



TERMS AND CONDITIONS OF ENGAGEMENT

These Terms and Conditions of Engagement (“Terms”) apply in respect of all work carried out by us for you, except to the extent that is otherwise agreed in writing.

1. Services

- 1.1 The legal services we aim to provide for you are outlined in our engagement letter.
- 1.2 We will only act on your clear instructions. Where you cannot or will not provide such instructions we will cease work until these are received and cannot accept any liability in such circumstances. In these circumstances we may elect to send you a formal disengagement letter notifying you that we are no longer acting for you.
- 1.3 By instructing us you accept liability to pay the account that we will render for work done and all agency disbursements incurred in respect of such instructions.
- 1.4 If we provide professional services to you for the purposes of a business, or in relation to your business, you acknowledge that, pursuant to section 43 of the Consumer Guarantees Act 1993 (“Act”), the provisions of the Act shall not apply with respect of such professional services.

2. Financial

Fees:

- 2.1 When we open a file we do not know how significant the work involved will be. It is therefore usually impossible to provide a fixed quote.
- 2.2 The fees we will charge or the manner in which they will be arrived at, are set out these Terms and in our engagement letter together.
- 2.3 Where possible we will give you an estimate. The estimate will be our best possible ‘guess’ as to what the fee is likely to be. If however the work does not proceed as we expected due to unanticipated complications, or if the work proves to be more complicated than what was anticipated, we reserve the right to charge for all additional work done. This will be based on our usual hourly rate as advised to you. In addition, our business hours are 8.30am to 5pm, Monday to Friday (“Business Hours”). On occasion we will be required by you to attend to matters outside of these Business Hours and we retain the discretion to charge an additional fee equivalent to 10% of the hourly rate(s) incurred for providing legal services outside of these Business Hours.
- 2.4 We can give estimates of the likely fees based on our experience with similar matters. Estimates are given as a guide only and not as a fixed quotation. Upon request, we will also inform you periodically of the level of fees incurred or inform you when fees reach a specified level.

- 2.5 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 charged on an hourly rate basis. 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.
- 2.6 Where fees are calculated on an hourly basis, the hourly rates are set out in our engagement letter. The differences in those rates reflect the experience and specialisation of our professional staff. Time spent is recorded in 6 minute units, with time rounded up to the next unit of 6 minutes.
- 2.7 For a variety of reasons, some instructions and / or matters are not completed. If this occurs, we will charge you for the work undertaken and costs incurred up to the time of termination.
- 2.8 In some circumstances, we may be required to incur additional time or expenses following the completion or termination of a matter. We will charge for this in the normal way.

Disbursements and expenses:

- 2.9 In providing services to you we may incur disbursements or have to make payments to third parties on your behalf. In particular, for (a) any extensive printing or binding; or (b) the service or filing of documents we reserve the right to outsource these services to a third party to deliver. These will be included in our invoice to you when the expense is incurred. We may require an advance payment for the disbursements or expenses which we will be incurring on your behalf.
- 2.10 For each file we act for you we will charge you for general office services undertaken. These include photocopying, facsimiles, telephone communications, deliveries, routine on-line searches and inquiries and similar. These are charged at a standard rate equal to 3.5% of our fees.
- 2.11 When we are required to obtain searches or attend to registration of any instruments via landonline; or prepare legal documents using Auckland District Law Society forms we will charge you an agency fee on top of the costs incurred by us on your behalf. Generally speaking this will amount to:
- a) \$5 on top of the fee charged to us for each search we undertake and \$10 on top of the fee charged to us to attending to the registration of each instrument via landonline.
 - b) \$5 on top of the fee charged to us for each Auckland District Law Society legal document used as required.
- 2.12 **GST (if any):** Is payable by you on our fees, charges and disbursements.
- 2.13 **When will you be billed?** You will be billed as follows:
- a) If the work we undertake for you is going to extend over a long period of time we will bill you on a regular basis and this may include on a weekly, fortnightly and/or monthly basis. This will help you by spreading the payments over time. It will also enable you to keep track of how much the work is costing you. Where files are billed monthly your account will usually be calculated purely on the basis of time spent.
 - b) In some circumstances we will bill you when certain milestones are met. These milestones may include completing particular key matters on a file; or upon reaching a certain level of unbilled time. We may discuss this with you on a case by case basis and we retain the right to:
 - (i) Establish and amend milestones for the payment of our fees throughout the course of acting on a matter for you.

- (ii) Dictate how regularly we provide you with invoices.
 - c) When a final bill is rendered an adjustment may be made to allow for those factors mentioned above.
- 2.14 **Credit policy:** you may be allowed a credit limit, which will be:
- a) Confidential between you and us.
 - b) The total amount that we will allow to be owed or due to us by you at any time.
 - c) Able to be increased or decreased or withdrawn by us at any time.
 - d) We may stop you doing work (and instruct others to stop doing work) for you if your credit limit is exceeded and payment not received by us when invoiced.
- 2.15 **When do you have to pay?**
- a) Our accounts are all due within 14 days following the date of the relevant invoice.
 - b) If we are holding any money for you on your behalf you unreservedly authorise us to deduct our fees from these funds without further instruction; after which we will give you a full statement of the balance of funds held (where appropriate).
 - c) In certain circumstances we may agree to fees being paid by way of automatic payment authority; or by way of a credit card payment. We are not obliged to agree to any such arrangement though. Please discuss this with us to determine whether this arrangement would be agreeable to us.
 - d) In respect of conveyancing or refinancing transactions, payment is due on settlement unless alternative arrangements have been made with us.
 - e) At the end of 14 days following the date of the relevant invoice we may contact you to remind you that payment is due. If payment is not received within 30 days from the date of issue of an invoice; the enforcement provisions outlined in clause 2.20 below may become applicable.
- 2.16 **Security:** we may ask you to pre-pay amounts to us, or to provide security for our fees and expenses. You authorise us:
- a) To debit against amounts pre-paid by you; and
 - b) To automatically deduct from any funds held on your behalf in our trust account any fees, expenses or disbursements for which we have provided an invoice.
- 2.17 **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 or with your approval be directed to a third party, nevertheless you remain responsible for payment to us if the third party fails to pay us.
- 2.18 **Instructing separate Counsel:** if separate Counsel is required we reserve the right to require payment of the other Counsel's estimated fees into our trust account beforehand. In addition:
- a) We will not be liable for the legal services provided by these separate Counsel. If you have any concerns with the nature of the legal services provided by them you are to raise these with them direct.
 - b) You will be liable for the payment of any invoices provided by these separate Counsel in addition to invoices provided by us.

- c) We may at our discretion elect to remove our instructions to this separate Counsel at any time. In this event you have the option of:
 - i. Retaining us as the sole lawyers acting on your file in which case these separate Counsel will immediately cease to be involved on your file.
 - ii. Appointing these separate Counsel as the sole lawyers acting on your file in which case we will immediately cease to be involved on your file and you will clear all outstanding fees (billed on unbilled) immediately.

2.19 **Credit checks:** you authorise any person or company to provide us with such information we may require in response to our credit enquiries.

2.20 **What if you can't pay on time?**

- a) If you anticipate difficulties in the payment of any account please contact us at the first available opportunity and discuss arrangements for payment. The provisions of clause 2.16 above may apply. Compound interest is chargeable at our discretion at 2.5% per month on any account more than 30 days overdue.
- b) All recovery costs incurred by us arising out of your failure to pay by the due date including (without limitation) any administrative costs (e.g. writing and phoning you which will be based on a set hourly rate of \$180 an hour), full legal costs (on our standard hourly rates) and all disbursements shall be payable by you on demand. We may elect at our discretion to forward your outstanding account(s) to a 3rd party to pursue you in a manner they deem most appropriate either on our behalf or on their own account. In this event you will be liable for all costs associated with the engagement of these 3rd parties. You acknowledge that we will not be responsible for the actions of these 3rd parties.

2.21 **Companies and Trusts:** if you are instructing us in your capacity as a director or shareholder of a company, or as a settler or trustee of a trust, or administrator of an estate then your instructions are accepted on the basis that you remain at all times personally liable (along with the company, trust or estate as appropriate) to pay our fees and disbursements. Furthermore we will accept instructions on the strict proviso that you have the full authority and capacity to bind the Company / Trust in question and you indemnify us for any actions that you undertake that are ultra vires your authority.

2.22 **Claimant groups:** where claims are lodged with the Waitangi Tribunal for purported breaches by the Crown of the Treaty of Waitangi / Te Tiriti o Waitangi on behalf of more than one claimant your instructions are accepted on the understanding that they are given with the consent and authority of any other named claimants. We will not be liable for any action in the event that your instructions are given without the consent and authority of another named claimant.

2.23 **Lien:** when work has been done by us but we have not been paid by you then as a general rule we have the right to retain certain 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 law firm to act for you. That firm may be obliged to give an undertaking to pay all outstanding fees and disbursements before your file is released to it.

3. **Confidentiality**

3.1 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:

- a) To the extent necessary or desirable to enable me to carry out your instructions; or
- b) To the extent required by law or by the Law Society's Rules of Conduct and Client Care for Lawyers.

3.2 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.

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

4. Termination

4.1 You may terminate our retainer at any time.

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 retainer is terminated you must pay all unpaid fees (including all invoices rendered and work in progress) due up to the date of termination and all expenses incurred up to that date.

4.4 If our retainer is terminated and we are required to transfer your file(s) to another law firm we reserve the right to charge you for any administrative costs incurred by us in attending to this.

5. Retention of files and documents

5.1 You authorise us (without further reference to you) to destroy all files and documents for this matter (other than any documents that we hold in safe custody for you) seven years after our engagement ends, or earlier if we have converted those files and documents to an electronic format.

5.2 If you provide us with any original documents that you wish to have returned to us when our engagement ends, we are happy to return these to you upon receipt of your notice outlining this intention. We periodically audit original documents held by us and in the event that we believe that certain deeds and documents have expired then you will be notified at your last known address to uplift the deed of document. If we do not receive any response, you are deemed to have authorised us to destroy the deed of document.

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. Duty of Care

7.1 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.

8. Trust Account

8.1 We will maintain a trust account for all funds which we receive from clients (except monies received for 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.

9. General

9.1 These Terms apply to any current engagement and also to any future engagement, whether or not we send you another copy of them.

9.2 We are entitled to change these Terms from time to time, in which case we will send you any amended Terms. Such amendments will comply with the Rules of Conduct in force from time to time.

9.3 Our relationship with you is governed by New Zealand law and New Zealand courts have non-exclusive jurisdiction.

10. Legal aid

10.1 You may be eligible for legal aid. In the event that legal aid is applied for, you acknowledge that you understand that a Crown charge to repay the cost of legal services may be taken over any property you may own now or in the future.

10.2 You acknowledge that in the event of legal aid not being granted you shall be fully liable for payment of our fees at our full hourly rates. We may require a retainer in advance from you until such time as legal aid has been granted to cover any initial attendances undertaken by us whilst your application for funding is being processed.

INFORMATION FOR CLIENTS

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

- 1.1 The basis on which fees will be charged is set out in our engagement letter. The way in which fees are to be made is set out in our Terms and Conditions of Engagement.
- 1.2 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.

2. Professional Indemnity Insurance

- 2.1 We hold professional indemnity insurance cover that meets the minimum standard set by the New Zealand Law Society.

3. Lawyers' Fidelity Fund:

- 3.1 The Law Society maintains the Lawyers' Fidelity Fund for the purpose 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 and 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. Complaints

- 4.1 We maintain a procedure for handling any complaints by clients, designed to ensure that a complaint is dealt with promptly and fairly.
- 4.2 If you have a complaint about our services or charges, you may refer your complaint to the person in our firm who has overall responsible for your work.
- 4.3 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 direct to Michael Taia. Michael may be contacted as follows:
 - (a) by letter.
 - (b) by telephoning him at (09) 215 1113.
- 4.4 The Law Society operates the Lawyers Complaints Service and you are able to make a complaint to that service. To do so, phone **0800 261 801** and you will be connected to the nearest Complaints Service Office, which can provide information and advice about making a complaint.

5. Persons Responsible for the Work

5.1 The names and status of the person or persons who will have the general carriage of or overall responsibility for the services we provide for you are set out in the letter of engagement.

6. Client Care and Service

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

6.2 Whatever legal services a lawyer is providing, he or she must:

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

6.3 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.

6.4 If you have any questions, please visit www.lawsociety.org.nz or call **0800 261 801**.

7. Limitations on extent of our Obligations or Liability

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