



ABN 90 127 616 906

1 July 2010

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To whom it may concern:

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forensic@cutcher.com.au

Re: Fixed price valuation of single entity for Family Law proceedings

This letter sets out the terms and conditions which apply to matters where we are instructed to provide a fixed price valuation of a single entity for Family Law proceedings.

If you have any questions regarding these terms and conditions, you should contact us prior to accepting these terms and conditions and instructing us to complete a report.

1.0 PURPOSE AND SCOPE

- 1.1 We understand that you would like us to provide a valuation for Family Law purposes of a single entity, being a company, trust, partnership or sole trader/practice.
- 1.2 To the extent you ask us to reach conclusions or form opinions, we are obliged to do so without regard to the impact that our conclusions may have on the litigation.
- 1.3 Whilst this engagement may involve the analysis of financial information and accounting records, it does not constitute an audit or an audit related service in accordance with the Australian Auditing Standards and accordingly no such assurances will be provided.
- 1.4 In completing this engagement, we will necessarily rely on information and material supplied by yourself or other persons involved in this matter. Our report will be issued on the understanding that we have been made aware of all matters and provided all information that may have an impact on any opinions set out in our report. We will not be responsible for any error in our report caused by misrepresentation in or omission of information provided to us, regardless of the party providing the information.
- 1.5 We will make requests for information. We will not be responsible for the cost of providing responses to any requests for information. We assume that appropriate arrangements have been made for payment of any costs associated with providing information, including but not limited to fees charged by other accountants or experts.

Clients Signature



2.0 TIMING

- 2.1 The report will be completed within five (5) weeks from receipt of instructions, engagement letters, payment of the fixed fee and responses to **all** initial information requests.
- 2.2 We note that we may provide requests for information in addition to the initial request for information available on our website. In order for the report to be completed within five (5) weeks, all additional information requests must be responded to within four (4) days.
- 2.3 We request that you advise us in writing of any relevant dates, including filing deadlines and hearing dates as soon as they are known. Should you not provide at least four weeks notice, we may not be able to meet your deadlines or attend at Court. We will always work with you and endeavour to complete all work on a timely basis.

3.0 ADDITIONAL WORK THAT MAY BE REQUIRED

- 3.1 We have found that we are often required to perform additional work to that originally agreed resulting from either the findings of our initial engagement or our discussions with Counsel. This may include preparing responses to questions or preparation for and attendance at Court.
- 3.2 Any work that we are instructed to perform in addition to the initial valuation report will incur additional fees. Any additional work performed will be invoiced on an hourly rates basis in accordance with this agreement.
- 3.3 We note that it is impractical to obtain instructions on every aspect of our involvement in this litigation matter and there may be instances where we will have to use our discretion in determining the work to be performed.

4.0 CONFLICT OF INTEREST

- 4.1 We will advise you if we become aware of any circumstances that, in our view, would constitute a conflict of interest or would impair our ability to provide objective assistance in this matter. Should any unforeseen conflicts arise that would impair our ability to perform objectively, we would advise you as soon as practical and determine our continued involvement in the engagement.

5.0 LEGAL PROFESSIONAL PRIVILEGE AND CONFIDENTIALITY

- 5.1 We understand that all communications between ourselves and legal advisors, as well as any materials or information developed or received by us, whether oral or written, may be protected by legal professional privilege and they will of course be treated by us as confidential.
- 5.2 Any written reports or other documents which we prepare are to be used only for the purpose of this litigation and may not be published or used for any other purpose without our written consent.

Clients Signature



5.3 We understand that our appointment is as a single expert in accordance with Part 15.5 of the Family Law Rules 2004. We propose that any formal correspondence from us will be sent to both legal representatives.

6.0 STAFFING AND BILLINGS

6.1 The fixed fee for preparing the report setting out the valuation of the single entity is \$5,500 including GST.

6.2 The professional staff assigned to your litigation matter will perform work under the ultimate supervision of a Partner or Director.

6.3 Each litigation report is unique in its preparation and presentation. As additional work is often required, it is not possible for us to furnish a precise estimate of our final costs as they will be subject to many factors.

6.4 Any fees in addition to our fixed fees are based upon the time necessarily spent on the assignment by professional and secretarial staff with the appropriate level of skill and experience. Costs relating to the work performed by the people assigned to the engagement are charged on the basis of time spent. This method of time costing applies to all attendances, such as conferences, telephone calls, attendances at court and waiting time.

6.5 Our current hourly rates for this engagement are \$412.50 (\$375 plus GST) for Partners and Directors, and other staff in the range of \$100 to \$290 including GST. Our hourly rates are subject to review on 1 January and 1 July each year and may increase at that time.

6.6 In lieu of billing individual disbursements for telephone calls, faxes, photocopies and similar expenses, an additional charge of \$5.50 per hour will be charged. Other disbursements such as company searches will be charged at cost.

6.7 As noted above, additional time such as that associated with participation in conferences, responding to queries subsequent to completion of the report and preparing for and attendance at Court is not included in the fixed fee. Any additional time will be charged at the hourly rates set out above.

6.8 An estimate of fees for any additional work may be requested once the nature of any additional work has been determined. We note that any fee estimates are purely indicative of our assessment based on your instructions and review of the financial records and other documentation that you have provided. Any estimates provided are subject to all of the information and explanations we require being provided in an appropriate manner and on a timely basis.

6.9 Our fee is not contingent upon the final results and we do not warrant or predict results or final developments in this matter.

6.10 Should our services under this engagement be terminated for any reason, we will require payment, determined in accordance with the terms set out in this letter, for the time and costs incurred to the date we are advised of the termination. In the event that our services are terminated prior to completion of the work for which the fixed fee was applicable, we will consider the work performed and may provide a partial refund of our fees. The amount of the refund, if any, will be solely at our discretion.

Clients Signature



6.11 In the event that either client ceases to instruct a solicitor and continues to conduct the matter as a self represented litigant, we reserve the right to cease to act in the matter. In the event that we cease to act for this reason, we will still require payment, determined in accordance with the terms set out in this letter, for the time and costs incurred to the date that we cease to act in the matter.

7.0 Instance where additional fees may be charged for preparation of the valuation

7.1 We reserve the right to apply an administration fee of up to \$550 including GST if the instructions, payment and all other information and documents are not provided at the same time.

7.2 We reserve the right to charge a fee of up to \$1,100 including GST for each instance where the responses to our requests for additional information are not provided within four (4) days.

8.0 Instances where the fixed fee will not be applicable

8.1 There are certain matters which will not be suitable to be completed under the fixed fee arrangement. The following are examples of instances where the fixed fee will not be applicable and work will be invoiced based on the time incurred on the matter:

a) The fixed fee will not apply when additional work is required in order to complete the valuation and provide an informed and concluded opinion to the Court. This includes matters where the parties provide inconsistent or different responses to the same request for information or investigation of certain matters is required or there appears to be irregularities in the accounting information provided.

b) The fixed fee will not apply where the Husband and Wife together do not own the whole of the entity to be valued. For example, if the shareholders/partners of the company/partnership included the Husband, the Wife and a third party, then the fixed fee valuation would not be available.

c) The fixed fee will not be applicable if the parties are unable to provide financial statements (balance sheet and profit and loss) that have been prepared by an external accountant (being a Chartered Accountant or CPA as opposed to a book keeper or records prepared by the parties themselves).

8.2 It is important to note that we may not be able to identify instances where we will be provided with inconsistent information etc. at the time of receiving the initial instructions. We will advise the parties as soon as possible if the fixed fee will not apply and provide an estimate of the likely additional costs. Any additional costs will be charged on an hourly rates basis.

Clients Signature



9.0 Payment Terms and Interest on Outstanding Invoices

- 9.1 It is noted that rule 15.47(2) of the Family Law Rules states that “*A single expert witness is not required to undertake any work in relation to his or her appointment until the fees and expenses are paid or secured*”.
- 9.2 Payment of the fixed fee is required at the time that we are instructed in the matter.
- 9.3 Any fees for additional work or work to be billed on an hourly rates basis will be billed on a progressive basis, detailing the work undertaken during that period. Our terms for additional work require payment within 14 days from the date of invoice.
- 9.4 Our fees will be addressed to the Husband or Wife, and sent care of their solicitor.
- 9.5 Should you wish to dispute the amount of any invoice, we request that you do so within 14 days of the invoice date. Unless we are advised in writing within 14 days of the invoice, the amount of the invoice will be deemed to have been accepted.
- 9.6 Interest will be charged from the date of the invoice for any unpaid balances outstanding for more than 14 days from the date of the invoice at the rate of 1.5% per calendar month (18% per annum). The interest rate will increase to 2% per calendar month (24% per annum) for any amounts outstanding after six (6) months.
- 9.7 In the event that interest is charged, any payments will be taken to be paying the interest that has been charged prior to the invoices for the work performed.
- 9.8 In the event that debt collection or legal fees are incurred due to non-payment of any invoices, the costs incurred in collection of the outstanding invoices will be added to the total fees outstanding.

10.0 Release of report

- 10.1 Please note that we will not release any report until we have received the signed acceptance to the terms of engagement.
- 10.2 We also reserve the right not to release the report to either party until payment of all fees associated with completion of the report and other work performed in the matter have been paid by both parties.

Clients Signature



If you wish to retain our services, we require that the Husband or Wife (as applicable) sign the bottom of each page of this letter. We also require that Husband or Wife (as applicable) sign and return the attached letter to confirm agreement to the engagement terms.

Yours faithfully

Nick Gaudion
Director

Clients Signature

Cutcher & Neale
PO Box 694
NEWCASTLE NSW 2300

Attention: Nick Gaudion

Re: Engagement of services for Family Law Proceedings

1. I have carefully read and understand your firm's terms and conditions as set out in your letter dated 1 July 2010.
2. I confirm that I wish to retain Cutcher & Neale Forensic Accounting Pty Limited to provide accounting, taxation and/or valuation assistance for my Family Law proceedings and to carry out or perform such professional services as either I, or my Solicitors or Counsel shall request from time to time.
3. I agree to the basis of charging as detailed in the attached letter, the method of calculating costs and periodic rendering of costs. I also acknowledge that your basic charge rates may increase on 1 January and 1 July of each year. I understand the circumstances where additional fees will be charged.
4. I confirm that your fees will be paid within 14 days of invoice and any account unpaid after that time will accrue interest at the rates set out in section 9 of your engagement letter.
5. I acknowledge that you are entitled to refuse to undertake any more work on my behalf in the event of non-payment of accounts.
6. You will keep me informed of the extent of your costs on this assignment as I request and in the event that they exceed any estimate provided, you will endeavour to notify me or my Solicitor as soon as you are aware the costs will exceed any estimate provided. Any additional work undertaken by you either at my request, or the request of my legal advisers, will be charged separately.
7. I understand that, unless directed by the Court or required by the Family Law Rules, your fees will be invoiced in equal shares to _____ <Name of Spouse> and myself. In the event that I wish for _____ <Name of Spouse> to be responsible for more than one half of your fees, I will obtain their written consent. If I am unable to do this, then I understand that I will remain responsible for payment of all fees invoiced to me.
8. I understand that I will meet the charges which you incur notwithstanding that the matter may settle prior to the release of your report or that you cease work for any other reason.
9. Should you need to contact me, my postal and email address is:

Email: _____

Postal: _____

Dated: / /

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Name and Signature of Client