

Standard Tender Terms

Introduction, purposes and definitions

1. These Standard Tender Terms (Standard Tender Terms), with any variations as referred to in clause 2 and in conjunction with the Work and the Tender, are intended to state the legal relationship between a Solicitor User and a Barrister User (collectively the parties) in respect of the performance of an Accepted Tender which is created by the parties through a tender process operated through the Legal Economy Pty Ltd Website.
2. In addition to these Standard Tender Terms (as they may be varied as referred to in subclauses (b) and (d) below), the terms of an Accepted Tender also include:
 - a. The description of the Work stated by the Solicitor User on the Website;
 - b. Any amendments to the Standard Tender Terms requested by the Solicitor User at the time of posting the Work;
 - c. The Tender submitted by the Barrister User; and
 - d. Any amendments to the Standard Tender Terms requested by the Barrister User at the time of submitting the Tender.

For the avoidance of doubt, amendments to the Standard Tender Terms may include agreements between the Solicitor User and the Barrister User not to use the Standard Tender Terms.

3. The purposes of the Standard Tender Terms are:
 - a. To create a simple regime for a solicitor to engage a barrister which seeks to comply with the requirements of the Legal Profession Laws;
 - b. To establish the relationship between the parties to an Accepted Tender;
 - c. To establish how the parties to an Accepted Tender manage the progress of the matter;
 - d. To provide for payment to a Barrister User for work performed in respect of an Accepted Tender.
4. The following terms have the stated meaning as used in these Standard Tender Terms:
 - a. Accepted Tender means a Barrister User's Tender to perform Work which has been accepted by the Solicitor User who posted the Work to the Website so constituting a contract between the Solicitor User and the Barrister User with terms comprising:
 - i. the Standard Tender Terms;
 - ii. the Work;
 - iii. any variations to the Standard Tender Terms stated in the Work;
 - iv. the Tender; and
 - v. any variations to the Standard Tender Terms stated in the Tender, with any variations to the Standard Tender Terms prevailing over the terms of the Standard Tender Terms to the extent of any inconsistency.
 - b. Australian Legal Practitioner means an Australian lawyer (or in South Australia, a legal practitioner) who holds a current Australian practising certificate within the meaning of the Legal Profession Laws.
 - c. Barrister User means a User who is an Australian Legal Practitioner who:
 - i. is authorised to engage in legal practice as or in the manner of a barrister, pursuant to the Legal Profession Laws;

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- ii. registers with Legal Economy Pty Ltd as a barrister and not as a solicitor; and
 - iii. will only use the Website to provide legal services of a kind provided by a barrister and not by a solicitor.
 - d. Client includes a person to whom or for whom legal services are provided.
 - e. Disclosure Exception Provisions mean the provisions under the Legal Profession Laws that provide exceptions to certain costs disclosure requirements, including as relevant:
 - i. s 170 of Schedule 1 to the Legal Profession Uniform Law Application Act 2014 (VIC);
 - ii. s 170 of Schedule 1 to the Legal Profession Uniform Law Application Act 2014 (NSW);
 - iii. s 311 of the Legal Profession Act 2007 (QLD);
 - iv. clause 13(1)(c) of the Legal Practitioners Act 1981 (SA);
 - v. s 272(1)(c) Legal Profession Act 2006 (ACT);
 - vi. s 263 of the Legal Profession Act 2008 (WA);
 - vii. s 306 of the Legal Profession Act (NT); and
 - viii. s 295 Legal Profession Act 2007 (TAS).
 - f. Legal Economy Pty Ltd refers to Legal Economy Pty Ltd ABN 74 607 352 241, of Level 3, 405 Little Bourke Street, Melbourne VIC 3000.
 - g. Legal Profession Laws mean the legislation and rules that permit and govern an Australian Legal Practitioner's practice of law, including as relevant:
 - i. the following legal profession Acts of each State or Territory in Australia:
 1. Legal Profession Uniform Law Application Act 2014 (VIC);
 2. Legal Profession Uniform Law Application Act 2014 (NSW);
 3. Legal Profession Act 2007 (QLD);
 4. Legal Practitioners Act 1981 (SA);
 5. Legal Profession Act 2006 (ACT);
 6. Legal Profession Act 2008 (WA);
 7. Legal Profession Act (NT);
 8. Legal Profession Act 2007 (TAS);
 - ii. any rules and regulations made pursuant to legislation listed under clause 4.g.i;
 - iii. any rules of a local bar association or regulatory authority governing practice as a barrister in that State or Territory of Australia; and
 - iv. any rules of a local regulatory authority governing practice as a solicitor in that State or Territory of Australia.
 - h. Solicitor User means a user who is an Australian Legal Practitioner:
 - i. whose Australian practising certificate authorises the holder to engage in one or more categories of legal practice under Legal Profession Laws;
 - ii. who registers with Legal Economy Pty Ltd as a solicitor and not as a barrister; and
 - iii. who will use the Website to provide legal services of a kind provided only by a solicitor and not by a barrister.
 - i. Standard Tender Terms means the Standard Tender Terms made available by Legal Economy Pty Ltd from time to time at <http://www.legaleconomy.com.au/tenderterms/> and current as at the date the Solicitor User requests Tenders from Barrister Users in respect of the Work.
 - j. Tender means an offer made by a Barrister User through the Website to perform Work.
 - k. User is a person who has commenced the registration process to use the Website or who is registered to use the Website.
 - l. Website means the Legal Economy Pty Ltd Website made available at <http://www.legaleconomy.com.au> and includes all electronic communications made with or by Legal Economy Pty Ltd.

- m. Work is the legal work which corresponds with the description provided by a Solicitor User of the legal work to be performed by a Barrister User disclosed on the Website in relation to the performance of which the Solicitor User requests Tenders from Barrister Users.

Application of Legal Profession Laws

5. The parties agree that the Disclosure Exception Provisions under the Legal Profession Laws apply in respect of the Accepted Tender because the Solicitor User engaging the Barrister User is one or more of the following:
 - a. an Australian Legal Practitioner;
 - b. a law practice; and/or
 - c. a person who has agreed to the payment of costs on a basis that is the result of a tender process.
6. The parties agree that the following types of fees (within the meaning of the Legal Profession Laws) are not payable pursuant to the Accepted Tender:
 - a. fees conditional on the successful outcome of the matter;
 - b. uplift fees; and
 - c. contingency fees.
7. The Barrister User must provide to the Solicitor User any information which the Solicitor User has notified the Barrister User that the Solicitor User requires for satisfying the Solicitor User's obligations under the Legal Profession Laws.
8. The parties acknowledge that variations to the Standard Tender Terms may cause the Accepted Tender to be void or may permit recovery of fees paid by the Solicitor User to the Barrister User by operation of the Legal Profession Laws.
9. To the extent that the Solicitor User engages the Barrister User to perform any work which does not fall within the scope of the Accepted Tender, the Solicitor User's engagement of the Barrister User is not subject to these Standard Tender Terms and the Solicitor User and Barrister User acknowledge that the further engagement must comply with the Legal Profession Laws and any other relevant legislation or law.

Relationships between the parties

10. The Accepted Tender is enforceable as a contract.
11. The Barrister User is engaged to perform the Accepted Tender.
12. The parties agree to exercise reasonable care, skill and diligence in the performance of their obligations under the Accepted Tender.
13. The Barrister User warrants that they have the time specified in the Tender available to perform the Accepted Tender in the time-frame specified in the Accepted Tender.
14. Except as required by law or as permitted by the Solicitor User or the Client, the Barrister User agrees to maintain confidentiality in respect of all documents and or information which enters the Barrister User's possession in the course of performing the Accepted Tender.
15. The Standard Tender Terms do not interfere with any right which would otherwise arise at law to recover from a Barrister User in respect of their performance of the Accepted Tender.

Progress of the matter

No obligation to extend scope

16. The parties to the Accepted Tender acknowledge that the Solicitor User is not obliged to extend the scope of work given to the Barrister User or to give any other work to the Barrister User beyond the subject matter of the Accepted Tender.

Accepted Tender does not proceed

17. Where the Solicitor User notifies the Barrister User by email that the Solicitor User does not require the Barrister User to perform the Accepted Tender, the Barrister User's right to recover legal costs from the Solicitor User is limited to the proportion of the sum specified in the Accepted Tender which corresponds to the proportion of the Barrister User's obligations under the Accepted Tender which the Barrister User has performed at the time the Solicitor User gives notice.
18. Where it is a term of the Accepted Tender that the Solicitor User states that the requirement for the performance of the Accepted Tender is subject to confirmation by a particular date that the Solicitor User requires the Accepted Tender to be performed, the Barrister User has no right to recover any legal costs unless confirmation that the work is required is given by the Solicitor User by email to the Barrister User.

Barrister not permitted or required to perform

19. The Barrister User warrants that at the time of submitting the Tender which forms part of the terms of the Accepted Tender that the Barrister User did not know of any circumstance placing them under a legal obligation not to perform the Accepted Tender or permitting them not to perform the Accepted Tender including arising under the Legal Profession Laws.
20. The Barrister User is permitted not to perform the Accepted Tender and in so doing will not breach the terms of the Accepted Tender where:
 - a. The Barrister User is not permitted to perform the Accepted Tender by operation of the Legal Profession Laws; or
 - b. The Barrister User:
 - a. is permitted not to perform the Accepted Tender by operation of the Legal Profession Laws; and
 - b. did not know, and it was not reasonable for the Barrister User to know, at the time of submitting the Tender which forms part of the terms of the Accepted Tender to know of the circumstances which would permit them not to perform the Accepted Tender.
21. Where the Barrister User does not intend to perform the Accepted Tender as permitted by clause 20 above, the Barrister User must notify the Solicitor User by email that they will not perform the Accepted Tender as soon as reasonably practicable and within a reasonable time in the particular circumstances.
22. Where the Barrister User is permitted not to perform the Accepted Tender, but it is permissible for the Barrister User to perform the Accepted Tender, and the Barrister User fails to notify the Solicitor User as required by clause 21 above, the Barrister User must continue to perform the Accepted Tender.
23. Where the Barrister User notifies the Solicitor User that they do not intend to perform the Accepted Tender as permitted by clause 20 and required by clause 21 above, the Barrister User's right to recover legal costs from the Solicitor User is limited to the proportion of the sum specified in the Accepted Tender which corresponds to the proportion of the Barrister User's obligations under the Accepted Tender which the Barrister User has performed at the time the Barrister User gives the notification.

Barrister User's right to payment

24. The Barrister User has a right to recover legal costs from the Solicitor User once the Barrister User has completed their performance of the Accepted Tender and has given a tax invoice for those legal costs to the Solicitor User.
25. Subject to the right to recover interest and costs, the Barrister User may recover no more than a maximum sum specified in the Accepted Tender from the Solicitor User.
26. The Barrister User may charge interest on unpaid legal costs if the costs are unpaid 30 days or more after the Barrister User has given a bill for the costs to the Solicitor User.

27. The interest rate chargeable is equal to the percentage (or maximum percentage) specified by the Reserve Bank of Australia as the Cash Rate Target on the date the bill was issued by the Barrister User increased by 2 percentage points.
28. The Barrister User does not require the payment of any sum into the Barrister User's Clerk's Trust Account prior to the performance of the Accepted Tender

Miscellaneous

29. In any claim brought in respect of the performance of any obligation arising under the Accepted Tender between the parties to the Accepted Tender, the successful party will be entitled to be indemnified by the unsuccessful party in respect of their costs in bringing or defending the claim.
30. Barrister Users and Solicitor Users are responsible for maintaining their own records in relation to Accepted Tenders, including a copy of these Standard Tender Terms (and any amendments) current at the time of the Accepted Tender. Legal Economy Pty Ltd is not responsible for maintaining any documentation in relation to Accepted Tenders on behalf of Barrister Users and Solicitor Users.
31. Legal Economy Pty Ltd accepts no responsibility for the performance of any obligation or the enforcement of any right arising pursuant to any contract entered into between Barrister Users and Solicitor Users through the Website or otherwise.

Commencement date: 9 December 2017