

# General Terms

For provision of legal services by Redchip Lawyers Pty Ltd (ABN 27 136 969 358) (**Redchip/we/us**)

Liability limited by a scheme approved under professional standards legislation

The *Legal Profession Act 2007* requires us to make particular disclosures to our clients. These disclosures are contained in these General Terms and in the engagement letter.

These General Terms and our engagement letter:

- (a) form the basis of our agreement with you (and may be added to or amended by an engagement);
- (b) is our offer of legal services to you.

You accept our offer of legal services if you:

1. sign and return our engagement letter ; or
2. continue to instruct us (either orally or in writing) to perform work, whether or not you sign the engagement letter .

*Please note that even if we receive instructions or start work we may still require that you sign our engagement letter before we start work or continue work for you. We may withdraw our offer to act if you do not accept the offer within 14 days. These General Terms apply to our relationship from the point that you first consulted us (whether by post, telephone, email or other form of communication) even if the engagement letter is signed at a later date or even if it is not signed at all.*

## 1. The Work

We will perform our work generally in accordance with these General Terms and in accordance with the engagement letter we give you for each matter that we conduct. The engagement letter itself may take a number of different forms, including a formal engagement letter, a schedule of instructions or more informal communications such as email. If there is any inconsistency between these General Terms and the engagement letter, the engagement letter will prevail. You should tell us immediately if you disagree with anything contained in an engagement letter or if you think we have misunderstood something. Otherwise we will proceed to carry our work in the way described in our engagement letter. Each engagement letter is governed by these General Terms.

## 2. Incorporated Status of this Firm

Redchip is an incorporated legal practice and:

- (a) all legal services will be provided by an Australian Legal Practitioner;

- (b) the provision of legal services is regulated by the *Legal Profession Act 2007* (Qld) however the provision of non-legal services is not regulated by that legislation; and
- (c) the information in this paragraph is provided to you in relation to all matters on which you may instruct us on an ongoing basis.

## 3. Scope of Works

Our engagement letter will describe the work that we will undertake for you, and any work which we specifically will **not** be undertaking for you (and which falls outside the scope of our retainer). If you want us to undertake any additional work you must contact us immediately so that we can amend the scope of our work and our fee estimate.

Unless we specifically agree in an engagement letter, our work does not include giving financial, commercial or taxation advice, advising on the commercial viability of any transaction, advising on your financial capacity to enter into or complete a transaction, advising on the financial viability or stability of any other party involved in the transaction and whether that other party is capable of performing its obligations. We may also specifically exclude other matters in our engagement letter.

If you do not wish to have us proceed with any particular part of the services we provide, then you should contact us immediately to discuss the matter further.

## 4. Persons who will perform the Works

Our engagement letter will tell you who will be undertaking the work for you, although from time to time it may be necessary to utilise the skills of other members of our firm.

## 5. Professional Fees – How we Charge

### 5.1 Professional Fees Charged On A Time Basis:

We calculate our fees on the basis of the time spent on your matter, unless an alternative arrangement is made. Time charging might result in a higher or lower bill than charging on the relevant court scales (if any are applicable to your matter). As at 1 July 2017 our charge rates are:

Directors:	\$595.00 to \$650.00 per hour
Associate Directors:	\$425.00 to \$495.00 per hour
Consultants:	\$385.00 to \$425.00 per hour
Associate:	\$395.00 to \$455.00 per hour
Lawyer:	\$295.00 to \$395.00 per hour
Trainee Lawyer:	\$245.00 to \$295.00 per hour

Paralegal:	\$195.00 to \$255.00 per hour
Legal Support Manager:	\$195.00 to \$235.00 per hour
Law Clerk:	\$175.00 to \$205.00 per hour
Legal Assistant:	\$175.00 to \$205.00 per hour

Our lawyers record their time in 6 minute units for any activity that is conducted (charged at 1/10 of the specified hourly rate). Our hourly rates include usual secretarial and word processing services. Our hourly rates may increase from time to time and we will tell you in writing of any increases.

**Internal Conferencing:** In order to provide the best possible outcome for our clients, it is our standard practice to participate in Internal Conferencing. We believe it can be beneficial to clients to have the lawyer with carriage of the matter consult with other lawyers within the firm in order to ensure that we resolve all matters in the most efficient manner and with the most optimal outcome. This practice of Internal Conferencing will be charged to you at the rates that the individual lawyers charge to you.

### 5.2 Fee estimates

In most cases we will give you an estimate of the fees you will incur on each matter. Estimates are based on the agreed scope of work and are not a fixed quote particularly as unforeseen circumstances or new issues often arise. If our estimate of fees becomes inaccurate, we will provide a revised estimate to you.

### 5.3 Fixed Fees

In some matters, we are able to calculate a fixed fee for the work. If so, our fee will be based on the agreed scope of work but will not cover any additional services that may be required as a result of any variation in the scope of work.

Please note this amount will not include disbursements or office charges referred to below. We may vary this fee with your consent if the circumstances, scope or requirements upon which we based our fee vary.

No fee quote or estimate that we give to you is a fixed fee unless we specifically state that it is a fixed fee.

### 5.4 Other Fee or Conditional Circumstances

If there are specific issues, considerations or circumstances relevant to the way we charge fees on your matter or if the fees are conditional upon an event or circumstance, these will be described in our engagement letter.

### 5.5 Professional Fees – Administration levy and office charges

**Please Note:** These are not outlays or out of pocket expenses. These are professional fees we are charging you to administer and manage the matters described below. They are in addition to professional fees we quote and will appear separately on your invoice to any outlays to which they relate.

Search conduct fee (applied with respect to any council, land title,	\$15.00 per search
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### ASIC search)

Courier administration fee	\$10.00 per courier
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Trust account administration charge	\$10.00 per trust account cheque & \$30.00 per telegraphic transfer
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Investment Account set up or variations	\$100.00
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Document hosting	\$5.00 per invoice
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The administration levy is equal to 2.5% of the professional fees invoiced to you on each invoice (capped at \$250 per invoice). These fees relate to services we provide and do not separately charge for including photocopying and printing, incoming and outgoing facsimiles and emails, trust account administration, postage charges, telephone charges and sundry items.

Credit Card - for payment of invoices made by AMEX a credit card surcharge of 3.5%.

### 5.6 Disbursements

In addition to the professional fees you agree to reimburse us for all disbursements properly incurred by us in conducting your matter including barrister's fees, search fees, courier fees, the cost of expert consultants, medical reports, telephone charges, filing and lodgment fees, banking charges, file retrieval costs, government revenue charges, process servers and investigators, agents' fees including interstate lawyers, external consultants, travel and accommodation, witness fees, transcript fees

Where possible, we will give you an estimate of these costs in our engagement letter.

### 5.7 Interest

Under section 321 of the *Legal Profession Act 2007* we may charge interest on unpaid legal costs. You agree that interest at the rate of the Reserve Bank of Australia Cash Rate plus 2% is payable in respect of any invoice which is not paid in accordance with the terms of payment described in that invoice. Interest will be charged and calculated on daily rests on the balance owing until the invoice is paid in full.

### 5.8 GST

Any amount payable under this Agreement for a taxable supply will be the amount of consideration for the supply set out in the applicable invoice rendered plus any amount of GST payable in relation to that supply.

### 5.9 Extraordinary items

Extraordinary items of cost which we may propose as being potentially beneficial for your matter (for example, expenditure on retaining senior and junior counsel) must be expressly approved by you before such work is started and you must acknowledge that the charges for such items may not be recoverable from another party to the action or transaction. Where extraordinary items apply, they will be

described in our engagement letter or in any subsequent letter that we give to you.

#### 5.10 Reports

We must give you, on reasonable request, a written report of the progress of your matter and the costs incurred by you to date, or since our last invoice to you. We may charge you a reasonable fee for a report regarding the progress of your matter, but will not charge a fee for a report regarding the costs you have incurred.

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### 6. Advance Payments

At the commencement of a matter, or thereafter from time to time, we may ask you to deposit money into our trust account to cover our anticipated fees and disbursements. We may require further advance payments to be made as the matter proceeds. By law, we can only accept retainer payments into our trust account by electronic funds transfer or by cheque (not credit card).

**PLEASE NOTE** we are unable to commence work or continue work (as the case may be) on your behalf if these payments into trust are not made.

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### 7. Billing and cost assessments

- (a) Except where a fixed price has been agreed, our invoices will describe:
  - (i) the date of each attendance;
  - (ii) the author who did the work for the relevant attendance;
  - (iii) the service performed on each occasion;
  - (iv) the total of the time charged by the author for the billing period;
  - (v) the disbursements and out of pocket expenses incurred on your behalf;
  - (vi) any amounts held to your credit in trust;
  - (vii) the total amount payable by you.
- (b) Accounts will be issued either monthly, upon completion of the matter or at another appropriate point for billing purposes.
- (c) We may suspend work on your matter if your payment of an invoice is overdue.
- (d) You hereby authorise and request us to provide invoices to you electronically.
- (e) We reserve the right to withdraw an invoice and to issue an invoice prepared by an independent legal costs consultant for a different amount if:
  - (i) the invoice contains a material error or omission;
  - (ii) the invoice remains unpaid after 7 days from the date of issue; or
  - (iii) if the amount of the invoice in a reasonable opinion (based on a review

of your file, an assessment of our costs and disbursements or for some other reason) does not accurately reflect the correct amount of our costs.

- (f) In the circumstances referred to in (e) we will withdraw the invoice and substitute it for an itemised invoice prepared by an independent legal costs consultant, which may be for an amount greater than the invoice originally provided to you (irrespective of any reductions agreed with you regarding the amount of our costs).
- (g) At our discretion, our costs may be assessed by an independent legal costs consultant. The independent legal costs consultant may prepare a short form assessment of costs, and the cost of the assessment will be charged and payable by you as a disbursement. If you elect not to have our costs assessed by an independent legal costs consultant you must give us those instructions in writing.
- (h) You are responsible for paying our costs even if, at your request, we send our invoices to other parties. Our invoices must be paid within 14 days. If we have to take action to recover our costs, you will be required to pay the cost of that action (including legal fees on an indemnity basis).
- (i) If you do not pay our account, then we are entitled to exercise a solicitor's lien. The lien allows us to retain all your documents and trust funds until the account is paid.

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### 8. Costs in court proceedings

- (a) If court proceedings are taken on your behalf:
  - (i) the court might order the other party to pay your costs. An order by the court for the payment of costs will not necessarily cover the whole of your legal costs. This means that you will be personally liable to pay the remainder of our costs owed by you and not covered by the order. We will separately give you an estimate of the range of costs that may be recovered from the other party, but as a general rule, costs recoverable could be between 35% and 50% of the actual costs incurred;
  - (ii) the court may order that you pay another party's costs (e.g. if you lose the case). We will separately give you an estimate of what those costs might be but as a general rule, costs payable could be between 35% and 50% of the actual costs incurred by the other party. These costs would be payable by you in addition to the costs that you must pay to us; and
  - (iii) unless we specifically agree in writing, your liability to pay our costs does not depend on whether you are successful in the court proceedings.

- (b) If your matter is resolved by alternate dispute resolution, prior to any agreement resolving the matter, we will provide you with:
  - (i) a reasonable estimate of the costs payable by you on settlement;
  - (ii) a reasonable estimate of the costs you would obtain from the other party on settlement if the settlement is favourable to you; or
  - (iii) a reasonable estimate of the costs you have to pay to the other party.

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## 9. Disputes about costs

- (a) If you would like to discuss your costs or our invoices you should contact the director in charge of your matter, or otherwise contact our managing director Gavin Barnes on (07) 3223 6100.
- (b) If there is a dispute in relation to our costs you have the right to apply for the costs to be assessed and for this agreement to be set aside. The time limits to take these actions are:
  - (i) an application for costs to be assessed – 12 months from the delivery of our invoice or request for payment or any extended time permitted by the court or cost assessor;
  - (ii) application for the agreement to be set aside – within 6 years or such other time as permitted by law.

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## 10. Change of Lawyer or Firm

You may change the lawyer at Redchip conducting any of your matters or move your matter to a new firm at any time. Please give us notice of the change to a new lawyer or firm as soon as possible to minimise inconvenience to you in transferring your file. We may charge for fees and costs incurred up to the time when the notice is received and may require that these fees be paid before we release your file.

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## 11. Termination of this Agreement

- (a) You may terminate our engagement with you and withdraw your instructions at any time and for any reason.
- (b) We may also terminate our engagement and cease to act for you for lawful cause or if you:
  - (i) breach these General Terms or anything contained in our engagement letter;
  - (ii) require us to act unlawfully or unethically;
  - (iii) fail to give us adequate instructions;
  - (iv) directly or indirectly indicate or suggest you have lost confidence in us;
  - (v) fail to pay for any accounts in accordance with our credit terms or to

provide money to be paid into trust as may be required by clause 6;

- (vi) lose legal capacity; or
- (vii) engage other lawyers to conduct the work or matter to which the engagement relates.
- (c) We will give to you reasonable notice if we intend to terminate our engagement.
- (d) If our engagement is terminated by either of us you agree, we are entitled to all outstanding fees and costs up to the termination and will be entitled to retain possession of your file and all of your documentation until payment of those fees and costs is received by us. You acknowledge and agree that we have such a lien over your file and documentation.
- (e) If the matter involves a fixed fee or lump sum fee, you must pay the part of our fixed fee or lump sum fee that we reasonably estimate has been incurred in respect of the legal services provided to you up to the date of termination (either by time spent or the value of the work provided up to that time), plus fees for other items, expenses and disbursements, subject to your right to a costs assessment.

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## 12. General matters

- (a) Any amendments to these General Terms must be made in writing or if agreed verbally between us, must be confirmed in writing within a reasonable time after such verbal agreement.
- (b) From time to time the advice given by us in the course of your matter will be based on assumptions or qualifications and those assumptions or qualifications will be set out in the advice. We will not be liable for any part of our advice that is conditional upon any of those assumptions in circumstances where further information or events make any part of our advice incorrect.
- (c) You agree that you have been informed that you should seek independent advice in relation to these General Terms prior to signing the same. By signing our engagement letter you acknowledge you were afforded the opportunity of independent advice.
- (d) We retain ownership of all copyright (including all moral rights) in all contracts, agreements, declarations, forms and other documents (**Documents**) created and developed by us to the extent to which we are lawfully entitled to assert ownership of that copyright. We retain and reserve all rights at all times with respect to copyright ownership in the Documents.
- (e) You agree that we may use email to communicate with you and may use the email address that you provide to us for that purpose. You agree to release us from any liability for any loss which you might incur if an email is intercepted or corrupted during transmission or if a document which we prepare for you is altered

- by you or any other party without our written consent.
- (f) Personal information about you, provided by you or other sources, is protected under the Privacy Amendment (Private Sector) Act 2000. Disclosure of such information may be compelled by law (e.g. under the Social Security Act). You also authorise us to disclose such information where necessary to others in furtherance of your claim/matter (e.g. within the law practice, to the Court, the other party or parties to litigation, to valuers, experts, barristers etc).
  - (g) This agreement is governed by the laws of Queensland and each of us agree to submit to the non-exclusive jurisdiction of the courts of Queensland.
  - (h) You agree that we can assign, novate or otherwise transfer any of our rights or obligations under the costs agreement we have entered into with you without the need to obtain your consent. You agree that if we merge or amalgamate with another law firm that we can transfer your file and all documents held on your behalf to that other firm.
  - (i) These General Terms and our engagement letter may be executed, in original form, by facsimile transmission or by electronic signature, and in any number of counterparts each of which will be considered to constitute the same instrument.
  - (j) Any provision of these General Terms or our engagement letter that is illegal, void or unenforceable will be severed without prejudice to the balance of the provisions of these terms and our engagement letter.

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### 13. Trust Account Authority

You hereby agree to pay our costs on the basis set out in this offer of legal services. You authorise us to transfer from our trust account to our general account money paid into our trust account on account of professional fees and disbursements as may be necessary, from time to time, to pay our invoices which will be rendered in the conduct of each individual matter. You further authorise us to pay directly from our trust account any third party outlays and disbursements properly incurred on your behalf.

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### 14. Personal responsibility

- (a) In consideration of our providing legal services, each person who signs an engagement letter or otherwise gives us instructions to act (irrespective of the capacity or authority they had to sign the engagement letter or to give us instructions), acknowledges and agrees they are jointly and severally liable for the payment of our fees and expenses in performing work for the Client as if they were named as the Client in these General Terms or in our engagement letter. Each person agrees to indemnify us for any loss we suffer because the Client does not pay our fees for any reason.

- (b) You agree that we may accept instructions from those persons who represent to us that they are authorised to provide instructions on behalf of the Client (for example, other directors, business partners, employees, spouses, accountants and other advisers) and that in the case of joint Clients, we may act on instructions given by either Client.
- (c) You acknowledge that we will use and rely primarily on the information provided by you in the performance of our work without having an opportunity to independently verify or assume responsibility for the accuracy or completeness of such information.

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### 15. Retention of Documents

Please note that from October 2014 we will be running your matter with an electronic file, and not a paper based file. Accordingly all correspondence and documents will be retained by us in electronic format only and we will not retain any documents in hard copy. All original documents that we receive during the course of your matter will be scanned and saved electronically, and will either be returned to you (in the case of important original documents that must be retained) or otherwise will be destroyed by us. You should therefore retain for safekeeping all original documents that are provided to you. You agree that we may destroy all documents and correspondence that we receive in hardcopy form, other than those original documents that are returned to you. You agree that we may store documents and correspondence relevant to your matter electronically in servers hosted by third parties located outside of our premises.

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### 16. Acknowledgement

You acknowledge that:

- (a) this offer of legal services will be accepted by you if you sign our engagement letter or failing that if you continue to instruct us in the matter;
- (b) you have read, understood and agreed to be bound by the terms of these General Terms;
- (c) you have read and understood the information contained in Form 1 (a copy of which is **attached**) pursuant to s308(5) of the Legal Profession Act 2007; and
- (d) you have received and will retain your own copies of these General Terms and the attached Form 1.

## FORM 1

*Legal Profession Act 2007 (s 308(5))*

### FORM OF DISCLOSURE OF COSTS TO CLIENTS

#### *Legal costs — your right to know*

You have the right to:

- negotiate a costs agreement with us;
- receive a bill of costs from us;
- request an itemised bill of costs after you receive a lump sum bill from us;
- request written reports about the progress of your matter and the costs incurred in your matter;
- apply for costs to be assessed within 12 months if you are unhappy with our costs;
- apply for the costs agreement to be set aside;
- accept or reject any offer we make for an interstate costs law to apply to your matter;
- notify us that you require an interstate costs law to apply to your matter.

For more information about your rights, please read the fact sheet titled *Legal Costs — your right to know*. You can ask us for a copy, or obtain it from your local law society or law institute (or download it from their website).