

# TERMS OF BUSINESS

## 1. DEFINITIONS

The words "**the firm**", "**we**", "**us**" and "**our**" means, as the context permits:

- (a) Steinepreis Paganin of Level 4, The Read Buildings, 16 Milligan Street, Perth WA 6000 Australia (**SP Perth**); or
- (b) Steinepreis Paganin of Level 4, 50 Market Street, Melbourne VIC 3000 Australia (**SP Melbourne**).

The word "**you**" has the meaning given in our Engagement Agreement.

The **effective date** of these Terms is 1 July 2022.

## 2. CONTRACTUAL POSITION

On execution of an Engagement Agreement with the firm, these terms of business (**Terms**) form part of our engagement pursuant to the Engagement Agreement, which constitutes an offer to enter into a costs agreement in compliance with the Legal Profession Uniform Law (Victoria) and/or (WA) (**Uniform Law**) as applicable. The Engagement Agreement is effective from the date we first received instructions from you in relation to the initial matter and will remain in effect until varied.

Upon acceptance, you agree to pay us for our services on these Terms.

The current form of these Terms is available on our website at [www.steinpag.com.au](http://www.steinpag.com.au).

We may amend and vary these Terms from time to time, including during the provision of our legal services to you, without your prior consent. You will be bound by any amendment or variation to these Terms as and when a copy of the revised document becomes available on our website if you continue to instruct us.

## 3. YOUR OBLIGATIONS

We will take instructions only from you. You do not authorise any other person to give instructions on your behalf.

To ensure we are able to provide legal services to you, we require the following from you:

- (a) that you provide instructions as and when required. Ordinarily we will ask for instructions from you in writing and request you provide instructions in writing. Pressure of time may however dictate that instructions are obtained orally. If that happens, we will endeavour to subsequently confirm your instructions in writing;
- (b) that you provide good access to all relevant documentation. It is important that if you possess original documents then they be provided to us. If the documents are not in English then we are entitled, at your expense, to have them translated into English; and
- (c) that you assist in ensuring we have good access to persons we will need to consult in order to advance your matter (including other advisors engaged by you).

We shall not be responsible for any loss, damage, costs or expenses you may suffer or incur as a result of the inaccuracy or incomplete nature of instructions that you give us or that are purportedly given by or on behalf of you.

You also agree that you are solely responsible for satisfying yourself as to the commercial viability of any transaction, the bona fides of the other parties to any transaction, the financial matters relevant to and the commercial soundness

of the transactions, and have the sole responsibility for all of these matters and will act reasonably and take reasonable care to do so and otherwise to protect your own interests.

## 4. OUR OBLIGATIONS

The firm owes you, as the client (and where there is more than one client, each of you), a duty of care. The firm's objective is to advance your interests. In doing so the firm has to have regard to ensuring the procedures applicable to your matter and the cost of the procedures are proportionate to the level of complexity, novelty or difficulty of the issues involved in your matter.

### Timely advice

Our services will be provided in the utmost good faith. All lawful and reasonable instructions will be carried out diligently, promptly and with reasonable skill and care.

The firm will endeavour to respond to telephone calls and other communications promptly. If you require an urgent response, you must clearly highlight and detail that in your communication.

In the event of a seriously disruptive event occurring at any of our offices or to our systems, we shall endeavour to restore our service as soon as possible. In such event there is likely to be some effect upon our service levels. We cannot accept responsibility for any delay caused by such disruption or for any other consequences beyond our reasonable control.

### Consent

Your acceptance of our Engagement Agreement authorises the firm to act for you. The firm is not required to ask for your consent for every action the firm takes. However, we will consult with you in advance about every material step we propose to take on your behalf.

### Conflicts of interest

If, during the course of your matter, you instruct us to provide advice to an entity or person that is related to or associated with you (and the practice is able to do so), then that entity or person must become a client of the firm by accepting an offer from the firm to provide legal services to that entity or person and the basis on which the firm will charge for those legal services.

We also owe a duty to you (and where there is more than one client, each of you) to represent your interests to the exclusion of the interests of others. If accepting some of your instructions in the course of your matter or continuing to act for you would present the firm with a conflict of interest, actual or potential, we may have to cease to act for you and terminate the Engagement.

In acting for you in your best interests the firm is not required to do anything which is unethical or unlawful. Each lawyer in the firm owes a duty to the Court that is a paramount duty and applies in priority to any duty owed to you.

## 5. WORK PRODUCT, PRIVILEGE AND CONFIDENTIALITY

### Use of work product

Advice that we give you and documents which we prepare in any matter or transaction in which we are acting for you are specifically given or prepared for you in relation to that matter or transaction only, and must not be relied on by:

- (a) you in relation to any other matter or transaction; or
- (b) any other person or entity, without our prior written consent.

## Ownership and copyright

We have and retain ownership of, and copyright in, all advices and other documents prepared in the course of our engagement other than documents prepared by external service providers.

You may use such advices and documents for the specific purpose for which it was prepared. You may not, without our prior written consent, use such advice or documents in any way for any other purpose, neither may you duplicate, amend, vary or adapt the documentation or drafting in any way or allow any third party to use the documents or advice.

To the maximum extent permitted by law, you hereby undertake to hold us harmless and to fully and effectively indemnify us and keep us indemnified against all actions, proceedings, claims, demands, damages, costs and other liabilities arising out of or in connection with any breach by you of this clause.

## Privilege

If material contained in emails is of a kind that might attract legal professional privilege, it is possible that privilege may be lost by the act of electronic dissemination.

## Confidentiality

We will keep confidential all information received from you in the course of us performing the work.

By forwarding any emails (and attachments) to the firm, you agree that we may copy, distribute or disclose such emails (and attachments) to other third parties for the purpose of providing our services to you, for example, we may forward your emails (and attachments) to our agents, consultants or barristers assisting us in providing our services to you.

## 6. EXCLUDED SERVICES – TAXATION/ACCOUNTING ADVICE

We do not hold ourselves out as having expertise to advise on, and accordingly do not provide any advice on, taxation or accounting matters.

## 7. ENGAGEMENT OF OTHER SERVICE PROVIDERS

You authorise us as your agent to engage external service providers (including other lawyers or law practices) to provide specialist advice or services. You are responsible for payment of fees and charges of such service providers and must repay us any amount we pay them.

We will consult you about the terms of these engagements before incurring the expense. We will provide you with a statement setting out the rates and estimated costs of any other service provider we propose to engage as soon as the retained service provider provides this information to us.

## Liability

The service provider may provide you with their own terms and conditions for business.

To the extent permitted by law:

- (a) we accept liability for any error on our part in our instructions to those service providers, but take no responsibility for their work or how they carry out their instructions; and
- (b) in suggesting or selecting a service provider, we shall rely on information we are given as the qualifications of the person but take no responsibility on that selection and give no warranty as to the ability of the service provider to appropriately carry out the task or as to the quality of that service provider's work.

## 8. BILLING

We will send you an invoice containing details of our professional fees and charges, disbursements and expenses, including GST, on a periodic basis, usually monthly. Our invoices are final for the work to date and are due and payable on receipt.

Each invoice sent to you will be signed by a principal of the firm and will contain a notification of your rights with respect to the costs charged in the invoice.

## Electronic Billing

By accepting the Engagement Agreement, you consent to us sending you our invoices electronically at your usual email address as specified by you or by any other means of electronic transmission agreed to by you and us.

## GST

We will charge, and you agree to pay, GST on all fees charged and disbursements paid by us for which GST is by law required to be paid. You otherwise acknowledge that GST is payable in respect of each taxable supply made to you and that all charges for professional time shown are inclusive of GST. ('GST', 'taxable supply' and 'tax invoice' have the meaning given in A New Tax System (Goods & Services Tax) Act 1999.)

## Interest Payable

If you do not pay an invoice within 30 days of the date of the invoice, we may charge interest on the unpaid portion from the due date until the date of payment in full at an interest rate not exceeding the Cash Rate Target, fixed by the Reserve Bank of Australia, plus 2 per cent, at the date the invoice is issued.

## Itemised Invoice

Within 30 days of receiving an invoice from us, you may require us, by notice in writing, to provide you with an itemised bill of the costs the subject of the invoice. We will provide the itemised invoice within 21 days of such request. We will not charge you for the preparation of an itemised invoice.

## Progress Reports

You are entitled to request, at reasonable intervals, written progress reports on your matter. Our normal charge-out rates will apply for this service.

You are entitled to request a written report on the legal costs incurred to date since the invoice was given to you, free of charge.

## Applying awarded costs to unpaid invoices

You acknowledge that the firm may receive on your behalf any payment for legal costs and disbursements awarded to you and use the money received to pay any unpaid or partly unpaid invoices issued to you.

## Lien and suspension of work

If any invoices remain unpaid, we may suspend work for you and retain possession of documents and files.

## 9. PAYMENT METHODS

The following payment methods are acceptable by the firm:

- (a) bPay or electronic transfer;
- (b) credit card; or
- (c) cheque.

Full payment details will be included in our invoices.

## 10. YOUR RIGHTS

It is your right to:

- (a) negotiate a costs agreement with us;
- (b) negotiate the method of billing;
- (c) request a written progress report of costs incurred;
- (d) receive a bill of costs and request and receive an itemised bill within 30 days after a lump sum bill or partially itemised bill is payable;
- (e) be notified of any significant change to the basis on which legal costs will be calculated or any significant change to the estimate of total legal costs; and
- (f) seek the assistance of the designated local regulatory authority (Legal Services Complaints Committee WA (**LSCC WA**) or the Victorian Legal Services Commissioner (**LSC Vic**) (as applicable) in the event of a dispute about legal costs. Further details will be included in or with our account.

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 only if:

- (a) when the lump sum 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
- (b) the costs are determined to be payable after a costs assessment or after a binding determination under the Uniform Law (as applicable).

## 11. DISPUTING COSTS

If you have a dispute in relation to any aspect of our legal costs, 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 to resolve the matter promptly and without it adversely impacting our business relationship.

If you still have a concern, you may seek the assistance of the LSCC WA or LSC Vic (as applicable) if you wish to dispute the legal costs and disbursements or you may apply to the Supreme Court of WA or the Victorian Supreme Court Costs Court (as applicable) for an assessment of the whole or any part of an invoice for legal costs and disbursements even if the legal costs and disbursements have been wholly or partly paid. Your application for assessment must be made within 12 months after the firm's final invoice on your matter was given to you.

If you have sought the assistance of the LSCC or LSC Vic (as applicable) in relation to a dispute between the firm and you about legal costs and disbursements you cannot apply to the Supreme Court for a costs assessment except where the LSCC or LSC Vic (as applicable) is unable to resolve the dispute and has notified you and the practice of the entitlement to apply for a costs assessment or the LSCC or LSC Vic arranges for a costs assessment.

## 12. TERMINATION OF LEGAL SERVICES

You may terminate our Engagement at any time by written notice to us. You remain responsible for all fees and disbursements which we may properly charge up to the time of receipt of your notice terminating the Engagement.

We may terminate our Engagement in writing and stop acting for you if:

- (a) you do not comply with the terms and conditions set out in our offer including a failure by you to comply with your obligation to pay the firm's costs and disbursement as provided for in this Engagement Agreement; or

- (b) within 21 days of the firm notifying you of the changed hourly rates, you reject the amended hourly rates; or
- (c) the firm forms the opinion, on reasonable grounds, that mutual confidence and trust do not exist between you and the firm; or
- (d) the firm considers on reasonable grounds that by continuing to act for you, it may breach professional conduct rules.

Upon termination, the firm is entitled to retain all files, documents and personal property relating to your matter(s) until all invoices rendered to you by the practice are paid in full or a court otherwise orders.

## 13. FUNDS HELD IN TRUST

Circumstances may arise where we receive funds to be held in our trust account for your benefit or for the benefit of third parties. Trust funds will not earn interest unless we receive your written instructions to deposit such funds in an interest-bearing account, unless the amount of the trust funds or the period of time for which they will be held make it inconvenient or impractical for us to invest them. When provided with written instruction, we will invest the trust funds at a branch of the National Australia Bank (unless you expressly direct otherwise) operated by the firm in Western Australia on such terms as we in good faith deem acceptable. By signing the Engagement Agreement, you acknowledge that the trust account is subject to the supervision by the Legal Practice Board of Western Australia and is maintained in accordance with Uniform Law and Uniform Rules effective at the time of the deposit. You also acknowledge that any claim for defalcation will be made in and under the rules of Western Australia. Under no circumstances will we have any responsibility for the performance of any investment made on your behalf.

All interest earned on funds invested on your instructions belong to you or the third-party beneficiary and will form part of the trust funds. The beneficiary will be liable to pay all income tax on the interest. By signing this the Engagement Agreement, you agree to indemnify us in respect of any income tax payable in relation to the funds invested on your instructions (whether for you or a third party) for which we may be assessed.

By signing an Engagement Agreement, you confirm a standing authority to allow us to apply any trust funds that you may have on deposit or invested through us in satisfaction of our outstanding accounts with you or in payment of disbursements we have paid on your behalf in accordance with the provisions of the Uniform Law and Uniform Rules relating to the withdrawal of trust money for legal costs. If we do this, we will advise you in writing within 14 days.

## 14. JOINT AND SEVERAL LIABILITY

If you provide us with instructions for and on behalf of a related entity, a third party or jointly with another party, or instructions are received directly from a related entity, both you or your company (as the case may be) and the related entity or other party (as the case may be) and any other person who signs the Engagement Agreement will be jointly and severally liable to pay for our services, including disbursements, in accordance with this Agreement.

## 15. APPORTIONMENT OF LIABILITY

If you make a claim against the firm or any of its lawyers for breach of duty to exercise reasonable care and skill, liability for damages in contract and in tort shall be apportioned in accordance with the respective fault (contributory negligence) of the firm (or relevant lawyer), yourself and any third parties.

## 16. STAFF GIVING OF EVIDENCE

If any of the firm's lawyers or staff are required to attend or give evidence to any court, royal commission, government agency, parliamentary or other inquiry in respect of matters handled on your behalf, then the firm may charge for all time incurred as a result and all disbursements reasonably incurred, in accordance with the Engagement Agreement.

## 17. ELECTRONIC COMMUNICATIONS AND CYBER SECURITY

### Electronic communication

We will use email and other forms of electronic or digital communication with you and third parties for provision of information, advice, options and copies of documents unless you instruct us to the contrary and we can discuss and agree an alternative method of communication with you.

### Risks with communication

Our emails are not encrypted and therefore may be open to access by "hackers". In addition, we do not represent or warrant that files attached to our emails are free from computer viruses or other defects. All attached files are provided, and may only be used, on the basis that the user assumes all responsibility for any loss or damage resulting directly or indirectly from such use. To the extent permitted by law, we will not be liable for any copying, recording, reading or interference by others during, or after, a transmission, for any delay or non-delivery, or for any damage caused in connection with the transmission.

If you have any concerns with electronic communication, please do not email particularly sensitive material to us and instruct us to avoid the use of emails for communications with you.

### Our bank accounts

We will never change our bank account details without requesting that you confirm that change with us by phoning and emailing the responsible Partner on the file through their official contact information. You are responsible for seeking that confirmation. We will not be responsible for any loss resulting from you transferring money to an incorrect account.

## 18. PRIVACY

We will collect personal information from you in the course of providing our legal services pursuant to this agreement. We may also obtain personal information from third party searches, other investigations and, sometimes, from adverse parties. If personal information (within the meaning of the Privacy Act 1988 (Cth) (**Privacy Act**)) is disclosed to us in the course of our provision of the services:

- (a) we will treat it in accordance with the Privacy Act; and
- (b) if disclosed to us by a third party, it will be your responsibility to ensure that such disclosure to us is permitted by the Privacy Act (including by obtaining any appropriate consents).

If you do not provide us with the full name and address information required by law, we cannot act for you. If you do not provide us with the other personal information that we request, our advice may be wrong for you or misleading. You hereby authorise us to disclose personal information about you to others (both within and outside of the firm) as we reasonably consider necessary to:

- (a) perform the services;
- (b) administer, further and complete the matter;
- (c) comply with any legal obligation, and

- (d) effect the performance of this agreement.

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, other statutory bodies, the Registrar General and third parties involved in the completion or processing of a transaction.

We are generally not likely to disclose personal information to overseas recipients. If in the course of acting for you it becomes necessary or desirable to disclose personal information to overseas recipients, we will generally canvass this with you before we do so.

Our privacy policy is located on our website [www.steinpag.com.au](http://www.steinpag.com.au) setting out our approach to handling your information. By accepting the terms of engagement, you are indicating that you have read and agreed the terms of our privacy policy. A client that Regulation (EU) 2016/679 of the European Parliament and of the Council (Global Data Protection Regulation) considers to be a "citizen" of the European Union (EU) or "established" in the EU must execute a copy of this Agreement and return it to us.

## 19. STORAGE AND DESTRUCTION OF CLOSED FILES

All client files will be closed, stored and then destroyed in accordance with the firm's usual practice. The firm's standard retention period is 7 years from the date of closing the file. The length of time may be extended after consideration of exceptions requiring a longer retention period.

At or after the time of closing your file, you may request a copy of the file. If such a request is made, we will provide you with a copy and will also retain a copy until the file's designated date of destruction. You may incur a cost in relation to the cost of copying or retrieving a file from storage.

## 20. JURISDICTION AND GOVERNING LAW

Subject to your rights to select jurisdiction under the Uniform Law, the Engagement Agreement and all aspects of the performance of our services for you are governed by (a) the laws of Victoria in respect of the provision of services by SP Melbourne and (b) the laws of Western in respect of the provisions of services by SP Perth. You irrevocably submit to the exclusive jurisdiction of the courts of that jurisdiction.

## 21. SEVERABILITY

Any provision of which is illegal, void or unenforceable is only ineffective to the extent of that illegality, voidness or unenforceability, without invalidating the remaining provision.