

**REGISTER OF  
ENTERPRISE AGREEMENTS**

**ENTERPRISE AGREEMENT NO:** EA04/127

**TITLE:** Innoxia Pty Ltd Agreement 2004

**I.R.C. NO:** IRC4/1924

**DATE APPROVED/COMMENCEMENT:** 2 April 2004 / 1 January 2004

**TERM:** 12 months

**NEW AGREEMENT OR  
VARIATION:** Replaces EA03/144

**GAZETTAL REFERENCE:** 18 June 2004

**DATE TERMINATED:**

**NUMBER OF PAGES:** 18

**COVERAGE/DESCRIPTION OF**

**EMPLOYEES:** The Agreement applies to all employees employed by Innoxia Pty Ltd located at 6/106 Old Pittwater Road, Brookvale, NSW 2100, engaged in the classifications pertaining to manufacture and distribution of cosmetics and cosmetic products, who fall within the coverage of the Innoxia Pty Ltd Consent Award, Drug Factories (State) Award, Warehouse Employees Drug (State) Award and the Metal and Engineering Industry (NSW) Interim Award

**PARTIES:** Innoxia Pty Ltd -&- the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union, New South Wales Branch, Shop Distributive & Allied Employees' Association, NSW

# INNOXA PTY LTD AGREEMENT 2004

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This Agreement shall be known as the INNOXA PTY LTD AGREEMENT 2004.

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### **3. Area, Incidence and Parties Bound**

This Agreement shall be binding upon:

INNOXA PTY LTD, located at 6/106 OLD PITTWATER ROAD, BROOKVALE, NEW SOUTH WALES;

Shop, Distributive and Allied Employees' Association, New South Wales;

Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union, New South Wales Branch; and

employees of INNOXA PTY LTD engaged in or in connection with the manufacture and distribution of cosmetics and cosmetic products.

### **4. Date and Period of Operation**

This Agreement shall take effect from 1st January, 20034 and shall remain in force until 31st December, 20034.

### **5. Relationship to Parent Award**

Where the terms and conditions of this Agreement do not specifically cover a particular matter then this Agreement shall be read and interpreted in conjunction with the Innox Pty Ltd Consent Award 1997.

Where the terms and conditions of this Agreement are in conflict with any of the terms and conditions of the above Award then this Agreement shall prevail to the extent of the inconsistency.

### **6. Aim of Agreement**

It is the objective of the parties to this Agreement to implement workplace practices so as to provide for more flexible working arrangements, which improve the efficiency and productivity of the business, enhance skills and job satisfaction and assist positively in ensuring that the company becomes a more profitable enterprise.

The parties agree that the objectives of this Agreement are to facilitate:

- (a) flexible working hours;
- (b) workplace productivity.'
- (c) the development and maintenance of good workplace relations.

The parties also agree that the objectives will not be limited to the measures set out at subclause 6 (a)-(c). It is recognised that an important factor in reaching the above objectives is the development of a working environment where all parties are involved with the decision-making process. Both management and employees are committed to cooperating positively to implement work practices that are flexible and meet the requirements of the company.

### 7. New Employees

The parties agree that any employee who is engaged by the employer after the commencement of this Agreement shall be bound by the Agreement and be entitled to all benefits and obligations of this Agreement.

### 8. Agreement to Be Displayed

Copies of this Agreement shall be displayed in a clearly visible place and be accessible to all parties covered by the Agreement.

### 9. Workplace Consultative Committee

The parties covered by this Agreement shall establish a consultative mechanism with equal representation of employer and employee(s) together with the union, with procedures appropriate to its size, structure and needs, for consultation on matters affecting the efficiency and productivity of the enterprise and to ensure better communication between management and its employees.

The Committee has no power to vary any matter in this Agreement.

This Committee shall be a forum for open discussion and shall meet on a regular basis with additional meetings on an as required basis.

The Rules and Constitution of the Committee, once developed and agreed upon, are to become an appendix to this Agreement.

### 10. No Extra Claims

The Unions and employees bound by the Agreement will not pursue any further claims, award or over award, for the life of this Agreement including increases arising from award variations to the relevant parent awards or from decisions from the Commission other than increases which are consistent with and provided for in the terms of this Agreement. Where however any variation to the parent awards increases the entry level rate above the rate set out in this Agreement, then such entry level rate shall be adjusted accordingly.

## PART B - CLASSIFICATIONS AND CAREER PROGRESSION

### 11.1 CLASSIFICATIONS

The parties agree to develop through the workplace consultative committee and as a matter of priority, a classification structure that is competency based around principles of multi-skilling. Pending the development of a classification structure the following minimum rates of pay shall apply and no employee shall have their current pay reduced as a result of the making of this Agreement: -

Level	Classification	Rate payable from 1/1/034
Entry level	[3 months probation and confirmed at Level 1]	\$508.79 per week
Level 1 *	Warehouse/factory processor and cleaner	\$555.80 per week
Level 2A	Storeperson	\$590.93 per week
Level 2B	Linesetter	\$712.04 per week
Level 3	Senior Supervisor	\$621.20 per week
Level 4	Chief Supervisor	\$655.87 per week
Level 5A	Compounder	\$735.60 per week
Level 5B	Senior Compounder	\$810.88 per week
Level 6	Fitter	\$828.62 per week

In addition, an allowance of .832 cents per hour is payable while the person performs the duties of Senior Supervisor, Level 3.

#### 11.2 UTILISATION OF SKILLS AND LABOUR FLEXIBILITY

Employees shall be employed to carry out such duties as may be directed by the employer from time to time subject to the limits of their skills, competence and training.

Employees shall therefore perform such work as is reasonable and lawfully required of them by management including accepting instructions and directions from authorised personnel.

Employees, working in teams, shall perform a wider range of functions and duties, including all reasonable requests to transfer between the warehouse and factory areas of the business, or to perform any work covered by this Agreement including any work which is incidental or peripheral to their main tasks or functions.

In carrying out duties, employees shall ensure and take all necessary steps to ensure that the quality, accuracy and completion of any job or task is maintained to the satisfaction of management. Employees shall not impose any restriction or limitations on the measurement and/or review of work methods or the utilisation of labour under the terms and conditions of this Agreement.

Any employee may, at any time, carry out such duties and use such tools and equipment as may be directed by the employer provided that the employee has been properly trained in the use of such tools and equipment.

Any direction given by the employer in accordance with the terms of the clause shall be consistent with the employer's obligations under the Occupational Health and Safety Act 2000.

#### 11.3 PROGRESSION/CAREER DEVELOPMENT

All employees will be encouraged and assisted to progress to the highest level personally attainable consistent with the needs of the company.

#### 11.4 BACKFILLING

When a new employee enters at a level above the base rate due to particular skill requirements, the employee must become familiar with the skills required at lower levels as soon as practicable to ensure full flexibility of labour.

#### 11.5 TRANSITION ARRANGEMENTS

Where the adoption of this Agreement and the development of a classification structure through the Workplace Consultative Committee creates individual situations where an employee's rate of pay and skill level does not fit the Agreement, the following principles will apply:

- (a) No employee will lose pay because of the transition;
- (b) Some employees may need to develop skills required at a lower level and must undertake to do so as soon as practicable.

## **PART C - REMUNERATION**

### **12. Pay Increases**

A 3.5 4% pay increase across the board is payable effective from the first pay period on or after 1st January, 20034.

### **13. Allowances**

Allowances shall continue to be paid in accordance with the relevant parent Award.

## **PART D - HOURS OF WORK**

### **14. Ordinary Hours**

Hours of work are a 38 hour week, with a rostered day off each 4 week cycle in accordance with clause 15. The ability of the Company in order to meet its production and distribution requirements to require employees to work rostered ordinary hours between 7am and 7pm Monday to Friday with staggered starts and finishes on a mutually agreed fixed shift basis. The abolition of the afternoon, three minute rest break is to allow for an earlier finishing time.

By mutual agreement an employee may defer taking up to five rostered days off each year which may be taken as part of annual leave or at such other mutually convenient time.

### **15. Rostered Days Off**

The ordinary hours of work of employees shall not exceed an average of thirty-eight hours per week averaged over a maximum of 4 weeks, working a cycle of 19 working days in four weeks.

### **16. Casual Employees**

The hourly rate for casuals includes in addition to the ordinary hourly rate a 17.5% casual employment loading and 1/12th pro rata loading for annual leave.

The Company may use additional casuals where overtime has been offered and refused by permanent staff. The engagement of any casual employee shall be limited to a continuous period of 12 months. If the employee remains in employment at that time, such employee shall be offered a full time position if work is available. As a guide, seniority of such casual staff shall determine the order of merit.

### **17. Contract Employees**

The Company may engage employees on a short fixed term contract as and when necessary to cover peak periods.

### **18. Rest Periods and Meal Intervals**

#### Rest Periods

In every period of ordinary daily hours, two rest periods of at least 3 minutes shall be allowed at a time to be mutually arranged so that there is no complete cessation of work (if this is necessary). All rest periods shall be paid, and tea, coffee, milk and sugar shall be supplied free of charge by the employer, for consumption on the premises during these breaks. As a guideline, a paid break should be allowed every two and a half hours in prolonged overtime situations.

#### Mealtime Intervals

Except where work can be completed in an extra half hour, no employee shall be required to work for more than four and a half hours continuously (exclusive of rest periods) without an interval of at least half an hour. Such intervals shall be unpaid.

## **PART E - LEAVE**

### **19. Annual Leave**

Annual leave entitlement shall be in accordance with annual leave provisions under the *Annual Holidays Act* 1944 and any amendments to that Act.

## 20. Annual Leave Loading

- (a) In this clause the *Annual Holidays Act 1944* is referred to as "the Act".
- (b) Before an employee is given and takes an annual holiday, or where, by agreement between the employer and employee, the annual holiday is given and taken in more than one separate period, then before each of such separate periods the employer shall pay the employee a loading determined in accordance with this clause.
- (c) The loading is payable in addition to the pay for the period of holiday given and taken when due to the employee under the Act and this Agreement.
- (d) The loading is 25 per cent of the appropriate ordinary weekly time rate of pay prescribed by this Agreement for the classification in which the employee was employed immediately before commencing the annual holiday together with any all purpose allowances where applicable.
- (e) Employees who take annual leave in advance shall be paid a pro rata amount of annual leave loading as if the annual leave had fully accrued, provided that if the employee leaves employment with the company for any reason prior to the accrual of the annual leave, the loading that was paid in advance shall be deducted by the company from any moneys owing to the employee.
- (f) Where in accordance with the Act, the employer's establishment or part of it is temporarily closed down for the purpose of giving an annual holiday or leave without pay to the employees concerned any employee who is entitled to take such a holiday shall be paid the loading calculated in accordance with subclause (d) of this clause.

## 21. Sick Leave

An employee who is unable to attend for duty during their ordinary working hours by reason of personal illness or personal incapacity (including incapacity resulting from injury within the *Workers' Compensation Act, 1987*), not due to the employee's own serious and wilful misconduct, shall be entitled to be paid at ordinary time rate of pay for the time of such non-attendance subject to the following:

- (a) The employee shall not be entitled to paid leave of absence for any period in respect of which the employee is entitled to compensation under the *Workers' Compensation Act 1987*.
- (b) The employee should within four hours where practicable, and in any case shall within twenty four hours, of the commencement of such absence, inform the employer of the employee's inability to attend for duty and, as far as practicable, state the nature of the injury or illness and the estimated duration of the absence.
- (c) The employee shall prove to the satisfaction of the employer, by the production of a medical certificate or other satisfactory evidence, that the employee was unable, on account of illness or injury, to attend for duty on 2 consecutive days or more for which sick leave is claimed.
- (d) Any medical certificate dated after the taking of sick leave shall not be accepted for the purpose of determining sick leave entitlements.
- (e) Subject to the other provisions of this clause, an employee shall be credited with 76 hours paid sick leave in respect of each year of service. Sick leave granted with pay shall be deducted from such credit.
- (f) Sick leave entitlements not claimed in any one year shall accumulate from year to year so long as the employment continues with the employer.
- (g) Service before the coming into force of this Agreement shall be counted as service for the purpose of qualifying there under.
- (h) The payment of any absence on sick leave in accordance with this clause during the first three months of employment of an employee may be withheld by the employer until the employee completes such three

months of employment at which time the payments shall be made. Provided further, an employee shall forfeit any payment for sick leave if the employee terminates the contract of employment within the first three months of employment. Alternatively, if an employer terminates the contract of employment within the first three months, the employer shall pay the employee for any sick leave taken by the employee, to a maximum of 76 hours.

- (i) Employees whose behaviour is unsatisfactory in relation to the use of sick leave will be given adequate time to demonstrate a willingness to improve. If, at the end of this period, the employee shows no willingness to improve in the opinion of management, then disciplinary action up to and including dismissal may be taken, Nothing in the procedure shall limit the right of management to summarily dismiss an employee for serious and wilful misconduct or prevent the employee from taking action under the *NSW Industrial Relations Act 1996*.

## **22. Paid Personal Carer's Leave**

Full-time and part-time employees shall be entitled to paid Family leave in order to attend to unforeseen family or personal matters, subject to the production of satisfactory evidence.

The employee seeking to take Family Leave must be responsible for the care of the family member concerned and the family member must be a member of the employee's household.

Family leave will be a maximum of 22.8 hours for full-time employees and pro-rata for part-time employees and shall be credited on the employee's weekly employment anniversary date. Such leave shall be non-cumulative.

Provided that in any year where the above paid family leave is exhausted an employee may elect to utilise:

paid time off accrued in lieu of overtime

outstanding annual leave entitlements

make-up time of any lost ordinary hours

accrued paid sick leave.

The following entitlements apply in accordance with the *NSW Industrial Relations Act 1996*.

### (a) Paid Personal Carer's Leave

- (i) An employee, other than a casual employee, with responsibilities in relation to a class of person set out in (a)(ii)(2) who needs the employees' care and support, shall be entitled to 3 days Paid Personal Carer's Leave in accordance with this subclause, for absences to provide care and support, for such persons when they are ill. Such leave may be taken for part of a single day.
- (ii) The employee shall, if required, establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person. In normal circumstances an employee must not take carer's leave under this subclause where another person has taken leave to care for the same person.

The entitlement to use sick leave in accordance with this subclause is subject to:

(1) The employee being responsible for the care of the person concerned, and

(2) The person concerned being:

(a) a spouse or the employee; or

(b) a de- facto spouse, who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the, first mentioned person as husband or



wife of that person on a bona fide domestic basis although not legally married to that person; or

- (c) a child or an adult child (including an adopted child, a step child, a foster child or an ex-nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse or de facto spouse of the employee, or
- (d) a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis, or
- (e) a relative of the employee who is a member of the same household where for the purposes of this paragraph:
  - (1) "relative" means a person related by blood, marriage or
  - (2) "affinity" means a relationship that one spouse because of marriage has to blood relatives of the other; and
  - (3) "household" means a family group living in the same domestic dwelling.

(iii) An employee shall, wherever practicable, give the employer prior notice of the intention to take such leave, including the name, of the person requiring care and that person's relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.

(b) Use of Sick Leave for Family Purposes

An employee may elect, with the consent of the employer, to take sick leave for the purpose of providing care and support of a member of a class of person set out in (a)(iii)(2) above who is ill.

(c) Unpaid Leave for Family Purposes

An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care and support of a member of a class of person set out in (a)(iii)(2) above who is ill.

(d) Annual Leave

(i) An employee may elect with the consent of the employer, subject to the *Annual Holidays Act 1944*, to take annual leave not exceeding five days in single day periods or part thereof, in any calendar year at a time or times agreed by the parties.

(ii) Access to annual leave, as prescribed in paragraph (d)(i) above, shall be exclusive of any business shutdown period provided for elsewhere under this Agreement.

(iii) An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.

(e) Time Off in Lieu of Payment for Overtime

(i) An employee may elect, with the consent of the employer, to take time off in lieu of payment for overtime at a time or times agreed with the employer within twelve (12) months of the said election.

(ii) Overtime taken as time off during ordinary time hours shall be taken at the ordinary time rate, that is an hour for each hour worked.

- (iii) If, having elected to take time as leave, in accordance with paragraph (e)(i) above, the leave is not taken for whatever reason, payment for time accrued at overtime rates shall be made at the expiration of the twelve (12) month period or on termination.
  - (iv) Where no election is made in accordance with paragraph (e)(i) the employee shall be paid overtime rates in accordance with the Agreement.
- (f) Make-up Time
- (i) An employee may elect, with the consent of their employer, to work 'make-up time', under which the employee takes time off in ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in the Agreement, at the ordinary rate of pay.
  - (ii) An employee on shift work may elect, with the consent of the employer to work 'make-up time' (under which the employee takes time off in ordinary hours and works those hours at a later time) at the shift work rate which would have been applicable to the hours taken off.
- (g) Rostered Days Off
- (i) An employee may elect, with the consent of the employer, to take a rostered day off at any time.
  - (ii) An employee may elect, with the consent of the employer, to take rostered days off in part day amounts.
  - (iii) An employee may elect, with the consent of the employer, to accrue some or all rostered days off for the purpose of creating a bank to be drawn upon at a time mutually agreed between the employer and employee, or subject to reasonable notice by the employee or the employer.
  - (iv) This subclause is subject to the employer informing each union which is both party to the Agreement and which has members employed at the particular enterprise of its intention to introduce an enterprise system of RDO flexibility, and providing a reasonable opportunity for the union(s) to participate in negotiations.

### **23. Long Service Leave**

Entitlement to long service leave shall be in accordance with the *Long Service Act 1955* and any amendments to that Act.

### **24. Bereavement Leave**

- (i) An employee, other than a casual employee, shall be entitled to a maximum of three day bereavement leave without deduction of pay, on each occasion of the death of a person within Australia as prescribed in paragraph (iii) of this clause, if such leave is necessary to arrange for and/or attend the funeral. Where the death of a person as prescribed by the said subclause (iii) occurs outside Australia, the employee shall be entitled to five days bereavement leave (inclusive of the three days referred to above), where the employee travels outside Australia to attend the funeral. Notwithstanding the above, bereavement leave will only be granted by management if the employee concerned would normally be working on the days for which bereavement leave is sought.
- (ii) The employee must notify the employer as soon as practicable of the intention to take bereavement leave and will provide to the satisfaction of the employer proof of death.
- (iii) Bereavement leave shall be available to the employee in respect to the death of a person prescribed for the purposes of personal/carer's leave as set out in subparagraph (2) of paragraph (ii) of subclause (a) of clause 22, Paid Personal Carer's Leave, provided that, for the purpose of bereavement leave, the employee need not have been responsible for the care of the person concerned.
- (iv) An employee shall be entitled to bereavement leave under this clause during any period in respect of which the employee has been granted other leave.

- (v) Bereavement leave may be taken in conjunction with other leave available under paragraphs (b), (c), (d), (e) and (f) of the said subclause 22. In determining such a request, the employer will give consideration to the circumstances of the employee and the reasonable operational requirements of the business.

## **25. Parental Leave**

Parental leave is regulated by Part 4 of the *Industrial Relations Act 1996*.

## **26. Jury Service**

An employee required to attend for jury service during his/her ordinary working hours shall be reimbursed by the employer an amount equal to the difference between the amount paid in respect of the employee's attendance for such jury service and the amount of wage the employee would have received in respect of the ordinary time he/she would have worked had the employee not been on jury service. An employee shall notify the employer as soon as possible of the date upon which the employee is required to attend for jury service. Further, the employee shall give the employer proof of attendance, the duration of such attendance and the amount received in respect of such jury service.

## **27. Holidays**

The following days or the day upon which they are observed shall be holidays: New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, Eight Hour Day, Christmas Day, Boxing Day and all other days proclaimed as public holidays for the State.

# **PART F - OTHER CONDITIONS**

## **28. Payment of Wages**

Wages shall be paid by Electronic Funds Transfer (EFT) each week to the employee's nominated account with a financial institution.

## **29. Training**

Employees shall undertake training and retraining as required by the company.

The company will pay all costs associated with training whether it is formal, internal, external or on the job.

## **30. Grievance and Dispute Settlement Procedures**

### **GRIEVANCE**

- 30.1 This Agreement recognises that employees' grievances should be resolved speedily, effectively and informally wherever possible between the employee and the Supervisor. It is agreed that it is in the interest of all parties to manage resolution of any conflict by means which do not damage the business.
- 30.2 The following procedure will apply to the resolution of any dispute:
  - (i) The employee is to notify the Supervisor of the nature of the grievance and the remedy being sought.
  - (ii) A meeting between the Supervisor and the employee is to be held within 24 hours of notification.
  - (iii) If the matter is not resolved at this meeting, the employee may request the Supervisor to refer the matter to the Factory Manager for discussions involving all parties, within a further 48 hours.
  - (iv) Where the grievance concerns the Super-visor or other person, as a matter under any Anti-Discrimination law, such matter should be referred to the Company's designated senior manager responsible for such matters to be dealt with under the terms of this procedure.

- (v) If the matter is unresolved it may then be referred to the NSW Industrial Relations Commission for resolution and the parties agree to be bound by the outcome of the Commission's decision.
- (vi) While this procedure is being followed work should continue as normal.
- (vi) At any step in this procedure, the employee may be represented by the relevant union.

## DISPUTE SETTLEMENT PROCEDURES

### 30.3 OBJECTIVES

- (i) To encourage and improve good work practices, performances and individual conduct in the workplace.
- (ii) To ensure that all matters relating to employee and management conduct are investigated properly, considered reasonably and are dealt with promptly, fairly and consistently.
- (iii) To ensure that every consideration has been given to correcting unsatisfactory performance or conduct.
- (iv) To ensure that, other than in cases of serious misconduct, suspension from duty or termination is taken only as a last resort, following appropriate counselling and after formal written warnings have been given to the employee.

### 30.4 RESPONSIBILITIES

- (i) It is management's responsibility to make available and known to all employees the terms and conditions of their employment in the relevant parent Awards.
- (ii) Employees for their part are required to familiarise themselves with these documents and to comply with the company's policies, rules and procedures.
- (iii) Where the matter in question generally affects the workplace and may give rise to a wider industrial dispute, the status quo shall remain until the matter is discussed between the parties to this Agreement.

### 30.5 ADMINISTRATION OF PROCEDURE

Apart from offences or serious misconduct justifying summary dismissal (as set out in Step 4 in subclause 30.9 of this clause) unsatisfactory conduct or performance of a less serious nature should be dealt with in accordance with the following steps:

#### 30.6 Step 1 - Counselling

The immediate supervisor, accompanied by another supervisor or manager should:

1. Discuss the problem with the employee and their chosen representative. A delegate or assistant delegate may also be present.
2. Advise employee of the standards of conduct or performance expected.
3. Agree on specific action to be taken and set a date for review (within one month) should the same situation or problem recur within the review period, when further disciplinary action will result.
4. This counselling session will be regarded as a formal warning and the employee must be informed of this.
5. A record of the counselling is to be placed on the employee's file and a copy given to the employee.

### 30.7 Step 2 - Second counselling session and final warning

If the first counselling session is not successful, the supervisor(s) and/or manager should counsel the employee again, at which time management should:

1. Restate the offence or repeated misconduct or performance related matter to the employee and their chosen representative. The delegate or assistant delegate may also be present.
2. State the agreed corrective action.
3. Indicate to the employee the action now being taken is a written final warning.
4. Warn the employee that further repetition of the misconduct or failure to improve performance may result in termination of employment.
5. Record the counselling and the final warning, with copies to the employee's file and to the employee.
6. In placing the written record of the initial warning on the employee's file, the employee shall be entitled to sight and sign such written record and add any notations regarding the contents of such record.

Should an employee respond satisfactorily to effective guidance, counselling, reprimands and final warning and continue to display satisfactory conduct or performance over the review period of the latest record of interview, past history will be disregarded so far as any immediate disciplinary action is concerned. If after the lapse of time specified in the review, the employee subsequently offends again, the procedure should be repeated from the first step unless circumstances justify action in line with step 3 or 4 referred to herein.

### 30.8 Step 3 - Dismissal

If the counselling and warnings have proved to be ineffective there is no alternative but to dismiss the employee. If dismissal then becomes necessary the action should involve the immediate supervisor and the Factory Manager or other senior manager.

Prior to dismissing any employee in these circumstances, the employee may initially be stood down on pay whilst the matters giving rise to the possible dismissal are reviewed by management. In this review the manager will satisfy himself/herself that all steps in the procedure have been properly followed and the employee has failed to positively respond to earlier counselling and formal reprimands which makes dismissal justifiable and necessary in all the circumstances.

Having decided on the need to terminate the employee's services, the employee should be invited into the privacy of an office and if a member of the relevant union requests it, the attendance of the delegate or assistant delegate should be arranged. It is then necessary to:

1. Restate the offences or matters giving rise to the conduct or performance matter and restate the corrective action which was previously agreed upon by the employee.
2. Advise the employee that as the employee has failed to comply with previously agreed corrective action, dismissal has resulted as a consequence. Dismissal should be in writing with relevant notice.
3. Submit the usual termination advice to the Pay Office for action.

### 30.9 Step 4 - Summary Dismissal

Where an employee is guilty of serious misconduct or serious misbehaviour which justifies summary dismissal, the Company shall not be required to give notice or to make payment in lieu of notice, subject to matters of procedural fairness in allowing the employee sufficient time to respond to the allegations.

Without limiting the Company's rights, some examples of serious misconduct or misbehaviour would be the commission of a serious criminal offence against the Company, an employee, contractor to the company or a client, refusal to work, malingering, serious or wilful breaches of the Company's occupational health and safety policies or relevant laws, breaches of anti-discrimination legislation, fighting on company premises, partaking of alcohol or a prohibited substance while on duty, malicious damage and stealing.

Where an employee becomes subject to the provisions of this clause, such employee may, at the discretion of management, be suspended on pay immediately pending an investigation. Subject to the employee being given an opportunity to respond to the allegations, the employee shall be terminated forthwith where the misconduct or misbehaviour is confirmed on proper investigation. At all times the true facts shall be used as the basis for determining the matter.

### **31. Anti-Discrimination**

- (1) It is the intention of the parties bound by this Agreement to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity and age.
- (2) It follows that in fulfilling their obligations under the dispute resolution procedure by this Agreement the parties have obligations to take all reasonable steps to ensure that the operation of the provision of this Agreement are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the Agreement which, by its terms or operation, has a direct or indirect discriminatory effect.
- (3) Under the *Anti-Discrimination Act 1977*, it is unlawful to victimize an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- (4) Nothing in this clause is to be taken to affect:
  - (a) any conduct or act which is specifically exempted from anti-discrimination legislation;
  - (b) offering or providing junior rates of pay to persons under 21 years of age;
  - (c) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
  - (d) a party to this Agreement from pursuing matters of unlawful discrimination in any State or Federal jurisdiction.
- (5) This clause does not create legal rights or obligations in addition to those imposed upon the parties by legislation referred to in this clause.

### **32. Best Practice**

The parties agree that this is the best way of doing things. It is a process of constantly changing and adapting to new demands.

Best practices are not fixed. At any particular point in time it is the method of operation to achieve exemplary levels of performance, including but not limited to an examination of costs, quality and timeliness of delivery.

The program will be based on the following principles:

understanding and measuring customer needs

bench marking

continuous improvement

multi-skilled workforce

flexible workforce committed to change, and

employee involvement

The parties agree that external and relevant best practice will be identified and adopted in measuring and improving the efficiency of the factory and warehouse functions as part of the consultative processes of the Workplace Consultative Committee including any necessary training.

### **33. Productivity Improvements**

- 33.1 The parties therefore commit themselves to a process of continuous improvement and agree that performance indicators and standards are the means of measuring what has been achieved and the need for further improvements. The primary role of performance indicators is to assist in the attainment of corporate goals in the interest of the customers, employees and the company in improving the quality of service and are a means of identifying trends and efficiencies to enable the identification of areas where there is capacity for further improvements.
- 33.2 Performance indicators will be developed in consultation with the Workplace Consultative Committee with a view to setting agreed and separate targets for the warehouse and factory and such targets will be periodically reviewed. The measurement of agreed targets will include, but is not limited to, minimising waste, reduction in the use of electricity, gas, water, detergents and cleaning materials, reduction in damage, improvement in first time product acceptance, reduction in time to produce completed product, improvement in work flow and quality processes.

### **34. Overtime**

By mutual agreement overtime may be taken as time in lieu at the relevant penalty rate.

### **35. Redundancy**

See Schedule 1 to this Agreement.

### **36. Conditions Relating to Union Activities**

Apart from meetings of the Workplace Consultative Committee, the Company recognises that employees may need to have meetings from time to time to discuss Company and union issues. The Company agrees to pay for four meetings per year of 15 minutes duration. The union delegates should confer with the factory manager, prior to any meeting, regarding the timing of the meeting to minimise any disruption to production.

### **37. Agency / Labour Hire Employees**

Where agency/labour hire employees perform work covered by this Agreement they shall be paid in accordance with this Agreement. The engagement of any agency/labour hire employees shall be limited to a continuous period of 12 months. If the employee remains in employment at that time, such employee shall be offered a full time position if work is available. As a guide, seniority of such casual staff shall determine the order of merit.

## **PART G - DECLARATION AND SIGNATORIES**

### **38. Declaration**

This Agreement has been negotiated through extensive consultation between management, employees and their union. The content of the Agreement has been explained and accepted by all parties. All parties are entering into this Agreement with full knowledge as to the content and effect of the document.

The parties declare that this Agreement:

- (a) Is not contrary to public interest
- (b) Is in accordance with NSW Industrial Relation Commission principles and the *Industrial Relations Act* 1996
- (c) Reflects the interests and intentions of the parties.

\_\_\_\_\_  
Signed for Shop, Distributive and Allied  
Employees' Association, New South Wales

Date: \_\_\_\_\_ 11 / 03 / 04

\_\_\_\_\_  
Signed for Automotive, Food, Metals,  
Engineering, Printing and Kindred Industries  
Union, New South Wales Branch

Date: \_\_\_\_\_ 22 / 03 / 04

\_\_\_\_\_  
Signed for Innox Pty Ltd

Date: \_\_\_\_\_ 11 / 03 / 04

## SCHEDULE 1

### REDUNDANCY AGREEMENT

#### 1. Introduction of Change

- (i) Employer's duty to notify
  - (a) Where an employer has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer shall notify the employees who may be affected by the proposed changes and the union to which they belong.
  - (b) "Significant effects" include termination of employment, major changes in the composition, operation or size of the employer's workforce or in the skills required, the elimination or diminution of job opportunities, promotion opportunities or job tenure, the alteration of hours of work, the need for retraining or transfer of employees to other work or locations and the restructuring of jobs.
- (ii) Employer's duty to discuss change

The employer shall discuss with the employees affected and the union to which they belong, the introduction of the changes referred to in subclause (i), above, the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees, and shall have prompt consideration to matters raised by the employees and/or the union in relation to the changes.

- (a) The discussion shall commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in subclause (1) above.
- (b) For the purpose of such discussions, the employer shall provide to the employees concerned and the union to which they belong, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees provided that any employer shall not be required to disclose confidential information the disclosure of which would adversely affect the employer.



## 2. Redundancy

- (i) Discussions before terminations.
- (a) Where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing to be done by anyone pursuant to subclause 1(i)(a), and that decision may lead to the termination of employment, the employer shall hold discussions with the employees directly affected and with the union to which they belong.
- (b) The discussions shall take place as soon as is practicable after the employer has made definite decision which will invoke the provision of paragraph (a) of this subclause and shall include any reasons for the proposed terminations, measures to avoid or minimise the terminations and measures to mitigate any adverse effects of any termination of the employees concerned.
- (c) For the purposes of the discussion the employer shall, as soon as practicable, provide to the employees concerned and the union to which they belong, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, and the number of employees normally employed and the period over which the terminations are likely to be carried out. Provided that any employer shall not be required to disclose confidential information the disclosure of which would adversely affect the employer.

## 3. Termination of Employment

- (i) Notice for Changes in Production, Program, Organisation or Structure

This subclause sets out the notice provisions to be applied to termination by the employer for reasons arising from "production", "program", "organisation" or "structure" in accordance with subclause (1)(i)(a) of this schedule.

- (a) In order to terminate the employment of an employee the employer shall give to the employee the following notice:

Period of continuous service	Period of notice
Less than 1 year	1 week
1 year and less than 3 years	2 weeks
3 years and less than 5 years	3 weeks
5 years and over	4 weeks

- (b) In addition to the notice above, employees over 45 years of age at the time of the giving of the notice with not less than two years continuous service, shall be entitled to an additional week's notice.
- (c) Payment in lieu of the notice above shall be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof

- (ii) Notice for Technological Change

This subclause sets out the notice provisions to be applied to terminations by the employer for reasons arising from "technology" in accordance with subclause (1)(i)(a) of this schedule.

- (a) In order to terminate the employment of an employee, the employer shall give to the employee three months notice of termination.
- (b) Payment in lieu of the notice above shall be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.

(c) The period of notice required by this subclause to be given shall be deemed to be service with the employer for the purposes of the *Long Service Act 1955*, the *Annual Holidays Act 1944*, or any Act amending or replacing either of these Acts.

(iii) Time off during the notice period.

(a) During the period of notice of termination given by the employer an employee shall be allowed up to one day's time off without loss of pay during each week of notice, for the purposes of seeking other employment.

(b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall be required, at the request of the employer, to produce proof of attendance at any interview or the employee shall not receive payment for the time absent.

(iv) Employee leaving during the notice period.

If the employment of an employee is terminated (other than for serious misconduct) before the notice period expires, the employee shall be entitled to the same benefits and payments under this schedule had the employee remained with the employer until the expiration of such notice. Provided that in such circumstances the employee shall not be entitled to payment in lieu of notice.

(v) Statement of employment

The employer shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee with a written statement specifying the period of the employee's employment and the classification of or the type of work performed by the employee.

(vi) Notice to Centrelink – Where a decision has been made to terminate the employment of more than 15 employees, the employer shall notify the Department of Social Security thereof as soon as practicable, giving relevant information including the number and categories of the employees likely to be affected and the period over which the terminations are intended to be carried out.

(vii) Employment Separation Certificate – The employer shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee an "Employment Separation Certificate" in the form required.

(viii) Transfer to lower paid duties – Where an employee agrees to be transferred to lower paid duties for reasons set out in subparagraph (a) of paragraph (i) of subclause (2) of this subclause, the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment had been terminated, and the employer may, at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former ordinary time rate of pay and the new ordinary time rate of pay for the number of weeks of notice still owing.

#### **4. Severance Pay**

(i) Where the employment of an employee is to be terminated pursuant to subclause (3) of this schedule, the employer shall pay the following severance pay in respect of a continuous period of service:

(a) The employer shall pay four weeks pay per year of service or part thereof, with a maximum payment of 52 weeks except where the employee is over 45 years of age in which case the employer shall pay five weeks pay per year of service or part thereof, with a maximum payment of 52 weeks.

(b) "Week's pay" means the all purpose for the employee concerned at the date of termination, and shall include, in addition to the ordinary rate of pay, over agreement payments, shift penalties, shift penalties and any all purpose allowances paid in accordance with agreement.

- (ii) The employer shall also pay all accrued entitlements, including any long service leave, annual leave, annual leave loading and superannuation payments.