

## TERMS OF ENGAGEMENT

### 1 The purpose of this document

- 1.1 This document:
- a. sets out the standard terms on which we do work for our clients;
  - b. explains what you can expect from us and what you agree to when we work for you;
  - c. includes information we are required to tell you under the New Zealand Law Society's Rules of Conduct and Client Care for Lawyers; and
  - d. applies to any current work and to any future work we do for you (unless we agree in writing to change these terms).
- 1.2 Occasionally we may change these terms. If we make changes, we will send you the updated terms.

### 2 Our letter of engagement for all new instructions

- 2.1 If appropriate, for new work we do for you, we will give you a 'letter of engagement'. The letter will outline:
- a. what we will do for you in relation to that work; and
  - b. the person / partner with overall responsibility for that work. Other members of our staff may also be involved, under that person's / partner's supervision, where appropriate.
  - c. if we do not advise you in writing, then the person with overall responsibility will be the person you have instructed to do that work.

### 3 Our duties to you

- 3.1 When we do work for you, we will:
- a. protect your privacy and confidentiality;
  - b. act competently, promptly and according to your instructions;
  - c. protect and promote your interests
  - d. give you clear information and advice;
  - e. keep you informed about progress;
  - f. treat you fairly and respectfully; and
  - g. charge you a fee that is fair and reasonable;
- subject to any overriding duties we have (e.g. to the courts and the justice system) and any legal obligations we have (e.g. to provide information to some government agencies).
- 3.2 Our duties are owed to you, the client named in our letter of engagement. Nobody else (such as family members, shareholders, directors or related entities) can rely on our advice without our written consent.

### 4 Your privacy and confidentiality

- 4.1 We consider client confidentiality to be of utmost importance. We will treat all information we hold about you in strict confidence. We will not use it or share it unless:
- a. you agree or ask us to;
  - b. we need to so we can carry out work for you; or
  - c. the law requires us to (e.g. Inland Revenue, the Financial Markets Authority, and other government agencies have powers to compel us to provide information we have about you and we must report suspicious transactions/activities and prescribed cash or wire transfer transactions); or
  - d. the Rules of Conduct and Client Care for Lawyers permit us to.
- 4.2 We may hold your photo ID electronically or on hard copy.
- 4.3 If we hold funds in our trust account on your behalf (including any judgment, sale proceeds, settlement amount or other money):
- a. you authorise us to provide any information we hold relating to your United States Foreign Accounts Tax Compliance Act (FATCA) or Common Reporting Standard (CRS) status, or other FATCA or CRS matters, to Inland Revenue and to our banks if they request information to be able to meet their FATCA or CRS obligations; and
  - b. if you do not provide any such information we request, we may be required to report your non-response, identity and reportable balance to our banks and Inland Revenue (who will in turn pass this information to the relevant foreign tax authority).
- Please ask us if you would like more information about FATCA or CRS.

### 5 How we avoid conflicts of interest

- 5.1 When we do work for you, we will always protect and promote your interests.
- 5.2 Before we accept work from you, we will do our best to find out if any conflict of interest exists.
- 5.3 If we find a conflict at any time, we will immediately let you know and tell you how we plan to deal with the conflict. That may mean we stop working for you, the other client or both.

### 6 Scope of our work

- 6.1 We are not qualified to give:
- a. investment or financial planning advice. You should get that advice from a qualified financial advisor; or
  - b. insurance advice. You should get that advice from your insurance provider; or
  - c. advice about foreign laws. We can help you to obtain such advice from a lawyer in the other country.
- 6.2 Unless we agree to do so in writing, we will not:
- a. remind you about dates (eg PPSR, lease or consent expiry dates); or
  - b. update advice after it is given.
  - c. provide tax advice (including any matter related to GST and "bright line" taxation).

## **7 Intellectual property**

7.1 Unless we agree otherwise:

- a. we retain ownership of all opinions, file memoranda, documents and other intellectual property created by us;
- b. you must not provide our advice to others (such as using our opinions in any public document or statement).

## **8 Emails**

8.1 We may communicate with you by email about the work we do for you.

8.2 We have virus protection software and security protocols in place, however we cannot guarantee that electronic communications will always be free from viruses or other defects, are secure or will be received.

8.3 We may occasionally email you information we feel is relevant and useful to you.

## **9 Storing records**

9.1 We will keep a record of all material documents we receive or create while working for you on the following basis:

a. we may, at any time, keep a document electronically and destroy paper originals (this includes any original documents you give to us unless you tell us you do not want them to be destroyed, in which case, we may return the originals to you once we have made an electronic copy). We will not destroy any original documents we have agreed to hold in safe custody for you (e.g. your Will);

b. we may, at any time, dispose of documents that are duplicates, do not contain substantive information, or belong to us; and

c. if you ask us to provide documents to you or another person, we are not obliged to retain copies of those documents, but we may do so for our own records.

9.2 We will provide you with copies of documents you are entitled to under the Privacy Act or any other law if you ask us to. We may charge you our reasonable costs to do so.

9.3 You authorise us (without further reference to you) to destroy, or delete in the case of electronic documents, all files and documents seven years after the work relating to them has been completed. We may retain files and documents for longer at our option.

## **10 How you can help us**

10.1 You can help us by:

- a. giving us clear instructions;
- b. asking if there is anything you are not sure of;
- c. telling us if you have any important time limits;
- d. dealing promptly with any questions we have;
- e. telling us if your contact details change; and
- f. keeping in touch. Please ask if you are concerned about anything or do not hear from us when expected.

## **11 Who we can accept instructions from**

11.1 Unless you let us know otherwise, if you are a:

a. couple, we can accept instructions from either of you;

b. trust, we can accept instructions from any of your trustees or officers;

c. partnership, we can accept instructions from any of your partners or officers;

d. company, we can accept instructions from any of your directors or employees or any other person you have authorised to instruct us; and

e. body corporate or incorporated society, we can accept instructions from any person holding themselves out as being authorised by the officers to instruct us.

## **12 Verifying your identity and source of funds, and credit checks**

12.1 We are required by law to verify your identity and, in some circumstances, the source of funds for a transaction. To enable us to act for you we may require a copy of your passport and utility bill, or another form or other forms of identity that will satisfy the regulatory requirements placed on us by the Anti-Money Laundering and Countering Financing of Terrorism Act (AML/CFT Act) and its regulations.

12.2 We may wish to carry out reasonable credit checks on you from time to time.

12.3 You authorise us to collect information about you (including customer due diligence information and credit reports), to obtain, exchange, hold, and use such information, and to make any other enquiries we think appropriate to:

- a. confirm information provided to us about you is true;
- b. enforce debt and legal obligations (including recovery of money owed to us); and
- c. comply with other legal obligations we may have.

12.4 You authorise any person (including credit reporters) to disclose information (including credit information) to us in response to such enquiries.

12.5 Without limiting the foregoing, we are required to comply with all laws binding on us including (but not limited to):

- a. the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT Act); and
- b. the United States Foreign Account Tax Compliance Act (FATCA); and
- c. the Common Reporting Standard (CRS).

12.6 To meet these requirements, we may be required to conduct customer due diligence on you, persons acting on your behalf, and other relevant persons such as your beneficial owners or persons who have effective control of you as a client. We may not be able to act or continue acting for you until this is completed to the required standard.

12.7 We will advise you what information and documents are required for these purposes. This information could include formal identification, address confirmation, source of funds, transaction details, ownership structures, tax identification details,

and any other information considered relevant. Please ensure the information and documents requested are provided promptly to avoid any delays in us acting for you.

- 12.8 We will retain the information and documents and may be required to disclose them to government agencies as required by law. We may not be permitted to advise you of the instances when we are required to disclose this information. We may also be required to provide this information to banks with which we place your funds through our trust account.
- 12.9 You accept that we may use customer due diligence services (including electronic based services from a third party) to verify your identity and conduct other customer due diligence or monitoring required under the AML/CFT Act, and that we may use credit reporting services to credit check you, and that when we use such services:
- the other third party or credit reporter (each a Service Provider) will exchange information about you for that purpose and the Service Provider may hold information on its system and use it to provide their customer due diligence service or credit reporting service (as the case may be) to their other customers;
  - we may use the Service Provider's services in the future for any authorised purpose (including in relation to ongoing customer due diligence or the provision of credit). This may include using the Service Provider's monitoring services to receive updates if information held about you changes; and
  - if you default in your payment obligations to us, information about that default may be given to credit reporters and given by credit reporters to their other customers.

### 13 Our fees and expenses

#### Fees

- 13.1 We will always charge you fair and reasonable fees.
- 13.2 Unless we agree with you otherwise, our fees will be calculated based on the time we spend on work charged at our hourly rates, and adjusted where appropriate for other factors permitted by the Rules of Conduct and Client Care for Lawyers (such as the complexity, urgency, importance, specialised knowledge, responsibility and risk involved and the results achieved). We will provide you with the hourly rate of the fee author carrying out the work for you, on request.
- 13.3 We will give you an estimate of fees if you ask for one. Special fee arrangements may be available for certain work (eg capped fees). Any estimate or special fee arrangement for work will be outlined in our letter of engagement.
- 13.4 If you have any questions about our fees please ask.

#### GST

- 13.5 Unless we state otherwise, our fees, estimates and hourly rates do not include GST or office expenses and disbursements, which are payable by you.

#### Office expenses

- 13.6 We charge an additional office and administrative expense fee calculated at 4% of professional fees plus GST to cover the following:
- Forms & miscellaneous expenses;
  - Postage;
  - Domestic courier charges;
  - Toll calls and mobile calls;
  - Faxes;
  - Photocopying & printing; and
  - Other incidental office time.
- 13.7 Land Information New Zealand licence and dealing office fees are charged on land transactions to cover our administration costs, together with search and/or registration fees incurred on your behalf.
- 13.8 Where we engage a third-party provider to assist with AML/CFT verification, we may charge a reasonable fee to cover the costs of using that service.
- 13.9 Payments to overseas bank accounts may incur an additional fee to cover the costs of completing mandatory reporting requirements.
- 13.10 Certain matters that utilise our electronic workflow software services will incur an additional electronic work management fee.

#### Out of Pocket Expenses

- 13.11 When we do work for you, we may have to cover some out of pocket expenses (such as search fees, registration fees, travel costs, court charges and agents' fees). You authorise us to incur these expenses, which will be shown on our account to you.
- 13.12 There may be instances when we request payment of out of pocket expenses in advance.

#### Changes

- 13.13 Fees, hourly rates, our service charge and out of pocket expenses may change from time to time without notice.

#### Legal aid

- 13.14 In some cases, you may be eligible for legal aid. If you want to apply for legal aid, we will let you know whether we would be prepared to complete the work for you on a legally aided basis. If not, we will recommend another firm to you.

### 14 Money handling procedures / tax legislation compliance

- 14.1 We maintain a trust account for all funds we hold on behalf of clients (except funds we receive for payment of accounts).
- 14.2 If we hold funds in our trust account on your behalf:
- we may deposit them in an interest-bearing deposit with a bank, where reasonable and practicable. We will not deposit funds when, in our discretion, we decide that the administrative costs of lodging funds (including complying with FATCA/CRS) outweigh the interest benefit to you.

- b. you acknowledge that we cannot place your funds in an interest-bearing deposit if you have not provided us with any information we request relating to your FATCA and CRS status and you have not completed any self-certification form as a pre-requisite.
  - c. there may be an additional fee payable to us, the amount of which we shall advise you at the time, for extraordinary attendances on the completion of any required self-certification form.
  - d. we are not responsible for obtaining the best interest rate available or for any loss of interest you suffer as a result of delay in placing your funds in an interest-bearing deposit.
- 14.3 We generally charge a 6% administration fee on the gross interest earned on funds held in an interest-bearing deposit.
- 14.4 Withholding tax will be deducted on the interest earned and paid to IRD. If we have your IRD number you can elect to have withholding tax deducted at your applicable rate. If we do not have your IRD number we are required to deduct it at the default rate (which may be higher than your actual rate).
- 14.5 Where you transfer funds to our trust account in a foreign currency, we will convert those funds into New Zealand dollars at the prevailing exchange rate offered by our bank. We are not responsible for seeking or obtaining a better exchange rate.
- 14.6 When we transfer funds from our trust account to a foreign bank account of yours or according to your direction, those funds will be converted from New Zealand dollars to the relevant currency by the bank concerned at its prevailing exchange rate. We are not responsible for seeking or obtaining a better exchange rate.
- 14.7 So that we may comply with Inland Revenue Department taxation requirements, if you are buying, selling or transferring property in New Zealand you must provide us at the outset of your transaction, your personal IRD number and/or that of any relevant company, trust, partnership or other entity. We will also require your tax payer identification number from any overseas countries where you are a tax resident (if applicable).

## 15 Paying your account

- 15.1 We may issue accounts monthly and on completion of the work or the ending of our engagement. We may also send you an account when we incur a significant expense.
- 15.2 Our accounts must be paid 14 days after they have been issued, unless otherwise provided in our Letter of Engagement to you.
- 15.3 If you have any questions about an account, please contact us straight away.
- 15.4 Sometimes we may require you to pay fees, office expenses and disbursements in advance. If we do, we will hold your payment in our trust account and only deduct our fees, office expenses and disbursements when we issue you an account.
- 15.5 If we hold funds in our trust account on your behalf (including any judgment, sale proceeds, settlement amount or other money), you authorise us to deduct any fees, office expenses or disbursements we have issued you an account for.
- 15.6 We may charge interest on unpaid accounts at the rate of 16% per annum calculated on a daily basis and charged monthly. We may take action to recover unpaid accounts and charge you the cost of that recovery.
- 15.7 At your request or with your approval, we may send our accounts to a third party to pay on your behalf. You are still responsible for payment by the due date if the third party does not pay us.
- 15.8 If you elect to pay our account by credit card, we may charge you an additional 2% of the amount you pay.
- 15.9 If your account is overdue we may:
- a. Stop work we are doing for you until our account is paid in full; and
  - b. Require an additional payment of fees in advance or other security before starting work again.

## 16 Guarantee

- 16.1 If you are a company or other incorporated entity we may require personal guarantees from your directors, shareholders or other officers.

## 17 Limiting our liability to you

- 17.1 The maximum amount that we will have to pay you, unless otherwise agreed in writing, will not exceed the greater of:
- a. The amount available to be paid out under any relevant insurance held by us up to a maximum of the amount set by the New Zealand Law Society as the minimum standard for the indemnity limit on our professional indemnity insurance.
  - b. Where no amount is available to be paid out under any relevant insurance held by us, the amount equal to five times our paid professional fees relating to the matter to which the claim relates up to a maximum of NZ\$500,000.
- 17.2 The limitations in clause 17.1 apply to the extent permitted by law, whatever you are claiming for and however liability arises or might arise if not for this clause (whether in contract, tort (including negligence), equity or otherwise). We will not have to pay you more than the maximum amount for anything caused by or resulting from anything we do or do not do, or delay in doing, whether or not it is contemplated or authorised by any agreement with you.
- 17.3 If you are more than one person (such as a couple or partnership), this maximum is the maximum combined amount that we will have to pay you together.
- 17.4 If you engage us to do work for the purposes of a business, you agree the Consumer Guarantees Act 1993 (CGA) does not apply and that sections 9, 12A and 13 of the Fair Trading Act 1986 (FTA) do not apply for the purposes of section 5D of the FTA. Otherwise nothing in this clause limits any rights you may have under the CGA or the FTA.
- 17.5 We shall not be liable for any loss or liability caused or contributed to by inaccurate or incomplete information supplied by you or third parties (including public records and expert witnesses) or because you did not receive or read a communication we sent you.
- 17.6 We will not be liable for any loss or damage suffered by you as a result of a failure to provide taxation advice or insurance advice or in relation to adequacy of insurance cover unless we have undertaken in writing to provide such advice.
- 17.7 For any claim against us, as defined in the Limitation Act 2010 (LA), whether in contract, tort, equity or otherwise, arising out of our engagement, the LA is modified so that any claim must be filed within 24 months after the date of the act or

omission on which the claim is based. The “late knowledge” provisions in sections 11(2), 11(3), 14 and 32(2) of the LA do not apply. The 24 month time period applies whether or not loss or damage has become apparent, or has been suffered, within that time period.

## 18 Ending our engagement

- 18.1 You may end our engagement at any time by giving us reasonable notice.
- 18.2 If we have good cause, we may decide to stop working for you, such as if you:
- do not provide us with instructions promptly; or
  - are unable to, or do not, pay our fees as agreed; or
  - against our advice, act in a way we believe is inconsistent with our fundamental obligations as lawyers or highly imprudent; or
  - mislead or deceive us in a material respect; or
  - give us instructions that require us to breach any professional obligation.
- 18.3 If we decide to stop working for you, we will give you reasonable notice and help you find another lawyer.
- 18.4 Before you take your records, you need to pay our fees for the work we have done for you. We may keep a copy of any records you take.
- 18.5 The enforceability of these terms is not affected by:
- the ending of our engagement; or
  - any changes to our partners or the incorporation of our firm.

## 19 New Zealand law applies

- 19.1 Our relationship is governed by New Zealand law and the New Zealand courts have exclusive jurisdiction.

## 20 Professional Indemnity Insurance and Lawyers' Fidelity Fund

- 20.1 We hold professional indemnity insurance that exceeds the New Zealand Law Society's minimum standards. If you would like further information about our insurance, please ask.
- 20.2 The New Zealand Law Society operates a Lawyers' Fidelity Fund to compensate clients who suffer theft of money or property entrusted to lawyers. The Fund covers losses of up to \$100,000 per individual claimant. It does not cover loss where you have instructed us to invest money on your behalf (subject to limited exceptions set out in the Lawyers and Conveyancers Act).

## 21 How we handle complaints

- 21.1 We are committed to providing services of the highest professional standards.
- 21.2 We will deal with any complaints promptly and fairly.
- 21.3 Please contact us straight away if you have a question about an account or if you are unhappy with any other aspect of our work. You may contact:
- the partner responsible for your work; or
  - our Risk Manager, Sam Rowe, by email at [management@fitzrowe.co.nz](mailto:management@fitzrowe.co.nz) or by telephone 06 351 4747.
- 21.4 The New Zealand Law Society also has a complaints service. Please telephone 0800 261 801 for information and advice about making a complaint.

## 22 Client care and service information

- 22.1 We are committed to complying with the New Zealand Law Society's Rules of Conduct and Client Care for Lawyers. The following statement describes some of our professional responsibilities to you:  
Whatever legal services your lawyer is providing, he or she must:
- act competently, in a timely way, and in accordance with instructions received and arrangements made;
  - protect and promote your interests and act for you free from compromising influences or loyalties;
  - 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;
  - let you know how to make a complaint and deal with any complaint promptly and fairly.
- 22.2 The obligations lawyers owe to clients are described in the Rules of Conduct and Client Care for Lawyers. Those obligations are subject to overriding duties, including duties to the courts and to the justice system.

If you have any questions, please visit [www.lawsociety.org.nz](http://www.lawsociety.org.nz) or call 0800 261 801.

We value our relationships with our clients. If you have any questions about these terms, please ask.

*Effective from 24 April 2021*