

MDA ATTORNEYS STANDARD COMMERCIAL TERMS



Construction & Technology Attorneys

1. RATES OF CHARGE, DISBURSEMENTS, DEPOSITS AND PAYMENT

1.1 Service are undertaken at hourly and daily rates based upon the time spent on the matter by the person/s working thereon. In addition, charges may, where appropriate, reflect other discretionary factors including the urgency of the matter, its complexity, the responsibility involved and the value of the matter.

By using our services, you agree to the rates as charged and as reflected in our invoice.

1.2 The rates applicable will be revised each financial year effective from 1 July. You are at liberty, at any time, to request to be specifically advised of the then applicable charge out rates of the persons dealing with any particular matter. We will aim to give you at least one calendar months' notice of any increase in the fees due. You have a right to cancel this contract if the increase in fees is to an amount which you no longer wish to pay. If you do cancel for this reason, you will not lose your deposit or any fees you have paid in advance. However, you must write to us to tell us of your intention to cancel within seven days of receiving the notice of increase. If you cancel after the seven days, then any services performed after the seven-day period has expired will be at the new rates.

1.3 Payment of our fees is to be made within **14 (Fourteen) days** of the date of our monthly invoice in respect thereof.

1.4 Our fees generally include overheads, secretarial and other administration costs. Other expenses and disbursements undertaken on behalf of you from time to time during the conduct of the matter are required to be reimbursed to us on presentation of an invoice in respect thereof (or to the extent that such disbursements are included as part of our monthly invoice, then within the 14 (Fourteen) day period referred to above). Without intending to be exhaustive as to the disbursements that may be incurred, these include and will be charged as follows:

CHARGE RATES	
(See clause 1.6 for VAT)	
Accommodation	At cost + 10%
Air Travel	At cost + 10%
Motor Vehicle Hire	At cost
Travelling - Motor Vehicle	At R6.00 / km for MDA vehicles, personal or company-owned or on the charged hire tariff (whichever may be applicable)
Parking	At cost
Meals + Refreshments- more than 1 night away	At cost or at an agreed rate per day
Incidental costs	SARS Rate applicable per day or at an agreed rate
Toll Fees	At cost

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CHARGE RATES	
(See clause 1.6 for VAT)	
Photocopies and printing will be invoiced monthly.	
A4 Monochrome	R2.00 per page
A4 Colour	R20.00 per page
A3 Monochrome	R4.00 per page
A3 Colour	R40.00 per page
Printing - Outsourced (at MDA Discretion)	At cost + 10%
Stationery and Miscellaneous:	
Lever Arch Files	R75.00
Dividers	R25.00 / set
CD/ USB	R40.00 per CD/ USB
Forex Charges	At costs charged by bank
Courier Costs	At cost + 10%
CIPC Search	R1000 per company
Windeed Search	At cost + 10%
Sundry Expenses	At cost
Advocates and Attorneys	At cost (pursuant to and as provided by the Rules of the Uniform Rules of Court, stating costs taxed and allowed in terms of the tariff for acts of the Rules published by Government Notice from time to time)
Sheriff Fees	At cost (pursuant to and as provided by the Rules of the Uniform Rules of Court, stating costs taxed and allowed in terms of the tariff for acts of the Rules published by Government Notice from time to time)

- 1.5 As is the case in respect of our fees and charges our standard disbursement rates in respect of motor vehicle travelling, photocopies, lever arch files, e-mail, CD's and the like will be revised from time to time but you will be informed of the revised rates as and when same are implemented.
- 1.6 We will give an estimate of the costs applicable to any matter prior to the commencement of any services and keep you advised should the estimate be exceeded.
- 1.7 Value Added Tax will be payable on charges and taxable disbursements incurred on your behalf. The above-mentioned rates of charge and disbursement rates are exclusive of Value Added Tax.
- 1.8 In the event of non-payment of any account within the time period stipulated, interest will accrue thereon at the rate of 2% (Two Percent) per annum above the prime lending rate charged by our bankers, from time to time, (presently being First National Bank) (and as certified in the event of any dispute by any manager of our bankers, whose appointment and designation it shall not be necessary to prove). Such interest will be charged from the due date of payment to the date on which payment is actually made.

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- 1.9 If money is owed to us (“the debt”) at any time during or after the duration of this contract and is in arrears, you must pay the debt when we demand it. We will give you a letter of demand signed by a director (whose appointment we do not have to prove) which will show the amount of the debt. You accept that the letter of demand is sufficient evidence without further explanation of the amount of the debt and the date by when the debt is due (this is known as prima facie proof and is sufficient for the purposes of furnishing particulars and obtaining provisional sentence or summary judgment). If you dispute the amount of the debt or the date by when you must pay, you must prove that the amount is not owing or that it is not owing by the date shown on the letter of demand. You also expressly waive and renounce the legal benefits and exceptions of denying there was no cause of debt, revision of accounts, errors in calculations and any other exceptions or defences which could or might be taken in respect of the recovery of any amount from you by us. You expressly agree that you are fully acquainted with meaning and effect of all the above.
- 1.10 Payment/s is/are to be made without deduction or set-off and payment shall not be withheld or deferred in account of any claim, counterclaim or set-off or for any other reason whatsoever.
- 1.11 Please note that you are at liberty to deliver payment directly to our offices, however we would prefer that payment should be made directly into our bank account, the present details of which are as follows:-

Account Holder: HATTINGH MASSEY BENNETT INC
Bank: First National Bank
Branch Code: 254605
Account No: 62509605319

- 1.12 Notwithstanding any prior dealings all documents and other matter including cash, bank drafts and other remittances, sent to us through the post shall be deemed not to have been received unless and until they are actually delivered to us by the postal authorities and all risk in and to such documents and other matter shall be at your risk until actually delivered.
- 1.13 We shall be entitled to suspend the rendering of services to you while you are in breach of any of the terms and conditions contained herein.
- 1.14 We reserve the right to require upfront payment of fees and disbursements, which shall be deposited forthwith to the credit of our trust banking account; and render services as against these upfront payments. Once any upfront payment has been exhausted, we reserve the right to stop all services and require further upfront payments. Should upfront payment result in a balance owing to you upon finalisation of services, such balance will be repaid to you without interest.
- 1.15 We reserve the right to call for a deposit from you, which shall be deposited forthwith to the credit of our trust banking account, in order to keep us covered for our costs and disbursements from time to time as the matter proceeds and in particular, but without limitation, as a deposit against attorneys’ and counsels’ fees. Where reasonably possible, we will endeavour to give you sufficient advance warning of when the deposit should be paid, however, and having regard to the exigencies of any particular matter, it may not be possible to do so and in certain instances, we may require a deposit to be paid on request. We reserve the right not to proceed with any services until such time as a requested deposit has been paid in full.

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1.16 Until such time as all payments (whether for fees or disbursements) have been made to us, we shall be entitled to and shall exercise a special and general lien and pledge over all documentation in our possession in respect of the matter in question, irrespective of the origin thereof (and including, without limitation, all notes of interviews of witnesses and other relevant documents, claims supporting documentation etc).

2. INSTRUCTIONS

The efficiency and cost effectiveness of our services are directly affected by information and records provided by you and we request a prompt response to any queries that we may raise with you.

3. CARE OF ORIGINAL DOCUMENTATION

In order to pursue any matter on your behalf it may be necessary to provide us with evidence and/or documentation. Although we will take reasonable care thereof, we will not be held liable for any damages or loss sustained by yourselves in the event of any damage, loss or destruction of such evidence and/or documentation from whatsoever cause and howsoever arising.

4. COPYRIGHT

Any and all documentation and other matters compiled by us is confidential and comprises original works in which copyright subsists. All rights in and to such copyright and all rights of ownership in respect of such materials shall vest with ourselves and all of our rights in respect thereof are reserved (including, but without limitation, all rights to the reproduction or adaptation thereof).

5. DISCLAIMER

Whilst we endeavour, at all times, to provide service of a high quality and to furnish sound advice, we are not able to guarantee successful results and do not warrant the accuracy of factual information derived from reports and documentation received by us from whatsoever source. It is therefore an express term of our contract with you that we shall, under no circumstances whatsoever, be liable for any loss or damage of whatsoever nature (whether direct or indirect, consequential or otherwise) which is, or may be sustained by you as a result of any services (whether in respect of advice or otherwise) tendered by us in relation to any mandate or instruction from you or generally from any other matter performed by us on your behalf.

The construction industry is a relatively small industry and as such you acknowledge that it is not possible for us to confine ourselves to particular clients. This agreement can therefore in no circumstances be regarded as a contract creating any form of exclusive relationship between ourselves whatsoever.

5. DISCLAIMER (cont.)

We may therefore in our sole and exclusive discretion work for any client of our choosing, including a party who we may be representing you against, or who may otherwise be engaged in projects or matters in which you are also involved. However, we shall use our best endeavours to ensure that we do not operate in a situation in which a conflict of interest could arise on the same project. Should a conflict of interest arise we shall immediately notify you and take any action required. Such action may include but not be limited to withdrawing from the matter. By agreeing to these terms and conditions you waive any remedies you may have in terms of any law in the event of a conflict of interest arising or otherwise in terms of this clause.

6. DISPUTE

- 6.1 Should any dispute arise out of, or in connection with this Agreement or the subject matter hereof or any resolution or mandate carried out by us on your behalf (other than where interim and/or urgent relief is sought from a court of competent jurisdiction), the parties shall in good faith attempt a negotiated resolution, by reference of the dispute matter to their senior management, for a period of 14 (Fourteen) days. A failure by the parties to agree the dispute within 14 (Fourteen) days of the expiry of the 14 (Fourteen) days negotiation period, either party may refer such dispute for final settlement by arbitration. Such arbitration shall be conducted in accordance with the Rules of the Arbitration Foundation of Southern Africa (“AFSA”), before one arbitrator agreed upon by the parties in writing, or failing such agreement being reached within a period of 14 (Fourteen) days of the referral, appointed by AFSA. The seat of arbitration shall be Johannesburg and the decision of the arbitrator shall be final and binding and not subject to appeal.
- 6.2 The provisions of this clause, constitute an irrevocable consent by the parties to any proceedings in terms hereof and none of the parties shall be entitled to withdraw from the provisions of this clause or claim at any such proceedings that it is not bound by this clause or such proceedings and are severable from the rest of this Agreement and shall remain in effect despite the termination, cancellation, invalidity or alleged invalidity of this Agreement for any reason whatsoever.

7. ACCEPTANCE AND APPLICABILITY OF THE TERMS AND CONDITIONS

Please note that all work undertaken by us is undertaken strictly in accordance with the terms and conditions set out herein and all instructions and mandates furnished to us shall be deemed to be furnished in accordance with these terms and conditions. For the sake of good order, however, we would request that you kindly expressly signify your acceptance of the terms and conditions set out above by signing in the space provided for hereunder and returning one duly signed original to us.

8. VARIATIONS AND ADDITIONS

We are entitled to amend any of these terms and conditions at any time. Should we do so, we will notify you that a change has been posted on our website and that it will take effect in 30 (thirty) days from the date of posting or the date of notice to you, whichever is the later. During that notice period you may contact us to discuss this, and if agreement cannot be reached or should you not contact us or withdraw within that period, the further use of our services in any form whatsoever, and whether or not such service carries any charge, shall constitute your agreement with the amended terms and conditions.

In the event these terms and conditions are not signed by us or you, or both, they will be deemed to be binding immediately upon the request for the provision of any services to you, whether charged for or not.

9. EACH TERM AND CONDITION IS SEPARATE

Each term and condition contained in this contract is separate from the other terms and conditions. This means if a court or consumer commission decides that any term or condition is unfair or illegal and, therefore, unenforceable, the remaining terms and conditions of the contract will remain valid.

For and on behalf of the you.

Signed _____

Date _____

Who warrants that he/they is/are duly authorised thereto.

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