

Terms of Business



1. Fees

- 1.1 Permanent** The Client must pay Stopgap 18% of the Candidate's first year's annual remuneration for a Permanent placement.
- 1.2 Freelance** The Client must pay Stopgap 15% of the Candidate's daily remuneration for a Freelance placement. If Stopgap is paying the Candidate on behalf of the Client, the Client must pay Stopgap for all monies it pays in relation to the Candidate's placement including Stopgaps Fee plus an 11% (of the Candidate's daily remuneration) administration fee to cover but not limited to payroll tax.
- 1.3 Freelance to Permanent** If a Candidate on a Freelance placement becomes Permanent then the Client must pay Stopgap 15% of the Candidate's first year's annual remuneration.
- 1.4 International Permanent Placement** The Client must pay Stopgap 20% of the Candidate's first years annual remuneration for an International Permanent placement.

2. Payments for Candidates

- 2.1 Remuneration, Statutory Entitlements and Deductions** The Client must:
 - 2.1.1** keep Stopgap informed in writing of the remuneration to be paid to any Candidate;
 - 2.1.2** pay the Candidate the agreed remuneration; and
 - 2.1.3** where candidates are being paid by the Client, make all payments for statutory entitlements and all required deductions (including super and tax). Where Stopgap is paying the Candidate on behalf of the Client, Stopgap will be responsible for the performance of these obligations.
- 2.2 Overtime** Where a Candidate is paid a Daily Rate then they must be paid an enhanced Daily Rate which is equivalent to 1.5 times the hourly rate for each hour or part of an hour worked:
 - 2.2.1** on a weekend, public or bank holiday;
 - 2.2.2** more than 10 hours in a day if it happens on more than 3 days in the same week; and
 - 2.2.3** more than 40 hours in a week except where already paid for that hour under 2.2.1 or 2.2.2. In the event of 2.2.1 then the 40 hours in a week will be pro-rata.
- 2.3 Awards** if a State or Federal Award covers the Candidate, the Client must immediately tell Stopgap of the applicability of the relevant Award and comply with its conditions.
- 2.4 Timesheets for Freelance** If the Candidate is in a Freelance placement, the Client must:
 - 2.4.1** obtain a timesheet from the Candidate at the end of each week that sets out the days, hours and any overtime worked by the Candidate;
 - 2.4.2** sign the timesheet, therefore verifying that its contents are accurate, and that the Candidate's performance has been satisfactory; and give Stopgap the signed timesheet within 7 Business Days of the last day covered by the timesheet.

3. Invoicing and Payment

- 3.1 Permanent** Stopgap will issue a single invoice to the Client for a Permanent placement on the Commencement Date, unless the Client has chosen to pay Stopgaps fee by PAYG in which case Stopgap will issue monthly invoices on the subsequent monthly Commencement Date over the Guarantee Period, which will be paid by way of standing order. This option ceases to apply in the event of late payment and balance of the full Permanent Fee shall thereupon be due immediately.
- 3.2 Freelance** Stopgap will issue the Client an invoice on the Commencement Date and then monthly in advance at the beginning of each subsequent month for a Freelance placement based on the agreed Daily Rate remuneration for that month. If Stopgap is paying the Candidate on behalf of the Client then invoices will be issued in arrears upon receiving the Candidate's timesheet in accordance with clause 2.4.
- 3.3 Payment**
 - 3.3.1 Terms** The Client must pay each Permanent and Freelance invoice within 30 days of receiving the invoice by direct deposit into Stopgaps nominated account, except for an invoice that is issued for a Freelance placement where Stopgap is paying the Candidate, which must be paid within 14 days.
 - 3.3.2 Interest** Stopgap may charge interest on late payments at 2% per month above the National Australia Bank Business Indicator Benchmark Rate as published in the Australian Financial Review.
 - 3.3.3 AUD\$** All fees and charges will be invoiced in Australian dollars and are to be paid in Australian dollars.
 - 3.3.4 GST** Unless otherwise expressly stated, all prices payable under or in accordance with this agreement are exclusive of GST. If GST is imposed on any supply made under or in accordance with this agreement, the recipient of the supply must pay to the supplier the GST payable on or for the supply subject to it receiving a valid tax invoice.

- 3.4 Credit Note** Provided the Client has complied with this Agreement, Stopgap will issue the Client a credit note for monies prepaid for a day where the Freelance Candidate did not actually work and the Client has provided Stopgap with a signed timesheet as per clause 2.4. No credit note will be issued for Freelance Candidates that are being paid via the Stopgaps payroll service as invoices are held to be accurate and correct under this Agreement as per clause 2.4.
- 4. Clients General Responsibilities**
- 4.1 General** The Client must directly supervise, be responsible for and control the Candidate during the placement.
- 4.2 Compliance** The Client must comply with all laws, by-laws, codes of practice, industry codes and other legal requirements in relation to the Candidate and the placement.
- 4.3 Insurance** Stopgap has the insurances as stated in clause 4.3.1 and 4.3.2 for Freelance placements on our payroll, although the Client must also obtain and maintain the following minimum insurances during the placement:
- 4.3.1** Public Liability Insurance for an amount not less than \$5,000,000;
- 4.3.2** Workers Compensation insurance as required by law;
- 4.3.3** There is no requirement to cover Graduate placements for workers compensation insurance as they are not "workers under the *Workers Compensation Act 1987*."
- 4.4 Candidate Contracts:** The Client must give Stopgap a copy of the terms of any agreement between the Client and the Candidate in connection with the placement.
- 4.5 Disciplinary Action** Before commencing disciplinary action against the Candidate, the Client must give Stopgap notice in writing, one Business Day in advance, explaining the reasons for and the proposed action.
- 4.6 Safe Workplace** The Client must provide the Candidate with a safe workplace that complies with all laws, standards, industry codes and requirements and give appropriate instruction, training, supervision, and safety equipment in relation to the Clients workplace.
- 5. International Placements**
- 5.1 Entitlement to Work** Stopgap will make enquiries with the Candidate as to whether or not they have the appropriate visa and status to fill the placement and will advise the Client of the Candidate's response. The Client shall satisfy itself and shall be responsible to ensure that the Candidate has the appropriate visa and status to fill the placement and work for them in Australia.
- 6. Confidentiality**
- 6.1 Keep Confidential** Each party must keep the others Confidential Information secret and confidential. It is only to be used in relation to this agreement and must not be disclosed, divulged, made known or in any way communicated it to any person without the other party's consent.
- 6.2 Forced Disclosure** It is not a breach of this clause for either party to disclose the other party's Confidential Information to its professional advisors or to a person or body it is obliged to disclose to by law.
- 6.3 Cumulative** The rights and remedies of each party under this clause are cumulative and in addition to any other rights or remedies to which the party may be entitled under this agreement or at law.
- 6.4 Client and Candidate** The Client must enter into an agreement with the Candidate relating to the use or disclosure of any of the Clients Confidential Information and the Client releases Stopgap from any associated liability in this regard.
- 7. Liability and Indemnity**
- 7.1** Stopgap is not liable to the Client for any loss, damage or expense suffered by the Client arising from or in connection with any acts or omissions of the Candidate or from any delay or failure by Stopgap to refer a candidate to the Client.
- 7.2 Indemnity** The Client indemnifies and must keep indemnified, Stopgap from and against all actions, proceedings, claims, demands, expenses, losses, damages and costs (including legal costs on a full indemnity basis) that may be brought or claimed against Stopgap or which Stopgap may pay, sustain or incur as a direct or indirect result of any breach of these terms and conditions by the Client, any negligent act or omission of the Client or the Candidate in connection with the placement or any liability to or claim by a Candidate arising as a result of the nomination that Stopgap pay the Candidate as set out in a Placement Confirmation Schedule and this Agreement.
- 7.3 Maximum Liability** Stopgaps maximum aggregate liability to the Client (including its officers, employees, agents and contractors) for any proven losses or damages of any kind caused by or resulting from any wrongful, wilful or negligent act or omission of Stopgap or any of its officers, employees, agents or contractors including liability for breach, in negligence or in tort or for any other common law or statutory action, is limited to the sum of the Fees paid by the Client to Stopgap under this Agreement.
- 7.4 No Consequential Loss** Despite any other clause, in no event will either party's liability to the other (including its officers, employees, agents and contractors) include any indirect, incidental, special or consequential damages, including loss of revenue, profits, anticipated profits, savings or data whether foreseeable or not and whether or not such loss or damage arises from an act or omission which is negligent and even if notified of the possibility of that potential loss or damage.

- 7.5 Selection of Candidate** Stopgap will take reasonable care in selecting a Candidate but can give no warranty in relation to the Candidate including that any information obtained in relation to them is accurate or that they will be fit for any purpose.
- 7.6 No Advice** Stopgaps responsibilities do not extend to giving advice on whether the Candidate will be able to perform the duties of the placement.
- 7.7 Exclusion** Any representation, warranty, condition or undertaking that would be implied in this agreement by legislation, common law, equity, trade, custom or usage is excluded to the maximum extent permitted by law.
- 7.8 Law** Nothing in these terms and conditions excludes, restricts or modifies any condition, warranty, right or remedy conferred by applicable law that cannot be excluded, restricted or modified by agreement.
- 8. Termination**
- 8.1 Freelance Candidate** The Client must give any Freelance Candidate a minimum of 24 hours' notice of any termination of the placement.
- 8.2 End of Placement** Subject to clauses 9.1 and 6, in the event that the Client provides notice pursuant to clause 8.1, this agreement will terminate at the end of the Candidate's Freelance placement with the Client.
- 8.3 Breach** Either party may terminate this agreement by notice to the other party if the other party fails to observe or perform any of its obligations under this agreement, and in the case of a failure which is capable of being remedied, does not remedy that failure within 28 days of being required in writing to do so.
- 8.4 Insolvency** Either party may terminate this agreement immediately after giving notice in writing if the other party suffers an insolvency event.
- 8.5 No Prejudice** Termination of this agreement for any reason will be without prejudice to the rights of either party arising prior to termination.
- 8.6 Survival** Clause 6 survives termination.
- 9. Subsequent Placement**
- 9.1** If a Freelance Candidate is employed by the Client in any position other than the position which was the subject of the placement, or the Candidate returns to engage in further employment within 12 months from the date that the previous placement was terminated or otherwise concluded, the Client must notify Stopgap within 5 Business Days and is liable to pay Stopgap a fee as set out in Clause 1.
- 9.2** A Fee will be payable by the Client in the event that the Client or a third party Introduced by the Client enters into an engagement of employment with a Candidate within 12 months following the introduction of the Candidate by Stopgap.
- 10. Guarantee for Permanent Placement**
- 10.1 Client not satisfied with Candidate**
If the Client terminates a Permanent placement within 3 Business Days of the Commencement Date because it is not reasonably satisfied with the Candidate, no Fees will be due by the Client if:
- 10.1.1** The Client notifies Stopgap in writing within 3 Business Days of the termination and this sets out the Clients reasons for terminating the employment; and
- 10.1.2** The Candidate has not been asked to perform tasks or duties outside the scope of the Clients brief to Stopgap or the Candidate's qualifications.
- 10.2 Candidate leaves within Guarantee Period** If the Candidate terminates a Permanent placement within the Guarantee Period, then subject to the Free Replacement Option below, the Client will receive a partial rebate of the Fee in proportion to the remaining part of the Guarantee Period in accordance with clause 10.5, if:
- 10.2.1** The fee paid to Stopgap for the Candidate was in line with clause 1.1 or 1.3;
- 10.2.2** The Client notifies Stopgap in writing of the termination within 3 Business Days and this sets out the Candidate's reasons for terminating the employment;
- 10.2.3** The termination was not a constructive dismissal or redundancy and not due to a business rationalisation (including a takeover), a change in the Candidate's job description or the desire of the Client to employ the Candidate in another capacity;
- 10.2.4** The Client in accordance with clause 3.3 paid all fees and other monies payable by the Client to Stopgap; and
- 10.2.5** The Client has met all other terms and conditions of this Agreement.
- 10.3 Client terminates Permanent Candidate** If the Client terminates a Permanent placement within the Guarantee Period, then subject to the Free Replacement Option below, the Client will receive a partial rebate of the Fee in proportion to the remaining part of the Guarantee Period in accordance with clause 10.4, if:
- 10.3.1** The Fee paid to Stopgap for the Candidate was in line with clause 1.1, 1.3 or 1.4;
- 10.3.2** The Client notifies Stopgap in writing of the termination within 3 Business Days and this sets out the Clients reasons for terminating the employment;
- 10.3.3** The reasons for termination were that the Candidate was manifestly unsatisfactory for the role with such reasons agreed by Stopgap (not a constructive dismissal or redundancy and not due to a business rationalisation (including a takeover), a change in the Candidate's job description or the desire of the Client to employ the Candidate in another capacity);
- 10.3.4** The Client in accordance with clause 3.3 has paid all fees and other monies payable by the Client to Stopgap; and
- 10.3.5** The Client has met all other terms and conditions of this Agreement.

- 10.4 Free Replacement Option** Stopgap can, at its sole discretion, opt to endeavour to find a free replacement at no extra cost to the Client within six weeks. In the event that Stopgap is unable to find a free replacement within the six-week period, then the Rebate detailed below shall be paid to the Client. If a free replacement is provided but then subsequently leaves, at any time after the start date, the Rebate will not apply.
- 10.5 Rebate** The rebate sum is 1/no. of months in the Guarantee Period multiplied by the Permanent Fee paid for each full month within the Guarantee Period that the Candidate is not employed by the Client. In the event that the Client is making payments under the PAYG option no further invoices will be issued after the date of actual termination of employment. All other invoices issued remain due and payable under this Agreement.
- 11. General**
- 11.1 Placement Confirmation Schedule** Stopgap will send to the Client a Placement Confirmation Schedule on confirmation by a Candidate that the placement is accepted. The Client will sign and return the Placement Confirmation Schedule to Stopgap. The contract between Stopgap and the Client in relation to any placement shall constitute the Placement Confirmation Schedule together with these terms and conditions. Terms and conditions in the Placement Confirmation Schedule that are inconsistent with these terms and conditions of this Agreement shall prevail to the extent of the inconsistency.
- 11.2 Notices** A notice or other communication connected with these terms and conditions has no legal effect unless it is in writing and sent by prepaid post to the address for service of the addressee, sent by facsimile to the facsimile number of the addressee or delivered at the address for service of the addressee. A party may change its details for service set out in the Placement Confirmation Schedule by giving notice of that change to each other party.
- 11.3 Severability** If anything in these terms and conditions is unenforceable, illegal or void then it is severed and the remainder of these terms and conditions Agreement remains in force.
- 11.4 Entire Understanding** These terms and conditions are the sole Agreement and understanding between the parties on everything connected with the subject matter of these terms and conditions and supersede any prior agreement or understanding between the parties on anything connected with that subject matter.
- 11.5 Variation** An amendment or variation to these terms and conditions is not effective unless it is in writing and signed by both parties.
- 11.6 Assignment** Either party may assign all or any of its rights under these terms and conditions with the consent of the other party with such consent not being unreasonably withheld.
- 11.7 No Right of Set-off** Except as expressly stated in these terms and conditions, neither party has right of set-off owing against a payment due to the other party.
- 11.8 Relationship of Parties** Nothing in these terms and conditions creates a relationship between the parties of partnership, employment, principal and agent or of trustee and beneficiary.
- 11.9 Governing Law and Jurisdiction** The law of New South Wales governs these terms and conditions. The parties submit to the non-exclusive jurisdiction of the courts of that jurisdiction.
- 12 Definitions and Interpretation**
- 12.1 Definitions** In these terms and conditions:
- 12.1.1 Stopgap** means Stopgap Pty Limited of 180 George Street, NSW 2000.
- 12.1.2 Agreement** means this agreement and any Placement Confirmation Schedule attached to it or variation thereof;
- 12.1.3 Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the area where an assignment is to be carried out for the Client or a payment is to be made;
- 12.1.4 Candidate** means any person introduced to or placed with the Client by Stopgap
- 12.1.5 Client** means [Client];
- 12.1.6 Commencement Date** means the first day that a Candidate begins employment with the Client;
- 12.1.7 Confidential Information** means all information provided by one party to the other or any of its representatives, whether obtained before or after signing of this Agreement, other than information which:
- 12.1.7.1** Was known to the receiving party before its communication by the disclosing party;
- 12.1.7.2** Is in or comes into the public domain other than through any default of the receiving party;
- 12.1.7.3** Is disclosed to the receiving party by a third party having no obligations of confidence to the disclosing party and the information has not been disclosed to that third party in breach of confidence; or
- 12.1.7.4** Developed independently by a party without reference to information disclosed by the other party;
- 12.1.8 Daily Rate** means the rate the Client agrees to pay a Candidate for each day worked during the Freelance placement;
- 12.1.9 Fee** means the price, amount or sum charged to the Client by Stopgap;
- 12.1.10 Freelance** means the employment by the Client or any related body corporate or associate of the Client of the Candidate on a casual basis;
- 12.1.11 Graduate** means a Candidate that is either a voluntary worker or work experience student. Someone that has recently completed some form of tertiary education and is just entering the work force.
- 12.1.12 Guarantee Period** means a period of 3 months from the Commencement Date as stated in the Placement Confirmation Schedule relevant to the particular placement;

- 12.1.13 International** means any placement with the Client sourcing a Candidate not resident in Australia at the time of sourcing of that Candidate;
- 12.1.14 Introduction, Introduced** means brought to the attention of whether by written or verbal means;
- 12.1.15 PAYG** stands for Pay As You Go, which means that the Client has the option to make equal subsequent payments over a set period as outlined in this Agreement;
- 12.1.16 Permanent** means the employment by the Client or any related body corporate or associate of the Client of the Candidate on a permanent basis;
- 12.1.17 Placement Confirmation Schedule** means the schedule in the form of Annexure A; and
- 12.1.18 Remuneration** means:
- 12.1.18.1** For a Permanent placement: the gross annual amount agreed to be paid to the Candidate including salary, statutory superannuation and additional allowances, i.e. car
- 12.1.18.2** For a Freelance placement: the gross daily amount paid to or for the Candidate including salary and statutory superannuation plus any other supplementary payment.
- 12.2 Interpretation** In these terms and conditions, unless the contrary intention appears:
- 12.2.1** A reference to a document (including these terms and conditions) includes any variation or replacement of it;
- 12.2.2** A person includes a partnership, body corporate, unincorporated association or an authority;
- 12.2.3** A party includes the party's executors, administrators, successors and permitted assigns; and dollars, Australian dollars, A\$, AUD\$, or \$ is a reference to the lawful currency of Australia;
- 12.2.4** If a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day and if an act must be done on a given day which is not a Business Day, it must be done instead on the next Business Day;
- 12.2.5** The words include, including, for example or such as when introducing an example, do not limit the meaning of the words to which the example relates to the example or to examples of a similar kind;
- 12.2.6** A provision of these terms and conditions must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Agreement or the inclusion of the provision in this Agreement.