



Terms of Engagement.

OUR TERMS OF ENGAGEMENT AND CLIENT SERVICE INFORMATION

1. WHO WILL BE WORKING FOR YOU?

- § We always select a lawyer/legal executive who we feel is best suited to your needs, and if you have any questions about our choice please feel free to discuss this with us. We work as a team of experts and therefore there may be a number of people who work on your file at various times although we try and avoid changing who is doing the work but sometimes this cannot be avoided.
- § We choose our lawyers/legal assistants in such a way that we ensure that your work is handled in a manner that sees you obtain the best advice in the most economical and efficient way.

2. SERVICES

- § The services we are to provide for you are outlined in our engagement letter to you and/or are attached to this document.
- § We will provide our services to you in accordance with your instructions. We customise the way we record and confirm our instructions in accordance with the needs of each individual client. In order to ensure that all matters are addressed properly and that you receive the best possible advice, it is essential that we spend time to fully understand and consider all of the issues raised.

3. INSTRUCTIONS

- § We will only act on your clear instructions. When we can't obtain these from you we will stop work until such time as clear instructions are received (in writing if necessary). If in any doubt, written instructions are always best and we will often request you to confirm your instructions to us in writing.
- § You must promptly provide us with any information that we may reasonably require in order to carry out your instructions and meet our statutory obligations. You are responsible for the accuracy of any information you provide to us. Please do not assume that we are aware of certain facts – we rely on you to advise us of all relevant facts in order to avoid us giving you advice based on incorrect assessments of fact.
- § We will carefully set out in our correspondence and terms of engagement to you what it is that we are to do for you. Please read these documents very carefully and do not assume that we will be undertaking any tasks unless they are specifically set out in our terms of engagement.
- § By instructing us to act on your behalf you accept liability to pay the bill that we render in respect of such instructions.
- § Please note that we are lawyers and do not pretend to offer advice in all areas of commercial endeavour, financing, accountancy, tax and the like. We will advise you when you need to seek further specialist advice and when we are unable to assist you further.

4. FEES

- 4.1 We will charge fees which are fair and reasonable for the services we provide while acting under your instructions. In determining the fee, the following may be taken into account:
 - (a) the time and labour expended (at the present time our partners' time is charged at \$370.00 per hour plus GST and other staff have different rates but there are no additional charges for secretarial, word processing and similar services).
 - (b) the skill, specialized knowledge, and responsibility required to perform the services properly.
 - (c) the importance of the matter to you and the results achieved.

- (d) the urgency and circumstances in which the matter is undertaken and any time limitations imposed, including those imposed by you.
- (e) the degree of risk assumed by us in undertaking the services including the amount or value of the 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 members of our firm working on your matter.
- (h) the possibility that the acceptance of the particular instructions will preclude employment of us by other clients.
- (i) whether the fee is fixed or conditional.
- (j) any quote or estimate of fees given by us.
- (k) any fee agreement entered into between you and us.
- (l) the reasonable costs of running our firm.
- (m) the fee customarily charged in the local market for work similar to yours.

4.2 Unless otherwise stated all fees are plus GST.

4.3 Out of pocket expenses (disbursement s) such as search and registration fees, valuation fees, tolls, faxes and photocopying will be extra charges. We may also send you an interim invoice when we incur a significant expense whilst acting under your instruction.

4.4 Please note that it is our firm policy to obtain funds from you in advance for any significant disbursements.

4.5 By instructing us to act on your behalf you authorise us to incur such other charges as are reasonably necessary to put your instructions into effect.

4.6 We will provide an estimate for you upon request. If that estimate is likely to be exceeded we will let you know as soon as possible. Any estimate we may give will be subject to certain conditions outlined to you at the time the estimate is given and if the conditions are not met or change for any reason then we are entitled to increase our fee and/or other charges above the estimated amount. We will advise you promptly if any changes in circumstances mean that our estimate will need to be altered.

4.7 In some cases due to the nature and uncertainty of the work we are required to perform we will **not** be able to provide any meaningful estimate for our work in advance.

4.8 There are other methods of charging which suit certain types of work and we will discuss these with you where they are appropriate.

4.9 All work done by us is charged on a fees basis apart from a commission of 7.5 % which is taken on all interest accruing on funds deposited with our bank through our bulk term deposit scheme.

4.10 Where it is applicable you may wish to apply for legal aid. Please note that our firm does NOT accept legal aid assignments. In that instance we would be happy to refer you to one of our colleagues who can assist.

4.11 Our hourly charge-out rates vary according to the type of work we undertake and the experience of the lawyers or legal executives involved and these may vary from time to time. Our rates include the costs of secretarial and word processing services.

4.12 If the client is a company, we require the client's obligations to be guaranteed by an individual (shareholders or company officers).

4.13 Rates charged for our fees and disbursements are reviewed from time to time and may change during the course of any particular matter. If they do, the revised rate will generally apply to your matter from the date of any such change.

5. PAYMENT OF FEES

§ Our fees are to be paid within 7 days of our account being sent except on conveyancing matters where fees are payable immediately **prior** to settlement.

§ For all property and financing transactions where payment of monies is due by you, we require cleared funds for the correct amount (including all fees and disbursements) to be deposited with us no later than 10.00 a.m. on the morning of the settlement or the day funds are to be disbursed.

- § Our final account will be sent to you shortly after we have completed your matter.
- § We do however issue interim accounts where that is appropriate (usually on a monthly basis unless otherwise agreed). Each account will set out the total fee charged during the relevant period as well as disbursement categories and total disbursement costs.
- § Our fees may be deducted from funds held in our trust account on your behalf.
- § We may ask you to pay fees in advance, but in those instances your payment will be held in our trust account and only paid to us by deduction when an account has been forwarded to you.
- § If a sale or purchase does **not** go ahead for some reason we reserve the right to charge for our attendances in connection with that matter.
- § Where work involves Court proceedings and sometimes other work we will ask you to pay money to us on account of fees and/or other charges yet to be incurred. Where such a request for money to be paid to us in advance is made we will not carry out work (or instruct others to carry out work on your behalf) until such payment is made to us.
- § We may also ask you to authorise us to carry out a credit check on you as a pre-requisite to our agreeing to carry out work for you.
- § We may request you to provide us with some form of specific security for our fees and disbursements.
- § Out of pocket expenses (disbursements) are to be paid by you immediately upon request but substantial out of pocket expenses will be requested in advance. We reserve the right to stop doing further legal work for you if you have an outstanding debt/bill owing to us which is over 7 days old.
- § Interest will accrue on unpaid accounts at the rate of 19.95% per annum (or the rate equal to that charged on Visa cards from time to time). Other action to recover unpaid fees may also be taken and the cost of such recovery may be added to the account due by you. You authorise us to take security over any of your property on account of outstanding costs and disbursements where we consider it appropriate.
- § Default interest is calculated on a daily basis from the due date until the actual date of payment (both before and after any judgment that may be obtained against you).
- § 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 (either in whole or in part).

6. INSURANCE AND INVESTMENTS

- § We may be instructed or required to arrange insurance or investments on your behalf. If this is so, payment of commission or brokerage may be made to us by the company or institution with whom the insurance cover or investments are placed.

7. CONFIDENTIALITY AND OWNERSHIP OF INFORMATION

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

8. ELECTRONIC MAIL AND COMMUNICATIONS

- § Email and electronic transmission of confidential and privileged documents or advice is a convenient method of delivery. However, email is not secure and any communications or documents transmitted may be interfered with, contain viruses or other defects and may not be successfully replicated on other systems. We will not be liable for any copying, recording, reading or interference by others during or after transmission, for any delay or for any damage caused in connection with any transmission.

9. DUTY OF CARE

- § Our duty of care is to you alone and not to any other person or persons unless specifically mentioned in our engagement letter. Please do not disclose or distribute our advice to any other person (other than your

other advisers or as may be required by law) and no such other person may rely on our advice, unless we expressly agree to this.

10. CONFLICTS OF INTEREST

- § 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".
- § We reserve the right to discontinue acting for you in any situation where we believe that we would be placed in a situation of conflict of interest.
- § We always endeavour to address such conflicts in such a way that they are resolved in the clients' best interests.

11. TRUST ACCOUNT

- § We maintain a trust account for all funds received 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 order to do so however, you must supply us with your appropriate IRD number as we cannot lodge such funds without it. We are not responsible for any loss of interest income which results from your failure to supply us with your IRD number.
- § In the event that we invest funds for you we will charge you an administration fee of 7.5% of the interest earned on your deposit.

12. FILES AND DOCUMENTS

- § You may use and copy all documentation created by us for you in connection with the work we undertake for you. However, all copyright and other intellectual property rights in the documentation and all original ideas created by us and relating to or connected with the work remain our property. We will be free to use any of the documentation to form the basis of any other work which we do and to use the intellectual property and original ideas to give advice to other clients, provided that we do not breach our duty of confidentiality to you.
- § When your instructions have been completed we shall keep your file for a period of 7 years from completion (or earlier if we have converted those files and documents to an electronic format) and then destroy it. You are welcome to uplift your file at any time provided that all fees and expenses have been paid. Please give us reasonable notice before collecting your file should you wish to do so.
- § Should you require access to your files or copies of anything from such files whilst they are in our care and storage, you specifically agree to paying our reasonable costs of time expended in retrieval, any storage or external charges for retrieval together with any photocopying or duplication costs.
- § Please ensure that you keep us advised of any change of address or alteration in your contact details.

13. THE LAWYERS' FIDELITY FUND

- § This Fund exists to provide compensation of up to \$100,000.00 per claim for clients who suffer a pecuniary loss in certain circumstances. These circumstances are the theft by a Lawyer of money or other valuable property entrusted to that Lawyer while they are providing legal services to the public or while they are acting as a Solicitor-Trustee.
- § It should be noted though that the Fund will not pay compensation in respect of money instructed to be invested unless they are funds invested in a bank in New Zealand, or in some private loans such as family loans.
- § ***As your money has been paid to us with instructions to invest, it will not be subject to compensation from the Fund (if appropriate).***
- § This is only a short summary of the major provisions in the Lawyers and Conveyancers Act 2006 relating to the Fidelity Fund. If you would like further information please ask us.

14. PROFESSIONAL INDEMNITY INSURANCE

- § We hold professional indemnity insurance providing cover when acting as Lawyers. As with all insurances this cover has limitations and is subject to certain exclusions, terms and conditions. Our insurance cover exceeds the minimum standards from time to time specified by the New Zealand Law Society.

15. LIMITATION OF LIABILITY

- § We do not accept liability for any loss arising from non-receipt of any communication including email communications.
- § We are not liable to you for consequential loss, including loss of profits, even if you advised us or we knew or should have known of the possibility of such loss.

16. RIGHT TO TERMINATE YOUR RETAINER

- § Where you have given us any instruction and we have relied on that instruction (e.g. by providing an undertaking to a third party) then you may **not** revoke that instruction.
- § You are entitled to terminate your instructions to us upon giving us reasonable notice. Our fees for services reasonably and properly provided up to and prior to the termination of retainer shall be paid by you prior to uplifting your records and we may retain copies of your documents and records. In addition, you will be liable to pay for any work which we may be required to do in relation to your matter **after** termination (such as a Court ordered requirement to file certain documents or the need to formally apply to a Court seeking leave to withdraw from representing you).
- § If you terminate your instructions, the provisions of these terms relating to reliance, confidentiality and ownership of information, files, limitation of liability and governing law shall continue to apply.
- § We may terminate the retainer if there is good cause, such as you not providing us with instructions in a sufficiently timely way or in your inability or failure to pay our fee on an agreed basis, or, except in litigation matters, your adopting against our advice a course of action which we believe is highly unwise.
- § If we terminate the retainer we will give you reasonable notice so that you can arrange alternative representation and we shall give you reasonable assistance to find another Lawyer.

17. SUSPENSION OF SERVICE

- § We reserve the right to stop work on your retainer if interim accounts are not paid on time or a request for information or action remains unsatisfied.

18. IF YOU HAVE A COMPLAINT

- § We will provide you with a competent, timely service following your instructions, but if you have any complaint at all about our service please raise it with the person responsible for your matter, or, if you prefer, directly with Paul Gallagher.
- § If you are not satisfied with the outcome, you have the right to take the matter up with the New Zealand Law Society which runs a complaints service.

19. PRIVACY AND CONFIDENTIALITY

- § We will treat all information we hold about you as private and confidential and will not disclose any information we hold on your behalf or about you unless we are required to do so by law, or where it is necessary to do so to provide our services to you, or when requested by you or with your consent.
- § Information concerning you will be held at our offices. Under the Privacy Act 1993 you have the right of access to, and correction of, your personal information held by us. Under that same Act you authorise any person or company to provide us with such information as we may require in response to our credit enquiries concerning you, if any.
- § The Financial Transactions Reporting Act requires us to collect from you and retain information required to verify your identity.

20. FORCE MAJEURE

- § We shall not be liable to you for any delay or non-performance of our obligations arising from any cause beyond our reasonable control. In the event of such a delay or our being prevented from performing our obligations, we shall give you notice in writing as soon as reasonably possible. Furthermore, we will resume performance of our obligations as soon as reasonably possible after removal of the external cause of the delay or prevention.

21. GENERAL

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- § These terms apply to any current engagement and also to any future engagement, whether or not we send you another copy of them.
- § We are entitled to change these Terms from time to time, in which case we will send you amended Terms.
- § Our relationship with you is governed by New Zealand law and New Zealand Courts have non-exclusive jurisdiction.
- § It is not necessary for you to sign these terms of engagement in order to signify your acceptance of them. We will assume your agreement when you engage us to provide legal services to you.
- § From time to time we may forward newsletters or other communications to our clients concerning legal and other matters of interest. If you do not wish to receive any such material please notify us.

22. ENTIRE AGREEMENT

- § These standard terms, together with our engagement letter or letters, constitute the entire agreement between us, and supersede any previous terms of engagement or letter.



Information for Clients

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 is set out in our Terms of Engagement. When payment of fees is to be made is also 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 \$100,000.00. 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.

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 Paul Gallagher.

He may be contacted as follows:

- by letter
- by email at paul@lawfirm.co.nz
- by telephoning him at (09) 415 9321

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. Their contact details are as follows:

The New Zealand Law Society
 P O Box 58
 Auckland
 Ph. (09) 303 5270

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 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.lawyers.org.nz or call (09) 303 5270 (NZLS Auckland) or (04) 472 7837 (NZLS Wellington).

7. LIMITATIONS ON EXTENT OF OUR OBLIGATIONS OR LIABILITY

Any limitations on the extent of our obligations to you or any limitation or exclusion of liability are set out in our Terms of Engagement.

Client signature

Client signature

Date