



## SHAW ATTORNEYS

### STANDARD TERMS AND CONDITIONS APPLICABLE TO ALL CLIENT MANDATES

The following sets out the terms and conditions on which Shaw Attorneys accept mandates from their clients and agree to carry out client instructions and regardless of whether or not you sign a copy of these Terms and Conditions, they will be binding upon you.

1. You grant us the usual authority of attorneys to act on your behalf in relation to all matters necessary or incidental to our engagement. This includes authority to incur all expenses that we consider necessary or desirable for the proper conduct of your matter.
2. Unless otherwise agreed in writing beforehand:
  - 2.1 Our fees for attorney and client work will be calculated with reference to the time spent on your matter, for example, in consultations, telephone calls, consideration of documentation, drafting, correspondence, preparation and travel. Where we deem it appropriate, our fees may be calculated with reference to certain factors including, but not limited to, the complexity or novelty of the work done, the skilled labour, specialised knowledge and responsibility involved on the part of the fee earner, the number and importance of the documents prepared or perused, the quality of the work done, and the experience or seniority of the fee earner.
  - 2.2 Our fees in respect of Conveyancing work such as the registration of transfers and the registration and cancellation of mortgage bonds and all related work are charged with reference to guideline tariffs published from time to time by the Legal Practice Council subject however to certain minimum charges levied by our Firm which are available on request.
  - 2.3 Our fees in respect of the Administration of Deceased Estates and related work are charged with reference to tariffs published from time to time pursuant to the Administration of Estates Act 66 of 1965 but may be varied in accordance with a Testator's specific Testamentary instructions.

Fees are not charged on a commission or contingency basis unless by prior written agreement.

3. Regardless of the method of calculation, our fees will always be based on and within the guidelines set out by the Legal Practice Council, as amended from time to time, and if you are dissatisfied with our account you are entitled to return it to us, after which we will redraw our account for taxation by the Taxing Committee of the Western Cape Legal Practice Council; in such event we expressly reserve our right to revise and redraw our account, without reference to the account you returned to us, and claim such higher amounts as may be allowed by the Taxing Committee.
4. The hourly rate/s in respect of the fee earners carrying out any mandate for you, will be specified for Standard Work and Routine Work respectively in the following manner:
  - 4.1 Standard Work: R1,700.00 per hour
  - 4.2 Routine Work: R1,100.00 per hour

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Managing Attorney: Joseph Shaw LLB (UCT) t/a Shaw Attorneys

Where for any reason, these hourly rates are not specified, our Standard Work hourly rates will apply. Fees are charged, according to international standards, in tenths of an hour, i.e. per 6-minute intervals at a minimum.

**These fees are not subject to the addition of Value Added Tax at the prevailing rate. These hourly rates are, unless you are otherwise expressly advised in writing, reviewed annually in February of each year. Any increase will take place with effect from the 1<sup>st</sup> of March of the year in question. Any such annual increase will apply to your mandate automatically and without our necessarily having to advise you. You are welcome to contact us during February, should you wish to know the increase, if any, in hourly rate/s for the forthcoming year, in terms of the above. We do, however, expressly reserve the right to increase our hourly rate/s at any time within any year, but subject to our giving notice to you.**

5. In addition to our fees, our accounts will also include charges for disbursements and expenses such as Advocate's fees, Sheriff's fees, Professional Expert's fees, travel / Uber taxi & parking expenses, telephone calls, photocopying & document preparation, printing, fax machine and e-mail usage, and special packaging/courier charges, stationery, postage and petties, and the like.
6. In litigation matters, it is usually not possible to give an exact estimate in advance of the likely costs of the matter. Insofar as any indication of our likely costs is/has been given to you, this is/has been given in good faith, and should be regarded as an estimate which is not binding on either party. Ultimately, our charges will be calculated on the basis set out in clause 1 above.
7. We reserve the right from time to time to require from you payments in advance on account of our fees and disbursements. We further reserve the right to call for a deposit to be paid by you, from which we will be entitled to deduct our fees and/or disbursements and/or other charges. You will be required to bring the requested deposit up to balance on a monthly basis or within 7 (seven) calendar days of written request by us.
8. All monies held by us on your behalf are deposited into the firm's trust account, the interest from which accrues to the Legal Practice Council and not to ourselves. **Trust moneys may only be invested on your behalf in interest-bearing accounts, part of such interest to accrue to you, provided that we receive your express written instructions and that all requisite statutory requirements are complied with.**
9. You may, if you wish, set an inclusive limit on the amount of fees and disbursements that we can incur on your behalf without further reference to you, but in this event the limit shall only apply provided that we have been notified of this in writing. **Should the limit expire before the end of the matter, then we shall of course have to cease acting for you unless you extend the limit in writing.**
10. It is our practise to render interim bills, usually on a monthly basis or at other appropriate intervals. We have found that interim billing is welcomed by most of our clients, as it assists with budgeting, keeps one alerted to costs being incurred and accords with good financial management for all those involved. Our bill is accompanied by an invoice, which is computer-generated and automatically re-issued on a monthly basis until the account is settled. On written request and at any time you choose, we will supply you with a pro forma account which details the services we have rendered prior to the generation of an invoice or statement of account.
- 11.1 Subject to 11.2 below, all our accounts, whether interim or final, are payable strictly on presentation of the invoice **and you will be liable to pay interest on the balance outstanding in terms of any account unpaid at the statutory Prescribed Rate, compounded monthly, which interest shall form part of our common-law damages.**
- 11.2 In Conveyancing matters we usually require payment of fees and disbursements on demand and typically in practice, prior to registration or completion of the matter.

12. In addition and without prejudice to our other rights and remedies, we reserve the right to immediately cease work and/or terminate the mandate which you have given us and in litigious matters to cause ourselves to be removed as attorneys of record, in the event of:
- 12.1 you fail to pay timeously any account rendered or to advise us immediately of any relevant change in your circumstances; or
  - 12.2 you fail promptly to supply any information or instructions requested by us to act on your behalf; or
  - 12.3 you give conflicting instructions, or attempt to retract earlier instructions, and our continuing to act for you would cause us unavoidable embarrassment; or
  - 12.4 you are dishonest in your dealing with us or in the information you give us; or
  - 12.5 we determine, in our sole discretion, that there exists a conflict of interest between us and any of our existing clients; or
  - 12.6 we determine, in our sole discretion, that we are unable to properly perform the mandate given by you to us,

in which event we shall forthwith be under no obligation to act further in the matter on your behalf. **We also reserve the right to deduct any accrued fees, disbursements and other charges from any funds held by us in trust on your behalf or from any moneys received by our firm on your behalf, regardless of the matter in terms of which, or the reason for which, these funds were received.**

13. In addition to the above, it is in your interests to bear in mind the following points when considering the question of legal costs:
- 13.1 We do not guarantee the outcome of any matter, nor do we charge a contingency based fee, unless this be specifically agreed to in writing and provided further that this be within the applicable laws and guidelines.
  - 13.2 Whatever the outcome of your matter, you will be personally responsible for payment of our accounts in full, regardless of any Order of Court or Agreement made against or with any other party to the proceedings.
  - 13.3 It is likely that should you lose a litigious matter, then you may have to pay a portion, or the whole, of your opponent's legal costs, in addition to your own legal costs owed to us.
  - 13.4 Should you be successful against an opponent, the latter may not be ordered to pay anything towards your legal costs and, should s/he be ordered to pay your legal costs, then under most circumstances you will not be able to recover your legal costs in full in any event.

Regard must also be had to the fact that it can happen that an opponent ordered to pay costs to you may be financially unable to do so. Should you instruct us to recover costs from any other party, then your instructions will constitute a separate mandate governed by the terms and conditions set out above and you will of course, once again, be personally liable for our accounts in full. We reserve the right to call for payment of our account for the initial mandate at any time, subject to clause 10 above, notwithstanding your instructions to recover costs from any other party and the lengthy time periods associated with recovery of such costs.

## **JOINT AND SEVERAL PERSONAL LIABILITY / GUARANTEE**

14. Notwithstanding your trust/company/close corporation's independent legal personality, whoever signs this agreement on behalf your trust/company/close corporation also agrees to permanently bind themselves in their personal capacity as guarantor and independent principal debtor to Shaw Attorneys for payment of any balance due, owing, and payable arising from any cause whatsoever which may now or anytime in future become owing to Shaw Attorneys in terms of this agreement. This guarantee shall continue on an ongoing basis and may only be cancelled in writing by Shaw Attorneys at our sole and absolute discretion. Whoever signed this agreement renounces the benefits of the following legal defences and exceptions: "excussion" which means that Shaw Attorneys is not required to proceed against your trust/company/close corporation first before proceeding against its guarantor; "division" which means that Shaw Attorneys is entitled to recover the full indebtedness from the guarantor; "cession of action" which means that although its guarantor may discharge the trust/company/close corporation's debt to Shaw Attorneys she/he are not entitled to claim a cession of Shaw Attorney's rights against the trust/company/close corporation; "*non causa debiti*" which means that the trust/company/close corporation's guarantor is not entitled to raise as a defence to a claim that there is no cause for the debt; "no value received" which means that the trust/company/close corporation's guarantor is not entitled to call on Shaw Attorneys to provide proof of received value from Shaw Attorneys before she/he settles the debt; "revision of accounts" which means the trust/company/close corporation's guarantor is not entitled to call for a debatement of account with Shaw Attorneys before making payment to Shaw Attorneys; "benefit of being sued together" which means that the trust/company/close corporation's guarantor is not entitled to require that she/he be sued together with the trust/company/close corporation.
15. If we are instructed by more than one client in the same matter then each client shall be jointly and severally liable for payment of our account in respect of that matter.
16. As stated above, these terms and conditions are binding and do not require your signature, however, you are requested to sign these terms and conditions thereby acknowledging that you have received a copy and have read and understood them.

## **EXCLUSION AND LIMITATION OF LIABILITY**

17. Our liability to you in respect of any loss, harm or damage suffered by you arising from the services we rendered (whether under contract, delict, strict liability or otherwise, and whether the services have ended or not) excludes any loss of profit or consequential, exemplary, indirect, incidental, punitive, pure economic or special loss or damages of any kind and however caused, and is limited to the total amount of the fees paid by you in connection with the services we rendered in any particular instruction in respect of direct losses only.
18. Any claim by you, in respect of any loss, harm or damage suffered by you arising from the services we rendered, that cannot be resolved by negotiation must be formally instituted through legal proceedings within one and a half (1.5) years of you becoming aware (or being in a position to become aware) of facts that give rise to the claim, failing which any claim by you will lapse and be extinguished. In any event, this cannot be later than three years after any alleged breach of contract, delict or other act or omission giving rise to a cause of action. This paragraph overrides any statutory provision that would otherwise apply.

In conclusion, we would like to stress that whilst we aim to provide our clients with an efficient, effective and friendly service, we acknowledge that, in the nature of things, problems can and do arise from time to time. In these situations, we would be most pleased if you would communicate with the Managing

Attorney to resolve the matter, with a view to continuing our working relationship with you, rather than lose you as a client. Naturally, we do carry Professional Indemnity Insurance and, if it should happen that you make a claim against us arising out of our failure to carry out our professional services for you in terms of our legal obligations, then our liability is strictly limited to the maximum extent of our insurance cover for that claim. Details of our Professional Indemnity Insurance are available on request.

Should you have any queries or uncertainties regarding any of the contents hereof, please do not hesitate to raise them with us.

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**\*\*This agreement becomes legally binding on accepting the Mandate / Terms & Conditions of the online consultation when you select the tickbox acknowledgement\*\***