

LEGAL SERVICES AGREEMENT – GENERAL CONDITIONS – July 2022

1. About this agreement

- a. By accepting the proposal in our engagement correspondence, you have engaged Jackson McDonald (also referred to as “we”, “us” and “the firm”) to assist you in your legal matter and do the work in accordance with this agreement.
- b. By “**engagement correspondence**” we mean any engagement letter we give you, and all email and other correspondence by which you and we agree upon (or agree to add to, or change) any aspect of the engagement, including the scope of the work and how we will charge for it.
- c. This “**agreement**” consists of the engagement correspondence and these General Conditions, combined.
- d. If there’s an inconsistency, the engagement correspondence prevails over these General Conditions, and more recent engagement correspondence prevails over earlier.

2. What is ‘in scope’

- a. You have engaged us to do the “**work**”, being all work and other activity referred to in the engagement correspondence from time to time.
- b. This agreement also covers any work we did on your matter before we gave you an engagement letter.

3. What is ‘out of scope’

- a. You have only engaged us to do the agreed scope of work. **We will not address any other legal matters which may affect you.**
- b. We’re not licenced to provide financial product advice and will not do so.

4. We need your instructions

To do the work properly and on time, we need you to give us timely and adequate instructions.

5. Who may instruct us

Unless you instruct us otherwise, we will accept instructions from anyone you tell us is authorised to instruct us, and from anyone who we believe on reasonable grounds has your authority to instruct us.

6. Fees

You must pay our fees, which will be calculated in the manner set out in the engagement correspondence.

7. Disbursements

- a. You must pay us (or someone we nominate) for any ‘disbursements’ (out of pocket expenses) we incur in accordance with this agreement. This includes the costs of any independent barrister or other law practice you authorise us to instruct.
- b. **You authorise us** to incur disbursements if we think it necessary or reasonable to do so in your interest.

8. Rate review

We may periodically change our hourly rates, or change which rate applies to a given person. We will give you notice before any increased rates apply.

9. Security and money on account

At any time, we may ask you to give us security for our anticipated fees and disbursements, by way of ‘money on account’ (prepayment) or other security. If so, we may suspend the work until we receive it.

10. Trust money (and interest on trust money)

- a. We’ll deposit all money we receive from you into our general trust account unless it’s for payment of an invoice we’ve rendered, or you direct us to do otherwise.
- b. **Our general trust account does not pay interest.**
- c. You can direct us to deposit your trust money in an interest-bearing account. The direction must be in writing. We will comply as promptly as reasonably practicable. There may be a period during which the money does not earn interest, as we wait for and then implement the direction.
- d. You must reimburse us for all related expenses including taxes.
- e. We accept no liability for loss in relation to any deposit of (or failure to deposit) money in an interest-bearing account, including loss caused by a lack of return, or a delay of any kind.

11. Invoicing and payment

- a. We may give you interim invoices before the work is completed, for example at monthly intervals or when we complete a phase of the work.
- b. You must pay an invoice within 14 days of receipt. We will notify you of the payment methods we’ll accept.
- c. We may charge you interest in the manner set out in the engagement correspondence.
- d. Your rights to dispute an invoice are set out in the engagement correspondence.
- e. **You authorise us** to withdraw money from our general trust account or any interest-bearing trust account and use it to pay any unpaid invoice, including any interest.
- f. **You also authorise us** to receive on your behalf any payment for costs awarded to you and use it to pay any unpaid invoice, including any interest.
- g. All amounts specified in or under this agreement exclude GST. You must pay GST where applicable.

12. Confidentiality

- a. We have a strict professional duty to keep your instructions and information confidential, but we may disclose them:
 - i. with your consent; or
 - ii. when required by law; or
 - iii. if it becomes public otherwise than by our action or inaction; or
 - iv. if the disclosure is necessary to reply to or defend a charge or complaint of criminal conduct, professional misconduct or unsatisfactory professional conduct against us or any of our current or former partners or staff.
- b. Unless you tell us otherwise, we may disclose to third parties that you are or have been our client, but we will not disclose confidential or commercially sensitive information.

13. We will not share other clients’ confidential information with you, or use it for your benefit

We will not disclose to you, or use for your benefit, another client’s confidential information, even if doing so would be to your advantage. **This is an important limitation on this engagement.** It limits what would otherwise be our professional duty to use all our knowledge for your benefit.

14. This retainer is not exclusive

This agreement does not oblige us to act exclusively for you. Provided we comply with clauses 12 and 13, we may, during and after this agreement, act for other clients who have interests inconsistent with yours, except where an actual conflict of interest or conflict of duties exists.

15. Conflicts

- a. If a conflict of interest (i.e. a conflict between your interests and ours) or conflict of duties (i.e. a conflict between our duties to you and to someone else) arises, we will, to the extent we are able, discuss the matter with you promptly. Sometimes, our professional duties will not allow us to tell you the other client's name, or the nature of the conflict.
- b. We may, due to a conflict, decide to stop acting for you. If so, we'll try to help you find alternative lawyers. So long as we don't have a lien over your files, we will hand them over to your new lawyers. A 'lien' refers to our right to retain possession of your property in the event you do not pay our fees and disbursements, and is explained in clause 23.

16. Who may use and rely on our work

- a. Unless we say otherwise explicitly and in writing, the advice, documents, and any other materials we prepare for you in the course of the work ("**work product**") are given solely for your benefit. We are not responsible for any loss arising from any other person's use of or reliance on any work product.
- b. You must ask for our consent (which will not be unreasonably withheld, but may be given with conditions) before doing any of the following with any work product: allowing anyone else to use or rely on it; filing it with any government or other body, authority or agency; publishing it electronically or otherwise; or publicly copying, quoting or referring to it.

17. How you may use our work

- a. We retain all our intellectual property in all work product.
- b. However, subject to clause 16, we grant you and your related bodies corporate an irrevocable, perpetual, royalty-free, non-exclusive licence on the terms of this agreement to use, reproduce and amend the work product. This licence is not transferable. If you wish to allow someone else to use, reproduce or amend the work product, please contact us.
- c. If you or anyone else modifies our work product, they must remove our branding.
- d. We are not responsible for any loss arising from changes made to any work product without our specific approval.

18. Scope of our advice

Unless we say otherwise explicitly and in writing, any work product is: limited by the information that you gave us; limited to the law as it applies in Western Australia as interpreted by courts having jurisdiction in Western Australia; and current at the date we give it to you or such other date as is stated in the work product. **We will not notify you of any changes to the law after that date.**

19. Communications

- a. You are responsible for ensuring the secure, cyber-secure and confidential receipt and storage of any information we send you, and managing your internal communications so that the correct people receive the correct information.
- b. A notice under this agreement must be in writing and delivered by hand, email or post to the recipient's street, email or postal address (as the case may be) last known to the sender.
- c. It takes effect from the time of delivery or the time and date specified in the notice (whichever is later).
- d. **You authorise us** to rely on any electronic communication which purports to be from someone authorised to instruct us, without investigating its authenticity. This includes any instruction to disburse funds out of our general trust account or other account.
- e. Unless we have been fraudulent or reckless, we accept no liability for any loss you may suffer as a result of the matters discussed in this clause 19, and you release us from all related claims.

20. Liability

- a. Our liability under this agreement is limited to A\$10 million under a scheme approved under Professional Standards Legislation.
- b. Any claim you may have against us in relation to any loss you may suffer, is reduced to the extent that the loss was caused or contributed to by your fault or negligence, and you release us from the claim to the same extent.
- c. A limitation or release expressed for our benefit in this agreement extends to current and past partners, directors, officers, staff or contractors of Jackson McDonald and Jackson McDonald Services Pty Ltd (as the case may be).

21. Termination

- a. You may terminate this agreement at any time by giving us written notice.
- b. We may terminate this agreement:
 - i. if you fail to pay an invoice in full within 30 days of receipt and do not make other arrangements with us; or
 - ii. if you otherwise breach this agreement; or
 - iii. if you fail to provide security as requested under clause 9; or
 - iv. if in our reasonable opinion the necessary mutual confidence and trust between you and the firm no longer exists; or
 - v. if we consider that by continuing to act for you we might breach a legal or ethical duty; or
 - vi. if something beyond our control has happened which compromises our ability to perform the work required within the required timeframe; or
 - vii. if in our sole discretion we otherwise consider it is no longer appropriate to act for you.
- c. If this agreement is terminated, we will stop acting for you, and if necessary, will apply to remove ourselves as your solicitors on the record.
- d. You must pay us all fees and disbursements we have incurred up to the date of termination, including disbursements which become payable after the date of termination and cannot reasonably be avoided. If the engagement correspondence provides for non-time-based charging, we may invoice you an amount which is reasonable when having regard to our progress on the work as at termination, determined by agreement or, failing agreement, determined by the President of the Law Society of Western Australia.
- e. You must pay us any reasonable fees and disbursements we incur at your request as a consequence of termination, including in assisting to transfer your matter to another law practice.
- f. Clauses 1, 9, 10.e, 11.c, 11.e, 11.f, 11.g, 12, 14, 15.b, 16, 17, 18, 20, 21.d, 21.e, 21.f, 22, 25, 26, 27 and 28.c continue to have effect after termination.

22. Archives

- a. We generally operate electronic files. Once a matter is complete, we will usually destroy all paper documents other than signed agreements, title deeds and the like, except where doing so is prohibited by law.
- b. We will keep an electronic copy of your matter file for at least seven years after completion of the matter, after which **we may destroy or delete the file without further notice to you.**
- c. Whenever we hand over a file to you or another law practice, we may retain a copy of anything on the file for our own records.

23. We may exercise a lien over your property

If you do not pay our fees and disbursements, **we may retain possession of your property**, including your documents or any money in a trust account up to the value of the



unpaid fees and disbursements. This is sometimes called a 'solicitor's lien'.

24. Dealing with group clients

- a. This clause 24 applies if you (our client) are a group of more than one person, unless you and we agree otherwise in writing.
- b. This agreement binds the group collectively and each group member individually, and can only be amended by written agreement with all group members.
- c. We act for the group and not for any group member individually. We may take instructions on any aspect of the work from any group member and those instructions bind the group and all group members.
- d. We may in our discretion share any confidential or other information we receive from any group member with any other group member.
- e. Each group member individually is liable for the full amount of costs, disbursements and interest payable under this agreement.
- f. If a group member no longer wishes to retain us collectively with the group (e.g. because its and the group's interests are no longer sufficiently aligned), it must notify us immediately.
- g. If we terminate this agreement (including because we decide that a conflict of interest or conflict of duties has arisen), we will be free, but not obliged, to keep acting for one or some of the group members.
- h. We may make our decisions under this clause 24 in our absolute discretion having regard to our legal and ethical duties. Sometimes, our professional duties will prevent us from telling you the reason for our decision.

25. Privacy

- a. Unless you tell us otherwise, you consent to our using personal information about you to undertake the work and for related purposes and, from time to time, sending newsletters and promotional material to you, your staff and your related entities.
- b. Our Privacy Statement is available at www.jacmac.com.au.

26. Foreign exchange

All amounts payable under this agreement must be paid in Australian dollars. Any amounts which are paid in foreign currency will be converted to Australian dollars in accordance with our or our bank's normal procedures and **you must bear the foreign exchange risk and pay all charges** associated with the conversion.

27. We will comply with statutory requirements at your cost

You must pay us for our reasonable fees and disbursements of considering, taking advice on, and responding to any legally binding or enforceable requirement arising in connection with this agreement or the work (for example a subpoena or other court order, a regulator's or government authority's requirements, or a requirement to prepare and lodge an income tax return in respect of any money you have asked us to invest or deposit). This includes paying for our time. If the engagement correspondence does not deal with how this time is to be charged, our normal hourly rates will apply.

28. Miscellaneous provisions

- a. This agreement can only be varied in writing.
- b. A right under this agreement can only be waived by written notice to each other party.
- c. If any part of this agreement is invalid, illegal or unenforceable for any reason, then that part is to be disregarded to the extent of the invalidity, illegality or unenforceability, and the balance of the agreement remains in full force and effect.

29. Definitions and interpretation

- a. In this agreement, underlined words have the defined meanings, and:
 - "**Act**" means the legislation governing the legal profession in the relevant jurisdiction, from time to time.
 - "**claim**" includes any present or future claim, demand, action or proceeding whether under statute, contract, tort or otherwise brought by or against you, or by or against a person claiming through you or on your behalf.
 - "**loss**" means any present or future damage, loss, liability, demand, action, compensation, cost, charge, expense or other obligation whether as a result of a claim or otherwise (and including the cost of defending or settling any claim), whether arising under statute, equity, contract, tort or otherwise, and whether arising directly or indirectly, and including direct, indirect or consequential losses, loss of profits, loss of expected savings, opportunity costs and loss of business.
- b. In this agreement:
 - i. the word "**includes**" is not a word of limitation;
 - ii. the word "**under**" includes under, by, by virtue of, pursuant to, and in accordance with;
 - iii. a reference to a thing includes the whole or a part of the thing;
 - iv. a reference to a document or statute includes its subordinate legislation and any modification, replacement or re-enactment;
 - v. a reference to a "**person**" includes a natural person, company, public body, or association or body of persons, whether incorporated or not, and includes the person's successors, permitted assigns, agents or representatives and (for natural persons) their personal representatives and executors.

