

## GENERAL TERMS AND CONDITIONS

### 1 DEFINITIONS

- 1.1 “**Client**” – means the person, institution, or entity contracting with VDMA for the rendering of legal services.
- 1.2 “**VDMA**” – means Van Der Merwe Dorning and Associates Incorporated (Registration Number 2010/007329/21) t/a VDMA.

### 2 TERMS AND CONDITIONS

- 2.1 The terms and conditions should be read in conjunction with: (i) the letter of engagement; and (ii) any terms and conditions contained in any written fee estimate, memorandum, opinion or e-mail issued by a duly authorised representative of VDMA to the Client (collectively referred to as the “**Terms and Conditions**”).
- 2.2 VDMA reserves the right to modify, amend, replace and substitute any of the provisions of the Terms and Conditions, which modification shall replace any previous Terms and Conditions, and the Client shall be bound by such new Terms and Conditions, which shall become effective once it has been published on VDMA’s website found at [www.vdma.co.za](http://www.vdma.co.za).
- 2.3 Unless specifically stated otherwise, the Terms and Conditions contained on VDMA’s website found at [www.vdma.co.za](http://www.vdma.co.za) shall prevail in the event of a conflict over any terms and conditions contained in any: (i) letter of engagement; (ii) quotation; (iii) memorandum; (iv) opinion; (v) e-mail issued by a duly authorised representative of VDMA; or (vi) this version of the Terms and Conditions.
- 2.4 It is the Client’s responsibility to keep abreast of any changes to the Terms and Conditions and VDMA shall not be obliged to notify the Client of any amendments thereto.
- 2.5 The Terms and Conditions shall apply to any and all relationships VDMA has with the Client (with retroactive force if need be) and shall continue to be effective until all rights and obligations of the parties hereto have been extinguished.
- 2.6 The Terms and Conditions will constitute the whole agreement between VDMA and the Client and no amendments or changes to the Terms and Conditions will be of any effect unless otherwise provided for herein or reduced to writing by VDMA.
- 2.7 In the event that the Client fails to return the signed letter of engagement to VDMA but nevertheless instructs VDMA to render any legal services on behalf of the Client, it will be deemed that the Client is in agreement with continuing with the use of VDMA’s services in accordance with the Terms and Conditions.

### 3 ACKNOWLEDGEMENTS

- 3.1 The Client agrees that they have fully considered the Terms and Conditions and that they are reasonable in the light of all factors relating to any engagement.
- 3.2 If any terms or provisions of the Terms and Conditions are or become invalid, illegal or unenforceable, such term or provision shall be severed here from and the remainder shall survive unaffected.

- 3.3 To the extent that: (i) the Client satisfies the definition of a “*Consumer*” as defined in the Consumer Protection Act No. 68 of 2008 (“**CPA**”); and (ii) any provision contained in the Terms and Conditions is invalid, illegal or unenforceable as a result of the application of the CPA, such provision shall be deemed to be amended to the extent necessary to comply with the CPA.

### 4 INSTRUCTION AND ASSIGNMENT OF WORK

- 4.1 Once the Client has provided VDMA with an instruction, VDMA will allocate the instruction to the appropriate individual employed by VDMA to deal with the matter. The services to be rendered to the Client are therefore not necessarily limited to one individual or the attorney the Client consulted with. There may be instances where VDMA will be required to instruct advisers on the Client’s behalf, for example counsel in another jurisdiction.
- 4.2 Any instruction given to VDMA by the Client shall be deemed to include an instruction by the Client for VDMA to do all things necessary in relation thereto, including the incurrence of any disbursement on the part of the Client, which shall be dealt with in terms of **paragraph 6.3**, and which mandate shall endure unless otherwise terminated in writing by the Client in terms of **paragraph 16.1**.

### 5 LIMITED LIABILITY

- 5.1 VDMA’s engagement with the Client creates rights and obligations between the Client and VDMA only. No other person, other than the Client may (i) rely on the information and advice given by VDMA; (ii) be protected by the advice given by VDMA; or (iii) enforce any term of this Terms and Conditions with VDMA through any applicable law.
- 5.2 VDMA will have no liability of any nature, whether in contract, delict or otherwise, for any losses, damages, costs or expenses (“**Losses**”) whatsoever and howsoever caused arising from or connected with any engagement, except where such Losses are caused by VDMA’s gross negligence or wilful default.
- 5.3 In any event, the aggregate liability of VDMA, of whatsoever nature, whether in contract, delict or otherwise, for any Losses whatsoever caused arising from or in any way connected with any engagement shall not exceed the professional indemnity cover received by VDMA in respect thereof.
- 5.4 For the avoidance of doubt, nothing in the Terms and Conditions will have the effect of increasing the liability of VDMA for any Losses caused by its gross negligence or wilful default beyond those available under common law, nor will the presence of this paragraph preclude any defence that would be available to VDMA.
- 5.5 Nothing in the Terms and Conditions will exclude or restrict any liability of VDMA for fraud or dishonesty to the extent that it cannot do so by law.
- 5.6 Unless and to the extent that they have been finally and judicially determined (including by conclusion of any appeal) to have been fraud, wilful default or gross negligence of VDMA, the Client will indemnify on demand and hold harmless VDMA against all actions, claims, proceedings, Losses, damages, costs and

- expenses whatsoever and howsoever caused arising from or in connection with any engagement.
- 5.7 Any memorandums, opinions, comments or advice otherwise given by VDMA shall be –
- 5.7.1 addressed to and in connection with the matter at hand only, and may not be relied upon for any other purpose and may not be disclosed to any other person (except to persons who in the ordinary course of the Client's business have access to the Client's papers and records, on the basis that they will similarly make no further disclosure) and may not be filed with any governmental agency or authority or quoted in any public document without, in any such case, VDMA's express prior written consent, which will not be unreasonably withheld;
- 5.7.2 provided on the basis that, except as explicitly stated therein, no opinions, comments or advice otherwise given be expressed in relation to any other representations or provisions contained in any written agreements that may be entered into, nor upon any other related commercial terms;
- 5.7.3 expressed in respect of, or on the basis of, any legislation, regulation or other governmental directive, which was in force, and on the basis of the provisions thereof, at the time that the opinions, comments or advice was given;
- 5.7.4 provided on the basis that VDMA has no obligation to update or amend any opinions, comments or advice otherwise given as a result of any events occurring after the date thereof or any existing or antecedent matter or circumstances being brought to VDMA's attention after the date thereof; and
- 5.7.5 not to be construed to provide any advice that would constitute "advice" in respect of a "financial product" as defined in the Financial Advisory and Intermediary Act No. 37 of 2002.
- 6 FEES, UPFRONT DEPOSITS AND ACCOUNTS**
- 6.1 Billing:
- 6.1.1 VDMA's accounts are based on time spent on the Client's matter, which includes all correspondence, be it in the form of e-mails, letters or telephone calls.
- 6.1.2 Hourly rates for each of the attorneys, professional assistants, candidate attorneys, or directors of VDMA differentiate based on, *inter alia*, the complexity of the work required. The applicable hourly rates up until 31 December 2017 are as follows:
- |                    |                         |
|--------------------|-------------------------|
| Director           | ZAR 2,495.00 – 4,790.00 |
| Senior Associate   | ZAR 2,275.00 – 4,220.00 |
| Associate          | ZAR 2,055.00 – 4,075.00 |
| Candidate Attorney | ZAR 1,725.00 – 3,505.00 |
- 6.1.3 Hourly rates shall escalate annually, which rates shall become effective upon publication thereof on VDMA's website found at [www.vdma.co.za](http://www.vdma.co.za). The Client undertakes to familiarise itself with such rates and make due enquiry with VDMA in relation thereto.
- 6.1.4 VDMA reserves the right to bill the Client with any items that were previously removed or discounted from the Client's account.
- 6.2 Fee estimates:
- 6.2.1 Fee estimates provided by VDMA in relation to any matter are based on VDMA's knowledge of the matter at the time and VDMA's assessment of the time required to attend thereto. In the event that the above assumptions prove to be incorrect, or the Client alters the instruction to VDMA, the fee estimate provided may not be accurate. The Client acknowledges that an estimate is not definitive and is not an upper limit for the fees to be charged by VDMA, which may vary in the circumstances.
- 6.2.2 In the event that VDMA provides a fee estimate, VDMA endeavours to attend to any instruction within such estimate. If, however, materially more time than anticipated is required while attending to the instruction, VDMA will charge the standard hourly rates for the additional time spent.
- 6.2.3 Any fee estimate provided by VDMA shall, unless it is accepted by the Client, only be valid for 14 (fourteen) days from the date of the fee estimate. Any fee estimate, unless otherwise expressly indicated, shall only be applicable for any specific instruction be subject to this **paragraph 6.2** and shall not apply for any further work required pursuant to such instruction, such as further drafting, reviewing or further meetings and/or teleconference calls.
- 6.3 Reimbursement costs:
- 6.3.1 The Client shall reimburse VDMA for all costs incurred by VDMA on the Client's behalf, including but not limited to: costs and charges for printing and photocopying (or similar services), counsel, experts, accountants, third party service providers, disbursements and business travel (or similar).
- 6.3.2 VDMA reserves the right to request that any disbursement costs to be incurred by VDMA on behalf of the Client is deposited into VDMA's trust account before the incurrence of any such disbursement by VDMA.
- 6.3.3 VDMA shall be entitled to incur all reasonable expenses on behalf of the Client as VDMA may reasonably determine.
- 6.4 VAT:
- VDMA will charge VAT, in addition to any of the above amounts, in instances when required to do so.
- 6.5 Deposits:
- Deposits are payable to VDMA prior to an instruction being executed by VDMA on behalf of a Client. VDMA reserves the right to stop conducting further work on a Client's matter should there be any funds outstanding to VDMA, or to suspend commencing with work on behalf of a Client, if the requisite deposit has not been paid.
- 6.6 Invoices:
- Invoices will be forwarded onto Clients monthly, which invoices will contain a description of the work conducted and services rendered (including but not limited to disbursement costs incurred), and will include a reference to the date and a description of the task accomplished which amounts reflecting on the invoice. VDMA will at all times be entitled to amend any entry which may appear on an invoice, if VDMA is of the opinion that such entry is incorrect.

- 6.7 General payment terms and interest
- 6.7.1 All payments to be made in terms of the Terms and Conditions shall be made in ZAR in immediately available funds, by electronic funds transfer, into the bank account nominated by the VDMA in writing. All invoices must be settled free of exchange, transaction, banking and/or transfer costs.
- 6.7.2 The Client shall be liable to settle all outstanding accounts with VDMA for all work undertaken by VDMA, including but not limited to all fees, disbursements and VAT irrespective of whether a Client's lawsuit or matter succeeds or not, or has the desired effect the Client anticipated it to have, or not, or the Client decides to not proceed with the matter or terminates its engagement with VDMA.
- 6.7.3 Invoice amounts not settled within 7 (seven) days from the date of receipt of invoice by the Client will accrue interest at an annual rate calculated in the prescribed manner of 2% (two percent) per month from the date on which payment was due by the Client until the date of full and final payment of all outstanding amounts. The determination as to whether interest shall be levied on outstanding invoices shall be at VDMA's sole and absolute discretion and may be levied retrospectively.
- 6.7.4 VDMA shall at its own instance be entitled to produce a certificate signed by any director of VDMA substantiating the amount which is due and payable by the Client to VDMA. The certificate shall constitute *prima facie* proof of the allegations and figures stated therein, and the Client shall bear the onus of disproving the content and figures reflected on the certificate. The Client acknowledges that such certificate shall be valid and in force for the purpose of summary judgment proceedings.
- 6.7.5 Should the Client fail to settle any invoice issued to it by VDMA, the signatories to the engagement letter shall be jointly and severally liable for any outstanding invoices levied by VDMA.

## 7 CLIENT MONEY

- 7.1 Money held on behalf of the Client
- Any money held as a deposit, or any money collected or received from or on behalf of the Client, will be allocated to any outstanding account of the Client.
- 7.2 Money held in VDMA's trust account
- The Client acknowledges that it will not earn any interest on money held in VDMA's trust account owing to the fact that such interest must be paid to the Fidelity Fund in accordance with the provisions of the Attorneys Act No. 53 of 1979 ("Attorneys Act") unless otherwise agreed in terms of **paragraph 7.3**.
- 7.3 Section 78(2A) investment
- 7.3.1 Should the Client instruct VDMA to invest money that VDMA holds on behalf of the Client, the Client shall complete VDMA's standard investment mandate. Upon receipt thereof, VDMA will invest such money into an interest-bearing account. All interest earned shall accrue to the Client in accordance with section 78(2A) of the Attorneys Act.

- 7.3.2 The Client acknowledges that money invested in terms of 78(2A) of the Attorneys Act will not be covered by the Fidelity Fund if: (i) payment is not made for purposes of investing such money on a temporary 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 (ii) VDMA does not exercise exclusive control over the account as trustee, agent, stakeholder or in any other fiduciary capacity.

## 7.4 Liability

To the extent permissible by law, VDMA shall not be liable for any loss that the Client may suffer as a result of: (i) any act or omission of the banking institution concerned regarding any account; (ii) any inability, delay or failure of the banking institution to repay the money on demand; (iii) the identity or choice of the banking institution; or (iv) any interest or exchange rate fluctuation.

## 8 CLIENT RESPONSIBILITIES

Should the Client's instruction to VDMA relate to, or result in litigation, it is of relevance that the Client is aware of the following:

- 8.1 The estimate for costs provided by VDMA relating to the anticipated legal fees to be incurred, is dependent on numerous factors, including, *inter alia* whether the litigation matter of the Client proceeds to trial or not. If the matter is settled prior to proceeding to trial, VDMA's estimated fees for litigating a matter will be correspondingly lower, depending on the lapse of time between the matter being settled and the anticipated court date.
- 8.2 Should it be necessary, VDMA will instruct experts, translators, or third parties on the Client's behalf and with the Client's approval. The costs associated with such appointments, which are also disbursements to VDMA, will be payable by the Client either upon presentation of VDMA's invoice which reflects the expert's account, (as the expert will render its account to VDMA which will in turn render an account to the Client), or in advance into VDMA's trust account before VDMA incurs any such disbursement.
- 8.3 The Client acknowledges the risk associated with litigation insofar as cost orders are concerned. For clarification, the Client agrees that it is aware that it faces the risk of having to pay the other litigating party's legal fees. Should this scenario occur for any reason whatsoever, these fees will be payable to the other litigating party's attorneys in addition to VDMA's fees and any disbursements associated with the litigation.
- 8.4 The Client acknowledges that should it be successful in litigation, and the court makes an order for costs in the Client's favour, that the Client may not recover 100% (one hundred percent) of the legal costs it incurred, but only a portion thereof as determined by the taxing master.
- 8.5 To allow VDMA to prepare for a trial, it requires any and all documents in existence associated with the matter. The Client is to refrain from deliberately destroying documents (including electronic documents) relevant to the issues in the matter that are in its possession, custody, or power. If the Client is found to have deliberately destroyed documents to ensure that these

documents are out of reach in the litigation, the court may strike out the Client's claim. For this purpose, the Client acknowledges and agrees to inform any individuals in the Client's organisation to preserve documents until instructed otherwise.

- 8.6 Should the Client not be certain as to whether a document is relevant or not, the Client agrees to contact VDMA's offices and enquire.
- 8.7 VDMA will appoint an advocate to argue the matter on the Client's behalf, irrespective of whether the Client is the plaintiff or the defendant. The advocate's fees will be discussed with Client in advance, and as same constitutes a disbursement, VDMA will require the upfront payment thereof. The Client is entitled to nominate an advocate to attend to the matter on the Client's behalf, in the absence of such nomination VDMA reserves the right to appoint any advocate it deems fit for the relevant matter.
- 8.8 VDMA's appointment of an advocate shall in no manner render it liable towards the Client should the court find against the Client or should the Client not achieve the desired results.
- 8.9 Should the action for litigation not fall within the jurisdiction of Johannesburg, or within the prescribed radius from the courthouse, VDMA will be obliged to appoint a correspondent firm to attend to certain actions on the Client's behalf. Such correspondent firm's costs for rendering services to VDMA relating to the Client's matter, is also a disbursement payable by the Client to VDMA.

## 9 COMMUNICATIONS

- 9.1 Written correspondence and draft documents will be transmitted to the Client via e-mail, unless otherwise requested. VDMA cautions that, as these forms of media are open to abuse by third parties, VDMA cannot accept responsibility for breaches of confidentiality arising from their use. Documents sent by e-mail must also be treated with caution and not be relied upon as final, as persons other than VDMA representatives may make amendments thereto without VDMA's knowledge and approval.
- 9.2 Unless otherwise agreed, VDMA shall communicate directly with the Client's representatives, or persons whom VDMA reasonably believes to be involved in the matter.
- 9.3 The Client acknowledges that e-mail communications are not totally secure and error free. VDMA shall not be liable in instances where its filtering software or other virus protection does not function and the Client's system is infected by an e-mail or other form of digital information (CD-ROM, DVD, memory stick or the internet).

## 10 DATA PROTECTION

- 10.1 VDMA may be required to process personal information about the Client, its officers, employees or clients.
- 10.2 Processing of information may take the form of transferring information to VDMA's offices, third parties who process information on behalf of VDMA and law enforcement agencies. In processing such information, VDMA undertakes to comply with all relevant laws and regulations.

## 11 RETENTION OF DOCUMENTS

- 11.1 *Destruction of documents:*  
In accordance with its policies, VDMA may destroy paper and electronic files after a period of 5 (five) years after sending the Client the final account of a matter.
- 11.2 *Retrieval of documents:*  
In the event that the Client requires VDMA to retrieve any documents from storage, the Client shall be liable for all reasonable costs in relation thereto, including but not limited to time spent reading such documents, drafting letters or any other action deemed necessary to comply with such request from Client.

## 12 COPYRIGHT

VDMA retains the copyright and all other relevant intellectual property rights in relation to its work. The Client shall have a licence to use and make copies of such documents prepared by VDMA for purposes of the relevant matter only, unless otherwise agreed.

## 13 ANTI-MONEY LAUNDERING

- 13.1 VDMA is required to comply with various laws and regulations pertaining to anti-money laundering and terrorism.
- 13.2 Prior to commencing any engagement, the Client will be required to provide VDMA with information to perform "*Know Your Client*" or due diligence checks.
- 13.3 VDMA is obliged to report any suspicious activity of a Client to the relevant authorities in order to obtain their consent prior continuing to act for the Client. Such authorities may prohibit VDMA from disclosing to the Client that such a report was made.
- 13.4 Should VDMA be of the opinion that its work on a matter may result in the breach of anti-money laundering or terrorism laws or regulations, or any applicable sanctions, VDMA may cease working on the matter immediately and terminate the engagement.
- 13.5 VDMA shall not be liable to the Client for any Losses that the Client may suffer because of ceasing to act on a matter or fulfilling statutory obligations in accordance with this **clause 13** in a *bona fide* manner.

## 14 CONFLICTS OF INTEREST

- 14.1 The Client acknowledges that VDMA is a law firm that services a wide array of clients (local and international) and that in certain instances there may be a significant risk or existing conflict of interest with another client ("**Conflict**"). The Client undertakes to inform VDMA of any possible Conflict as soon as reasonably possible.
- 14.2 In the event of a Conflict, VDMA shall, in its sole and absolute discretion and in accordance with applicable laws and best practice, determine whether to act for the Client or the other client.

## 15 LIEN

VDMA is entitled to exercise a lien (a right of possession) over all the documents and monies held on a Client's account until full payment of the outstanding fees have been made. Should a Client in this instance appoint a new legal representative, VDMA will release all the documents to such new legal

representative only upon receiving payment of outstanding fees owing to VDMA.

## 16 TERMINATION OF SERVICES

- 16.1 The Client shall be entitled to terminate its engagement with VDMA immediately upon written notice to VDMA.
- 16.2 VDMA maintains the right to immediately terminate its engagement with a Client, on the following grounds: (i) when payment of the fees owing to VDMA are not made as in accordance with the terms as stipulated herein; (ii) when there is a lack of instructions which is required to continue with the lawsuit/matter; (iii) when the Client acts contrary to the advice provided by VDMA; (iv) when the Client fails to provide sufficient funds for disbursements when requested to do so; and (v) when a Conflict arises that cannot be avoided, mitigated, or resolved.

## 17 DISPUTES

- 17.1 If a Client is dissatisfied with any element of VDMA's service, including but not limited to the fees charged by VDMA, the Client should contact the head of the relevant department or a director of VDMA, who will be happy to discuss the issue with the Client.
- 17.2 The parties agree that in the event of a dispute arising in relation to the fees charged by VDMA to the Client, in relation to any matter whatsoever, the council of the Law Society of the Northern Provinces ("**Council**"), or any

committee duly appointed by the Council, shall be competent to assess the fees and reasonable disbursements payable by the Client in respect of the performance of work done by the attorney in his or her capacity as a practitioner ("**Dispute**").

- 17.3 It is the Client's obligation and responsibility to refer any Dispute to the Council for final determination within a period of 14 (fourteen) days from receipt of the disputed invoice, failing which the Client is deemed to accept the invoice and to the extent necessary, waives its right to dispute same.
- 17.4 The Client acknowledges that it shall be liable for all costs and disbursements incurred by VDMA in pursuance of any debt collection from the Client and any Dispute referred to the Council by the Client.
- 17.5 The Client acknowledges that any amounts due to VDMA remain payable to VDMA notwithstanding a Client's referral of a Dispute to the Council and that any outstanding amounts due to VDMA shall continue to accrue interest, subject to any determination made by the Council.

## 18 ADDRESS FOR RECEIVING OF NOTICES

The Client hereby chooses the physical, postal and e-mail address, all recorded under the Client's name in the engagement letter, for receipt of all documents and written notices.