

# INSOLVENCY ENGAGEMENTS SPECIFIC TERMS AND CONDITIONS – PART 2

Norrie & Daughters

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# Insolvency Engagements - Specific Terms and Conditions

## 1.0 Introduction

- 1.1 This document contains the Specific Terms and Conditions (**Terms**) that apply to all insolvency engagements undertaken by Norrie & Daughters and its staff, agents or contractors and is to be read in conjunction with the **General Terms and Conditions**
- 1.2 You do not need to sign these Terms, acceptance of these Terms is deemed to occur when you engage us for the provision of any insolvency engagement service provided by Norrie & Daughters. Further information is available at clauses 2.9 to 2.11.
- 1.3 These Terms supersede all previous arrangements (whether written, oral or both).
- 1.4 Our Terms are divided into parts:
- a) Part 1 contains our General Terms and Conditions (**General Terms**) and these apply to all service engagements and products;
  - b) Part 2 is made up of terms specific to certain clients, service engagements or products (**Specific Terms**). Specific Terms are contained in separate documents.
- 1.5 The Terms set out in this Part are additional Terms or altered terms to the General Terms set out in Part 1 and where there is any conflict between the Terms in Part 1 to the Terms in Part 2 the Terms in Part 2 prevail.
- 1.6 **Your agreement to our current Terms:** Acceptance by you of our Terms will in respect of insolvency services occur upon you signing either in written or electronic style a shareholders or directors resolution to appoint a liquidator, a minute or resolution to appoint a receiver or administrator, we provide at your request professional services to an individual or entity that may in the future become insolvent or is currently insolvent or you appoint us to provide restructuring services.

## 2.0 Interpretation

- 2.1 **Appointee:** means the formal appointment of an accredited insolvency practitioner as a receiver, liquidator, interim liquidator, an administrator, supervisor, monitoring accountant or similar role pursuant to an appointment arising under Part 14 or Part 15 of the Companies Act 1993, a deed administrator under part 15A of the Companies Act 1993, a trustee of a personal creditor compromise proposal under Part 5(2) of the Insolvency Act, a manager, controller or supervisor of an insolvent under any other legislation.
- 2.2 **Approving Body:** means the body with authority to approve or review remuneration or a course of conduct and/or to which the Appointee must report, being the Appointor, the Court, or other entity as required by Legislation or agreement.
- 2.3 **Conflict between Terms:** If any of the General Terms conflict with any Specific Terms, the Specific Terms will prevail.
- 2.4 **Conflict of Interest:** means any circumstance, relationship or other fact relevant to Norrie & Daughters (or any of its partners, directors or managerial employees) own financial, business, property or personal interests which in reality will, or reasonably may, impair the rendering of objective insolvency and restructuring services.
- 2.5 **Code of Conduct:** In respect of insolvency engagements we follow the engagement standard issued by the Board of the New Institute of Chartered Accountants and subject to issue the Code of Professional Conduct of the Restructuring Insolvency and Turnaround Association of New Zealand (**RITANZ**).
- 2.6 **Independence:** means independence of mind and independence in appearance

- 2.7 **Independence in appearance:** means the avoidance of facts and circumstances that are so significant that a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances, that an individual or firm's integrity, objectivity or professional scepticism has been compromised.
- 2.8 **Independence of mind:** means the state of mind that permits the expression of a conclusion without being affected by influences that compromise professional judgement, thereby allowing an individual to act with integrity and exercise objectivity and professional scepticism.
- 2.9 **Insolvency Engagement:** is an engagement in which Norrie & Daughters or any of its staff provides professional services in relation to an individual or entity that may in the future become insolvent or is currently insolvent, and services in relation to the liquidation of solvent entities. An insolvency engagement may be of either a formal or informal nature.
- 2.10 **Formal Insolvency Engagement:** is an insolvency engagement where Norrie & Daughters or any of its staff is appointed under the Companies Act 1993, the Insolvency Act 2006, the Insolvency (Crossborder) Act 2006, the Corporations (Investigations and Management) Act 1989, the Receiverships Act 1993, or other relevant statute or by a Court order.
- 2.11 **Informal Insolvency Engagement:** is an insolvency engagement which is not a formal insolvency engagement
- 2.12 **Professional services:** means any services in which a member is required to use professional expertise on behalf of a client, irrespective of whether payment is received for this work.
- 2.13 **You:** means the appointer(s) and/or any approving body.
- 2.14 **We, us, our:** means Norrie and Daughters as a Firm, a liquidator, receiver or administrator employed by Norrie & Daughters and any staff, agents or contractors engaged by Norrie & Daughters and working on the insolvency engagement.

### 3.0 Commencing an Insolvency Engagement

- 3.1 **Proof of Identity:** We will require proof of identity of all those who sign any shareholder special resolution, board resolution or creditor seeking to have a liquidator of our firm appointed by the Court or to act as a receiver we will require proof of identity of the relevant persons and where a creditors watershed meeting is held we will require proof of identity that those creditors voting are entitled to vote, before we will accept the appointment.
- 3.2 **Conflict of Interest:** Before accepting an appointment we will carry out conflict of interest checks to ensure that we are and are seen to be free from any conflicts of interest but notwithstanding the foregoing, if you are a shareholder, director or creditor and you believe that a conflict of interest may arise then you are required to advise us of your concerns and the reasons why so we may investigate further. If we are aware prior to or at the time of appointment that a conflict of interest exists, or we are aware that a conflict of interest may arise during the period of the appointment then we will not accept the appointment.

If, during the course of an insolvency engagement, we become aware of a conflict of interest or other threat to our independence, shall take immediate steps to disclose the nature of the threat to all relevant parties and attempt to resolve the conflict however where we are unable to resolve the conflict we may withdraw from the insolvency engagement.

3.3 **Declaration of Independence:** We will provide a Declaration of Independence to all known creditors when we take an insolvency engagement. We reserve the right to make this declaration in our first report on the assignment.

3.4 **Solvent Liquidations and Receivership:** Conflict of interest and independence are not applicable to solvent liquidations and acting as a receiver. Sections 3.2 and 3.3 do not apply to these engagements.

## 4.0 Our Duties to Affected Parties

4.1 **Professional Competence and Due Care:** We will ensure that when we take on an insolvency engagement that the lead person and other staff or agents working on the engagement are adequately trained, have appropriate experience and technical competency.

4.2 **Communication:** We will communicate with affected parties in a manner that is accurate, honest, open, clear, succinct and timely in order to ensure their effective understanding of the processes, and their rights and obligations and in accordance with our legal obligations.

4.3 **Timeliness:** We will attend to the insolvency engagement duties in a timely way and in accordance with our professional obligations

4.4 **Acquiring of Assets:** We have in place policies and procedures which prohibit our directors, associate directors, partners and staff, their respective relatives and entities that any of those parties have a material interest in from acquiring or deriving a benefit from dealing with any assets which come under the administration of an insolvency practitioner engaged by us or a staff member under an insolvency engagement, except as permitted by the law and/or any professional standard or code.

4.5 **Resources:** We will ensure that we have adequate expertise and resources for the type and size of the insolvency engagement, or the capacity to call in that expertise and those resources as needed.

4.6 **Quality Assurance:** We have policies, procedures and systems in place to ensure effective quality assurance.

4.7 **Compliance Management:** We have policies, procedures and systems in place to ensure effective compliance with legislation, our fiduciary obligations and the requirements of any applicable professional standard or code.

4.8 **Risk Management:** We have policies, procedures and systems in place to ensure effective management of risk associated with each insolvency engagement.

## 5.0 Remuneration

5.1 Part 1 (General Terms and Conditions) section 4 (Fees) is replaced by this section.

5.2 **Calculation of our fees:** Unless agreed otherwise in writing our fees are calculated on a time basis. Our fees are calculated on the time expended by us, charged out at up to our then approved hourly rates. The approved hourly rates are the latest rates for which we have obtained High Court approval to use. Wherever possible the work will be carried out by a person at the most appropriate level to carry out the work in a competent and cost effective manner, the interests of the creditors being paramount.

5.3 **Units of Charging:** Time based fee calculations are recorded electronically in 0.1 decimals of an hour.

5.4 **Disbursements:** We will also charge for any disbursements incurred during the provision of the Services. We will provide you with information of disbursements including general information on the different classes of disbursements and the amount of disbursements by category and a declaration that the disbursements were necessary and proper.

5.5 **Administration fee:** In order to cover minor but ongoing costs that would normally be recorded as a minor disbursement, such as, photocopying, files, photography, postage, stationary, storage of records, tea and coffee at creditor or shareholder meetings and similar other minor expenses, in order to reduce our time accounting for such we charge an administration of fee to cover sundry administrative disbursements at the rate of 4% of our fees.

5.6 **Remuneration Reporting:** We will report to you in the form, if any, required by Legislation or the terms of appointment the following:

- (a). matters that may have contributed to the Remuneration claim;
- (b). complexities or difficulties that have been faced by the Practitioner;
- (c). goals that have been achieved since the last report;
- (d). outcomes including explanations as to why that outcome was better or worse than originally predicted; and
- (e). future tasks to be undertaken and why they need to be done.

Unless agreed otherwise our reporting will be by way of the liquidators 6 monthly reports into the progress of the liquidation.

5.7 **Drawing of Remuneration:** Excluding Court appointed liquidation services, where we charge on an hourly rate basis we rely initially upon the default provisions of the Companies Act 1993 to draw our remuneration however notwithstanding that where legislation or the terms of the appointment requires approval of our fees and if the appointer is also the approving body then you irrevocably agree that our fees are capped at one hundred thousand dollars and in the event our fees will exceed that sum then we will seek the approving body's approval. You irrevocably grant to us a proxy to vote as we see fit at any approving body meeting held to determine a cap in our fees. We will not draw any remuneration until we have produced an invoice based on our time and then we will only draw up to the agreed capped amount.

5.8 **Monies Received in Advance:** Where we require a retainer to be paid to cover work prior to an insolvency engagement commencing, for example checking no conflicts of interest and providing a liquidator's consent and supporting affidavit to the High Court to act as a liquidator, that money will be paid into our trust account and then upon completion of that work you consent to us drawing on that retainer and applying it to our account.

Where you are a shareholder or director appointing us for an insolvency assignment and we require an upfront payment then you consent to us applying those monies to our fees in accordance with clause 5.7.

5.9 **Drawing of Remuneration in Non-Time Based Billing Engagements:** Subject to a separate tailored agreement we may agree to billing on other than time based billing. In those cases, the following will apply:

In respect of percentage-based remuneration, we may draw our remuneration from each nominated realisation, provided that there are sufficient funds available to meet higher-ranking priority debts.

In respect of a contingency arrangement, fees may be drawn on the basis approved by the approving body. Any conditions imposed when approving a contingency arrangement, (for example, independent assessment of the achievement of a result) must be satisfied before remuneration is drawn.

In respect of fixed fees, the terms approved will be that the fixed amount may be drawn only at the conclusion of the appointment; or in specified amounts at nominated milestones in the appointment. We will not draw fixed fee remuneration 'up-front'.

- 5.10 **Litigation Funding and Indemnity Payment:** Payments will be deposited into our trust account and remuneration drawn from litigation funding or indemnity payments will be disclosed and, if required, approved in accordance with these terms of engagement.
- 5.11 **Estimated Costs:** Based upon the information you provide us we will if asked provide an estimated range of the costs for the insolvency engagement however many factors outside of our or your knowledge at the time may impinge on the work necessary to complete the insolvency engagement causing increased costs. When we become aware of increased costs we will keep you informed.
- 5.12 **GST:** All our fees are quoted excluding GST.
- 5.13 **Further billing information:** We can supply more information about the hourly charging rates of anyone dealing with the insolvency engagement, or about how a fee has been calculated, if you ask.

## 6.0 Billing and Payments

- 6.1 **Retainer or deposit:** For certain engagements, we may require a retainer or deposit to be paid in advance for our engagement. We will advise you at the time if any such payment is required and how much is to be paid. These payments are to be paid into our Trust Account details of which are Norrie & Daughters Trust at BNZ 02-0240-0067482-000
- 6.2 **Invoicing:** Invoicing is done at regular intervals of 2 weekly or monthly depending on the amount of work undertaken, progress and commercial sensibility or upon completion of an insolvency engagement.
- 6.3 **Billing Client:** Where directors of a company require an insolvency engagement in respect of a company that may become or is insolvent but is still trading then unless we are advised and agree otherwise, we will invoice the directors in their personal capacity and the directors give their consent to personal liability by engaging us. Where shareholders appoint a liquidator, shareholders will be liable for the costs of liquidation in the event unsecured asset realisations are insufficient to cover our costs. In personal insolvency matters the insolvent(s) will be liable for our costs. In other insolvency engagements the appointor(s) will be liable for our costs.
- 6.4 **Time for Payment:** Payment is due within 14 days of the date of invoice unless otherwise agreed in writing by Norrie & Daughters.
- 6.5 **Payment:** Payments are to be paid into our Trust Account details of which are Norrie & Daughters Trust at BNZ 02-0240-0067482-000 Please ensure you record the name of the account you are paying and the invoice number.
- Payment may also be made online using VISA or MasterCard by clicking on the "Pay Here" (or similar) link on your emailed invoice.
- 6.6 **Guarantees:** For insolvency engagements involving entities that may in the future become insolvent we may require a personal guarantee.

## 7.0 Complaints

- 7.1 **Complaints Management System:** We maintain a complaints management system so as to try to respond and resolve a complaint whilst it is of minor nature or to escalate complaints that cannot be resolved. We will appoint a "Complaints Manger" who is not involved in the insolvency engagement to manage the complaint.
- 7.2 **Making a Complaint:** To make a complaint then in the first instance you should email or write to the lead insolvency practitioner setting out the details of your complaint including any supporting documents. If the matter is unable to be resolved, then either party may escalate the complaint by written advice to the other party and we will appoint a Complaints Manager.

- 7.3 Complaint Contact Addresses: Complaints can be emailed to liquidations@norrie.co.nz or posted to PO Box 12 516 Penrose Auckland 1642. Our phone number is +64 (0)9 551 3631
- 7.4 If your complaint passes the complaint threshold set out in any code of practice applicable to the insolvency engagement then you may request an independent third party who is a member of the RITANZ to review a claim to remuneration and disbursements to determine if the claim is fair or not. The costs of such a review will initially be shared in accordance with the applicable code of practice but you are advised that if your complaint is not upheld then you may be liable for the full cost of the review.

Generally, if the outcome of the Review results in:

- a) a greater than 20 per cent. adjustment to our invoice for remuneration (excluding disbursements) for the benefit of you, then we will reimburse you your share of the Costs and Expenses; or
- b) if the review results in between no adjustment and up to and including 20 per cent adjustment to our claim for remuneration then you must reimburse us for our share of the Costs and Expenses.

## 8.0 Terms Specific to Assignment

- 8.1 In respect to provision of professional services to the shareholders of:

COMPANY NAME LIMITED (in Liquidation) (**Company**)

and the solvent liquidation of the Company the following terms of engagement are agreed to:

- 8.2(a) The insolvency engagement is accepted on the basis of the director's resolutions and certificate of solvency and:
- i. The Company has ceased trading and has assets other than cash in the bank; and
  - ii. Up to 2 tax returns are to be prepared and filed with the Commissioner Inland Revenue;
- 8.2(b) We understand that the Company has cash assets available in its name held in its bank account. The costs of liquidation will be drawn from these assets in accordance with Schedule 7 of the Companies Act 1993 however if insufficient assets are available to pay the costs of liquidation then the shareholders will be personally liable to the liquidator and the liquidator may then seek a retainer to be paid into Norrie & Daughters trust account.
- 8.2(c) Based upon information provided to the liquidator it is estimated that the costs of completing this liquidation will be up to \$5,000.00 plus GST. This will cover disbursements for advertising and preparation of tax returns. If the information upon which this estimate is based is for whatever reason incorrect on then we will update our estimated costs and keep you informed as much as is practicably possible.
- 8.2(d) Our fee will be fair and reasonable for the work involved and will generally reflect an hourly rate for time and attendances involved in dealing with the assignment but the fee need not be limited to that rate alone and may be adjusted for the value of any matter arising or the urgency of that matter and the like. At the time of accepting this assignment the liquidators hourly rate is \$400 per hour plus GST (High Court approved rate). Other staff who are employed or engaged by our firm will be charged for their time and attendances will be charged at between \$120 and \$250 per hour plus GST depending on their experience.
- 8.2(e) No retainer payment is currently required.