

## 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

- 1.1 The services we are to provide for you are outlined in our Letter of Engagement.
- 1.2 This Act requires us to inform you that we are not investment advisers and do not have qualifications or expertise in the provision of investment advice.

### 2 Financial

#### 2.1 Fees:

- a. The fees we will charge or the manner in which they will be arrived at, are set out in our Letter of Engagement.
- b. If the engagement Letter of Engagement 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.
- c. Where our fees are calculated on an hourly basis, the hourly rates are set out in our Letter of Engagement. 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.
- d. **Estimates:** If requested, written estimates of fees will be provided before work commences. Estimates are provided as a guideline only and are based on our professional judgment. Estimates are not maximum or fixed fee quotations. Unless specified, an estimate excludes GST, disbursements and expenses.
- e. **Quotations:** In certain circumstances quotations will be provided. Any quotation provided will be recorded in writing and clearly labelled as a quotation rather than an estimate.

2.2 **Disbursements and Expenses:** We will charge for out-of-pocket expenses and disbursements which we pay or are liable to pay others on your behalf including registration and search fees and filing fees, Court charges, fees of agents, experts and other professionals and travel costs. We may require an advance payment for the disbursements or expenses which we will be incurring on your behalf.

2.3 **Office Costs:** Our fees include a charge for sundry office services, which include photocopying, facsimiles, voice and data communications, postage and deliveries. This is charged at a flat rate.

2.4 **GST (if any):** Is payable by you on our fees and charges.

- 2.5 **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.
- 2.6 **Payment:** Invoices are payable within 7 days of the date of the invoice, unless alternative arrangements have been made with us.
- a. 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 for a particular purpose.
  - b. If you have difficulty in paying any of our accounts, please contact us promptly so that we may discuss payment arrangements.
  - c. If your account is overdue we may:
    - i require interest to be paid on any amount which is more than 7 days overdue. Interest will accrue at the rate of 15% per annum from the date the payment becomes due.
    - 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 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.
  - d. Payment may be made by cash, Eftpos, internet banking and Credit Card. Please note that all Credit Card transactions incur a 3% surcharge.
- 2.7 **Fees and disbursements in advance:** We may ask you to pre-pay amounts to us, or to provide security for our fees and expenses. You authorise us:
- a. to debit against amounts pre-paid by you; and
  - b. to deduct from any funds held on your behalf in our trust account
  - c. any fees, expenses or disbursements for which we have provided an invoice.
- 2.8 **Administration Fee for Dormant Trust Account Balances:** You agree unless otherwise agreed in writing (such as in respect of funds held in escrow or in terms of an undertaking) the firm may charge an annual administration fee on all Trust Account credit balances it holds on your behalf where that credit balance has been deposited in the trust account of the firm for a period of more than 12 months. You agree that the fee the firm may charge shall be \$50.00 or such lower amount that is equal to the amount that has been held in the trust account for more than 12 months.
- 2.9 **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.

- 2.10 **Guarantees:** We may ask for a guarantee for payment of our fees. If this requirement is set out in our Letter of Engagement, we will not undertake substantial work until a copy of the letter signed by the guarantor(s) has been returned to us.
- 2.11 **Legal Aid:** For information on your financial eligibility for legal aid please visit [www.lsagovt.nz](http://www.lsagovt.nz). It is not our practice to work on legal aid matters.

### **3 Anti-Money Laundering**

- 3.1 We are obliged to comply with all laws applicable to us in all jurisdictions, including (but not limited to):
- Anti-money laundering and countering finance of terrorism laws (AML/CFL Act); and
  - Laws relating to tax and client reporting and withholdings.
- 3.2 Under the AML/CFL Act we are required to obtain and verify more information about you in order to undertake a Customer Due Diligence Assessment (CDD) on you, persons acting on your behalf and other relevant persons such as beneficial owners and controlling persons. The CDD Assessment includes an Identity Check and commencement of any of our services to you is subject to your identity being verified.
- 3.3 As part of the CDD Assessment, we may also require evidence of your source of income and wealth. We are required to report to the authorities in certain circumstances. All services provided to you are subject to our Legal Requirements under the act. More information is available on the AML/CFL Act on our website.
- 3.4 Before our services to you commence, we will confirm with you what information we need and what documents we will need for this CDD Assessment. If we are unable to obtain, or cannot verify the information, it is likely we will not be able to continue to act for you.
- 3.5 We use the services of First AML who is a specialist outsourced service provider to conduct CDD. First AML will be in touch with you directly to attend to the electronic verification process that is required for your particular transaction. We will obtain your authority for First AML to contact you for this purpose. Please refer to the AML/CFT Client Due Diligence Information on our website for more details.
- 3.6 You expressly consent to and authorise us and our agents to disclose your personal information to any third parties as needed to perform services on your behalf; to regulatory bodies or law enforcement agencies as required by law and to meet our legal or regulatory obligations including, without limitation, for the purposes of the firm's compliance with the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 and related legislation. Subject to certain circumstances and exclusions set out in the Privacy Act, you have the right to access all personal information held about you by us. If any of the information is incorrect, you have the right to have it corrected. Subject to all of the above, we and our agents shall keep all of your information confidential except where necessary to give effect to your instructions.
- 3.7 Please ensure that you and/or any of the persons described previously are aware of this. It is important to ensure that all information provided to us is accurate. If the information is not provided, or considered by us to be potentially inaccurate, misleading, or in contravention of any law, we may terminate or refuse to enter into an engagement. Refer to clause 6 below regarding termination of engagement.
- 3.8 You acknowledge that if the firm or its agents acting on the firm's behalf cannot obtain adequate and appropriate CDD information from you or any related person as may be required by the AML/CFT Act, the AML/CFT act prohibits the firm from commencing an existing relationship with you and the firm may be required to terminate any existing business relationship with you without completing or carrying out any further instructions.

## 4 Confidentiality

- 4.1 **Confidence:** 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. as expressly or impliedly agreed by you; or
  - c. as necessary to protect our interests in respect of any complaint or dispute; or
  - d. to the extent required or permitted by law.
- 4.2 We will of course, not disclose to you confidential information which we have in relation to any other client.
- 4.3 **Personal information and Privacy:** In our dealings with you we will collect and hold personal information about you. 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. Provision of personal information is voluntary but if you do not provide full information this may impact on our ability to provide the Services.
- 4.4 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 our offices. Verification of identity: The Financial Transactions Reporting Act 1996 requires us to collect from you and to retain information required to verify your identity. We may therefore ask you to show us documents verifying your identity (such as a passport or driver's licence). We may retain copies of these documents. 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 as we consider to be required by law.

## 5 Communications

- 5.1 We will obtain from you contact details, including email address, postal address and telephone numbers. 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.
- 5.2 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.
- 5.3 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.

## 6 Termination

- 6.1 You may terminate our retainer at any time.

- 6.2 We may terminate our retainer 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 and for any of the reasons stated under clause 3.8.
- 6.3 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.

## **7 Retention of files and documents**

- 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.
- 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 but grant you a non-exclusive licence to use and copy the documents as you see fit for your own personal or commercial use. However, 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 policies in place to identify and respond to conflicts of interest. If a conflict of interest or potential conflict of interest arises, we will consult with you about the best way to resolve the matter.
- 8.3 We recognise that New Zealand has relatively small commercial and legal markets. As far as possible, clients should be able to retain lawyers of choice. We may, therefore, act for other clients whose commercial or legal interests differ from yours. However, we will not act without your consent for any other client where that client's instructions:
- a. Are substantially related to any active matter on which we are working for you, or
  - b. Involve confidential information which we hold on your behalf that would disadvantage you if disclosed to the other client and there is a real risk that the personnel within our firm who would act for that other client would obtain that information.
- 8.4 Where we hold confidential information on your behalf but no longer act for you on that matter, we will ensure that effective information barriers are in place so that there is no material risk that you will be disadvantaged by our holding that information. As necessary, information barriers will include ensuring that access to hard-copy files and electronic documents is limited to the appropriate personnel.

## **9 Duty of Care**

- 9.1 Our duty of care is to you and not to any other person. 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 opinion only, based on the facts known to us and on our professional judgement, 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.
- 9.3 Our advice relates only to each particular matter in respect of which you engage us. Once that matter is at an end, we will 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.
- 9.4 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 Trust Account**

We maintain a trust account for all funds which we receive from clients (except monies received for payment of our invoices).

- 10.1 Payments out of the trust account will be made either to you or to others with your authority. Written authorisation from you will be required when payment is to be made to a third party. Before making a payment to another account we may require verification of third party account details.

- 10.2 A full record of our trust account is kept at all times. 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.
- 10.3 Unless it is not reasonable or practicable to do so, if we are holding significant funds on your behalf we will normally lodge those funds on interest bearing deposit with a bank. Interest earned from deposits, less withholding tax and an interest administration fee payable to us of 5% of the interest, will be credited to you.
- 10.4 You acknowledge that the firm is or may be required by law, including, without limitation, the Foreign Account Tax Compliance Act and the OECD Common Reporting Standard, to obtain certain information or certification from clients in respect of their legal or financial status, in particular their taxation status in overseas jurisdictions. You agree that you shall promptly provide all such requested information or complete any certification required by the firm and further acknowledge that the firm may provide that information to its bank and any other organisation or regulatory body to the extent necessary to comply with all relevant legislation. You acknowledge and agree that due to the requirements of relevant legislation and the requirements of the firm's own regulatory supervisor and/or bank your funds will not be placed on interest bearing deposit until the firm is provided satisfactory certification from you in terms of this clause and you shall have no claim against the firm for failure to place funds on interest bearing deposit (or failure to do so promptly) due to any non-compliance by you with the terms of this clause.

## **11 Information**

You warrant that all information you provide us with is accurate and not misleading and you agree that we may rely on that being so.

## **12 Intellectual Property**

All copyright and other intellectual property arising or created or provided by us in connection with our services (including all intellectual property rights in any document, advice or thing created by us in the course of providing the services to you) remains our property.

## **13 Electronic Communication**

Unless otherwise agreed with you, we may communicate with you at times by electronic means. Although we will take reasonable precautions we cannot and do not warrant that these communications will be complete, secure and free from viruses or other defects and will not be delayed or fail to be received.

## **14 Foreign Law**

We are only qualified to advise on New Zealand law. If you instruct us in respect of any matter that is governed by foreign law, we only act on the basis that we are not responsible for advising you in relation to your legal position under that foreign law.

## **15 Limitations of Obligations**

- a. We are not responsible for any failure to advise on any matter that falls outside the scope of our engagement and we have no responsibility to you to update any advice to take account of events or changes in the law that take place after it is issued.
- b. We do not provide advice on specialist reports, including but not limited to, Building, LIM, Geotechnical, Toxicology or Valuation reports.
- c. By referring you to a third party, we do not accept any liability or obligation in relation to services provided to you by that third party.

## **16 Limitations of Liability**

- 16.1 To the maximum extent permitted by law:

Our total liability to you (or to any other person claiming through you, including any executor, assignee or nominee) whether in contract or any other legal ground, including negligence, howsoever arising out of your engagement of us on any matter, or series of related matters, will be limited to the greater of:

- a) the amount of our applicable fee charged (excluding office service charges, disbursements and GST); or
- b) the amount paid out under any relevant insurance policy held by us.

- 16.2 In no circumstances will we be liable to you for any loss of profit, indirect, consequential or special losses of any kind.

- 16.3 You may not commence any action against us more than one year after that cause of action has arisen.

## **117 General**

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

## **18 Feedback and Complaints**

- 18.1 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 the Partner responsible for your business.
- 18.2 If you have any concerns or complaints about our services, please raise them as soon as possible with the person to whom they relate. They will respond to your concerns as soon as possible. If you are not satisfied with the way that that person has dealt with your



complaint, please raise the matter with the Partner responsible for your business. 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.

- 18.3 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. Matters may be directed to:

Lawyers Complaints Service  
PO Box 5041  
Wellington 6140  
New Zealand

Phone: 0800 261 801

To lodge a concern:

[www.lawsociety.org.nz/for-the-community/lawyers-complaints-service/concerns-form](http://www.lawsociety.org.nz/for-the-community/lawyers-complaints-service/concerns-form)

To make a formal complaint:

[www.lawsociety.org.nz/for-the-community/lawyers-complaints-service/how-to-make-a-complaint](http://www.lawsociety.org.nz/for-the-community/lawyers-complaints-service/how-to-make-a-complaint)

**Email: [complaints@lawsociety.org.nz](mailto:complaints@lawsociety.org.nz)**