

UX Law Fixed Fee Terms

Cost Agreement and Cost Disclosure in accordance with the Legal Profession Uniform Law (NSW)

Effective Date: 23 October 2020

1 Background and Acceptance of this Agreement

- 1.1 This Agreement sets out the terms of our offer to provide Services to you on fixed fees. It constitutes our costs agreement and disclosure pursuant to the Uniform Law.
- 1.2 If you do not understand or do not confirm anything in this document, please contact us promptly.
- 1.3 Your use and purchase of our Services is subject to this Agreement. This Agreement constitutes a binding legal agreement between you and us, and if you continue to instruct us you are deemed to accept this Agreement. If you do not agree to the Agreement, you must not continue to instruct us or purchase any Services.
- 1.4 We may amend or modify this Agreement at our sole discretion and at any time. Updates will be effective 7 days after they are publicised on the Site. If you are currently receiving any ongoing Services, we will also send you an email notification in relation to the updated Agreement. If you continue to use the Services, you indicate that you have accepted the updated Agreement.
- 1.5 This Agreement will prevail over any other terms or agreement between you and us.

2 Definitions

- 2.1 The following capitalised terms have the following meaning in this Agreement:

Agreement means these Fixed Fee Terms and the Quote.

Costs means all legal costs, including without limitation the Quoted Fee, any additional fees in accordance with our Hourly Rates, and any disbursements.

Delivery Date means any indicative date or time period quoted by us to you in relation to the delivery of Services.

Hourly Rates means our hourly rates in accordance with clause 5, as may be updated from time to time.

Quote means a separate document setting the scope of Services to be provided, usually being:

- (a) a page on our Sites which allows you to directly purchase a Service; or
- (b) a quote document issued by us to you; or
- (c) an email from us to you which clearly sets out the scope of Services and a fixed Quoted Fee.

Quoted Fee means the fee quoted in the Quote in exchange for relevant Services.

Service or Services means legal services.

Trust Account means our legal practice trust account. The details of our Trust Account will be made available to you with a Quote.

Uniform Law means the Legal Profession Uniform Law (NSW).

Uniform Rules means Legal Profession Uniform General Rules 2015 (NSW).

Site or **Sites** means our website at www.uxlaw.com.au or any social media accounts operated by us.

We, we, us, our mean A.C.N. 149 196 734 Pty Ltd trading as UX Law.

You or **you** mean any person who purchases legal services from us on a fixed fee basis.

3 Preconditions

- 3.1 Access to and use of the Services is subject to you being at least 18 years old and having the legal capacity to enter into binding contracts. Accordingly, by instructing us, you warrant the above to us. If the above conditions are not satisfied, please cease instructing us immediately.

4 Scope and Fee

- 4.1 Subject to this Agreement, the scope of the Services we agree to provide to you in exchange for the Quoted Fee is set out in the Quote.
- 4.2 To the extent of any clear inconsistency between the Quote and these Fixed Fee Terms, the provisions of the Quote prevail.
- 4.3 Unless the Quote clearly states otherwise, the following conditions apply to any Quote:
- (a) All Quoted Fees are exclusive of GST.
 - (b) The Quoted Fee stated covers only the initial drafting or reviewing of each Service document, and one round of amendments. If further amendments or negotiation is required, we will charge additional fees in accordance with our Hourly Rates.
 - (c) The Quoted Fee and Delivery Date stated do not include changes of circumstances or instructions. If there is a change of circumstances or instructions, we may charge additional fees in accordance with our Hourly Rates and the Delivery Date may be subject to change.
 - (d) The Quoted Fee and Delivery Date stated are conditional on you providing us timely and complete instructions, payment, and feedback. If you fail to provide instructions, payment or feedback promptly, we will need to spend additional time following up and reacquainting ourselves with your matter. In such circumstances, we may charge additional fees in accordance with our Hourly Rates and the Delivery Date may be subject to change.
 - (e) You are entitled to contact us by phone (during ordinary business hours) and email in relation to the Services, provided this is done on a reasonable and fair basis, and not outside the scope of the Services. If we determine (at our sole discretion) that your correspondence with us has become unreasonable, we may commence charging additional fees in accordance with our Hourly Rates after providing written notice to you.
 - (f) The Delivery Date is stated is strictly an estimate and we will not be liable if there is a delay in providing the Services beyond the Delivery Date. Also, the Delivery Date refers to the delivery of the first draft of the Services. The delivery of the complete Service is often dependent on factors outside of our control, including without limitation, feedback from you or third-parties (such as opposing lawyers).
 - (g) Any Services which are not specifically included in the Quote are strictly out of scope and accordingly are not included in the Quoted Fee stated in the Quote. If you require any out of scope Services, you must obtain a separate Quote from us in relation to those Services or they will be charged in accordance with our Hourly Rates.

- (h) If you require Services to be provided on an urgent basis or outside of ordinary business hours (including weekends, public holidays, and where the relevant staff member is on holidays), we reserve the right to charge an uplift fee of 15% on top of the Quoted Fee.

5 Hourly Rates

- 5.1 Where this Agreement states that we will provide services in accordance with our Hourly Rates, the applicable rates are:

Position	Hourly Rate (Ex-GST)	Hourly Rate (Inc-GST)
Director	\$500	\$550
Senior Associate	\$400	\$440
Lawyer	\$300	\$385
Paralegal or assistant	\$200	\$220

- 5.2 You will be proportionately charged for work involving shorter periods less than an hour. Our charges are structured in 6-minute units. For example, the time charged for a task of up to 6 minutes will be 1 unit and the time charged for a task between 6 and 12 minutes will be 2 units.
- 5.3 Our Hourly Rates are reviewed on a regular basis and may change during the course of a matter. You will be given 7 days' notice in writing of any changes to our Hourly Rates.
- 5.4 When we charge in accordance with our hourly rates, some of the variables which may affect and change the Quoted Fee include:
- (a) the number and duration of telephone calls or other communications;
 - (b) your prompt and efficient response to requests for information or instructions;
 - (c) whether your instructions are varied;
 - (d) whether documents have to be revised in light of varied instructions;
 - (e) the lawyer or other persons with whom we deal and the level of co-operation of the lawyer's clients and other persons involved;
 - (f) changes of circumstance relating to your matter;
 - (g) changes in the law; and
 - (h) the complexity or uncertainty concerning legal issues affecting your matter.

6 Disbursements and Other Costs

- 6.1 We may incur disbursements (being money which we pay or are liable to pay to others on your behalf). Disbursements include (without limitation) search fees, registration fees, filing fees, process server fees, expert fees, witness expenses, travel expenses, transcript expenses and barrister's fees.
- 6.2 Unless otherwise stated, disbursements are not included in the Quoted Fee stated in the Quote.
- 6.3 We do not charge you for any internal expenses such as printing, photocopying, postage and telephone.

7 Commencement of Services

- 7.1 Prior to us commencing work on any Services, you must:
- (a) deposit the entire Quoted Fee into our Trust Account;
 - (b) provide us with any instructions we ask for; and
 - (c) comply with any onboarding requirements we may have, including without limitation any "Know Your Client" procedures.

We are entitled to refuse to commence work on any Services until these conditions have been fulfilled to our satisfaction.

- 7.2 We are entitled at our sole discretion to refuse to provide any Services for any reason, including if we have already issued a Quote. A Quote is an 'invitation to treat', and not be construed as a binding offer for Services.
- 7.3 In the event that you have deposited funds into our Trust Account and we have determined to refuse to provide Services, we will provide a refund (less any reasonable deductions for time spent by us) after you provide us with your bank details.

8 Billing, Payment and Trust Account

- 8.1 Our usual policy is to issue a tax invoice on delivery of the first draft of a Service, but we may issue tax invoices on a more frequent basis depending on the nature of the Service and work. The tax invoice may include all Costs chargeable under this Agreement.
- 8.2 If we receive money on your behalf we will deposit the money into our Trust Account.
- 8.3 You irrevocably authorise and direct us:
- (a) to receive on your behalf any moneys due to you in the course of or as a result of acting for you;
 - (b) to deduct from any such moneys as may be received by us and to transfer to our own account, such amount or amounts as are necessary to pay any amount owed by you to us (including without limitation, Costs), provided a statement of account is provided to you within 2 business days of such payment; and
 - (c) in the event we receive money to be paid to a third party, to forward that money to the third party unless the client instructs us to do otherwise.
- 8.4 To the extent a tax invoice is not fully paid out of money deposited into our Trust Account, the outstanding amount of the tax invoice is due and payable 14 days from the date of the tax invoice.
- 8.5 Interest at the maximum rate prescribed in Rule 75 of the Uniform Rules (being the Cash Rate Target set by the Reserve Bank of Australia plus 2%) will be charged on any amounts unpaid after the expiry of 7 days after a tax invoice is given to you. Our tax invoices will specify the interest rate to be charged.
- 8.6 Where applicable, GST is payable on our Costs and will be clearly shown on our tax invoices. By accepting this Agreement you agree to pay us an amount equivalent to the GST imposed on these charges.
- 8.7 You consent to us sending our tax invoices to you electronically at your usual email address or mobile phone number as specified by you.
- 8.8 You authorise us to receive directly into our Trust Account any judgment or settlement amount, or money received from any source in furtherance of your work. A trust statement will be forwarded to you upon completion of the matter

9 Recovery of Costs

- 9.1 The Uniform Law provides that we cannot take action for recovery of Costs until 30 days after a tax invoice (which complies with the Uniform Law) has been given to you.

10 Your Rights

- 10.1 It is your right to:
- (a) negotiate this Agreement (being a costs agreement) with us;
 - (b) negotiate the method of billing (e.g. task-based or time based);
 - (c) request and receive an itemised bill within 30 days after a lump sum bill or partially itemised bill is payable;
 - (d) seek the assistance of the designated local regulatory authority (the NSW Commissioner) in the event of a dispute about Costs;
 - (e) be notified as soon as is reasonably practicable of any significant change to any matter affecting Costs;
 - (f) accept or reject any offer we make for an interstate costs law to apply to your matter; and
 - (g) notify us that you require an interstate costs law to apply to your matter.
- 10.2 If you request an itemised bill and the total amount of the 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 bill is given, we inform you in writing that the total amount of the 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 section 292 of the Uniform Law.
- 10.3 Nothing in these terms affects your rights under the Australian Consumer Law.

11 Your Rights in Relation to a Dispute Concerning Costs

- 11.1 If you have a dispute in relation to any aspect of our Costs you have the following avenues of redress:
- (a) 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 of resolving the matter promptly and without it adversely impacting on our business relationship;
 - (b) you may apply to the Manager, Costs Assessment located at the Supreme Court of NSW for an assessment of our Costs. An application for assessment must be made within 12 months after:
 - (i) the final bill in this matter was provided;
 - (ii) request for payment made: or
 - (iii) after the Costs were paid.

12 Principal Responsibility

- 12.1 Unless otherwise stated in the Quote, the lawyer with principal responsibility for assisting you is Eric Shmilovits (Director).

- 12.2 You may contact Eric Shmilovits at eric@uxlaw.com.au to discuss Costs or other issues relating to principal responsibility.

13 Retention of Your Documents

- 13.1 On completion or termination of the Services, we will send you by post any original documents we hold on your behalf. Your acceptance of this Agreement constitutes your authority for us to destroy the file after those 7 years. We are entitled to retain your documents while there is money owing to us for our Costs.
- 13.2 You will be liable for the cost of storing and retrieving documents in storage and our Costs in connection with this.

14 Marketing

- 14.1 We like to display our portfolio of successful clients and provide links to any positive press announcements relating to our clients on our Sites. Unless you notify us otherwise in writing:
- (a) we may display information about you, your business or the key contact details including without limitation names, website and LinkedIn links, logos and photos on our Sites;
 - (b) we may display and link positive press articles or announcements about you or your business on our Sites;
 - (c) we may display any testimonial or review you have provided to us on our Sites.
- 14.2 You are entitled to withdraw your consent to this clause 14 at any time by providing us written notice, at which point we will take reasonable steps to remove any marketing material to the extent of our ability and within a reasonable time (for example, some testimonials or reviews cannot be removed from third-party sites).

15 Intellectual Property Rights

- 15.1 You agree that all intellectual property rights and ownership in connection with the Services vest solely in us.
- 15.2 We grant you a limited, perpetual licence to use the Services for the purpose disclosed in your instructions only.
- 15.3 You must not do anything which breaches or otherwise interferes with our intellectual property rights. Unless otherwise agreed in writing, you may not distribute, reproduce, publish, alter, modify or create derivative works from the Services content without our prior written permission or the relevant third-party licensor, or exploit such contents for commercial benefit. This includes, without limitation, sending any of our materials and documents to another person to be used, replicated or adapted, or for anything which is not directly related for the matter you engaged us for.
- 15.5 You acknowledge and agree that damages may not be an adequate remedy for a breach of this clause 15 and that equitable or injunctive relief may be necessary.

16 Termination by Us

- 16.1 We may cease to act for you or refuse to perform further Services, including:
- (a) while any of our tax invoices remain unpaid;
 - (b) while you have failed to make a deposit into our Trust Account;

- (c) if you do not within 7 days comply with any request to pay an amount in respect of disbursements or future Costs;
 - (d) if you fail to provide us with clear and timely instructions or feedback to enable us to advance the Services;
 - (e) if you refuse to accept our advice;
 - (f) if you indicate to us or we form the view that you have lost confidence in us;
 - (g) if there are any ethical grounds or legal grounds which we consider require us to cease acting for you, including without limitation, a conflict of interest or because you have instructed us to do something which is unethical or in breach of any law or regulation;
 - (h) for any other reason outside our control which has the effect of compromising our ability to perform the Services required within the required timeframe;
 - (i) if in our sole discretion we consider it is no longer appropriate to act for you; or
 - (j) for just cause.
- 16.2 We will give you a written notice of termination of the Services within a reasonable time. You will be required to pay our Costs incurred up to the date of termination.

17 Termination by You

- 17.1 You may terminate the Services by written notice at any time. However, if you do so you will be required to pay our Costs incurred up to the date of termination on the basis of Hourly Rates (including if the matter is litigious, any cancellation fees or other fees such as hearing allocation fees for which we remain responsible).

18 Lien

- 18.1 Without affecting any lien to which we are otherwise entitled at law over funds, papers and other property of yours:
- (a) we shall be entitled to retain by way of lien any funds, property or papers of yours, which are from time to time in our possession or control, until all Costs, disbursements, interest and other money due to us have been paid; and
 - (b) our lien will continue notwithstanding that we cease to act for you.

19 Privacy

- 19.1 We will collect personal information from you in the course of providing our Services. We may also obtain personal information from third party searches, other investigations and, sometimes, from adverse parties.
- 19.2 We are required to collect the full name and address of our clients by Rule 93 of the Uniform Rules. Accurate name and address information must also be collected in order to comply with the trust account record keeping requirements of Rule 47 of the Uniform Rules and to comply with our duty to the courts.
- 19.3 Your personal information will only be used for the purposes for which it is collected or in accordance with the *Privacy Act 1988* (Cth). For example, we may use your personal information to provide advice and recommendations that take into account your personal circumstances.

- 19.4 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.
- 19.5 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 Australian Securities and Investments Commission, the Office of State Revenue, PEXA Limited, the Land and Property Information Division of the Department of Lands, the Registrar General, Australian Tax Office, AUSTRAC and third parties involved in the completion or processing of a transaction.
- 19.6 We do not disclose your information overseas unless your instructions involve dealing with parties located overseas. If your matter involves parties overseas we may disclose select personal information to overseas recipients associated with that matter in order to carry out your instructions.
- 19.7 We manage and protect your personal information in accordance with our privacy policy which can be found on our Site or a copy of which we shall provide at your request. Our privacy policy contains information about how you can access and correct the personal information we hold about you and how you can raise any concerns about our personal information handling practices. For more information, please contact us in writing via email.

20 Sending Material Electronically

- 20.1 We are able to send and receive documents electronically. However, as such transmission is not secure it may be copied, recorded, read or interfered with by third parties while in transit. If you ask us to transmit any document electronically, you release us from any claim you may have as a result of any unauthorised copying, recording, reading or interference with that document, for any delay or non-delivery of any document and for any damage caused to your system or any files.

21 Disclaimer and Limitation of liability

- 21.1 The limitations, exclusions and disclaimers provided in this clause are provided to the maximum extent permitted by law.
- 21.2 OUR LIABILITY IS LIMITED BY A SCHEME APPROVED UNDER PROFESSIONAL STANDARDS LEGISLATION.
- 21.3 Our liability arising in connection with this Agreement or the platform is limited as follows:
- (a) we exclude all liability for consequential, special, indirect or remote loss, including loss of profits, opportunity or business;
 - (b) we exclude all liability for non-economic loss, including without limitation loss of enjoyment, dissatisfaction, disappointment, unhappiness, and loss of reputation;
 - (c) our liability is excluded to the extent that you contributed to the liability or failed to strictly follow our advice;
 - (d) we exclude all liability for anything you have been aware of for longer than six (6) months and you have not commenced a claim in a court of competent jurisdiction; and
 - (e) our liability is subject to your duty to mitigate your loss.
- 21.4 All subclauses of this clause 21 are cumulative to one another.

22 Release and Indemnity

- 22.1 To the maximum extent permitted by law, you agree to release the Released Parties from all Loss or Claims arising out of or in any way connected with any Released Matter.
- 22.2 To the maximum extent permitted by law, you agree to indemnify (and keep indemnified), defend and hold harmless the Released Parties from any Loss or Claims arising out of or in any way connected with any Released Matter.
- 22.3 In this clause:
- (a) **Claim** means a claim, action, proceeding or demand made against a person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.
 - (b) **Loss** means a damage, loss, cost, expense or liability incurred by the person concerned however arising, including without limitation penalties, fines, and interest and including those which are prospective or contingent and those the amount of which for the time being is not ascertained or ascertainable.
 - (c) **Released Parties** means us and our officers, directors, shareholders, agents, employees, consultants, contractors, associates, affiliates, subsidiaries, related parties, related body corporates, sponsors, and other third-party partners.
 - (d) **Released Matter** means anything in connection with:
 - (i) any damage to person, property, personal injury or death;
 - (ii) your breach of this Agreement;
 - (iii) any matter for which we have purported to disclaim or exclude liability for under this Agreement;
 - (iv) your failure to provide us with timely, accurate and complete instructions and feedback, including but not limited to prompt notice of any changed instructions, a change of circumstance, or facts which may be relevant to your matter or the Services;
 - (v) your failure to follow our advice;
 - (vi) your breach or failure to observe any applicable law.

23 Costs Payable and Recoverable on Litigation Outcome

- 23.1 In litigation, even if you are successful in proceedings and have a costs order in your favour it is unlikely that you will recover all of the Costs you must pay us from another party. If you do have a costs order in your favour, it may still be necessary to seek to enforce such costs order (eg, through the assessment system). This can be time-consuming and costly. The possible costs associated with such potential enforcement proceedings are not dealt with in this document, but will be advised to you should the relevant circumstances arise. It is also possible that you cannot recover the costs from the other party (for example if the party goes into liquidation or becomes bankrupt); nonetheless you will still have to pay us, prior and irrespective of you actually receiving anything from another party.
- 23.2 If you lose the litigation, then you will likely have to pay the costs of the other party - either an amount you can both agree on or if no agreement can be reached then an amount of costs assessed by a costs assessor as payable. However, the Court always has a discretion in relation to costs orders.

24 General

- 24.1 All email notices under this Agreement are taken to be read on the day they are received, unless they are received after 5 PM or on a day which is not a business day in New South Wales, in which case they are deemed to be read on the next business day.
- 24.2 You must not assign, sublicense or otherwise deal in any other way with any of your rights under this Agreement.
- 24.3 If a provision of this Agreement is invalid or unenforceable it is to be read down or severed to the extent necessary without affecting the validity or enforceability of the remaining provisions.
- 24.4 This Agreement is governed by the laws of New South Wales and each party submits to the exclusive jurisdiction of the courts of New South Wales and all courts of appeal from there.
- 24.5 Any waiver of any term on this Agreement by us can only be done in express writing. Any failure on our part to enforce a term does not constitute a waiver and we reserve the right in relation to all breaches unless expressly stated otherwise.
- 24.6 The contents of this Agreement constitute the entire agreement between the parties and supersede and wholly exclude any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this agreement, whether orally or in writing.
- 24.7 A provision of this Agreement which can and is intended to operate after its conclusion will remain in full force and effect – including all indemnities and releases.

Signing

PLEASE BE AWARE THAT IN ACCORDANCE WITH CLAUSE 1.3, YOU ARE TAKEN TO HAVE READ AND ACCEPTED THIS AGREEMENT IF YOU CONTINUE TO INSTRUCT US - EVEN IF YOU DO NOT SIGN BELOW.

If you are signing on behalf of an entity (for example, a company, trust, partnership or another organisation or entity), the person signing warrants and represents to us that they have full and complete authority to sign and accept this Agreement on behalf of the entity, and any internal processes have been fully complied with by the entity.

Executed by you, the client

sign here ►

print name

Executed by us, A.C.N. 149 196 734 Pty Ltd trading as UX Law

sign here ► 

print name Doron Shmilovits, Director

