

# DISCRETIONARY TRUST SUCCESSION PRECEDENTS

These terms and conditions (**Terms**) are the contract between you as the client (**you** or **your**) and The Art of Estate Planning Pty Ltd ACN 627 545 822 as trustee for The Sunshine Trust trading as the Art of Estate Planning ABN 69 195 087 765 (**us**, **our** or **we**).

If you purchase the Services from our Site, you:

1. consent to us providing information to you electronically, including the written disclosures required under the LPA;
2. accept the offer as set out in these Terms and agree to be bound by these Terms; and
3. acknowledge that you have received the Disclosure Notice and the Cost Agreement.

Please read this document carefully and save it. If you do not agree to be bound by these Terms, you should leave the Site immediately.

Within this document the following terms have the following meaning:

**Associates** has the meaning set out in the *Income Tax Assessment Act 1997* (Cth).

**Cost Agreement** is the document set out in Schedule 2.

**Disclosure Notice** is the document set out in Schedule 1.

**Fixed Price** means \$650 including GST.

**LPA** means the *Legal Profession Act 2007* (Qld).

**Precedents** means:

- deed of succession for the role of appointor/principal/guardian/trustee in a discretionary trust
  - deed of retirement and appointment for the role of appointor/principal/guardian in a discretionary trust
-

- deed of variation to update the succession mechanisms for the role of appointor/principal/guardian/trustee in a discretionary trust
- a template letter summarising the recommendations following a review of a trust deed in relation to the succession of the role of appointor/principal/guardian/trustee
- a template covering letter for the deed of variation and deed of successor

**Services** means the provision of the Precedents.

**Site** means [www.taralucke.com.au](http://www.taralucke.com.au) and <https://theartofestateplanning.mykajabi.com>.

# SCHEDULE 1 - DISCLOSURE NOTICE

## 1. Disclosure Notice

- 1.1 This Disclosure Notice contains important information about your rights under the LPA and discloses information that we are required to provide to you by the LPA about your rights and the costs of our Services.
- 1.2 Please read this disclosure notice before accepting:
  - 1.2.1 our offer to provide you with the Services; and
  - 1.2.2 the Terms which apply to the provision of the Services.
- 1.3 Schedule 2 sets out the Costs Agreement applying to the Services. You have the right to negotiate a costs agreement with us before you accept the Costs Agreement set out in Schedule 2. Make sure you understand what you are agreeing to, and ask questions if you are unsure about any aspect of the Cost Agreement. You have the right to seek independent legal advice about the Costs Agreement.
- 1.4 We will inform you in writing as soon as reasonably practicable of any substantial changes to anything contained in this Disclosure Notice as work progresses, including changes in person responsible for the work and the Fixed Price.
- 1.5 This Disclosure Notice provides you with information about our Services, the cost of the Services and your rights. For more information about your rights, please read the facts sheet entitled Legal Costs – Your right to know. You can ask us for a copy, or obtain it from the Queensland Law Society or download it from their website at [www.qls.com.au](http://www.qls.com.au).

## 2. Services

- 2.1 The cost for the Services is calculated on a fixed fee basis. We will invoice you for the cost in accordance with the Fixed Price.

## 3. Person/s responsible for the work

- 3.1 Tara Lucke will be responsible for the work. Our contact details are at the end of this document.
-

- 3.2 If it is necessary for us to engage, on your behalf, the services of an external lawyer to provide specialist advice or services, including advocacy services, or to act as an agent, we will consult with you as to the terms of that lawyer's engagement, but you may be asked to enter into a costs agreement directly with that lawyer on a similar basis to these Terms.

## 4. Applicable law

- 4.1 The law of Queensland applies to legal costs regarding the matter(s). You are, however, able to enter into a costs agreement with us on the basis that the corresponding law of a State or Territory is applicable, if the matter has a substantial connection with that State or Territory. In that event, we will disclose costs as they are applicable in that State or Territory. You have the right to contract with us that the costs assessment scheme in Queensland is applicable, in the event of any dispute as to costs arising with us.

## 5. Review rights

- 5.1 You have a right to have our costs assessed where you have entered into a costs agreement with us which complies with the provisions of the LPA, and you make such application within 12 months after you received our bill or a request for payment of costs is made by us, or full payment is made to us if no bill was given or request was made.
- 5.2 You have a right under section 328 of the LPA to apply to the Supreme Court to set aside the costs agreement or a provision of it on the basis that it determines that the agreement is not fair or reasonable within 6 years or such other time as the law permits.
-

# SCHEDULE 2 - COSTS AGREEMENT TERMS

## 1. Services

- 1.1 We will perform the Services with professional skill and diligence as your lawyer acting in your best interests. We will not perform work for you if factors such as conflict of interest or other laws prevent us from accepting your instructions or continuing to act. You may request, at any time, a report of the progress of the matter and statements of fees and costs (if applicable).

## 2. Professional fees and other charges

- 2.1 The cost for the Services is calculated on a fixed fee basis. We will invoice you for the cost in accordance with the Fixed Price.
- 2.2 We reserve the right to update the Fixed Price from time to time at our discretion.
- 2.3 The Fixed Price is stated on a GST inclusive basis. We will treat you as the recipient of the supplies that we make.
- 2.4 Upon submitting an order on our Site for the Services, we will charge you for the Fixed Price and provide you with a tax invoice. You will receive the Precedents within 24 hours of submitting your order via email.
- 2.5 Once we have sent the Services to you via email, you will not be entitled to a refund.
- 2.6 You are entitled to receive a bill of costs from us complying with the requirements of the LPA. We cannot take action to recover any professional fees and other charges that we may have an immediate right or entitlement to until the period specified in the LPA after we have given you a bill has expired.
- 2.7 If we provide you with a bill which does not set out the details of the work, we have done and the charges to be paid for that work, you may request an itemised bill within the period specified in the LPA.

### 3. Permitted use of documents

- 3.1 You (and your Associates) must not resell or provide the Precedents to any person for any purpose other than for the purpose of providing estate planning documentation and information to your clients.
- 3.2 You indemnify us from all actions, suits, claims, demands, liabilities, costs, expenses, loss and damage (including legal fees on a full indemnity basis) incurred or suffered by you or us as a direct or indirect consequence of your use of the Precedents.
- 3.3 We are responsible only for the terms of the Precedents provided to you and are not responsible for any alterations made to the Precedents by you.
- 3.4 We do not warrant merchantability or fitness for a particular purpose of the Precedents and we disclaim all responsibility for any loss, injury, claim, liability or damage of any kind arising out of or in any way related to:
  - 3.4.1 any errors in or omissions from the Precedents, including but not limited to technical inaccuracies and typographical errors;
  - 3.4.2 your use of the Precedents;
  - 3.4.3 your inability to use the Precedents;
  - 3.4.4 your use of our Site or any associated third party platforms ; or
  - 3.4.5 your use of any equipment or software used in connection with the Precedents.
- 3.5 The Precedents are provided on as “as is, as available” basis at the time you purchase the Services. We will not provide you with any updates or amendments to the Precedents, unless you are a member of the TT Precedents Club. If you are a member of The TT Precedents Club, you will only receive updates for the duration of your membership. You are responsible for ensuring that the Precedents continue to reflect best practice and the current law. You are responsible for ensuring that your use of the Precedents reflects best practice and the current law.
- 3.6 If you claim compensation, damages or contribution from us for loss or damage arising from acts or defaults (including negligence) on our part and some or all of that loss or damage was due to or contributed to by:
  - 3.6.1 your own acts or defaults or by the acts or defaults of other persons for whose actions or defaults you are responsible; or
  - 3.6.2 the acts or defaults of one or more other persons, not being partners, employees or agents for whose conduct we are responsible,

then we will be liable only for that proportion of the loss or damage which our acts or defaults bear relative to the totality of the conduct of all persons causing or contributing to the loss or damage.

- 3.7 Where any law relating to proportionate liability applies to a claim against us, this clause does not seek to exclude the operation of that law but will continue to operate to the extent that its operation is consistent with that law.

## 4. Duration of our engagement

- 4.1 Unless you are a member of the TT Precedents Club, our engagement with you will automatically terminate within 2 days of you submitting an order for the Services via our Site.
- 4.2 You may terminate our engagement by giving us written notice at any time. If you do so, you will be obliged to pay or make arrangements to secure payment of the Fixed Price for the Services to which we may have a right to receive payment.
- 4.3 We may terminate our engagement:
- 4.3.1 by giving you reasonable notice;
  - 4.3.2 if any payment (including payment of a bill or money in advance) due by you to us under these Terms is not paid on the due date;
  - 4.3.3 if you do not provide timely, accurate and proper instructions; or
  - 4.3.4 if, by continuing to act for you, we would be required to act contrary to any legal, regulatory or professional conduct obligation or similar just cause.
- 4.4 Termination by us on any of those grounds does not prejudice or otherwise affect any lien created under these Terms.

## 5. Confidentiality

- 5.1 We will keep confidential all confidential information received from you in the course of the work, and persons performing work for you:
- 5.1.1 will treat confidential information you give as being given only to them;
  - 5.1.2 may disclose confidential information within our law practice as required in order to perform the work; and
  - 5.1.3 will not disclose to you any confidential information of third parties which may be known to them or any other personnel and may otherwise be information to which you are entitled.

- 5.2 You understand and accept that our obligation to you with respect to giving you information is restricted by these provisions. Only our law practice's personnel working for you will have an obligation to give advice only to you. We will treat other clients' instructions to the law practice and their confidential information on the same basis.
- 5.3 We may transfer material to our internal databases for learning and knowledge purposes. Before doing so, we will make reasonable efforts to ensure that confidential information is neither disclosed outside the law practice nor otherwise used inconsistently with the obligations referred to above.
- 5.4 When you visit our Site, you accept responsibility for any action done by any person in your name or under your account or password. You should take all necessary steps to ensure that your password is kept confidential and secure.
- 5.5 You agree to inform us immediately if you have any reason to believe that your password has become known to anyone else, or if the password is being, or is likely to be, used in an unauthorised manner.
- 5.6 You agree that you have provided accurate, up to date, and complete information about yourself to us. We are not responsible for any error made as a result of such information being inaccurate.
- 5.7 You agree to notify us of any changes in your information, such as updated credit card details or other critical personal information immediately once a change occurs. If you do not do so, we may terminate your account at our discretion.

## 6. Privacy

- 6.1 The *Privacy Act 1988* (Cth) and other privacy legislation applies when we collect, use and disclose information or an opinion about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion (**personal information**). You agree that we may manage your personal information in accordance with our Privacy Policy available on our website as amended from time to time.
- 6.2 In particular:
  - 6.2.1 we may collect personal information in the course of your instructions and while acting for you. This may include personal information about individuals who are employees, directors or principals of corporate clients. We ask you to assist us to make these individuals aware that our acting for you may involve collection of personal information about them;
  - 6.2.2 we may decide that it is necessary to conduct further searches and enquiries regarding the information you have provided us or more generally concerning you or your associates for our regulatory or prudential purposes. This may entail using some or all of the collected information to obtain additional information concerning



you or your associates (including personal information in respect of individuals), from various other entities including, but not limited to, government agencies, law enforcement bodies, publicly available records, public registries, court or tribunal records, ratings agencies, search agencies and regulatory and licensing bodies.

- 6.3 We may use personal information in the course of acting for you and we may disclose personal information to our service providers or agents and to other organisations including other parties in the matter and government agencies responsible for processing transactions, but only to the extent necessary to perform the work and in accordance with our professional obligations, or as required by law. If we do not collect such personal information or if you or others do not consent to us conducting such further searches or enquiries we may not be able to carry out your instructions.

## 7. Disclaimers

- 7.1 We provide the Services to help you to improve your estate planning practice, but any documents or advice you give to your clients, and the consequences that flow from such documents and advice, is and remains your sole responsibility. You acknowledge and agree that we are not responsible for decisions that you may make, documents you prepare or advice that you give to your clients and that you will always research the correct legislation, case law and other requirements before giving such advice (**Research**) and that we are not involved in the Research aspect or advising your clients in any way.
- 7.2 You acknowledge and agree that:
- 7.2.1 all information provided as part of the Services is provided on an “as is, as available” basis at the time you access it;
  - 7.2.2 we disclaim all responsibility for any loss, injury, claim, liability or damage of any kind arising out of or in any way related to any errors in or omissions, including but not limited to technical inaccuracies and typographical errors or your use of the information provided;
  - 7.2.3 you are an appropriately qualified Australian lawyer and note that if this is not the case, the Services are in no way intended to be used by you to give specific legal advice to your clients;
  - 7.2.4 we do not guarantee the accuracy, completeness or adequacy of the Services for your purposes; and
  - 7.2.5 your use of the Services is at your own risk, with you agreeing to take full responsibility for your actions and any advice you give based on your purchase of the Services.

## 8. Limitation of liability

- 8.1 Our liability is limited by a scheme approved under Professional Standards Legislation.
- 8.2 We shall not be liable for any damages of any kind whatsoever (including, without limitation, loss of opportunity and lawyer's fees), resulting from or arising in connection with your use of the Services, including damages which are:
- 8.2.1 special;
  - 8.2.2 direct;
  - 8.2.3 indirect;
  - 8.2.4 incidental;
  - 8.2.5 loss of profits, data or other intangibles;
  - 8.2.6 punitive; or
  - 8.2.7 consequential.
- (collectively, **Damages**).
- 8.3 Our sole liability to you for damages shall be limited to \$650.
- 8.4 The disclaimers, liability limitations and indemnities within these Terms do not exclude rights that by law may not be excluded. Such rights include, but are not limited to, those rights under Australian Consumer Laws.

## 9. Security of your credit card

- 9.1 Please note that credit card payments are not processed on a page controlled by us.
- 9.2 Processing takes place on the third party payment processor connected to our Site, and we are bound by their terms and conditions and any other relevant third payment processor that the Site uses to take your payment.
- 9.3 If you have concerns about the safety or otherwise of your card, the Site and other third payment processor terms should be read before you agree to the any direct debit from your card to ensure the details are being kept safely. While we will use our reasonable commercial endeavours to ensure the safety of any details we hold, we cannot directly control the details held by third party sites and will not be liable in this regard.

## 10. Communications

10.1 For any questions and notices, please contact us at:

Name: Tara Lucke

Email: [tara@taralucke.com.au](mailto:tara@taralucke.com.au)

Last update: March 2022

10.2 Any communication to be served on either of the parties by the other shall be delivered by hand or sent by express post or recorded delivery or by e-mail.

10.3 It shall be deemed to have been delivered:

10.3.1 if delivered by hand: on the day of delivery;

10.3.2 if sent by post to the correct address: within 72 hours of posting;

10.3.3 if sent by e-mail to the address from which the receiving party has last sent e-mail: within 24 hours if the sender has received no notice of non-receipt.

10.4 Neither party shall be liable for any failure or delay in performance of this agreement that is caused by circumstances beyond its reasonable control.

## 11. Jurisdiction and governing law

11.1 Subject to your rights to select jurisdiction under the LPA, our Costs Agreement and all aspects of our retainer and the performance of our services for you are governed by and you agree to be bound by the laws of the state or territory from which we issue this Costs Agreement. You irrevocably submit to the exclusive jurisdiction of the courts of that jurisdiction.

11.2 Where the legal services are or will be completely or primarily provided in, or where the work has a substantial connection with another state or territory, you have the right to:

11.2.1 enter into a costs agreement with us on the basis that a corresponding law of that other state or territory; or

11.2.2 notify us in writing in accordance with the time limits of the corresponding law that you require the law of another jurisdiction to apply to our Costs Agreement.