

**STANDARD TERMS AND CONDITIONS  
BURNETT ATTORNEYS & NOTARIES**

This document sets out the terms and conditions upon which BAN & Associates ("BAN") agrees to act on your behalf. These terms may be varied or added to by mutual agreement in writing when your instructions are accepted by us or at any time thereafter. If you do not accept or understand these terms for any reason you should notify the attorney dealing with your matter immediately in writing. In the absence of any such notice, you will be deemed to have agreed to these terms.

**AUTHORITY**

BAN is given the usual authority and power of attorneys granted to attorneys or other professionals to act on your behalf in relation to all matters necessary or incidental to its engagement. Without limiting the generality of the above going, this includes authority to incur all expenses which it considers necessary or desirable for the proper conduct of the matter. The client understands that BAN may attend to related and unrelated matter from time to time which the client may instruct BAN to deal with on his/her its behalf. The client confirms and agrees that the terms of this mandate shall apply to such related/unrelated matters in the event and that this mandate will apply thereto.

**PROFESSIONAL DUTIES**

In order to discharge its professional duty, BAN will throughout the handling of your matter rely on you to supply all necessary instructions promptly and immediately advise it of any relevant change in circumstances.

BAN is free to act for any other client as its ethical obligations allow. BAN will consult you if it becomes aware of any new instruction which it receives, and which may conflict with your current instructions. If a conflict of interest is discovered which prevents it from continuing to act for you, BAN will assist you to find alternative legal representation if required.

BAN will not disclose to any other client any confidential information or knowledge which it obtains as a result of acting for you. Similarly, it will not disclose to you any confidential information or knowledge which it has obtained as a result of acting for any other client.

**FEES AND DISBURSEMENTS**

You specifically agree to pay BAN in accordance with their normal hourly rate of R 2 700,00 in respect of consultations, preparations or attendances or any other time whatsoever nature spent by an employee of BAN. The client agrees that the hourly rate may escalate at the discretion of BAN by an amount not exceeding 10% per annum.

Disbursements incurred by BAN on your behalf (e.g. counsel's fees, sheriff's fees, courier charges, revenue stamps etc.) will be charged in addition to its fees at cost. BAN may, in its discretion, request that the cost of certain disbursements be paid into its trust account prior to incurring them.

Certain charges such as photocopies, faxes, electronic mails and printing etc. (soft costs) will be charged to you and recovered from you on an ongoing basis just as we do with disbursements.

Estimates of fees and expenses are given for guidance only on the basis of information then known to us and should not be regarded as quotations.

Invoices will reflect fees, disbursements and soft costs. Interim accounts (in respect of fees, disbursements and/or soft costs) will be submitted at monthly intervals during the course of a matter although we may decide to bill at longer intervals at our discretion. See paragraph 5 below.

You have the right to give BAN written notice to set a limit on the fees which you may wish to incur to BAN. If that limit is reached, we will then notify you thereof and await your further instructions as to whether or not you wish to proceed. You should understand that, particularly in relation to litigation matters, it is not possible to limit your liability in relation to the other party's/ies' costs.

Should you require to have our charges taxed by any competent taxing authority, we shall do so with all reasonable dispatch, and you will be furnished with reasonable notice of the date of taxations taxation shall proceed on the basis of our internal tariff referred to above. We reserve the right to claim –

**CONTRIBUTION TOWARDS YOUR COSTS**

If you have arranged for a third party to be liable for or to contribute towards your legal costs, we shall, where reasonably possible, accommodate you by billing the third party concerned. Notwithstanding any such arrangement, you shall remain liable for our costs as our client and shall look to you for payment in the event of default by the third party. Please note that in agreements where provision is made for any part of our costs to be borne by any party to that agreement, we will insert a *stipulatio alteri* in our favour which will entitle but not oblige us to have recourse against the party concerned. That will not in any way relieve you from your liability to pay our costs in full.

**PAYMENT**

BAN's invoices are due and payable against presentation. In the absence of specific written instructions to the contrary, MCC shall have the right to appropriate from any amounts held by it in trust from time to time, such amounts as may be necessary to defray disbursements incurred on your behalf or to pay interim fee and soft cost accounts. MCC may from time to time require you to pay reasonable amounts on account of anticipated fees, soft costs and third-party disbursements. However, such amounts are, in the normal course, intended to be held against payment of the final account to be rendered to you and you are expected to settle interim accounts without recourse to such amounts. Any amounts held by MCC on account of anticipated fees and disbursements may, in the absence of an express written instruction by you to the contrary, be invested by MCC with a registered bank or financial institution and the interest which may accrue in respect thereof will similarly be applied on account of fees and disbursements. Payment of all invoices must be made into the bank account of BAN, the branch of which is located in Lynnwood, Pretoria.

**LITIGATION (IF APPLICABLE)**

The basis of BAN's charges in relation to litigation matters, as between MCC and yourself, is the same as that set out in paragraph 3.1. above and is not related to any tariff of fees laid down by any competent body in relation to litigation in any court or tribunal.

If you are successful, you may be entitled to an order for the payment of your costs by another party. It should be noted in relation to any such costs order that: such an award is at the discretion of the Court; quasi-judicial bodies and other tribunals do usually not make cost orders;

you will be personally liable to us for the costs and charges due by you in terms of paragraph 3 above, regardless of any order made against your opponent; it is probable that your opponent will not be ordered to pay the full amount you have to pay us. This means that even if you are successful in your litigation you will be liable to pay all of our fees, disbursements and soft costs without being able to recover the full amount from your opponent. Also, our account will be payable upon presentation whereas the amount that you are able to recover from your opponent, will in all likelihood, take some time to be finalized and collected; if your opponent is funded by legal aid, you are unlikely to recover any costs even if you are successful; your opponent may be unwilling or unable to pay either the sum for which you have been given judgment or the costs he has been ordered to pay. In that event you will still be obliged to pay all our fees, disbursements and other costs.

If you are unsuccessful, you may be ordered to pay your opponent's costs as well as the costs and charges due by you to us in terms of paragraph 3 above.

The client specifically acknowledges, records and confirms that he/she has been made aware that the provisions in respect of the tariff as set out in Rule 43 (7) and Rule 43 (8) of the Supreme Court Act 59 of 1959 and expressly waives compliance therewith and agrees that MCC shall be entitled to charge in accordance with the standard terms and conditions as set out herein

**INVESTMENTS**

If you instruct BAN to invest funds on your behalf from time to time, it will be entitled to charge a fee (which will be a percentage of the interest earned in respect of such investment and deducted from such interest) in order to defray administrative expenses incurred in supervising such investment and in complying with the requirements of the Law Society.

Any advice which you may seek from us in relation to investment matters may be given. However, if we do give such advice, we do not accept any responsibility for any investment advice which may be given to you.

**FILE STORAGE**

At the end of a matter, the file will be stored for a maximum period of 5 years or such shorter period as the law requires, after which period BAN has the right to destroy the file.

The file will only be stored for a longer period if you make such a special arrangement with the firm and it agrees on a suitable financial arrangement for the additional storage time. A charge will be made for retrieving the file from storage at your request and for supplying copies of any documents contained therein.

**TERMINATION OF MANDATE**

*Without prejudice* to its other rights and remedies, BAN will have the right to cease work and/or terminate any mandate by giving you written notice at your last known address, *inter alia*, in the event that: you fail promptly to supply any information or instructions needed by BAN to act on your behalf or to advise BAN immediately of any relevant change in circumstances;

any account remains unpaid for more than 30 days after presentation; BAN determines, in its sole discretion, that there exists a conflict of interest between MCC and a client or between any two or more of its clients; BAN determines, in its sole discretion, that it is not in a position properly to perform the mandate given by you to it. BAN considers, in its sole discretion, that any part of the conduct required to be undertaken by BAN to which BAN might be thought to be a party, is inappropriate.

**LIMITATION OF LIABILITY AND WAIVER AND INDEMNITY**

You waive any claim of whatsoever nature (including damages, loss, interest, costs, expenses or otherwise (not limited *ejusdem generis*)), howsoever arising whether in contract or in delict or otherwise (not limited *ejusdem generis*) which you may have against BAN (and its successors in practice) beyond the amount actually recovered by it under its professional indemnity insurance policy in respect of your claim. Whilst BAN will make every effort to ensure that professional indemnity insurance is in place, it gives no undertaking that there will be professional indemnity insurance in place to cover such claim or that if there is such professional indemnity insurance in place that it will be sufficient to cover your claim/s.

You waive any claim of whatsoever nature (including but not limited to damages, loss, interest, costs, expenses or otherwise (not limited *ejusdem generis*)), howsoever arising whether in contract or in delict or under section 19(3) of the Companies Act, 2008 (as amended or substituted) or otherwise, which you may have against any of the directors, past directors or employees of BAN (and its successors in practice) (in whose favour, this constitutes a *stipulatio alteri* capable of acceptance at any time) by reason of any negligent (including grossly negligent) act or omission of the part of any director, past director or employee.

You indemnify BAN (and its successors in practice), its directors, past directors and employees (in whose favour, where applicable, this constitutes a *stipulatio alteri* capable of acceptance at any time) against any claim of whatsoever nature (including but not limited to damages, loss interest, costs, expenses or otherwise (not limited *ejusdem generis*)), howsoever arising whether in contract or in delict or under section 19(3) of the Companies Act, 2008 (as amended or substituted) or otherwise, that may be made against it/them by any third party as a result of any work done, or omitted to be done, whether negligently (including gross negligence) or in breach of obligations to you or otherwise, by BAN (or its successors in practice), any director, past director or employee for you or on your behalf.

You shall not be entitled for any reason whatever to withhold payment of any fees, disbursements or soft costs incurred by or owing to BAN whether it incurred any such disbursements or soft costs in your name or in the name of BAN.

laws as well but excluding its conflict of law principles.

**SUBMISSION TO JURISDICTION**

In the event that BAN institutes action against the client for non-payment of his/her invoices, the client specifically agrees that the whole cause of action arose within the area of jurisdiction of the Pretoria Magistrate's and/or Regional Court in that: 1) is agreement was concluded in Pretoria, the breach of contract insofar as non-payment is concerned occurred in Pretoria and the mandate provided to BAN required that the mandate be carried out in Pretoria.

**DOMICILIUM CITANDI ET EXECUTANDI**

The client chooses his/her/its *domicilium citandi et executandi* for the service of all documents the address reflected on the overleaf hereto. BAN chooses as its *domicilium citandi et executandi* its principal place of business from time to time