KOVICH & CO
LEGAL | COMMERCIAL | TAXATION

Terms of Engagement

1. Definitions

In these terms, unless the context otherwise requires:

costs agreement means a costs agreement made in accordance with part 5 of schedule 3 of the LPA.

fee proposal means any written communication from us containing a fee estimate, quote or other fee proposal for legal services.

information includes documents in any form.

legal services means legal services we provide to you.

LPA means the *Legal Practitioners Act 1981* (SA).

we, our, us means Kovich & Co Pty Ltd ABN 74 629 633 370.

you, your means, in relation to legal services, our client in relation to the legal services, being:

(a) the person named as our client in our fee proposal for the legal services; or

(b) if no client is named in our fee proposal for the legal services, the person our fee proposal is addressed to; or

(c) if no fee proposal is provided for the legal services, the person named as our client in our records for the legal services.

your representatives means, in relation to legal services, each person named as an authorised representative in our fee proposal for the legal services.

2. Interpretation

In these terms, a reference to:

(a) the singular includes the plural and vice versa; and

(b) a person includes an individual, company or other entity.

3. Application

These terms:

(a) apply to all legal services; and

(b) incorporate any fee proposal for legal services; and

(c) in respect of legal services, are:

(i) the entire agreement between us and you; and

(ii) an offer to enter into a costs agreement which you may accept in writing or by:

A. providing or authorising an agent to provide us with information that we request for the purpose of providing the legal services; or

B. paying an invoice for the legal services,

at any time after we make a copy of these terms reasonably available to you.

4. Our client

(a) If you are two or more persons, you are jointly and severally liable.

(b) If during an engagement you nominate another person to receive a legal service or invoice, you remain the client and remain liable.

(c) We accept no liability to any person other than you in relation to the legal services.

(d) You may not assign, hold on trust or otherwise transfer the benefit of the legal services.

5. Your representatives

(a) In the course of providing legal services, you authorise us to deal with your representatives in relation to the legal services as if they were you, including:

(i) if appropriate, requesting and acting on instructions;

(ii) requesting and relying on information; and

(iii) providing information and advice.

(b) You may only revoke an authority in paragraph (a) in writing.

6. Scope of legal services

(a) The legal services we will provide are:

(i) the services specified in our fee proposal, together with the usual things supplied for such services; or

(ii) if no services are specified in our fee proposal or we do not provide a fee proposal, the specific services we agree to provide.

(b) If during an engagement the relevant legal services change:

(i) we may decline to provide the new services and may review our fee proposal for the initial services; and

(ii) these terms will apply to any new services we agree to provide, together with any updated or supplementary fee proposal.

(c) After we have provided you with advice, information or other services, we are not liable to inform you of subsequent:

(i) changes to the law or administrative practice relevant to the services; or

(ii) times, dates or conditions for the exercise of any right or the discharge of any obligation in connection with the services.

(d) We are not qualified to provide investment or valuation advice and recommend you obtain such advice from a qualified expert.

7. Responsible lawyer

(a) Our senior lawyer responsible for providing legal services will be:

(i) the person named as the responsible lawyer in our fee proposal for the legal services; or

(ii) if we do not provide a fee proposal for the legal services or no responsible lawyer is named in the fee proposal, Matthew Andruchowycz.

(b) You will be promptly notified if another senior lawyer becomes responsible for legal services.

(c) The responsible lawyer may delegate tasks to other lawyers and staff where appropriate.

8. Your agreement to work with us

(a) You agree to provide or procure your agents, advisers and personnel to provide, in a timely manner, any information, instructions and other assistance we reasonably request in order to provide legal services.

(b) If you purport to bind or make a representation on behalf of a third party, we are entitled to assume you are authorised to do so.

9. Commencement and completion dates

(a) Our expected commencement and completion dates are indicative only.

(b) If our fee proposal for legal services specifies an expected commencement and completion date, we will endeavour to provide the legal services within that timeframe, however some delays may be outside our control, including:

(i) a lack of timely access to relevant information, instructions or other assistance;

(ii) ongoing or protracted negotiations for a proposed transaction or agreement; or

(iii) another person prolonging the legal process.

10. Our fees

(a) Our fee proposal for legal services may specify a fixed, uplift or contingency fee arrangement (special fee arrangement).

(b) If our fee proposal does not specify a special fee arrangement, or we do not provide a fee proposal, we will calculate our fees by reference to the time we spend providing the legal services - including time spent in meetings, on the phone, undertaking research, travelling, attending court and reviewing and preparing advice, documents, letters, emails and other communications, based on the following hourly rates (excluding GST):

(i)	Director:	$ 550.00
(ii)	Associate director:	$ 470.00
(iii)	Senior associate:	$ 340.00
(iv)	Associate:	$ 220.00
(v)	Solicitor/clerk:	$ 100.00

11. Fee estimates

(a) Our fee estimates are not fixed quotes or maximum charges.

(b) If our fee proposal for legal services specifies a fee estimate or range of fees:

(i) we will be as efficient as possible in relation to fees and will contact you if it appears our fees may materially exceed our estimate; and

(ii) the major variables that may impact our fees are:

A. the volume, nature and complexity of your specific instructions;

B. how readily we can obtain any required information, instructions or other assistance from you and others;

C. the extent of our communications with you and others;

D. the extent of any negotiations with third parties;

E. the relative complexity of the applicable legal and strategic issues and considerations; and

F. changes to your instructions or the applicable law or administrative practices during the engagement.

12. Uplift fees

(a) In appropriate circumstances we may agree to provide legal services for a reduced fee on the condition that you will pay an additional amount if a pre-defined successful outcome is achieved (uplift fee).

(b) An uplift fee may be appropriate and warranted in circumstances where:

(i) the legal services do not relate to a litigious matter, or any matter set out in clause 25 of part 5 of schedule 3 of the LPA;

(ii) the uplift fee is not calculated in the manner set out in clause 27 of part 5 of schedule 3 of the LPA;

(iii) a successful outcome can be measured and described (for example a favourable decision or transaction), but is not guaranteed;

(iv) you are unable or unwilling to pay our normal fees unless a successful outcome is achieved;

(v) you believe due to our experience and expertise we will maximise your chances of achieving a successful outcome;

(vi) if a successful outcome is achieved, you will be willing to pay a premium;

(vii) considering the potential premium, we are willing to risk that we will receive less than our normal fees; and

(viii) we are satisfied the uplift fee will not detract from our ability to satisfy our duties and responsibilities.

(c) If we offer to enter into a costs agreement involving an uplift fee, our offer will:

(i) set out the estimated discount to our normal fees, the circumstances that constitute the successful outcome, the amount of the uplift fee and the reasons why the uplift fee is warranted;

(ii) contain a statement that you have been informed of:

A. your right to seek independent legal advice before entering into the agreement; and

B. the applicable cooling off period of 5 clear business days during which you may terminate the agreement by written notice to us; and

(iii) be required to be signed by you in order to be accepted.

13. Your rights regarding fees

(a) The information in this provision is required under legislation. The laws of South Australia apply to our fees. Unlike us, other law practices may calculate legal fees in accordance with an applicable court or tribunal scale of costs. At any time, you may contact the applicable responsible lawyer (see clause 7) to discuss our fees. Also, you have the right to be notified in writing of any substantial change to anything required to be disclosed under clause 10 of part 3 of schedule 3 to the LPA, as soon as reasonably practicable after we become aware of the change.

Legal Costs – Your Right to Know

You have the right to:

- negotiate a costs agreement with us;
- receive a bill of costs from us;
- request an itemised bill of costs after you receive a lump sum bill from us;
- request written reports about the progress of your matter and the costs incurred in your matter;
- apply for costs to be adjudicated within six months if you are unhappy with our costs;
- apply for the costs agreement to be set aside;
- make a complaint to the Legal Profession Conduct Commissioner (if you believe there has been overcharging);
- accept or reject any offer we make for an interstate costs law to apply to your matter; and
- notify us that you require an interstate costs law to apply to your matter.

(b) For more information about your rights, please read the fact sheet titled Legal Costs - your right to know. You can ask us for a copy, or obtain it from the Law Society of South Australia (or download it from their website).

14. GST

If we incur a GST liability in providing legal services, you must pay the amount of the GST liability to us at the same time as you are required to pay our fees.

15. Disbursements

(a) We may recover from you all usual and proper expenses incurred in providing legal services, including search costs, lodgement and registration fees, travel and accommodation costs and fees paid to barristers, experts and others.

(b) We recover expenses at cost to us, net of any GST input tax credit allowable to us.

16. Invoicing

(a) We may invoice you at any time (including more frequently than monthly) for the time we spend and expenses we incur in providing legal services, even if the services are not complete.

(b) We may send you any statements and reminders we consider appropriate in relation to our outstanding invoices.

17. Payment and interest

(a) You are liable to pay our invoices without set off or counterclaim within 7 days of the date of the invoice.

(b) If an invoice is not paid within 30 days of the date of the invoice, we may recover from you interest on the unpaid fees and expenses at the then current cash rate target (as defined in section 61 of the *Legal Practitioners Regulations 2014* (SA)) increased by two percentage points, accruing on and from the date of the invoice.

(c) If you authorise us to recover fees and expenses by debiting a credit or debit card, we may do so unless and until you revoke that authority by written notice to us.

(d) You are liable to pay all costs we incur in recovering or attempting to recover moneys you owe us. Such costs may include legal costs on a solicitor/client basis at rates agreed between us and our own solicitors.

18. Confidentiality

We will keep confidential and not disclose confidential information about you obtained in performing legal services except as needed to perform those services, or required by law, or in seeking a remedy against you.

19. Privacy

(a) We are not bound by but nevertheless endeavour to adhere to the standards set out in the Australian Privacy Principals.

(b) A copy of our privacy policy is available on our website.

20. Email communications

(a) You acknowledge that email communications are inherently insecure, may contain viruses, may be delayed or prevented in transmission or receipt, and may be intercepted by third parties.

(b) We agree, and you agree, to take reasonable steps to ensure all emails and attachments are free of viruses and other malware.

21. Intellectual property rights

Our files are and remain our property. We own the copyright in advice, documents and other works we create for you. You have a licence to use those works for the purpose for which they were intended, conditional upon you having paid for such works.

22. Storage of records

(a) We may agree to hold documents in safe custody for a period of time subject to any special conditions (including payment of a fee) we nominate at the time.

(b) We generally retain records of work for at least seven years, and may destroy records after that time.

23. Third party cheques

Unless you specifically instruct us otherwise, if you provide us with a cheque made payable to a third party, you authorise us to forward the cheque directly to that third party.

24. Litigation

(a) In any litigation, even if the case is won, an order by a court or tribunal for the payment of costs in favour of you will not necessarily cover all of our fees and expenses. In some cases, a losing party cannot be ordered to pay the winning party's costs.

(b) If litigation is lost, you may pay a large portion of the legal costs and expenses of the winning party, in addition to our fees and expenses.

25. Lien

We have a general lien over any documents and property we hold at any time for you, as security for payment of invoices we have issued or may issue. The lien continues even if we no longer act for you.

26. Our publications

We may publish legal updates and other information on matters of interest. You consent to us sending such information to the email address we usually use to communicate with you. You may withdraw your consent at any time by notifying us.

27. Termination

(a) At any time, we or you may terminate any or all of our engagements to provide legal services.

(b) We will not terminate any such engagements except on reasonable notice, unless we are required to terminate immediately due to a conflict or where continuing to act would require us to breach our ethical duties or professional responsibilities (in which case the law may prohibit us from providing reasons for terminating).

(c) We remain entitled to recover our fees and expenses for work performed up to termination.

(d) On termination, and subject to payment of our fees and expenses, you may recover anything in our files that is your property.

28. Conflicts

(a) We will not intentionally become involved in a situation where there is a conflict of duty or interest between us and you and/or any other client of ours, however if this occurs we may be obliged to terminate any or all of our engagements to provide legal services.

(b) If you are two or more persons, then we will act for all of you jointly in relation to the legal services, and you each confirm and warrant to us that you are aware:

(i) there is a possibility that in certain circumstances your individual interests in relation to the legal services might differ, which could mean that our advice and communications, although beneficial to you when viewed jointly, might only benefit one of you individually and might be to another's detriment; and

(ii) despite this, you want us to act for all of you jointly in relation to the legal services (for example because you each want the same outcome, or the best outcome for each other, or to maximise your combined outcome); and

(iii) if for any reason any of you change your mind about this, it is likely that we would then have to stop acting for all of you; and

(iv) even if none of you change your mind, we may have to stop acting for all of you if any conflicts or difficulties arise which we reasonably consider may prevent us from discharging our duties; and

(v) you can avoid the above risks and complications by each having separate legal representation, however you nevertheless want us to act for all of you jointly.