

STANDARD TERMS OF ENGAGEMENT

These Standard Terms of Engagement (“Terms”) apply to all work I carry out for you, unless we agree otherwise in writing.

1 General

- 1.1 These Standard Terms of Engagement (Terms) apply to any current engagement and also to any future engagement, whether or not I send you another copy of them. I am entitled to change these Terms from time to time, in which case I will send you amended Terms. My relationship with you is governed by New Zealand law and New Zealand courts have exclusive jurisdiction.

2 Services

- 2.1 The services I am to provide for you (the Services) are outlined in my letter of engagement along with any further instructions that you provide to me in writing (or that I record in writing).

3 Communications

- 3.1 I will obtain from you contact details, including email address, postal address and telephone numbers. I may provide documents and other communications to you by email (or other electronic means). You will advise me if any of your contact details change.
- 3.2 I will report to you periodically on the progress of any engagement and will inform you of any material and unexpected delays, significant changes or complications in the work being undertaken. You may request a progress report at any time.

4 Financial

- 4.1 **Fees:** The basis upon which I will charge our fees is set out in my engagement letter.
- a If the initial letter of engagement specifies a fixed fee, I will charge this for the agreed scope of the Services. Work which falls outside that scope will be charged on an hourly rate basis. I will advise you as soon as reasonably practicable if it becomes necessary for me to provide services outside of the agreed scope and, if requested, give you an estimate of the likely amount of the further costs.
- b Time spent is recorded in six-minute units.
- c Hourly fees may be adjusted (upwards or downwards) to ensure the fee is fair and reasonable to take into account matters such as the complexity, urgency, value and importance of the Services. Full details of the relevant fee factors are set out in Rule 9 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (Rules).

- 4.2 **Disbursements and Third-Party Expenses:** In providing the Services I may incur disbursements and payments to third parties on your behalf. You authorise me to incur these disbursements (which may include such items such as search fees, court filing fees, registration fees and travel and courier charges) which are reasonably necessary to provide the Services. You also authorise me to make payments to third parties on your behalf which are reasonably required to undertake the Services (which may include items such as experts' costs or counsel's fees). These will be included in my invoice to you, shown as "disbursements" when the expenses are incurred (or in advance when I know I will be incurring them on your behalf).
- 4.3 **Office Service Charge Fee (Administrative expenses):** In addition to disbursements, I may charge a fee of \$35 plus gst to cover out of pocket costs which are not included in my fee and which are not recorded as disbursements. These include items such as photocopying and printing, postage and phone calls.
- 4.4 **GST:** My services will usually attract Goods and Services Tax (GST). If this is the case, GST is payable by you on my fees and charges.
- 4.5 **Invoices:** I will send interim invoices to you, usually monthly, and on completion of the matter, or termination of our engagement. I may send you invoices more frequently when I incur a significant expense or undertake a significant amount of work over a shorter period of time.
- 4.6 **Payment:** Invoices are payable within 14 days of the date of the invoice, unless alternative arrangements have been made with me.
- a You authorise us to deduct my fees and other expenses from funds held in my trust account on your behalf on provision of an invoice to you, unless those funds are held for a particular purpose.
 - b If you have difficulty in paying any of my accounts, please contact me promptly so that I may discuss payment arrangements.
 - c If your account is overdue I may:
 - i require interest to be paid on any amount which is more than 14 days overdue, calculated at the rate of 2 % above the overdraft rate that my firm's main trading bank charges me for the period that the invoice is outstanding;
 - ii stop work on any matters in respect of which I am providing services to you;
 - iii require an additional payment of fees in advance or other security before recommencing work;
 - iv recover from you in full any costs I incur (including on a solicitor/client basis) in seeking to recover the amounts from you, including collection and legal fees incurred by me or any collection agency.
 - d Payment may be made by internet banking to ASB. The bank account number will be recorded on the invoice.
- 4.7 **Fees and disbursements in advance:** I may ask you to pre-pay amounts to me, or to provide security for my fees and expenses. I may do this, on reasonable notice, at any time.

- 4.8 **Estimates:** You may request an estimate of my fee for undertaking the Services at any time. If possible, I will provide you with an estimate (which may be a range between a minimum and a maximum amount or for a particular task or step). An estimate is not a quote. Any significant assumptions included in the estimate will be stated and you must tell me if those assumptions are wrong or change. I will inform you if I am likely to exceed the estimate by any substantial amount. Unless specified, an estimate excludes GST, disbursements and expenses.
- 4.9 **Third Parties:** Although you may expect to be reimbursed by a third party for my fees and expenses, and although my invoices may at your request or with your approval be directed to a third party, you remain responsible for payment to me in accordance with these Terms if the third party fails to pay me.
- 4.10 **Trust Accounting:** I operate a trust account. All money received from you or on your behalf will be held to your credit in our trust account.
- a Payments out of the trust account will be made either to you or to others with your authority. Written authorisation from you (and if I am acting for more than one of you, from all of you) will be required when payment is to be made to a third party. Before making a payment to another account I may require verification of the account details by provision of (for example) a copy of a deposit slip, cheque or bank statement showing the account number, a signed authority from you including the bank account details, or a signed letter from the relevant financial institution providing bank account details.
- b A full record of my 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.
- c Unless it is not reasonable or practicable to do so, when I hold significant funds for you for more than a short period of time I will discuss with you whether the funds should be placed on call deposit with a bank registered under section 69 of the Reserve Bank of New Zealand Act 1989.
- 4.11 **Confidence:** I will hold in confidence all information concerning you or your affairs that I acquire during the course of acting for you. I 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 as expressly or impliedly agreed by you; or
- c as necessary to protect my interests in respect of any complaint or dispute; or
- d to the extent required or permitted by law.
- 4.12 Confidential information concerning you will as far as practicable be made available only to those within my firm who are providing legal services for you.
- 4.13 **Personal information and Privacy:** In my dealings with you I will collect and hold personal information about you. I will use that information to carry out the Services and to make contact with you about issues I believe may be of interest to you. Provision of personal information is voluntary but if you do not provide full information this may impact on my ability to provide the Services.

- 4.14 Subject to clause 5.1, you authorise me to disclose, in the normal course of performing the Services, such personal information to third parties for the purpose of providing the Services and any other purposes set out in these Terms.
- 4.15 I may disclose your name and address to third parties such as credit agencies to perform a credit reference or to undertake credit management or collection processes if it is reasonable to do so.
- 4.16 The information I collect and hold about you will be kept at my offices and/or at secure file storage sites (including electronic file storage sites) elsewhere. If you are an individual, you have the right to access and correct this information. If you require access, please contact me.
- 4.17 **Verification of identity:** The Financial Transactions Reporting Act 1996 requires us to collect from you and to retain information required to verify your identity. I may therefore ask you to show us documents verifying your identity (such as a passport or driver's licence). I may retain copies of these documents. I may perform such other customer verification checks as to your identity and checks as to the source of any funds associated with any transaction to which the Services relate as I consider to be required by law.

5 Documents, Records and Information

- 5.1 I will keep a record of all important documents which I receive or create on your behalf on the following basis:
- a I may keep a record electronically and destroy originals (except where the existence of an original is legally important such as in the case of wills and deeds).
 - b At any time, I may dispose of documents which are duplicates, or which are trivial (such as emails which do not contain substantive information), or documents which belong to us.
 - c I am not obliged to retain documents or copies where you have requested that I provide them to you or to another person and I have done so, although I am entitled to retain copies for my own records if I wish to do so.
- 5.2 I will provide to you on request copies or originals (at my option) of all documents to which you are entitled under the Privacy Act 1993 or any other law. I may charge you my reasonable costs for doing this.
- 5.3 Where I hold documents that belong to a third party you will need to provide me with that party's written authority to uplift or obtain a copy of that document.
- 5.4 Unless you instruct me in writing otherwise, you authorise me and consent to me (without further reference to you) to destroy (or delete in the case of electronic records) all files and documents in respect of the Services 7 years after our engagement ends (other than any documents that I hold in safe custody for you or are otherwise obliged by law to retain for longer). I may retain documents for longer at my option.
- 5.5 I may, at my option, return documents (either in hard or electronic form) to you rather than retain them. If I choose to do this, I will do so at my expense.
- 5.6 I own copyright in all documents or work I create in the course of performing the Services but grant you a non-exclusive licence to use and copy the documents as you see fit for your own personal or commercial use. However, you may not permit any third party to copy, adapt or use the documents without my written permission.

6 Conflicts of Interest

- 6.1 I am obliged to protect and promote your interests to the exclusion of the interests of third parties and ourselves as set out in the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (Rules). This may result in a situation arising where I have a conflict of interest.
- 6.2 I have procedures in place to identify and respond to conflicts of interest or potential conflicts of interest. If a conflict of interest arises I will advise you of this and follow the requirements and procedures set out in the Rules. This may mean I cannot act for you further in a particular matter and I may terminate our engagement.

7 Duty of Care

- 7.1 My duty of care is to you and not to any other person. I owe no liability to any other person, including for example any directors, shareholders, associated companies, employees or family members unless I expressly agree in writing. I do not accept any responsibility or liability whatsoever to any third parties who may be affected by my performance of the Services or who may rely on any advice I give, except as expressly agreed by us in writing.
- 7.2 My advice is not to be referred to in connection with any prospectus, financial statement, or public document without my written consent.
- 7.3 My advice is opinion only, based on the facts known to me and on my professional judgement, and is subject to any changes in the law after the date on which the advice is given. I am not liable for errors in, or omissions from, any information provided by third parties.
- 7.4 My advice relates only to each particular matter in respect of which you engage me. Once that matter is at an end, I will not owe you any duty or liability in respect of any related or other matters unless you specifically engage me in respect of those related or other matters.
- 7.5 Unless otherwise agreed, I may communicate with you and with others by electronic means. I cannot guarantee that these communications will not be lost or affected for some reason beyond my reasonable control, and I will not be liable for any damage or loss caused thereby.

8 Limitations on Obligations or Liability (Optional)

- 8.1 To the extent allowed by law, my aggregate liability to you (whether in contract, tort, equity or otherwise) in connection with my Services is limited to the amount available to be payable under the Professional Indemnity Insurance held by the firm.

9 Termination

- 9.1 You may terminate our retainer at any time.
- 9.2 I may terminate our retainer in any of the circumstances set out in the Rules including the existence of a conflict of interest, non-payment of fees, and failure to provide instructions.
- 9.3 If our retainer is terminated you must pay all fees, disbursements and expenses incurred up to the date of termination.

10 Feedback and Complaints

- 10.1 Client satisfaction is one of my primary objectives and feedback from clients is helpful to me. If you would like to comment on any aspect of the service provided by me, including how I can improve my service, please contact me. I will inquire into your complaint and endeavour in good faith to resolve the matter with you in a way that is fair to all concerned.
- 10.2 If you are not satisfied with the way I have dealt with your complaint the New Zealand Law Society has a complaints service to which you may refer the issue. You can call the 0800 number for guidance, lodge a concern or make a formal complaint. Matters may be directed to:

Lawyers Complaints Service
PO Box 5041
Wellington 6140
New Zealand

Phone: 0800 261 801

To lodge a concern:

www.lawsociety.org.nz/for-the-community/lawyers-complaints-service/concerns-form

To make a formal complaint:

www.lawsociety.org.nz/for-the-community/lawyers-complaints-service/how-to-make-a-complaint

Email: complaints@lawsociety.org.nz

Smids Law updated 15 January 2019