

## TERMS OF ENGAGEMENT

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1. **General**
  - 1.1. These Standard Terms of Engagement (Terms) apply to any current engagement and also to any future engagement, whether or not we send you another copy of them.
  - 1.2. We are entitled to change these Terms from time to time, in which case we will send you amended Terms.
  - 1.3. Our relationship with you is governed by New Zealand law and New Zealand courts have exclusive jurisdiction.
2. **Services**
  - 2.1. The services we agree to provide you (the Services) are outlined in our Letter of Engagement along with any further instructions that you provide to us in writing (or that we record in writing).
  - 2.2. In order to provide you with efficient advice and services and to provide the most cost-effective service, it may be that part or all of your instructions may be delegated to other professionals in our firm.
3. **Client Checks**
  - 3.1. We are required to comply with all laws in New Zealand and, in certain cases, intergovernmental agreements between New Zealand and other nation states, including:
    - (a) The Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (“AML”); and
    - (b) The United States Foreign Account Tax Compliance Act and relevant provisions of the Tax Administration Act 1994 (together referred to as “FATCA”).
  - 3.2. In order to comply with our obligations under all laws, we will:
    - (a) Perform customer due diligence;
    - (b) Obtain from you verification of your contact details, including email address, postal address and telephone numbers;
    - (c) Keep records;
    - (d) Report any unusual or suspicious transactions where required by AML, FATCA, or any other governing statute;
    - (e) Assist any bank or other entity with whom we transact with as your agent or with whom we deposit money on trust for you to enable that entity to comply with its obligations in New Zealand and any other jurisdictions;
    - (f) Request information and documents from you in order to comply with our obligations; and
    - (g) Retain the requested information and documents, provide them to a bank or other entity as applicable, disclose them to any law enforcement or regulatory agency or court as required by law.
  - 3.3. If the requested information and/or documents are not provided, or there are concerns that the business relationship or the Services you instructed us to carry out is unusual, may be in breach of any applicable law, or may relate to an illegal or unlawful conduct in New Zealand or any other country, we or the bank or other entity, where applicable, may, without notice to you:
    - (a) Suspend, terminate, or refuse to act for you in the transaction and terminate our business relationship with you;
    - (b) Refuse to process the transaction you instructed us to carry out including refusing to handle and deposit money on trust for you; and
    - (c) Report the transaction.
  - 3.4. **We will not, under any circumstances, accept cash from you.**
4. **Communications**
  - 4.1. We may provide documents and other communications to you by email (or other electronic means). You will advise us if any of your contact details change. Please also advise us if you prefer us not

to send you emails or communicate with you by email.

4.2. Please bear in mind that emails are not always secure and may contain viruses, and that legitimate incoming emails to us may, at times, be deleted before it reaches us because of a virus threat. We are not responsible for and not liable for any damage or loss caused by an email that was intercepted or has a virus threat.

4.3. We will report to you periodically on the progress of any engagement and will inform you of any material and unexpected delays, significant changes or complications in the work being undertaken. You may request a progress report at any time.

4.4. You agree that we may provide you from time to time with other information that may be relevant to you, such as newsletters and information bulletins. At any time you may request that this not be sent to you.

## 5. Financial

### 5.1. Fees:

- (a) The basis upon which we will charge our fees is set out in our engagement letter.
- (b) If the engagement letter 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 services outside of 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 of the people we expect to undertake the work are set out in our engagement letter. Any differences in those rates reflect the different levels of experience and specialisation of our professional staff. Time spent is recorded in six-minute units.
- (d) Hourly fees may be adjusted (upwards or downwards) to ensure the fee is fair and reasonable to take into account

matters such as the complexity, urgency, value and importance of the Services. Full details of the relevant fee factors are set out in Rule 9 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (Rules).

- (e) We require our fee and disbursements to be paid in advance and held in our trust account until our invoice is rendered.
- (f) Where our fee and disbursements is not paid in advance by agreement, you authorise us to deduct our fees and disbursements from the any funds we receive on your behalf on completion of the transaction if there are excess funds before paying any balance to you. **Please note that we will only agree to this arrangement if you satisfy us that there will be excess funds on completion of the transaction to pay our fee and disbursements. Otherwise, you agree to pay our fee and disbursements in advance as set out in 5.1(e) above.**

### 5.2. Disbursements and Third Party Expenses:

- (a) In providing the Services we may incur disbursements and payments to third parties on your behalf.
- (b) You authorise us to incur these disbursements (which may include items such as title search fees, registration fees and travel and courier charges) which are reasonably necessary to provide the Services.
- (c) You also authorise us to make payments to third parties on your behalf, which are reasonably required to undertake the Services.
- (d) Fees to third parties for LIM application fees, court fees, experts' costs or counsel's fees are to be paid in advance into our trust account. We will advise the amount to be paid including GST.
- (e) We will show all disbursements and third party expenses together with payments received from you

in advance in our invoice and statement to you.

5.3. **Office Service Charge Fee (Administrative expenses):**

- (a) In addition to disbursements, we will charge a fee of \$50 plus GST 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, printing, postage, licence fees and phone calls.

5.4. **GST:**

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

5.5. **Invoices:**

- (a) We will send interim invoices to you, usually monthly, and on completion of the matter, or on termination of our engagement.
- (b) We may send you invoices more frequently when we incur a significant expense or undertake a significant amount of work over a shorter period of time, or where our Services is on-going such as for litigation matters.

5.6. **Payment:**

- (a) Where payment has not been made in accordance with 5.1 above, invoices are payable within 7 days of the date of the invoice, unless alternative arrangements have been made with us.
- (b) 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 solely for a particular purpose.
- (c) If you have difficulty in paying any of our accounts, please contact us promptly so that we can discuss payment arrangements.
- (d) If your account is overdue we may:
- (i) Require interest to be paid on any amount which is more than 7 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) Refer the outstanding invoice to a debt collection agency and 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.

- (e) Payment may be made to our bank account by internet banking/direct credit. Please insert the invoice number and the Client Matter Number as reference. **We do not accept payment by cash at our offices as set out in 3.4 above.**

5.7. **Fees and disbursements in advance:**

- (a) As set out in 5.1 and 5.2 above, we may ask you to pre-pay amounts to us, or to provide security for our fees and expenses.

5.8. **Consequences if fees and disbursements are not paid for litigation matters**

- (a) We are under no obligation to carry out any further work if our fees and disbursements are outstanding, particularly in litigation matters where steps are required to be taken as directed by the Court and there are consequences for not taking those steps.
- (b) The consequences may include the following:
- (i) Judgment being entered against you;
- (ii) Your case being struck out for failure to comply with

- timetabling or other orders made by the Court;
- (iii) The hearing being adjourned;
- (iv) An order that you pay costs.

5.9. **Estimates:**

- (a) You may request an estimate of our fee for undertaking the Services at any time.
- (b) 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).
- (c) An estimate is not a quote.
- (d) Any significant assumptions included in the estimate will be stated and you must tell us if those assumptions are wrong or change.
- (e) We will inform you if we are likely to exceed the estimate by any substantial amount.
- (f) Unless specified, an estimate excludes GST, disbursements and expenses.

5.10. **Third Parties:**

- (a) 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 at all times for payment to us in accordance with these Terms if the third party fails to pay us.

5.11. **Trust Accounting:**

- (a) We operate a trust account. All money received from you or on your behalf will be held to your credit in our trust account.
- (b) Payments out of the trust account will be made either to you or to others with your written authority.
- (c) 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.
- (d) Before making a payment to another account, we will 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.

- (e) A full record of our trust account is kept at all times.
- (f) 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.
- (g) 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, subject to your having completed to the bank's satisfaction any request for information relating to the deposit or certification required by the bank. Interest earned from call deposits, less withholding tax and an interest administration fee payable to us of 2% of the interest, will be charged to you.

6. **Confidentiality and Personal Information**

6.1. **Confidence:**

- (a) We will hold in confidence all information concerning you or your affairs that we acquire during the course of acting for you.
- (b) We will not disclose any of this information to any other person except:
  - (i) To the extent necessary or desirable to enable us to carry out your instructions; or
  - (ii) As expressly or impliedly agreed by you; or
  - (iii) As necessary to protect our interests in respect of any complaint or dispute; or
  - (iv) To the extent required or permitted by law.
- (c) 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.

6.2. **Personal information and Privacy:**

- (a) In our dealings with you, we will collect and hold personal information about you.
- (b) 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. Although provision of personal information is voluntary, please note that if you do not provide full information this may impact on our ability to provide the Services including meeting our obligations under the AML, FATCA and any other law which we are required to comply with in providing our Services to you.
- (c) Subject to clause 6.1, 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.
- (d) 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.
- (e) 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 Jane Belthazar, Director.

6.3. **Verification of identity:**

- (a) The Financial Transactions Reporting Act 1996 requires us to collect from you and to retain information required to verify your identity.
- (b) We may therefore ask you to show us documents verifying

your identity (such as a passport or driver's licence).

- (c) We may retain copies of these documents.
- (d) 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 which we consider is required by law.

7. **Documents, Records and Information**

7.1. 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.

7.2. 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.

7.3. 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.

7.4. 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 7 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 where they relate to Wills, relationship property, and creation and administration of trusts.
- 7.5. 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.
- 7.6. We own copyright in all documents or work we create in the course of performing the Services. You may not permit any third party to copy, adapt or use the documents without our written permission.
8. **Conflicts of Interest**
- 8.1. We are obliged to protect and promote your interests to the exclusion of the interests of third parties and ourselves as set out in the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (Rules). This may result in a situation arising where we have a conflict of interest.
- 8.2. We have procedures in place to identify and respond to conflicts of interest or potential 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 Rules. This may mean we cannot act for you further in a particular matter and we may terminate our engagement.
9. **Duty of Care**
- 9.1. 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.
- 9.2. Our advice is not to be referred to in connection with any prospectus, financial statement, or public document without our written consent.
- 9.3. Our advice is opinion only, based on the facts known to us and on our professional judgment, 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.
- 9.4. Our advice relates only to each particular matter in respect of which you engage us. Once that matter is at an end, we do 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.
- 9.5. 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.
10. **Limitations on our Obligations or Liability**
- 10.1. 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.
11. **Limited Scope Retainers**
- 11.1. We are an incorporated sole practice. We do not accept instructions to act on limited retainers.
12. **Termination**
- 12.1. You may terminate our engagement at any time by written notice to us. You must pay all our fees, disbursements and expenses incurred up to the date of termination for the Services we carried out.
- 12.2. We may terminate our engagement in any of the circumstances set out in the Rules including the existence of a conflict of interest, non-payment of fees, and failure to provide instructions. If we terminate our engagement, we will render an invoice for our Services, disbursements and expenses incurred up to the date of termination.
13. **Feedback and Complaints**
- 13.1. 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 Jane Belthazar, Director, at belthazarlaw@xtra.co.nz

- 13.2. If you have any concerns or complaints about our services, please raise them as soon as possible with Jane Belthazar. Jane Belthazar will respond to your concerns as soon as possible. We will inquire into your complaint and endeavour in good faith to resolve the matter with you in a way that is fair to all concerned.

- 13.3. 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 the 0800 number for guidance, lodge a concern or make a formal complaint. Your complaint may be directed to:

Lawyers Complaints Service  
PO Box 5041  
Lambton Quay  
Wellington 6145  
New Zealand  
Phone: 0800 261 801  
Email: [complaints@lawsociety.org.nz](mailto:complaints@lawsociety.org.nz)