

## **Our Terms of Engagement**

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These are our standard terms which set out how we will work together (**Terms**). Our Terms cover all services offered by us. Our Terms commence when you give us instructions to act for you. You do not need to sign anything. We do update our Terms from time to time and will provide the most recent terms on our website.

Our Terms include information we are required to provide under the Rules of Conduct and Client Care for Lawyers as required by the New Zealand Law Society.

### **What do we do for you**

- For each new matter we do for you, we will give you a letter of engagement. This will state:
  - the work we will do; and
  - which person we believe is most suited to the work, and to our relationship with you, and the person who will have the overall responsibility for the work we do for you.
- We provide you with legal advice and representation.
- Where appropriate, other staff may be involved, under that person's supervision. For example, where involving another staff member allows us to do the work more efficiently, quickly, and at a lower cost to you.

### **What we do not do**

- We do not provide tax advice. If you want tax advice, we can, if requested by you, connect you with a tax professional who can assist you.
- As lawyers, we do not give investment or financial advice (as defined in the *Financial Advisors Act 2008*). This means we do not give advice about the desirability or economic benefits of a proposed transaction, acquisition, investment, or venture. If you want that type of advice, we will, if you request us to do so, put you in contact with someone who we believe has the required skills and qualifications to provide you with that advice.
- Unless we have agreed otherwise in writing, we will not:
  - remind you about dates (such as lease dates, consent expiry dates, financing statement renewal dates); or
  - update our advice after it has been provided.

### **What do you need to do**

- Take care to confirm your requirements. It is important that you do this so we can do our best to meet your expectations and deliver the service you require.

- Keep up to date with payment of our fees or any agreed payment arrangements so that we can continue to act for you.
- Provide all information that we need to act for you (including suitable identification and proof of address to complete CDD/AML requirements) and advise us of any changes to your circumstances, as this may impact the advice you require.

### **Who we can accept instructions from**

Unless you let us know otherwise in advance and in writing, you agree that we can accept instructions from:

- a. Any person you have authorised to instruct us;
- b. If you are a **couple**, from either of you;
- c. If you are a **trust**, from any trustees or officers of the trust;
- d. If you are a **company**, from any of your directors or employees, or other persons you have authorised to instruct us;
- e. If you are a **partnership**, from any partners, or officers of the partnership; and
- f. If you are a **body corporate**, or incorporated society, from any person holding themselves out as being authorised by the officers to instruct us.

### **Email Communication**

You authorise us to use any email address you give us to communicate with you about the work we do for you.

We have extensive security protocols and virus protection software in place. However, we cannot guarantee that our electronic communication to you will always be free from defects, or viruses, is secure or that it will be received by you. We do not accept any responsibility, and we are not liable for any damage or loss due to email problems, outages, viruses or corruption.

### **Information for Clients**

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Set out below is the information required by the *Rules of Conduct and Client Care for Lawyers* of the New Zealand Law Society (**Law Society**).

#### **1. Fees:**

If you ask, we will give you a fee estimate. Any estimate or special fee arrangement for a job will be outlined in our letter of engagement.

We will charge you a fair and reasonable fee.

Unless we agree otherwise with you, we calculate our fee based on the time we spend on a job. The calculation will be based on our hourly rates, adjusted where appropriate for other factors permitted by the Conduct and Client Care Rules. For instance, the complexity, urgency, importance, specialised knowledge, responsibility and risks involved, and results achieved.

We may deduct from any funds held on your behalf in our trust account, any fees, expenses or disbursements for which we have provided an invoice.

### *Office Charges*

We may charge you an amount to cover office expenses. We normally calculate office charges at a rate of up to 5% of our legal fee. These amounts are shown separately in our account to you.

### *Disbursements*

We may have to cover some expenses or make other payments on your behalf. You authorise us to incur these expenses, and these will be shown separately in our account. This includes items like LINZ fees, and the third party costs payable to our AML provider, First AML.

### *Changes*

Hourly charge out rates, office expenses and disbursements may change from time to time.

## **2. Professional Indemnity Insurance:**

We hold professional indemnity insurance that meets or exceeds the minimum standards specified by the Law Society. We will provide you with particulars of the minimum standards upon request.

## **3. Lawyers Fidelity Fund:**

The Law Society maintains the Lawyers Fidelity Fund for the purposes of providing clients of lawyers with protection against pecuniary loss arising from theft by lawyers. The maximum amount payable by the Fidelity Fund by way of compensation to an individual claimant is limited to \$100,000.00. Except in certain circumstances specified in the Lawyers & Conveyancers Act 2006, the Fidelity Fund does not cover a client for any loss relating to money that a lawyer is instructed to invest on behalf of the client.

## **4. Staff Responsible for Your Work:**

The names and status of the person or persons who currently will have the responsibility for the services we provide for you are set out in our letter of engagement. As a result of staff changes in our firm the persons who will have responsibility for the services we provide you may change from time to time.

## **5. Client Care and Service:**

The obligations that lawyers owe to clients are described in the *Rules of Conduct and Client Care for Lawyers*. Those obligations are subject to our other overriding duties, including duties to the courts and to the justice system.

We must:

- Act competently, in a timely way, and in accordance with instructions received and instructions made;
- Discuss with you your objectives and how they should best be achieved;
- Protect and promote your interests and act for you free from compromising influences or loyalties;
- Protect your privacy and ensure appropriate confidentiality;
- Let you know how to make a complaint and deal with any complaint promptly and fairly.
- Charge you a fee that is fair and reasonable and let you know how and when you will be billed;
- Treat you fairly, respectfully and without discrimination;
- Provide you with information about the work to be done, who will do it and the way the services will be provided;
- Give you clear information and advice;
- Keep you informed about the work being done and advise you when it is completed.

If you have further queries please visit [www.lawyers.org.nz](http://www.lawyers.org.nz) or phone (04) 472 7837.

**6. Limitations on extent of our Obligations or Liability:**

Any limitations on the extent of our obligations to you or any limitation or exclusion of liability are set out in our letter of engagement.

**7. Legal Aid:**

If you are granted Legal Aid by the Ministry of Justice under the Legal Services Act 2011 for payment of our services, we advise that upon confirmation of your legal aid grant you have the following obligations to the Ministry of Justice:

- You must tell the Ministry of Justice if your contact details, financial details, employment status, or family circumstances change.
- You may have a prescribed repayment amount payable to the Ministry of Justice and, if you receive any proceeds from proceedings, you may need to make a lump sum final repayment towards the cost of our service.
- Ministry of Justice invoicing for our services will be forwarded directly to the Ministry of Justice for payment a copy of which will be provided to you.
- If we exceed the guideline hours set by the Ministry of Justice it will be necessary that we apply to the Ministry of Justice for an amendment to grant. An amendment to grant may increase your repayment obligations. If an amendment to grant is sought we will forward these to the Ministry of Justice and copies will be forward to you for your records.
- For more information regarding legal aid you can contact the Ministry of Justice through their website at [www.justice.govt.nz](http://www.justice.govt.nz).

**8. Complaints:**

We will respond to any complaint promptly and fairly.

If you have a complaint about our services or charges, you may refer your complaint to the person in our firm who has overall responsibility for your work.

Please contact us immediately if you have a question about an invoice, or if you are unhappy about any aspect of our work. You may contact:

- The person handling your work; or
- The director responsible for your work;

The New Zealand Law Society maintains a complaints service and you are able to make a complaint to that service. You can contact them on 0800 261 801 for information and advice about making a complaint.

## **Standard Terms of Engagement**

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These are the Terms that set out how we will work together. Our terms cover all services we offer and commence when you provide us with instructions to act for you. You do not need to sign anything.

We update our Terms as necessary. We will publish our most recent Terms on our website.

**1. Services**

- 1.1 The services we provide to you are set out in our Letter of Engagement.

## **2. Financial**

### **2.1 Fees:**

- (a) The fees we will charge and the manner they will be calculated, are set out in our Letter of Engagement.
- (b) If the Letter of Engagement specifies a fixed fee, we will charge this for the agreed scope of our services. Work which falls outside that scope will be charged in accordance with the Lawyers and Conveyancers Act, Rules of Conduct and Client Care, Rule 9 (unless otherwise agreed).

If the Letter of Engagement does not specify a fixed fee, the legal services provided will be charged in accordance with the Lawyers and Conveyancers Act, Rules of Conduct and Client Care, Rule 9.

You can ask us to provide you with an estimate of the likely amount of the future costs and we will endeavour to give that estimate which may, however, be subject to our assessment of what further work may be necessary. Any estimate is a “best guess” only. If our estimate is likely to be exceeded, we will let you know.

- (c) We will charge a fee which is fair and reasonable for the services provided, having regard to your interests and our interests. In determining the fee, the following may be considered by us:
  - (i) The skill, specialised knowledge, and responsibility required;
  - (ii) The complexity of the work and the difficulty or novelty of the questions involved;
  - (iii) The value or amount of any property or money involved;
  - (iv) The number or importance of the documents prepared or perused;
  - (v) The urgency and circumstances in which the matter is transacted;
  - (vi) The importance of the matter to the client and the result achieved;
  - (vii) The time and labour expended; and
  - (viii) The reasonable costs of running a practice.

The relative importance of the factors set out above will vary according to the particular circumstances of each transaction.

### **Invoices:**

Depending on the nature of the legal services provided we may send (unless otherwise agreed in writing with you) interim monthly invoices to you for the legal services provided for the month previous, and also on completion of the matter or termination of our engagement.

If you would like to receive invoices on a monthly basis please advise us.

We may send you an invoice when we incur a significant expense, either by way of disbursements or by way of work carried out by us.

Invoices are due and payable by the seventh (7th) day after the date of the invoice. We charge interest on any amount that is more than seven days overdue. Interest is calculated at the rate of 1.5% per month on the account. Receipt of payment will only be sent out on request.

You authorise us:

- (d) to debit against amounts prepaid by you; and
- (e) to deduct from any funds held on your behalf in our trust account any fees, charges, expenses or disbursements for which we have issued an invoice.

We reserve the right to cease further work for you if your account is in arrears.

## 2.2 Security:

We may ask you to pre-pay amounts, or to provide security for our fees and expenses.

## 2.3 Debt Recovery:

If our fees and/or disbursements are not paid and we commence debt recovery action, then the costs of that recovery (including our reasonable internal and/or external legal costs and disbursements) together with any debt collection agency costs we may incur shall be to your account and payable by you.

## 2.4 Third parties:

Although you may expect to be reimbursed by a third party for our fees and expenses, and although our invoices may at your request and/or with your approval be directed to a third party, you remain responsible for payment to us if the third party fails to pay us.

# 3. **Confidentiality**

3.1 We have a number of statutory compliance obligations, including our obligations under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (**AML/CFT**). Because of this, we may be obliged to send details of your transactional history to regulatory authorities in accordance with our compliance requirements.

3.2 We consider client confidentiality to be extremely important. We will not disclose information we hold about you to any other person except:

- (a) where you agree or ask us to;
- (b) we need to do so, to carry out our work for you.; or
- (c) the law requires us to (for example, reporting suspicious activities or transactions under AML)

3.3 Confidential information concerning you will as far as practicable be made available only to

those within our firm who are providing legal services for you.

- 3.4 We will not disclose to you any confidential information which we have in relation to any other client.

#### **4. Termination**

- 4.1 You may end our engagement at any time by giving us reasonable notice;
- 4.2 We may terminate our retainer in any of the circumstances set out in the Law Society's *Rules of Conduct and Client Care for Lawyers*;
- 4.3 If our engagement is terminated you must pay us all fees due up to the date of termination and all expenses incurred up to that date.

#### **5. Retention of documents and files**

Once your matter has been completed, you can choose to collect your physical file once you have paid your final bill if you wish to. If you do not collect this, we will scan and electronically store the file for at least 10 years and destroy the physical copy. You will be able to access the electronic file during this period if necessary.

Original deeds (such as wills/enduring powers of attorney) are physically held by us in our deeds storage system.

#### **6. Conflicts of Interest**

- 6.1 We have procedures in place to identify and respond to conflicts of interest. If you believe there is or may be a conflict of interest please notify us immediately.
- 6.2 If we find a conflict at any time, we will immediately let you know and tell you how we plan to deal with the conflict. This may mean we stop working for you, the other client, or both.

#### **7. Duty of Care**

Our duty of care is to you and not to any other person. The advice we provide to you is personal, and is not to be relied upon by another other person, unless we have expressly agreed to this in writing.

#### **8. Money Handling Procedures**

- 8.1 We maintain a trust account for all funds we receive from clients, except for the monies received for payment of our invoices.
- 8.2 If we are holding significant funds on your behalf, we will typically place those funds on interest bearing deposit with a registered bank, provided we have received from you the FATCA/CRS forms required from you to do this. We are not responsible for obtaining the best interest rate available, or for any loss of interest from delay in placing your funds on an interest-bearing deposit account.
- 8.3 We charge an administration fee of 5% of the gross interest received for funds held on interest bearing deposit.

- 8.4 Withholding tax on interest earned will be deducted and paid to the IRD. If we have your IRD number you can elect to have withholding tax deducted at your applicable rate. If we do not have this, we are required to deduct it at the default rate.

We send an annual withholding tax certificate in circumstances where the gross interest earned exceeds \$50 per annum, but not for lesser amounts of interest unless you ask us in writing to do so.

## **9. Lien**

Where work has been done by us but we have not been paid then as a general rule we have the right to retain original documents and correspondence on your file until such time as all outstanding fees, disbursements and other expenses have been paid. This is known as a lien. This will be particularly important in circumstances where you decide for whatever reason to instruct another firm.

## **10. Intellectual Property**

We own all intellectual property we create while working for you. You cannot reproduce or share our intellectual property without our permission.

## **11. General**

- 11.1 These Terms apply to any current engagement and also to any future engagement, whether or not you are provided with a further copy of these Terms.
- 11.2 Our relationship with you is governed by New Zealand law and New Zealand courts have non-exclusive jurisdiction.