



Allen Burtt Legal Services

Business and Commercial Law

Standard Terms and Conditions

This document sets out the terms and conditions upon which Allen Burtt Legal Services agrees to accept your instructions and perform legal work for you. It includes a costs agreement and explains your legal rights in relation to legal costs.



Business and Commercial Law

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Introduction

This document explains how legal costs are charged and your rights in relation to those costs. It also sets out the terms and conditions upon which Allen Burt Legal Services (**ABLS**) agrees to accept and carry out your instructions and charge legal costs. Please read the document carefully and feel free to contact Allen Burt (T 8373 3611 or E amburtt@amburtlegal.com) if you have any queries. You may also seek advice from another legal practitioner regarding these terms and conditions if you wish.

In relation to legal costs, you have the right to:

- Negotiate a costs agreement with ALBS.
- Request an itemized bill of costs after you receive a lump sum bill from ABL.
- Request written reports about the progress of your matter and the costs incurred in your matter.
- Apply for costs to be adjudicated within 6 months if you are unhappy with ABL 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 ABL makes for an interstate costs law to apply to your matter.
- Notify ABL that you require an interstate costs law to apply to your matter.

For more information about your rights, please read the fact sheet titled Legal Costs - your right to know. You can ask ABL for a copy, or obtain it from the Law Society of South Australia or download it from their website - <https://www.lawsociety.sa.gov.au/>.

These terms and conditions constitute an offer by ABL to enter into a costs agreement with you to which Schedule 3 of the Legal Practitioners Act 1981 (S.A.) applies or is to apply. The offer can be accepted by you in writing or by conduct. Conduct that will constitute acceptance is if you continue to instruct ABL in your legal matter after ABL has brought these terms and conditions to your attention.

Terms and Conditions - including a costs agreement

1. Who is the client?

- 1.1 When you instruct ALBS:
 - (a) in your personal capacity, you are the client;
 - (b) on behalf of an incorporated association, the association is the client;
 - (c) on behalf of a company, the company is the client;
 - (d) on behalf of a partnership, each partner is the client; or
 - (e) on behalf of a trust, each trustee is the client.
- 1.2 If you instruct ABL on behalf of another person you warrant that you have authority to give those instructions. ABL may require the person to provide written confirmation of your authority and his or her agreement to be bound by these terms and conditions.
- 1.3 If ABL is instructed to act for more than one person the liability of each person under these terms and conditions is joint and several.

2. Scope of legal work

Your instructions determine the scope of the legal work. After you first instruct ABLS will write to you confirming the scope of the legal work that you have asked ABLS to carry out. You may vary your instructions but note that this may alter the scope of the legal work and legal costs.

3. Giving instructions

- 3.1 You agree to provide instructions to ABLS as and when necessary to progress your legal matter. You agree to reply to correspondence, emails and return telephone calls when reasonably required. If you do not provide instructions as and when necessary ABLS may be unable to progress your legal matter and may cease to act for you. ABLS may require your instructions in writing before carrying your instructions.
- 3.2 You must promptly inform ABLS of any change to your instructions upon becoming aware of the change or any other circumstance that may materially affect your ability to provide instructions or that may adversely affect your ability to pay any legal costs.
- 3.3 ABLS cannot accept or complete instructions if they are false or misleading. If your instructions involve an allegation of criminality, fraud or serious misconduct against another person, the allegation must be relevant to your legal matter and supported by evidence or other material to justify the allegation before ABLS can implement those instructions.
- 3.4 You consent to ABLS recording verbal instructions to maintain accurate records, review and complete your instructions and comply with professional obligations relating to the client solicitor relationship. Such communications are confidential (see clause 5).

4. Performing legal work

ABLS agrees to follow your competent and lawful instructions, provide legal services in respect of your matter as competently and as promptly as is reasonably practicable, act in your best interests in any legal matter in which ABLS represents you and assist you to understand the legal issues and make informed choices reasonably available to you. The legal advice ABLS provides will be based on the law and court decisions in force at the time that ABLS provides the advice and will not take into account pending changes to the law or unresolved appeals from court decisions.

5. Confidentiality

- 5.1 ABLS will not communicate to any third party confidential information concerning you or your legal matter and will where appropriate assert legal professional privilege on your behalf. However, you authorize ABLS to disclose information relating to your legal matter in the following circumstances:
 - (a) where necessary to carry out your instructions;
 - (b) where the information has lost its confidentiality;
 - (c) where required by law or a court or tribunal to disclose the information;
 - (d) for the purpose of avoiding the probable commission of a serious criminal offence; or
 - (e) to prevent serious and imminent physical harm to you or another person.
- 5.2 Legal costs incurred in resolving or maintaining any claim for confidentiality or legal professional privilege on your behalf are charged to your legal matter.

6. Taxation advice not included

Unless ABLS expressly agrees, the scope of the legal work ABLS undertakes for you does not include the provision of advice on the taxation or revenue implications of your legal matter. It is your responsibility to obtain independent accounting and financial advice concerning any taxation or revenue implications that affect your legal matter.

7. Legal costs

7.1 Legal costs are the monies you may be charged or become liable to pay in respect of your legal matter and are described below.

7.2 Professional Fees

- (a) ABLS charges for legal services on a time cost basis. This means my fees are calculated by reference to the amount of time ABLS spends working on your legal matter. The hourly fee rate is \$320.00 per hour exclusive of GST. That rate will apply to your legal matter unless ABLS has expressly agreed in writing to a different rate or fixed fee. ABLS fees are calculated pro-rata for a part hour. The minimum unit of time recorded for any item of work is 2 minutes. If an item of work takes less than two minutes it is rounded up.
- (b) ABLS may change my fee rate to reflect increases to the cost of living or running a legal practice. In that event, ABLS will write to you to confirm any change to the fee rate. You are not obligated to accept a change to the fee rate. If you do not accept the change, then ABLS may cease acting for you. Your acceptance of a change may be communicated to ABLS expressly or by paying bills that have been calculated using that rate.
- (c) ABLS may agree to a fixed fee in some legal matters. In that event my fees will be the fixed regardless of the amount of time spent working on your matter. A fixed fee agreement must be in writing and expressed as such. Note that a fixed fee agreement is **not** the same as an estimate. An estimate is provided to you to assist you to understand the potential total legal costs that may be incurred in your legal matter and is not binding on you or ABLS.

7.3 Barrister's Fees

- (a) If your legal matter involves litigation, barrister's fees can, and often do, constitute a large component of the legal costs. They are determined by the barrister having regard to his or her experience and expertise. Barrister's fees are negotiable, but a barrister is only required to accept a brief if the fee that is offered is acceptable to the barrister.
- (b) If you instruct ABLS to engage a barrister for your legal matter ABLS will ask the barrister to provide a written estimate of his or her fees, confirm that the estimate is acceptable to you and request that you deposit monies into ABLS trust account to enable ABLS to pay the fees. ABLS will not be required to accept or complete your instructions or do further work on your legal matter until those monies have been deposited into ABLS trust account.
- (c) Under the South Australian Bar Association Inc. Barristers' Conduct Rules, a barrister may refuse or return a brief if the solicitor does not agree to be responsible for the payment of the barrister's fee. The usual practice is for the barrister to require such agreement. As such, suitable arrangements must put in place for the payment of the barrister's fees before engaging the barrister.

7.4 File Costs

File costs are out of pocket expenses or administrative fees attributable to your legal matter and are recoverable in the same manner as professional fees. Common file costs are the cost of telephone calls, emails, facsimiles, parking, binding documents, photocopies, postage, couriers and company or land searches. Other file costs may be charged where they relate specifically to your legal matter. If your legal matter involves litigation, some file costs may not be recoverable even if you are successful in the litigation.

7.5 Disbursements

Disbursements are amounts charged by a third party that relate specifically to your legal matter. These may include charges by accountants, experts, medical practitioners and government departments. They are incurred on your behalf and you are responsible for payment. ABLS will seek your instructions to incur a disbursement if it is more than \$100.00. If your legal matter involves litigation, ABLS will also seek your instructions to incur a disbursement if it is an unusual expense as it may not be recoverable even if you are successful in the litigation. ABLS is not required to accept or complete your instructions or do further work on your legal matter unless you pay the disbursement or deposit monies into ABLS trust account to enable ABLS to pay the disbursement.

8. Goods and services tax applies

- 8.1 You agree to pay or reimburse to ABL the GST applicable to the supply of services that relate to your legal matter.
- 8.2 ABL will render a tax invoice that identifies the GST component. The GST component is payable by you in the same manner as professional fees. Barrister's fees and disbursements may also attract GST. ABL will if required request that the third party provide a tax invoice to you.

9. Estimating the legal costs

- 9.1 The total legal costs in legal matters cannot always be accurately quantified or predicted. Where it is practicable to do so ABL will provide to you an estimate of the total legal costs for your legal matter. Where it is not practicable, ABL will provide an estimate of the total legal costs and an explanation of the major variables that will affect those costs. The estimate will only include barrister's fees (if any), file costs and disbursements known when the estimate is given.
- 9.2 Note that the total legal costs vary depending upon the complexity of the legal matter, the extent of legal work required and other factors that often cannot be accurately predicted in advance. An estimate is ABL's opinion based on the information known when the estimate is given. Some information may not be known or only emerge much later. The estimate may also be based on information supplied by another person (such as a barrister). In some legal matters complexities may emerge which were not anticipated or included in the original estimate.
- 9.3 An estimate is given in good faith, it is not a quote or agreement for a fixed fee and is not binding on you or ABL. The legal costs that are billed to you will be based on the legal work actually done and the fees, file costs and disbursements actually incurred.

10. If the dispute involves litigation

- 10.1 In legal matters that involve litigation you may have the right to recover some of the legal costs that you incur. However, the legal costs described in these terms and conditions are payable by you whether or not you have the right to recover the legal costs from another person.
- 10.2 A court or tribunal may order one party to pay another party's legal costs, but has broad discretion in relation to the making of such orders. The general principle is that the successful party is entitled to an order that the unsuccessful party pay the legal costs that the successful party has incurred. However, if the court or tribunal makes such an order, those costs will be calculated on the scale of costs used by the court or tribunal and are likely to be less, sometimes substantially less, than the legal costs you have actually incurred.
- 10.3 It is also important to understand that an order of a court or tribunal that a party pay your legal costs does not guarantee that you will recover the costs as this also depends upon the other party's capacity to pay. You may also have to incur further legal costs to enforce the costs order of the court or tribunal.
- 10.4 If ABL negotiates a settlement on your behalf, before the settlement is agreed ABL will give you an estimate of any legal costs payable by you if the matter is settled (including any legal costs that you may be required to pay to another party). If applicable, ABL will give you a reasonable estimate of any contribution towards your legal costs that may be recoverable from another person.

11. Legal bills and payment of legal costs

- 11.1 An itemized bill will be provided to you showing how the legal costs are made up. A bill will be rendered upon completion of your legal matter if it is not protracted. If your legal matter is protracted bills will be rendered on an interim basis provided that no bill will be rendered less than 21 days after the delivery of a previous bill.
- 11.2 If ABL discounts the legal costs, the discount will only be valid for 14 days from the date shown on the bill and conditional upon payment of the bill in full within that period. If payment is not received within that period the discount will lapse and ABL may render an amended bill reversing the discount.
- 11.3 If any bill is not paid within 14 days, ABL will be entitled to cease work on your legal matter and/or exercise any other legal rights or remedies that ABL may have and if not paid within 30 days, ABL will be entitled to charge interest equal to 2% above the Reserve Bank of Australia Cash Target Rate as at the date of the bill. Bills rendered by third parties will be payable in accordance with the trading terms of the third party.

- 11.4 Where ABLs acts for you and another person in the same legal matter both of you will be jointly and severally responsible for the payment of ABLs bills whatever arrangements may be made between you and the other person.

12. Security for legal costs

- 12.1 ABLs may request that you provide security for the payment of legal costs if ABLs believes that the costs could be significant. If ABLs requests that you provide security ABLs will not be required to accept or complete your instructions or perform any work on your legal matter until the security has been provided. The cost of preparing and completing the security will form part of the legal costs relating to your legal matter.
- 12.2 Whether or not ABLs requests security, you agree that ABLs will have the first ranking charge over any monies that are payable to you by another person in connection with your legal matter. You irrevocably authorize ABLs to direct that person to deposit the monies into ABLs trust account in respect of your legal matter. You agree that upon the deposit of the monies into my trust account ABLs may give a valid discharge to the person on your behalf. You also agree that monies deposited into ABLs trust account in respect of your legal matter may be applied to pay outstanding legal costs provided that ABLs has complied with Clause 13.3.
- 12.3 If the client is a company ABLs may request its directors and/or shareholders to provide a personal guarantee as security for the payment of legal costs. If ABLs has requested the directors and/or shareholders to provide a guarantee, ABLs will not be required to accept or complete your instructions or perform any work until the guarantee has been provided. The cost of preparing and completing the guarantee will form part of the legal costs relating to your legal matter.

13. Deposit and withdrawal of trust monies

- 13.1 ABLs may from time to time request that you deposit monies into ABLs trust account to meet anticipated legal costs. If ABLs has requested that you deposit monies into ABLs trust account, then ABLs will not be required to accept or complete your instructions or perform any work on your legal matter until those monies have been deposited.
- 13.2 Without limiting Clause 13.1, if your legal matter involves litigation ABLs will ask that you deposit into ABLs trust account the monies reasonably estimated by ABLs to cover the full cost of the trial, including any barrister's fees, witness fees, court charges and anticipated legal costs. ABLs will not be required to prepare your legal matter for trial or accept or complete your instructions or perform any work on your legal matter until those monies have been deposited.
- 13.3 You irrevocably authorize ABLs to withdraw monies that you deposit into ABLs trust account to pay outstanding legal costs relating to your legal matter unless the monies have been deposited for the express purpose of paying a specific disbursement. Before ABLs withdraws monies from ABLs trust account for the payment of legal costs, ABLs will give you (a) a request for payment, referring to the proposed withdrawal; (b) written notice of withdrawal; or (c) a bill relating to the legal costs.
- 13.4 Where monies are deposited into ABLs trust account in respect of your legal matter, you agree that ABLs may transfer those monies to any other legal matter in which ABLs acts for you for the purpose of paying outstanding legal costs except where the monies have been deposited into ABLs trust account for the payment of a specific disbursement.
- 13.5 ABLs is not required to invest monies that you deposit into ABLs trust account unless you request ABLs to do so in writing. ABLs is not a licensed financial adviser and cannot provide investment advice. Any investment must be chosen by you based on your own independent judgment and financial advice. The investment will be at your risk and expense in all things. ABLs may charge professional fees for the time in carrying out your instructions to invest or redeem trust monies. ABLs may ask that you provide a tax file number for the purpose of making or redeeming the investment. You are not required to provide a tax file number but TFN Withholding Tax may be deducted from the monies that have been invested if you do not provide a tax file number.

14. Ceasing to act for breach

If there is a serious or repeated breach of these terms and conditions by you ABLs may cease to act for you. If ABLs ceases to act ABLs will not be required to accept or complete your instructions or do further work on your legal matter. If ABLs elects to continue to do any of those things this will only be on the basis that you have remedied the breach.

15. Terminating instructions or legal work

- 15.1 You have the right to terminate your instructions at any time by giving written notice of termination to ABL. ABL has a like right decline your instructions and terminate my services if there is good cause. Examples of good cause would be where ABL has ceased to act for you, a conflict of interest emerges or the necessary relationship of trust and confidence no longer exists between us.
- 15.2 If the termination or refusal requires the leave, permission or order of a court or tribunal, then any termination or refusal shall be subject to the court granting such leave, permission or order and these terms and conditions will continue to apply until such leave, permission or order is granted. If your legal matter involves litigation, you agree that you will promptly file in the appropriate court or tribunal a notice that you are acting in person in the litigation in which ABL has been acting for you. If you do not promptly file that notice you agree ABL may do so on your behalf.
- 15.4 All legal costs incurred prior up to and including the date of termination remain payable by you. Legal costs that have not been billed are immediately billable to you. Subject to any order by a court or tribunal, you agree that ABL may retain any monies, documents, files and records relating to your legal matter until the legal costs have been paid in full.
- 15.5 Termination of your instructions or ABL legal services does not terminate these terms and conditions, but releases you from the obligation to provide further instructions in respect of your legal matter and the obligation of ABL to do further work on your legal matter.

16. Conflicts of interest

- 16.1 ABL will not intentionally act in a legal matter where there is a conflict of interest of a legal nature between ABL, you or another person. If through inadvertence or unforeseen circumstances a conflict emerges then ABL may be obligated to cease acting for you and decline to accept further instructions from you.
- 16.2 Should you and another person jointly instruct ABL to act in a legal matter, then you agree that by giving those instructions you consent to ABL acting for both parties even although this may require ABL to act in a manner that may otherwise be contrary to your best interests viewed independently. You also agree that ABL may disclose confidential information concerning you and your legal matter to the other person. However, if a conflict of interest of a legal nature does arise, ABL may cease to act for you or the other person or both.
- 16.3 Should you instruct ABL to act against another person for whom ABL has previously acted and ABL agrees to do so, then ABL may cease to act if it would otherwise be improper for ABL to continue acting for you even if there is not a conflict of interest of a legal nature. An example of this would be where acting for you could lead to the use of confidential information relating to the other person without his or her consent.
- 16.4 Legal costs incurred in resolving any conflict of interest will be charged and billed by ABL to you as a separate legal matter.

17. Ownership of documents

- 17.1 Documents created by ABL in the course of your legal matter remain the property of ABL. Where you have requested a copy of any document, the cost of providing that copy will be charged to your legal matter as a photocopying cost. ABL shall be not required to provide any documents or a copy to you if the legal costs have not been paid.
- 17.2 Documents that you provide to ABL remain your property and will be returned on request or at the completion of your legal matter.
- 17.3 ABL owns the copyright and intellectual property in all documents that ABL prepares for you in respect of your legal matter. You may use those documents without restriction for the purpose that they are supplied, but may not copy them or re-use them without the written agreement of ABL.

18. Obligations on completion of legal work

- 18.1 ABL professional obligations to you end upon completion of your legal matter, the termination of your instructions or legal services under these terms and conditions. In the event of any of those things, your file will be closed and ABL will have no obligation to provide any further legal services and will not be responsible for stored documents.

The practice of ABLS is to destroy documents and files after they have been stored for 7 years and you authorize ABLS to destroy my file relating to your legal matter 7 years after closing the file.

- 18.2 If ABLS does store documents for you then the bailment thereby created shall be deemed to be for your sole benefit and ABLS will not be liable for the risk of loss or damage to the documents. ABLS may charge you a reasonable fee for the storage or retrieval of documents.

19. If there is a complaint

- 19.1 You agree that should you have a complaint regarding your legal matter or legal work, then the complaint shall be initially dealt with by mutual discussion and ABLS and you agree to use all reasonable endeavours to resolve the complaint. Where a resolution is reached ABLS and you agree to promptly record the resolution in writing and carry out the terms of the resolution.
- 19.2 If your complaint relates to legal costs, then the avenues referred to in the Introduction are available to you even if you have not discussed the complaint with ABLS.

20. Limitation of liability

To the extent permissible by law, the liability of ABLS to you for any loss and damage relating to the provision of legal services to you or performing legal work for you is limited to and shall not exceed the amount that ABLS is able to recover from the professional indemnity insurer of ABLS. You also acknowledge that the liability of ABLS is limited by a scheme approved under Professional Standards Legislation.

21. Entire agreement

These terms and conditions represent the entire agreement between you and ABLS and any other statements or representations concerning the subject matter of these terms and Conditions are expressly negated to the full extent permitted by law applicable in South Australia.

22. Applicable law

These terms and conditions are governed by the law of South Australia and you and ABLS agree to submit to the jurisdiction of the courts of that State in respect of anything relating to these terms and conditions. You and ABLS also agree that the courts of that State are the proper and most convenient forum for dealing with any legal dispute under these terms and conditions. Note that this also means that the law of South Australia applies to legal costs in relation to your legal matter.

23. Variation of these terms and conditions

ABLs may vary these terms and conditions from time to time. Unless you agree to the contrary any variation will only apply to legal matters in which you first instruct ABLs after the publication of the variation, unless ABLs is required by law to apply the variation to all legal matters in which ABLs acts. You may terminate your instructions if you do not agree to the variation.

24. Giving of notices

Notice under these terms and conditions may be given by any lawful means, including by email transmission to the last known email address of the intended recipient of the notice. Where notice is sent by email transmission it will be deemed to be received by the intended recipient on the date of transmission unless the email transmission is returned to the sender undelivered. In the case of any dispute concerning the giving of notice, the person giving the notice shall bear the onus of proving that notice was sent and the intended recipient of the notice shall bear the onus of proving that the notice was not received.

25. Interpretation of these terms and conditions

In these terms and conditions where the context requires or permits "you" and "your" refers to the client and any person to or for whom ABLs provides legal services when carrying out your instructions; "instruct" and "instructions" refer to instructions to perform legal work in respect of your legal matter; "person" includes an incorporated association, company, each partner of a partnership and each trustee of a trust. The plural includes the singular and vice versa. Words defined in Schedule 3 of the Legal Practitioners Act 1981 (S.A.) have the same meaning in these terms and conditions. If any provision of these terms and conditions is void, voidable or unenforceable, then such provision shall be read down so that it is valid and enforceable. If such provision cannot be read down, then it shall be severed with the remaining terms and conditions remain in full force and effect.