

## TERMS OF ENGAGEMENT

### 1. GENERAL

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1.1 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.

### 2. OUR DEALINGS WITH OTHER PARTIES

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2.1 We have obligations to comply with a variety of laws including the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT), the Foreign Account Tax Compliance Act (FATCA), the Income Tax Act 2007 and related legislation (ITA) and the Overseas Investment Act 2005 (OIA).

2.2 It is a condition of us agreeing to act for you that you:

- 2.2.1 authorise us to collect information about you in order to confirm what you have told us about you and your circumstances to comply with our AML/CFT obligations under our AML/CFT policy as detailed below in clause 2.3, and retaining such information about you as is necessary to meet our legal obligations. You also consent to us providing such information about you to our auditors or as otherwise required by law as they may reasonably require;
- 2.2.2 provide information to us or to complete forms, make statements, or provide other documents to allow us to comply with our obligations under FATCA and OIA; and
- 2.2.3 acknowledge that we may have an obligation in certain circumstances to make payments to IRD from funds we hold on your behalf pursuant to the ITA, whether or not you consent to such payment being made.

2.3 We may be required to verify your identity, the source of your wealth, and / or the source of any funds you provide to us in the course of your dealings with us.

2.4 You authorise any third party to disclose such information to us as is necessary for us to discharge our obligations under FATCA, AML/CFT, ITA and OIA or any other statute as may be applicable from time to time.

2.5 Our obligations to collect and disclose information about you under clauses 2.1 to 2.4 override our duty of confidentiality to you. If you fail to provide us with any information we require, we may terminate our relationship with you or refuse to accept instructions on a matter.

### 3. SERVICES

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3.1 The services which we will provide to you are outlined in our engagement letter. Your satisfaction is important to us. Therefore, we will (subject to any other overriding duties, including to the Courts and the justice system):

- 3.1.1 Discuss with you your objectives and how they should best be achieved.
- 3.1.2 Provide you with information about the work to be done, who will do it and the way the services will be provided.
- 3.1.3 Give you clear information and advice.
- 3.1.4 Act competently, in a timely way, and in accordance with instructions received from you and arrangements made with you.
- 3.1.5 Protect and promote your interests and act for you free from compromising influences or loyalties.
- 3.1.6 Treat you fairly, respectfully and without discrimination.
- 3.1.7 Charge you a fee that is fair and reasonable and let you know how and when you will be billed.
- 3.1.8 Protect your privacy and ensure appropriate confidentiality.
- 3.1.9 Keep you informed about the work being done and advise you when it is completed.
- 3.1.10 Let you know how to make a complaint and deal with any complaint promptly and fairly.

3.2 If the services that we provide to you include dealing with any property covered by the OIA, our retainer with you is limited to the specific use of the property contemplated by the matter for which we are engaged, and does not include advice on any implications of future ownership or change of use or any other transaction involving the property unless you specifically ask for such advice, which will be charged separately.

3.3 You authorise us to undertake any credit checks which we consider necessary as part of our internal credit control.

#### **4. BODIES CORPORATE AND JOINT CLIENTS**

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- 4.1 If you instruct us as a director, partner, trustee or in any other capacity where you act on behalf of another individual or entity, we accept your instructions on the basis that you accept full personal responsibility as principal debtor and indemnify us for the payment of our fees and disbursements, notwithstanding that the work may be completed for the benefit of, and our account rendered to, another entity. Where instructions are received from more than one client on a matter, each client will be jointly and severally liable for the payment of our fees and disbursements. Unless we agree otherwise, we may act on instructions received from any one of such joint clients.

#### **5. TRUST ACCOUNT**

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- 5.1 We maintain a trust account for all funds that we receive from clients (except moneys 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.
- 5.2 We cannot deposit funds on interest bearing deposit ("IBD") unless you have first signed a declaration as to your FATCA status. If you fail to provide such information, you agree to release us from our obligation to place funds on IBD and indemnify us from any costs arising from us not placing funds on IBD.

#### **6. CLEARED FUNDS POLICY**

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- 6.1 In many transactions we have to pay money to other parties on your behalf. If we need to make such payments, we require that cleared funds are transferred into our trust account at least one working day before the date those funds are required. If the funds are not transferred into our trust account in accordance with this time frame under this policy, we will require confirmation from the bank from which the funds were paid that the funds are cleared funds and that they will not be reversed from our trust account. If you require us to pay out funds immediately, then you must arrange for the bank from which the funds were transferred to give an irrevocable undertaking that the funds are cleared and that the payment will not be reversed. Any costs associated with this will be in addition to any fee estimate given to you.

#### **7. OWNERSHIP AND STORAGE OF WORK**

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- 7.1 We own the copyright of all work created during the course of our engagement. You are granted an irrevocable licence to use such work for the purpose for which it was created. You may not use any documents as a precedent unless we agree to this. For the purposes of this clause, work includes final correspondence, final reports, and other documents prepared for your use. Work will not include our working papers, internal memoranda, drafts of correspondence or other documents, research, file notes and notes of telephone calls.
- 7.2 Present legislation states that we must retain certain documents from work we undertake for you ("the Files") for a period of between seven (7) and ten (10) years. We may elect to engage a specialist archivist to store the files for us and you consent to us doing so.
- 7.3 You also consent to us converting the Files into an electronic form for storage purposes and to us holding the Files in that form indefinitely. You authorise us (without further reference to you) to destroy all physical files and documents (other than any documents that we hold in safe custody for you) between seven (7) and ten (10) years after our engagement ends, or earlier if we have converted those files and documents to an electronic format.

#### **8. FEES AND PAYMENTS**

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- 8.1 Our fees are calculated in accordance with the guidelines laid down by the New Zealand Law Society. These guidelines set out thirteen factors which we consider when setting our fees:
- 8.1.1 the time and labour expended;
  - 8.1.2 the skill, specialised knowledge, and responsibility required to perform the services properly;
  - 8.1.3 the importance of the matter to the client and the results achieved;
  - 8.1.4 the urgency and circumstances in which the matter is undertaken and any time limitations imposed, including those imposed by the client;
  - 8.1.5 the degree of risk assumed by the lawyer in undertaking the services, including the amount or value of any property involved;
  - 8.1.6 the complexity of the matter and the difficulty or novelty of the questions involved;
  - 8.1.7 the experience, reputation, and ability of the lawyer;
  - 8.1.8 the possibility that the acceptance of the particular retainer will preclude engagement of the lawyer by other clients;
  - 8.1.9 whether the fee is fixed or conditional (whether in litigation or otherwise);
  - 8.1.10 any quote or estimate of fees given by the lawyer;
  - 8.1.11 any fee agreement (including a conditional fee agreement) entered into between the lawyer and client;
  - 8.1.12 the reasonable costs of running a practice;
  - 8.1.13 the fee customarily charged in the market and locality for similar legal services.

- 8.2 Where the time and labour expended is one of the factors taken into account in calculating our fee, the hourly rate(s) will be the rate(s) set out in our engagement letter (these may change during the course of the transaction). The differences in the hourly rates of different staff reflect their experience and specialisation. Our fee for services that fall outside the agreed scope will be calculated in accordance with the guidelines set out above.
- 8.3 We also charge a fee to cover the expenses we incur in setting up a file, for printing, faxes and telephone calls.
- 8.4 In providing services we may incur disbursements or have to make payments to third parties on your behalf. 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.
- 8.5 We may ask you to pre-pay amounts to us, or to provide security for our fees and expenses. You authorise us to:
- 8.5.1 debit against amounts pre-paid by you; and
  - 8.5.2 deduct from any funds held on your behalf in our trust account, any fees, expenses or disbursements for which we provide an invoice.
- 8.6 GST is payable by you on our fees and charges unless it is exempt under the Goods and Services Tax Act 1985.
- 8.7 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.
- 8.8 Invoices are payable within 14 days of the date of the invoice, unless other arrangements have been made with us.
- 8.9 If you pay your invoice by credit card then an additional surcharge will be added on to the invoice. The value of the surcharge will be advised to you at the time of payment and will be based on a percentage of the invoice plus GST. The percentage amount of the surcharge may vary from time to time.
- 8.10 We may require interest to be paid on any amount which is more than 7 days overdue. If we charge interest, it will be calculated at the rate of 1.5% per month. If our invoice is not paid, we may refer the account to a debt collector, or we may commence legal proceedings for the recovery of our fees. If we do this, you will be responsible for all costs we incur in attempting to recover those fees (our debt collector charges a success fee of 20% of the amount of the invoice outstanding in addition to other costs). Your obligations under this paragraph will include our own costs where we choose not to engage external counsel to act for us.
- 8.11 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, you remain responsible to us for payment if the third party fails to pay us.

## **9. CONFIDENTIALITY**

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- 9.1 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:
- 9.1.1 To the extent necessary or desirable to enable us to carry out your instructions; or
  - 9.1.2 To the extent required by law or by the Law Society's Rules of Conduct and Client Care for Lawyers.

## **10. CONFLICTS OF INTEREST**

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- 10.1 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.

## **11. DUTY OF CARE**

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- 11.1 Our duty of care is to you and not to any other person. Before any other person may rely on our advice, we must expressly agree to this.

## **12. LIMITATION OF LIABILITY**

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- 12.1 We do not accept liability for any claim or loss in respect of any single event or connected events arising from:
- 12.1.1 Non-receipt of any communication, including email communication;
  - 12.1.2 Your failure to follow our advice, or your failure to follow it in a timely manner;
  - 12.1.3 Any failure arising from the assumptions set out above or any breach of your obligations under these terms.

- 12.2 If a forum of competent jurisdiction determines that we are liable for a loss which you suffer, and which is not otherwise excluded by the limitation of liability, our liability will be limited to a maximum of:
- 12.2.1 \$1,000,000.00 where the fees (excluding GST and disbursements) for the services rendered by us in connection with the event triggering liability is \$15,000.00 or less; and
  - 12.2.2 \$2,000,000.00 where the fees (excluding GST and disbursements) for the services rendered by us in connection with the event triggering liability is more than \$15,000.00.
- 12.3 The above limitations of liability will include any legal costs you incur and any part of such a claim which is met under the Lawyers' Fidelity Fund or our Professional Indemnity Insurance.

### **13. PROFESSIONAL INDEMNITY INSURANCE**

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- 13.1 We hold current Professional Indemnity Insurance which meets the minimum standard from time to time specified by the New Zealand Law Society.

### **14. LAWYERS' FIDELITY FUND**

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- 14.1 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.

### **15. TERMINATION**

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- 15.1 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.
- 15.2 We reserve the right to suspend work on your retainer if interim accounts are not paid on time, or a request for information or action remains unsatisfied.

### **16. COMPLAINTS**

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- 16.1 If you have a complaint, we will endeavour to deal with it in a competent and timely fashion. If you have a complaint about our service, please raise it with the partner responsible for your matter, or if you prefer, any other partner in our firm. If it cannot be resolved, we shall appoint a partner who has not been involved in your matter to deal with it. 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 complaint service.
- 16.2 You can contact the Lawyers Complaints service on 0800 261 801.
- 16.3 The Lawyers Complaints Service can provide you with information about your rights and options if you are unsure whether you have grounds for making a complaint.