

## I Need A Chef Pty Ltd – Terms & Conditions of Labour Hire

1. **Definitions**
    - 1.1 "Agent" shall mean I Need A Chef Pty Ltd ATF I Need A Chef Unit Trust T/A I Need A Chef Pty Ltd its successors and assigns or any person acting on behalf of and with the authority of I Need A Chef Pty Ltd ATF I Need A Chef Unit Trust T/A I Need A Chef Pty Ltd.
    - 1.2 "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by the Agent to the Client.
    - 1.3 "Candidate" shall mean any individual sent by the Agent to the Client for employment by the Client on a temporary, casual, or part time basis.
    - 1.4 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
    - 1.5 "Services" shall mean all Services supplied by the Agent to the Client and includes any advice or recommendations.
    - 1.6 "Fee" shall mean the Fee payable for the Services as agreed between the Agent and the Client in accordance with clause 6 of this contract.
  2. **The Commonwealth Competition and Consumer Act 2010 ("CCA") and Fair Trading Acts ("FTA")**
    - 2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the CCA or the FTA in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.
  3. **Acceptance**
    - 3.1 Any instructions received by the Agent from the Client for the supply of its Services and/or the Client's acceptance of Services supplied by the Agent shall constitute acceptance of the terms and conditions contained herein.
    - 3.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Fee.
    - 3.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of the Agent.
    - 3.4 The Client shall give the Agent not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by the Agent as a result of the Client's failure to comply with this clause.
    - 3.5 Services are supplied by the Agent only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.
  4. **Services**
    - 4.1 The Agent undertakes to:
      - (a) use its best endeavours to provide suitably qualified Candidates to undertake work duties in compliance with the Client's requirements, in the event the Client is not satisfied with the performance of the Candidate then clause 5.2 shall apply; and
      - (b) make the payment of all amounts due to the Candidate under the terms of any relevant industrial instrument or contract; and
    - (c) make the payment of all leave entitlements (including, but not limited to, annual leave, sick leave, parental leave and long service leave) if the Candidate is a fulltime employee; and
    - (d) deduct the requisite amounts of income tax, fringe benefits tax, pay roll tax and all other applicable deductions as required by Australian law; and
    - (e) ensure payment of any other statutory taxes, superannuation contributions and/or levies as required by Australian law; and
    - (f) maintain workers compensation insurance for all Candidates, except where state laws specify otherwise.
  5. **Agent's Undertakings**
    - 5.1 The Agent agrees to use its best endeavours to supply suitable, competent Candidates to its Clients based on the Client's requirements. The Client agrees to clearly instruct the Agent of its requirements for Candidates and to notify the Agent immediately if there is any change in those requirements.
    - 5.2 In the event that the Agent receives notice from the Client within one (1) hour of a Candidate commencing that the Client is dissatisfied with the Candidate provided by the Agent, no charge will be made to the Client for the hour worked by the Candidate.
    - 5.3 Every effort is made by the Agent to ensure the highest standards of integrity within their Candidates. However, no responsibility shall be accepted by the Agent for any error, loss, expense, damage or delay that arises where a Candidate has been required as part of any assignment to handle money's, securities, valuables or confidential information.
    - 5.4 The Agent may replace a Candidate at any time with another Candidate of comparable qualifications without notice to the Client however the Agent shall endeavour to notify the Client before doing so.
  6. **Fee and Payment**
    - 6.1 At the Agent's sole discretion the Fee shall be either:
      - (a) as indicated on invoices provided by the Agent to the Client in respect of Services supplied; or
      - (b) the Agent's current price at the date of delivery of the Services as indicated on the Agent's rate schedule; or
      - (c) the Agent's quoted Fee (subject to clause 6.2) which shall be binding upon the Agent provided that the Client shall accept the Agent's quotation in writing within twenty-four (24) hours.
    - 6.2 The Agent's quotation shall specify:
      - (a) the Services to be provided by each Candidate;
      - (b) the job description of each Candidate;
      - (c) the location where Services shall be performed;
      - (d) the Fee payable by the Client for the Services.
    - 6.3 The Agent reserves the right to change the Fee in the event of a variation to the Agent's quotation. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation as a result of additional works required due to hidden or unidentifiable difficulties or as a result of increases to the Seller in the cost of materials and labour) will be charged for on the basis of the Seller's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
  - 6.4 At the Agent's sole discretion a non-refundable deposit may be required.
  - 6.5 Time for payment for the Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due fourteen (14) days following the date of the invoice.
  - 6.6 Payment will be made by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Client and the Agent.
  - 6.7 GST and other taxes and duties that may be applicable shall be added to the Fee except when they are expressly included in the Fee.
  - 6.8 The Agent must be advised by the Client of any specific site or project allowances which may be applicable. All such allowances (including, but not limited to, meal, travel or tool allowances) shall be on-charged to the Client accordingly.
  - 6.9 The Client acknowledges that only lunch breaks shall be deducted from total hours charged by the Agent to the Client.
  - 6.10 The Client acknowledges and agrees that the Client's obligations to the Agent for the supply of Services shall not cease until:
    - (a) the Client has paid the Agent all amounts owing for the particular Services; and
    - (b) the Client has met all other obligations due by the Client to the Agent in respect of all contracts between the Agent and the Client.
  - 6.11 Receipt by the Agent of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Agent's ownership or rights in respect of the Services shall continue.
7. **Minimum Hire Period**
  - 7.1 A minimum hire period of four (4) hours is applicable to all Candidates supplied by the Agent to the Client.
8. **Delivery of Services**
  - 8.1 The Client agrees that they shall not alter the location where the Candidate is to undertake any agreed duties without the prior consent of the Agent.
  - 8.2 The failure of the Agent to deliver shall not entitle either party to treat this contract as repudiated.
  - 8.3 The Agent shall not be liable for any loss or damage whatever due to failure by the Agent to provide its Services (or any of them) promptly or at all, where due to circumstances beyond the control of the Agent.
9. **Client's Responsibilities / Agreements**
  - 9.1 The Client agrees that they shall supply to the Agent (on the day specified by the Agent) a duly authorised timesheet to enable the Agent to pay the Candidate when due. By the Client signing off on a Candidate's timesheet, this shall be deemed to be acceptance of the Terms and Conditions herein and shall mean the Client is satisfied with the Candidate's performance.
  - 9.2 It is the responsibility of the Client to:
    - (a) provide supervision of Candidates to ensure that work is carried out to a satisfactory standard; and
    - (b) provide Candidates with appropriate information, supervision and training to enable them to work safely; and
    - (c) provide Candidates with workplace specific and job specific induction if necessary. This induction is to be completed before the Candidate commences work with the Client; and
    - (d) familiarise the Candidate with the Client's operations, facilities, policies and procedures, and properly inform the Agent of any specific requirements of the job

- which the Candidate will be required to undertake; and
- (e) provide safe working conditions and to comply with all statutory and other obligations that are applicable pursuant to Australian law (including but not limited to, Occupational Health and Safety legislation) applicable to employers and otherwise to treat Candidates as if they were employed by the Client; and
- (f) effect and maintain insurance cover in respect of any claims which may be made against the Client by a Candidate that arises as a result of the Client's occupation of premises, and otherwise in respect of any act or omission in respect of machinery, equipment or vehicle(s) used by the Candidate, and to indemnify the Agent against any such claims; and
- (g) properly maintain plant and equipment.
- 9.3 The Client agrees that it will not request a Candidate to engage in any works or use any equipment that a Candidate is unfamiliar with, or unqualified to use or perform, or have not received adequate training for.
- 9.4 The Client agrees that they will immediately notify the Agent of any variation of duties given to a Candidate that may affect the remuneration payable to the Candidate or may involve additional risk to the Candidate.
- 9.5 The Client agrees that it will immediately notify the Agent of any injury sustained by the Candidate.
- 9.6 The Client acknowledges that they remain responsible for controlling the manner, time and place in which the Candidate shall carry out their duties as assigned by the Client and that in doing so the Client shall be liable for all acts and omissions of the Candidate the same as they would be for any of their own employees.
- 9.7 In no circumstances shall the Agent be liable for any personal injury resulting in injury or death, loss and/or damage or expense arising out of, or caused by, any act or omission of a Candidate whether or not any such act or omission is negligent, and the Client acknowledges and agrees to indemnify the Agent against all such liability whether alleged or proved. The Client is to include all Candidates in the Client's own public liability insurance cover.
- 9.8 If any event arises which is likely to lead to any dispute or claim, the Client must notify the Agent of the same within thirty (30) days of the event. If the Client shall fail to comply with this provision then all Services provided by the Agent shall be deemed to have been provided in accordance with these terms and conditions, and free from any disputes or claims.
- 9.9 The Client agrees that any working environment in which a Candidate is placed during the period of the engagement will comply with all applicable equal opportunity legislation or regulations. The Client agrees to immediately notify the Agent if a Candidate is involved in a sexual harassment or discrimination claim during the performance of the Services.
- 9.10 The Client acknowledges that the Agent makes no representation or guarantee that any Candidate will achieve a certain level of performance, achieve a certain outcome, solve a particular problem or attain a specific goal.
- 10. Confidentiality**
- 10.1 The Agent and the Client agree to keep confidential any information in relation to the other party which is not in the public domain (including, but not limited to, trade secrets, processes, formulae, accounts, marketing, designs, databases and all other information held in any form).
- 11. Employees of Agent**
- 11.1 The Client agrees not to employ, contract, subcontract or utilise in any way an employee or past employee of the Agent (other than through the Agent) for a period of no less than twelve (12) months after that employee's last employment with the Agent.
- 11.2 The Client agrees that if clause 11.1 is contravened the Agent will view this as a permanent placement and will invoice the Client a one off placement fee of 9% of the candidates total annual gross salary package. Applicable to any Candidate employed, contracted, subcontracted or utilised in any way by the Client. The Client agrees to pay said invoice in accordance with the standard payment terms contained in this contract.
- 11.3
- 12. Errors and Omissions**
- 12.1 The Client shall review the Agents Services as they are delivered and shall immediately notify the Agent of any failure to provide the agreed or quoted services. The Client shall afford the Agent an opportunity to review those Services within a reasonable time following delivery if the Client believes the Services are defective in any way. If the Client shall fail to comply with these provisions, the Services shall be conclusively presumed to be in accordance with the terms and conditions herein. For defective Services, which the Agent has agreed in writing that the Client is entitled to reject, the Agent's liability is limited to either (at the Agent's discretion) replacing the Services or rectifying the Services.
- 13. Default and Consequences of Default**
- 13.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at the Agent's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 13.2 If the Client owes the Agent any money the Client shall indemnify the Agent from and against all costs and disbursements incurred by the Agent in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Agent's collection agency costs, and bank dishonour fees).
- 13.3 Without prejudice to any other remedies the Agent may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms of hire the Agent may suspend or terminate the supply of Services to the Client and any of its other obligations under the terms and conditions. The Agent will not be liable to the Client for any loss or damage the Client suffers because the Agent has exercised its rights under this clause.
- 13.4 Without prejudice to the Agent's other remedies at law the Agent shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Agent shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to the Agent becomes overdue, or in the Agent's opinion the Client will be unable to make a payment when it falls due; or
- (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 14. Security and Charge**
- 14.1 Despite anything to the contrary contained herein or any other rights which the Agent may have howsoever:
- (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Agent or the Agent's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that the Agent (or the Agent's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
- (b) should the Agent elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Agent from and against all the Agent's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Agent or the Agent's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 14.1.
- 15. Cancellation**
- 15.1 The Agent may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are delivered by giving written notice to the Client. On giving such notice the Agent shall repay to the Client any sums paid in respect of the Fee. The Agent shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 15.2 In the event that the Client cancels delivery of the Services the Client shall be liable for any loss incurred by the Agent (including, but not limited to, any loss of profits) up to the time of cancellation.
- 16. Privacy Act 1988**
- 16.1 The Client and/or the Guarantor/s (herein referred to as the Client) agree for the Agent to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by the Agent.
- 16.2 The Client agrees that the Agent may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by the Client; and/or
- (b) to notify other credit providers of a default by the Client; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
- (d) to assess the creditworthiness of the Client.
- The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 16.3 The Client consents to the Agent being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

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- 16.4 The Client agrees that personal credit information provided may be used and retained by the Agent for the following purposes (and for other purposes as shall be agreed between the Client and Agent or required by law from time to time):
- (a) the provision of Goods; and/or
  - (b) the marketing of Goods by the Agent, its agents or distributors; and/or
  - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
  - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
  - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods.
- 16.5 The Agent may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client;
  - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 16.6 The information given to the credit reporting agency may include:
- (a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
  - (b) details concerning the Client's application for credit or commercial credit and the amount requested;
  - (c) advice that the Agent is a current credit provider to the Client;
  - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
  - (e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
  - (f) information that, in the opinion of the Agent, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);
  - (g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;
  - (h) that credit provided to the Client by the Agent has been paid or otherwise discharged.

### 17. General

- 17.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 17.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria and are subject to the jurisdiction of the courts of Victoria.
- 17.3 The Agent shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Agent of these terms and conditions.
- 17.4 In the event of any breach of this contract by the Agent the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Fee for the Services.
- 17.5 The Client shall not be entitled to set off against, or deduct from the Fee, any sums owed or claimed to be owed to the Client by the Agent nor to withhold payment of any invoice because part of that invoice is in dispute.

- 17.6 The Agent may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 17.7 The Agent reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Agent notifies the Client of such change. Except where the Agent supplies further Services to the Client and the Client accepts such Services, the Client shall be under no obligation to accept such changes.
- 17.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 17.9 The failure by the Agent to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Agent's right to subsequently enforce that provision.