



### Information for Clients and Standard Terms and Conditions

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"); and our Standard Terms of Engagement.

These Standard Terms of Engagement ("Terms") apply to any current engagement and also to any future engagement, whether or not we send you another copy of them. We are entitled to change these Terms from time to time, we will notify you of any substantial changes. Our relationship with you is governed by New Zealand law and New Zealand courts have exclusive jurisdiction.

**By instructing us to provide you with legal services, you are deemed to have accepted these Terms.**

#### 1. Professional Indemnity Insurance

1.1. 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.

#### 1.2. Scope of Duty: Legal Services ordinarily acquired for personal or domestic purposes:

1.2.1. The service which we agree to provide to you relates only to the particular matter in respect of which you engage us (the engagement).

1.2.2. Where the engagement includes the giving of legal advice, this advice is an opinion only, based on the facts known to us and on our professional judgment. We will not be liable where we reasonably base our advice on information given by others, which turns out to be wrong, or the state of the law, which subsequently changes.

1.2.3. Once the matter in respect of which we were engaged is at an end, save for legal duties which may subsist beyond expiration of the contract of retainer as a matter of law, we will not owe you any duty or liability in respect of any other matter, even if related, unless you specifically engage us in respect of those related or other matters.

1.2.4. Our duty of care is to you, as the party by whom we have been engaged, and not to any other person, including (for example, but without limitation) any directors, shareholders, associated companies, employees or family members, unless we expressly agree in writing. Except as expressly agreed by us in writing, we do not accept any responsibility or liability whatsoever to any third parties who may be affected by the performance of the engagement or who may rely on any advice we give to you.

1.2.5. Any advice given by us is not to be referred to in connection with any prospectus, financial statement, or public document without our written consent.

1.2.6. Unless otherwise agreed, we may communicate with you and with others by electronic means. We cannot guarantee that these communications will not be lost or affected for some reason beyond our reasonable control, and we will not be liable for any damage or loss caused thereby.

#### 1.3. Limitation of Liability: Legal Services ordinarily acquired for personal or domestic purposes but you (the client) is 'in trade'.

1.3.1. For the purposes of the Consumer Guarantees Act 1993 (the Act), or any equivalent legislation subsequently enacted, you acknowledge and agree:

1.3.1.1. You are in trade; and

1.3.1.2. The legal services to be provided under the engagement are acquired by you in trade and/or for business purposes; and

1.3.1.3. You accept that the provisions of the engagement, including the liability cap set out below, are fair and reasonable in light of the subject matter of the engagement.

1.3.1.4. You agree to contract out of the provisions of the Act as set out below and to the extent permitted by law and subject to the court's determination pursuant to s43(2A) of the Act; and

1.3.1.5. You are free to negotiate the terms of the engagement with us, were not required to accept or reject the terms of engagement without us being willing to negotiate, you understand the effect of the terms of the engagement, and were free to take legal advice, independent of us, on the effect of the engagement.

1.3.2. To the extent permitted by law, you agree that our total liability to you in connection with this matter, or on any related matters on which you engage us, shall not exceed the sum of \$600,000.00 (the liability cap) (including interest, costs, and all losses whatsoever).

1.3.3. The liability cap will apply to any liability of whatever kind, howsoever arising, whether in contract, in tort (including negligence), statutory, in equity or otherwise.

1.3.4. If we provide any service to any persons or entities related to or associated with you or to anyone else at your request (whether or not we also advise you) on a matter or series of related matters then our aggregate liability to you and all those persons and entities in respect of that matter (or series of related matters) will be subject to the liability cap. You will ensure that those persons or entities agree to this.

1.3.5. The liability cap will accrue to the benefit of any partner, employee, or agent of ours who may have acted in connection with the matter, so that in no instance shall the liability of any person, and all persons claimed against in the aggregate, be for more than the liability cap.

#### 1.4. Limitation of Liability: Legal Services are not ordinarily acquired for personal or domestic purposes.

1.4.1. You acknowledge and agree that the engagement is for the commercial or business purposes, and the services to be provided are not ordinarily acquired for personal or domestic purposes.

1.4.2. To the extent permitted by law, you agree that our total liability to you in connection with this matter, or on any related matters on which you engage us, shall not exceed the sum of \$600,000.00 (the liability cap) (including interest, costs, and all losses whatsoever).

1.4.3. The liability cap will apply to any liability of whatever kind, howsoever arising, whether in contract, in tort (including negligence), statutory, in equity or otherwise.

1.4.4. If we provide any service to any persons or entities related to or associated with you or to anyone else at your request (whether or not we also advise you) on a matter or series of related matters then our aggregate liability to you and all those persons and entities in respect of that matter (or series of related matters) will be subject to the liability cap. You will ensure that those persons or entities agree to this.

1.4.5. The liability cap will accrue to the benefit of any partner, employee, or agent of ours who may have acted in

connection with the matter, so that in no instance shall the liability of any person, and all persons claimed against in the aggregate, be liable for more than the liability cap.

## 2. Lawyers Fidelity Fund

2.1. 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.

## 3. Complaints

3.1. We maintain a procedure for handling any complaints by clients, designed to ensure that a complaint is dealt with 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.

3.2. If you do not wish to refer your complaint to that person, or you are not satisfied with that person's response to your complaint, you may refer your complaint to our Chief Executive Officer.

3.3. The New Zealand Law Society also maintains a complaints service and you are able to make a complaint to that service. To do so you should contact them on (04)472-7837 or by mail to P.O. Box 5041, Lambton Quay, Wellington 6145.

## 4. Client Care and Service

The Law Society client care and service information is set out below.

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

## 5. Duty of Care

5.1. Our duty of care is to you and not to any other person. Before any other person may rely on our advice, we must expressly agree to this.

## 6. Conflicts of Interest

6.1. We have procedures in place to identify and respond to conflicts of interest. If a conflict of interest arises we will advise you of this and follow the requirements and procedures set out in the Law Society's Rules of Conduct and Client Care for Lawyers.

## 7. Services

7.1. We will provide you with the legal services that you request or that we agree on, unless a conflict of interest or other factors prevent us from doing so. If this is the case, we will contact you immediately.

7.2. We will use due care and skill and will act in accordance with your instructions subject to any ethical and/or legal duties.

7.3. We provide our advice to you and only you. Other people or entities (including those closely associated with you) who want to rely or act on our advice can do so only if we both agree in writing.

## 8. Persons Responsible for the Work

8.1. A particular Principal or staff member may be responsible for your matter or you may have requested a particular Principal or staff member. Generally, that person will work with you, however, they may also work with other Principals and staff on your matter. You will be advised who will be responsible for your work in our letter of engagement.

8.2. In order to provide you with efficient advice and services and to provide the most cost-effective service, it may be that part or all of your instructions will be delegated to other professionals in our firm.

## 9. Confidentiality and Retention of Files and Documents

9.1. We will hold in confidence all information concerning you or your affairs that we acquire during the course of acting for you. We will not disclose any of this information to any other person except:

- 9.1.1. to the extent necessary or desirable to enable us to carry out your instructions; or
- 9.1.2. to the extent required by law or by the Law Society's Rules of Conduct and Client Care for Lawyers.

9.2. 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.

9.3. We will, of course, not disclose to you confidential information which we have in relation to any other client.

9.4. You authorise us (without further reference to you) to destroy all files and documents for any matter (other than any documents that we hold in safe custody for you) 7 years after the matter is concluded, or earlier if we have converted those files and documents to an electronic format.

## 10. Termination

10.1. You may terminate our services at any time.

10.2. We may refuse to continue to act for you in any of the circumstances set out in the Law Society's Rules of Conduct and Client Care for Lawyers.

10.3. If our services are terminated or we no longer act for you, you must pay us all fees due up to the date of termination and all expenses incurred up to that date.

10.4. If our services are terminated or we no longer act for you, you irrevocably authorise us to retain a copy of all documents, correspondence and files.

## 11. Fees

11.1. The basis on which fees will be charged and when payment of fees is to be made is set out in our terms of engagement. 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.

11.2. If the engagement letter specifies a fixed fee, we will charge this for the agreed scope of our services. Work which falls outside that scope will be additional to the agreed fixed fee. We will advise you as soon as reasonably practicable if it becomes necessary for us to provide services outside the agreed scope and if requested, give you an estimate of the likely amount of the further costs.

11.3. In setting our fees, we take into account a number of factors including the following:

- 11.3.1. the time and labour expended including time spent investigating the facts and researching the law;
- 11.3.2. the skill, experience, specialised knowledge, and responsibility required to perform the services properly;

- 11.3.3. the importance of the matter to you and the results achieved;
  - 11.3.4. the urgency and circumstances in which the matter is undertaken, and any time limitations imposed, including those imposed by you;
  - 11.3.5. the degree of risk assumed by us in undertaking the services, including the amount of value or any property involved;
  - 11.3.6. the complexity of the matter and the difficulty or novelty of the questions involved;
  - 11.3.7. the possibility that the acceptance of the particular retainer will preclude engagement by other clients;
  - 11.3.8. whether the fee is fixed or conditional;
  - 11.3.9. any quote or estimate of fees given by us;
  - 11.3.10. any fee agreement (including a conditional fee agreement) entered into between us;
  - 11.3.11. the reasonable costs of running a practice;
  - 11.3.12. the fee customarily charged in the market and locality for similar legal services.
- 11.4. These factors are based on the Law Society's Rules of Conduct and Client Care for Lawyers.
- 11.5. In addition to our fee an Administration Fee will be charged on every invoice to cover our office expenses such as photocopying, printing, stationary, facsimiles, telephone and other such expenses. When we are required to verify your identity pursuant to the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT) an AML fee will be charged.
- 12. Disbursements**
- 12.1. Disbursements incurred on your behalf will be charged to you. Disbursements are expenses such as registration and filing costs, Landonline fees, court charges, travel and accommodation costs and matters of a similar nature.
- 12.2. Disbursements also include payments made on your behalf such as fees of agents, experts and other professionals, and are charged at the amount charged to us. Where you have asked us to instruct outside counsel then you will, on demand, pay to us the fees billed to us by that outside counsel.
- 13. GST**
- 13.1. You will also be charged GST at the current rate as required by law in addition to the fees agreed, estimated or rendered unless you are exempt for the purposes of GST.
- 14. How Do We Bill?**
- 14.1. We will issue you regular accounts (usually monthly) unless otherwise agreed, and on completion of the matter, or termination of our engagement.
- 14.2. We may also send you an invoice when we incur a significant expense.
- 14.3. Payment is due on receipt of the invoice or as otherwise arranged with us.
- 14.4. If your account remains unpaid after thirty (30) days and there is no satisfactory explanation for non-payment we:
- 14.4.1. will charge interest on the overdue amount at the rate of 14% per annum from the due date.
  - 14.4.2. may start proceedings to recover the amount owed.
  - 14.4.3. may do no further work for you, and will not release your papers and files until all accounts are paid.
- 14.5. Even if you expect another party to reimburse you for our fees and/or charges, we have no recourse to any person other than you, and so look to you for payment, even if reimbursement is delayed or you fail to get reimbursed.
- 14.6. Please contact us immediately if you have any concerns about your account.
- 15. Fees in Advance**
- 15.1. We may ask you to pre-pay amounts to us, or to provide security for our fees and expenses. In such cases you authorise us to deduct from such funds any fees, expenses or disbursements for which we have provided an invoice.
- 16. Fees paid by Deduction**
- 16.1. Where we hold funds on your behalf in our Trust account you authorise us to deduct from such funds any fees, expenses or disbursements for which we have provided an invoice.
- 17. Trust Account**
- 17.1. We maintain a trust account for all funds which we receive from clients (except monies received as payment of our invoices). If we are holding significant funds on your behalf we will normally lodge those funds on interest bearing deposit with a bank. In that case we will charge an administration fee of 5% of the interest derived.
- 18. Foreign Account Tax Compliance Act (FACTA)**
- 18.1. Our Bank (ANZ) is required by law to obtain certain information about funds held in our Trust Account and advise the IRD, who in turn may exchange this information with overseas tax authorities.
- 18.2. You agree to supply any information requested to ensure full compliance with this legislation.
- 18.3. You agree and consent to us providing any information held by us in relation to your FACTA status or FACTA matters to the IRD and/or the ANZ Bank.
- 19. Verifying your Identity and Source of Funds**
- 19.1. In certain circumstances we are required by law to verify your identity and, in some circumstances, the source of funds for a transaction. We use an external service provider to assist with the verification process. By agreeing to use our services you consent to the use of said external services. You may withdraw this consent at any time by notification.
- 19.2. You authorise us to collect information about you to obtain, exchange, hold and use such information, and to make any enquiries we believe are appropriate to:
- 19.2.1. Confirm information provided to us about you is true;
  - 19.2.2. Undertake initial and on-going customer due diligence and monitoring in accordance with the Anti-Money Laundering and Countering Financing of Terrorism Act (AML/CFT Act);
  - 19.2.3. Enforce debt and legal obligations (including recovery of money owed to us); and
  - 19.2.4. Comply with other legal obligations we may have.
- 20. General**
- 20.1. We value feedback, positive or negative. Please do not hesitate to contact us if you have any comments or questions about these terms or any related matters. Please send your feedback to the relevant Principal or to our Chief Executive Officer at P.O. Box 140, Paraparaumu.
- 20.2. The obligations lawyers owe to clients are described in the Rules of Conduct and Client Care for Lawyers. Those obligations are subject to other overriding duties, including duties to the courts and to the justice system.
- 20.3. If you have any questions, please visit [www.lawyers.org.nz](http://www.lawyers.org.nz).