

Costs Disclosure and Costs Agreement

Between: **Client**
And: **Schweizer Kobras, Level 5, 23-25 O'Connell Street, Sydney NSW 2000, Australia**
Re:
Date:

This document, together with our General Terms of Business and covering letter/email, if any, sets out the terms of our offer to provide legal services to you and constitutes our costs agreement and disclosure pursuant to the *Legal Profession Uniform Law* (NSW) (the "Law").

You confirm that you have hereby been informed of your right to obtain independent legal advice before entering into this Costs Agreement.

1. **Scope of Work**

2. **Professional Fees**

We will charge you professional fees for the work we do based on hourly rates. The hourly rates charged by our professional staff are set out below:

- Partner \$625.00 per hour (plus GST)
- Consultant \$550.00 per hour (plus GST)
- Foreign Law Consultant \$550.00 per hour (plus GST)
- Senior Associate \$550.00 per hour (plus GST)
- Associate \$475.00 per hour (plus GST)
- Solicitor \$425.00 per hour (plus GST)
- Senior Para-Legal \$325.00 per hour (plus GST)
- Junior Para-Legal \$275.00 per hour (plus GST)

You will be proportionately charged for work involving shorter periods of less than an hour. Our charges are structured in 6 minute units. For example, the time charged for an attendance of up to 6 minutes will be 1 unit and the time charged for an attendance between 6 and 12 minutes will be 2 units. Our charge out rate of 6 minute units applies to all attendances and time spent on your work such as meetings and conferences, telephone calls, attendances at court, preparing and reviewing correspondence, drafting and reviewing documents, travel and waiting time.

Our rates are reviewed on a regular basis and may change during the course of a matter. In relation to lengthy matters, this may impact on our cost estimates (which may be revised accordingly). You will be given 30 days' notice in writing of any changes to our charge out rates.

3. **Disbursements and Internal Expenses**

Disbursements

We may incur disbursements (being money which we pay or are liable to pay to others on your behalf). Disbursements may include search fees, court filing fees, process server fees, expert fees, witness expenses, travel expenses, translation fees, transcript expenses and barrister's fees. Disbursements will generally be charged to you as they are incurred and we will inform you of these as soon as reasonably practical. We may ask you for payment of specific disbursements in advance or payment on account of disbursements to be incurred.

Where you instruct us to brief a barrister or other expert and they provide a disclosure and costs agreement, we will provide this to you.

Internal Expenses

You will also be responsible for internal expenses which we incur in carrying out your instructions. These include:

- 3.1. photocopies @ 50 cents per page;
- 3.2. facsimiles @ \$1.00 per page;
- 3.3. \$50.00 for each bank attendance for transmission of funds overseas;
- 3.4. \$50.00 file storage fee;
- 3.5. \$50.00 per file retrieval fee from storage; and
- 3.6. sundries, for items such as post and stationary, at the following rate:
 - 3.6.1. \$15.00; or
 - 3.6.2. 2.5% of professional fees up to \$2,000.00 and 1% thereafter, whichever is the higher, per invoice.

all plus GST. All our internal expenses are itemised by us. Photocopies are electronically counted at the time of copying. Faxes are recorded at the time of dispatch or receipt.

4. **Estimate of Professional Fees, Disbursements and Internal Expenses**

We will provide you with an estimate of fees, disbursements and internal expenses once the ambit of the work and likely time involved is known. In the meantime, all work will be performed at the applicable professional fee rates set out in paragraph 2 above.

Variables

Some of the variables which may affect and change any costs estimate include:

- 4.1. whether you have fully disclosed or advised us of all relevant facts at the outset of the matter;
- 4.2. whether you promptly disclose or advise us of all relevant changes as and when they occur;
- 4.3. the number and duration of telephone calls or other communications;
- 4.4. your prompt and efficient response to requests for information or instructions;
- 4.5. whether your instructions are varied;
- 4.6. whether documents have to be revised in light of varied instructions;
- 4.7. the lawyer or other persons with whom we deal and the level of co-operation of the lawyer's clients and other persons involved;

- 4.8. changes in the law; and
- 4.9. the complexity or uncertainty concerning legal issues affecting your matter.

Please note that the total costs may exceed the estimate. Our costs may exceed an estimate if further information becomes available or circumstances change which affect these matters. In that event, we will provide you with a revised estimate as soon as practicable. Where there is a significant change in your matter then, as far as possible, we will advise the impact of the change on the legal costs.

5. Assumptions

In accepting your instructions and making an estimate of likely costs involved in the matter, we have assumed that:

- 5.1. no work apart from that described in this Costs Agreement will be required;
- 5.2. you have fully and accurately informed us of all relevant facts, circumstances, agreements and other relevant information within your knowledge, relating to the matter and the work required;
- 5.3. the substantive commercial terms of any relevant transaction have been understood and agreed between the parties affected before we start work;
- 5.4. we will promptly receive from you and all other relevant parties, all additional information, documents and records necessary for the work when requested;
- 5.5. any other persons who act for any other party or who are engaged by us, will act diligently and competently;
- 5.6. consents and approvals from third parties will be given promptly and will not involve protracted correspondence or negotiations;
- 5.7. relevant regulators, government agencies and authorities do not adopt any unusual stances or unusual interest in the matter, and the matter proceeds smoothly;
- 5.8. NSW is the only relevant jurisdiction unless stated otherwise; and
- 5.9. no unforeseen circumstances will arise which affect our estimate.

6. More than One Client

If there is more than client:

- 6.1. we will assume that each of you has authorised the other to give instructions on behalf of all of you; and
- 6.2. you will be liable for our costs individually and together.

If you are signing on behalf of the client, you confirm that you are authorised to do so.

Signed for and on behalf)
of Schweizer Kobras)
I/We have read and agree to be bound by this Costs Disclosure and Costs Agreement

.....
Client

.....
Client

Date:

Date:

General Terms of Business (Standard Retainer)

1 Billing Arrangements

Our usual policy is to issue tax invoices on a monthly basis but we may issue tax invoices on a more frequent basis depending on the nature of the work. All tax invoices are due and payable 7 days from the date of the tax invoice. You consent to us sending our tax invoices to you electronically at your usual email address or mobile phone number as specified by you.

2 Acceptance of Offer

You may accept the Costs Disclosure and Costs Agreement by:
2.1 signing and returning the document to us; or
2.2 continuing to instruct us.
On such acceptance, you agree to pay for our services on these terms.

3 Interest Charges

Interest at the maximum rate prescribed in Rule 75 of the Legal Profession Uniform General Rules 2015 (“Uniform General Rules”) (being the Cash Rate Target set by the Reserve Bank of Australia plus 2%) will be charged on any amounts unpaid after the expiry of 7 days after our tax invoice is given to you. Our tax invoices will specify the interest rate to be charged.

4 Recovery of Costs

The *Legal Profession Uniform Law (NSW)* (the “Uniform Law”) provides that we cannot take action for recovery of legal costs until 30 days after a tax invoice (which complies with the Uniform Law) has been given to you.

5 Your Rights

It is your right to:

- 5.1 negotiate a costs agreement with us;
- 5.2 negotiate the method of billing (e.g. task based or time based);
- 5.3 request and receive an itemised bill within 30 days after a lump sum bill or partially itemised bill is payable;
- 5.4 seek the assistance of the designated local regulatory authority (the NSW Commissioner) in the event of a dispute about legal costs;
- 5.5 be notified as soon as is reasonably practicable of any substantial change to any matter affecting costs;
- 5.6 accept or reject any offer we make for an interstate costs law to apply to your matter; and
- 5.7 notify us that you require an interstate costs law to apply to your matter.

If you request an itemised bill and the total amount of the legal costs specified in it exceeds the amount previously specified in the lump sum bill for the same matter, the additional costs may be recovered by us but only if:

- 5.8 when the lump sum bill is given, we inform you in writing that the total amount of the legal costs specified in any itemised bill may be higher than the amount specified in the lump sum bill; and
- 5.9 the costs are determined to be payable after a costs assessment or after a binding determination under section 292 of the Uniform Law.

Nothing in these terms affects your rights under the Australian Consumer Law.

6 Your Rights in relation to a Dispute concerning Costs

If you have a dispute in relation to any aspect of our legal costs, you have the following avenues of redress:

- 6.1 in the first instance, we encourage you to discuss your concerns with us so that any issue can be identified and we can have the opportunity of resolving the matter promptly and without it adversely impacting on our business relationship; and

6.2 you may apply to the Manager, Costs Assessment located at the Supreme Court of NSW for an assessment of our costs. This application must be made within 12 months after the bill was provided or request for payment was made or after the costs were paid.

7 Payment Methods

It is our policy that, when acting for new clients, we do one or more of the following:

- 7.1 approve credit;
- 7.2 ask the client to pay monies into our trust account; and/or
- 7.3 ask the client for their credit card details.

Unless otherwise agreed with you, we may determine not to incur fees or expenses in excess of the amount that we hold in trust on your behalf or for which credit is approved.

8 Authorisation to Transfer Money from Trust Account

You authorise us to receive directly into our trust account, any judgment or settlement amount, or money received from any source in furtherance of your work, and to pay our professional fees, internal expenses and disbursements in accordance with the provisions of Rule 42 of the Uniform General Rules. A trust statement will be forwarded to you upon completion of the matter.

9 Retention of Your Documents

On completion of your work, or following termination (by you or us) of our services, we will retain your documents for 7 years. Your agreement to these terms constitutes your authority for us to destroy the file after those 7 years. The authority does not relate to any documents which are deposited in safe custody which will, subject to agreement, be retained on your behalf indefinitely. We are entitled to retain your documents while there is money owing to us for our costs. You will be liable for the cost of storing and retrieving documents in storage and our professional fees in connection with this.

10 Termination by You

You may terminate our services by giving us written notice at any time. However, if you do so, you will be required to pay our costs incurred up to the date of termination (including, if the matter is litigious, any cancellation fees or other fees such as hearing allocation fees for which we remain responsible).

11 Termination by Us

We may cease to act for you or refuse to perform further work, at any time including:

- 11.1 while any of our tax invoices remain unpaid;
- 11.2 if you do not within 7 days comply with any request to pay an amount in respect of disbursements or future costs;
- 11.3 if you fail to provide us with clear and timely instructions to enable us to advance your matter, for example, compromising our ability to comply with Court directions, orders or practice notes;
- 11.4 if you refuse to accept our advice;
- 11.5 if you indicate to us or we form the view that you have lost confidence in us;
- 11.6 if there are any ethical grounds which we consider require us to cease acting for you, for example a conflict of interest;
- 11.7 for any other reason outside our control which has the effect of compromising our ability to perform the work required within the required timeframe;
- 11.8 if in our sole discretion we consider it is no longer appropriate to act for you; and/or
- 11.9 for any other just cause.

We will give you reasonable written notice of termination of our services. You will be required to pay our costs incurred up to the date of termination.

12 Lien

Without affecting any lien to which we are otherwise entitled at law over funds, papers and other property of yours:

- 12.1 we will be entitled to retain by way of lien any funds, property or papers of yours, which are from time to time in our possession or control, until all costs, disbursements, interest and other moneys due to the firm have been paid; and
- 12.2 our lien will continue notwithstanding that we cease to act for you.

13 Transfer of File

If you wish us to transfer our file to you or to a third party, either on termination of our services or completion of the matter then you authorise us, at your expense, to make a copy of all documents in the file for our retention before doing so. We will also be entitled to retain possession of the file until all our outstanding accounts and our expenses incurred in connection with the copying and transfer of the file have been paid.

14 Privacy

We will collect personal information from you in the course of providing our legal services. We may also obtain personal information from third party searches, other investigations and, sometimes, from the other party or parties in litigation.

We are required to collect the full name and address of our clients by Rule 93 of the Uniform General Rules. Accurate name and address information must also be collected in order to comply with the trust account record keeping requirements of Rule 47 of the Uniform General Rules and to comply with our duty to the courts.

Your personal information will only be used for the purposes for which it is collected or in accordance with the *Privacy Act 1988* (Cth). For example, we may use your personal information to provide advice and recommendations that take into account your personal circumstances.

If you do not provide us with your full name and address and other information required by law then we cannot act for you. If you do not provide us with the other personal information that we request then our advice may be wrong for you or misleading.

Depending on the nature of your matter, the types of bodies to

whom we may disclose your personal information include the courts, the other party or parties to litigation, experts and barristers, the Office of State Revenue, conveyancing platform providers, the Land and Property Information Division (LPI) of the Department of Lands, the Registrar General, the Department of Immigration and Border Protection and third parties involved in the completion or processing of a transaction.

We do not disclose your information overseas unless your instructions involve dealing with parties located overseas. If your matter involves parties overseas, we may disclose select personal information to overseas recipients associated with the matter in order to carry out your instructions.

We manage and protect your personal information in accordance with our privacy policy [which can be found on our firm website or a copy of which we will provide at your request]. Our privacy policy contains information about how you can access and correct the personal information we hold about you and how you can raise any concerns about our personal information handling practices. For more information, please contact us in writing.

15 Sending Material Electronically

We are able to send and receive documents electronically. However, as such transmission is not secure, it may be copied, recorded, read or interfered with by third parties while in transit. If you ask us to transmit any document electronically, you release us from any claim you may have as a result of any unauthorised copying, recording, reading or interference with that document, for any delay or non-delivery of any document and for any damage caused to your system or any files.

16 GST

Where applicable, GST is payable on our professional fees and expenses, and will be clearly shown on our tax invoices. By accepting these terms, you agree to pay us an amount equivalent to the GST imposed on these charges

17 Governing Law

The law of New South Wales governs these terms and legal costs in relation to any matter on which we are instructed to act.

*Standard Retainer
(September 2018)*