

Section 3 - Business Terms

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The provision of legal services is regulated by the Legal Profession Act (**LPA**). The Costs Agreement we are required to give you under the LPA comprises the Appointment Terms (being the document attached to these Business Terms or other document provided by Clayton Utz confirming your instructions), the Fees & Other Charges schedule and these Business Terms. Those documents (together with any additional correspondence relating to a particular matter that we provide to you at the time of receiving instructions) set out the basis upon which services are provided to you for the work set out in the Appointment Terms and for any other work which you (or any company or organisation you control) may instruct Clayton Utz.

1. Professional relationship

Our key obligation: We will perform the work with professional skill and diligence acting as your independent legal advisers and unless we are authorised by you to act for other parties, solely in your interest. We will not perform work for you if factors such as conflict of interest prevent us from accepting your instructions.

Our reporting obligations: We will keep you informed of the progress of the work. You may also request, at any time, a report of the progress of the matter and statements of fees and costs since your last bill. We reserve the right to charge for the provision of progress reports but no charge will be imposed for provision of costs statements.

Multi party or joint work: Where you instruct us jointly with one or more other parties, you and each other party will be jointly and severally liable to pay our bills.

Your obligations: You agree:

- to provide us with timely, accurate and proper instructions, and all documents and other records relevant to the services we are providing to you; and
- that you are solely responsible for satisfying yourself as to the commercial viability of any transaction, the bona fides of the other parties to any transaction, the financial matters relevant to and the commercial soundness of the transactions, and have the sole responsibility for all these matters and will act reasonably and take reasonable care to do so and otherwise to protect your own interests.

Facts and assumptions: In providing legal services we may need to base our advice or conclusions on facts or assumptions. If that occurs, we will tell you what facts and assumptions we are relying on. You agree to check that all those facts and assumptions are correct.

2. Fees and other charges

Fees: Our fees are calculated by reference to the time spent by our lawyers and other relevant staff on your matter, multiplied by the relevant hourly rate set out in the Fees and Other Charges Schedule. Time is costed in 6 minute units. The minimum amount of time spent on a task will be one unit.

Included in fees: Fees will be charged for all professional time for lawyers, law clerks and paralegals including but not limited to drafting, reviewing and completing documents, correspondence, advices, conferences, reading materials, travelling (where related to the work), telephone calls, court appearances, research and providing representation letters where requested by you.

We reserve the right to charge for support staff outside normal trading hours at the rate specified in the Fees & Other Charges schedule.

Other charges: Other charges are calculated in accordance with the Fees & Other Charges schedule or at the rate charged by the provider or otherwise at cost. Where we pay taxes, fees or charges on your behalf, you will reimburse us for those payments. All disbursements and outlays we incur on your behalf will be accounted for in our bills. We will provide you, on request, with invoices or other proof of disbursements and outlays we make on your behalf.

Reviews of fees and other charges: We will review our rates and other charges each financial year and we will notify you of any changes to apply for the following financial year, in

accordance with the amendment to agreement provisions that follow.

Goods and Services Tax (GST): Unless otherwise stated, the fees, other charges and disbursements are stated on a GST inclusive basis. We will treat you as the recipient of the supplies that we make. We will determine the GST payable on our supply of services to you based on your legal status and the nature of the work, and will add an amount to our bills on account of that GST. You agree that unless the amount payable by you is specifically stated to be exclusive of GST, you will pay us an additional amount on account of any GST that we are liable to pay as a result of any supply we make to you.

Mergers and acquisitions and other significant matters:

For significant mergers and acquisitions matters and other significant transactions, we reserve the right to renegotiate our rates in respect of personnel at and above senior lawyer level.

3. Fee indemnities and third parties

Indemnities for fees: Although you may expect to be reimbursed by some other person for our bills, if we do not have any recourse against that other person, you will be responsible for payment, even if payment to you is delayed or not received.

Third parties: Where a third party is legally obliged to pay your fees and other charges to us (that is, an associated third party pursuant to the LPA), then:

- we may make any disclosure required by the LPA to the third party without further reference to you; and
- we may provide the third party with any information that it requires relating to the fees and other charges you would otherwise be liable for as a result of our retainer.

4. Non-Clayton Utz service providers

External service providers: You authorise us as your agent to engage external service providers needed to perform the work (for example accountants, data management specialists, forensic experts, surveyors or town planners). You will be responsible for payment of fees and charges of such service providers and must repay us any amount that we pay them.

Service provider liability: External service providers may contract with you on their own terms and conditions of business. Many service providers, including advocates, undertake work only on the basis that their liability for damages is limited.

Our liability in relation to service providers: To the extent permitted by law:

- we accept liability for any error on our part in our instructions to those service providers, but take no responsibility for their work or how they carry out their instructions;
- in suggesting or selecting any service provider, we shall rely on information we are given as to the qualifications of the person but take no responsibility for that selection and give no warranty as to the ability of the service provider to appropriately carry out the task or as to the quality of that service provider's work.

Service provider GST: For the purposes of the Australian GST law, you (and not Clayton Utz) will make an acquisition of the service provider's services. You will therefore be entitled to an input tax credit for GST included in amounts charged by the

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service provider, to the extent that you satisfy the requirements of the GST law. We will supply you with details of the amounts invoiced by the service provider and will retain the original tax invoices on your behalf. Whether or not the service provider should add GST on the amounts they charge for supplies they make to you is a matter between you and the service provider. Where a service provider includes an amount on account of GST that we pay on your behalf, you must repay us the whole amount paid by us, including any GST.

Specialist advocates: We will advise you in advance if we need to brief a specialist advocate (including any barrister) in any of your matters. If the advocate provides us with disclosure in accordance with the LPA or the basis of fee calculation, we will pass this information on to you. If we become liable to pay interest on any advocate's fees as a consequence of delay on your part, we will pass that charge on to you. As a matter of public policy, the law provides immunity from suit in relation to advocacy. Nothing in this agreement affects an advocate's immunity from suit in relation to any advocacy conducted on your behalf.

5. Billing arrangements

Billing arrangements: You are entitled to receive a signed bill from us. We bill each month and bills are payable upon receipt. You are taken to have received our bill:

- if it is given personally - on the day it is given to you or to your agent;
- if it is sent by post - within 2 days of posting;
- if it is sent electronically - upon transmission.

Electronic billing: If requested, we may deliver our bills to you electronically. Your rights under the LPA to receive an original bill of costs signed by a partner will be satisfied by our preparing and manually signing the bill, having that signed bill imaged to create a digital file, and sending that file to you by email or other electronic communication. If you ask us to do so, we will also post you a signed hard copy original.

Bill payments: Bills are payable in the currency of issue in full following receipt. Payment must be made without deduction or set-off including but not limited to withholding tax or any other deduction for processing payment. If we receive a refund in respect of any withholding tax or any other tax for which you have effectively reimbursed us, we will pay to you the amount of that refund less any costs we incur in obtaining it. We may charge interest on any amount outstanding for the period from 30 days after receipt of the bill until payment in full, calculated in accordance with the LPA regulations using an interest rate equal to the Reserve Bank Cash Rate Target as at the bill date plus 2 percentage points.

External service providers payments: Where we receive funds to meet an obligation incurred on your behalf to an external service provider, we will pay the third party as soon as practicable after receipt.

6. Liens and suspension of work

Liens: Subject to the LPA:

- we have a lien on all documents, funds and records in any form whatsoever in our possession until payment in full of all our bills for all matters in respect of which you have retained us; and
- we are entitled to retain for our records, copies of all documents which we give you, whether owned by us or not and to deal with them in accordance with clause 14 below of these Business Terms.

Suspension of work: We may at any time suspend all work for you until payment in full of all our bills for all matters in respect of which you have retained us.

7. Work product

Use of work product: Advice that we give you and documents which we prepare in any matter or transaction in which we are acting for you are specifically given or prepared for you in relation to that matter or transaction only, and must not be relied on by:

- you in relation to any other matter or transaction; or
- any other person or entity,

without our prior written consent.

Ownership and copyright: We have and retain ownership of, and copyright in, all advices and other documents prepared in the course of our engagement other than documents prepared by external service providers or specialist advocates.

You may use such advices and documents in relation to the work for which they were prepared but must not:

- reproduce or use them in relation to any other transaction or matter; or
- provide them to any other person or entity

without our prior written consent.

Changes to work product: We are not responsible to you or any other party for any loss incurred in connection with changes made to a document that we provide to you unless we have specifically approved those changes.

8. Apportionment of liability

If you claim compensation, damages or contribution from us for loss or damage arising from acts or defaults (including negligence) on our part and some or all of that loss or damage was due to or contributed to by:

- your own acts or defaults or by the acts or defaults of other persons for whose actions or defaults you are responsible; or
- the acts or defaults of one or more other persons, not being partners, employees or agents for whose conduct we are responsible,

then we will be liable only for that proportion of the loss or damage which our acts or defaults bear relative to the totality of the conduct of all persons causing or contributing to the loss or damage.

Where any law relating to proportionate liability applies to a claim against us, this clause does not seek to exclude the operation of that law but will continue to operate to the extent that its operation is consistent with that law.

9. Your rights under the LPA

Right to receive a bill: You are entitled to receive a bill of costs (bill) from us complying with the requirements of the LPA.

We cannot take action to recover our fees and other costs until the period specified in the LPA after we have given you a bill has expired.

Details of work and charges: If we provide you with a bill which does not set out the details of the work we have done and the charges to be paid for that work, you may request an itemised bill within the period specified in the LPA.

10. Costs review

Notwithstanding the provisions of the Division of the LPA as to Costs Assessment and what may appear on our bills, you agree that you will not be entitled to apply for a review of the whole or any part of the legal costs we charge to you in a bill unless you make that application within 4 months of the date we send you the bill in accordance with these Business Terms.

This agreement applies regardless of whether or not the bill we

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send you is an interim bill or a final bill, and whether or not the bill has been previously reviewed, assessed or paid.

11. Trust funds and advance payments

We may ask you for payments in advance. If we do, we will hold the money in trust and tell you how it is used. You authorise us to use such money held in trust to pay for charges and third party payments. We may also use money held in trust to pay our professional fees provided we have first given you a bill for them and either:

- you have not objected to the use of the money within 7 days after being given the bill; or
- you do object but do not apply for a review of the costs under the LPA within 60 days after being given the bill; or
- the money otherwise becomes legally payable.

You authorise us to deposit any moneys we receive on your behalf directly to our trust account and to pay ourselves from this money in the circumstances set out above.

12. Ending our appointment

Termination by you: You may terminate our engagement by giving us written notice at any time. If you do so, you will be obliged to pay our fees for work done and for other charges incurred up to the time of termination.

Termination by us: We may terminate our engagement:

- by giving you reasonable notice, except where our engagement is for a set duration;
- if any payment (including payment of a bill or money in advance) due by you to us under this Costs Agreement is not paid on the due date;
- if you do not provide timely, accurate and proper instructions;
- if, by continuing to act for you, we would be required to act contrary to any legal, regulatory or professional conduct obligation or similar just cause; or
- if there is any change in the financial or legal status of any associated third party.

Termination by us on any of those grounds does not prejudice or otherwise affect any lien created under clause 6 of these Business Terms.

13. Email and other electronic communication

Emails and electronic communication: We will use email and other forms of digital or electronic communication with you and third parties for provision of information, advice, opinions and copies of documents unless you instruct us to the contrary and we can discuss and agree an alternative method of communication with you.

Risks with communications: Email and other digital or electronic communication may be interfered with, contain computer viruses or other defects, or may not be successfully replicated on other systems. To the extent permitted by law, we will not be liable for any copying, recording, reading or interference by others during, or after, a transmission, for any delay or non-delivery, or for any damage caused in connection with the transmission. You will contact us immediately if you have any doubts about the authenticity of any communications or material which appears to have been received from us.

14. Confidentiality

Our obligations: We will keep confidential all confidential information received from you in the course of the work, and partners and staff performing work for you:

- will treat confidential information you give as being given only to them;

- may disclose confidential information within the firm as required in order to perform the work; and
- will not disclose to you any confidential information of third parties which may be known to them or any other Clayton Utz personnel and may otherwise be information to which you are entitled.

If required, we will reinforce the confidentiality of information by adopting special procedures among groups of partners and staff.

Restricted information from us: You understand and accept that our obligation to you with respect to giving you information is restricted by these provisions. Only partners and staff working for you will have an obligation to give advice only to you. We will treat other clients' instructions to the firm and their confidential information on the same basis.

Industry Information: You understand that we act for clients in similar industries and sectors to your own. Except for information confidential only to you, knowledge of industry or sector conditions, practices, participants or pricing form part of our knowledge and experience and is not confidential information for the purposes of this agreement.

Internal information use: We may transfer material to our internal databases for learning and knowledge purposes. Before doing so, we will make reasonable efforts to ensure that confidential information is neither disclosed outside the firm nor otherwise used inconsistently with the obligations referred to above.

15. Competitive bidding

If you instruct us in any matter where you are or may become one of a number of competitive bidders (or their financier) for an asset, a right or a contract, for example, a tender process, we reserve, and you consent to our having the right, to act or to continue to act, for any other competitive bidder (or their financier), provided our standard information barriers have been put in place. In such a situation, in addition to the matters mentioned in clause 14 of these Business Terms, each of the separated teams within our firm will pay attention solely to the interests of its client, without regard to the interests of any competitive client.

16. Compliance with Laws - Anti-Money Laundering and Counter-Terrorism Laws

The Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth), Regulations and Rules (**AML laws**) place obligations on "reporting entities" to, amongst other things, identify their customers and report certain transactions and suspicious matters to AUSTRAC. Reporting entities are defined in the AML laws to include those entities who provide "designated services" which may extend to legal services we provide to you or financial services we access on your behalf, for example, receiving your money into our trust account and/or dealing with that money on your behalf with financial services institutions such as banks.

Notwithstanding your instructions, we will nevertheless seek to comply with all laws applicable to our retainer and the performance of our services for you, including, without limitation, any applicable AML laws.

As a condition of our ongoing retainer, you must therefore provide, or cause others to provide to us, any information we require for those purposes in a timely manner and you authorise us to provide information as required by law to any relevant third party (such as regulators or financial institutions for the purposes of identifying the source of funds (whether for you or for others) and the purpose of any transaction).

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17. Privacy

Personal information: The Privacy Act 1988 (Cth) and other privacy legislation applies when we collect, use and disclose information or an opinion about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion (**personal information**). You agree that we may manage your personal information in accordance with our Privacy Policy available on our website (www.claytonutz.com) as amended from time to time.

In particular:

- We may collect personal information in the course of your instructions and while acting for you. This may include personal information about individuals who are employees, directors or principals of corporate clients. We ask you to assist us to make these individuals aware that our acting for you may involve collection of personal information about them;
- we may decide that it is necessary to conduct further searches and enquiries regarding the information you have provided us or more generally concerning you or your associates for our regulatory or prudential purposes. This may entail using some or all of the collected information to obtain additional information concerning you or your associates (including personal information in respect of individuals), from various other entities including, but not limited to, government agencies, law enforcement bodies, publicly available records, public registries, court or tribunal records, ratings agencies, search agencies and regulatory and licensing bodies.

Information usage: We may use personal information in the course of acting for you and we may disclose personal information to our service providers or agents and to other organisations including other parties in the matter and government agencies responsible for processing transactions, but only to the extent necessary to perform the work and in accordance with our professional obligations, or as required by law. If we do not collect such personal information or if you or others do not consent to us conducting such further searches or enquiries we may not be able to carry out your instructions. In most cases, individuals whose personal information we hold are able to gain access to that information on request. However, where permitted by law, we reserve the right to refuse access to any information we hold.

Subordinate information usage: Contact details and other information (such as information about areas of interest) we hold about individuals may also be used by us (and disclosed to our service entities) to keep those individuals informed about developments in relevant areas of law or other legal services or seminars we may offer (including by email and other electronic communications). However, if at any time individuals tell us that they do not wish their personal information to be used for this purpose, we will act in accordance with their request.

18. Official inquiries

Obligation to produce documents: It is possible that because we have acted for you in a matter or because we have received documents or information in the course of, or in connection with, our work, we may be required in the future to participate in an inquiry, commission or proceeding arising out of, or in connection with, that work. This may involve us producing documents, seeking to claim or defend your privilege to resist inspection or disclosure of certain documents or information, or giving evidence at an inquiry.

Steps to be taken: We will seek your instructions if these circumstances arise, but you agree to reimburse us for out of

pocket expenses we reasonably incur and for the time we spend in that regard at our then current hourly rates.

19. Document storage

Storage standard: Where we agree, or are required, to retain documents on your behalf, you agree that we may entrust them to the possession of a professional document management service which is a member of the Records Management Association of Australia, complies with the Australian standard for records management, or is accredited under ISO 9000/9002.

Storage method: You agree that documents we retain on your behalf:

- may be stored in digital or electronic formats;
- may be destroyed 12 years after the date on which the matter is complete;
- may be copied before delivery to you.

Stored documents that we retrieve for your benefit will incur retrieval costs and you agree to indemnify us for those costs.

20. Jurisdiction and governing law

Jurisdiction: Subject to your rights to select jurisdiction under the LPA, our Costs Agreement and all aspects of our retainer and the performance of our services for you are governed by and you agree to be bound by the laws of the state or territory from which we issue this Costs Agreement. You irrevocably submit to the exclusive jurisdiction of the courts of that jurisdiction.

LPA rights as to jurisdiction: Where the legal services are or will be completely or primarily provided in, or where the work has a substantial connection with another state or territory, you have the right to:

- enter into a costs agreement with us on the basis that a corresponding law of that other state or territory; or
- notify us in writing in accordance with the time limits of the corresponding law that you require the law of another jurisdiction to apply to our Costs Agreement.

In the event that you elect to have another jurisdiction's laws govern this agreement, then we may do one or both of the following:

- conduct the matter from our office in that jurisdiction; and/or
- enter into a new costs agreement with you.

21. Amendment to agreement

Each financial year we will review these Business Terms and the Fees & Other Charges schedule. If we propose to amend either the Business Terms or the Fees & Other Charges schedule, we will notify you in writing and ask you to agree to the amendments.

22. Severability

Any provision of this Costs Agreement which is illegal, void or unenforceable is only ineffective to the extent of that illegality, voidness or unenforceability, without invalidating the remaining provisions.

23. Inconsistency

To the extent of any inconsistency or conflict between:

- the Appointment Terms;
- any matter related letters;
- the Fees & Other Charges schedule; and
- these Business Terms,

then that inconsistency or conflict must be resolved by giving priority to the earlier named document over any later document.