

## Standard Terms of Engagement

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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

1.1 The services we are to provide for you are outlined in our engagement letter.

### 2. Financial

#### 2.1 Fees

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

If the engagement letter specifies a fixed fee, we will charge this for the agreed scope of our 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 services outside the agreed scope and, if requested, give you an estimate of the likely amount of the further costs.

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. We review our staff’s hourly rates on 1 April of each year. We will notify you of any changes.

We operate a litigation software management system (EDT) that we use for discovery, document analysis, preparation of the bundle documents and other aspects of litigation. A disbursement of \$60 per hour (plus GST) will be added for the cost of scanning documents to EDT. Hosting documents on EDT attracts a set up fee and a small monthly hosting fee depending on the volume of documents. Those fees will be passed on to you as disbursements.

We charge office services which is a 3% flat fee covering communication costs and minor disbursements. Larger copying will be charged separately.

We generally report and bill at the end of each month. Our billing and reporting practices are detailed and transparent and we track our actual costs against estimates. Any costs beyond estimates or contingency items are explained in the monthly reports.

#### 2.2 Reasonable Fee Factors

In accordance with chapter nine of the Lawyers and Conveyancers Act (Lawyers Conduct and Client Care) Rules 2008, the factors taken into account when determining our fees, include the following:

- a) The time and labour expended;
- b) The skill, specialised knowledge, and responsibility required to perform the services properly;
- c) The importance of the matter to the client and the results achieved;

- d) The urgency and circumstances in which the matter is undertaken and any time limitations imposed, including those imposed by the client;
- e) The degree of risk assumed by the lawyer in undertaking the services, including the amount or value of any 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 lawyer;
- h) The possibility that the acceptance of the particular retainer will preclude engagement of the lawyer by other clients;
- i) Whether the fee is fixed or conditional (whether in litigation or otherwise);
- j) Any quote or estimate of fees given by the lawyer;
- k) Any fee agreement (including a conditional fee agreement) entered into between the lawyer and client;
- l) The reasonable costs of running a practice; and
- m) The fee customarily charged in the market and locality for similar legal services.

### 2.3 Disbursements and expenses

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.

### 2.4 Estimates

When requested we will provide an estimate of our costs for steps to be undertaken. We normally do this in the shape of our milestone analysis document setting out next steps and estimated costs.

However all estimates provided are estimates only. We will charge only for the time reasonably required. Our clients therefore obtain the benefit when our actual costs are less than our estimates. Similarly, we will charge our actual costs reasonably incurred when these exceed estimates. We will carefully explain as soon as reasonably practicable when estimates have been or will be exceeded (generally in the period immediately after the instructed work is undertaken).

We take care in providing estimates that are realistic and provide guidance. We take seriously the costs constraints that all clients face. Litigation costs from case to case can vary for many reasons, including for example - the approach taken by the other parties (or our clients), the range and complexity of the issues in dispute, the number of parties involved or later joined, the hearing length required and a range of other factors. Some of these factors can be broadly estimated but many cannot.

The milestone analysis we provide you, or any estimate, will not include GST, disbursements or expert witness fees.

### 2.5 GST (if any)

GST 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 within 10 days of the date at which the invoice is sent, unless alternative arrangements have been made with us. 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 14.95% above our firm's main trading bank's 90-day bank bill buy rate as at the close of business on the date payment became due.

## **2.8 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**

**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) To the extent required by law or by the Law Society's Rules of Conduct and Client Care for Lawyers.

**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.

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

## **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 incurred up to that date.

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

**5.1** You authorise us (without further reference to you) to destroy all files and documents for this matter (other than any documents that we hold in safe custody for you) 7 years after our engagement ends, or earlier if we have converted those files and documents to an electronic format.

## **6. Conflicts of Interest**

**6.1** 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.

## **7. Duty of Care**

- 7.1 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.

## **8. Limitations on liability**

- 8.1 To the extent allowed by law, our aggregate liability to you for any claim or claims (whether in contract, tort equity, under statute, in law, or otherwise) in connection with our retainer or our provision of services is limited to:
- 8.2 the amount available to us under our professional indemnity for such a claim (if any) at the time (which currently has a limit of \$5 million in aggregate for claims in a year but may be subject to change from year to year); or
- 8.3 if no amount is available under our professional indemnity insurance policies, an amount equal to five times our total fees charged in your matter excluding office services, disbursements and GST up to a maximum of \$200,000.

## **9. General**

- 9.1 These Terms apply to any current engagement and also to any future engagement, whether or not we send you another copy of them.
- 9.2 We are entitled to change these Terms from time to time, in which case we will send you amended Terms.
- 9.3 Our relationship with you is governed by New Zealand law and New Zealand courts have non-exclusive jurisdiction.