

## **STANDARD TERMS OF ENGAGEMENT**

These Standard Terms of Engagement ('Terms') apply in respect of all work carried out by us for you, except to the extent that we otherwise agree with you in writing.

### **Client Care Information**

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The New Zealand 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.
- Charge you a fee that is fair and reasonable and let you know how and when you will be billed.
- Give you clear information and advice.
- Protect your privacy and ensure appropriate confidentiality.
- Treat you fairly, respectfully and without discrimination.
- 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.

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.

If you have any questions, please visit [www.lawyers.org.nz](http://www.lawyers.org.nz).

### **1. Services**

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1.1. The services which we are to provide for you are outlined in our Letter of Engagement.

### **2. Fees**

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2.1. 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 taken into account:

- The time and labour expended at an hourly rate.
- The skill, specialised knowledge, and responsibility required to perform the services properly.
- The importance of the matter to you and the results achieved.
- The urgency and circumstances in which the matter is undertaken and any time limitations imposed, including those imposed by you.
- The degree of risk assumed by us in undertaking the services including the amount or value of the property involved.
- The complexity of the matter and the difficulty or novelty of the questions involved.
- The experience, reputation and ability of the members of our firm working on your matter.
- The possibility that the acceptance of the particular instructions will preclude employment of us by other clients.
- Whether the fee is fixed or conditional.
- Any quote or estimate of fees given by us.
- Any fee agreement entered into between you and us.
- The reasonable costs of running our firm.
- The fee customarily charged in the market and locality for work similar to yours.

2.2. Unless otherwise stated all fees are plus GST.

2.3. In providing services we may incur disbursements or have to make payments to third parties on your behalf such as search and registration fees, valuation fees, tolls and photocopying. These will be included in our invoice to you when the expense is incurred.

- 2.4. All work done by us is charged on a fees basis apart from a commission of 5% which is taken on all interest accruing on funds deposited with our bank through our Solicitors Deposit Scheme.
- 2.5. Where it is applicable, you may wish to apply for legal aid. In the event that legal aid is not granted you will be liable for our account charged at the private rates referred to above.

### **3. Payment of Fees**

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- 3.1. We will send you an invoice on completion of the matter, or termination of our engagement. We may also send you an interim invoice.
- 3.2. Invoices, whether interim or final, are payable within 14 days of the date of the invoice, unless alternative arrangements have been made with us. We may require interest to be paid on any amount which is overdue. Interest will be calculated at 15% per annum. Credit card payments incur a 2% surcharge.
- 3.3. You authorise us to deduct against amounts pre-paid by you; and to deduct from any funds held on your behalf in our trust account any fees, expenses or disbursements for which we have provided an invoice.
- 3.4. We may ask you to pay fees in advance, but in those instances your payment will be held in our trust account and only paid to us by deduction when an account has been forwarded to you. Disbursements are to be paid by you immediately upon request but substantial disbursements will be asked for in advance.
- 3.5. 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, you remain responsible for payment if the third party fails to pay us.
- 3.6. If your invoice is unpaid, we may pursue its recovery and you agree that we may use and disclose any personal information (as defined in the Privacy Act 1993) for that purpose and that you will pay the full costs of collection, including legal costs.

### **4. Verifying your identity and source of funds, and credit checks**

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- 4.1. We are required by law to verify your identity and, in some circumstances, the source of funds for a transaction. To enable us to act for you we may require a copy of your passport and utility bill, or another form or other forms of identity that will satisfy the regulatory requirements placed on us by the Anti-Money Laundering and Countering Financing of Terrorism Act (AML/CFT Act) and its regulations.
- 4.2. We may wish to carry out reasonable credit checks on you from time to time.
- 4.3. You authorise us to collect information about you (including customer due diligence information and credit reports), to obtain, exchange, hold, and use such information, and to make any other enquiries we think appropriate to:
  - a. confirm information provided to us about you is true;
  - b. undertake initial and on-going customer due diligence and monitoring in accordance with the AML/CFT Act;
  - c. enforce debt and legal obligations (including recovery of money owed to us); and
  - d. comply with other legal obligations we may have.
- 4.4. You authorise any person (including credit reporters) to disclose information (including credit information) to us in response to such enquiries.
- 4.5. You accept that we may use customer due diligence services (including electronic based services from a third party) to verify your identity and conduct other customer due diligence or monitoring required under the AML/CFT Act, and that we may use credit reporting services to credit check you, and that when we use such services:
  - a. the other third party or credit reporter (each a Service Provider) will exchange information about you for that purpose and the Service Provider may hold information on its system and use it to provide their customer due diligence service or credit reporting service (as the case may be) to their other customers;
  - b. we may use the Service Provider's services in the future for any authorised purpose (including in relation to ongoing customer due diligence or the provision of credit). This may include using the Service Provider's monitoring services to receive updates if information held about you changes; and
  - c. if you default in your payment obligations to us, information about that default may be given to credit reporters and given by credit reporters to their other customers.

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**5. The Lawyers' Fidelity Fund**

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5.1. The New Zealand 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. 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.

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**6. Professional Indemnity Insurance**

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6.1. We hold current Professional Indemnity Insurance which meets the minimum standards from time to time specified by the New Zealand Law Society. We will provide you with particulars of the minimum standards upon request.

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**7. Limitation of Liability and Obligations**

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7.1. 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, or as from time to time is set out in our correspondence to you.

7.2. We do not accept liability for any loss arising from non-receipt of any communication including email communications.

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**8. Termination of Retainer**

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8.1. You may terminate our retainer at any time.

8.2. We may terminate our retainer in any of the circumstances set out in the New Zealand Law Society's *Rules of Conduct and Client Care for Lawyers*.

8.3. If our retainer is terminated, you must pay us all fees due up to the date of termination and all disbursements incurred up to that date.

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**9. Suspension of Service**

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9.1. We reserve the right to stop work on your retainer if interim accounts are not paid on time or a request for information or action remains unsatisfied.

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**10. Privacy and Confidentiality**

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10.1. 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 us to carry out your instructions; or

b to the extent required by law or by the New Zealand Law Society's *Rules of Conduct and Client Care for Lawyers*.

10.2. 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.

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

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**11. Files and Documents**

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11.1. 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) 10 years after our engagement ends, or earlier if we have converted those files and documents to an electronic format.

11.2. You are welcome to uplift your file provided that all fees and expenses have been paid. Please give us reasonable notice before collecting your file should you wish to do so.

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**12. Conflicts of Interest**

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12.1. 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 New Zealand Law Society's *Rules of Conduct and Client Care for Lawyers*.

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**13. Duty of Care**

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13.1. 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.

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**14. Complaints**

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14.1. 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.

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 by letter, email or telephone to:

Tania McKenzie, Partner

[tania@williamsmckenzie.co.nz](mailto:tania@williamsmckenzie.co.nz)

(03) 311 8142

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 the Law Society on **0800 261 801**.

## **15. Trust Account**

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- 15.1. From time to time, as part of your instructions we may be required to hold funds in our trust account on your behalf. We shall monitor the level of these funds and, should there be a material benefit, place these funds on interest bearing deposit at the applicable call account rate. All interest is subject to our administration fee of 5% and applicable resident withholding tax (RWT) deductions.
- 15.2. Due to the Foreign Account Tax Compliance Act (FATCA) we are unable to place funds on interest bearing deposit (IBD) for you unless you have first signed declarations as to your FATCA status. There is a cost in generating the necessary documents, having them executed by you and reporting to our bank/Inland Revenue. This cost may make it uneconomic to place funds on IBD. Therefore, you acknowledge that we need only consider placing funds on IBD for you where the net interest earned will likely exceed \$150, the sum we estimate it will cost to complete the FATCA process.
- 15.3. Sometimes at the conclusion of the retainer there may be a balance of funds held to your credit in the trust account. These will be remitted to you or transferred to another ongoing file if one exists. Due to the administrative costs in dealing with small balances, credit balances of less than \$20 will not be refunded but will be donated to Big Brothers Big Sisters, a charity that we support unless you specifically direct us to pay these funds back to you.

## **16. General**

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- 16.1. These Terms apply to any current engagement and also to any future engagement, whether or not we send you another copy of them.
- 16.2. We are entitled to change these Terms from time to time, in which case we will send you amended Terms.
- 16.3. Our relationship with you is governed by New Zealand law and New Zealand courts have non-exclusive jurisdiction.