

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.

1. Services

- 1.1 The services which we are to provide for you are outlined in our engagement letter. Your instructing us gives us the authority expected of solicitors to act in fulfilment of instructions, including incurring reasonable expenses and retaining any necessary expert advisors (for example, surveyors, taxation experts).

2. Financial

- 2.1 **Fees:** Our fee/s to you will be a fee or fees/s that is/are fair and reasonable for the services provided, having regard to the interests of both you and us, and having regard also to the factors set out in rule 9.1 of the Law Society’s *Rules of Conduct and Client Care for Lawyers* (“Law Society Rules”), which are set out below:

“Reasonable fee factors

9.1 The factors to be taken into account in determining the reasonableness of a fee in respect of any service 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 retainer 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:

(m) the fee customarily charged in the market and locality for similar legal services.”

- 2.2 **Disbursements and expenses:** In providing services we may incur disbursements or have to make payments to third parties on your behalf. These will be included, separately from our fees, in our invoice/s to you. We may require an advance payment for the disbursements or expenses which we will be incurring on your behalf. In our invoices we charge separately for general office services, including photocopying, faxes, form fees, stationery, communications and technology costs and postage. We also must recover costs associated with government imposed controls, including tax statement compliance and anti-money laundering and counter terrorism compliance. The amount of the general office services charge is established by us with reference to the extent of the use of such services in connection with the particular matter.

- 2.3 **GST (if any):** Is payable by you on our fees and charges.

2.4 **Invoices:** We may send interim invoices to you at appropriate junctures, 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 **Payment:** 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 overdue, at the rate of 18% per annum, accruing daily. If payment is overdue we need not perform any further work for you, and we retain custody of any of your property in our possession (including deeds, documents and files) until all unpaid invoices are paid in full. We will not be responsible or liable for the consequences of our taking any such action. If an account remains outstanding then we may retain a debt collection agency to recover any outstanding debt on our behalf. You will be liable for all costs related to recovering that debt.

2.6 **Security:** We may ask you to pre-pay amounts to us, or to provide security for our fees and expenses. You authorise us:

- to debit 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.

2.7 **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. **Anti-Money Laundering and Countering Financing of Terrorism Act (AML/CFT)**

3.1 From the 1st July 2018 we are obliged to verify your identity and, in some circumstances, the source of funds for a transaction. We must comply with all binding law in all jurisdictions,

3.2 We will undertake due diligence, monitoring and reporting and liaise with banks and other entities as required to comply with such laws.

3.3 From time to time we may require you to provide certain information to ensure our compliance and yours. If we are not able to obtain the required information from you, it is likely we will not be able to act for you. Because the law applies to everyone, we need to ask for the information even if you have been a client of ours for a long time.

3.4 Before we start working for you, we will let you know what information we need, and what documents you need to show us and let us photocopy.

4. **Confidentiality**

4.1 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:

- to the extent necessary or desirable to enable us to carry out your instructions; or
- to the extent required by law or by the Law Society Rules.

4.2 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.

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

5. **Termination**

- 5.1 You may terminate our retainer at any time.
- 5.2 We may terminate our retainer in any of the circumstances set out in the Law Society Rules.
- 5.3 If our retainer is terminated you must pay us all fees due up to the date of termination and all expenses incurred up to that date.

6. **Retention of files and documents**

- 6.1 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) 7 years after our engagement ends, or earlier if we have converted those files and documents to an electronic format.

7. **Conflicts of Interest**

- 7.1 The Law Society Rules provide for conflicts of interest. Please advise us immediately if you believe a conflict of interest has arisen or might arise.
- 7.2 Our acting for you does not preclude us from acting (with or without your consent) for any other client in relation to any other matter, notwithstanding that the other matter may be contrary to your interests.
- 7.3 The terms of our engagement letter also provide consent for us to act for more than one party to a matter, in non-contentious circumstances.

8. **Duty of Care**

- 8.1 Our duty of care is to you and not to any other person. No other person may rely on our advice unless we expressly agree to this, in writing.
- 8.2 Our advice to you is not to be used for any purpose other than that you advised us it was being sought at the time of your instructing us, and it is not to be disclosed to third parties.
- 8.3 Our advice is limited to the matters it refers to, and is subject to any changes to the circumstances as known to us at the time of our providing our advice (including any changes to the law).
- 8.4 This firm's name is not to be used, nor our advice referred to, in any document or other communication, unless we expressly agree to this, in writing.

9. **Trust Account**

- 9.1 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 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. Interest withholding tax will be deducted from interest earned, at the appropriate rate.

10. **Limitations on our obligations or liability**

- 10.1 We will be relying on the completeness and accuracy of information provided to us by you or on your behalf, and also on the completeness and accuracy of information provided to us by other

lawyers and other professionals (e.g. surveyors, valuers), and central and local government agencies (eg. the Land Transfer Office, the Council rates office). We will not be responsible or liable for the consequences of our acting on such information, if subsequently found to be incomplete, inaccurate or misleading.

- 10.2 As lawyers, we have duties to the Courts and to uphold the rule of law and the administration of justice. We also have duties under the law relating to taxation. Those duties override any duty we have to you, and we will not be responsible or liable for the consequences of our acting in accordance with those other duties.
- 10.3 We may be relying on you and/or third parties to provide us with documents, information, authorities or consents in time for us to perform our legal services. We will not be responsible for the consequences of any delay or failure in the provision to us of any such documents, information, authorities or consents.
- 10.4 We are not responsible for providing you with taxation advice in relation to the matters in respect of which we act for you, unless you have expressly sought such advice from us in relation to the particular matter.
- 10.5 If communication between us and you is via email, we are not responsible and have no liability for any failure, interference with or corruption of any email, beyond our reasonable control.
- 10.6 Our acting for you on a matter finishes once your instructions are completed. Thereafter, we have no obligation to provide further services in respect of that matter, nor alert you to subsequent changes of the law.

11. **Copyright**

We retain the copyright (and any other intellectual property) in the material we produce for you, which you are not to copy or disclose to any third party unless we expressly agree to this, in writing

12. **General**

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

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:** The basis on which fees will be charged and when payment of fees is to be made is set out in our Standard Terms of Engagement.

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

3. **Lawyers Fidelity Fund:** The 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.

4. **Complaints:** 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 to Patti Wolfsbauer, our Practice Manager.

She may be contacted by letter (Private Bag 2031, New Plymouth), by email at paw@rmy.co.nz, or by telephoning her at 06 769 8080.

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 New Zealand Law Society Complaints Service, PO Box 150, Taranaki Mail Centre, 4340, Tel 0800 261 801.

5. **Persons Responsible for the Work:**

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 our letter of engagement.

6. **Client Care and Service:**

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.
- 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.lawsociety.org.nz or call 0800 261 801.

7. Limitations on extent of our obligations or liability

General limitations on the extent of our obligations to you or any limitation or exclusion of liability are set out in our Standard Terms of Engagement. Any limitations or exclusion of liability specific to a particular brief or retainer will be communicated to you in writing.