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## **TERMS OF ENGAGEMENT (Effective 1<sup>st</sup> April 2017)**

### **1. APPLICATION**

These Terms of Engagement ("Terms") apply in respect of our current engagement and also to any future engagement whether or not we send you another copy of them. We are entitled to change these Terms from time to time. However if these Terms are inconsistent with any other written agreement we have made with you then that other agreement prevails over these Terms.

### **2. AUTHORITY**

You authorise us as your Lawyers to act on your behalf in relation to each instruction you provide us and which we accept. This includes incurring expenses, engaging external solicitors and barristers, other professionals and experts.

The person who signs the letter by which our services are engaged personally accepts full sole personal responsibility for the payment of fees and disbursements, notwithstanding that the work may be for a trust or for a private limited liability company (either in existence or to be formed as a result of an instruction) and that liability will remain irrespective of the name of the party to whom the final account is rendered. **The signatory is therefore signing as a personal guarantor of all fees which may result in respect of the instruction.**

### **3. CONFLICTS**

The New Zealand Law Society ("NZLS") Conduct and Client Care for Lawyers rules ("Rules") apply. Acting for you will not restrict us from acting for another client in relation to any matter that is separate from the instruction you have given us and which we have accepted, even if that other client's interest may be adverse to yours.

If you believe a conflict of interest has arisen or may arise, you must inform us immediately. If a conflict of interest arises we will advise you of this and follow the requirements and procedures set out in the NZLS Rules.

### **4. DOCUMENTS/RECORDS/INFORMATION**

We will keep a record of all important documents which we receive or create on your behalf on the following basis:

- 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).



- 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.
- 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.

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.

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.

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 our 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.

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.

We own copyright in all documents or work we create in the course of performing our 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.

## **5. ADVICE**

The advice we provide is limited to and governed by New Zealand law and is given by us solely for your benefit and no other person may rely on it unless we agree to that in writing. Our advice is not to be disclosed, referred to or used other than for the purpose for which it was sought by you.

We are not responsible for advising you on any matter other than that covered by the instruction and we do not give financial advice or advise on accounting and taxation issues.

When our instruction on a matter is completed, our representation of you will end. We are not obliged to notify you of any subsequent change in the law, or to provide any further services related to that matter.



## 6. SERVICES

Our fees are charges on the basis of the NZLS Rules which require that fees be fair and reasonable.

We may change our rates for fees and services from time to time. At regular periods (usually monthly) we will provide you with an invoice and, if applicable a statement of funds which we have handled on your behalf.

Special fee arrangements can be made to meet the particular requirements of the services to be provided/transaction. These can include success fee, fixed fee and capped fee arrangements.

Our fees for professional services incorporate the Firms overhead costs and the cost of secretarial, word processing and other assistance provided to our staff. Our charges for office services (photocopying, faxing, phone calls and the like) are generally established by reference to a scale of charges based on the fee value of the invoice (currently 2% on invoices up to \$5,000 with a minimum amount of \$50).

Disbursements (such as courier costs, Ministry of Justice, Ministry of Economic Development and Land Information New Zealand search and registration fees) and other external costs are charged separately from our fees and itemised on our invoices as disbursements. If we are required to expend significant amounts on disbursements or other external costs, we may request you pay these in advance. Our fees and charges are plus GST (if any), which is payable by you.

## 7. INVOICES

We normally issue invoices monthly. We also issue an invoice on completion of your matter. Our invoices are to be paid by you within 14 days of invoice unless otherwise arranged with us. We may ask you to pre-pay amounts to us, or to provide security for expenses and our fees. We have your authority to draw on the amounts paid towards our fees and expenses, as they become due.

If payment of our invoice by you is overdue, we may [1] not perform any further work for you until all unpaid invoices are paid in full; [2] retain custody of any of your property (including documents or files) until all unpaid invoices are paid in full; [3] **charge interest** on any amount overdue at a rate of no more than 12% p.a. [4] **secure the moneys due** by Memorandum of Mortgage on the Auckland District Law Society standard form, over your real property and/or register a General Security Agreement on the Auckland District Law Society standard form under the Personal Property Securities Act over your personal property **and you irrevocably authorise and appoint us as your attorney to do this.**

You must pay our invoices whether or not [1] you have a right of indemnity or recovery from a third party; [2] any third party seeks assessment of any of our invoices; or [3] you receive any amount from a third party.



**We shall be entitled to recover all time incurred by us in the recovery of unpaid account debts at the rate of \$250.00 per hour plus GST (in addition to any interest and the original bill together with all court fees and actual costs of serving any documents related to such proceedings).**

**8. TERMINATION**

You may terminate our engagement at any time. We may terminate in the circumstances permitted by the NZLS Rules. You must pay us for what we provide, and all expenses we have incurred, up to the date of termination.

**9. TRUST ACCOUNT**

Our firm maintains a trust account at ASB Bank Limited ("Bank") for all funds which it receives from clients (except for funds which are for payment of our invoices).

If it is necessary for us to hold significant amounts on your behalf, we may lodge those funds on interest earning deposit with a registered bank. **We may charge an administration fee of 5% of the net interest earned.** If we deposit funds on your behalf, we will need either your IRD number or a copy of your interest withholding tax exemption certificate.

We may deduct from funds held on your behalf in our trust account any fees, costs or disbursements for which we have provided an invoice.

**10. ELECTRONIC COMMUNICATIONS**

We may communicate with you and others at times by electronic means. These communications can be subject to interference or interception or contain viruses or other defects. We do not accept responsibility for, and will not be liable for any damage or loss caused in connection with, or as a consequence of, the corruption of an electronic communication.

**11. GOVERNING LAW – CHANGES**

New Zealand law governs our relationship and New Zealand Courts have non-exclusive jurisdiction. We may change these Terms at any time, and will publish the changed Terms on our website. The change will bind you in respect of any matters on which we accept instructions after publication of the change.

**12. CLIENT/TRANSACTION CHECKS**

We are required to comply with all laws binding on us in all jurisdictions, including [1] the Anti-Money Laundering and Countering Financing of Terrorism Act 2009; and [2] the United States Foreign Account Tax Compliance Act; and [3] relevant provisions of the Tax Administration Act 1994.



We will perform client due diligence and account monitoring, keep records, and report any unusual or suspicious transactions where so required by law.

We or the Bank may [1] suspend, terminate, or refuse to enter into a business relationship; [2] delay, block, or refuse to process a transaction; [3] report a transaction without notice if [i] the required information or documents are not provided, [ii] it is suspected that the business relationship or transaction is unusual, may breach any applicable law, or may otherwise relate to conduct that is illegal or unlawful in any country.

Where residential land is sold and we receive the sale proceeds on your behalf, we may be legally required to withhold residential land withholding tax ("RLWT") from the proceeds. This will apply if, under the Income Tax Act 2007 [1] you are an 'offshore RLWT person; [2] the land is 'residential land' in New Zealand; [3] you sell the land within the 2 year 'bright line' period.

In the event RLWT applies, we must remit the tax to the Inland Revenue Department and consequently we will account to you for the net sale proceeds only, after RLWT and any other amounts we are permitted to deduct have been deducted. We have no liability to you for or in relation to any amount we withhold and remit to IRD as RLWT.

### **13. LIMITATION OF LIABILITY**

To the extent permitted by law, our aggregate liability to you (whether in contract, equity, tort or otherwise) arising out of your engagement of us on a matter (or any series of matters) is limited to the lesser of [1] an amount that is five times our applicable fee (excluding our service charge, disbursements and GST), or [2] the amount available to be paid out under any relevant insurance held by us, up to a maximum of \$1,500,000.

### **14. INDEPENDENT ADVICE**

These Terms modify some of the duties owed by lawyers to their clients. We recommend that you seek independent legal advice before accepting them.