

## **TERMS OF ENGAGEMENT – GENERAL**

To Whom It May Concern,

1. These are the general terms on which Cartland Law Pty Ltd (ACN 606 752 818), an incorporated South Australian legal practice, will act for you. These terms, if accepted will constitute a Terms of Engagement. The purpose of the Terms of Engagement is to advise you of the basis on which I will act for you in this matter and also to provide information required under the *Legal Practitioner's Act 1981* (SA).

### **Acceptance**

2. You can accept the Terms of Engagement by instructing us (by email or letter) to start our work under these Terms of Engagement. Once accepted, the Terms of Engagement form the agreement between us.

### **Scope of Work**

3. The scope of the work to be carried out by Cartland Law consists whichever instructions you provide from time to time.

### **Cost Estimates**

4. This is an open retainer and the work will depend on the instructions you give from time to time. It is not possible to estimate your fees at this time. If it later becomes reasonable to do so then I will provide an updated estimate.
5. My estimate is subject to the following factors:
  - 5.1. the complexity of the matters involved in performing the work;
  - 5.2. the extent of the communications we have with you in relation to the work;
  - 5.3. the number of drafts necessary to complete the work in accordance with your instructions;
  - 5.4. the number and complexity of issues that arise during the course of the work that were not evident at the time of the estimate; and
  - 5.5. the approach of other parties involved in the matter and the amount of communication with them that is necessary to perform the work.
6. Please note that this is my estimate only and should not be regarded as a fixed quote. The actual costs you incur will be based on the work actually done and the expenses actually incurred. Further estimates will be provided along the way. We will send you an account for services performed every fortnight so that you remain aware of the legal costs incurred during this matter.
7. Based on our general experience the following factors may alter this quote in the manner described:
  - 7.1. where the facts of your matter are different to those presented in your initial instructions, then the costs may increase by between 50% and 100%;

- 7.2. where unexpected correspondence with an authority or other third party is received, the costs may increase by between 20% and 50%;
- 7.3. where we have difficulty in contacting you to obtain further instructions, costs may increase by 50% to 100%; and
- 7.4. where there is an unexpected legal problem that we need to devise a solution to, your costs may increase by 50% to 100%.

### Legal Fees

- 8. I charge for our services based on hourly rates. Myself, my Solicitors, Law Clerks and Administrative assistant each have an hourly charge rate set according to their seniority, experience, skill and qualifications, and having regard to the nature of the work to be undertaken. Law Clerks have not yet completed their law degrees or graduate diploma requirements, and the legal work performed by them is done under my direct supervision.
  - 8.1. We use our resources as a team in order to maximise overall efficiency and quality of output and so will often have multiple solicitors in a meeting all working together. This is necessary for supervision of practitioners and also for creative output. Each solicitor present will be charged. At our discretion we may discount the rate of the second and subsequent solicitors.
  - 8.2. We charge in units of 6 minutes. The time we charge includes time spent on your matter and includes interviews, preparing or reading documents or correspondence, telephone calls, attending at meetings, undertaking research and travelling in the course of undertaking work for you and on your matter.
  - 8.3. Our rates of charge for time spent are different from the rates set out in the Scales of Fees published by the Supreme Court. Although time charging is common there may be other legal practitioners who would be prepared to act for you and charge according to the scale. You are entitled to seek independent legal advice regarding this or any other term of the Terms of Engagement.
  - 8.4. Our rates are likely to result in a higher charge than if the Court Scale of Fees were used and other lawyers might be prepared to do the work for a lesser fee.
  - 8.5. You are also liable for disbursements (that is – out of pocket expenses including Barrister's fees, except if agreed upon).
  - 8.6. We pay close attention to the market value of our services. We'll keep you informed of any changes that we make actually had more detail to keep in front of the competition.
  - 8.7. We always try to be innovative and provide the best value to you. You may always propose alternative terms that better suit your situation and we will try to meet your needs.
  - 8.8. Other legal practitioners may charge based on the time they spend, or on the Supreme Court Scale of Fees, rather than on the value to you. This may result in a higher or lower cost to you as compared with our offered fixed fee or retainer.
  - 8.9. If we are required to incur out-of-pocket expenses in connection with your instructions we will on charge them to you as agent at the cost to us.

- 8.10. Your bill will show each item that you have been charged for. We are happy to provide updates on the progress of your matter and the items charged and expected to be charged.
- 8.11. We charge you when we have completed the item you asked for. If we do not provide what you asked for then will not charge for that item.
- 8.12. If we have provided what you asked for but you are still unhappy with paying the amount you agreed to then you can always discuss it with us, get our fees adjudicated, seek to have your agreement set aside, make a complaint to the Legal Profession Conduct Commissioner or attempt to have interstate costs laws applied. For more information you may wish to read the fact sheet entitled *Legal Costs – Your Right to Know* that you can get from us or from the Law Society of South Australia.
- 8.13. We will charge the following hourly rates exclusive of GST:
- |         |                  |          |
|---------|------------------|----------|
| 8.13.1. | Director:        |          |
|         | Adrian Cartland  | \$500.00 |
| 8.13.2. | Senior Associate | \$400.00 |
| 8.13.3. | Associate        | \$300.00 |
| 8.13.4. | Solicitor        | \$200.00 |
| 8.13.5. | Law Clerk        | \$200.00 |
| 8.13.6. | Junior Law Clerk | \$100.00 |
| 8.13.7. | Admin Assistant  | \$80.00  |
- 8.14. I will notify you of any new hourly rates we propose to charge. You are not obliged to accept such proposed rates, but if you do not accept them we are entitled to cease acting for you. If you do accept the new rates, either expressly or by paying bills expressly calculated by reference to those new rates, they will be binding on you.

#### **Disbursements**

9. We will charge you for any out-of-pocket expenses (we call them disbursements) that we incur in connection with your matters. Examples of out-of-pocket expenses are search fees, registration fees, stamp duty, agent's fees, storage retrieval fees, special postage or courier fees, bulk photocopying costs and taxi fares. Disbursements will either be itemised on our accounts or invoiced separately.
- 9.1. Should we see a need to incur expenses on your behalf which are unusual as to their nature or extent (including, in court matters, expenses which are unlikely to be recoverable from the other side if you win and obtain a costs order), we will provide you with advice and seek your specific instructions before incurring such expenses.
- 9.2. Disbursements are incurred by us as your agent. If a disbursement is subject to GST you need to pay the GST.

#### **Goods and Services Tax ('GST')**

10. In addition to the rates referred to above, you are liable to pay an additional amount to reimburse us for the GST payable (if any) on any supply we make to you in the course of

providing legal services. You will also, if requested, let us have the information we need to calculate the GST payable (if any) in respect of the supply of legal services to you.

### **Administrative Services**

11. We do not generally charge for facsimile transmissions or photocopying. However if a large volume of photocopying is required for your matter, we will charge a nominal fee for each copy. We will tell you about that charge and how much it will be before we do the copying.

### **Automated Documents**

12. We have automated a number of documents so that we may provide them rapidly and efficiently. All prices listed are for electronic copies only. This list is constantly being updated as we automate new documents. At the time of writing our automated documents are as follows:

<b>Item</b>		<b>Standard Charge (excl GST)</b>
Trusts	Discretionary (Family) Trust	\$300
	Unit Trust	\$300
	(Income and Capital) Unit Trust	\$2,000
	Accumulation Trust	Price on application
	Bloodline Trust	\$800
	Bare Trust	\$300
	Change of Trustee, Appointor etc.	\$150
	Substitution of Trust Deed (No CGT/Stamp Duty)	\$800
SMSF	SMSF Deed	\$400
	Limited Recourse Borrowing Arrangement	\$800
Company	Incorporation	\$200 plus ASIC fee
Partnership	Standard Partnership Agreement	\$400
	Discretionary Partnership	\$800
Agreements	Div 7A Loan Agreement	\$250
	Div 7A 25 year Loan Agreement	\$800
	Overarching Div 7A Loan Agreement	\$800
	Shareholder's Agreement	\$1000
	Buy-Sell Agreement	\$800
	Overarching Loan Novation Agreement	\$500
	Deed of Forgiveness	\$250
	Loan Novation Agreement	\$250
	Basic loan agreement	\$500

### **Legal Costs – Your Right to Know**

13. You have the right to:
- 13.1. negotiate a costs agreement with us;
  - 13.2. receive a bill of costs from us;
  - 13.3. request an itemised bill of costs after you receive a lump sum bill from us;

- 13.4. request written reports about the progress of your matter and the costs incurred in your matter;
  - 13.5. apply for costs to be adjudicated within 6 months if you are unhappy with our costs;
  - 13.6. apply for the costs agreement to be set aside;
  - 13.7. make a complaint to the Legal Profession Conduct Commissioner (if you believe there has been overcharging);
  - 13.8. accept or reject any offer we make for an interstate costs law to apply to your matter; and
  - 13.9. notify us that you require an interstate costs law to apply to your matter.
14. For more information about your rights, please read the fact sheet titled Legal Costs – Your Right to Know. You can ask us for a copy, or obtain it from the Law Society of South Australia (or download it from their website).

#### **Updating of Advice**

15. You have the right under Clause 7 of Schedule 3 of the *Legal Practitioners Act 1981 (SA)* to be notified of any substantial change to the matters to be disclosed to you under Clause 9 of Schedule 3, including any substantial change to the estimated costs of work.

#### **Litigation Matters (cases in Court)**

16. If you have asked us to represent you in court, these terms also apply in addition to those as described above. In these cases, the above costs estimate only refers to the costs we charge you. In addition, the Court may order you to pay other moneys, including some or all of the costs of other parties to your court case.
- 16.1. You agree to pay our fees and disbursements according to our payment terms. You agree to pay these fees and disbursements whether or not you have rights to recover some of your costs from another party or parties if you are successful in your case.
  - 16.2. The Scale of Fees which applies in the Court in which your case will run will usually determine how much money can be recovered from the other party if you are successful.
  - 16.3. It is a term of the agreement between you and us that you, as the client, are aware and acknowledge that you have been advised by us, that even if you are successful in obtaining an order for costs payable by other parties in the case, such an order will not necessarily cover the whole of your legal costs. It is likely to be for an amount substantially less than the costs payable under these Terms of Engagement (in our experience it is likely to be no more than 50 per cent of your costs due to us, and for cases in the Magistrates Court it is likely to be even less than that percentage).
  - 16.4. You will have to meet the difference between our accounts and any awarded costs from your own pocket. It is only in the most exceptional circumstances that a court would order the losing party to pay all of the costs which we have charged you and even then you will have to recover money from the other party who may not have the money to pay you.
  - 16.5. If you are unsuccessful in your case in Court, you may be liable to pay the costs of other parties to the case in addition to our costs. As we are not aware of the extent of

the legal work which may be performed for the other parties, it is difficult to be precise as to what the amount of such costs might be. We can only estimate these at between 50 and 100 per cent of the amount of your own legal costs.

- 16.6. If we negotiate a settlement of your case before any such settlement we will give you a reasonable estimate of our costs and an estimate of the contribution to those costs likely to be received from another party so that the likely minimum net amount that you will receive can be calculated.

### **Litigation**

17. In litigation, the costs recoverable from other parties (if there is a costs order in your favour) will be limited to the relevant Court scale. Our fees under these Terms of Engagement and the rates that you may pay counsel for services in connection with litigation may be significantly higher than the relevant scale costs. In addition, our fees may include our fees for a solicitor attending at trial. Such fees are usually not recoverable under the scale. Notwithstanding this, you agree to pay our fees and any counsel fees for services in connection with litigation.

### **Legal Agent Fees**

18. It might be necessary for us to engage a legal agent in your matter. Legal agents are barristers, country or interstate lawyers or costs consultants. These people may be needed to act on your behalf. A barrister may be engaged to provide an opinion or to present your case at Court. Interstate or country lawyers may be engaged to attend to things that need to be done interstate. Costs consultants may be engaged to work out your entitlement to (or liability for) legal costs. We will tell you of the basis on which an agent will charge before we engage them.

### **Billing**

19. I will send you interim accounts each fortnight. You agree to pay all Interim and final accounts within 14 days, or I may choose to stop working on your case. You may also choose to deposit money into our Trust Account.
20. Interest at the Reserve Bank of Australia Cash Rate Target (as of the date the bill is issued) plus 2% will be charged on overdue accounts. You agree that this records the agreement and applies to any future unpaid bills, as well as any outstanding at the date of this letter, for this matter and any other matters, from the due date of the bill which may be before the date hereof. Interest begins to run on our accounts once they have remained unpaid for 14 days. Also, if an account remains unpaid after that time, I may terminate our engagement.
21. The following avenues are available to you if you are not happy with a bill from us. You may:
- 21.1. request an itemised bill;
  - 21.2. discuss your concerns with us;
  - 21.3. have our costs adjudicated under Part 7 of the *Legal Practitioners Act 1981* (SA);
  - 21.4. apply to set aside our cost agreement under Clause 30 of the *Legal Practitioners Act 1981* (SA);
  - 21.5. make a complaint to the Legal Profession Conduct Commissioner (if you believe there has been overcharging).
22. Time limits may apply to any action you may wish to take. A complaint to the Conduct Commissioner must be made within 3 years of the conduct that is the subject of the complaint

or such longer period as the Commissioner may allow. For more information about your rights, please read the fact sheet titled Your Right to Challenge Legal Costs. You can ask us for a copy, or obtain it from the Law Society of South Australia (or download it from their website).

### **No Apportionment of Liability**

23. Where we act for two or more people or entities in a matter, each of you are individually responsible for payment of our entire account whatever arrangements may be made between you. You agree that you are personally liable for our costs and disbursements even if the matter involves our acting for other persons and/or organisations. Money received for one party may be applied towards the debts of any other party, at our discretion. If you provide us with instructions for or on behalf of a third party or jointly with another party, you will be personally liable to pay for our services in accordance with these Terms of Engagement, irrespective of the liability of any third or other party to pay our fees.

### **Termination**

24. You have the right to terminate our services at any time.
- 24.1. Upon good cause, such as failure to comply with the terms of our agreement with you or if in our view the necessary relationship of confidence between you and us no longer exists, we have a right upon reasonable notice to terminate our engagement and cease acting for you, and in litigation matters apply to be removed from the Court file as your legal practitioners.
- 24.2. All fees and disbursements incurred prior to termination by either you or us are then immediately payable by you.
- 24.3. If we have undertaken work for you on a lump sum fee basis, then you must pay that part of our lump sum fee that we reasonably estimate has been incurred in respect of the legal services provided to you up to the date of termination, plus disbursements.
- 24.4. Subject to any court order to the contrary or consequent agreement to the contrary, you agree that we are entitled to retain all moneys, papers and records relating to this matter until our bills are paid.

### **Confidential information**

25. Any confidential information we obtain from you will be kept confidential and will not be disclosed to anyone unless it is done in the course of carrying out our engagement, disclosure is required by law or the information ceases to be confidential. We are not required to disclose to you or use for your benefit any confidential information we have obtained from, or on behalf of another client.

### **Intellectual property and Storage of Records**

26. We retain copyright and other intellectual property ownership rights in the work that we do for you:
- 26.1. All file notes and work papers created by us in the course of representing you remain our property. We can retain possession of your funds, property and documents until all amounts due to us have been paid.
- 26.2. We will store your files for seven years following completion of the matter. We do not charge for this storage, but if you require us to retrieve any of your files stored by us after completion of the matter, you agree that we can charge you a reasonable fee for

the services required to retrieve those files. You authorise us to destroy any of your files retained by us after seven years following the completion of the matter.

### **Your Agreement to Work with Us**

27. It is a term of this agreement that you will reply to correspondence, return phone calls, respond reasonably to requests for instructions, and pay accounts or pay money into trust when reasonably required. If you do not work with us in these ways then we may terminate this agreement. In such circumstances, you agree that you will file a notice of acting in person in any current court proceedings in which we have been acting for you.

### **Authorisation**

28. You agree to deposit money into the Cartland Law Trust Account as requested from time to time to cover our legal fees or any disbursements. You agree that we may direct amounts to be paid to you in the course of this matter to be paid into our trust account or a trust account of your presently engaged agents or into bank accounts provided by you from time to time, in accordance with our determination as to the most expedient manner to receive funds on your behalf and you authorise us to make such directions as we may consider necessary. It is a term of our engagement that, should we receive any money from you or on your behalf other than for a specified purpose, we are at liberty to apply that money in payment of our outstanding accounts if nothing has been heard from you disputing the accounts within 7 days after delivery.

### **Credit ratings and references to credit agencies**

29. You authorise us to obtain your consumer credit information from a credit reporting agency. If you do not pay our accounts within our terms, you acknowledge that we may refer the fact of non payment to a credit agency who in turn may exchange that information with other credit providers.

### **Apportionment of liability**

30. If you should make any claim against us, and any loss you sustain is caused or contributed to by your breach of this agreement or negligence, then our liability for your loss will be reduced in accordance with the provisions of any applicable statute, or otherwise to such extent as is just and equitable having regard to the extent to which such loss was caused or contributed to by your breach of the Terms of Engagement or your negligence.

### **Limitation of liability**

31. This section sets out the limitations which apply to our liability to you should you have reason to make a claim against us:
32. You agree that our liability for any loss or damage suffered by you arising out of the services we provide (including liability for any negligent act or omission or misrepresentation of ours), is limited to the amount to which we are entitled to be indemnified under the following:
- 32.1. The compulsory professional indemnity insurance required to be held by us under the *Legal Practitioners Act 1981 (SA)*; and
- 32.2. Any additional insurance (including but not limited to professional indemnity) held by us.
33. The term 'liability' includes liabilities arising in tort, contract, by virtue of any statute or otherwise.

- 33.1. The term 'loss or damage' includes loss or damage incurred directly, indirectly or consequentially but excludes any loss or damage arising from any fraudulent or unlawful conduct on our part.
- 33.2. You agree to release us from all claims arising in connection with the provision of services under our engagement to the extent that our liability would exceed the limit on our liability under this section.
- 33.3. Nothing in the Terms of Engagement excludes, restricts or modifies the application of the provisions of any statute (including the *Competition and Consumer Act 2010* (Cth)) where to do so would contravene that statute or cause any of the terms of the Terms of Engagement (including these Standard Terms of Engagement) to be void.
- 33.4. The Terms of Engagement are the only communications governing our relationship. Subject to this section, we will have no liability for any other statements or representations concerning our relationship with you. All representations to exercise reasonable care or render our services with due care and skill, which might otherwise be implied by statute, common law or custom, are expressly excluded. If any representations are of importance to you, you should ensure they are expressly set out in the Terms of Engagement before accepting them.

#### **Applicable law**

- 34. These terms are governed by South Australian law. All parties consent to the non-exclusive jurisdiction of the courts of South Australia with regard to any dispute arising under or out of them.

#### **Your Agreement to These Terms**

- 35. I welcome and value feedback from my clients. If we can do something better or if we are not performing to your satisfaction, please tell us.
  - 35.1. Please do not hesitate to contact admin\_at\_cartlandlaw\_dot\_com (address edited to prevent bots) if there is anything in the Terms of Engagement which you do not understand, with which you disagree or which you wish to discuss. You are also entitled to seek independent legal advice on the terms of these Terms of Engagement.
  - 35.2. This is an offer to enter into a costs agreement and we ask you to sign a copy of this letter and return it to us to confirm that you accept the terms of engagement. You may also acknowledge your agreement by email. The offer may also be accepted by conduct if you continue to provide us with instructions in this matter and/or pay bills expressly calculated under the Terms of Engagement.
  - 35.3. In the event you instruct us again in this financial year you may elect to waive the requirement to receive a long form disclosure document for each new matter. If you do, we will simply give you a short form fee estimate for each new matter. If you would like to waive further long term disclosure this financial year, please tick the box below or email us to that effect.

We look forward to working with you towards a successful completion of this matter.

Kind Regards,

A handwritten signature in black ink, appearing to read 'Adrian Cartland', is centered at the top of the page. The signature is written in a cursive, flowing style.

Adrian Cartland

Principal

