

## Terms of Engagement

These 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 letter of engagement (the "Services").

### 2 Financial

#### 2.1 Fees

- (a) The fees which we will charge, or the manner in which they will be arrived at, are set out in our letter of engagement.
- (b) If the letter of engagement specifies a fixed fee, we will charge this for the agreed scope of the 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 the Services outside the agreed scope and if requested, give you an estimate of the likely amount of the further costs.
- (c) Where our fees are calculated on an hourly basis, the hourly rates are set out in our letter of engagement. 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 Disbursements and Third Party Expenses

- (a) In providing the Services we may incur disbursements or have to make payments to third parties on your behalf (for example court filing fees, search fees, registration fees and travel and courier charges) which are reasonably necessary to provide the Services. These will be included in our invoice to you, shown as "disbursements" when the expenses are incurred (or in advance when we know we will be incurring them on your behalf).
- (b) We use Larnach Services (GML) Limited as a third party supplier to provide agency and search services. That company is owned and controlled by the partners of Gibbs Mills Livingstone.
- (c) A copy of the invoice for any third party expense will be provided on request.

#### 2.3 Office Service Charge Fee (Administrative expenses)

In addition to disbursements, we may charge a fee to cover out-of-pocket costs which are not included in our fee and which are not recorded as disbursements. These include items such as photocopying and printing, postage, phone (tolls/mobile) calls, facsimile charges, and stationery and storage costs.

#### 2.4 GST (if any)

The Services will usually attract Goods and Services Tax (GST). If this is the case, GST is payable by you on our fees and charges.

#### 2.5 Invoices

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 or undertake a significant amount of work over a shorter period of time.

#### 2.6 Payment

Invoices are payable within 14 days of the date of the invoice, unless alternative arrangements have been made with us.

- (a) 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.
- (b) If you have difficulty in paying any of our accounts, please contact us promptly so that we may discuss payment arrangements.
- (c) If your account is overdue we may:
  - (i) require interest to be paid on any amount which is more than 14 days overdue, calculated at the rate of 5% above the overdraft rate that our firm's main trading bank charges us for the period that the invoice is outstanding;

- (ii) stop work on any matters in respect of which we are 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 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.

Should you wish to pay an invoice rendered by us or other funds into our trust account by way of direct lodgement of funds, our trust account number is 12-3089-0113653-02. Please include your name and tax invoice number (if any) for reference.

## **2.7 Fees and disbursements in advance**

We may ask you to pre-pay amounts to us, or to provide security for our fees and expenses. We may do this, on reasonable notice, at any time.

## **2.8 Estimates**

You may request an estimate of our fee for undertaking our 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.

## **2.9 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, as our client, you remain responsible for payment to us if the third party fails to pay us.

## **2.10 Trust Accounting**

We 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 we are 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 we 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 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.
- (c) Unless it is not reasonable or practicable to do so, when we hold significant funds for you for more than a short period of time we will place them on call deposit with a bank registered under section 69 of the Reserve Bank of New Zealand Act 1989. Interest earned from call deposits, less withholding tax and an interest administration fee payable to us of 5% of the interest, will be credited to you.

## **2.11 Lien/Ownership of Files**

When we do work for you, but have not been paid by you then you agree that we have the right to retain the original documents until such time as all outstanding fees, disbursements and other expenses have been paid. This is known as a lien. This may be in circumstances where you decide, for whatever reason, to instruct another law firm. You must pay in cleared funds all outstanding fees and disbursements and expenses owed or owing to us before we release your documents to your new solicitor. Alternatively, at our discretion, that other law firm may be obliged to give a satisfactory undertaking to us to protect us for our fees, expenses and disbursements before your documents are released. You agree that the files opened by us in relation to your matters (and their contents) belong to us, although you are entitled to copies of correspondence on payment of appropriate photocopying charges.

## **3 Confidentiality**

- 3.1 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:

- (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 our interests in respect of any complaint or dispute; or
- (d) to the extent required or permitted by law.

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

3.3 In our dealings with you we will collect and hold personal information about you. We will use that information to carry out the Services and to make contact with you about issues we 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 our ability to provide the Services.

3.4 Subject to clause 3.1, you authorise us 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.

3.5 We 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.

3.6 The information we collect and hold about you will be kept at our 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 the supervising partner with overall responsibility for your file.

3.7 The Financial Transactions Reporting Act 1996 requires us to collect from you and to retain information required to verify your identity. We may therefore ask you to show us documents verifying your identity (such as a passport or driver's licence). We may retain copies of these documents. We 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 we consider to be required by law.

#### **4 Termination**

4.1 You may terminate our retainer at any time.

4.2 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*.

4.3 If our retainer is terminated you must pay us all fees due up to the date of termination and all expenses and disbursements incurred up to that date.

#### **5 Retention of Files and Documents**

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

- (a) 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 deeds).
- (b) 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.
- (c) We are not obliged to retain documents or copies where you have requested that we provide them to you or to another person and we have done so, although we are entitled to retain copies for our own records if we wish to do so.

5.2 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.

5.3 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.

5.4 Unless you instruct us in writing otherwise, you authorise us and consent to us (without further reference to you) to destroy (or delete in the case of electronic records) all files and documents in respect of the Services seven years after our engagement ends (other than any documents that we hold in safe custody for you or are

otherwise obliged by law to retain for longer). We may retain documents for longer at our option. We will charge a \$50 + GST fee for costs associated with storage of your files and/or documents.

5.5 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.

5.6 We own copyright in all documents or work we 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 our written permission.

## **6 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*.

## **7 Duty of Care**

7.1 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.

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

7.3 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.

7.4 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.

7.5 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.

## **8 General**

8.1 These Terms apply to any current engagement and also to any future engagement, whether or not we send you another copy of them.

8.2 We are entitled to change these Terms from time to time, in which case we will send you amended Terms.

8.3 Our relationship with you is governed by New Zealand law and New Zealand courts have non-exclusive jurisdiction.

## **9 Limitation on our Obligations**

9.1 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.

## **Information for Clients**

### **1. Introduction**

Set out below is the information required by the Rules of Conduct and Client Care for Lawyers of the New Zealand Law Society (“Rules”).

### **2. Fees**

The basis on which our fees will be charged is set out in paragraph 2 of our Standard Terms of Engagement. Please refer to our letter of engagement for a list of our firm’s charge-out rates.

### **3. Professional Indemnity Insurance**

We hold professional indemnity insurance that meets or exceeds any minimum standards from time to time specified by the Law Society.

### **4. Lawyers Fidelity Fund**

The Lawyers Fidelity Fund provides compensation to people who suffer theft of any money or property entrusted to lawyers or incorporated law firms while providing legal services or acting as solicitor-trustee. The Lawyers Fidelity Fund is held in trust by the New Zealand Law Society. The maximum amount which can be paid to an individual claimant is \$100,000 and the Fund may not be used to compensate anyone for money lost which a lawyer or law firm has been instructed to invest.

### **5. Complaints**

Client satisfaction is one of our primary objectives and feedback from clients is helpful to us. If you would like to comment on any aspect of the service provided by us, including how we can improve our service, please contact the Partner responsible for your business. If you have any concerns or complaints about our services, please raise them with us and we will respond to your concerns as soon as possible. If you are not satisfied with the way we have dealt with your complaint, the New Zealand Law Society has a complaints service to which you may refer the issue. You can call 0800 261 801 for guidance.

### **6. Persons Responsible for Work**

Details of the person who will have overall responsibility for the services we provide for you are set out in our letter of engagement.

### **7. Client Care**

We are required by the New Zealand Law Society when providing you with legal services to:

- act competently, in a timely way, and in accordance with any 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 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