

## **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 which we are to provide for you are outlined in our engagement letter.

### **2. Financial**

#### **2.1 Fees**

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

2.1.2 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 further costs.

2.1.3 Where our fees are calculated on an hourly basis, the hourly rates will be the rates applicable at the time the work is carried out, as referred to in our letter of engagement. The differences in those rates reflect the experience and specialization of our professional staff. Time spent is recorded in 6 minute units, with time rounded up to the next unit of 6 minutes.

2.1.4 If we give you an estimate of our fee:

- (a) it is an estimate only and we will review it if necessary. The final fee may be more or less than the amount of the estimate (although our estimates are as accurate as possible, based on information available to us at the time);
- (b) the estimate does not include disbursements or GST.

#### **2.2 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.

#### **2.3 GST**

GST (if any) is payable by you on our fees and charges.

## 2.4 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.

## 2.5 Payment

2.5.1 For transactional work we may require our fees to be paid on settlement or from the proceeds of settlement.

2.5.2 Otherwise invoices are payable within 7 days of the date of the invoice, 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.

2.5.3 Interest will be calculated at the rate of 15% per annum from the date payment became due until the date payment is made in full. This does not affect our other rights to recover payment.

2.5.4 If you pay by cheque, your payment is treated as made when the cheque has cleared.

2.5.5 You will be liable for all legal and debt collection costs that we may incur, including solicitor/client costs in enforcing or attempting to enforce, our rights under these Terms of engagement.

## 2.6 Security

We may ask you to pre-pay amounts to us, or to provide security for our fees and expenses. You authorise us:

2.6.1 to debit against amounts pre-paid by you; and

2.6.2 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.

## 2.7 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. Due Diligence

3.1 To meet our obligations under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (**AML**) we must conduct certain due diligence on our clients.

3.2 You agree to provide us, from time to time, with any information that we may require under AML and acknowledge that if you do not comply with our requests promptly then we may have to refuse to accept your instructions or we may have to terminate any existing relationship with you, in which case we will be unable to provide our services to you.

#### 4. Confidentiality

4.1 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:

4.1.1 to the extent necessary or desirable to enable us to carry out your instructions; or

4.1.2 to the extent required by law or by the Law Society's Rules of Conduct and Client Care for Lawyers.

4.2 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.

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

4.4 You consent to us providing information about you to:

4.4.1 any bank where we maintain a trust account in which we hold funds for you;

4.4.2 the New Zealand Inland Revenue Department; and

4.4.3 any overseas governmental authority with which New Zealand has an inter-governmental agreement relating to the exchange of information where such information may be required to comply with an inter-governmental agreement relating to the exchange of information; and

4.4.4 the New Zealand Police and Department of Internal Affairs, where we are required to comply under AML; and

you agree to provide us with any further information we may request for any of these purposes.

4.5 For further detailed information relating to how we collect, use, disclose and protect your personal information, please refer to the Privacy Policy posted on our website [www.hmlaw.co.nz](http://www.hmlaw.co.nz).

#### 5. Termination

5.1 You may terminate our retainer at any time.

5.2 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.

5.3 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.

#### 6. Retention of files and documents

6.1 If you give us a paper document, you authorise us to destroy it after making an electronic copy of that document.

6.2 Any paper that we receive in relation to your matters will be scanned and destroyed, with limited exceptions.

- 6.3 We will not destroy Wills or any other document we have agreed in writing to hold in safe custody for you.
- 6.4 You authorise us (without reference to you) to destroy all electronic files and documents in respect of any engagement (other than any documents that we hold in safe custody for you) 7 years after our engagement ends.

## 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. Before any other person may rely on our advice, we must expressly agree to this.

## 9. **Trust account**

- 9.1 We maintain a trust account for all funds which we receive from clients (except monies received for payment of our invoices).
- 9.2 Subject to 9.4 below, if we are holding significant funds on your behalf, we will lodge those funds on interest bearing deposit with our bank. In that case, we may charge an administration fee of 5% of the interest derived.
- 9.3 Withholding tax will also be deducted by our bank each month as interest accrues and when any term deposit matures.
- 9.4 In order to meet our obligations under the Foreign Account Tax Compliance Act (FATCA) and The OECD Common Reporting Standard (CRS), we are required to obtain certain information from you before we can lodge funds on interest bearing deposit. To gather that information, we ask our clients to complete, sign and return the relevant Self-Certification Form(s), prior to us investing funds on their behalf. We are unable to invest funds for any clients who have not provided us with this information, except where the funds are "out of scope". Out of scope funds include:
- 9.4.1 where we are holding funds in escrow (as stakeholder);
  - 9.4.2 where we are holding funds for a registered charitable trust;
  - 9.4.3 where we are holding funds for a deceased estate (up until probate, at which point funds are classed as an investment and so are no longer considered to be out of scope).
- 9.5 By completing the survey, you consent to us releasing the information to our Bank, as required by the Tax Administration Act 1994 and Income Tax Act 2007. In turn, you understand that the Bank may provide that information to the Inland Revenue Department who will then pass on any relevant information to the US Internal Revenue Service and the Revenue Services of other countries who participate in the CRS regime.

## 10. **No Tax or Investment Advice**

Our scope of service excludes any advice and we do not accept responsibility in relation to:

- 10.1 the income tax or GST consequences of any transaction or activity undertaken by you; or
- 10.2 the quality of any investment including, without limitation, property.

**11. Advice on New Zealand law only**

We can only advise you on New Zealand law. If we do provide assistance in relation to matters governed by foreign law (outside New Zealand) it is on the basis that we are not advising on foreign law and accept no liability for your rights or obligations under foreign law.

**12. Business Clients**

12.1 Where we are providing services to you for the purposes of a business, to the fullest extent legally permissible:

- 12.1.1 we will have no liability for any direct or indirect loss of profits or for any indirect, special or consequential loss; and
- 12.1.2 the Consumer Guarantees Act 1993 will not apply.

**13. General**

- 13.1 Our relationship with you will be governed by New Zealand law and New Zealand courts will have non-exclusive jurisdiction.
- 13.2 These Terms, as amended from time to time, apply to any current engagement and also to any future engagement, whether or not we send you another copy of them.
- 13.3 We are entitled to change these Terms from time to time and post the amended Terms on our website [www.hmlaw.co.nz](http://www.hmlaw.co.nz). The amended Terms will apply from the time that you next commence a new matter with us. If you disagree with any of the amended Terms you may terminate our retainer.