

# SUMMIER

## APPOINTMENT TERMS

### 1. Our role

We will work for you at a reasonable level of skill and care, acting solely in your interest as your independent legal advisors (unless we are authorised by you to act for the benefit of other parties).

We will not be able to work for you if factors such as conflicts of interest prevent us from accepting or continuing to accept your instructions.

### 2. Your obligations

You agree to the following obligations in relation to the work we will do for you.

- (a) You will provide us with timely, accurate, and proper instructions and records relevant to the services we will be providing.
- (b) You will be solely responsible for satisfying yourself as to the commercial viability of any transactions, the bona fides of other parties to any transactions, and any financial matters relevant to and the commercial soundness of such transactions. You will have the sole responsibility for all these matters and will act reasonably to protect your own interests.

### 3. Who is authorised to provide us with instructions?

If we are providing our services to multiple clients, we will act upon the instructions received from any of those clients without having to confirm their instructions with any of the other clients. Each client will be jointly and severally bound by these terms as well as individually liable for our fees, disbursements, and other charges.

If we are providing our services to an organisation, then, unless agreed otherwise, we will act upon the instructions received from any single director, CEO, or employee who is ostensibly authorised to give us instructions without having to confirm these instructions with any other member of the organisation.

You authorise us to discuss any issues in relation to your matter with the partners and staff of your accountants or any of your other advisers or consultants with whom we may need to deal while carrying out work for you.

### 4. Client representative / intermediary

Where you appoint a representative or an intermediary (e.g., an officer, employee, accountant, financial advisor, or consultant) to give us instructions on your behalf, you agree that

- (a) we can act on any instructions received from that representative or intermediary without discussing or confirming those instructions with you; and
- (b) the representative or intermediary can, and is authorised to, receive documents and other communication materials from us in the capacity of your agent.

### 5. Basis and scope of our advice

In providing legal services, we may need to base our advice or conclusions on the facts and assumptions that are presented to us.

If that occurs, we will tell you on which facts and assumptions we are relying. You agree to check that all such facts and assumptions are correct.

Our advice will be based on the law as it stands on the date of our issuing of the advice. It is always possible that the law will be changed at some future date; thus, you acknowledge and agree that we are not in a position to comment on the likelihood or the possible scope of such potential changes.

With regards to tax matters, our advice is also based on existing publications by the relevant tax authorities outlining their current practice with regards to applying the law. It is always possible that the relevant tax authorities will change their practice; thus, you acknowledge and agree that we are not in a position to comment on the likelihood or the possible scope of such potential changes.

We will generally not advise on tax matters, other than those ancillary to standard banking and finance products as part of our offerings.

Our advice may also be based on existing publications by the relevant regulatory authorities outlining their current practice in applying the law. It is always possible that the relevant authorities will change their practice; thus, you acknowledge and agree that we are not in a position to comment on the likelihood or the possible scope of such potential changes.

## **6. Billing arrangements**

Unless otherwise agreed with you, we will send you bills for our professional fees as well as expenses and disbursements on a monthly basis.

### **6.1. Timing**

Once issued, all tax invoices are due and payable in 30 days from the date of the tax invoice is sent to you unless other arrangements have been made with us.

### **6.2. Receiving our bill(s)**

You consent to us sending our tax invoices to you electronically to your usual email address. If you ask us to do so, we will also send you original and signed hard copies by post.

If our bill is

- (a) given personally, then we consider it received on the day it is given to you or to your agent.
- (b) sent by post, then we consider it received two business days after it is posted.
- (c) sent electronically, then we consider it received upon transmission.

You must pay our bills without any deductions or setoffs as well as avoid withholding tax or making any other deductions concerning the payment. If we receive a refund for 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 when obtaining it.

If you give us instructions jointly with one or more other clients, you and every other client will be jointly and severally liable to pay our bills.

## **7. Reimbursement rights**

Even though you may have the right to be reimbursed by some other person for our fees, disbursements, or other charges, you are still responsible for the payment of our bills in accordance with these terms even if any payments due to you from any other person are delayed or not received.

Where a third party is under a legal obligation to us to pay your fees, disbursements, or other charges, then:

- (a) we may make any disclosure required by the Uniform Law to the third party without your consent or knowledge; and
- (b) we may give the third party any information that it may require concerning the fees, disbursements, or other charges you would otherwise be liable for as a result of our engagement.

## **8. Suspension of work**

We may, at any time, suspend work for you until you pay all the bills that are charged for all the services you have engaged us to provide and that have been outstanding for seven or more days.

## 9. Interest charges

Interest at the maximum rate prescribed in Rule 75 of the *Legal Profession Uniform General Rules 2015 (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 relevant due date. Our tax invoices will re-iterate this.

## 10. Recovery of costs

The *Legal Profession Uniform Law (NSW) (Uniform Law)* provides that we cannot take any action to recover our legal costs until after 30 days after a tax invoice (which complies with the Uniform Law) has been issued to you.

## 11. Your rights

It is your right to:

- (a) negotiate a fee agreement with us;
- (b) negotiate the billing method (e.g. task-based or time-based);
- (c) request and receive an itemised bill within 30 days after receiving a lump sum bill or after a partially itemised bill is made payable;
- (d) seek the assistance of the designated local regulatory authority (the Office of the Legal Services Commissioner) in the event of a dispute about legal costs;
- (e) be notified as soon as is reasonably feasible of any significant changes made to any of the costs pertaining to your matter;
- (f) accept or reject any offer we make for an interstate costs law due to your matter; and/or
- (g) notify us that you require an interstate costs law to resolve issues related to your matter.

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

- (a) when the lump sum bill is given, we inform you in writing that the total cost of the legal fees specified in any itemised bill may be higher than the amount specified in the lump sum bill **and**
- (b) the costs are determined to be payable after the conducting of an assessment of the fees or after a binding determination under Section 292 of the Uniform Law

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

## 12. Progress reports

- (a) We will keep you informed of the progress of your matter.
- (b) You may request, at any time, a report of the progress of your matter or a statement of our fees and disbursements incurred since our last bill. We reserve the right to charge you for any progress reports in relation to your matter that we give to you following your request. We will not, however, charge you for any progress statement in respect of our fees.

## 13. Your rights in relation to a dispute concerning any incurred costs

If you have a dispute in relation to any aspect of our legal costs, you have the following avenues of redress.

- (a) 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 our business relationship.

- (b) You may apply to the Manager of 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 is provided, a request for payment is made, or after the costs were paid.

If you wish to discuss the legal costs associated with your matter or you disagree with the amount listed on a bill, please contact any of the people set out in the engagement details.

#### **14. Payment methods**

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

- (a) approve credit;
- (b) ask the client to transfer funds into our trust account; and/or
- (c) ask the client for their credit card details

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

#### **15. Authorisation to transfer money from a trust account**

We may ask you for money in advance. If we do, we will hold that money in a trust and let you know how we use it.

You authorise us to deposit any received payments directly into our trust account, such as any judgment or settlement funds, money received from any source in furtherance of your work and as a payment of our professional fees, and any internal expenses and disbursements (including those produced by transferring trust funds held in other matter ledgers) in accordance with the provisions of Rule 42 of the Uniform General Rules. A trust statement will be forwarded to you upon the completion of the matter.

If we have requested trust money from you and you have failed to pay us that money within the time, we may stop or not start working for you.

#### **16. Termination**

You may terminate our agreement by giving us written notice at any time. If you do so, you must pay the fees for the work already done and any other charges incurred up to the time of termination.

We may terminate our engagement by giving you reasonable notice if

- (a) any payment (including payment of a bill or money we ask you to pay in advance) due to be paid to us is not paid on its due date
- (b) you do not provide timely, accurate, and proper instructions
- (c) by continuing to work for you or carrying out any instructions you have given to us, we would breach any of our legal, regulatory, or professional conduct obligations
- (d) there is any material adverse change to the financial or legal circumstances of any third party responsible for the payment of our fees, disbursements, and other charges, **or**
- (e) you refuse to act in accordance with our advice

Termination by us on any of these grounds does not prejudice or otherwise affect any lien we may have under these or other terms.

You agree that the reasonable notice for the purposes of clause 11 may be 24 hours or less if we believe that we should terminate our engagement because of a conflict of interest or other legal or ethical reason.

## 17. Lien

Subject to the provisions of the Uniform Law and the general law:

- (a) we have a lien on all documents (including but not limited to certificates of title), funds, and records in any form in our possession until you pay all our bills for all the services that you have engaged us to complete; and
- (b) we are entitled to retain copies of all documents that we give to you, whether we own them or not, and to deal with them in accordance with these terms.

Our lien will remain regardless of whether we cease to provide services for you and will continue to apply across all matters you may have engaged us from time to time until you pay our bills in their entirety.

## 18. Security for conditional costs agreement matters

In matters where we have agreed to act under a conditional costs agreement, you agree that as security for our professional fees, internal expenses, and disbursements, you grant us a security interest and/or charge (as applicable) in your security documents that are the subject of the conditional costs agreement with us.

## 19. Document retention and destruction

Where we retain documents on your behalf, you agree that we may entrust them to a professional document management service or a professional cloud storage service.

You agree that the documents we retain on your behalf may be stored in electronic or digital formats

- (a) destroyed seven years after the date on which your matter is complete, **and**
- (b) copied prior to being delivered to you

Stored documents that we retrieve for your benefit will incur retrieval costs, and you agree to reimburse us for such costs.

## 20. Confidentiality

We will retain the confidentiality of all the confidential information we receive from you in the course of your matter; however, our partners and staff may disclose your confidential information within the firm as required in order to perform our work for you.

You agree that our obligation to give you information is restricted in the following ways.

- (a) Partners and staff doing work for you will not disclose to you any confidential information of third parties known to them or any other staff of Summer Lawyers that may otherwise be information to which you are entitled.
- (b) Only partners and staff carrying out work on your matter will have an obligation to give advice exclusively to you.
- (c) We will treat other clients' instructions to the firm and their confidential information on the same basis.

You understand that we may provide services to clients in similar industries and sectors to yours. Except for information confidential exclusively to you, our knowledge of industry or sector conditions, practices, participants, or pricing forms, this serves as a part of our knowledge and experience and is not confidential for the purposes of these terms.

We may use materials created for your matter in our internal databases for learning and knowledge purposes. Before doing so, we will make reasonable efforts to ensure that no confidential information is used inconsistently with the obligations referred to above.

You agree that we can use any information about your matter that is public (e.g. the fact that we have acted for you in a transaction or a matter) in our general credentials as well as marketing or expertise statements.

**21. No Poaching of our employees**

Without our prior written consent you must not either directly or indirectly solicit or entice (or seek or attempt to entice away) any of employees from their employment with us. You acknowledge that the above restraint is, in the circumstances, reasonable and necessary to protect our genuine business interests and agree that damages are not necessarily an adequate remedy if you breach this clause and that we may apply for injunctive relief against you if you breach this restraint clause.

**22. Privacy**

During our engagement, you may disclose to us (and we may collect from you) personal information that is subject to legislation with regards to privacy. We will use that personal information for the purposes of providing our services to you. You agree that we may manage your personal information in accordance with our privacy policy as amended from time to time. A copy of our privacy policy is available on our website at [www.summerlawyers.com.au](http://www.summerlawyers.com.au).

The personal information that we collect may include information about your employees, directors, shareholders, partners, or principals. You will assist us to make these individuals aware that our work for you may involve collection of personal information about them.

We may disclose personal information to service providers or agents and to other organisations including other parties involved in your matter and to 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. In most cases, individuals whose personal information we hold can gain access to that information on request. However, where permitted by law, we may refuse access to any information held by us.

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 any developments in the relevant areas of law or other legal services or seminars we may offer (including via email and other electronic communication channels). However, if, at any time, an individual tells us that they do not want their personal information to be used for this purpose, we will cease any such use.

**23. Legal professional privilege**

Communication between you and us may be subject to legal professional privilege. This privilege is your legal substantive right that states that you must keep the content of this communication confidential. If maintained, this privilege will protect this communication from compulsory disclosure in court proceedings and in some regulatory investigations.

You acknowledge and agree that, to maintain this privilege, you may need to preserve the confidentiality of the communication by implementing and observing protocols for

- (a) communicating with us and any other advisers or intermediaries **and**
- (b) disseminating information or advice from us or any consultant(s) engaged by us on your behalf within your organisation or to any third parties

You agree to contact us if you want us to give you specific advice in relation to the legal professional privilege or tell you about the appropriate safeguards or protocols for you to implement.

**24. Use of our work**

Our work (including advice and documents) on a matter of transaction is provided exclusively to you and only as a part of your matter or transaction. Unless you have our prior written consent, neither you nor any other person or organisation may rely on it in relation to any other matter or transaction.

We are not responsible to you or any other person or organisation for any losses incurred in connection with any changes made to a document that we provide unless we have approved those specified changes.

**25. Intellectual property rights**

We retain all intellectual property rights in relation to anything we produce during our engagement.

You have a limited authority to use our advice and documents for purposes directly connected with the matter or transaction for which they were prepared; however, you must not, without our prior written consent,

- (a) reproduce or use them in relation to any other transaction or matter or
- (b) provide them to any other person or organisation

**26. Legal compliance**

Even if you instruct us otherwise, we will comply with all laws applicable to our engagement and the performance of our services to you including the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) as well as any regulations and rules made under it.

You agree to provide, or cause others to provide to us, any information we require for those purposes in a timely manner. You also 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 any funds or the purpose of any transaction.

**27. Official inquiries**

It is possible that, because we have provided a certain service to you or have received documents or information in the course of, or in connection with, our work, we will 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

- (a) disclosing documents
- (b) seeking to resist or justify your claim to resist inspection or disclosure of documents (on the basis of legal professional privilege or otherwise), or
- (c) giving evidence at an inquiry.

We will seek your instructions if these circumstances arise, but you agree to reimburse us for reasonable out-of-pocket expenses we might incur and for the time we might spend in that regard at our then current hourly rates.

**28. Sending material electronically**

We may use email and other forms of electronic or digital communication with you and third parties for provision of information, advice, opinions, and copies of documents unless you instruct us to the contrary.

Email and other forms of electronic or digital 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 of any communication, 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 communication or materials that appear to have been sent by us.

**29. Severability**

Any provision of these terms that is illegal, void, or unenforceable is only ineffective to the extent that it is illegal, void, or unenforceable, without invalidating the remaining provisions.

**30. Goods and Services Tax**

Where applicable, the Goods and Services Tax (GST) is payable on our professional fees and expenses and will be clearly shown on our tax invoices. By accepting these terms, you agree to pay us an amount equivalent to the GST imposed on these charges.

**31. Governing Law**

The law of New South Wales governs these terms and legal costs in relation to any matter upon which we are instructed to act