

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 (**Law Society's Rules**). 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, regulation (including of any foreign jurisdiction) or by the Law Society's Rules.
- 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.
- 3.4 We may be required to disclose information as outlined in section 11 below.

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.
- 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.

This does not apply to documents which by agreement we hold in safe custody for you.

- 5.2 Without prejudice to the foregoing, you authorise us (without further reference to you) to retain any files and documents (physical or in electronic format) for so long as we consider reasonable in the context of our

business purposes. This does not apply to documents (physical or in electronic format) which you expressly request us to destroy where it is reasonably practicable for us to do so and we are not otherwise obliged to retain them. If, at your request or if we are obliged to do so, we destroy any files or other documents in advance of our usual document destruction date, then any liability we may have to you in relation to the matter, files and / or documents however arising will be deemed to have been waived and will end, and you will indemnify and hold us harmless against any such liability to a third party.

6. Conflicts of interest

6.1 General: We have procedures in place to identify and respond to conflicts of interest should they arise. We follow the requirements and procedures set out in the Law Society's Rules and our internal protocols in relation to such issues.

6.2 Commercial conflict: We may accept instructions from other clients or potential clients operating in the same or competing markets and whose commercial interests conflict with your own, provided those instructions do not involve the use of confidential information we have obtained from you.

6.3 Legal conflict: If a legal conflict of interest arises, in relation to any matter on which you have instructed us, between your interests and those of any other client for whom we are also acting, we will inform you as soon as possible.

6.4 Competitive sales process: If you have instructed us to act for you as a bidder, or an adviser or financier to a bidder, in relation to a competitive sales process, our engagement is on a non-exclusive basis, unless otherwise expressly agreed. This means that you agree that we may also act for one or more other bidders and / or their advisers or financiers, whose identities may not be known to you, with separate legal teams.

6.5 Non-exclusive engagement:

(a) In a competitive sales process or if you have otherwise agreed to engage us on a non-exclusive basis in relation to a matter, we will

establish an information barrier around the relevant legal services team and keep information in respect of your affairs confidential to that team. Similarly, we will not be permitted to provide you with access to information which is held by us as a result of a separate legal services team acting for another party or parties.

(b) If, in the course of acting for you or any other party, a dispute arises or matters otherwise become contentious between you and that other party, we will comply with the Society's Rules, which may require us to cease acting for one or more parties. Before that point is reached, we will raise and endeavour to resolve the issue with all parties (unless obligations of confidentiality or other constraints preclude that).

6.6 Representation: If we cease to act for you or have not been instructed by you on a matter, we may act for other clients whose interests are adverse to your own, provided either:

- (a) we do not hold confidential information belonging to you that is relevant to the matter; or
- (b) we have taken steps to maintain the confidentiality of information which is relevant to you.

This will involve the establishment of an information barrier similar to that set up when we are engaged on a non-exclusive basis in relation to a matter.

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 including that outlined in section 11 below. 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. Compliance

- 11.1 We must comply with our obligations under all laws and regulation binding on us, including:
- (a) anti-money laundering and countering financing of terrorism laws; and
 - (b) laws relating to tax reporting and withholdings.
- 11.2 In order to do so, we may be required to conduct customer due diligence and ongoing monitoring on you, persons acting on your behalf, and other relevant persons such as your beneficial owners or persons who have effective control of you and (in the case of a trust) the beneficiaries of the trust. We may not be able to act or continue acting for you, or to complete trust account transactions for you, until this is completed.
- 11.3 We may be required to provide information about you, persons acting on your behalf, and other relevant persons as described above to government agencies. We may not be permitted to tell you or such persons if we do provide such information. We

may also be required to provide such information to banks with which we place your funds through our trust account, and information provided to banks may be in turn be passed on by them to tax and other regulatory authorities in New Zealand and offshore.

- 11.4 Please ensure that any of the persons described above in respect of whom we collect information are aware of and consent to this and to the provisions of our Privacy Policy which can be viewed [here](#). Please also ensure that all information provided to us is accurate and provided promptly to us.
- 11.5 We are not responsible to you, or anyone else, for anything done or not done by us (including any provision of information by us to any third party or any withholdings made) in order to comply with our legal obligations.
- ## **12. General**
- 12.1 We may change these Terms from time to time. Our current terms at any particular time will be available on our website.
- 12.2 Our relationship with you is governed by New Zealand law and New Zealand courts have exclusive jurisdiction.