

TERMS OF ENGAGEMENT

1. SERVICES

- 1.1. The services we are to provide for you are outlined in our letter of engagement to you.
- 1.2. Our letter of engagement will set out the person or persons who has the overall responsibility for the services we are to provide you.
- 1.3. If you have any questions or comments about any letter of engagement we have sent to you please notify us. We hold the utmost importance in understanding what you have asked us to do and your expectations of our services.

2. FINANCIAL

2.1. Fees

- a. Our fees will be charged on the basis that they will be fair and reasonable having regard to the circumstances of the matter and the nature of our work for you.
 - b. You authorise us to deduct our fees and other expenses from funds held in our trust account on your behalf on provision of an invoice to you, unless those funds are held for a particular purpose.
 - c. 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 further costs.
 - d. We will charge you fair and reasonable fees. The factors to be taken into account in determining the reasonableness of a fee in respect of any services provided by a lawyer to a client include the following:
 - (a) the time and labour expended;
 - (b) the skill, specialised knowledge, and responsibility required to perform the services properly;
 - (c) the importance of the matter to the client and the results achieved;
 - (d) the urgency and circumstances in which the matter is undertaken, and any time limitations imposed, including those imposed by the client;
 - (e) the degree of risk assumed by the lawyer in undertaking the services, including the amount or value of any property involved;
 - (f) the complexity of the matter and the difficulty or novelty of the questions involved;
 - (g) the experience, reputation and ability of the lawyer;
 - (h) the possibility that the acceptance of the particular engagement will preclude engagement of the lawyer by other clients;
 - (i) whether the fee is fixed or conditional (whether in litigation or otherwise);
 - (j) any quote or estimate of fees given by the lawyer;
 - (k) any fee agreement (including a conditional fee agreement) entered into between the lawyer and client;
 - (l) the reasonable costs of running a practice; and
 - (m) the fee customarily charged in the market and locally for similar legal services.
- 2.2. In providing services we may incur disbursements or have to make payments to third parties on your behalf. These will be included in our invoice to you when the expense is incurred. We may require advance payment for the disbursements or expenses which we will be incurring on your behalf.
 - 2.3. GST (if any) is payable by you on our fees and charges.
 - 2.4. We may send interim invoices to you, usually monthly and on completion of the matter, or termination of our engagement. We may also send you an invoice when we incur a significant expense.

- 2.5. Invoices are payable within fourteen (14) days of the date of the invoice, unless alternative arrangements have been agreed upon. We may require interest be paid on any amount which is more than seven (7) days overdue.
- 2.6. We may ask you to pre-pay amounts to us, or to provide security for our fees and expenses. In doing so, you authorise us to:
 - a. debit against amounts pre-paid by you; and
 - b. deduct from any funds held on your behalf in our trust account for any fees, disbursements or other expenses for which we provided an invoice.
- 2.7. 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 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 to the extent:
 - a. necessary or desirable to enable us to carry out your instructions; or
 - b. 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 by giving us reasonable notice.
- 4.2. Provided we have good cause, we may decide to stop working for you, such as if you:
 - a. do not provide us with instructions promptly;
 - b. are unable to, or do not pay our agreed fees;
 - c. give us instructions that require us to breach any professional obligations, or mislead or deceive us in a material respect; and/or
 - d. against our advice, act in a way we believe is highly imprudent and may be inconsistent with our fundamental obligations as lawyers. This does not apply to litigation instructions.
- 4.3. In the event we stop working for you, we will give you all reasonable notice and assist in finding another lawyer.
- 4.4. If our engagement is terminated, you must pay all fees due up to the date of termination and all expenses incurred up to that date.

5. CONFLICTS OF INTEREST

- 5.1. 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*.

6. FILE AND DOCUMENT RETENTION

- 6.1. You agree to authorise us to destroy all files and documents for this matter (other than any documents that we hold in safe custody for you) ten (10) years after our engagement ends, or earlier if we have converted those files and documents to an electronic format.

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 in writing.

8. TRUST ACCOUNT

- 8.1. We 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 consult with you regarding lodging those funds in interest bearing deposit with a bank.

9. PROFESSIONAL INDEMNITY INSURANCE

- 9.1. We hold professional indemnity insurance that meets or exceeds the minimum standard specified by the Law Society. We will provide you with particulars of the minimum standards upon request.

10. LIMITING OUR LIABILITY TO YOU

- 10.1. To the extent permitted by law, we limit our liability to you in accordance with the provisions of this clause.
- 10.2. Our aggregate liability to you (whether in contract, equity, tort or otherwise) arising out of your engagement of us on a matter (or multiple related matters) is limited to the greater of:
- NZD \$500,000.00 (excluding GST and disbursements); and
 - an amount equal to five times our paid fees from you (excluding GST and disbursements) in relation to the relevant matter (or any multiple related matters), up to a maximum of NZD \$2,000,000.00 (excluding GST and disbursements).
- 10.3. This limit applies to whatever you are claiming for, and however liability arises or may arise if not for this clause (whether in contract, tort, equity or otherwise).
- 10.4. Without limitation to the previous provisions, we shall not be liable for any loss or liability caused by or contributed to by inaccurate or incomplete information supplied by you or third parties (including public records and eye witnesses) or because you did not receive or read a communication we sent you.

11. LAWYERS FIDELITY FUND

- 11.1. The Law Society maintains the Lawyer's 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.

12. COMPLAINTS

- 12.1. We maintain procedures for handling any client complaints to ensure any issue is dealt with quickly and fairly. Should 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.
- 12.2. Should you wish to not refer your complaint to that person, or you are not satisfied with that person's response, you may refer your complaint to either Paul Gray or Lisa Grace.
- 12.3. The 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 at the following address:

*Southland District Law Society
39 Don Street
INVERCARGILL 9810
Phone: (03) 218 8778*

13. LIMITS ON OUR ADVICE

- 13.1. We are not qualified to provide:
- tax advice;
 - investment advice; and/or
 - advice on foreign laws.

- 13.2. Should you need advice on any of these matters we can assist in finding an appropriate advisor.

14. ANTI-MONEY LAUNDERING

- 14.1. Under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 ("the Act") we are required to perform customer due diligence. This includes verifying your identity, and in some circumstances the source of funds for a transaction.
- 14.2. You authorise us to collect information from you, and use that information, to undertake customer due diligence and carry out any ongoing monitoring under the Act.
- 14.3. You acknowledge that we cannot act (or continue to act) for you or complete any transactions through our trust account for you, until customer due diligence is complete.

15. CLIENT CARE AND SERVICE

- 15.1. 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;
 - 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; and
 - let you know how to make a complaint and deal with any complaint promptly and fairly.
- 15.2. 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 to the courts and to the justice system.

16. GENERAL

- 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 the amended Terms.
- 16.3. Our relationship with you is governed by the laws of New Zealand and New Zealand courts have non-exclusive jurisdiction.
- 16.4. If any provision of these Terms is or becomes invalid or unenforceable, that provision shall be deemed deleted from these Terms and such invalidity or unenforceability shall not affect the other provisions of these terms, all of which shall remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provisions.
- 16.5. The enforceability of these terms is not affected by:
- the ending of our engagement; and/or
 - any change to our partners at our firm.

We thank you for engaging our firm to carry out work for you and value our relationship with you.