

Standard Terms of Engagement

July 2019

These Terms of Engagement apply except where we otherwise agree with you in writing.

“We”, “us”, “our” and “the firm” means Commercial and Public Law Limited (“CPLL”), and “you” means our client.

Franks Ogilvie is not a legal partnership, but is the trading name of CPLL. All services provided to you are provided by CPLL.

Scope of our role

We will represent and advise you on all legal matters that properly fall within the scope of your instructions. We will normally set out our understanding of those instructions in an engagement letter or e-mail. If that record is inconsistent with your understanding, please let us know immediately.

Our services will not include legal advice on tax-related issues unless we expressly agree.

Our duties are owed to you, our client named in our engagement letter or e-mail confirming your instruction. Those duties do not extend to others, including associated parties such as shareholders or related companies or entities, directors or family members. Another party may rely on our advice, only if we expressly agree. Services to entities related to or associated with you will be provided on these terms.

Confidentiality

We will hold in strict confidence all private information that we acquire through our work with you, and which concerns your business or your instructions to us (other than where you authorise us to disclose such information or where we must do so by law).

Naturally, the reverse applies and we are not able to disclose to you private information that we obtain through acting for other clients.

Conflicts of Interest

We are anxious to avoid conflicts of interest that could adversely affect any client, including by leaving with them reasonable doubt about our loyalty to their success in our work for them. On the other hand, as specialists in a field part of our value to clients arises from having substantial experience in matters that may involve other parties operating in the same or competing markets.

Accordingly we may accept instructions from clients whose commercial or other interests may be adverse to yours provided those instructions do not involve the use of your information. Of course this does not mean we could accept instructions to act against you in a matter or issue on which we have instructions from you.

When we identify a conflict of interest or potential conflict of interest, we will consult with you about the best way to resolve the matter unless we would breach a duty by disclosing the cause to you.

In the case of a conflict of interest for which there is no informed consent of both parties to continue to act we will cease to act for the second party to instruct us, or both parties where necessary to avoid the conflict.

If we cease to act for you or have not been instructed by you on a matter we may act for other clients whose interests are adverse to your own, provided we have taken steps to maintain the confidentiality of confidential information (if any) which we continue to hold on your behalf. As necessary, this will involve setting up appropriate information barriers to maintain that confidentiality, including to ensure that access to hard-copy files and electronic documents is limited to the appropriate personnel.

Our fees

Please refer to the “Fees” section of our website and ask about any particular fee structures that might suit you.

Unless we have agreed otherwise, our fees will reflect the time we spend on a matter, charged at our hourly rates (plus GST where applicable), and adjusted to be overall fair and reasonable. While the time and resources involved will be important factors, we will also consider the results achieved and the urgency, level of skill, complexity, responsibility and specialist knowledge involved.

Often the greatest contributor to lower fees is the level of communication between you and us, both before the work begins and during it. Please ensure we are fully aware of the outcomes you seek, the context and the level of legal involvement that you require.

We will arrange for each part of your work to be dealt with by the person with the most appropriate level of skill and experience.

We will not add a standard percentage for “general office services” – we regard those as covered by our fee for professional services. We will however charge separately for our out of pocket disbursements such as travel costs, filing costs, fees of agents, experts and other professionals or where our office costs are substantial enough to justify the costs of tracking them to your work. For example, particularly expensive telephone conference calls might be billed while routine calls will not.

We may send interim invoices, usually monthly. We may send an initial invoice shortly after commencing work, payable within 7 days. Unless stated otherwise our invoices are payable by the 20th of the month following the date of the invoice. Where we do not receive payment by that date, we may charge you interest at the rate of 1.5% per month, compounding plus costs (both our own time and any third party fees).

All invoiced amounts are payable in New Zealand dollars, unless we agree otherwise. All applicable New Zealand Goods and Services Tax (GST) will be added to the invoice and is payable by you.

Where we have an arrangement with you that we will address the invoice to another person, you will pay that invoice if that other person does not pay the invoice.

Legal Aid

Legal aid is governed by the Legal Services Act 2011 and the associated regulations. Legal Aid is administered through the Ministry of Justice by the Legal Services Commissioner.

We will submit invoices in relation to your grant of aid to the Legal Services Commissioner and provide you with copies. The Legal Services Commissioner will write to you about any conditions or repayment obligations that you may have in relation to the grant of legal aid and your rights as an applicant or recipient of legal aid. You should be aware at this time that legal aid is not always free. You should read these letters carefully and keep them for later reference.

You must let the Legal Services Commissioner know if there is any change in your and your partner's contact details, employment status, family circumstances or financial details.

Insurance and limitation of our liability

We will always advise you and act honestly and in good faith in your interests. We offer our knowledge, experience and judgement, but in selecting us to do your work you acknowledge that we will be making assessments of your needs, the urgency and time and level of certainty you want, in relation to the costs you are willing to bear and the benefits to you. Often it is only in hindsight that it becomes clear how much care and diligence would have been warranted to avoid a risk. Please do not engage us unless you accept that you take the risk that our best judgment and honest effort can be mistaken or insufficient. This is not designed to allow us to act with impunity. We accept potential liability in respect of the quality of our professional services proportional to the fees you pay us (see below), but not proportional to the size of your business or the risks you take and which we advise you on. If you want cover for those risks please consider your other business insurances.

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

We will act competently and professionally in carrying out your instructions. However absent bad faith, our total liability to you in respect of our work for you (on all things we have done or not done) will not exceed the lesser of:

- 4 times the fees you have paid us on the matter in respect of which the liability arises; and
- \$100,000.

Please note all services provided to you are provided by CPLL. Stephen Franks and Rob Ogilvie are the directors and shareholders of CPLL, but are not in partnership. Except to the extent set out in Lawyers and Conveyancers Act 2006, Stephen and Rob are not personally liable to you for any act or omission of CPLL. Nor is any director liable to you for the acts or omissions of any other director.

Electronic services and communication

Unless otherwise agreed with you, we may communicate with you and others by electronic means. We take normal precautions to ensure that those services and communications are reliable, and secure.

However, we cannot always be certain that they are error free. Internet-based services present risks that are outside our control. Consequently, we cannot and do not represent that those services and communications will always be reliable, complete, confidential and secure. We exclude all warranties to the extent permitted by law.

Document ownership and retention

Our records include all: drafts and copies of letters, opinions and documents; our research, working and file notes; our time records; the contents of our individual e-mail mailboxes and folders; and your communications to us. Our records remain our property.

Your records include letters we write and receive (other than from you) in the course of providing services to you, and final documents we produce for you.

We may store all your and our records electronically. Subject to any legal requirement we may destroy your records at any time if authorised by you or in any event after 7 years, and we may destroy our records at any time without reference to you. We will not be liable to you or anyone else for the retention or destruction of your or our records in any circumstances.

Termination

Where you give us any instruction and we rely on that instruction (for example, by giving an undertaking to a third party) you may not revoke that instruction. Otherwise, you may end our engagement at any time on any matter. We may, on reasonable notice to you, end our engagement at any time.

If you have paid all of our invoices on all matters, we will (on request) provide to you the documents that we have obtained or created through working for you. Before we provide those documents to you, we may take a complete copy of them.

If our engagement is terminated, these terms continue to apply.

General

These terms of engagement apply to any future instruction, whether or not we send you another copy of them. There is no need for you to sign these terms; you accept them by maintaining our engagement after receiving them.

These terms of engagement are not affected by any change to the firm.

If we change these terms the changes will apply if you continue to have us work for you after we have drawn the changes to your attention. In addition, they will be deemed to be changed where necessary to comply with the Law Society's Rules of Conduct in force from time to time.

Any dispute concerning these terms or our work for you is to be resolved in the New Zealand courts under New Zealand law.

In these terms of engagement, "we", "us", and "the firm" means Commercial & Public Law Limited, and "you" means our client.

Client service information

We are obliged to work under the Rules of Conduct and Client Care for Lawyers of the New Zealand Law Society (Law Society). The following describes some key elements of those rules and some recourse you have as a consumer of legal services.

Client care and service

In our legal services, we must:

- 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; and
- 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 either discuss them with us or contact the Law Society at www.lawsociety.co.nz or on 0800 261 801.

People responsible for your work

We will advise you of the people who will have the overall responsibility for your work on each matter.

Complaints

If you have a complaint about our services or charges, please talk to the Franks Ogilvie person you usually deal with or the Director responsible for your work.

If you do not wish to talk to that person about your complaint, or you are not happy with that person's response to your complaint, please contact either Stephen Franks or Rob Ogilvie who can be reached by:

- email at stephen.franks@franksogilvie.co.nz or rob.ogilvie@franksogilvie.co.nz
- telephone +64 4 815 8050

You can complain to The Law Society by calling 0800 261 801.

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.

Lawyers' fidelity fund

The Lawyers' Fidelity Fund provides a limited form of cover in respect of losses arising from theft by lawyers. It is unlikely to be relevant to you as we do not hold client money or operate a trust account.