



## **D. G. WIGMORE & ASSOCIATES c.c. MARINE SURVEYORS & CONSULTANTS**

**D G WIGMORE & ASSOCIATES CC**

**Members: D G Wigmore; CA Wigmore; J Evans**

**[www.wigmore.co.za](http://www.wigmore.co.za)**

### **Terms and Conditions of Engagement**

#### **Introduction of Services**

DG Wigmore & Associates CC ["DGWA"] seeks to provide a high quality marine surveying and consulting service ["the service/s"] to its principals. It is important that our principals are aware of the basis upon which that service is provided and the terms on which it is carried out.

The following are the terms and conditions on which DGWA render the services.

#### **Fees and Disbursements**

Fees are generally based on the time spent by our fee earners and will reflect the importance and the complexity of the work done and the seniority and experience of the staff concerned. This includes, but is not restricted to, time spent on surveys, consultations with third parties, review and preparation for litigation or any other dispute resolution, (including attorneys), considering and drafting reports and other documentation, correspondence, research, telephone calls, attendance at necessary meetings and travelling. VAT will be added to the fee, where applicable.

Disbursements such as travelling, sustenance and accommodation costs, photocopying, telephone and fax charges, courier charges, testing and analysis charges, fees of necessary third parties and all other out-of-pocket expenses, plus VAT will be for the principal's account.

Fees are charged at varying rates depending upon the seniority and expertise of the staff members involved. The hourly charge out rates for the staff members providing surveying services will be made available on request, or set out in a signed quotation.

The rates as stated are adjusted from time to time.

Please note that any estimate of fees is given as a guide only, based on the information then known, and is not to be regarded as a quotation unless we specifically agree that it is to be so regarded. Any estimate or quotation will only be valid for acceptance for a period of 30 (thirty) days whereupon it will lapse, unless otherwise agreed.

#### **Terms of Payment**

Billing will ordinarily take place on a monthly basis unless a contrary agreement is reached in writing.

Accounts are due and payable within 30 (thirty) days of presentation of the invoice.

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If any account is not paid within 30 (thirty) days of the date of the presentation of the invoice, DGWA will be entitled to charge interest, calculated daily and compounded monthly in arrears on all amounts outstanding from time to time, at a rate of 1% above that rate of interest at which Nedbank Limited lends on overdraft to its prime customers in the private sector, as certified by any manager of that bank whose appointment need not be proved and such certificate shall be *prima facie* proof of that rate.

DGWA will be entitled to suspend the provision of services on any matter until all outstanding amounts have been settled.

Invoices must be paid in the currencies reflected in the invoice, and must be paid into the bank account reflected in the invoice, unless otherwise agreed.

### **Deposit**

DGWA may from time to time require the principal to pay reasonable amounts on account of anticipated fees and disbursements. Such amounts are, in the normal course, intended to be held against payment of the final account to be rendered to you and you are expected to settle interim accounts as they fall due. Any deposit held by us may, in the absence of an express written instruction from you to the contrary, be invested by us in a separate identified account with a registered bank or financial institution and the interest which may accrue in respect thereof will similarly be applied on account of fees and disbursements.

### **Trust Funds**

Where funds are received by DGWA whether on the principal's behalf or otherwise, and whether as the proceeds of any salvage sale or otherwise, and are deposited into DGWA's trust bank account, DGWA reserves the right, and the principal hereby agrees that it has the right, to deduct its fees and expenses from those funds without any further approval of or notification to the principal.

### **Aborted Work and Termination of Instructions**

Where work does not proceed to a conclusion or the mandate is terminated, DGWA will charge for all work done up to such date, together with all disbursements incurred by DGWA in relation to the matter.

Where work is transferred to any other party, DGWA will be entitled to charge for work done and all costs and disbursements associated with the orderly termination and the transfer of such work, and DGWA will not hand over any reports, records or documents pertaining to the work prior to receipt of payment for all amounts owing to DGWA.

### **Confidentiality**

All information, survey reports, correspondence and advice of whatever nature given by DGWA to the principal is confidential and is for the principal's sole use and shall not be published, disclosed or made available to third parties without DGWA's prior consent.

In the event that any reports or findings made by DGWA are required for any litigation or other dispute resolution process, then such findings or reports may not be used without DGWA written consent.

### **Transfer and Transmission of Funds**

All transfer and transmission of principal funds are made at the principal's risk and expense and DGWA shall not be liable for any loss, damage or delays howsoever caused.

### **Limitation of Liability**

Our liability for the aggregate of all claims against us by any principal arising out of or in connection with each instruction in respect of any alleged breach of contract or alleged breach of a legal duty or fault or negligence on the part of DGWA (collectively hereinafter referred to as "the claims") shall be

limited to double the amount of the fees, excluding disbursements, that were charged, or would have been charged, by DGWA for the services rendered in respect of that instruction.

The principal agrees that it will not pursue any action against an individual employee, member or director of DGWA in respect of the claims.

Should any instruction be renewed or extended, or any further instruction received from the same principal, the above limitation of liability will apply to each such renewal or extension or further instruction.

This limitation of liability shall not apply to loss resulting from any cause for which restriction or exclusion of liability is prohibited by law.

#### **FICA**

DGWA is an accountable institution in terms of the Financial Intelligence Centre Act 2001. If your instruction relates to a matter which requires us to obtain prescribed information concerning your organisation or individuals within that organisation, DGWA will provide you with an explanatory memorandum and the applicable forms. DGWA complies with the reporting obligations under FICA. Information communicated to DGWA will remain confidential to the extent permissible by law.

#### **Principal Care**

It is the policy of DGWA to investigate complaints and expressions of dissatisfaction fully and promptly. If you have a complaint relating to the work being carried out for you, you should raise this in the first instance with the staff member dealing with the matter. If you are still dissatisfied you should make a formal complaint (preferably in writing) to Captain DG Wigmore, giving full details of your complaint. Captain DG Wigmore or another member of staff nominated by him will investigate the matter and will respond to you in writing.

#### **Principal Relationship**

On acceptance of instructions in relation to a particular matter, the principal will become a principal of DGWA and remain so throughout the duration of the instruction. DGWA will not act for any other person or company in relation to the same matter unless the principal agrees thereto.

Unless the principal has specifically retained the firm DGWA to act for the principal in all matters, DGWA is not precluded in any other circumstances from acting for any another party in any other matter with which the principal is associated provided that no conflict of interest arises.

#### **Applicability of these Terms**

These terms and conditions will apply in respect of all services provided by DGWA, whether or not there shall be in existence any written or other express acceptance which conflicts or contradicts these terms and conditions. DGWA reserves the right from time to time to vary these terms and conditions.