

Offer by Law Practice to enter into Costs Agreement

Part 3

Terms and Conditions

1. Legal services

The law practice will provide legal services to you subject to these terms and conditions. The law practice must act in your best interests, but the law practice is not required to do anything which is unethical or unlawful.

2. Instructions

You must give adequate and prompt instructions to the law practice whenever requested by the law practice.

3. Bills

You must pay for the law practice's services in accordance with all bills sent by the law practice even though all of the legal services referred to in Part 2 of this Agreement have not been performed.

4. Money in advance

You must pay money in advance on account of the law practice's costs and disbursements whenever reasonably requested by the law practice.

5. Non-payment

If you do not pay, within 30 days, a bill sent to you by the law practice or comply with a request for payment in advance within 14 days the request is made, the law practice may immediately stop acting for you. If litigation has begun, the law practice may inform the court that the law practice is no longer representing you.

6. Interest for delay in payment

The law practice may charge you interest on the amount of any bill which is unpaid for longer than 30 days. The rate of interest will not exceed the rate specified in paragraph 10 of Part 2 of this Agreement.

7. Request for Itemised accounts

If the law practice gives you a lump sum bill you are entitled to request the law practice to provide you with an itemised account. You must make any request to the law practice to provide an itemised account within 30 days of receiving the lump sum bill. The law practice must comply with your request within 21 days after the date on which your request is made. The law practice cannot charge you for the preparation of the itemised account.

8. Costs assessment

You may apply to a taxing officer for an assessment of the whole or any part of a bill for legal costs even if the legal costs have been wholly or partly paid. Your application for assessment must be made within 12 months after the bill was rendered to you. The law of the jurisdiction of Western Australia applies to legal costs in relation to the legal services described in Part 2 Item 3.

9. Request for Information regarding costs

If you ask, the law practice must provide you with details of the legal costs and disbursements incurred by you so far and the law practice's estimate of the costs payable by you to complete the matter (including the other party's legal costs and disbursements if you lose).

10. Estimates Generally and Changes in circumstances

You acknowledge that it is difficult in litigation proceedings to estimate total legal costs, as there are significant variables impacting upon the estimates. From time to time the law practice will provide to you updated estimates of fees as and when required. The law practice must provide you with details of changed circumstances affecting the extent and nature of the legal services to be provided under this Agreement and the effect of these changes on the estimates of costs provided to you.

11. Costs recovery

In terms of this Agreement, you agree that from any money held in trust on your behalf the law practice may pay unpaid bills which the law practice has rendered to you.

The law practice may receive on your behalf any payment for costs (including disbursements) awarded to you and use the money received to pay any of the unpaid bills rendered to you.

12. Trust accounts

Within 14 days of applying the monies held for you on trust in the law practice's trust account, the law practice must account to you showing how the monies were applied.

13. Law practice is your agent

The law practice is your agent and may incur expenses (such as fees charged by an independent barrister) on your behalf. You are responsible for any expenses the law practice incurs on your behalf and you agree to the law practice charging those expenses to you and if you do not pay them, recovering them from you. So far as reasonably possible, the law practice

must first obtain your consent before incurring unusual expenses on your behalf.

14. Termination by you

You may terminate this Agreement at any time by writing to the law practice. You remain responsible for all costs which the law practice may properly charge up to the time of receipt by the law practice of the notice of termination.

15. Termination by the law practice

The law practice may terminate this Agreement by writing to you and stop acting for you if:

- (1) You do not comply with this Agreement; or
- (2) The law practice forms the opinion, on reasonable grounds, that mutual confidence and trust do not exist between you and the law practice; or
- (3) The law practice considers on reasonable grounds that by continuing to act for you the law practice may breach professional conduct rules.

16. Lien

The law practice is entitled to retain all files, documents and personal property relating to your matter(s) until all bills rendered to you by the law practice are paid in full or a court otherwise orders.

17. Variation of this Agreement

This Agreement is binding on you and the law practice. It may not be varied except in writing.

18. Magistrates Court jurisdiction

This Agreement applies even if the amount which you succeed in claiming is within the monetary jurisdiction of the Magistrates Court.

19. Reasonable care

The law practice must take reasonable care in providing legal services to you. If you suffer injury, loss or damage partly as a result of the negligence of the law practice in providing those services and partly as a result of your own negligence, any claim you make against the law practice for breach of contract will be reduced, as if the claim were based in negligence, to the extent that it is just and equitable having regard to your share in the responsibility for the injury, loss or damage.

20. Copyright

You acknowledge the law practice's copyright in all documents prepared by the law practice and that they must not be reproduced without prior written permission of the law practice.

21. Retention and Destruction of files

The law practice is entitled to destroy the file(s) created upon your instructions seven (7) years after completion of your matter.

The law practice may, in its sole discretion, elect to earlier destroy the physical copy (if any) of the file(s) on the condition that it retains an electronic copy of the file(s) for the full period of 7 years.

File(s), whether physical or electronic, may be destroyed earlier upon the law practice giving you written notice and obtaining your consent.

22. Setting aside of this Agreement

You may apply to the Supreme Court to have the Costs Agreement reviewed, and if the court forms the view that the Agreement is not fair or reasonable the costs payable by you may be reduced or this Agreement set aside.

23. Definitions

The Act means the *Legal Profession Act 2008*.

24. Interpretation

A reference to "this Agreement" is a reference to the Offer by Law Practice to Enter into Costs Agreement constituted by Part 2 (Schedule) and Part 3 (Terms and Conditions).

25. Changes to hourly rates

The hourly rates stated in this Agreement are subject to change. Where the law practice proposes to change the hourly rates that apply, the law practice will notify you in writing of the proposed revised hourly rates that will apply and the date from which they are to apply. The increase will not exceed the amount of the general increase in the CPI index (or 10% whichever is the greater) since the date of this Agreement, or since the last increase in the hourly rates in the terms of this Agreement.

You may accept the amended hourly rates in writing or by your conduct by continuing to instruct the law practice. If reject the amended hourly rates within 21 days of notification by the law practice, the law practice may cease acting for you.

26. Other Law Practices may act for you without a Costs Agreement

Other law practices may be prepared to act for you in accordance with the relevant court scale. By accepting this offer to enter into a costs agreement, you acknowledge that there may be other law practices willing to act for you at a lower cost or who may not require a written costs agreement.

For further information on this Agreement, it is recommended that you read the Law Society's *Explanatory Notes for Clients*.

NOTE: This Agreement is not to be used as a Conditional Costs Agreement or a Costs Agreement under which uplift fees are to be charged.

*Offer by Law Practice to Enter into Costs Agreement Parts 1 - 2 and Part 3
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