

# Terms & Conditions of Engagement Trade & Credit

## Terms & Conditions of Trade:

1. **Definitions**
  - 1.1. "Financial Planner/Accountant/Solicitor" shall mean Ascendia its successors and assigns or any person acting on behalf of and with the authority of Ascendia.
  - 1.2. "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by the Financial Planner/Accountant/Solicitor to the Client.
  - 1.3. "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
  - 1.4. "Services" shall mean all Services supplied by the Financial Planner/Accountant/Solicitor to the Client and includes any advice or recommendations.
  - 1.5. "Price" shall mean the price payable for the Services as agreed between the Financial Planner/Accountant/Solicitor and the Client in accordance with clause 3 of this contract.
2. **Acceptance**
  - 2.1. You may accept our offer to act and will have engaged our services, accepting all terms contained in this document by undertaking one of the following:
    - a) by signing and returning the attached acceptance;
    - b) by providing instructions (verbal or written) to commence work;
    - c) by requesting a certain service or advice;
    - d) by providing requested records or information to allow the work to be undertaken; or
    - e) by way of undertaking any other conduct which would lead to a reasonable assumption that you wish to proceed.
  - 2.2. Any instructions received by the Financial Planner/Accountant/Solicitor from the Client for the supply of Services and/or the Client's acceptance of Services supplied by the Financial Planner/Accountant/Solicitor shall constitute acceptance of terms and conditions contained herein and at [www.ascendia.com.au](http://www.ascendia.com.au).
  - 2.3. Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
  - 2.4. Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of the Financial Planner/Accountant/Solicitor.
  - 2.5. The Client shall give the Financial Planner/Accountant/Solicitor not less than thirty (30) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by the Financial Planner/Accountant/Solicitor as a result of the Client's failure to comply with this clause.
  - 2.6. These terms and conditions of trade are meant to be read in conjunction with the Financial Planner/Accountant/Solicitor's "Financial Services Guide" (this is mandatory disclosure document) and the Financial Planner/Accountant/Solicitor's "Letter of Engagement" (where applicable) or "Service Agreement" (where applicable).
3. **Price And Payment**
  - 3.1. At the Financial Planner/Accountant/Solicitor's sole discretion the Price shall be either
    - (a) as indicated on invoices provided by the Financial Planner/Accountant/Solicitor to the Client in respect of Services supplied; or
    - (b) the Financial Planner/Accountant/Solicitor's quoted Price as detailed in either the Financial Planner/Accountant/Solicitor's service agreement document or the Financial Planner/Accountant/Solicitor's letter of engagement (subject to clause 3.2) which shall be binding upon the Financial Planner/Accountant/Solicitor provided that the Client shall accept the Financial Planner/Accountant/Solicitor's quotation in writing within thirty (30) days.
  - 3.2. The Financial Planner/Accountant/Solicitor reserves the right to change the Price in the event of a variation to the scope of works detailed in the Financial Planner/Accountant/Solicitor's original quotation.
  - 3.3. At the Financial Planner/Accountant/Solicitor's sole discretion a deposit may be required.
  - 3.4. At the Financial Planner/Accountant/Solicitor's sole discretion:
    - (a) payment shall be due on delivery of the Services; or
    - (b) payment shall be due before delivery of the Services; or
    - (c) payment for approved Clients shall be made by instalments in accordance with the Financial Planner/Accountant/Solicitor's payment schedule; or
    - (d) payment for approved Client's shall be due on seven (7) days following the end of the month in which a statement is posted to the Client's address or address for notices.
  - 3.5. Time for payment for the Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) or (14) days following the date of the invoice at the Financial Planners/ Accountants sole discretion,
  - 3.6. Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to two (2%) of the Price), or by direct credit, or by deduction from at the Financial Planner/Accountants sole discretion from the Clients ATO tax refund cheque proceeds after crediting to the Financial Planner/Accountant/Solicitor's Trust Account, or by any other method as agreed to between the Client and the Financial Planner/Accountant/Solicitor.
  - 3.7. The Client acknowledges that payment may also be made to the Financial Planner/Accountant/Solicitor in the form of brokerage or commissions.
  - 3.8. GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
4. **Delivery Of Services**
  - 4.1. At the Financial Planner/Accountant/Solicitor's sole discretion delivery of the Services shall take place when:
    - (a) the Client takes possession of the Services at the Financial Planner/Accountant/Solicitor's address; or
    - (b) the Client takes possession of the Services at the Client's nominated address (in the event that the Services are delivered by the Financial Planner/Accountant/Solicitor or the Financial Planner/Accountant/Solicitor's nominated carrier),
  - 4.2. Delivery of the Services to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement
  - 4.3. The Financial Planner/Accountant/Solicitor may deliver the Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
  - 4.4. The failure of the Financial Planner/Accountant/Solicitor to deliver shall not entitle either party to treat this contract as repudiated.
  - 4.5. The Financial Planner/Accountant/Solicitor shall not be liable for any loss or damage whatever due to failure by the Financial Planner/Accountant/Solicitor to deliver the Services (or any of them) promptly or at all.
5. **Risk**
  - 5.1. If the Financial Planner/Accountant/Solicitor retains ownership of the Services nonetheless, all risk for the Services passes to the Client on delivery.
  - 5.2. The Financial Planner/Accountant/Solicitor shall take every reasonable step to ensure the accuracy of information provided to the Client but shall accept no liability or claims for any loss or damage arising out of the Client's use of that information where the Client chooses to self implement any financial planning instead of using the expertise of the Financial Planner/Accountant/Solicitor to implement such planning on their behalf.
  - 5.3. The Client acknowledges that it is their responsibility to ensure that documentation provided to the Client by the Financial Planner/Accountant/Solicitor is completed, signed and returned to the Financial Planner/Accountant/Solicitor within thirty (30) days of receipt, the Financial Planner/Accountant/Solicitor will accept no liability for deals, rates or opportunities missed due to the Client's failure to comply with this clause.
6. **Title**
  - 6.1. The Financial Planner/Accountant/Solicitor and the Client agree that ownership of the Services shall not pass until:
    - (a) the Client has paid the Financial Planner/Accountant/Solicitor all amounts owing for the particular Services; and
    - (b) the Client has met all other obligations due by the Client to the Financial Planner/Accountant/Solicitor in respect of all contracts between the Financial Planner/Accountant/Solicitor and the Client
  - 6.2. Receipt by the Financial Planner/Accountant/Solicitor of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Financial Planner/Accountant/Solicitor's ownership or rights in respect of the Services shall continue,
  - 6.3. It is further agreed that:
    - (a) until such time as ownership of the Services shall pass from the Financial Planner/Accountant/Solicitor to the Client the Financial Planner/Accountant/Solicitor may give notice in writing to the Client to return the Services or any of them to the Financial Planner/Accountant/Solicitor, Upon such notice the rights of the Client to obtain ownership or any other interest in the Services shall cease,
    - (b) if the Client fails to return the Services to the Financial Planner/Accountant/Solicitor then the Financial Planner/Accountant/Solicitor or the Financial Planner/Accountant/Solicitor's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Services are situated and take possession of the Services.
7. **Errors and Omissions**
  - 7.1. The Client shall inspect the Services on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Financial Planner/Accountant/Solicitor of any alleged defect, shortage in quantity, errors, omissions or failure to comply with the description or quote. The Client shall afford the Financial Planner/Accountant/Solicitor an opportunity to inspect the Services within a reasonable time following delivery if the Client believes the Services are defective in any way. If the Client shall fail to comply with these provisions, the Services shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage. For defective Services, which the Financial Planner/Accountant/Solicitor has agreed in writing that the Client is entitled to reject, the Financial Planner/Accountant/Solicitor's liability is limited to either (at the Financial Planner/Accountant/Solicitor's discretion) replacing the Services or rectifying the Services, except where the Client has acquired Services as a consumer within the meaning of the Trade Practices Act 1974 (Cwlth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Services, or rectification of the Services, or replacement of the Services.
8. **The Commonwealth Trade Practices Act 1 974 ("TPA") and Fair Trading Acts ("FTA")**
  - 8.1. Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.
9. **Intellectual Property**
  - 9.1. Where the Financial Planner/Accountant/Solicitor has designed, drawn or written Goods for the Client, then the copyright in those designs and drawings and documents shall remain vested in the Financial Planner/Accountant/Solicitor, and shall only be used by the Client at the Financial Planner/Accountant/Solicitor's discretion.
  - 9.2. The Client warrants that all designs or instructions to the Financial Planner/Accountant/Solicitor will not cause the Financial Planner/Accountant/Solicitor to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Financial Planner/Accountant/Solicitor against any action taken by a third party against the Financial Planner/Accountant/Solicitor in respect of any such infringement.
10. **Default & Consequences of Default**
  - 10.1. Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.
  - 10.2. If the Client defaults in payment of any invoice when due, the Client shall indemnify the Financial Planner/Accountant/Solicitor from and against all costs and disbursements incurred by the Financial Planner/Accountant/Solicitor in pursuing the debt including legal costs on a solicitor and own client basis and the Financial Planner/Accountant/Solicitor's collection agency costs,
  - 10.3. Without prejudice to any other remedies the Financial Planner/Accountant/Solicitor may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Financial Planner/Accountant/Solicitor may suspend or terminate the supply of Services to the Client and any of its other obligations under the terms and conditions. The Financial Planner/Accountant/Solicitor will not be liable to the Client for any loss or damage the Client suffers because the Financial Planner/Accountant/Solicitor has exercised its rights under this clause.
  - 10.4. If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (1 0.00%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
  - 10.5. Without prejudice to the Financial Planner/Accountant/Solicitor's other remedies at law the Financial Planner/Accountant/Solicitor shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Financial Planner/Accountant/Solicitor shall, whether or not due for payment, become immediately payable in the event that:
    - (a) any money payable to the Financial Planner/Accountant/Solicitor becomes overdue, or in the Financial Planner/Accountant/Solicitor's opinion the Client will be unable to meet its payments as they fall due; or
    - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
    - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

#### 11. Security And Charge

- 11.1 Despite anything to the contrary contained herein or any other rights which the Financial Planner/Accountant/Solicitor may have howsoever
- (a) where the Client and/or the Guarantor (if any) is the owner of land, realty, personal or business records, Company / Trust / SMSF registers, ATO refund cheques made payable to the Client, or any other asset including those capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty, personal or business records or Company / Trust / SMSF registers, ATO refund cheques, or any other asset to the Financial Planner/Accountant/Solicitor or the Financial Planner/Accountant/Solicitor's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that the Financial Planner/Accountant/Solicitor (or the Financial Planner/Accountant/Solicitor's nominee) shall be entitled to lodge where appropriate a caveat, or take a lien or take possession of any such property mentioned in this section. Such a caveat, charge, lien or possession shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
- (b) should the Financial Planner/Accountant/Solicitor elect to proceed in any manner in accordance with this clause and/or its subclauses, the Client and/or Guarantor shall indemnify the Financial Planner/Accountant/Solicitor from and against all the Financial Planner/Accountant/Solicitor's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Financial Planner/Accountant/Solicitor or the Financial Planner/Accountant/Solicitor's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 11.1.
- (d) Where there is, after new or updated terms herein are introduced, ongoing use of our service or ongoing outstanding credit still extended, those new or updated terms will apply to the service, trade and credit engagement and will apply in respect of all amounts of outstanding credit as may have been accrued as owing up until the new or updated terms were notified to the client or implemented by publication on the web site

#### 12. Cancellation

- 12.1. The Financial Planner/Accountant/Solicitor may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are delivered by giving written notice to the Client On giving such notice the Financial Planner/Accountant/Solicitor shall repay to the Client any sums paid in respect of the Price. The Financial Planner/Accountant/Solicitor shall not be liable for any loss or damage whatever arising from such cancellation.
- 12.2. In the event that the Client cancels delivery of Services the Client shall be liable for any loss incurred by the Financial Planner/Accountant/Solicitor (including, but not limited to, any loss of profits) up to the time of cancellation.

#### 13. Privacy Act 1988

- 13.1. The Client and/or the Guarantor/s agree for the Financial Planner/Accountant/Solicitor to obtain from a credit reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by the Financial Planner/Accountant/Solicitor.
- 13.2. The Client and/or the Guarantor/s agree that the Financial Planner/Accountant/Solicitor may exchange information about the Client and the Guarantor/s with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by the Client; and/or
- (b) to notify other credit providers of a default by the Client; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
- (d) to assess the credit worthiness of Client and/or Guarantor/s.
- 13.3. The Client consents to the Financial Planner/Accountant/Solicitor being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 13.4. The Client agrees that personal credit information provided may be used and retained by the Financial Planner for the following purposes and for other purposes as shall be agreed between the Client and Financial Planner/Accountant/Solicitor or required by law from time to time:
- (a) provision of Services; and/or
- (b) marketing of Services by the Financial Planner/Accountant/Solicitor, its agents or distributors in relation to the Services; and/or
- (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Services; and/or
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
- (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Services.
- 13.5. The Financial Planner/Accountant/Solicitor may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client and/or
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

#### 14. General

- 14.1. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 14.2. These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland and are subject to the jurisdiction of the courts of Queensland.
- 14.3. The Financial Planner/Accountant/Solicitor shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Financial Planner/Accountant/Solicitor of these terms and conditions.
- 14.4. In the event of any breach of this contract by the Financial Planner/Accountant/Solicitor the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Services.
- 14.5. The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by the Financial Planner/Accountant/Solicitor.
- 14.6. The Financial Planner/Accountant/Solicitor may license or sub-contract all or any part of its rights and obligations without the Client's consent
- 14.7. The Financial Planner/Accountant/Solicitor reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Financial Planner/Accountant/Solicitor notifies the Client of such change.
- 14.8. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 14.9. The failure by the Financial Planner/Accountant/Solicitor to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Financial Planner/Accountant/Solicitor's right to subsequently enforce that provision.
- 14.10 You agree that if the web site is down or not available to you, the most up to date terms and conditions of service, engagement and credit of the business as published on the internet will apply

- 14.11 Where there are differences in any of the terms and conditions of service, trade and credit and letters of engagement as notified to the client by email or mail - as compared to versions of the terms and engagement document that may be published or available from time to time on the web site - if you continue to utilise Ascendia credit and / or service, you agree that the effective terms for that provision will be those published on our website

#### 15. Client Direct Debit Service:

##### 15.1 Our commitment to you:

This document outlines our service commitment to you, in respect of the Direct Debit Request (DDR) arrangements made between Ascendia and you. It sets out your rights, our commitment to you and your responsibilities to us together with where you should go for assistance.

The first drawing under this Direct Debit arrangement will occur 30 days after the date of agreement in respect of Ascendia invoices issued before the date of this agreement. Subsequent drawings will be no earlier than 30 days after the issue of Ascendia invoices issued in respect of our service to you.

If any drawing falls due on a non-business day, it will be debited to your account on either the next business day following, or the previous business day preceding the scheduled drawing date.

We will give you at least 14 days notice in writing, to the address we have in our client database in respect of service to you, when changes to the initial terms of the arrangement are made. This notice will change to the initial terms such as the wait period after invoicing (currently 14 days) or the frequency of payment where it is on a regular basis (currently monthly where this is used), or the date on which the debit is made.

If you wish to discuss any changes to the initial terms, contact our administration centre on 07 5448 0566 and ask to speak to the administration manager.

##### 15.2 Initial Terms of the Direct Debit Arrangement: Outstanding Invoices:

We undertake to debit your nominated account and / or credit card periodically in respect of Ascendia invoices issued in respect of our service to you that were issued prior to this agreement, no earlier than 30 days after the date of this agreement.

##### 15.3 Default Drawing Arrangements 30 Days After invoice:

In terms of the Direct Debit Request arrangements made between us and signed by you, we undertake to debit your nominated account and / or credit card periodically in respect of Ascendia invoices issued in respect of our service to you, no earlier than 30 days after the date of issue to you of Ascendia invoices - in payment of such Ascendia invoices. This arrangement is the default arrangement for all our services unless alternative periodic (monthly or other agreed time) debit arrangements are agreed in writing.

##### 15.4 Agreed Periodic Drawing Arrangements

We undertake to debit your nominated account and / or credit card periodically in respect of Ascendia invoices issued in respect of our service to you that you have agreed are to be paid on a monthly periodic basis: no earlier than 30 days after the date of this agreement. Invoices may be issued in respect of services for which payment is direct debited monthly on an as agreed in writing basis and may be annually, quarterly or monthly in arrears of payment for your records.

##### 15.5 Your Rights:

Changes to the arrangement:

If you want to make changes to the drawing arrangements, contact our administration centre on 07 5448 0566 and ask to speak to the administration manager.

These changes may include: deferring the drawing; or altering the schedule; or stopping an individual debit; or suspending the DDR; or cancelling the DDR completely.

##### Enquiries:

Direct all enquiries to us, rather than to your financial institution, and these should be made at least 14 working days prior to the next scheduled drawing date. All communication addressed to us should include your Client reference number.

All personal customer information held by us will be kept confidential except that information provided to our financial institution to initiate the drawing to your nominated account.

##### Disputes:

If you believe that a drawing has been initiated incorrectly, we encourage you to take the matter up directly with us by contacting our administration centre on 07 5448 0566 and asking to speak to the administration manager.

If you do not receive a satisfactory response from us to your dispute, contact your financial institution who will respond to you with an answer to your claim: within 5 business days (for claims lodged within 12 months of the disputed drawing); or within 30 business days (for claims lodged more than 12 months after the disputed drawing). You will receive a refund of the drawing amount if we can not substantiate the reason for the drawing. *Your financial institution will ask you to contact us to resolve your disputed drawing prior to involving them.*

##### Your commitment to us:

It is your responsibility to ensure that your nominated account can accept direct debits (your financial institution can confirm this); and that on the drawing date there is sufficient cleared funds in the nominated account; and that you advise us if the nominated account is transferred or closed.

If your drawing is returned or dishonored by your financial institution, we can reissue the direct debit until we choose to contact you for alternative payment method. We normally do this after 3 attempts. If after 3 attempts we are unable to obtain the funds from your nominated bank account you agree that we are able to attempt debit from your credit card instead. We are able to continue these attempts until we choose to contact you to make alternative arrangements for payment. Any transaction fees payable by us in respect of the above will be added to your account in accordance with this agreement at our discretion.

**\*Ascendia = Ascendia Accountants (Noosa) Pty Ltd ABN: 94 123 735 393, Ascendia Accountants (Maroochydore) Pty Ltd ABN: 93 149 783 844, Ascendia Accountants (Brisbane) Pty Ltd ABN: 55 152 685 455, Ascendia Pty Ltd ABN: 88 122 360 721, as applicable**

## Definitions

**Engagement Letter** means a letter from us to you in which we offer to act for you and which refers to these Terms of Engagement.

**We/us/our** refers to Ascendia Lawyers Pty Ltd ACN 153 327 256.

**You/your** refers to the client named in item 1 of the **Matter details** section of the Engagement Letter.

**Your matter** means the matter described in item 2 of the **Matter details** section of the Engagement Letter, including any future changes to the scope of work agreed between you and us.

## Our offer

The Engagement Letter is an offer by us to act for you.

## How you accept our offer

You will be taken to have accepted our offer to act for you if:

- you tell us, verbally or in writing, that you accept our offer; or
- you give us instructions about your matter, or you ask us to provide legal services relating to your matter, after you receive the Engagement Letter from us; or
- you do not tell us, within a reasonable time after receiving the Engagement Letter from us, that you do not accept our offer; or
- the Engagement Letter asks you to make a deposit of money to our trust account and you deposit some or all of the money to our trust account.

If the Engagement Letter says that you need to sign and return a document to us in order to accept our offer to act for you, then we do not have to consider you to have accepted our offer unless and until that occurs. We may, however, waive that requirement.

## Agreement resulting from acceptance of our offer

If you accept or are taken to have accepted our offer, an agreement is formed between you and us. The agreement:

- includes the Engagement Letter and these Terms of Engagement; and
- applies retrospectively from the time that you first gave us instructions or started dealing with us about your matter; and
- if you comprise or include an individual, continues to be enforceable by or against your personal representatives if you die.

## Legal costs

### Basis of calculating professional fees

Item 3 of the **Matter details** section of the Engagement Letter says whether we will calculate our professional fees on the basis of time-costing or a fixed fee.

### Time-costing

If we are calculating our professional fees on the basis of time-costing, this means that when our staff perform a task on your matter, they will record how much time they spent and the fee for that task will be calculated at the hourly rate specified in the table below.

Classification	Hourly rate (plus GST)
Legal Practitioner Director	\$400.00
Solicitor	\$320.00
Paralegal	\$140.00

The Engagement Letter will tell you the names and classifications of our staff who will be working on your matter as at the date of the Engagement Letter.

Please note that the rates specified in the table above are subject to review as explained under the heading **Review of professional fees and overheads** below.

Lawyers conventionally record time on the basis of units of 6 minutes, with any part of a unit counted as a unit (e.g. anything up to 6 minutes is counted as one unit), and we may use that method of recording time.

### Fixed fee

If we are calculating our professional fees on the basis of a fixed fee, then our professional fees for performing the usual tasks necessary to complete your matter are fixed at the amount specified in item 3 of the **Matter details** section of the Engagement Letter.

The fixed fee does not cover work that is beyond:

- the scope of the description of your matter in item 2 of the **Matter details** section of the Engagement Letter; or
- the tasks usually necessary to complete such a matter.

If we carry out any work that is not covered by the fixed fee, that additional work will be charged on the basis of time-costing (see above under the subheading Time-costing).

We will normally tell you and give you an estimate of the legal costs associated with work beyond the scope of the fixed fee if:

- the additional work results in our estimate of the total legal costs to you for the matter exceeding \$1,500 plus GST; or
- the original fixed fee was more than \$1,500 plus GST and the additional work produces a significant change in our estimate of the total legal costs to you for the matter.

Please note that the fixed fee does not include outlays (see below under the subheading Outlays).

If the scope of work that we actually carry out is materially less than the scope of the description of your matter in item 2 of the **Matter details** section of the Engagement Letter (for example, because you cancel your engagement of us before we complete those tasks), then instead of charging you the full fixed fee, we may reduce our professional fees to an appropriate proportion of the full fixed fee.

## Overheads

We may charge for receiving and sending faxes and making photocopies in relation to your matter at \$0.50 (plus GST) per page.

Please note that this rate is subject to review as explained under the heading **Review of professional fees and overheads** below.

## Outlays

Depending on what your matter involves, we may incur outlays. Outlays are expenses that we incur in connection with your matter.

Examples of outlays are search fees, government fees and charges, expert report fees, barristers' fees, court fees, agents' fees, service fees, telephone charges, postage charges and courier charges.

You appoint us to be your agent for the purpose of paying any outlays including any government tax, fee or charge specified in a determination of the Treasurer for GST purposes (under division 81 of *A New Tax System (Goods and Services Tax) Act 1999*).

## Estimate of total legal costs

We estimate that the total legal costs in your matter will be up to the amount shown in item 4 of the **Matter details** section of the Engagement Letter.

## Variables that can affect legal costs: time-costing

If we are calculating professional fees on the basis of time-costing, the major variables that can affect your legal costs are:

- the number and complexity of the documents (and drafts of documents) prepared and reviewed in your matter; and
- how long we spend in negotiations and conferences with you, your other professional advisers and other parties involved in your matter; and
- the conduct of those other parties; and
- the state of any records we require to access and review in connection with your matter (and their accessibility); and
- whether any unexpected or unusual issues arise; and
- the nature and complexity of the advice and services we provide to you.

## Variables that can affect legal costs: fixed fee

If we are calculating professional fees on the basis of a fixed fee, the variables that can affect your legal costs are:

- if legal costs are incurred beyond the scope of the fixed fee; or
- if the outlays incurred in connection with your matter are more than we anticipated when we sent the Engagement Letter to you.

## Estimate is not a quote

Our estimate is the best estimate based on the information known to us at the date of sending the Engagement Letter to you. Please note that this estimate is not a quote. We will tell you if there is a significant change in the estimate.

## Review of professional fees and overheads

### Automatic changes

Our professional fees and overheads will increase on 1 July each year. The increase will not exceed the annual percentage increase in the Consumer Price Index (All Groups - Brisbane) to the March quarter before that 1 July.

This will not apply to our professional fees if we are calculating professional fees on the basis of a fixed fee, unless at least 12 months pass from the date of the Engagement Letter until the date when we issue you an invoice for the fixed fee.

### Notified changes

We can make a notified change to the amounts of our professional fees or overheads. If we decide to do this, we will write to you and notify you how they are changing.

If you do not agree to the change, you have the right to cancel your engagement of us, but we would encourage you to talk to us first. Otherwise, the change becomes effective 1 month after we have notified you of it.

We will not make a notified change during the first 12 months after the date of the Engagement Letter, or more than once in any period of 12 months.

## Billing

### Billing frequency

The billing frequency is shown in item 5 of the **Matter details** section of the Engagement Letter.

If the billing frequency is shown as "On completion", we will issue a bill to you when we consider your matter has been substantially completed (or when your engagement of us is cancelled if that happens before then).

If the billing frequency is shown as "Monthly", we will generally issue bills to you on a monthly basis. In some circumstances we might choose to issue bills less frequently, for instance if:

- you ask us to; or
- there has not been much activity on your matter during the month; or
- for some other reason we think it appropriate not to issue a bill at the end of a particular month.

### Due date for bills

The due date for bills is 21 days after the bill is issued, unless a later due date is specified in the bill.

### Interest on overdue bills

The rate of interest that we charge on overdue legal costs is the Cash Rate Target (which is the percentage, or maximum percentage, stated by the Reserve Bank of Australia as at the date of the bill) increased by 2 percentage points as at the date of the bill that is overdue. The rate of interest applying to overdue legal costs at the date of the Engagement Letter is shown in item 6 of the **Matter details** section of the Engagement Letter. The interest will accrue daily as simple interest.

## Who to contact about legal costs

The Business Manager Legal of Ascendia Lawyers Pty Ltd.

## If there is a dispute about legal costs

The avenues open under the *Legal Profession Act 2007* in relation to a dispute about legal costs are:

- costs assessment under part 3.4, division 7 of the *Legal Profession Act 2007*; and
- an application for the setting aside of a costs agreement under section 328 of the *Legal Profession Act 2007*.

The time limit for you to request costs assessment for legal costs is 12 months from your receipt of the final bill from us for the legal services we were engaged to provide.

The *Legal Profession Act 2007* does not impose a time to apply for the setting aside of a costs agreement but a time limit of 6 years from when the costs agreement was made (or, in some circumstances, from a later date) may apply under the *Limitation of Actions Act 1974*.

#### **Involvement of others in your matter**

To conduct your matter, we may need to engage the services of experts such as accountants, engineers, surveyors, valuers, town planners or forensic experts. If we do:

- we will discuss with you the identity of the expert; and
- we will recommend to you an expert who we think has the appropriate qualifications to do the work required; and
- we do not, however, take responsibility for the work done by the expert; and
- if the expert makes a mistake or is negligent, we are not responsible for the expert's mistake or negligence (but the expert may be).

#### **Trust money**

If the Engagement Letter asks you to deposit money to our trust account:

- we do not have to start or continue work until you satisfy that request; and
- we may cancel your engagement of us at any time before that happens.

We may withdraw trust money held on your behalf, for payment of legal costs owing to us by you:

- if we first give you a request for payment, referring to the proposed withdrawal;
- or
- if we first give you a written notice of withdrawal; or
- in the situations allowed by the *Legal Profession Act 2007* and the *Legal Profession Regulation 2008*.

#### **What we can expect of each other**

We will:

- represent you with reasonable care, skill and diligence; and
- meet our professional and ethical obligations to you; and
- do our best to keep you informed of the progress of your matter.

We do not give financial, taxation or commercial advice. It will be your responsibility to be satisfied about the financial, taxation and commercial implications of anything involved in your matter. We will sometimes discuss those issues with you, but those discussions are only part of a general commentary about your matter and should not be treated as us assuming any obligation to give you financial, taxation or commercial advice.

You will need to:

- give us timely, accurate and full instructions and information; and
- make available all documents and records that are relevant to your matter; and
- tell us if you are going to be away or uncontactable; and
- tell us if you contact details change; and
- tell us if you have any important time limits; and
- ask us for clarification if there is anything you are not sure of; and
- pay any bills on time; and
- do everything else that is indicated in these Terms of Engagement.

#### **How we deal with you**

**If there are more than one of you**

Unless you instruct us to use different protocol:

- we can deal with any one of you and any communications to or from any of you will be taken to have been on behalf of all of you; and
- instructions given to us by any one of you will bind all of you.

If there are more than one of you, you are bound "jointly and severally" by the terms of your engagement of us. This means that each of you is bound individually and you are also bound together.

#### **If you are a corporation or business**

Unless you instruct us to use a different protocol, we can deal with (and take instructions from) any director, manager, senior person or other person you have introduced to us to deal with on your behalf.

#### **Where we will send communications**

Unless you instruct us to use a different protocol:

- we can communicate with you by post, telephone, fax, email or any other agreed method; and
- we can use any postal or street address, telephone number, fax number and email address that you give to us or publish on your letterhead, any communication you send to us, your website or any public directory.

#### **Cancelling your engagement of us**

You can cancel your engagement of us at any time by notifying us. We can cancel the

engagement by notifying you if:

- you breach your obligations under these Terms of Engagement; or
- you do not pay a bill on time or we do not think you will pay future bills on time;
- or
- you do not give adequate instructions to us to allow us to have confidence that we can appropriately and professionally represent you; or
- you do not give us timely instructions (including if we write to you asking for instructions within a specified period and we do not receive the requested instructions within that period); or
- you indicate you have lost confidence in us; or
- we discover a conflict of interest; or
- you do not follow our advice or recommendations; or
- you ask or expect us to act unprofessionally or unethically; or
- for other professional or ethical reasons, we decide we cannot continue to act for you in your matter.

If you or we cancel our engagement, we can charge you legal costs after the cancellation for:

- work that you ask us to do; and
- work that we have to do in order to satisfy professional or ethical obligations we still owe you; and
- work that we do in connection with the cancellation of our engagement if you do not promptly do what you need to do in order to formalise the cancellation.

If we are calculating professional fees on the basis of a fixed fee, that work for which we can charge you legal costs after the cancellation of the engagement is not covered by the fixed fee.

#### **Information sharing with other Ascendia entities**

As lawyers, we are bound by strict duties of confidentiality. However, most of our clients come to us as a result of referrals from other Ascendia entities and normally our clients want us to liaise with those other Ascendia entities in the course of acting for them.

Unless you tell us otherwise, we will assume that you have consented to:

- us sharing information about you and your matter with other Ascendia entities if they ask us for the information; and
- other Ascendia entities giving us information about you if we want it from other Ascendia entities in the course of acting for you in your matter.

Please note that for as long as you do consent to us sharing information with other Ascendia entities, that does not necessarily mean that the other Ascendia entities will have free access to our file on your matter or that we will continually keep them advised of the progress of your matter. It means only that if they ask us for specific information, or if you ask us to give them specific information, then we will accommodate those requests.

By "Ascendia entities", we mean the companies that provide accounting, financial planning and consulting services as part of the Ascendia group, as well as the people who work for those companies.

#### **Documents and files**

##### **Copyright and intellectual property**

We will own the copyright and other intellectual property rights in any advice or other document we prepare or give you. However:

- you may use any advice or other document we give you, for any legitimate purpose associated with the purpose for which we gave it to you; and
- we will not engage in any dealing or transaction with any copyright or other intellectual property rights, or perform or authorise any act comprised in the copyright, to the extent that doing so would infringe the professional or ethical duties we owe to you (such as duties of confidentiality).

##### **Ownership of file contents**

The contents of our file for your matter are our property, other than documents the law says are your property (such as documents we prepare for your benefit and charge you for).

However, we will have the right to exercise any lien arising by law. (A "lien" is a right we can exercise in certain circumstances to hold documents, money or other property until legal costs due or to become due to us have been paid.)

##### **File retention and custody**

When your matter has been completed, we may create digital images of the paper documents on our file for your matter and then destroy those paper documents.

However, we will not destroy any documents (such as original wills and powers of attorney) that we already hold or have told you we will hold in our long-term document custody system or that we are required to retain by law. You consent to and authorize the destruction of your file in accordance with the terms of this engagement.

We will keep our file, consisting of:

- paper documents or digital images of paper documents that we have destroyed as mentioned above; and
- other digital and electronic files,

for at least 7 years after your matter has been completed (except to the extent that we have given it to you another lawyer representing you). After that we may destroy it. You should arrange to collect it from us before then if you wish to keep it.

After your matter has been completed, we may store the file at a location away from our office premises. If we do, and you ask us to retrieve the file, we can charge you a reasonable administration fee as well as any retrieval fee that we have to pay to the place where the file is being stored.

##### **Your rights**

You have the rights to:

- negotiate a costs agreement with us; and
- receive bills from us; and
- request an itemised bill after receipt of a lump sum bill; and
- apply for legal costs to be assessed within 12 months if you are unhappy with a bill; and
- apply for a costs agreement between you and us to be set aside; and
- be notified under section 315 of the *Legal Profession Act 2007* of any substantial change to anything included in a disclosure made under part 3.4, division 3 of that Act (including in this Engagement) as soon as is reasonably practicable after we become aware of the change; and
- request written reports of the progress of your matter (for which we may charge you a reasonable amount); and
- request written reports of the legal costs incurred by you to date or since the last bill in the matter (we will not charge you to give you one of these reports).

##### **Law applying to legal costs**

The law of Queensland applies to your legal costs.

However, if we provide legal services to you wholly or primarily in an Australian jurisdiction other than Queensland, or if your matter has a substantial connection with an Australian jurisdiction other than Queensland, you may have the right to:

- accept under a corresponding law a written offer to enter into an agreement with us that the corresponding provisions of the corresponding law apply to the matter; or
- notify us in writing under a corresponding law, and within the time allowed by the corresponding law, that you require the corresponding provisions of the corresponding law to apply to the matter.

A "corresponding law" is the law of a State or Territory of Australia that corresponds to the *Legal Profession Act 2007* of Queensland.

##### **Limitation of liability scheme**

Our lawyers individually participate in the limitation of liability scheme for solicitors administered by the Professional Standards Council. For more information, you can ask us or contact the Professional Standards Council or the Queensland Law Society.

##### **Transfer of engagement**

If we sell our law practice and notify you of that fact, the agreement which includes these Terms of Engagement continues in force between you and the buyer of our law practice.

##### **Guarantee**

If the Engagement Letter says that we are offering to act for you on the basis that a person is to give us a written guarantee for your obligations to us:

- we do not have to start or continue work until that person has given us a written guarantee in a form acceptable to us; and
- we may cancel your engagement of us at any time before that happens.

##### **General**

You agree that if the web site is down or not available to you, the most up to date terms and conditions of service, engagement and credit of the business as published on the internet will apply.

Where there are differences in any of the terms and conditions of service, trade and credit and letters of engagement as notified to the client by email or mail - as compared to versions of the terms and engagement document that may be published or available from time to time on the web site - if you continue to utilise Ascendia credit and / or service, you agree that the effective terms for that provision will be those published on our website.

Where there is, after new or updated terms herein are introduced, ongoing use of our service or ongoing outstanding credit still extended, those new or updated terms will apply to the service, trade and credit engagement and will apply in respect of all amounts of outstanding credit as may have been accrued as owing up until the new or updated terms were notified to the client or implemented by publication on the web site.