

**LETTER OF TERMS OF ENGAGEMENT  
FOR LIQUIDATION**



## GENERAL TERMS OF ENGAGEMENT

1. This letter sets out our Terms of Engagement for our liquidation services. You will have agreed to be bound by these Terms & Conditions when you authorised Norrie & Daughters staff (N&D) to act as liquidators.
2. This agreement comes into effect upon you giving advice to N&D that you wish N&D to carry out liquidation work or assist in preventing your company from having a liquidator appointed.

## DEFINITIONS

**Liquidation Work** means: any work carried out by N&D staff to either:

- (a) Work with a company and/or its owners, directors and staff to help prevent a liquidation occurring; or
- (b) To act as liquidators a company

**You** means: The person(s) signing any resolution or minute or letter or email appointing N&D to carry out liquidation work.

## TERMS OF ENGAGEMENT FOR LIQUIDATION WORK (TERMS OF ENGAGEMENT)

3. The purpose of this letter is to set out the Terms of Engagement you have agreed to by appointing N&D staff to carry out liquidation work.

By signing a Resolution appointing N&D staff to act as liquidator or if you provided any other instruction to N&D to carry out any other type of liquidation work then you severally and jointly are deemed to have been provided a copy of and read and understood and if necessary taken appropriate legal advice in respect of these Terms of Engagement and you agree to be bound by these Terms of Engagement.

## LIQUIDATIONS

4. N&D will perform the functions of a liquidator to the required statutory requirements. Liquidation work is subject to our Consent to Act being given in writing and other provisions.
5. You agree to deliver to N&D all documents and records that pertain to the company(s) in liquidation, directors reports, immediate access to company assets including keys and/or unlock codes to locks and subsequent requests for clarification of records produced or further records whether they be in electronic form, paper form or otherwise ("documents") to the offices of N&D or other such place that the liquidator(s) may direct. Any delay in delivering documents to the liquidator(s) whether under the terms of this letter or as required by the liquidator(s) may be deemed to be an act of frustration of this agreement.  
The role of the liquidator is impartial and carried out in accordance with the Companies Act 1993 and other relevant legislation. A liquidator is responsible for securing company assets, realising those assets and distributing the proceeds of realisation to creditors and surplus amounts as required by the Companies Act or company constitution.

## LIQUIDATION WORK - PREVENTING LIQUIDATION/INSOLVENCY

6. In the event of liquidation work to help prevent the appointment of a liquidator N&D gives no guarantee to the successful outcome of its work but N&D will to the best of its endeavours assist you in every way practicable.
7. The Company, its directors and shareholders fully indemnify N&D against all claims from any party including the company, directors and/or shareholders themselves arising out any work carried by N&D with a company and/or its owners, directors, staff and creditors to help prevent a liquidation or other adverse event occurring.
8. You agree to provide N&D with all records and facts and give full disclosure as requested by N&D in order for N&D to provide the best possible service in order to obtain the best outcome. Any delay in delivering documents to the liquidator(s) whether under the terms of this letter or as requested by N&D may be deemed to be an act of frustration of this agreement and/or may lead to N&D being unsuccessful in preventing company liquidation.
9. In some cases you may be asked to make N&D your tax agent in order for N&D to provide the best services. This may be temporary or permanent at your choice.

## OUR FEES & PAYMENT

10. In cases where the Company is incapable of meeting the costs of liquidation N&D will where possible provide you with a fixed price for an agreed set of services however liquidation work is subject to many variables so in the event that you are given a fixed price then that price will have been determined upon what was known to N&D at the time which will have included disclosures given by you. If the disclosures provided at the time are not of a sufficient degree of accuracy then N&D reserve the right to vary a fixed price. Examples of when a fixed price may change are:
- (a) Creditors: A change in status, number, meetings and objections;
  - (b) Debtors: A change in status, number, objections to supply of records or payment, voidable transactions;
  - (c) Legal: The need to incur unexpected legal fees and disbursement including dealing with directors and/or shareholders;
  - (d) Frustration: Failure of directors to furnish company records or access to assets as required by the Liquidators;
  - (e) Other Costs: Non disclosed material information that requires the Liquidators to incur unexpected costs; otherwise

Subject to section 11 below N&D will absorb cost overruns greater than 10% if those overruns are caused by N&D underestimating the estimated cost and you had provided N&D with full and correct disclosure of all necessary information before you appointed and N&D accepted and provided you with an estimate to carryout liquidation work.

11. If N&D have provided an estimate for the liquidation work then N&D will to the best of its abilities try to ensure that the final costs are contained within 10% of that estimate however the basis of any such estimates are based upon your communications and disclosures to N&D and the nature of liquidation work is such that any inaccuracies in the information provided to N&D may result in that estimate being inaccurate in which case we will advise you of cost overruns if they are likely to exceed 25% of our estimate. If your instructions were to liquidate a company then you will subject to section 13 of these Terms of Engagement be liable in full for any additional costs over and above our estimate. If your instructions for other work then we will discuss with you alternative ways to control the additional costs.
12. In some cases the company(s) to be liquidated will be capable of paying for the costs of liquidation. In such cases N&D only provide an estimate of the costs of liquidation and proof of ability to make payment to the liquidator will be required before acceptance by N&D of the liquidation. N&D may require a deposit of funds into N&D Client Funds Trust Account which you authorise N&D to deduct the costs of the liquidation from if the Company is incapable of paying for all or some of the liquidation.
13. In the event that the company(s) are able or appear able to fund the costs of liquidation then N&D will take its fees from the company(s) in accordance with the law however when the costs of the liquidation exceed the funds available in the company(s) in liquidation then whether or not a deposit has been asked for or not the persons who signed the resolutions and/or the third party as set out in section 17 of this section personally guarantee payment of the costs of liquidation plus disbursement plus any other costs associated with the liquidation.
14. Where N&D is charging on an hourly rate or has cause to charge additional money under a fixed rate agreement then those charges will be charged at the appropriate prevailing hourly or agreed rate. Hourly rates are recorded in 6 minute units, with time rounded up to the next unit of 6 minutes.
15. Unless agreed otherwise if a deposit is required the amount of the deposit will be advised to you separately and must be paid in cleared funds to N&D before N&D will accept liquidation work.
16. Payment may be made direct to our Clients Trust Account held at BNZ. Our Client Trust Account number is: 02-0240-0067482-000. Please ensure you record the name of the company in liquidation and advise N&D by email to [admin@nadbiz.co.nz](mailto:admin@nadbiz.co.nz) of that payment attaching any proof of payment you have available. In all cases of insolvent companies the shareholders and/or directors must pay N&D out of their own funds and N&D will invoice the appropriate individuals and N&D will in good faith assume that payment has been made by the individual(s).
17. N&D will invoice you in accordance with this letter unless an agreement is in place to invoice a third party. It is your responsibility to get the third party to agree in writing to be invoiced for work we do that you instruct us on and provide us with a copy of the agreement. If no agreement is in place to invoice a third party, you are responsible for paying for the services that you instructed us on whether or not the work was done for the benefit of a third party or on behalf of a third party.

18. Any account queries must be brought to the attention of N&D in writing within 7 days of receipt of invoice/statement. If you are likely to have difficulty meeting any account please discuss this with us. We will then endeavour to make arrangements to suit your circumstances.
19. Payment is required on invoice unless otherwise agreed or stipulated on our invoice. We reserve the right to charge interest of 2% monthly on all overdue sums and interest shall be calculated on a monthly compounding basis on accounts remaining unpaid. You agree to indemnify us and pay all costs and expenses on a solicitor/client base if legal action is necessary, and/or Collection Company's fees, which may be incurred in recovering from you any overdue amount. Any reminder letters/statements are charged at \$20 each. For the purposes of being overdue payment must be received no later than 7 days after the date of invoice.
20. N&D fees are quoted as exclusive of disbursements. We invoice for disbursements separately from our own fees.
21. In respect to disbursements or fees incurred by N&D in currencies different from the invoice currency, it may not be practical to accurately invoice for the exact disbursement amount. This sometimes results in a foreign exchange gain in our favour. We therefore agree that where you notice such foreign exchange discrepancies that you have an opportunity within 7 days of the invoice being issued to you to dispute the disbursement amount we have invoiced you. If you do raise such a dispute, we will get an exact amount we were charged for the disbursement from our bank and, where necessary, issue you with an invoice with the exact disbursement amount. Please note that in some cases, doing this may increase the disbursement amount we invoice you if the originally invoiced disbursement was below what we actually paid for the disbursement. If you do not dispute the invoice in the 7 day time limit, you agree that the amount charged for the disbursement is correct, even if we make a gain or take a loss on the transaction.
22. N&D fees and disbursements are quoted as GST exclusive unless specifically otherwise quoted. GST will be invoiced for work done in New Zealand for a New Zealand client. Otherwise, no GST will be levied unless you advise us that GST should be levied. It is your responsibility to advise us if we have incorrectly charged or not charged GST. If GST should have been charged, we reserve the right to invoice you for outstanding GST and any penalties incurred.
23. N&D may discontinue work for a company or its owners or directors in the event of non-payment or likely non-payment of an invoice in which case N&D will be liable in in anyway whatsoever for any losses incurred by the company or its directors and shareholders.

## UNPAID ACCOUNTS AND FRUSTRATION OF INSTRUCTIONS

24. You undertake not to frustrate the completion of liquidation work by, for example, not acting timeously or not providing necessary information for us to complete your instructions. In the event that you unreasonably frustrate our efforts to complete your instructions, we reserve the right to invoice the full amount for the instructed work even though your instructions may not have been completed.
25. If your account remains unpaid and there is no satisfactory explanation for non-payment, then in addition to our other rights as set out elsewhere in this Agreement if we have carried out other work for you or an associated entity then we reserve the right to retain any other documentation and files as a lien until all accounts are paid, start proceedings for the recovery of the amount owed + interest + collection costs and legal costs on a full indemnity basis, and do no further work for you. This may mean that we will not file certain records with government agencies and that you may incur penalties from that government agency in which case we will not be liable to you for those penalties.

## TERMINATION

26. Except for acting as a liquidator, you may terminate our services and authority to act for you at any time in writing. Payment in full is required to be made up to the time of termination and N&D have a lien on all records and documentation until payment in full is made.
27. If our services or authority to act for you is terminated, you must pay us all fees due up to the date of termination and all expenses incurred up to that date.

## INTERPRETATION

- (a) **Singular and Plural terms:** Singular words in this Agreement include, where appropriate, the plural and vice versa.
- (b) **References:** References to “Us”, “Our”, and “We” are references to N&D and its subsidiaries including its successors and assigns, and its agents, authorized officers and employees. References to “You” and “Your” are references to the entity(s) signing these Terms of Engagement and include your successors and permitted assigns, and its agents, authorized officers and employees.
- (c) **Joint and Several Liability:** If the entity signing these Terms of Engagement comprises more than one person or entity then each such person or entity will be jointly and severally liable on all of the covenants or the Guarantor covenants (as the case may be) under this Agreement.
- (d) **Headings:** The headings and subheadings in this Agreement are for convenience only and will not affect the construction of the terms and conditions of this Agreement.
- (e) **Assignees:** All rights and powers which N&D have under this Agreement may be exercised by Our assignee (if any).

Yours faithfully

**Norrie and Daughters Limited**

### Appendix 1 - Payment Terms, Instructions & Other Matters

Instructions:

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Estimated Cost (You agree that you have read section 11 of these Terms of Engagement)

Estimate is \_\_\_\_\_ or between \_\_\_\_\_ and \_\_\_\_\_

Payment Terms:

Deposit Required:

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Other Matters:

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Signed at

this

day of

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Name: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_