

Webber Wentzel Terms of Business

These terms and conditions ("**Terms**") will apply to the relationship between you and us, in general during our engagement by you, and to each specific Matter. We may vary these Terms from time to time and will notify you in writing when we do so. Definitions, if not provided in the body of the Terms, are in paragraph 23.

1 Important paragraphs

If you are a consumer, as defined in the Consumer Protection Act 68 of 2008 ("**Consumer Protection Act**") we have a duty to point out certain important terms to you. The paragraphs which contain these important terms and reasons why they are important are set out below:

- 1.1 **Limitation of our liability.** Paragraphs 5.5, 6.2, 10.5, 11, 12, 13, and 15.5 are important because they limit and exclude obligations, liabilities and legal responsibilities that we may otherwise have to you. They also limit and exclude your rights and remedies and place various risks, liabilities, obligations and legal responsibilities on you.
- 1.2 **Assumption of risk.** Paragraphs 10.3, 10.5 and 16.3 are important because they contain assumptions of risk by you and may limit your rights and remedies against us.
- 1.3 **Acknowledgment of fact.** Paragraphs 5.1, 5.2 and 5.3 are important because they each contain an acknowledgement of fact by you. You must read each paragraph carefully because they set out how monies are held on your behalf. In addition, paragraphs 8.2, 8.3, 8.4, 16.3 and 17.3 contain an acknowledgment of fact by you and you must read each paragraph carefully.
- 1.4 **Indemnity.** Paragraph 13 requires you to indemnify (hold us harmless) us against claims that may be made against us in certain circumstances - this may place various risks, liabilities, obligations and legal responsibilities on you and we may claim payment from you of the amount of these claims.

2 General terms of engagement

- 2.1 **Scope of engagement.** You and we will agree on the scope of our engagement for each Matter when necessary.
- 2.2 **Our advice to you.** The engagement only creates rights and obligations between you and us. No other person:
 - may rely on advice we give you;
 - is intended to be protected by our advice or other Services and other obligations; or
 - may enforce any term of your engagement with us through any applicable law.
- 2.3 **Taking instructions and duty of care.** We will treat only you as our Client for professional purposes. You agree that we may take instructions from you and any other person whom we reasonably believe you have authorised to instruct us. Our duty of care is only to you, as our Client. It does not extend to your holding company, subsidiaries, affiliated companies or other third parties, unless we agree otherwise in writing.
- 2.4 **Time frames.** We will take reasonable steps to complete our mandate and give you any deliverables in the timeframes agreed with you, or as soon as is reasonably possible in the circumstances.
- 2.5 **Updating advice.** We will give you advice based on our understanding of the relevant statutes, case law and practice as at the time we give the advice. Subsequent changes in law and practice may affect the advice but we are not obliged to update advice in line with these changes, unless we have specifically agreed in writing with you to do so.

3 Fees

- 3.1 We will agree our fees for any Matter with you at the appropriate time.
- 3.2 **Fee estimate.** Any fee estimate we give you for a Matter is based on our knowledge of the Matter and our assessment at the time we give you the estimate of the amount of work needed to fulfil our instructions. If any of those assumptions, or our assessment, proves to be incorrect or you alter our instructions, the estimate may not be accurate. An estimate is not definitive and is not an upper limit for our fees.
- 3.3 **Deposits and reimbursements.** We may request a deposit to cover our reasonably anticipated fees or disbursements before we start working on a Matter. In any event, you must reimburse us promptly for:

- costs and charges for printing and copying (or similar services) and of counsel, experts and accountants (or similar service providers), we undertake or engage on your behalf; and
- disbursements (third party expenses, such as external search fees) and business travel (or similar) expenses which we incur.

- 3.4 **Liquidated damages.** Should you not reimburse us in accordance with these Terms for any invoice containing any such costs, charges or disbursements, then such costs, charges or disbursements shall immediately become overdue, owing and payable to us and, being agreed liquidated amounts in money, will entitle us to seek summary judgment against you in the event that legal proceedings are instituted against you for the recovery thereof.
- 3.5 **Travel time.** Our fees may include time spent travelling, on your instructions, for the purposes of the Matter.
- 3.6 **VAT.** Where we are required to charge VAT, we will charge VAT in addition to any of the above amounts. Any specific arrangement in an engagement letter or other similar document that pertains to the applicable rate of the VAT (zero rate or the standard rate); is specifically incorporated into these Terms.

4 Invoicing and payment terms

- 4.1 **Invoicing.** We will invoice monthly or at alternative times arranged with you, or otherwise at intervals we consider appropriate for the Matter.
- 4.2 **Payment and interest.** You must settle your account within 14 days of date of invoice. We may charge interest on amounts outstanding up to the legally allowed rate, and exercise a lien over any documents or monies we possess regarding invoices that are not paid within that time.
- 4.3 **Cybercrime:** Due to the growing risk of cyber scams (including business email compromise and impersonation fraud), you agree to take reasonable steps including telephonically verifying with your known contact that the bank account details received electronically are our bank account details before making any payment to us. Webber Wentzel will not be liable for payments made to the wrong account.
- 4.4 **Withholding or similar tax.** You must pay all sums free of any withholding tax or other relevant deduction (a '**Withholding**'), except as required by law. If the law requires a Withholding, you must pay us such amount as will leave us with the same amount we would have received in the absence of a requirement to make a Withholding.
- 4.5 **Ending the engagement for a Matter.** If you inform us that you have decided not to proceed with the Matter (at all or for temporarily) we may submit our invoice to you for all work that has been undertaken.

5 Your money

- 5.1 **Funds held on your behalf.** If we hold your funds on deposit, or if we have collected or received funds on your behalf, you consent to our applying them to settle any outstanding amounts you owe us, or any costs, charges or other disbursements we have incurred on your behalf.
- 5.2 **Funds held in our trust account.** You will not earn any interest on funds we hold in our trust account, because we must pay any interest to the Legal Practitioners' Fidelity Fund ('**Fidelity Fund**') established under the Legal Practice Act 28 of 2014 ('**Legal Practice Act**').
- 5.3 **Section 86(4) investment.** If you specifically request us to invest funds that we hold on your behalf for a Matter, you must complete our standard investment mandate. We will then invest those funds in an interest-bearing call account. You will then benefit from the interest earned, after deducting such percentage of the interest as accrues to the Fidelity Fund in terms of section 86(5)(b) of the Legal Practice Act (currently 5%).

5.4 These funds invested in terms of section 86(4) will not be covered by the Fidelity Fund if:

- the payment is not made for the purpose of investing such money on a temporary or interim basis only pending the conclusion or implementation of a Matter or transaction which already exists or is about to start at the time the investment is made; and
- we do not exercise exclusive control over the account as trustee, agent, stakeholder or in any other fiduciary capacity.

5.5 **Liability.** As far as the law allows, we will not be liable for any loss you may suffer arising from:

- any act or omission of the banking institution concerned regarding any account;
- any inability, delay or failure of the banking institution to repay the funds on demand;
- the identity or choice of banking institution;
- any interest or adverse exchange rate fluctuation; or
- any cyber-attack or hacking of a banking institution's or our systems.

6 Internal and external resources

6.1 **Appropriate resources.** We will involve our employees (including partners) as well as other third parties working for, or with us, whom we consider appropriate for our engagement with you. Our policy is to involve persons of an appropriate level of expertise to perform your mandate, having regard to the nature of the work.

6.2 **External resources.** There may be times where we need to instruct advisers on your behalf (for example local counsel in another jurisdiction). We shall not be liable for the acts, errors, omissions, or the fees of these advisers or service providers.

7 Information and documentation

7.1 **Relevant and accurate information.** We will perform our mandate based on the information you give us and you agree:

- to ensure that we receive all the information that may affect our mandate, including any information about a change in circumstances that may influence the position;
- that we are not obliged to determine if the information you give us is accurate or complete; and
- that unless you ask us, and we agree in writing, we will not perform any audit, due diligence or other procedure to verify information we receive.

7.2 **Draft documents.** We may send you drafts of documents we produce, such as letters of advice or reports for your review, while working on a Matter. You cannot rely on a draft until we finalise its contents and confirm this in writing.

7.3 **Conflict between finalised documents.** Multiple copies and versions of finalised documents may exist in different media. In the case of any discrepancy, the signed hard copy version will prevail.

8 Confidential information

8.1 **Confidential information.** We will respect the confidential nature of any information ('**Confidential Information**') you or your advisers give us.

8.2 **Disclosure.** Subject to paragraphs 15 and 17, we will not disclose any Confidential Information to anyone without your prior consent, except:

- where the law, rules or a court order requires us to do so. We will only do this (where possible and permitted by law) after we have informed you and taken action, at your cost, to contest the disclosure;
- to anyone (including any of your other advisers) who may be able to assist us with the Matter and we believe it is appropriate for them to know the Confidential Information, taking into account your interests;
- to our professional indemnity insurers or legal advisers, and
- to selected third parties such as suppliers of word processing, translation, waste disposal, IT and other services or suppliers who assist us in legal, finance,

administrative and other roles, and who will or may have access to Confidential Information as part of their function.

8.3 **Necessary disclosure.** If we are required to disclose Confidential Information, such as in the situations above, we will take all reasonable steps to secure and ensure your Confidential Information is protected.

8.4 **Other clients.** We owe a similar duty of confidentiality to all of our other clients ('**Other Clients**') as we do to you. We will not disclose to you any information Other Clients give us, without their consent, even if the information is material to your Matter. You agree that we do not owe a duty of disclosure to you in relation to such information.

8.5 **Other matters.** There may be times when we act for Other Clients on matters where their interests differ from yours and your Confidential Information is material to the Other Clients' matters. You agree our duty of confidentiality to you will be satisfied by putting in place appropriate safeguards, in line with applicable law or practice. You agree that you will not seek to prevent us from acting for Other Clients merely because we hold your Confidential Information.

8.6 **Your duty of confidentiality.** We may assume that you comply with all your confidentiality obligations to third parties regarding any information you disclose to us.

8.7 **No instruction from you.** If you contact us about a potential matter, but decide not to proceed, you agree that we may act for Other Clients whose interests may differ from yours, if we protect your Confidential Information with the appropriate safeguards.

8.8 **Sharing your Confidential Information.** We may share your Confidential Information internally, including with any firm with which we have entered into a joint venture, alliance or collaboration arrangement, for:

- checking conflicts of interest between matters; or
- determining generally whether to accept instructions from you or another client.

9 Conflicts of interests

9.1 **Conflict of interests procedures.** We have procedures designed to prevent us acting for one client in a matter where there is, or there is a significant risk of, a conflict of interests with another client ('**Conflict**'). If you are aware of a possible Conflict, please inform the partner responsible for the Matter immediately.

9.2 **Unrelated Matters.** We represent many clients, nationally and internationally, over a wide range of industries and businesses and in a wide variety of matters. For this reason we may represent Other Clients whose interests may differ from yours or any of your affiliates on matters that are not substantially related to your Matters (an '**Unrelated Matter**').

9.3 **No disqualification.** If we represent you or any of your affiliates in a Matter this does not disqualify us from representing Other Clients in any Unrelated Matter. Our acting in Unrelated Matters does not breach any duty we owe you or your affiliates, if we abide by the applicable laws.

9.4 **Decision to act.** If a Conflict arises, we may decide to act for you, the Other Client, both or neither. We will decide this based on applicable laws, best practice and your and the Other Client's interests and wishes.

9.5 **Your affiliates.** You agree that each of your group companies (whether parent, subsidiary, affiliate or holding company) shall be considered a separate entity for Conflicts purposes. Our duties related to Conflicts only extend to group companies which we have agreed in writing to represent in a Matter.

9.6 **Acting for multiple clients.** In certain cases, we may have more than one client actually or potentially interested in the same subject matter, transaction, or competing for the same asset (for example the acquisition of a company being auctioned, a tender for a contract or proving claims in insolvency). In such cases we are free to act for more than one client in line with the relevant laws.

9.7 **Fulfilling different roles.** If the Matter does not proceed, we will protect your Confidential Information, but we may take on other roles in relation to the Matter in accordance with the relevant rules of confidentiality.

10 Communications

- 10.1 **Communicating with you.** Unless you specify otherwise, we may communicate directly with your employees or your other advisers as we consider appropriate and who we reasonably believe are involved in the Matter and can assist us with providing the Services to you.
- 10.2 **Email communication.** We will communicate with you and your advisers about the Matter (including Confidential Information) by email, unless you instruct us otherwise in writing.
- 10.3 **Follow up.** Email communications are not totally secure or error-free. We use filtering software to reduce spam and harmful viruses entering our systems. As there is a risk of filtering out legitimate correspondence, you should not assume that we receive every email. Please follow up important communications by phone, post or fax.
- 10.4 **Cloud-based technology.** Email and various other software and platforms (such as Microsoft 365, e-signature, virtual data room, contract management and e-discovery software) use secure cloud-based technology. Cloud-based technology has become widely used in the legal industry and is provided by specialist third-party service providers. You may also instruct us to use such or similar technology in the delivery of your matters. This technology involves information being hosted on an external platform (such as Amazon Web Services, Microsoft Azure Web Services or Mimecast), which may be located in South Africa or internationally, and utilises a number of security processes and controls designed to ensure that confidential information is kept secure and protected from unauthorised access. Provided we comply with all applicable laws, you agree to our use of cloud-based technology.
- 10.5 **Liability for viruses or cyber-attacks.** As far as the law allows, we are not liable if our cyber-security filtering software or other virus or electronic protection does not function or it malfunctions and your systems are infected by any email or other form of delivery of information (such as CD, DVD, memory stick or via the internet) from us.
- 10.6 **Monitoring.** As far as the law allows, you agree that we may monitor electronic communications to ensure compliance with our legal and regulatory obligations and internal policies.

11 Proportionality

- 11.1 **Proportionate liability.** If we are liable to you for any loss (including interest and costs) in respect of any breach by us of our engagement or mandate, and another person or entity is also liable to you for the same loss, any compensation we have to pay you will be reduced in proportion to the responsibility of the other person for the same loss (as set out in paragraph 11.2).
- 11.2 **Extent of responsibility.** In determining the existence and extent of the responsibility of the other person or entity for the loss, no account will be taken of any agreement limiting the amount of damages that person or entity is liable for, or any actual or potential shortfall in recovery of this amount (whether this is due to settling or limiting claims, or any other reason).

12 Limits to our liability

- 12.1 **Limits to our liability.** As far as the law allows, our aggregate (total) liability (of any nature) to you, or any third party, will not exceed the proceeds of any professional indemnity cover we actually receive or that our insurers pay to you. If there is no professional indemnity cover or no proceeds from such professional indemnity cover are received by us or paid to you, then our aggregate liability will be limited to three times the amount of our fees payable in respect of the relevant Matter.
- 12.2 **Liability of our individual employees.** The aggregate liability (of any nature) to you, or any third party (as set out above) also includes any possible liability of our individual partners, directors, employees, consultants, agents or other persons acting for or controlled by us or for whom we are legally responsible.
- 12.3 **Application as far as the law allows.** Nothing in these Terms excludes or limits any liability to the extent that it may not be excluded or limited by applicable law, regulation or rules.

- 12.4 **No individual liability.** You agree that, regarding the Services we provide you:

- your only contractual relationship related to any Matter or Services, is with us (and not our individual partners, directors, employees, consultants or agents);
- as far as the law allows, no individual who is a partner, director, employee or agent of, or consultant to us accepts or assumes responsibility to you or to anyone else for Services we provided to you. This applies even if you granted them a direct power of attorney (for example, to represent you in litigation);
- you will not bring any claim in connection with the Services we provide you whether on the basis of contract, delict (including negligence), breach of statutory duty or otherwise directly, against any of our individual partners or directors or against any of our employees, agents or consultants; and
- this will not limit or exclude our liability for the acts or omissions of our partners, directors, employees, agents or consultants, subject to the above limits of liability.

13 Indemnity

As far as the law allows, you indemnify us against any claim made against us by:

- 13.1 any of your subsidiaries, associates, affiliates or shareholders which may not have signed an engagement letter on these Terms or substantially similar terms and for whom we perform a mandate; or
- 13.2 any third party to whom you disclose our advice, unless we provide our written agreement for that third party to be able to rely on our advice to you.

14 Consumer Protection Act

- 14.1 If these Terms or any goods or services provided under these Terms are regulated by the Consumer Protection Act, all the provisions in these Terms must be treated as being qualified, to the extent necessary, to ensure compliance with the provisions of the Consumer Protection Act.
- 14.2 No provision in these Terms:
- does or intends to limit or exempt us from liability (including loss that resulted, directly or indirectly, from our gross negligence or willful misconduct or that of any other partner, director, employee or other person acting for or controlled by us), so far as the law does not allow this limitation or exemption; or
 - requires you to assume risk or liability for the kind of loss referred to in the paragraph above so far as the law does not allow such an assumption of risk or liability.

15 Anti-money laundering and sanctions

- 15.1 **Legal requirements.** Various laws and regulations on anti-money laundering and terrorism apply to us. When we ask you to give us relevant information to perform know your client (KYC) or customer due diligence (CDD) checks (for example, verification of identity or evidence of source of funds) you must give us this information promptly.
- 15.2 **Reporting.** We may have to report any suspicious activity to the relevant authorities and obtain their prior consent before continuing to act. They may also prohibit us from informing you that we have made such a report (for example a tip-off).
- 15.3 **Sanctions.** We are also subject to various sanction regimes which may be specific to certain jurisdictions, entities or individuals. These sanctions may be arms embargoes, other trade restrictions or financial restrictions. You must notify us as soon as possible if you become aware that a Matter may lead to a breach of any sanction.
- 15.4 **Cessation of Matter or termination.** Where we believe that our work on the Matter may involve a breach of anti-money laundering or terrorism law or regulation, or any applicable sanction, we may cease working on the Matter immediately and terminate our mandate.
- 15.5 **No liability.** We will not be liable to you for any loss, damage or delay you may suffer as a result of our:
- ceasing to act in accordance with paragraph 15.4 above; or

- fulfilling our statutory obligations (or in acting as we may reasonably believe we are required to do so), so long as we have acted in good faith.

16 Data protection

- 16.1 **Data subjects.** In providing Services to you, we may process personal information about you, your owners, officers or employees, sub-contractors, consultants, or other similar parties (each a 'Data Subject').
- 16.2 **Processing personal information.** We process all Data Subjects' personal information in accordance with our privacy policy available on our website www.webberwentzel.com, as may be amended from time to time.
- 16.3 **Consent.** When you give personal information to us about any Data Subject for the purposes of a Matter, you warrant that you have a lawful basis to share that information or that you have obtained the necessary consent from the Data Subject for us to process that personal information. On certain occasions, in providing Services to you, you may provide us with personal information of parties such as your clients or customers or other third parties for purposes of the Services. In such situations, you warrant that you have a lawful basis to share their information with us or that you have obtained their consent for us to process the information. You undertake to comply with all relevant data protection laws and regulations.

17 Marketing

- 17.1 **Contacting you.** We may contact you (including by email) with marketing communications which we believe may be of interest, on our own or in conjunction with another firm with which we have entered into a joint venture, alliance or collaboration arrangement.
- 17.2 **Ceasing communication.** If you do not wish to receive marketing information, you may, at any time, request that such communications cease by emailing us at dataprotection@webberwentzel.com. Marketing communications will not be sent to you if you request not to receive marketing communication.
- 17.3 **Disclosures.** You agree that we may disclose that we are acting for you in our marketing and similar materials and, if in the public domain, the Matter on which we have acted on or are acting on for you. If the Matter is not in the public domain, we may only disclose the Matter for marketing purposes in generic form (and without reference to you), unless otherwise agreed between you and us.

18 Termination

- 18.1 **Termination by you.** You instruct us separately in relation to each Matter. You do not engage us on a permanent basis, but you may terminate our engagement in any, some or all matters at any time.
- 18.2 **Termination by us.** We will stop acting on a Matter only with good reason in line with the relevant law. We may do this for example if you do not pay an interim invoice, you become insolvent, a Conflict arises or our continuing to work on the Matter may have an adverse effect on our reputation.
- 18.3 **Automatic termination.** Unless terminated earlier, our engagement on each Matter will terminate 30 days after dispatch of our final invoice. As far as the law and relevant rules allow, we will consider that the Matter has not proceeded and our engagement will be terminated once:
- you inform us that the Matter will no longer proceed;
 - our engagement is otherwise terminated in accordance with these Terms; or
 - we have had no instructions from you in relation to the Matter for 60 days.
- 18.4 In each case, you remain responsible for our fees and expenses for work done up to the time of termination.

19 Document retention

- 19.1 **Destroying documents.** We may destroy our paper and (where possible) electronic files in line with our relevant policies on this, seven years or later after sending you our final invoice on the Matter.
- 19.2 **Retrieving documents.** If you or your other advisers request us to retrieve any documents from storage, you will pay our

reasonable costs, including time spent reading such documents, writing letters or other work which we, acting reasonably, deem necessary, to comply with such a request.

20 Copyright

We retain the copyright and all other relevant intellectual property rights in our work product. You will have a licence to use and make copies of the documents we prepare for the purposes of the Matter but not (unless otherwise agreed by us in writing) for any other matters.

21 Queries and disputes

- 21.1 **Queries and disputes.** If you are dissatisfied with any element of our Service (including our charges), you should contact the partner responsible for the Matter, the head of the relevant department or our Senior Partner to discuss the matter with you.
- 21.2 **Negotiation and arbitration.** As far as the law allows, if we are unable to resolve any dispute related to a Matter with you by negotiation, the dispute shall be referred to arbitration to be finally resolved in accordance with the Commercial Rules of the Arbitration Foundation of Southern Africa by an arbitrator appointed by that Foundation. The arbitration will be conducted in English in Johannesburg.
- 21.3 **Jurisdiction of the Courts.** Any dispute (including a dispute relating to any non-contractual obligation) will, subject to the arbitration procedure in paragraph 21.2, be subject to the exclusive jurisdiction of the High Court of South Africa (Gauteng Local Division, Johannesburg). However, we retain the right to commence legal action out of any competent court.

22 General terms

- 22.1 **Conflict.** If there is any inconsistency between these Terms and any other terms and conditions agreed between you and us, in writing, the written terms between you and us will prevail. If there is a conflict between these Terms and the investment mandate you sign with us (under paragraph 5.3), the investment mandate will prevail.
- 22.2 **Severability.** If any provision of these Terms is or becomes invalid, illegal or unenforceable, the remainder shall survive unaffected.
- 22.3 **Governing law.** South African law governs these Terms.

23 Definitions and Interpretation

- 23.1 **Definitions.** In these Terms the following words will bear the meanings given to them here:
- **'Matter'** means each matter in which we provide you with Services;
 - **'Services'** means any advice, deliverable, product, information or other obligation or service we perform or provide for a Matter;
 - **'you'** or **'Client'** means the party who enters into an engagement with us for a Matter and to whom we provide the Services and such other persons as you and we agree shall be treated as a Client for the purposes of the Matter; and
 - **'we', 'our'** or **'us'** means Webber Wentzel, the partnership formed under South African law whose principal office is at 90 Rivonia Road, Sandton, Johannesburg or (if appropriate) its affiliated firms, alliance partners or other entities.
- 23.2 **Singular and plural.** Words in the singular include the plural and the other way around.
- 23.3 **Different forms of the same word.** Different grammatical forms of the same word have the same meaning. (For example, to pay, paying and paid).
- 23.4 **General words are not limited.** Where we use general words to describe specific things that belong together, the general words shall not be restricted to the specific things.
- 23.5 **References to 'include' and 'including'.** The words 'including' or 'include' or 'includes' shall not be interpreted as being limited to the list following after the word, or excluding other items from a list following after the word.
- 23.6 **Calculating days.** Where any number of days is stated, those days are counted to exclude the first day and include the last day.

- 23.7 **Reference to laws.** Where there is reference to a law or to a section of a law, it means that law or section of that law as amended, repealed or replaced from time to time.
- 23.8 **References to persons.** Any reference to a person includes natural persons and juristic persons and vice versa.