

Davidson

Terms and Conditions of Appointment 2024

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. 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. Our retainer

- 3.1 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.
4. Unless otherwise agreed our advice in this matter will be based solely on New South Wales law.
5. 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.

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Liability Limited by a scheme approved under
Professional Standards Legislation.



6. Where we engage professional or service providers on your behalf we do not accept liability for the advice or other services provided by them.
7. 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.

8. Your rights

8.1 It is your right to:

- 8.1.1 negotiate a costs agreement with us;
- 8.1.2 negotiate the method of billing (eg. task based or time based);
- 8.1.3 receive a bill and to request and receive an itemised bill within 30 days after a lump sum bill or partially itemised bill is payable. If you are liable to pay only part of the legal costs to which the bill relates, the request for an itemised bill may only be made in relation to those costs that you are liable to pay;
- 8.1.4 seek assistance of the designated local regulatory authority (the NSW Commissioner) in the event of a dispute about legal costs;
- 8.1.5 be notified as soon as is reasonably practicable of any significant change to any matter affecting costs, including a sufficient and reasonable amount of information about the impact of the change on the legal costs that will be payable to allow you to make informed decisions about the future conduct of the matter;
- 8.1.6 receive, on reasonable request, without charge and within a reasonable period, a written report of the legal costs incurred by you to date or since the last bill (if any) in the matter;
- 8.1.7 accept or reject any offer we make for an interstate costs law to apply to your matter;
- 8.1.8 notify us that you require an interstate costs law to apply to your matter.

8.2 If you request an itemised bill and the total amount of the legal costs specified in it exceeds the amount previously specified in the lump sum bill for the same matter, the additional costs may be recovered by us only if:

- 8.2.1 when the lump sum bill is given, we inform you in writing that the total amount of the legal costs specified in any itemised bill may be higher than the amount specified in the lump sum bill; and
- 8.2.2 the costs are determined to be payable after a costs assessment or after a binding determination under section 292 of the *Legal Profession Uniform Law (NSW)* (**Uniform Law**).



Nothing in these terms affects your rights under the Australian Consumer Law.

9. Your rights in relation to a dispute concerning costs

9.1 If you have a dispute in relation to any aspect of our legal costs you have the following avenues of address:

9.1.1 in the first instance we encourage you to discuss your concerns with us so that any issue can be identified and we can have the opportunity of resolving the matter promptly and without it adversely impacting on our business relationship;

9.1.2 you may apply to the Manager, Costs Assessment located at the Supreme Court of NSW for an assessment of our costs. This application must be made within 12 months after the bill was provided or request for payment made or after the costs were paid.

10. Electronic communications

10.1 We may communicate with you and others using email.

10.2 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, and release us from any claim you may have as a result of any unauthorised copying, recording, reading or interference with any email or document transmitted via email, for any delay or non-delivery of any such email or document transmitted via email, and for any damage caused to your system or any files.

10.3 We do not encrypt, password protect or digitally sign any email sent by us unless otherwise requested.

11. Confidentiality and permitted disclosure

11.1 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.

11.2 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 under this or any other retainer.

11.3 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.

11.4 You agree that we may disclose your confidential information:



- 11.4.1 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;
 - 11.4.2 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 purchaser and any security;
 - 11.4.3 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;
 - 11.4.4 to third parties where they are working on your files at our instruction including for translation, printing, typing, word processing, document production or IT services.
- 11.5 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.

12. Privacy

- 12.1 We will collect personal information from you in the course of providing our legal services. We may also obtain personal information from third party searches, other investigations and, sometimes, from adverse parties.
- 12.2 We are required to collect the full name and address of our clients by Rule 93 of the *Legal Profession Uniform General Rules 2015 (Uniform General Rules)*. Accurate name and address information must also be collected in order to comply with the trust account record keeping requirements of Rule 47 of the Uniform General Rules and to comply with our duty to the courts.
- 12.3 Your personal information will only be used for the purposes for which it is collected or in accordance with the *Privacy Act 1988 (Cth)*. For example, we may use your personal information to provide advice and recommendations that take into account your personal circumstances.
- 12.4 If you do not provide us with the full name and address information required by law we cannot act for you. If you do not provide us with the other personal information that we request, our advice may be wrong for you or misleading.
- 12.5 Depending on the nature of your matter, the types of bodies to whom we may disclose your personal information include the courts, the other party or parties to litigation, experts and barristers, the Office of State Revenue, PEXA Limited, the Land and Property Information Division of the Department of Lands, the Registrar General and third parties involved in the completion or processing of a transaction.
- 12.6 We do not disclose your information overseas unless your instructions involve dealing with parties located overseas. If your matter involves parties overseas we may disclose select personal information to overseas participants' associates with that matter in order to carry out your instructions.



12.7 We manage and protect your personal information in accordance with our privacy policy. Our privacy policy contains information about how you can access and correct the personal information we hold about you and how you can raise any concerns about our personal information handling practices. For more information, please contact us in writing.

13. Documentation

13.1 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.

13.2 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.

14. Billing arrangements

14.1 Our usual policy is to issue a tax invoice on a monthly basis but we may issue tax invoices on a more frequent basis depending on the nature of the work.

14.2 All tax invoices are due and payable 7 days from the date of the tax invoice.

14.3 You consent to us sending our tax invoices to you electronically at your usual email address or mobile phone number as specified by you.

15. Payment of our fees and expenses

15.1 You are responsible for paying our fees. Unless otherwise agreed:

15.1.1 all bills, including interim bills, must be paid in full on presentation;

15.1.2 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;

15.1.3 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;

15.1.4 we may bring legal proceedings on interim and final bills which we have delivered;

15.1.5 we reserve the right to exercise a lien over any monies which we hold on your behalf in respect of unpaid bills.



- 15.2 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.
- 15.3 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.
- 16. Disbursements and other charges**
- 16.1 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, printing and other document production, IT services, conference and video conference facilities and GST is added where applicable.
- 16.2 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.
- 16.3 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.
- 17. Payments on account and payment of disbursements**
- 17.1 We may ask for payment of 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.
- 17.2 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.
- 17.3 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 of 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.



18. Payment methods

18.1 It is our policy that, when acting for new clients, we do one or more of the following:

18.1.1 approve credit;

18.1.2 ask the client to pay monies into a trust account;

18.1.3 ask the client for their credit card details.

18.2 Unless otherwise agreed with you, we may determine not to incur fees or expenses in excess of the amount that we hold in trust on your behalf or for which credit is approved.

19. Authorisation to transfer money from trust account

19.1 You authorise us to receive directly into a trust account established by us any judgment or settlement amount, or money received from any source in furtherance of your work, and to pay our professional fees, internal expenses and disbursements in accordance with the provisions of Rule 42 of the Uniform General Rules.

19.2 A trust statement will be forwarded to you upon completion of the matter.

20. Interest charges

20.1 Interest at the maximum rate prescribed in Rule 75 of the Uniform General Rules (being the Cash Rate Target set by the Reserve Bank of Australia plus 2%) will be charged on any amounts unpaid after the expiry of 30 days after a tax invoice is given to you.

20.2 Our tax invoices will specify the interest rate to be charged.

21. Recovery of costs

21.1 The Uniform Law provides that we cannot take action for recovery of legal costs until 30 days after a tax invoice (which complies with the Uniform Law) has been given to you.

22. Costs payable and recoverable on litigation outcome and liability for the costs of another party

22.1 Even if you are successful in proceedings and have a costs order in your favour, it is unlikely that you will recover all of the costs you must pay us from another party. You remain responsible to us for our fees.

22.2 If you do have a costs order in your favour, it may still be necessary to seek to enforce such costs, for example through the assessment system. This can be time consuming and costly. The possible costs



associated with such potential enforcement proceedings are not dealt with in this costs agreement, but will be advised to you should the relevant circumstances arise.

22.3 It is also possible that you cannot recover the costs from the other party (for example if the party goes into liquidation or becomes bankrupt). In those circumstances, you will still be required to pay us.

22.4 If you lose the litigation, then you will likely have to pay the costs of the other party. This can either be an amount you can both agree on or if no agreement can be reached, then an amount of costs assessed by a costs assessor as payable. However, the Court always has a discretion in relation to costs orders. Any such fees and expenses would then be payable by you, in addition to our charges.

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

23.1 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.

24. Termination

24.1 You may terminate your instructions to us in writing at any time.

24.2 We reserve the right to cease acting for you either temporarily or permanently or refuse to perform further work by giving you reasonable notice including in circumstances where:

24.2.1 you do not pay a bill; or

24.2.2 you do not within 7 days comply with any request to pay an amount in respect of disbursements or future costs; or

24.2.3 you fail to provide us with clear and timely instructions to enable us to advance your matter, for example, compromising our ability to comply with Court directions, orders or practice notes; or

24.2.4 there is a serious breakdown in the relationship between us including your failure or refusal to accept our advice; or

24.2.5 you indicate to us or we form the view that you have lost confidence in us; or

24.2.6 if there are ethical grounds which we consider require us to cease acting for you, for example a conflict of interest; or

24.2.7 we must adhere to any statutory or other legal or professional requirements of us; or



24.2.8 there is any other reason outside our control which has the effect of compromising our ability to perform the work required within the required timeframe; or

24.2.9 in our sole discretion we consider it is no longer appropriate to act for you; or

24.2.10 there is just cause.

24.3 We reserve the right to cease acting for you immediately:

24.3.1 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;

24.3.2 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.

24.4 If we cease to act for you pursuant to this clause 24:

24.4.1 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;

24.4.2 we will remove our name as your legal representatives from the court record in any court proceedings;

24.4.3 you will receive a final account (including all outstanding legal fees and disbursements);

24.4.4 you must pay our fees for work and expenses incurred up to the time we cease to act (including, if the matter is litigious, any cancellation fees or other fees such as hearing allocation fees for which we remain responsible).

25. Lien

25.1 Without affecting any lien to which we are otherwise entitled at law over funds, papers and other property of yours:

25.1.1 we shall be entitled to retain by way of lien any funds, property or papers of yours, which are from time to time in our possession or control, until all costs, disbursements, interest and other moneys due to the firm have been paid; and

25.1.2 our lien will continue notwithstanding that we cease to act for you.



26. Retention of your documents

- 26.1 On completion of your work, or following termination (by either party) of our services, we will retain your documents for 7 years.
- 26.2 Your agreement to these terms constitutes your authority for us to destroy the file after those 7 years, unless we have agreed a longer period with you in writing.
- 26.3 The authority does not relate to any documents which are deposited in safe custody which will, subject to agreement, be retained on your behalf indefinitely.
- 26.4 We are entitled to retain your documents while there is money owing to us for our costs.
- 26.5 You will be liable for the cost of storing and retrieving documents in storage and our professional fees in connection with this.
- 26.6 It is your responsibility to collect from us any documents you need to keep for tax or other purposes.

27. Limitation of liability

- 27.1 Our liability is limited pursuant to a scheme under the *Professional Standards Act 1994* (as amended).
- 27.2 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.
- 27.3 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 27.1.
- 27.4 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.
- 27.5 This clause 27 shall survive any termination of our engagement.

28. Assignment and third party rights

- 28.1 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.



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

29. GST

29.1 Where applicable, GST is payable on our professional fees and expenses and will be clearly shown on our tax invoices.

29.2 By accepting these terms you agree to pay us an amount equivalent to the GST imposed on these charges.

30. Law and jurisdiction

30.1 The law of New South Wales governs our agreement and legal costs in relation to any matter upon which we are instructed to act. The courts of New South Wales shall have exclusive jurisdiction in relation to any matter arising from it.

30.2 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.