



**A T T O R N E Y S**

*bee at ease!*

## TERMS OF ENGAGEMENT (DEBT COLLECTIONS)

Between

**BREGMAN MOODLEY ATTORNEYS  
(‘BMA’)**

And

**SAMPLE COMPANY**

**Please carefully read the terms of this Agreement and let us know if there’s anything that you don’t understand, before you sign.**

**Once you initial each page, sign this Agreement on the last page and return a signed copy to BMA, together with all FICA documents, we will acknowledge acceptance of representation by counter-signing this Agreement and return a fully executed copy to you. On that date this Agreement will take effect and BMA will provide legal services to you on the terms set forth below.**

### **1. Legal Practice Act**

We draw your attention to Section 37(7) – (9) of the Legal Practice Act, Act 28 of 2014.  
**Please feel free to communicate with us should you require clarification:**

(7) When any attorney or an advocate referred to in section 34(2)(b) first receives instructions from a client for the rendering of litigious or non-litigious legal services, or as soon as practically possible thereafter, that attorney or advocate must provide the client with a cost estimate notice, in writing, specifying all particulars relating to the envisaged costs of the legal services, including the following:

(a) The likely financial implications including fees, charges, disbursements and other costs;

(b) the attorney’s or advocate’s hourly fee rate and an explanation to the client of his or her right to negotiate the fees payable to the attorney or advocate;

(c) an outline of the work to be done in respect of each stage of the litigation process, where applicable;

(d) the likelihood of engaging an advocate, as well as an explanation of the different fees that can be charged by different advocates, depending on aspects such as seniority or expertise; and

(e) if the matter involves litigation, the legal and financial consequences of the client's withdrawal from the litigation as well as the costs recovery regime.

(8) Any attorney or an advocate referred to in section 34(2)(b) must, in addition to providing the client with a written cost estimate notice as contemplated in subsection (7), also verbally explain to the client every aspect contained in that notice, as well as any other relevant aspect relating to the costs of the legal services to be rendered.

(9) A client must, in writing, agree to the envisaged legal services by that attorney or advocate referred to in section 34(2)(b) and the incurring of the estimated costs as set out in the notice contemplated in subsection (7).

## 2. Outline of work

The Process is set out in **Annexure A**.

## 3. Authority

BMA will have the usual authority of attorneys to act on your behalf in relation to all matters necessary or incidental to our engagement, which includes authority to incur all expenses that we consider necessary or desirable for the proper conduct of the matter. These include all out-of-pocket expenses such as the cost of photostat copies, telephone calls, amounts paid to messengers, couriers, sheriffs, advocates, etc.

## 4. Your contact information

You select the address the address set out in **Annexure B** as your domicile address.

## 5. BMA's duties

- 5.1. BMA will provide those legal services reasonably required to represent you.
- 5.2. BMA will commence debt collection proceedings on receipt of instructions. During the process, BMA will attempt to gauge the prospects of success in each matter and give you a frank assessment whether it is worth your while continuing with the process (for example where we establish that a debtor has ceased to trade, is insolvent, has no assets, etc.)
- 5.3. Where possible, we shall attempt to recover all our fees and disbursement from your debtors.
- 5.4. BMA will keep you informed of progress and to respond to your inquiries, at least once a month. We do charge for phone calls, WhatsApp's, emails and other communications, so we encourage you not to request more regular status reports as this will run up costs, unnecessarily.
- 5.5. Although we conduct ourselves in a professional manner and offer practical and high-quality legal advice, our comments about the outcome of a matter are expressions of opinion only, are neither promises nor guarantees, and will not be construed as promises or guarantees.
- 5.6. When BMA has completed all the legal work necessary for your case, we will close our file and return original documents to you. We will then store the file for 5 years.

We will destroy the file after that period of time unless you instruct BMA in writing to keep the file longer.

## **6. Your duties**

- 6.1. BMA will rely on full and proper instructions from you. You will assist BMA by timeously providing necessary information and documents.
- 6.2. You agree to be truthful with BMA and will not withhold information.
- 6.3. You agree to cooperate, to keep BMA informed of any information or developments which may come to your attention regarding any matters that you entrust to us.
- 6.4. You agree to pay BMA's statements on time, and to keep BMA advised of your current address, email and telephone numbers.

## **7. Accounting and payment in respect of debt collection matters**

- 7.1. BMA's rates are according to party and party court tariffs applicable from time to time. Please see the following links to the Magistrates' and the High court tariffs:

[http://www.justice.gov.za/legislation/notices/2015/20150123-gg38399\\_rg10349\\_gon33-RulesBoard.pdf](http://www.justice.gov.za/legislation/notices/2015/20150123-gg38399_rg10349_gon33-RulesBoard.pdf) (Magistrates' Court)

[http://www.justice.gov.za/legislation/notices/2015/20150123-gg38399\\_rg10349\\_gon31-RulesBoard.pdf](http://www.justice.gov.za/legislation/notices/2015/20150123-gg38399_rg10349_gon31-RulesBoard.pdf) (High Court)

- 7.2. The tariff allows BMA to charge collection commission of 10% per payment made either to BMA or to you, directly, with a maximum of R 1200 per payment. This is Value Added Tax exclusive.
- 7.3. Invoices will reflect fees and disbursements plus Value Added Tax, which will be charged at the tariff rate applicable from time to time.
- 7.4. Travelling and waiting time, drafting, copying and perusing of all documents including letters, memoranda, and internal memoranda, instructions to counsel, pleadings and affidavits are based on tariff.
- 7.5. BMA will require an advance deposit or interim payments on account based on estimated fees and disbursements incurred or to be incurred.
- 7.6. BMA will advise you before undertaking any procedures that will substantially increase the amount of fees. Please remember this is an estimate and may be subject to change.
- 7.7. Any deposits made by you or estimate of fees given by us are not a representation of a flat fee and will not be a limitation on fees.
- 7.8. BMA will hold the funds in its Trust Account. We will provide you with a monthly statement of fees and disbursements. After BMA emails you the monthly statement, we will apply the funds to the fees earned and disbursements incurred. Should we exceed the deposit, we may bill you monthly for additional fees and expenses. Payment must be made within 30 days of receipt of our statement. We reserve the right to withdraw should these bills not be paid. Further, we may ask that additional sums shall be deposited in our trust account should it appear necessary to cover additional fees and expenses.

7.9. Should the debtor pay any amount to you directly, after handover, we shall charge collection commission on such direct payments, according to tariff.

**8. Termination of mandate**

8.1. Either party may terminate this Agreement at any time and for any good cause shown on notice to the other party.

8.2. All unpaid charges for fees or costs, up to date of termination, will be due and payable immediately.

8.3. Until such fees and disbursements have been paid BMA shall retain a lien on your file/s.

8.4. Once our account has been paid in full, if you request that BMA hands over your case file to you or a third party, we shall retain copies of the case file.

**9. Whole agreement**

This document contains the whole agreement between you and BMA and no amendments to this document will be valid unless they are in writing and signed by both parties.

**Please Sign here**

Signed at \_\_\_\_\_ on \_\_\_\_\_

COMPANY REPRESENTATIVE FULL NAMES:

\_\_\_\_\_

COMPANY REPRESENTATIVE SIGNATURE:

\_\_\_\_\_

(who warrants that he/she is duly authorised, and that the information contained herein and is correct)

\_\_\_\_\_

For: BMA

Duly authorised (hereby acknowledging acceptance of representation)

# ANNEXURE A

## DEBT COLLECTION UNDERSTANDING THE PROCESS

### 1. Receive instructions from Managing Agent/Client

- 1.1. Receive instructions from client
- 1.2. Open file on Office System
- 1.3. Acknowledge receipt of instructions
- 1.4. Deeds Office search – to ensure that the correct person is being summonsed
- 1.5. Ensure that all information is obtained for purposes of the Summons
- 1.6. Issue and send letter of demand
- 1.7. If debtor does not pay, then proceed to summons.

### 2. Prepare Summons

- 2.1. Prepare Summons and Particulars of Claim
- 2.2. Print Summons and Particulars of Claim (2 copies)
- 2.3. Sign Summons and Particulars of Claim

### 3. Proceed to issue Summons out of Court

- 3.1. Attend at Court (either High Court or Magistrate's Court depending on amount outstanding)
- 3.2. Receive issued Summons with allocated case number

### 4. Summons to Sheriff for services

- 4.1. Draft letter to the Sheriff with Jurisdiction instructing Sheriff to serve on Defendant
- 4.2. Await Sheriff's Return of Service
- 4.3. Attend at Sheriff's office to collect Return of Service

Time: Service of Summons could take up to 3 weeks

### 5. Default Judgment

(In the event that no Notice of Intention to Defend is received from the Defendant within 10 Business days of service of the Summons on the Defendant)

- 5.1. Note Sheriff's service date
- 5.2. Diarise for 10 Court days after aforementioned service date
- 5.3. Take instructions to proceed with default judgment from the Managing Agent
- 5.4. Draft "Request for Default Judgment"
- 5.5. Have Request for Default Judgment signed
- 5.6. Two copies of Request for Default Judgment are necessary
- 5.7. Attend at Court to hand in Request for Default Judgment to Clerk of the Court
- 5.8. Await notification or enquiries for the granting of Request for Default Judgment from the Clerk of the Court
- 5.9. Notify client of Judgment grant and take instructions if we may proceed with Warrant of Execution
- 5.10. Instruction that we may proceed with Warrant of Execution

### 6. Warrant of Execution

- 6.1. Draft Warrant of Execution
- 6.2. Have Warrant of Execution signed
- 6.3. Attend at Court to deliver the Warrant to the Clerk of the Court
- 6.4. Await notification or enquiries for the granting of Warrant of Execution from the Clerk of the Court
- 6.5. Receive Warrant of Execution from the Clerk of the Court

## **7. Proceed with Warrant of Attachment for Movable Assets**

- 7.1. Do letter to the Sheriff with Warrant attached
- 7.2. Letter must record that sufficient goods are received to cover Sheriff's costs
- 7.3. Await Sheriff Return of Service
- 7.4. Receive Return of Service from Sheriff
- 7.5. Advise client regarding content of Sheriff's Return of Service
- 7.6. If appropriate, appoint a Tracer on a "no trace no fee" basis
- 7.7. Instruct Sheriff to remove assets that were attached
- 7.8. Provide bond of security
- 7.9. Request sale date from the Sheriff
- 7.10. Advertise sale in local newspaper
- 7.11. Await auction date of movable assets
- 7.12. Receive Sheriff's cheque
- 7.13. Account to client
- 7.14. If appropriate, take instructions from client regarding proceeding with Sale of Immovable Assets
- 7.15. Receive instructions from client to proceed with Sale of Immovable Assets

## **8. Sale of Immovable Assets**

- 8.1. Receive Sheriff's return of "nulla bona" in respect of movable assets (which means 'no goods' found)
- 8.2. Take instructions from client to proceed with Application for Warrant of Execution for Sale of Immovable Property (The unit itself)
- 8.3. Prepare Affidavit in client's name for Warrant of Execution for Sale of Immovable Property
- 8.4. Send Affidavit for Warrant of Execution for Sale of Immovable Property to client
- 8.5. Client to have Affidavit signed before Commissioner of Oaths
- 8.6. Client to return Affidavit to our office
- 8.7. Draw and prepare Application for Warrant of Execution for Sale of Immovable Property and attach Notice of Motion to the Affidavit
- 8.8. Have aforementioned signed
- 8.9. Three copies of Application for Warrant of Execution for Sale of Immovable Property
- 8.10. Send Warrant of Execution for Sale of Immovable Property to Sheriff for "Personal Service"
- 8.11. Await Sheriff's return of Personal Service
- 8.12. Receive Return of Service from Sheriff
- 8.13. Attend Court on set down date
- 8.14. Argue application for Application for Warrant of Execution for Sale of Immovable Property before the Court
- 8.15. Advise client of Magistrate's Decision
- 8.16. Instruct Sheriff to proceed with Sale of Immovable Property
- 8.17. Request sale date from the Sheriff
- 8.18. Advertise sale in local newspaper
- 8.19. Await auction
- 8.20. Receive payment from Sheriff
- 8.21. Account to client

## **9. Close file**

## ANNEXURE B

Kindly provide us with certified copies of the following documents:

1. the identity documents of all the company's directors / member of the close corporation or trustees of the trust; and
2. a copy of the certificate of registration and proof of the registered address of the company / close corporation / trust

### Company Representative Details

First name:

Surname:

Identity number:

Email address:

Contact number:

### Company details

Registered name: **SAMPLE COMPANY**

Registration number:

Registered address:

Vat registration number:

Physical address: