

## Standard Terms of Engagement

### 1. Agreement

All services supplied to you or expenses and disbursements incurred on your behalf under the engagement by Banyan Consulting Pty Limited (ACN 079 063 308) (“the firm”) are supplied on these terms and conditions (“Standard Terms of Engagement”), which may be varied by the firm at any time.

### 2. Credit Granting

All engagements are accepted by the firm subject to your satisfactory credit approval and are governed by the firm’s Standard Terms of Engagement in force at the time of engagement. Credit approval once granted may be withdrawn at any time. Where credit approval has not been granted, or is withdrawn, payment for all services supplied or expenses incurred is required on acceptance of the engagement. If a fixed fee has been provided, the amount due is the fixed fee. If a fixed fee has not been provided, the estimated fee outlined in the Letter of Engagement, or an estimate proved by the firm is the amount due.

Where credit has been granted, payment for the services supplied or expenses incurred and disbursements, is to be made on or before fourteen (14) days from the date of each invoice raised.

It is a condition of the firm’s services that when performing work for companies, whether in their own capacity or as a corporate trustee, the firm is instructed by the directors of such entities personally. On this basis such directors are jointly and severally liable for payment of the firm’s fees in the event that the company fails to pay the invoice within the prescribed credit terms.

### 3. Fees and staffing

Where a fixed fee has been provided, the fee shall be as provided.

Where the engagement is not on a fixed fee basis, it shall be on an hourly rate basis.

Unless agreed otherwise, hourly rates are as per the scale detailed in the Standard Fees and Expenses **Schedule**. Time is recorded in a minimum of ten (10) minute intervals. All attendances continuing up to ten (10) minutes will be charged as a full ten (10) minutes. All attendances continuing for more than ten (10) minutes will be charged for each ten (10) minute interval or part thereof.

Time spent on the telephone and computer sending or receiving emails are treated in the same way as consulting. However, as a matter of policy the firm does not charge for “5-minute phone calls” or “information only” emails. The staff involved in your engagement will be determined by the firm and may change from time to time.

The firm shall, when requested, provide an estimate of unbilled fees and costs incurred or fees and costs likely to be incurred.

### 4. Goods and Services Tax (GST)

All fees and costs referred to in these Standard Terms of Engagement and detailed in the Standard Fees and Expenses Schedule include Goods and Services Tax (GST).

### 5. Billing

Fees are rendered progressively as work is undertaken, or at month end, or at specific times where mutually agreed, or at such times at the discretion of the firm. The firm will send you a tax invoice for the firm’s fees, expenses, and disbursements. Where the firm has your email address, the invoices shall be emailed, otherwise posted. You agree to notify the firm immediately if you change your address.

### 6. Payment

Payment may be made by cash, cheque, electronic transfer, or credit card. Cash will be accepted at the firm’s office during business hours. The firm’s bank details for electronic transfers are included on the firm’s invoices. Cheques will be credited to your account only after bank clearance. If applicable, fees incurred by the firm for any of your returned cheques, shall be added to your account. Credit cards payments are accepted subject to a service fee per **Clause 7**. The firm only accepts Visa and MasterCard.

## **7. Credit Card recovery of costs**

A service fee may apply to any payments made by credit card. The fee applicable to each credit card is detailed in the Standard Fees and Expenses **Schedule**.

## **8. Claims and disputes**

If you in good faith dispute any invoiced charge, you may withhold the disputed amount, but only if on or before payment due date for payment, the undisputed amount is paid in full and notice in writing of the dispute is given to the firm, setting out the details of the amount disputed, the reasons for the dispute, and the basis for calculating the disputed amount. The firm will investigate all disputes. If the amount is found to be payable (in whole or in part) then you must pay the amount within 7 days of receiving notice and the basis of the decision. Invoiced charges that are not disputed in good faith within 30 days of the date of an invoice will be deemed to be correct.

## **9. Refunds**

Should any advance or estimated payment exceed the amount of fees, expenses and disbursements billed, the firm shall, on completion of the engagement, refund the balance to you.

## **10. Consequences for delayed or non-payment**

If you fail to pay for the engagement within the time for payment of the invoices issued to you, the firm may at its sole discretion:

- a. charge interest on all amounts not paid by you at a rate of 3% per calendar month accruing each calendar month until the date of payment;
- b. cancel any provision of credit to you;
- c. require cash prepayment for further engagements;
- d. start proceedings against you and any guarantors for all outstanding amounts;
- e. cease supplying services;
- f. terminate any engagement with you; and
- g. exercise any other rights at law.

Where we refuse further service, this may include not lodging income tax returns. The firm will not be held responsible for any fines or penalties arising from non-lodgement of your return in these circumstances.

If you default in payment of any invoice when due and payable, you shall indemnify the firm from and against all costs and disbursements incurred by the firm in pursuing the debt including legal costs on a solicitor and own client basis and the firm's mercantile agency costs.

In addition you authorise the firm, at our discretion, to direct funds from the Australian Taxation Office to the firm's Trust account, where we may deduct any fees expenses and disbursements, outstanding from you or any related entities or associates.

## **11. Security and Lien**

In the event of a dispute, or non-payment of any invoices within the time for payment of the invoices the firm has a legal right of lien over any client documents in our possession.

As security for payment of the invoices issued by the firm, the client and any guarantor(s) agree to charge, and hereby do charge, all of their interest in all present and after-acquired property (including real property and personal property) with payment of all fees, costs and disbursements incurred by the client and due to the firm and hereby consents to the firm lodging with the appropriate land titles registry a caveat in respect of any charged real property, registering a security interest in any respect of any charged personal property in the Personal Property Securities Register, in which case the client and any guarantor(s) hereby waive any right under section 157 of the Personal Property Securities Act 2009 (Cth) to receive notice of any such registration, and maintaining those interests, lodgements and registrations until the firm's fees, costs and disbursements have been paid in full and any contingent liability has been provided for.

The client and any guarantor(s) further agree that if demand is made on them by the firm, they will immediately execute a mortgage or other instrument of security as required by the firm to better secure the obligations of the client and the guarantor(s) under this agreement. In the event that the client and any guarantor(s) fail to comply with any such request by the firm within a reasonable time, the client and the guarantor(s) hereby irrevocably appoint the firm, or any solicitor or other person nominated by the firm to act as the attorney of the client or the guarantor(s) to execute and register such instrument(s).

#### **12. Client responsibilities**

You are responsible for the accuracy and comprehensiveness of the details and information you provide to the firm. The firm requires that our correspondence and any requests for information be promptly attended to so that the engagement can be proceed efficiently. Similarly, you are required to attend to statutory and legal obligations timely e.g. the filings with ASIC and settlement of obligations with the Australian Taxation Office.

#### **13. Authorisation to act**

In circumstances that it is necessary for the firm to act on your behalf, e.g. for the lodgement of returns with the Australian Taxation Office or for accessing bank information, you agree to provide authorisation to the firm on request.

#### **14. Privacy Act**

You hereby authorise and unconditionally grant consent to the firm obtaining from a credit reporting agency or any other person or company information from time to time. You further authorise and consent to the firm obtaining and disclosing information about your credit worthiness to and from credit reporting agencies and credit providers.

#### **15. Confidentiality**

Information acquired by the firm during this engagement is subject to strict confidentiality and we will not disclose that information to other parties except as required or allowed by law, or with your written consent.

#### **16. Ownership of Documents**

All original documents obtained from you in respect to this engagement shall remain your property; however, the firm reserves the right to make copies of original documents for the firm's records.

Ownership of the documents, reports, returns, etc produced as part of this engagement will vest in you. All other documentation produced by the firm in respect of the engagement will remain the property of the firm.

#### **17. Limitation of Liability**

Our liability is limited by a scheme approved under Professional Standards Legislation. Further information on the scheme is available from the Professional Standards Council's website <http://www.psc.gov.au>

#### **18. Termination**

You may terminate the engagement in writing at any time with at least 30 days' notice. However, if you do so you will be required to pay the firm's fees, expenses, and all disbursements, incurred up to the time of termination. The firm may terminate any engagement with you and cease supplying services:

- a. if you default in payment of any invoice when due and payable;
- b. if you fail to attend to requests for correspondence and information on a timely basis;
- c. if there are any ethical grounds which the firm considers requires the firm to cease supplying services to you, e.g. a conflict of interest; or
- d. for any other reason outside the firm's control which has the effect of compromising the firm's ability to perform the work required within the required timeframe.



The firm will give you at least 30 days' notice of the firm's intention to terminate the engagement, together with the grounds upon which the intention to terminate is based. You will be required to pay the firm's fees, expenses and all disbursements incurred up to the time of termination.

#### **19. Jurisdiction**

The Terms are governed by and will be construed in accordance with the laws of NSW and the parties agree to submit to the exclusive jurisdiction of the Courts of the State of NSW.

#### **20. No Waiver**

The failure by the firm to exercise, or delay in exercising, any right, power, or privilege available to it under the Standard Terms of Engagement will not operate as a waiver thereof or preclude any other or further exercise thereof or the exercise of any right or power.

#### **21. Acceptance of offer**

You may accept the offer of engagement either orally or in writing or by signing the Letter of Engagement and returning it to the firm. Where you instruct us to carry out further work, you agree that the Engagement terms apply, even where you do not sign the Engagement Proposal or Letter. You have taken to have accepted the terms contained herein by continuing to provide us with instruction, either orally or in writing after the date of receiving these terms.

#### **22. General**

The firm may serve any notice or Court documents on you by forwarding them by pre-paid post to your last known address.

If any provision of these Standard Terms of Engagement shall be invalid, void, illegal or unenforceable, the remaining provisions shall be unaffected, not prejudiced or nor impaired. You shall not be entitled to set off against or deduct from the price of services or expenses any sums owed or claimed to be owed to you by the firm.

The firm may licence or subcontract all or any parts of its work, rights, and obligations without your consent. A certificate of debt duly signed by a representative of the firm shall be evidence and proof of money owing by you to the firm at that time.