

# STANDARD TERMS

7 Feb 2020

for the purposes of section 5(2)(b) of the Consumer Protection Act 68 of 2008.

## 1 General

- 1.1 This document is a record of the standard terms of engagement applicable to your contractual relationship with our firm. We present it to you to avoid any misunderstandings or ambiguity regarding the basis upon which we have accepted your instruction.
- 1.2 These terms are additional to the general contractual terms governing the attorney-and-client relationship existing between you and our firm.
- 1.3 Unless otherwise agreed in writing, these terms apply to all matters dealt with by our firm, irrespective of whether you have agreed to our prevailing terms with every new instruction.
- 1.4 Should any of the terms recorded herein be unclear or unacceptable, you are requested to notify the attorney dealing with your matter immediately. In the absence of any such notification, we shall assume that the terms and conditions as set out below are acceptable to you.
- 1.5 These terms constitute the whole agreement between you and our firm relating to the subject matter hereof and supersede any other discussions, understandings or agreements regarding the subject matter hereof. These terms will only be amended if reduced to writing and signed in writing by a director of the firm.
- 1.6 Our relationship is governed by South African law and subject to the jurisdiction of the Western Cape High Court. You consent to the jurisdiction of the Magistrate's Court to determine any dispute pertaining to for the payment of any fees or expenses.

## 2 Consumers in terms of the Consumer Protection Act

- 2.1 If your business (our client) is a "consumer" in terms of section 5(2)(b) of the Consumer Protection Act 68 of 2008 (with an annual turnover or asset value below the prescribed amount that is set from time to time under that Act), you agree to notify us accordingly in writing without delay.
- 2.2 In the absence of such notification, we engage and render our services in good faith on the basis that your business (our client) is not a "consumer"

## 3 Instructions and advice

- 3.1 In carrying out your work, we will rely on your full and timeous instructions.
- 3.2 You confirm that the persons instructing us are duly authorised to do so. If we are to accept instructions from designated persons, you agree to advise us thereof on reasonable prior notice in writing.
- 3.3 You should not assume we have knowledge of any other matters we have dealt with or are dealing with on your behalf or on behalf of a third party. In each case, it is your responsibility to provide us with full instructions, unless we agree otherwise in writing.
- 3.4 Our advice in a matter pertains to that matter only and should not be relied on for any other purpose not approved by us in writing.
- 3.5 You should only rely on the final versions of any advice or document we approve. For clarity, do not rely on draft versions of advice or documents.
- 3.6 Our advice is for your benefit, as our client, only. No other party may rely on it without our express agreement in writing.
- 3.7 We are not tax practitioners and we do not give tax advice. We recommend that you obtain advice from your preferred tax advisers prior to pursuing any course of action to avoid the risk of unintended tax consequences.
- 3.8 You should note that we are an accountable institution in terms of the Financial Intelligence Centre Act 38 of 2001 and, amongst others, are required by law to verify your identity in the prescribed manner and to report certain suspicious or unusual transactions of which we become aware without prior notice to you, irrespective of our professional duties of confidentiality or legal privilege.

## 4 Fees and disbursements

- 4.1 With the exception of certain tariff-bound legal work, the fees debited by our firm are based on the hourly rate(s) of the attorney(s) dealing with your matter.

- 4.2 The hourly rate(s) of the relevant attorney(s) can be requested by you from the attorney(s) concerned.
- 4.3 The hourly rates of our attorneys are adjusted annually on the 1st of January and the adjusted rates will apply to any on-going instructions as from that date.
- 4.4 Unless otherwise agreed with you, we will debit interim fees at regular intervals. Please note that debiting of fees will take place not only at the completion of a particular matter.
- 4.5 All disbursements on your behalf will be debited and invoiced to you as and when such disbursements are incurred.
- 4.6 Invoices for fees and disbursements are payable on presentation. Interest will be debited on all amounts not settled within 30 (thirty) days of date of invoice at a rate equal to the prime overdraft lending rate of our bankers from time-to-time. Should you fail to pay any amount due in terms of a statement of account rendered by our firm in accordance with these standard terms, we reserve the right to submit your personal information (as well as details of your default) to any registered Credit Bureau. By acceptance of our standard terms, you hereby consent to the disclosure of the aforementioned information and that such information be shared with customers of the Credit Bureau and registered credit providers.
- 4.7 Please note that successful litigation will as a rule not result in full recovery from the other party of the fees and disbursements paid or payable to our firm. Our fees and disbursements remain payable irrespective of the extent of recovery by you of such fees and disbursements from the other party.
- 4.8 In instances where you may have agreed with a contracting party that such party shall be responsible for payment of our fees and disbursements pertaining to a particular matter, you, as our instructing client, will nevertheless remain liable for our fees and disbursements. Any initial accommodation on our part to invoice such other contracting party for the fees and disbursements will not detract from your obligations to settle the relevant account with our firm in the event of non-payment by the other party.
- 4.9 Should you request a cost estimate at the commencement of a particular matter, and such estimate is given, it must be noted that such cost estimate should be regarded as an estimate only and does not constitute a quote. We reserve the right to debit full fees and disbursements incurred in a particular matter irrespective of any lesser cost estimate given to you in relation to the matter.
- 4.10 Should you wish to limit your exposure to costs in any particular matter, you may instruct the attorney in charge in writing to notify you as soon as the fees and disbursements reach the limit imposed. At this point, on being so notified, you must issue your attorney with further instructions.
- 4.11 It is our policy to ensure that our clients are fully informed at all times of all aspects pertaining to the finances of their matters. You are welcome to direct any queries in this regard (or relating thereto) to the attorney dealing with your matter.
- 4.12 Should you require accounts to be submitted for taxation to the Legal Practice Council, we reserve the right to recover from you any higher amount at which the relevant account may be taxed.
- 5 Bank account details; investment of funds**
- 5.1 We shall never inform you by email or electronic messaging service of a change of our banking details. A change of our banking details is, in any event, highly unlikely. If you ever receive an email or other electronic message about a change of our banking details, please do not act on it, and please contact our office immediately.
- 5.2 Unless you request us to invest trust funds on your behalf by executing an investment mandate, funds in our trust account will not accrue interest in accordance with the Legal Practice Council's rules.
- 5.3 Please note that in terms of the Legal Practice Act Number 28 of 2014, a statutory deduction of 5% of the interest amount earned on funds invested on your behalf will be made. This amount will be deducted and paid over directly to the Legal Practitioners Fidelity Fund by the financial institution with whom the investment is placed.
- 6 Communications and data**
- 6.1 If your contact details change, please notify us in writing without delay.
- 6.2 Unless you instruct otherwise, we will communicate with you by any expedient form of electronic communication (including email, telephone, facsimile, video conference, instant messaging) and you accept the inherent risks arising from the use of such methods (such as non-delivery, interception and forgery).
- 6.3 While we employ technologies to protect against malicious communication or data actions, you agree not to rely only on our protective measures and to employ your own technologies for this purpose.
- 6.4 We will only be deemed to have received any message when we respond to it.

## 7 Records

- 7.1 All documentation relating to matters handled by this firm will be filed in our archives for a period of five years.
- 7.2 At expiry of this five-year period, the contents of the relevant file will be destroyed.
- 7.3 Should we be requested to retrieve documentation relating to a finalised matter, we reserve the right to charge a reasonable fee for attendances in this regard.
- 7.4 Safe-custody facilities are available at our offices and may be used to deposit documents under a special safe-custody number. We charge a fee for the storage and handling of documents held in our safe-custody facility. Further information will be furnished upon request.

## 8 Complaints

- 8.1 Any complaints relating to a matter dealt with by our firm on your behalf must be lodged with the attorney at the head of that particular department.
- 8.2 All complaints will be assessed and you will receive a report.
- 8.3 It is the aim of our firm to deal with all matters to the satisfaction of our clients. We invite you to notify us of any instances where, in your opinion, we may have fallen short of this goal.

## 9 Termination of mandate

- 9.1 Unless otherwise agreed, you are entitled to terminate our mandate to act on your behalf at any time.
- 9.2 If we become aware of an untenable conflict of interest that cannot be resolved to your and our satisfaction, we reserve the right to withdraw from your matter and you agree not to make any claims against is pursuant thereto.
- 9.3 In the event of termination of our mandate, you are entitled to delivery of all documentation relating to your case on receipt of payment of all fees and disbursements due to our firm to date of termination.

## 10 Limitation of liability

- 10.1 The maximum liability of our firm and/or its directors for all claims arising out of the execution of our mandate shall be limited to an amount equal to twice the average annual fees charged for our services for the duration of the mandate, or twice the aggregate fees charged if the duration of the mandate was for less than a year. This maximum liability shall be an aggregate

liability for all claims from whatever source and howsoever arising, whether in contract, delict or otherwise.

- 10.2 Our firm and/or its directors shall not be liable for any loss, damages, costs or expenses directly or indirectly incurred as a result of information supplied by or misrepresentations, negligent or dishonest acts or omissions on your part or on the part of any of your employees or agents.
- 10.3 **No consequential damages.** You agree not to claim for the recovery of any consequential damages, indirect, punitive or other special damages (including loss of profit) and hereby waive any such claims.
- 10.4 **No liability of related parties.** You agree not to make any claim against a current or past director, employee, consultant or other agent of Cluver Markotter Inc in their personal capacity and hereby waive any such claims.
- 10.5 **No liability if insurance does not provide cover.** Certain exclusions and limitations apply to our professional indemnity cover (for instance, limitations from causes arising from North America). We will provide you with a copy of such prevailing cover on request, should you wish to appraise yourself of such limitations. If no proceeds are recovered by us from our professional indemnity cover in response to a claim by you against our firm and/or any of its directors, then you hereby waive such claim in full.
- 10.6 **No liability for third-party agents.** We may from time to time be required to engage third-party agents to perform work, such as advocates and foreign trade correspondents. Should any claim arise as a result of the actions or omissions of such third-party agents and we undertake on your request in writing to cede to you the right to claim from such third parties directly, provided however that you indemnify us for any adverse consequences arising from such cession, including legal costs.
- 10.7 The exclusion of liability in the previous clauses shall not apply to the extent that any liability arises out of acts, omissions or misrepresentations which are in any case criminal, dishonest or fraudulent on the part of our firm's directors, employees, or agents.
- 10.8 In determining the liability of our firm for purposes of any action in contract in terms of this paragraph, a court or arbitrator shall limit such liability by having regard to the contribution to the loss or damage in question of all the parties concerned, based upon relative degrees of fault; it being agreed that the provisions of Section 1 of the Apportionment of Damages Act, 1956 will apply to all claims between you and this firm, and that reference in this document to our terms "*dishonest*" and "*negligence*" on the one hand and "*damages*" or "*losses*" on the other shall fall

within the meanings of "fault" and "damage" respectively as contained in Section 1 of the Apportionment of Damages Act, 1956.

days after the arbitration has been demanded, failing which in terms of the Expedited Rules of the arbitration Foundation of Southern Africa (hereafter AFSA).

**11 Arbitration**

11.1 Except for disputes over which the Legal Practice Council has jurisdiction or disputes concerning the payment of any fees or expenses, any dispute arising out of or pursuant to this Agreement shall be finally resolved by arbitration in Cape Town in accordance with the rules agreed upon between the parties in writing within 14 (fourteen) working

11.2 The proceedings shall be presided over by a single arbitrator agreed to between the parties to the dispute in writing, failing such agreement within 7 (seven) working days after the arbitration has been demanded, an arbitrator or arbitrators as appointed by AFSA having regard to the nature of the dispute.

Details of matter: \_\_\_\_\_

Client's acceptance: \_\_\_\_\_

Name of Client: \_\_\_\_\_

Signature of Client: \_\_\_\_\_

Date of signature: \_\_\_\_\_

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