

## Appendix A: 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 both otherwise expressly agree in writing.

### 1. Services

- 1.1 Before we undertake any significant work on a matter, we may, depending on the nature of the instruction, first need to ensure that no conflict of interest arises or may arise (this may entail you being prepared to disclose sufficient information to enable this determination to be made). We will advise you if such a conflict does exist and seek to resolve this in accordance with our protocols in this regard. Once we have determined that we can take your instruction, we will advise you of the person who will have overall responsibility for the work. Other personnel in our firm will be used as appropriate. Our objective is to ensure that each matter is handled efficiently.
- 1.2 Before we undertake any significant work on a matter, we may also agree with you the scope of that work (for example, in a specific engagement or estimate letter).

### 2. Financial

#### 2.1 Fees:

- (a) Unless we both otherwise agree in relation to a particular engagement, our fees will be determined taking into account the hourly rates of the personnel within our firm who have worked on the matter, and other factors set out in rule 9.1 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008. These other factors include:
- (i) the complexity of the matter;
  - (ii) the skill, specialised knowledge and responsibility required;
  - (iii) the results achieved;
  - (iv) the urgency and circumstances in which the matter is undertaken;
  - (v) the degree of risk assumed, including the amount or value involved; and
  - (vi) the possibility that the acceptance of a particular engagement will preclude engagement by other clients.
- (b) We will give estimates of likely fees for a matter if requested. Where an estimate is given, it is a

guide only, based on our experience of similar matters.

- (c) An estimate is also given on the basis of the scope of work and any assumptions set out in the relevant estimate. If we think an estimate may be exceeded (for example, where further work is required or assumptions are not correct) we will advise you as soon as reasonably practicable. Any estimate given is exclusive of GST and expenses.

2.2 **Expenses:** We do not charge for office services (such as routine photocopying), but do charge for actual out of pocket expenses.

2.3 **GST / VAT:** GST/VAT (if any, payable in any jurisdiction) is payable by you on our fees. If we do not correctly charge GST/VAT on an invoice where we are required by law to do so, we may recover such GST/VAT from you.

2.4 **Invoices:** Unless we both otherwise agree in relation to a particular engagement, we will send interim invoices to you, usually monthly and on completion of a matter, or on termination of our engagement. We may also send you an invoice when we incur a significant expense.

#### 2.5 Payment:

- (a) Invoices 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 more than 7 days overdue.
- (b) If your account is overdue we may:
- (i) stop work on any matters in respect of which we are providing services to you;
  - (ii) require an additional payment of fees in advance or other security before recommencing work;
  - (iii) recover from you in full any costs we incur (including on a solicitor/client basis) in seeking to recover the amounts from you, including our own fees and the fees of any collection agency.

2.6 **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.

### 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 us 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 not disclose to you confidential information which we have in relation to any other client.

### 4. Termination

- 4.1 You may terminate our engagement at any time.
- 4.2 We may terminate our engagement 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 files and documents

- 5.1 You authorise us (without further reference to you) to:
- (a) destroy all physical files and documents for a matter, provided we have converted those files and documents to an electronic format; and
  - (b) destroy all files and documents (physical or in electronic format) for a matter 7 years after our engagement ends.
- 5.2 This does not apply to documents which by agreement we hold in safe custody for you.

### 6. Conflicts of interest

- 6.1 We have procedures in place to identify and respond to conflicts of interest should they arise. 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 and our internal protocols in relation to such issues.

## **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. Foreign law matters**

8.1 We are only qualified to advise on New Zealand law. If we assist you in respect of matters governed by foreign law, we do so on the basis that we do not accept any responsibility (and will not have any liability, whether in contract, tort (including negligence), equity or otherwise) in relation to your legal position under that foreign law.

8.2 We will give our advice in English. If we provide a translation into any other language then the English version will prevail in the event of any inconsistency.

## **9. Limitation of liability**

9.1 To the extent permitted by law, our total aggregate liability to you (and any other persons) in connection with any matter or series of related matters on which you engage us, is limited to the greater of:

- (a) the amount available to be paid out for that liability under any relevant insurance held by us, up to a maximum of NZ\$20,000,000 (including interest or costs); and
- (b) NZ\$2,000,000 or (if greater) the amount of five times our applicable fee (excluding disbursements and GST).

9.2 This limitation applies to liability of all kinds, including, but not limited to, contract, tort (including for negligence) and equity.

## **10. Trust account**

10.1 We maintain a trust account for funds that we receive from or for the benefit of clients (except for funds which are payment of our invoices).

10.2 Payments out of the trust account will be made either to you or to others with your authority. Before making a payment to another account we may require verification of the account details.

10.3 Unless you expressly instruct otherwise, we may, where practicable and reasonable, deposit the funds we hold on your behalf in an interest bearing deposit account with a New Zealand registered bank - either on call or for a fixed term. Otherwise your funds will be held in our trust account with one of our relationship banks, which is not interest bearing. We are not responsible for obtaining the best interest rate available at the time your funds are placed on interest bearing deposit or for any loss of interest that you may suffer as a result of any delay in placing your funds on interest bearing deposit. In certain cases our relationship banks may require information from us in respect of you before we deposit funds in an interest bearing deposit account. If we do not receive such information, you acknowledge and agree that we cannot place such funds in an interest bearing deposit account and, accordingly, cannot earn interest on such funds. We shall not be liable in such case.

10.4 We will have no liability to you however arising for the loss of any amount deposited with us on your behalf where the loss results from the act, omission, neglect or default of a financial institution.

10.5 We may deduct any fee, expense or disbursement for which we have provided you with an invoice from any

funds held in our trust account on your behalf except where we receive the funds from you for a special purpose (other than as security for our fees) and they remain in our trust account for that special purpose.

10.6 Where you transfer funds to our trust account in a foreign currency, we will convert those funds into New Zealand dollars at the prevailing exchange rate offered by our bank. We are not responsible for seeking or obtaining a better exchange rate from any other bank or financial institution.

10.7 We may ask you to provide us with information verifying your identity and your tax status. We may retain copies of that information and provide it to our bank and, if required, any regulatory body (including the Inland Revenue Department and Land Information New Zealand). We may perform such other verification checks as to your identity and checks as to the source of any funds associated with any transaction to which our service relate as we consider to be necessary or desirable to comply with our legal and regulatory requirements. We may refuse to hold funds on your behalf if you do not provide us with the information we require.

10.8 A full record of our trust account is kept at all times. A statement of trust account transactions detailing funds received and payments made on your behalf will be provided to you periodically and at any time upon your request.

## **11. General**

11.1 We may change these Terms from time to time. Our current terms at any particular time will be available on our website.

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