

## GUNSTONS ATTORNEYS TERMS OF ENGAGEMENT

Gunstons Inc, trading as Gunstons Attorneys, is a firm of professional and client centred attorneys committed to providing an exceptional client experience and real value.

Our head office is in Cape Town, South Africa, but we have a reach well beyond, so are happy to explore how we can assist our clients, wherever their legal needs may lie geographically. We cover a fairly full spectrum of legal services, either directly or through our various associates.

### **1. Scope of engagement**

- 1.1. These terms of engagement apply generally to any instruction that you, our client, may give us. We may amend or add to these terms in a separate engagement letter or other correspondence. Any change to our terms must be in writing and signed by us or be posted on our website to be effective. You accept the latest version of these terms by instructing us.
- 1.2. Upon accepting this engagement on your behalf, we agree to do the following:
  - 1.2.1. provide legal counsel in accordance with these terms of engagement in reliance upon information and guidance provided by you; and
  - 1.2.2. keep you reasonably informed about the status and progress of the matter/s we are handling for you.
- 1.3. To enable us to provide effective representation, you agree to do the following:
  - 1.3.1. disclose to us, fully and accurately and on a timely basis, all facts and documents that may be material or that we request,
  - 1.3.2. keep us apprised on a timely basis of all developments relating to the matters we are handling for you that may be material,
  - 1.3.3. attend meetings, conferences, and other proceedings when it is reasonable to do so, and
  - 1.3.4. otherwise co-operate fully with us.

### **2. Professional duty**

- 2.1. We shall fulfil our professional duty as your legal advisors according to the professional standards expected of us. We shall provide our services with reasonable skill and care and without undue delay.
- 2.2. Our advice will reflect our best interpretation of the law as it applies in South Africa at the time. If you request brief, telephonic or urgent advice, this may affect the quality and/or depth of the advice that we are able to give.

### **3. Authority**

- 3.1. We are given the authority usually given to legal representatives to act on your behalf and advise in relation to all matters necessary or incidental to our engagement.
- 3.2. This includes the authority to incur all expenses which we consider necessary or desirable for the proper conduct of your matter and actioning of your instruction/s. This is, of course, something that we are happy to discuss with you, and you may want to specifically limit or otherwise define the scope of our engagement.

### **4. Companies and other legal entities**

If you are a company, partnership, trust, association or other legal entity, we may take instructions from any director, partner, trustee, officer or senior manager unless you expressly limit this, in writing to us.

### **5. Information to be provided to us**

- 5.1. We need you to give us complete and accurate information, on time, where we have requested this.
- 5.2. We are not responsible for the consequences of any delay arising from your failure to do this nor obliged to carry out any instruction without the required information. Please be aware

that delays of this sort can also contribute to costs escalating. As a firm of attorneys, we are very conscious of wanting to provide you with good value, and we hope to work with you to avoid this.

## 6. Legal opinions

- 6.1. We are only able to give you our opinion on how the law will be interpreted, or on the prospects of success of any potential litigation, based on certain facts. We cannot guarantee that our opinion will always be confirmed by a court as correct.
- 6.2. We do undertake to act according to the professional standard expected of us in giving the opinion.

## 7. Reliance on advice

- 7.1. Our advice is provided for your sole use and only you may rely on it. Any advice is based on the information you give us and assumes we have all relevant information.
- 7.2. You are responsible for all strategic, personal and/or business decisions taken in response to our advice or services.

## 8. Our fees and expenses

- 8.1. We will charge you fees for the tailor-made solutions we provide. Factors that influence our fees include the amount of time devoted to the matter, the seniority of the person or people who work on the matter and the nature and extent of other resources devoted to it, its urgency, complexity, the value involved, the importance to you and the level of responsibility and skill required in performing the work.
- 8.2. **Fee estimates.** We are happy to provide our best estimate for the likely cost of certain work. Any fee estimate is merely a guide to help you budget and not a definitive quotation or agreement by us to do the work for the estimated amount or within a fixed time. If the actual fee is less than the fee estimate, we will charge the actual fee. If a fee estimate turns out to have been too low, we will advise you in good time.
- 8.3. **Fixed fees.** We may agree a fixed fee for certain services based on all relevant information and key people being available to us without unreasonable delay. A fixed fee is always subject to the scope of the work not growing beyond what was initially envisaged and discussed and the matter not becoming unduly protracted.
- 8.4. **Tariff fees.** In certain matters (e.g. conveyancing and deceased estates) fees are charged according to tariffs prescribed by statute or regulation from time to time or according to guidelines set by the Law Society.
- 8.5. **Extra fees.** We may charge extra fees if the work becomes more complex, time consuming or urgent or there are other delays or problems beyond our control that we could not reasonably have expected. As far as is reasonably possible, we will discuss this with you upfront.
- 8.6. **Hourly rates.** Our standard hourly rates are usually reviewed once a year. We record time in minimum units of 6 minutes each. We are happy to provide you with details of the hourly rates charged by our various professionals.
- 8.7. **Urgent matters.** If you require work to be undertaken as a matter of urgency after normal working hours (including weekends and public holidays), at our discretion an uplift surcharge of between 25% and 50% of the base hourly rates may be levied.
- 8.8. **Itemised disbursements.** Specific out-of-pocket expenses (disbursements) will be itemised and charged in addition to our fees. Itemised disbursements include, for example, courier costs, Companies and Intellectual Property Commission costs, company secretarial agents' fees, advocates' fees, search fees, messenger fees, investigative fees, computerized legal research, filing fees, court fees, expert fees, after-hours secretarial support, filing and storage service fees, recording fees, transcripts, registration fees, travelling and accommodation (where applicable) and other costs incurred on your behalf. We charge for standard hotel accommodation, meals, car hire, economy airfares and other necessary travel costs when we travel non-locally at your specific request. Local travel is charged at a rate per kilometre. We will get your approval before incurring any unusual

expenses. If we believe that certain disbursements will be substantial, we may ask you to pay them directly or in advance. If we are invoiced for disbursements in foreign currencies, we may require you to pay those disbursements in the currency in which they are invoiced to us. If it becomes necessary to hire third parties to provide services for you or on your behalf, we may elect to pay the third party and include that charge as part of our bill to you. Alternatively, we may require that you pay the third party directly. In either event, you will have the final responsibility for payment to the third party.

- 8.9. **General disbursements.** General disbursements include costs for printing, photocopying, telephone calls, document management, emails and file storage, and will be recovered by levying a reasonable amount on your invoice. The disbursements will not necessarily be itemised on your invoice, but where a global amount is charged it will be calculated with reference to the actual costs for such utilities. We do it this way as a reasonable approximation and to save on administration time, which ultimately benefits you, our client.
- 8.10. **Deposits.** Within our discretion we are entitled at any stage to require that you deposit an amount to cover us in advance for any estimated fees likely to become payable for undertaking your mandate, before we spend any chargeable time in pursuing the matter on your behalf. Any deposit received will be paid into our trust account and set off against fees and disbursements. Deposits are usually placed in pooled interest-bearing trust accounts governed by the Attorneys Act 53 of 1979. All accruing interest is paid to the Attorneys Fidelity Fund. If you would like your deposit to be placed in an interest-bearing account with the interest accruing to your benefit we require written instructions from you to this effect. The need to replenish the deposit is a condition of our continued work.
- 8.11. **VAT.** Our rates exclude Value Added Tax.
- 8.12. **Fee limits.** We are happy for you to set a limit on the fees which you may wish to incur with us. If that limit is reached, we will then notify you accordingly and await your further instructions as to whether or not you wish to proceed.

## 9. Invoicing and payment

- 9.1. We will send all invoices electronically. We will usually send them monthly for ongoing work (sometimes we decide to send them more or less often because of the amounts or the nature of ongoing work). Please pay directly into our bank account shown on each invoice.
- 9.2. Our invoices are payable on presentation, unless we have agreed a longer time period in writing. Any amounts not paid within 30 days will be subject to charge interest at the monthly rate of 1% (or such rate as amended from time to time), compounded monthly in arrears. You shall not be entitled for any reason whatever to withhold payment of any fees or disbursements incurred by or owing to us.
- 9.3. In the event of us collecting, receiving or in any other manner being in control of funds for you and on your behalf in any matter, we reserve the right to deduct any amount due to us in respect of fees and disbursements from such funds for any matter handled on your behalf.
- 9.4. If an invoice remains unpaid, we reserve the right to:
- 9.4.1. in addition to our common law retention rights, retain any documents which belong to you and/or which are in our possession; and
  - 9.4.2. hold you liable for collection charges on the attorney and own client scale, on a full indemnity basis, for any time spent by a Gunstons professional to collect those fees, irrespective of whether litigation is commenced or not; and
  - 9.4.3. discontinue services and / or terminate our mandate; if we are representing you in pending litigation, we may seek to withdraw as your counsel.

## 10. Intellectual Property

- 10.1. We retain all copyright and other intellectual property rights in all know-how, working materials, document and other work we create in providing services to you. This means that anything we provided you with may not be copied without our prior written consent.
- 10.2. We grant you a non-exclusive, non-transferable licence to use these works solely for the purpose for which you instructed us in exchange for you paying our fee.

- 10.3. We may retain and use any advice or opinion obtained while providing the services, subject to removing information that could identify you.

#### 11. FICA

- 11.1. The Financial Intelligence Centre Act (FICA) compels us to compile profiles of our clients. We must therefore ask you to provide copies of certain documents such as ID's / passports and proof of residence.
- 11.2. We are obliged and entitled to keep the affairs of our clients confidential unless we know or reasonably suspect that our client is involved in money laundering. In this case, **we are prohibited from informing** you that we have been legally compelled to make a disclosure under FICA.

#### 12. Communications

- 12.1. We may communicate with you by way of email or other electronic means.
- 12.2. By engaging us, you accept the risks associated with such communication (including but not limited to interception or unauthorised access to emails or data contamination in any way, such as by way of viruses). We use virus protection software but do not give any guarantee that it is effective.

#### 13. Personal data

Any personal data will only be used by us for the purposes of:

- 13.1. invoicing and other administration (where such information relates to your contact details and personal information);
- 13.2. enabling us to provide the services you require;
- 13.3. sourcing other services provided by outside experts that you require and have instructed us to source; and/or
- 13.4. conducting our business and commercial activities.

#### 14. Confidentiality

- 14.1. We will not, without your consent, disclose to any other client or third party any confidential information or knowledge which we obtain as a result of acting for or advising you. Similarly, we will not disclose to you any confidential information or knowledge which we have obtained as a result of acting for any other client.
- 14.2. If the matters we handle for you involve transactions, litigation or administrative or similar proceedings in which our firm appears as counsel of record for you in publicly available records, we reserve the right to inform others of the fact of our representation of you in such matters and (if likewise reflected of record in publicly available records) the results obtained, unless you specifically direct otherwise.

#### 15. File Storage

- 15.1. At the end of a matter, your physical file will be stored for a maximum period of 7 years or such shorter period as the law requires, after which period we have the right to destroy the file. The file will only be stored for a longer period if you make a special arrangement with us and we agree on a suitable fee for the additional storage time. A charge will be made for retrieving the file from storage at your request and for supplying copies of any documents contained in your file.
- 15.2. You expressly consent to your information being stored on an internet-based cloud storage platform, as well as in a physical file (if necessary).

#### 16. Limitation of liability

Our liability, whether arising in contract or delict or whether caused by our negligence in any degree, excludes consequential and indirect damages and is limited to the upper limit of our professional indemnity or public liability insurance, as the case may be, from time to time.

#### 17. Indemnity

If any third party claims against us for any loss or damage that follows from any of our services to you, whatever the cause, you indemnify us against that claim *unless* it is finally determined that the loss or damage was caused by fraud or deliberate misconduct by us or any of our employees or agents.

## 18. Ending our mandate

- 18.1. If you want us to stop acting for you, you may write to us to end our mandate at any time.
- 18.2. Without prejudice to our other rights and remedies, we will have the right to cease work and/or terminate any mandate by giving you written notice at your last known address, in the event that:
  - 18.2.1. you fail promptly to supply any information or instructions needed by us, in our sole discretion, to act on your behalf, or to advise you properly;
  - 18.2.2. any account remains unpaid for more than 30 days after presentation, unless a specific arrangement to the contrary has been made with us;
  - 18.2.3. we determine, in our sole discretion, that there exists a conflict of interest between us and a client or between any two or more of our clients that would affect our ability to give unhindered advice;
  - 18.2.4. we determine, in our sole discretion, that we are not in a position to properly perform the mandate given by you to us;
  - 18.2.5. we consider, in our sole discretion, that any part of the conduct required to be undertaken by us to which we might be thought to be a party, is inappropriate, unethical or illegal; and/or
  - 18.2.6. for any other reason which we consider in our sole discretion to be valid grounds to terminate the mandate.
- 18.3. We will invoice you for our fees and expenses up to the end of our mandate.

## 19. Dispute resolution

- 19.1. We support alternative dispute resolution.
- 19.2. Although we hope no disputes ever arise, if there is a dispute between Gunstons and you related to these terms of engagement or the services that cannot be resolved by a good faith effort, we both agree to refer the matter for confidential without-prejudice mediation. The Association of Independent Mediators (see <http://aim-mediation.co.za/>) will be requested to appoint a mediator. A senior decision-maker from each party must personally take part in the mediation in good faith.
- 19.3. Despite this mediation clause, neither party is prevented from approaching any South African court with jurisdiction for interim relief in appropriate circumstances.

## 20. Consent to jurisdiction

Notwithstanding the amount of the claim and should we elect to proceed in an appropriate Magistrates Court, you shall be deemed to have consented to the jurisdiction of the Magistrates Court for the purposes of such action.

## 21. Applicable law

South African law governs these terms of engagement.

## 22. Non solicitation

Within 6 months of completing any work, you undertake not to solicit for employment or employ any of our employees with whom you have had dealings, without our prior written consent, while we are mandated by you and/or for a period of 6 months after our completing any work for you.

## 23. No waiver

Any delay or indulgence in enforcing these terms of engagement will not affect or restrict any of the rights and powers contained in them. We will only be taken to have released our rights under these terms of engagement, or granted a variation or waiver, if we have confirmed such release, variation or waiver in writing to you.

## 24. Force majeure

We shall not be held liable for any delay or failure to fulfil our obligations to you as a result of causes beyond our reasonable control. Such causes include, but are not limited to, fire, floods, hurricanes, acts of god, acts and regulations of any governmental or supranational authority, wars, riots, strikes, lock-outs and industrial disputes.