



D J STEYN ATTORNEYS
CORPORATE. COMMERCIAL. LITIGATION

Tel: +27 12 433 6381

Fax: +27 12 433 6301

Email: info@dsteyn.co.za

TERMS OF ENGAGEMENT

These terms set out the general terms on which we provide services to you. When you instruct us to advise on a new matter we will normally send you an engagement letter confirming your instructions. The terms of that letter (if any) and these Terms of Engagement will together form the contract between us for that matter.

Our appointment

When you appoint us to act for you in relation to a particular piece of legal work:

- you will be authorising us to take all measures we believe appropriate to protect your interests unless you instruct us specifically to the contrary; and
- you will be authorising us to incur reasonable expenses on your behalf.

Your requests to us for work to be done are called “instructions”.

Our advice is provided to you and may not, without our prior written consent, be disclosed to any other party. You will not refer to us or our advice in any public document or communication without our prior written consent.

Communication

We will ensure that further issues raised in your matter are explained to you and that you are kept informed of progress. From time to time and as necessary we will review, and advise you, as to whether the likely outcome of your matter will continue to justify the likely charges, expenses and risk involved.

For the sake of convenience, we are happy to communicate with you using normal, non-encrypted email. This form of email is not secure and there is a risk to you if we communicate confidential information to you in this way. We cannot accept liability for any communication which is intercepted or otherwise falls into the hands of those other than the intended recipient.

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We will assume that we have your consent to communicate with you by this method, unless you advise us otherwise.

Fees

We are flexible and are willing to consider many different ways of charging fees. These include fixed fees, fees subject to a fee limit, percentage fees based on the value of the transaction, retainer fees or fees calculated by reference to hourly rates. However, unless we have specified another fee structure, we will charge fees primarily by reference to the amount of time spent by individuals at D J Steyn Attorneys on your work.

In setting our fees and our hourly rates we take into account:

- the nature and complexity of the work;
- the amount of time spent, knowledge required and responsibility involved;
- the risk associated with the instruction;
- the type and nature of the documents involved; and
- the value of the transaction, property or subject matter.

Time spent on your matter will include, but is not limited to, meetings with you and others in relation to the matter, time spent travelling and waiting, considering and preparing papers, making and receiving telephone calls, correspondence, sending and receiving e-mails, attendance at Court or other Forum, time spent in filing documents at Court and undertaking other clerking tasks, and documenting the arrangements under which we will provide legal services to you.

The amount of time spent on a matter will also be influenced by the manner in which you respond to our requests for information. Timely provision of up to date information will help us to spend less time on your matter.

Estimates we give are a guide to assist you in budgeting, but should not be seen as a definitive quotation unless this is specifically agreed in writing.

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In some types of work we may be willing to agree a fee structure which depends on the outcome. We are not generally able to do this for litigation.

If a transaction or other matter does not proceed to completion, our fees (together with disbursements) will still be payable.

Any special fee (such as a fixed or capped fee) agreed for a matter will not cover additional work not identified when the arrangement was agreed.

Limits to Fees

You may agree with us an upper limit for the fees and expenses that may be incurred by us without further authority in a particular case. This means that you must pay those incurred up to the agreed limit without our needing to refer to you further. Depending on the nature of the work, it may be necessary to review that upper limit with you as the case or transaction progresses.

Changes to Fees

Our hourly charge-out rates are reviewed with effect from 1 January each year. We will notify you of the rates if they change and you will then be bound by them. If you do not accept the new rates after review, we reserve the right not to continue acting for you from 31 January.

Expenses

Our fee estimates do not include any expenses or payments to third parties which we may have to incur on your behalf. These are known as "disbursements". Examples of disbursements are travel expenses, phone call charges, fax and photocopying charges, experts' (including bill of costs specialists) fees, Counsels' / Advocates' fees, stamp duty and search fees. These will generally be billed at the same time as we invoice you for our fees, but may sometimes be billed at another time.

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Value Added Tax

All quotations or estimates of fees that we give are not subject to Value Added Tax. Most expenses that we pay on your behalf will be subject to the addition of Value Added Tax.

Invoicing

Unless agreed to the contrary, and to help you budget for your legal expenses, we render invoices monthly for the work performed to date together with any disbursements we have incurred on your behalf. You must pay the invoice within 15 days from its date.

If you are unhappy with any invoice which we send you please contact your attorney in the first instance who will try to resolve your query.

Payment

Our invoices are payable no later than 15 days from the invoice date unless we have agreed with you otherwise in writing. We may change these payment terms at any time by giving at least 30 days' notice in writing. If an account is not paid in full within that period we may charge you interest on any amount outstanding from the date of the invoice until the date the bill is paid at 15.5% p/a, or such percentage equivalent to the statutory rate of interest prescribed for judgments from time to time in place.

If an account remains unpaid and we decide to commence legal proceedings against you in order to recover the sums you owe us then we will be entitled to recover from you the legal costs that we incur in connection with those proceedings at our standard hourly rates, together with all disbursements (including fees of Counsel and any correspondent attorneys engaged by us in our attempts to recover payment from you).

Where an account is overdue we are entitled to exercise a lien over files and documents belonging to you until our account is settled. We also reserve the right to cease continuing work for you.

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If instructions for a piece of work are given by more than one person or company, we may recover our fees, disbursements and Value Added Tax (where applicable) from any one or more of them. This includes situations where one person or company instructs on behalf of another.

If arrangements are made for a third party to pay any of our fees or disbursements, or a court orders a third party to pay any part of our fees or disbursements, you remain liable to pay them to the extent that the third party does not pay them when due.

Payments on account

There may be circumstances in which we will expect you to make payment to us on account of our fees and any expenses that are to be incurred in connection with our work. We will tell you in advance if this is the case.

Any money that you pay to us on account will be held in our trust account at Nedbank Limited and unless agreed to the contrary you will be entitled to interest on it. We will offset that money on account against your invoices, although our total fees and expenses may be greater than any advance payments.

Monies held subject to an undertaking

Any monies that we hold subject to an undertaking on your behalf will be held in our trust account at Nedbank Limited.

Litigation: your costs and those of the other party

If we act for you on a contentious matter you will be responsible to us for all the legal fees and expenses that you incur although you may be able to recover some of them from your opponent. In some cases, particularly where your opponent is legally aided, your opponent is unlikely to be ordered to pay any or all of your fees and expenses, even if you are wholly successful in your action. Even where a Court orders your opponent to pay your costs and expenses you may encounter an insolvent opponent who cannot pay. In these circumstances you are still liable to pay us for all the legal fees and expenses that you incur. You will also be responsible for paying the charges and expenses of seeking to recover any charges and expenses

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that the Court orders your opponent to pay. If the Court does order your opponent to pay some or all of your charges and expenses, in that case, interest can be claimed from your opponent from the date of the Court Order.

You agree to be liable for our charges and expenses, on the basis agreed between us in the engagement letter and these terms (and subject to any changes notified to you), notwithstanding that this amount may exceed the amount of costs which you would be permitted to recover from any other party. If you are unsuccessful the Court may order you to pay all or a significant proportion of your opponent's fees and expenses (together with interest). You may also have to make payments in respect of your opponent's fees and expenses at various stages in the course of the action. If you withdraw from a case you will usually be ordered to pay your opponent's fees and expenses.

Litigation: 3rd party cover

Your liability for our charges and expenses and for your opponent's charges and expenses (and, in some cases, liability for damages) may be covered by insurance which you may already hold. Please check your insurance policies to ascertain whether or not you have any cover, including any relevant Directors and Officers indemnity policy, household, motor, or credit card policies.

Litigation: access to documents

Documents filed at Court such as the Particulars of Claim, Plea and Replication, together with orders made in open court are available to the public.

Document storage

It is our policy to store files and papers relating to your matter for a minimum of five years from the date the matter was completed. This does not apply to any papers that you ask to be returned to you.

After five years, we may dispose of them in accordance with the procedures recommended by regulatory authorities.

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If we retrieve papers or documents from storage in relation to continuing or new instructions to act in connection with your affairs, we will normally charge you for the cost to us of that retrieval. We may also make a charge based on time spent retrieving and copying stored papers or documents to you or another at your request.

Confidentiality and Disclosure

We have a duty to keep the affairs of our clients and former clients confidential except where disclosure is required or permitted by law or by the clients or former clients concerned. In certain circumstances, such as in order to comply applicable laws in force from time to time, we may be required to provide information relating to a client or former client to regulators.

Should we receive requests, either directly from you, or from your accountants and/or auditors, for confirmation as to whether we are instructed on your behalf, our response shall always be addressed directly to you for onward transmission. Such requests may require us to confirm whether any matters are of a litigious nature, whether any deeds or documents are retained by us on your behalf and also whether there are any outstanding invoices owed by you to us or any work in progress at any given point in time.

You also agree that we may, when required by our insurers or other advisers, provide details to them of a matter or matters on which we have acted for you.

We reserve the right to charge on a time basis for work undertaken in responding to such requests.

Conflicts and Confidentiality

Conflicts between your interests and those of another client may arise. If there is a conflict of interest, we might have to cease acting for you.

All fees and disbursements and VAT up to the date of termination will be charged and become due.

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You agree that we will not be under any obligation to disclose to you, or use on your behalf, any documents or other information in respect of which we owe a duty of confidentiality to another client, former client or third party.

Data Protection

We are under an obligation to comply with data protection law set out in the protection of Protection of Personal Information Act and any other regulations made under that Act. By giving us your personal information you consent to us processing and storing your information so that we may provide you with legal services and generally administer and take care of our relationship with you. We may disclose your information to our third party service providers or agents for these purposes.

In addition we may contact you from time to time to let you know about our services which may include sending you newsletters and news on training events or changes in the law which may affect you. Please remember that you can elect not to receive such marketing material at any time by writing to the attorney responsible for your work.

We can send you our full data protection policy on request.

Termination

You may, except as set out in "Restrictions to Termination" below, terminate our engagement at any time on reasonable notice. To do so you should notify the lawyer with responsibility for your matter and confirm the position in writing.

We reserve the right to terminate our engagement by you which we will confirm in writing. However, we will only decide to stop acting for you with good reason, for example, if you do not pay a bill or comply with our request for a payment on account or you fail to give us the co-operation which we are reasonably entitled to expect. We must give you reasonable notice that we will stop acting for you.

All fees and disbursements up to the date of termination will be charged and become due.

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Restrictions to Termination

Where the Consumer Protection Act applies to the work we undertake for you (for example if you have instructed us over the telephone or by email), you acknowledge that on our commencing that work you will be incurring fees attributable to that work. Because we will have commenced work at your request, you may not cancel your contract with us in relation to the work that has been done (or expenses and charges incurred) and our fees for that work will be payable by you.

With respect to contentious matters, if we are on record at Court as acting for you in any proceedings the consent of the Court may be required before we can be removed. To that extent your right to terminate our engagement may be restricted and you will be liable for our fees and charges until such date as we are no longer on the record as acting for you.

Independent Services

When we are asked to recommend the services of a third party (such as an advocate, trade mark or patent attorney, accountant or foreign lawyer) we shall always do so in good faith. However, no warranty is given in respect of the standing, ability or the quality of the services of a third party. We do not accept liability for that third party's services and you will have a contract with that third party, but not with us in respect of that third party's goods or services. You will be responsible for the fees and expenses of that third party.

Excluded Advice

Unless specifically agreed with you in writing in our engagement letter our advice to you will not extend to advice on the tax or financial implications of the work on which we are advising you.

Unless specifically agreed with you in writing in our engagement letter, we will not keep under review, or re-visit in the future, any advice which we give to you in relation to any instruction.

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Law of the Republic of South Africa

All of our advice is given on the basis of the laws of the Republic of South Africa. To the extent we advise on documents governed by the laws of other jurisdictions, we will not be advising on any specific implications of the laws of those jurisdictions.

Force Majeure

We shall not be liable to you if we are unable to perform our services as a result of any cause beyond our reasonable control. In the event of any such occurrence affecting us we shall notify you as soon as reasonably practicable.

Governing Law and Jurisdiction

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of the Republic of South Africa.

The parties irrevocably agree that the Courts of the Republic of South Africa shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

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