



Terms of Service

Due Diligence Consultation

Introduction

Thank you for booking a Due Diligence Consultation with me. Booking this consultation is subject to the following Terms of Service. Please read them carefully. They are for your benefit as well as mine. If you have any questions at all, please email me: contact@carefreecounsel.com.

Here are some further details that may help you to get in contact with me if you have any concerns.

Michelle Whitehead trading as Carefree Counsel

BA (Hons 1) LLB (Hons 1) LLM (Hons)

NSW Solicitor #: 58004

ABN: 91968443292

PO Box 438, South West Rocks, NSW 2570

Phone: 0436291346

(Please only call or text in an emergency – I prefer contact by email.)

This consultation is offered in compliance with Australian Consumer Law.

Content & Delivery

The Due Diligence Consultation consists of:

- these Terms of Service

- a 60 minute online video consultation using Zoom
- a comprehensive reporting letter

The Zoom link is provided in your confirmation of booking email. I suggest you add it to your calendar immediately or save it for easy reference. If you can't find it before the consultation is due to start, please email me.

If you would like a recording of the session, please ask when you join Zoom so I can give you permission to record.

Payment Terms

The fee for this consultation is on my website & on my booking page. My fee will be invoiced following our session when I send the reporting letter. Payment is due within 14 days of the date of the invoice unless alternative arrangements have been agreed to in advance.

My preferred payment method is by direct deposit or EFT (electronic funds transfer) to the account nominated on the tax invoice. Please use your surname and invoice number as the reference when making a deposit.

Account Name	Branch Code (BSB)	Account Number
M M Whitehead	082-491	82 659 2006

IMPORTANT! My bank account details will not be changed from the details above. If you receive any correspondence suggesting that I have changed my bank account details and asking you to pay into a different account, please call me on 0436291346 or send me a message through Facebook to confirm BEFORE PAYING, as this is a common cybercrime tactic.

PayPal is available on request if you prefer to pay by credit card. Please confirm the details of the payment with me and wait for me to issue a PayPal invoice before making a PayPal payment. I reserve the right to add a surcharge of 2.5% as a contribution towards PayPal's fees. (This is less than PayPal charges me).

Make sure you keep a copy of the invoice as this work should be claimable as a business expense for tax purposes, although you will need to confirm this with your accountant or financial adviser.

Payment plans

I am always happy to accept payment plans.

The total amount must be paid in full within 6 months from the date of invoice. If this will cause you hardship, let me know and I may exercise my discretion to extend the timing.

Once we have agreed on the instalment amounts and timing, I will set up an invoice series in my accounting software which will automatically email each monthly invoice to you.

The first month's instalment is due within 14 days of our instruction interview or my receipt of your document for DIY+Review (unlike payment in full, which is not due until the documents are completed).

IMPORTANT NOTE - If you have any difficulty paying an invoice, CONTACT ME so we can make alternative arrangements. I promise to understand. There is nothing worse than being ghosted and having to beg for payment. If there is a problem, if you need more time or if you are not happy, reach out and tell me so I can be generous and offer a win/win solution.

If you don't, the administrative fees for overdue payments mentioned below WILL be added to the total you owe, and I will eventually bring in a debt collector - because otherwise I am trampling on my own boundaries, and that's not fair.

Don't make me feel mean and nasty by hiding from me! Let me know what is going on for you so we can find a way forward without ruining our relationship. Sound reasonable?

Late payment consequences (because no-one should have to beg to get paid)

If I have not received payment after 14 days from the date of the invoice, I will send you a reminder. I will continue to send weekly reminders after that until payment is received.

After the first reminder, an administrative fee of \$27.50 (inc GST) will be added to the total amount due each week for EVERY reminder sent where I have not received a

payment. This applies to all invoices, including payment plan instalments. You agree that it is reasonable for this administrative fee to accrue where I must follow up on payments that are 28 days or more overdue. Even if you can't pay the whole overdue amount, paying something towards it will stop you incurring the administrative fee for that week.

The *Legal Profession Uniform Law* (NSW) (“the Uniform Law”) provides that I cannot take action for recovery of legal costs until 30 days after a tax invoice which complies with the Uniform Law has been given to you. I am patient – I am willing to wait three times that long. However, if an invoice is more than 90 days overdue, you agree to pay all costs, including debt collection agency fees and solicitor’s costs (including my own), that I may incur in taking steps to recover any money that you owe to me, whether or not legal proceedings are issued in relation to the debt.

What will we cover in the Consultation?

In a typical consultation, you will provide me with a name or image that you are either considering registering as a trade mark, or which you wish to use as an unregistered trade mark in your business. I will share my screen and we will carry out a thorough investigation to discover:

- whether there are any registered trade marks around the world which clash with your desired name or image;
- whether – and if so how – that name or image is currently being used online, including in social media; and
- whether there is any evidence of offline use of the name or image which may be in conflict with your desired use.

As we carry out our investigation, I will give you my opinion about any problems I foresee with your desired use.

If this plan for the consultation does not meet your needs, be sure to let me know in the booking form or at the start of our consultation what you have in mind or what your concerns are, and I will adapt the consultation accordingly.

Disclaimer

The Due Diligence consultation is based on my knowledge of trade mark law and my experience in processing trade mark applications. If an issue arises that I feel is beyond my skill level, I will refer you to a specialist trade mark attorney. As we conduct our searches and analyse the results, I will do my best to identify and alert you to potential problems or difficulties that you may face in using the specified name or image to build your business brand.

I am human, and there is a possibility that I may miss something – particularly if you ask me to assess more than one name or image in a session. If you choose to proceed with registering a trade mark, the trade mark examiner has access to more resources than I do, and therefore their search is more thorough and may flag issues that we did not see.

As a result, I cannot guarantee that this consultation will identify every possible potential for conflict (although we will try hard to do so). Potential problems that I identify may (or may not) ever come to pass. What I can guarantee is that at the end of the hour, you will have a much greater understanding of the uniqueness of your desired brand name or image in the marketplace, of a range of potential problems that you need to be aware of, and how to increase your likely chances of success for any trade mark application.

International Use

This Due Diligence Consultation is designed for Australian use only. However, we do search internationally and would also suit international clients seeking to register a trade mark in Australia, and Australian clients seeking to register a trade mark in Australia and then extend that protection internationally (please note that a trade mark is **ONLY** protected in the country where it is registered; if you are considering international registration, you need to register in each country you wish to have protection in). If you have any concerns about this, please contact me before proceeding.

If you are not an Australian or New Zealand resident, this consultation is mentoring only – **not legal advice** – and you will need to seek confirmation of anything I tell you or have your

contract reviewed by an appropriately qualified lawyer in your jurisdiction before relying on it.

Testimonials & Results

Any testimonials and promised results that may have influenced you in making this purchase are based on my experience and those of my previous clients. They are not guarantees that anyone else will achieve the same results.

Intellectual Property

My logo, the name Carefree Counsel™ and Contracts that Care™ are common law trade marks. They may not be used under any circumstances without my express written permission. During the consultation (or in my report) I will also explain to you the difference between a common law (unregistered) trade mark, and a registered trade mark.

The Due Diligence Report that I provide to you is also protected by copyright and is not to be shared or made public in any way without my permission.

Confidentiality

During the consultation, I understand that you will be sharing highly confidential information with me relating to your business and future plans – and that this information may not be in the public domain. As a lawyer, I have a strict duty of confidentiality. Any information that you share with me may only be used for your benefit. It cannot be shared or disclosed to any third party without your express permission. The relationship between a lawyer and their client is a fiduciary one – this means that it is a relationship of extreme trust and confidence. I take my ethical duties extremely seriously, and I will not knowingly engage in any conduct that may compromise my integrity or professional standing.

I record the consultation via Zoom. Recorded consultations are solely for my own records and will never be shared with anyone or used for any purpose, unless they are required by my insurer or professional standards board, which is extremely unlikely. If I give you

permission to record the consultation, you understand that it is for your own use only and must not be shared with anyone other than your legal or financial advisors.

All files and notes are stored on a password protected computer. I use Streak and Google Workspace as my customer records management database and for all communication. You can read more about their security provisions here:

- <https://www.streak.com/security>
- <http://workspace.google.com/security/>

I manage and protect your personal information in accordance with my privacy policy: <http://www.carefreecounsel.com/privacy>. My privacy policy contains information about how you can access and correct the personal information I hold about you and how you can raise any concerns about my personal information handling practices. For more information, please contact me in writing.

On completion of the consultation, I will retain electronic copies of your documents for 7 years. Your agreement to these terms constitutes your authority for me to destroy the file after those 7 years. The authority does not relate to any documents which are deposited in safe custody which will, subject to agreement, be retained on your behalf indefinitely.

Sending Material Electronically

During the course of your matter we will send and receive documents to each other electronically. I commonly use Gmail, Google Drive and Acuity. My accounts with these programs are password protected, and I have investigated and have every confidence in the strength of their security provisions. I also maintain top quality internet security software on all my devices. I endeavour to use best-practice cyber-security principles at all times. However, it is a fact of modern life that such transmissions may not be secure, and documents may be copied, recorded, read or interfered with by third parties while in transit. By accepting these terms, you release me from any claim you may have as a result of any unauthorised copying, recording, reading or interference with that document, for any delay or non-delivery of any document and for any damage caused to your system or any files.

Rescheduling Policy

You may reschedule your consultation at any time. If you miss the consultation, I will attempt to contact you and remind you of our booking. While it is nice to have notice if you can't make the call, I will always give you an opportunity to reschedule.

Satisfaction Guarantee

I offer a 100% satisfaction guarantee. That means I do not invoice you until after our consultation, when I send the reporting letter. However, you agree to give me a fair opportunity to deal with any concerns that you have. If you feel that our consultation has not met your needs, please let me know immediately, or as soon as possible afterwards. If you do not notify me that there is a problem within 24 hours of receiving your invoice and reporting letter, then I am entitled to assume that there is no problem, and the invoice becomes a debt that you must pay in accordance with my payment terms.

Jurisdiction & Dispute Resolution

My main place of business is in New South Wales, Australia. This agreement is subject to the governing law of New South Wales.

Negotiation

If you have any issue or complaint arising out of these Terms of Service, you and I agree to make a genuine effort to find a win/win solution and resolve the dispute through negotiation and discussion.

Mediation

If we are unable to resolve a dispute by negotiation and discussion within 21 days, we agree to proceed to mediation with the assistance of an independent accredited mediator, seeking online dispute resolution or mediation by telephone if either of us would need to travel for more than an hour to attend the mediation.

The mediator is to be appointed by agreement between us or, failing agreement within 21 days of the negotiation period ending, the person initiating the dispute will seek the appointment of a dispute resolution professional by the President of the Law Society of New South Wales or similar neutral authority.

We agree to share all the costs of mediation equally between us.

We agree that neither of us will commence legal action until, in the opinion of the independent mediator, the potential for negotiation and mediation have been exhausted.

Professional standards complaint

If we are unable to resolve a dispute by negotiation and mediation, you may access the complaints procedure offered by the Law Society of New South Wales here: <https://www.lawsociety.com.au/for-the-public/making-a-complaint>.

Respectful communication

We both agree that should we become involved in a dispute we will not engage in any public discussion about the issues, we will behave politely towards each other, and we will each act in good faith to refrain from any conduct or communication which might reasonably be expected to interfere with each other's business or personal interests.

Acceptance of these Terms

By proceeding with this booking, you agree that you have read and agree to be contractually bound by these Terms of Service. Please email me before completing your booking if you have any questions or concerns.