

# **RETAINER AGREEMENT**

(Cost Agreement pursuant to Section 179 and Cost Disclosure pursuant to Section 174 of the Legal Profession Uniform Law (NSW) [the Act])

I/We hereby instruct the firm of **DAMMHOLZ & CO.** (“the firm”) to act on my/our behalf upon the following terms and conditions:

## **1. Scope of Work**

The firm is instructed to act for me/us in relation to:

.....

Unless I/we have given the firm specific or limiting instructions, the firm is instructed to take all steps, measures and actions it considers in its absolute discretion necessary or desirable to achieve a positive outcome for me/us. The firm is instructed to conduct the matter in a practical and economical fashion without being required to seek authorization for - or to report on - each individual action. The firm shall be permitted to outsource work to suitably qualified contractors or experts if this is considered necessary or useful for the efficient and expeditious handling of the matter. I/We acknowledge that the firm has not guaranteed or promised a particular outcome or result of the matter.

I/We have been informed that the firm does not provide taxation advice. Any statement by the firm in relation to any taxation issue is made without obligation and I/we have been encouraged to obtain independent advice by a qualified accountant on the taxation implication of the action taken or recommended by the firm.

## **2. Professional Fees**

The firm has advised me/us that professional fees in this matter are negotiable and we have negotiated to pay for the firm’s professional services by way of time charges at the rate of \$ 425.00 per hour. This rate is fixed for a period of six months and may thereafter be increased at any time on notice by up to \$ 25.00 per hour. The agreed rate will be proportionally charged for work of shorter periods than an hour. The firm’s time charging is structured in 6 minutes units so that any chargeable action will be at least 6 minutes. Travel and waiting periods are charged at the rate of \$ 200.00 per hour.

## **3. Disbursements**

I/We agree to reimburse the firm for all disbursements, e.g., notary's, barrister's, expert's and agent's fees; search, filing and service fees; transport and travel costs; telephone, email and fax charges; courier costs, postage, photocopying, printing and scanning of documents; other internet charges; bank fees and sundries as required for a proper and expeditious conduct of the matter. The amounts of the disbursements are determined by the firm’s actual outlays or are charged at fixed

standard rates. I/We have been advised that a complete schedule of the firm's standard office charges is obtainable on request.

4. **Goods and Services Tax**

I/We agree to pay any Goods and Services Tax (GST) the firm pays or is liable for in relation to the services rendered to me/us.

5. **Cost Estimate**

I/We have been advised of the firm's obligation to provide me/us with an estimate of the total legal costs in this matter. After explanation of the relevant statutory provisions, I/we have formed the independent opinion that the firm's disclosure obligations are impractical and, in view of limited information and instructions, currently impossible to meet. I/We therefore release to the extent as the law permits the firm from the obligation to provide an overall cost estimate at the outset.

I/We acknowledge having been advised of my/our options to exercise cost control by:

- making action limiting advance payments;
- setting cost ceilings;
- requesting interim and progress bills at any time;
- requesting information on fees and disbursements incurred at any time.

6. **Billing Arrangements**

I/We do not require an itemised bill but shall accept a lump sum bill identifying the general nature of the work carried out. I/We understand that if we require an itemized bill, we must request such a bill in writing within 30 days from receipt of the lump sum bill. The firm may bill us on completion of the work or may issue interim bills at any stage of the matter.

7. **Payments and Interest.**

I/We undertake to settle the firm's accounts within 14 days. I/We agree to accept interim and progress bills prior to the completion of the matter. I/We also agree to make advance payments on account of the firm's fees and expenses if requested by the firm.

I/We understand that if the firm's accounts are not paid within 14 days I/we may be charged interest on the unpaid amount at the rate prescribed under Rule 36.7 of the Uniform Civil Procedure Rules 2005 in respect of unpaid judgements of the Supreme Court of NSW, which is subject to change.

8. **Corporate/Multiple Clients**

If the client is a company, trust or other legal entity the undersigned officers or representatives of that entity hereby guarantee jointly and severally to pay punctually and on demand all moneys due from time to time to the firm and acknowledge that this guarantee shall extend to moneys which the firm shall have received from the

entity but which it is subsequently required to pay or repay to any liquidator, receiver or manager appointed for the entity.

If the firm represents several clients in the same matter, each client is liable for the full amount of costs and disbursements incurred.

#### **9. Cost Dispute**

I/We acknowledge having been advised of our right to apply to the Supreme Court to have the firm's accounts assessed for its fairness and reasonableness. Applications for assessment must be made before the expiry of 60 days after receipt of the bill of costs or the firm's request for payment or my/our full payment, whichever is the earliest.

#### **10. Trust Account**

Whilst the firm is operating a trust account, I/we agree that payments made to the firm in settlement of a tax invoice (issued by the firm or a third party) shall not be regarded as trust, controlled or transit moneys within the meaning of the relevant legislation and may be deposited in the firm's office account. I/We further agree and authorize the firm to withdraw such amounts of money from the funds held for me/us in the firm's trust account as needed to satisfy costs and disbursements incurred at any time in this matter or any other matter conducted by the firm on my/our behalf without notice to me/us. I/we have been informed that the use of the firm's trust account attracts trust account and bank charges.

#### **11. Communication**

The firm may communicate with me/us or third parties in a way it deems most suitable and practical at the time. The firm may use any mode of communication, including post, courier, fax, e-mail and telephone which the firm in its absolute discretion considers necessary or desirable. However, the firm shall not be liable for any communication failure for whatever reason and shall not be obliged to advise me/us or other relevant parties if temporarily unable to receive or send messages by a particular mode of communication.

Whilst the firm takes every reasonable measure to keep communication confidential and protected from cyber-attacks etc., it does not accept liability for criminal or unauthorized internet activities by third parties. I/we likewise undertake to make sure that electronic communication with the firm is suitably protected and accept liability for any damages suffered by the firm or its personnel caused by cyber crime facilitated by me/us.

#### **12. Limited Liability**

I/We acknowledge having been informed and I/we accept that the firm's liability is limited by a scheme approved under the professional standards legislation of the State of NSW. The firms' maximum liability is determined by its current professional indemnity insurance cover.

13. **Termination of Agreement**

I/We agree that the firm may cease acting in this matter at any time on notice to my/our last address on record. In particular, the firm can terminate the retainer if accounts for legal costs are not paid as set out in this agreement, if no proper instructions are given within reasonable time, if the firm cannot retain Counsel or expert consultants of its choice or the client refuses to accept Counsel's or expert's advice.

14. **File Destruction**

I/We have been informed that the firm will only keep a file in relation to this matter for a period of seven (7) years after completion of the matter. Thereafter the file may be destroyed without notice to me/us.

15. **Jurisdiction**

I/We submit to the jurisdiction of the appropriate courts of the States/Territories and the Commonwealth of Australia as well as any overseas courts considered convenient by the firm.

16. **Independent Advice**

I/We have been advised that before signing this agreement I/we should obtain independent advice from another lawyer as to its legal and practical nature and effect, and as to whether or not it is in my/our interests to sign it.

17. **Acceptance of Offer**

These terms and conditions have been explained to me/us and I/we acknowledge that I/we fully understand and agree to them. I/We also understand that in order to accept the firm's offer to act for me/us, I/we need to sign and return this document and that the firm will not be obliged to carry out any work until this is done. However, the firm shall be entitled to assume my/our acceptance of the offer if I/we give the firm instructions after having received this document.

Dated: .....

.....  
Client / Client's Representative

.....  
Solicitor for Damholz & Co.