

**Term and Conditions of Service**

**1 Definitions**

- 1.1 “Attorney/s” - Stephen Merril Mileman trading as Mileman & Associates, or his qualified professional employees, correspondents or other duly authorised agents;
- 1.2 “Counsel” - any advocate employed by the attorneys;
- 1.3 “Correspondent” – Any other attorney employed or contracted by the attorneys for any reason, such as, but not restricted to attorneys in other areas of jurisdiction;
- 1.4 “Law Society” - The Law Society of The Northern Provinces or its successors;
- 1.5 “the client” - the person who gave the instructions to the attorneys or the entity which he/she is duly authorised to represent, or both, being jointly and severally liable, the one paying the other to be absolved;
- 1.6 “outsourced services” all services such as advocates, correspondent attorneys, international attorneys, accountants, experts, tracing agents, delivery and filing services or any other service that the attorney may reasonably require in order to fulfil his mandate.
- 1.7 “the rate” Fees shall be charged at the rate of R1,350,00 per hour plus VAT unless a different rate is agreed in writing by the parties.

**2 Fees**

- 2.1 The attorneys charge for the time they spend on behalf of the client in carrying out his specific, tacit or implicit instructions by the hour.
- 2.2 The tariff in all Courts is waived as a basis for the charging of fees in litigious matters. The client shall pay the attorney on the basis and at the rate set out in clause 1.7 above.
- 2.3 The rules of court that apply to rule 28 in the Central Divorce Court or in the case of rule 43 in the Uniform Rules of Court shall not apply to any matter taken on by the attorneys who shall be entitled to charge for work in regard to matters in this regard on the same basis as set out in clause 1.7 above.
- 2.4 All litigious fees shall be assessed by the Law Society of the Northern Provinces on the basis set out in this mandate.
- 2.5 The person who consults with the attorney warrants his authority to represent the client in all dealings.
- 2.6 Notwithstanding that the client may from time to time give instructions to the attorneys to render accounts to a particular entity, such instructions shall not affect the liability of the person who gave the instructions to the attorney.
- 2.7 Travelling charges when the attorney is required to attend on the client at a place other than his office shall be charged at the same rate as for consultations.
- 2.8 All telephone calls made to the client or on the client’s behalf shall be regarded as consultations and charged at the same hourly rate as for consultations. The client acknowledges that he always retains the right make an appointment for a face-to-face consultation. The convenience of the telephone, internet call or conference call remains a convenience to save the client time, but will not reduce the time spent by the attorney in conducting such service.
- 2.9 Accounts shall be paid on presentation of an invoice or statement of account unless otherwise agreed in writing. Credit is not an automatic right granted to the client.

- 2.10 The attorneys shall be entitled to set-off any amounts owed to them for any reason whatsoever against any amounts of whatsoever nature being held in trust for payment to the client prior to making payment to the client or honouring any undertaking the attorneys may have given to the client or on behalf of the client.
- 2.11 The attorneys shall specifically be entitled to set off money received for the client in one matter against fees payable in another matter, all amounts collected and all amounts owed shall be regarded as being inseparable, whether retained in one or more trust or investment accounts or otherwise, unless the attorney has specifically agreed otherwise in writing.
- 2.12 Under no circumstances shall the attorney be obliged to make payment to the client of any moneys of whatsoever nature owing to the client, while amounts due to the attorneys remain payable to the client.
- 2.13 Should a dispute arise in regard to the payment of moneys to the client, the attorney shall be entitled to retain sufficient funds from the moneys payable to the client to secure the moneys owing to the attorney.
- 2.14 Moneys being held in trust for payment to a client for one matter maybe used to pay amounts incurred in respect of any other matter being handled by the attorney on behalf of the client.
- 2.15 If the client is a legal entity, the attorneys are authorised to make payment out of moneys being held for payment to that entity in respect of amounts owing by any director or a shareholder, member or trustee of that entity who has represented the entity in giving instructions to the attorneys.
- 2.16 Interest shall be charged at the rate of 2 % per month 30 days from the date of the end of the month in which the work was invoiced, alternatively, at the maximum rate allowed by law from time to time from due date to date of payment of the account which ever is the lower.

**3 Outsourced Services**

- 3.1 The client authorises the attorneys to make use of outsourced services where they, at their discretion deem it necessary and to charge the client for the fees they are charged for such services.
- 3.2 The client shall bear any costs incurred in resolving any dispute regarding counsel’s fees on the same basis as he would have, had for all other work.

**4 Interest on Credit Balances and Investments**

- 4.1 Money which the client indicates in writing in the form required in terms of the Bye Laws, that he wishes the attorney to invest (“the investment”) shall, unless otherwise agreed between the parties in writing, be invested on the basis set out below.
- 4.2 Unless otherwise instructed, the investment shall be placed on daily call with Nedbank Limited at whatever rate the bank is prepared to offer for such investment.
- 4.3 The client shall bear all banking charges in regard to the investment, which amount shall be deducted from the investment.
- 4.4 An investment made on the above basis shall not enjoy the protection of the Fidelity Fund.
- 4.5 The attorney shall be entitled to charge a fee of, 0,1% (comma one percent) per month to invest the investment unless otherwise agreed.

4.6 The attorney is not an expert in the investment of money and does not undertake to obtain the best investment on moneys paid to him and he will not be liable for any damages whatsoever for advice given in regard to investments.

4.7 It not being the attorneys' core business, the attorney shall not be liable for any damages whatsoever for failing to carry out the client's instructions regarding the investment promptly unless specific instructions are given in writing and accepted in writing by the attorney.

**5 FICA**

5.1 Should it be necessary for any reason for the attorney to undertake or carry out any certification in regard to the funds entrusted to him by the client, the client shall be liable for the attorneys normal fees charged on a time basis for carrying out such work required by the prevailing laws

**6 Assessment of Fees**

6.1 Should the client require the fees to be assessed at any stage, he shall advise the attorney in writing.

6.2 Prior to preparing an account for submission to the law society for taxation the client shall make payment of the full amount of the fee into the attorneys trust account to be held pending determination of the taxation.

6.3 In addition to the fee charged the client shall pay a preparation fee of R5000,00 to the attorney for the cost of preparing an account for taxation by the law society involved, or should the Taxing Master of a Court having jurisdiction if for some reason the account requires taxation by that entity.

6.4 The above preparation fee shall be taken into account in settlement of any moneys owing by the client, having regard to any costs for which the client shall be liable in terms of the agreement.

6.5 In preparing invoices, the client acknowledges that the attorney may not include all the time charged in respect of the work carried out by him. He does not, however, waive his right to raise a charge for the work not charged for, should the account not be paid on due date.

6.6 If it is necessary to draw a detailed bill of costs, the attorneys reserve the right to reassess the amount of work done on behalf of the client and to claim the full reassessed amount thereof.

6.7 The client agrees to an assessment of the fees by the Law Society whether the nature of the work done is litigious or not. If the assessment committee assess the fees at an amount that is within 5% of the fees invoiced to the client prior to the assessment, the client shall be liable for the cost of all work done in preparation for the assessment, the time spend travelling to the assessment and attending the hearing and all other necessary costs at the same rate per hour as is either set out above in clause 1.7 herein or agreed between attorney and client.

**7 Disputes**

7.1 If no objection to the fees charged is raise within one month after the invoice is sent to the client, the client waives any right to query the fees charged in respect of specific items.

7.2 The client specifically waives the right to withhold payment for fees in one matter for the reason that there is a dispute over fees charged in another matter.

7.3 If the client disputes the fees charged he shall nevertheless pay those

fees into the attorneys trust account to be retained by the attorney pending resolution of the dispute. Upon resolution of the dispute, the attorney may immediately appropriate such moneys towards interest, costs and disbursements in that order or any other the attorney chooses.

7.4 Any dispute arising of whatsoever nature between attorney and client shall be resolved by arbitration by a single arbitrator who shall be an attorney chosen by the Law Society.

7.5 The arbitrator shall have plenary powers and absolute discretion to determine the rules to apply to the arbitration procedure, including whether to determine some or all issues on the basis of written submissions.

7.6 The arbitrator shall be entitled to summon the parties in writing to appear before him at a time and place most convenient to the arbitrator. Should a party who has been duly summoned fail to appear, the arbitrator shall be entitled to proceed or adjourn the proceedings or and make such award or determination as he deems fit.

7.7 The arbitrator shall proceed as quickly and expediently as possible with a view to resolving the issues and he shall be entitled to evaluate the truth or relevance of any evidence based on probabilities that are in his discretion appropriate having regard to the seriousness of the matter, without the need to strictly apply the laws of evidence.

7.8 Notwithstanding anything contrary set out in this agreement, the attorney shall have the right to sue or to approach a Court having jurisdiction for such relief as may be appropriate, including the winding up of a company or close corporation or the sequestration of a person or a trust.

**8 Domicilia and Notices**

8.1 **The parties choose as their *domicilium citandi et executandi***, for all purposes under this Agreement, whether in respect of Court processes, notices or other documents or communications of whatsoever nature, the addresses set opposite the party's name above in this agreement.

**9 General**

9.1 The interpretation of this document shall be governed by the laws of interpretation.

9.2 The client waives any right to request the attorneys or the practice, if a company to put up security for costs for any reason whatsoever or in terms of any law whatsoever.

9.3 No amendment of this agreement or consensual cancellation thereof or any part thereof shall be binding on the parties unless it is recorded in writing.

9.4 No relaxation or indulgence which any one party may show to the other shall in any way prejudice affect or be deemed to be a waiver of that party's rights in terms of this agreement, nor shall such relaxation or indulgence preclude or estopp that party from exercising its rights in terms of this agreement in respect of any further breach.

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