

Terms and Conditions of Appointment 2017

1. Our client

- 1.1 Our client is the entity named in the letter referring to these Terms and Conditions of Appointment.
- 1.2 Where we work on a matter for you jointly with one or more other clients, the rights and obligations of you and the other clients will be joint and several.
- 1.3 Where we are instructed by a third party as your agent, you warrant that the agent has authority to retain us on these terms and to give us instructions on your behalf.
- 1.4 We owe no duty of care to, and we do not accept any liability to, any third party, including in relation to any fees that may have been paid to us by a third party on your behalf. If either you or another person specifically requests the right for another person to rely upon our advice, we will consider, but reserve the right to decline, any such request.

2. Conflicts of interest

- 2.1 On receiving your inquiry and request to act for you, we satisfied ourselves that there is no conflict of interest. If we become aware that a conflict has arisen we will notify you immediately, and in some cases it may be necessary for us to withdraw from the case or to otherwise implement appropriate procedures.
- 2.2 You acknowledge and agree that it may be reasonable for us to act for current or future clients who do, or may in the future operate in the same industry sector as you, or who may have or develop commercial or legal interests adverse to yours.
- 2.3 Where we are instructed by other clients in matters in which you have an interest and where you have instructed another law firm we may act for such other clients provided that our duty of confidentiality to you is maintained.

3. Electronic communications

- 3.1 We may communicate with you and others using email. You accept the risks involved including but not limited to the risks of interception of or unauthorised access to such communications and the risks of computer viruses. We do not encrypt, password protect or digitally sign any e-mail or document sent by us unless otherwise requested.

4. Our retainer

- 4.1 Our retainer and the commencement of our duty of care to you for any matter shall commence upon you providing us with formal instructions to advise you and shall end upon delivery of a final bill. We have no liability to you arising out of preliminary exchanges or discussions prior to receipt of your instructions to proceed to act on your behalf. Our obligation to advise you is limited to providing you with advice within the scope of the retainer as accepted by us and notified to you.
5. Unless otherwise agreed our advice in this matter will be based solely on New South Wales law.
6. If we have not specifically agreed to do so in the scope of the retainer (as set out above) we shall not advise you in relation to any issues which arise during our retainer in relation to the coverage which may be available to you under any insurance policy, nor represent you in any dealings with your insurers, unless we separately agree in writing to do so.

7. Where we engage professional or service providers on your behalf we do not accept liability for the advice or other services provided by them.
8. We will not accept cash deposits nor will we remit funds from our account in any circumstances except for a matter where we are instructed.

9. Confidentiality and permitted disclosure

- 9.1 We owe you a duty to keep confidential information provided by you confidential. However, where we are instructed by a third party on your behalf, you agree that we may disclose such information to that third party.
- 9.2 By agreeing to instruct us on these terms you accept that our provision of legal services to you does not oblige us to disclose to you or use for your benefit any confidential information that we currently have or may obtain in relation to any other client or under this or any other retainer.
- 9.3 In some matters where we act for one or more clients in relation to a transaction it may become necessary to put in place arrangements as we consider appropriate to ensure that the confidentiality of your documents and/or information is maintained such as information barriers. We will inform you of this if this becomes necessary.
- 9.4 You agree that we may disclose your confidential information:
 - (a) to our insurers and brokers pursuant to the terms of our professional indemnity insurance policy and to our own legal and other professional advisers to deal with statutory obligations, regulatory requirements or civil proceedings;
 - (b) where we are acting for both the lender and purchaser in a matter, and we have a duty to reveal fully to the lender all relevant facts about the purchase and any security.
 - (c) where we know or suspect that a criminal offence has been committed, and we may be required to disclose that information to the relevant authorities;
 - (d) to third parties where they are working on your files at our instruction including for translation, printing, typing, word processing and document production.
- 9.5 You agree that we may disclose to third parties that you are or have been a client. We may also disclose to third parties that we are or have acted for you on a matter if information about that matter is in the public domain or you specifically consent to that disclosure.

10. Documentation

- 10.1 You are entitled to use and copy all documents created by us for you during our retainer only in connection with the retainer for which they are created. Where we provide precedent documents for your subsequent use, we accept no responsibility if such precedent documents are used subsequently in circumstances which are inapplicable, used without our advice, or if applicable law or regulations have changed in any material way.
- 10.2 All copyright and other intellectual property rights in the documents created by us and related in any way to the scope of our work remain our property. We will be free to use the intellectual property in them to give advice to other clients provided we do not breach our duty of confidentiality to you.

11. Payment of our fees and expenses

- 11.1 you are responsible for paying our fees. Unless otherwise agreed:
 - 11.1.1 all bills, including interim bills, must be paid in full on presentation;
 - 11.1.2 we may send you regular interim bills or interim bills which are a final account of our fees for the work done during the period to which they relate;
 - 11.1.3 interim bills are not final accounts in relation to fees and disbursements for the period and where errors have occurred or disbursement accounts are received after the rendering of an interim bill we will be permitted to render a further bill for the same period as a prior interim bill;
 - 11.1.4 we may bring legal proceedings on interim and final bills which we have delivered;
 - 11.1.5 we reserve the right to exercise a lien over any monies which we hold on your behalf in respect of unpaid bills.

- 11.2 Where you ask us to provide information for the purpose of your annual audit we shall open a new file for that work and be entitled to charge you for the time spent at the hourly rates set out in our letter of engagement for that work.
- 11.3 If any bill remains unpaid 30 days after the date we have sent it to you, we reserve the right to charge interest on the amount unpaid at the rate fixed under Clause 110A of the Legal Profession Regulation 2005 (NSW), calculated from the end of that 30 day period until the amount is paid and to terminate our retainer or temporarily cease working on this or on any other matter in which we act for you.
- 11.4 You must pay our fees and expenses without deduction or set off and free of any withholding or deduction in respect of any taxes or duties. If you are required by law to withhold or deduct tax, the amount of each bill must be treated as increased to the extent necessary to ensure that, after any withholding or deduction, we receive and retain a net sum equal to the amount of the bill.
- 11.5 If we cannot satisfactorily resolve any concern you may have in relation to our bills, you may:
- (a) apply for an assessment of our costs and disbursements under Division 11 of Part 3.2 of the Act. Under section 350 of the Act you must apply for an assessment within 12 months after the bill was given or a request for payment was made, or, if no bill was given or request made, the costs were paid;
 - (b) apply to set aside our costs agreements or a provision of our costs agreement under section 328 of the Act; and
 - (c) refer the dispute to mediation under Division 8 of Part 3.2 of the Act if the amount in dispute is less than \$10,000. A dispute may be referred for mediation under section 336 of the Act at any time before an application for an assessment of the whole or any part of the bill.

12. Disbursements and other charges

- 12.1 We charge at cost for disbursements such as travelling expenses, accommodation, phone calls and faxes, video conference calls, couriers, stamp duty, court fees, filing or registration fees, search fees, international electronic payments, typing and word processing, external photocopying and printing, conference and video conference facilities and GST is added where applicable.
- 12.2 Where we engage other professional advisers or service providers such as counsel, overseas lawyers, expert witnesses, surveyors, technical consultants and translators on your behalf, we do this as your agents and you will be responsible for payment of their fees, charges and expenses in addition to our own. Where we receive terms and conditions of business from such persons or entities these will be forwarded to you and unless you inform us to the contrary promptly upon receipt of such terms you accept that such terms of business are reasonable. Where such terms impose a requirement to pay interest in the event of late payment you will reimburse us in respect of such interest and in addition you will be responsible for all sales, value-added or other taxes (such as VAT, TVA or GST) payable on such fees if any. We reserve the right to invoice you in the foreign currencies in which the fees and expenses were incurred.
- 12.3 Amounts payable to us or to third parties engaged by us on your behalf exclude GST. In addition to our fees and disbursements, you must pay GST at the prevailing rate on those amounts (if applicable). Our bill will contain details of the GST charged.

13. Payments on account and payment of disbursements

- 13.1 We may ask for payments our fees and expenses in advance of performance of the work. We do not have to start or continue work or incur any expenses for which you are responsible until you have paid our fees as requested.
- 13.2 We may seek identification evidence from any party to which you ask us to make payments or where you ask us to accept payments from them on your behalf. We may need to hold funds provided by you or on your behalf pending consent from appropriate authorities.
- 13.3 You authorise and direct us to pay any money we receive on your behalf directly into our trust account (unless otherwise directed); and to draw on that money to pay any amount due from you to us. Money paid into our trust account will become subject to the laws the state of the Australian office to which the money was paid. No interest is payable on money in our trust account as we do not receive any interest from our bankers.

14. Liability for the costs of another party

- 14.1 Even if any court or tribunal orders the other party to pay all or part of your fees and expenses, you remain responsible to us for our fees.
- 14.2 In some circumstances the court may order you to pay all or contribute to the other party's legal fees and expenses, for example if you lose all or part of the case. Such fees and expenses would then be payable by you, in addition to our charges.

15. Charging and funding information including liability for costs of another party

- 15.1 In contentious matters you may already have, or it may be possible to obtain, insurance which may cover the fees and expenses incurred by you and your liability, if any, for a third party's costs (before or after the event insurance). We will discuss this possibility with you, and advise you in relation to this upon request by you.

16. Termination/Storage of papers and documents

- 16.1 You may terminate your instructions to us in writing at any time.
- 16.2 We reserve the right to cease acting for you either temporarily or permanently by giving you reasonable notice including in circumstances where you do not pay a bill or fail to provide us with proper or adequate instructions about the conduct of the matter; or there is a serious breakdown in the relationship between us including your failure or refusal to accept our advice; or in order to adhere to any statutory or other legal or professional requirements of us.
- 16.3 We reserve the right to cease acting for you immediately:
- (a) where we are instructed by any competent authority that we should cease to act for you; or we suspect that you or any third party connected with you or the matter on which we are instructed is involved in any criminal activity;
 - (b) if acting for you or receiving and/or holding funds from you or from any person on your behalf or using such funds on your behalf for payment of our invoices or making such disbursements as are necessary in providing our services would be in violation of, inconsistent with, or expose us to the risk of infringing any trade sanctions, foreign trade controls, export controls, non-proliferation, anti-terrorism, anti-money laundering or similar laws.
- 16.4 If we cease to act for you pursuant to this clause 16:
- (a) we will not incur any liability to you or to any third party instructed on your behalf, to whom you shall remain responsible, as a result of ceasing to act for you;
 - (b) we will remove our name as your legal representatives from the court record in any court proceedings;
 - (c) you will receive a final account (including all outstanding legal fees and disbursements);
 - (d) you must pay our fees for work and expenses incurred up to the time we cease to act.
- 16.5 To the extent permitted by law we reserve the right to exercise a lien over any monies which we hold on your behalf and to retain your papers and documents whilst there is money owing to us.
- 16.6 We have your authority to destroy the papers and documents and our file after 7 years from completion of the work or the date we cease acting for you, unless we have agreed a longer period with you in writing.
- 16.7 It is your responsibility to collect from us any documents you need to keep for tax or other purposes.

17. Limitation of liability

- 17.1 Our liability is limited pursuant to a scheme under the Legal Profession Act 2004 (NSW) (Act).
- 17.2 We do not accept any liability for advice given or services provided by any third party professional adviser or service provider which may be engaged by us on your behalf.
- 17.3 Where we are jointly liable to you together with another adviser or third party for any loss suffered by you, our liability to you shall be limited to the proportion of your loss caused by us and for which we are to blame and shall not be increased by reason of any inability to pay or limitation of liability imposed by such other adviser or third party and provided always that our overall liability to you shall in any event be limited as provided by clause 17.1.



17.4 We will not be liable to you for any failure to perform or delay in performing any of our obligations to the extent that the failure or delay is caused by circumstances beyond our reasonable control including but not limited to telecommunications failure, power supply failure, terrorism and computer breakdown.

17.5 This clause 17 shall survive any termination of our engagement.

18. Assignment and third party rights

18.1 We may assign all rights and liabilities relating to our agreement with you to any partnership or corporate body which succeeds to the whole or substantially the whole of the business of our firm. Subject to this, neither of us may transfer or assign this agreement to any third party without the consent of the other.

18.2 No person (other than our legal client) shall derive any benefit or have any right or entitlement in relation to this agreement.

19. Law and jurisdiction

19.1 Our agreement shall be governed by the laws of New South Wales, and the courts of New South Wales shall have exclusive jurisdiction in relation to any matter arising from it.

19.2 If any clause (or part of any clause) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that clause or part-clause shall be deemed not to form part of this retainer, and the validity and enforceability of the other provisions shall not be affected.