



## 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

The services (“Services”) which we are to provide for you are outlined in our engagement letter.

The charges to you for our legal services will depend on the input of time and skill required from us. To ensure that matters are addressed properly and you are given the best possible advice it is essential that we spend time to fully understand and consider the issues raised. We do all we can to minimise the costs for you by maintaining our expertise and, where appropriate, by allocation of tasks to suitably qualified staff. As work on your matter proceeds, a partner or member of staff other than the one you initially consulted may be asked to assist. The purpose of this is to ensure that your work is handled in a way that sees you obtain the best advice in the most economical way.

### 2 FINANCIAL

#### 2.1 Fees:

The fees which we will charge or the manner in which they will be arrived at, are set out in our engagement letter.

We will charge a fee which is fair and reasonable for the Services provided, having regard to your interests and our interests. In determining the fee the following may be taken into account:

- the time and labour expended at the present time, our Partner and Principals record between \$350.00 and \$465.00 per hour, our Associates and Consultants between \$300.00 and \$350.00. Our Solicitors charge between \$200.00 and \$300.00 per hour and our Legal Executives record between \$215.00 and \$330.00 per hour (all rates are plus GST);
- the skill, specialised knowledge, and responsibility required to perform the services properly together with the experience, reputation and ability of the members of our firm working on your matter;
- the importance of the matter to you and the results achieved.
- the urgency and circumstances in which the matter is undertaken and any time limitations imposed, including those imposed by you;
- the degree of risk assumed by us in undertaking the services, including the amount or value of the property involved.
- the complexity of the matter and the difficulty or novelty of the questions involved;
- the possibility that the acceptance of the particular instructions will preclude employment of us by other clients.
- whether the fee is fixed or conditional and any quote or estimate of fees given by us;
- any fee agreement entered into between you and us;
- the reasonable costs of running our firm;
- the fee customarily charged in the market and locality for work similar to yours.

Unless otherwise stated all fees are plus GST.

Out of pocket expenses such as search and registration fees, valuation fees, tolls, faxes, printing and photocopying will be charged extra as set out below.

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

All work done by us is charged on a fees basis apart from a commission of 5% which is taken on all interest accruing on funds deposited with our bank through our bulk deposit scheme.

Where our fees are calculated on an hourly basis, the hourly rates are set out in our engagement letter. The differences in those rates reflect the experience and specialisation of our professional staff. Time spent is recorded in 6 minute units, with time rounded up to the next unit of 6 minutes.

#### 2.2 Estimates:

You may request an estimate of our fee for undertaking the services at any time. If possible we 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 us if those assumptions are wrong or change. We will inform you if we are likely to exceed the estimate by any substantial amount. Unless specified, an estimate excludes GST, disbursements and expenses.

#### 2.3 Forms of Payment:

Please note that as well as EFT, EFTPOS and cash we accept the following credit cards:

- Mastercard;
- Visa.

#### 2.4 Disbursements and expenses:

In providing services we may incur disbursements or have to make payments to third parties on your behalf.

These disbursements will include an initial amount for establishment of the file and may also include administration, tolls and telephone charges (which are charged at a flat rate of 5% of the monthly fee), facsimiles, photocopying, Court or Tribunal filing fees, registration and search fees (particularly in property transactions), couriers and any special postage. In addition we may need to collect from you the charges of other professionals (such as Valuers) whom we have engaged on your behalf, by arrangement with you.

These will be included in our invoice to you when the expense is incurred. We may require an advance payment for the disbursements or expenses which we will be incurring on your behalf.

#### 2.5 GST (if any):

Is payable by you on our fees and charges.

#### 2.6 Invoices:

We will 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.

## **2.7 Payment:**

Invoices are payable immediately at the date of the invoice, unless alternative arrangements have been made with us.

If your account is overdue we may:

- require interest to be paid on any amount which is more than 7 days overdue. Interest will be calculated at the rate of 5% above our firm's bank overdraft rate charged to us as at the close of business on the date payment became due;
- stop work on any matters in respect of which we are providing services to you;
- 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.

## **2.8 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.

## **2.9 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**

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 including under anti-money laundering legislation and requirements imposed on us for purposes of the United States Foreign Account Tax Compliance Act and Common Reporting Standards; 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.

## **4 DUE DILIGENCE OBLIGATIONS**

We are required to comply with all laws binding on us including (but not limited to):

- The Anti-Money Laundering and Countering Financing of Terrorism Act 2009; and
- The United States Foreign Account Tax Compliance Act (FATCA); and
- The Common Reporting Standards (CRS).

To meet these requirements, we are required to conduct client due diligence on you, persons acting on your behalf and other relevant persons such as your beneficial owners or persons who have effective control of you as a client. We may not be able to act or continue acting for you until this is completed to the standard required by legislation.

We will advise you what information and documents are required for these purposes. This information could include formal identification, address confirmation, source of funds, transaction details, ownership structures, tax identification details, and other information considered relevant. Please ensure the information and documents requested are provided promptly to avoid any delays in us acting for you.

We will retain the information and documents and may be required to disclose them to government agencies as required by law. We may not be permitted to advise you of the instances when we are required to disclose this information. We are also required by law to provide this information to banks when we place your funds on deposit through our Trust account.

## **5 TERMINATION**

You may terminate our retainer at any time.

We may terminate our retainer in any of the circumstances set out in the Law Society's *Rules of Conduct and Client Care for Lawyers*.

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 (Refer also to paragraph 12).

## **6 DOCUMENTS, RECORDS, AND INFORMATION**

When your instructions have been completed we shall keep your file for a period of six (6) years (unless your matter involves company or business records in which case we will retain it for seven (7) years, or requires an e-dealing transaction in which case we will retain it for ten (10) years) from completion and then destroy it. You are welcome to uplift your file, provided that all fees and expenses have been paid. A further fee of \$125.00 (plus GST) may be incurred for an uplift of files. Please give us reasonable notice before collecting your file should you wish to do so.

We will keep a record of all important documents which we receive or create on your behalf on the following basis:

- We 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 enduring powers of attorney).
- At any time, we 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.
- We are not obliged to retain documents or copies where you have requested that we provide them to you or another person and we have done so, although we are entitled to retain copies for our own records if we wish to do so.

We will provide to you on request copies or originals (at our option) of all documents to which you are entitled under the Privacy Act 1993 or any other law. We may charge you our reasonable costs for doing this.

Where we hold documents that belong to a third party you will need to provide us with that party's written authority to uplift or obtain a copy of that document.

We may, at our option, return documents (either in hard or electronic form) to you rather than retain them. If we choose to do this, we will do so at our expense.

We own copyright in all documents or work we create in the course of performing the Services but grant you a non-exclusive license 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 our written permission.

## **7 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*.

## **8 DUTY OF CARE**

Our duty of care is to you and not to any other person. We owe no liability to any other person, including for example any directors, shareholders, associated companies, employees or family members unless we expressly agree in writing. We do not accept any responsibility or liability whatsoever to any third parties who may be affected by our performance of the Services or who may rely on any advice we give, except as expressly agreed by us in writing.

Our advice is not to be referred to in connection with any prospectus, financial statement, or public document without our written consent.

Our advice is opinion only, based on the facts known to us and on our professional judgement, and is subject to any changes in the law after the date on which the advice is given. We are not liable for errors in, or omissions from, any information provided by third parties.

Our advice relates only to each particular matter in respect of which you engage us. Once that matter is at an end, we will not owe you any duty or liability in respect of any related or other matters unless you specifically engage us in respect of those related or other matters.

Unless otherwise agreed, we may communicate with you and with others by electronic means. We cannot guarantee that these communications will not be lost or affected for some reason beyond our reasonable control, and we will not be liable for any damage or loss caused thereby.

## **9 RELIANCE ON CLIENT INFORMATION**

Where applicable, you agree to provide to us on a timely basis the information we reasonably require to provide the Services. You warrant that this information will be accurate and complete, and acknowledge we may rely on it without further verification. We will not be liable for any loss or damage arising from inaccuracy, incompleteness or other defect in any information or documents supplied by you.

## **10 TRUST ACCOUNT**

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.

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 LIMITATION OF LIABILITY**

We do not accept liability for any loss arising from non-receipt of communications including email communications.

## **12 LIEN AND SECURITY**

Where work has been done by us, but we have not been paid by you, then as a general rule we have the right to retain original documents and correspondence on the client's file until such time as all outstanding fees, disbursements and other expenses have been paid. This is known as a lien. This will be particularly important in circumstances where you decide, for whatever reason, to instruct another firm. That other firm may be obliged to give an undertaking to us to pay all outstanding fees and disbursements before the client's file is released.

In these circumstances we also reserve the right to register a security (mortgage), including a Memorandum of Mortgage, general or specific security, over your personal or real property to secure unpaid fees. You agree to this and that this agreement will be an irrevocable power of attorney to us to execute the necessary Authority and Instruction documents should this be required.

## **13 LIMITATIONS ON OUR OBLIGATIONS OR LIABILITY**

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

## **14 COMMUNICATION**

We will obtain from you contact details, including an email address, postal address and telephone numbers. We may provide documents and other communications to you by email (or other electronic means). You will advise us if any of your contact details change.

We 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.

You agree that we may provide you from time to time with other information that may be relevant to you, such as newsletters and information bulletins. At any time you may request that this not be sent to you.

## **15 GENERAL**

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.

Principals and Consultants do not share the partner's liability for the firm.



## 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 letter of engagement. 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 Hamish Fletcher (Partner).

He may be contacted as follows:

- by letter;
- by email at [hamish@hflaw.co.nz](mailto:hamish@hflaw.co.nz)
- by telephoning him at (03) 539 0210 or on his cell 027 220 5122.

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.

New Zealand Law Society  
PO Box 5041 Wellington 6145  
Tel: 0800 261 801  
Fax: (04) 473 7909  
[complaints@lawsociety.org.nz](mailto:complaints@lawsociety.org.nz)

### 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 <http://www.lawsociety.org.nz/> or call 0800 261 801

### 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 letter of engagement.