

TERMS OF ENGAGEMENT

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 (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).
- 1.2 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 will be delegated to other professionals in our firm.

2 Financial

- 2.1 **Fees:** The basis upon which we will charge our fees is set out in our engagement letter.
 - a 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.
 - b We reserve the right to review our hourly rates from time to time. Therefore the hourly rates specified in our letter of engagement are subject to change.
 - 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 Our fee may be adjusted (upwards or downwards) to ensure the fee is fair and reasonable to take into account matters set out in clause 2.1e below. In estates, commercial, or rural transactions you agree that we may make an additional charge of 0.1% of the value of the property involved. Where we or one of our trustee companies is acting as a trustee further charge of 0.1% of the value of the property involved may be added.
 - e In setting our fee we may take into account the following factors:
 - i The time and labour expended;
 - ii The skill, specialised knowledge, and responsibility required to perform the services properly;
 - iii The importance of the matter to the client and the results achieved;
 - iv The urgency and circumstances in which the matter is undertaken and any time limitations imposed, including those imposed by the client;

- v The degree of risk assumed by the lawyer in undertaking the services, including the amount or value of any property involved;
- vi The complexity of the matter and the difficulty or novelty of the question involved;
- vii The experience, reputation and ability of the lawyer;
- viii The possibility that the acceptance of the particular retainer will preclude engagement of the lawyer by other clients;
- ix Whether the fee is fixed or conditional (whether in litigation or otherwise);
- x Any quote or estimate of fees given by the lawyer;
- xi Any fee agreement (including a conditional fee agreement) entered into between the lawyer and the client;
- xii The reasonable costs of running a practice; and
- xiii The fee customarily charged in the market and locality for similar legal services.

2.2 Disbursements and Office Services:

- a 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. You authorise us to make payments of disbursements on your behalf.
- b We will also charge you for office services which include forms, postage, photocopying, faxing, scanning, phone charges, courier charges, and the time taken by our staff to provide those services. The office services charge is calculated at 4.5% of your fee with a maximum of \$200.00 per invoice.
- c When we carry out searches or registration we instruct Central Legal Agency Limited to do so on your behalf. Agency fees will be paid to Central Legal Agency as a disbursement. Evans Bailey shareholders have an interest in Central Legal.

2.3 GST (if any):

Is payable by you on our fees and charges.

2.4 Payment of Fees by Deduction:

You authorise us to deduct fees, expenses and disbursements for which we have issued an invoice from any funds held on your behalf in our trust account. In particular you agree that fees, expenses and disbursements for any sale, purchase or refinance of a property, business or shares, or for any relationship property or litigation settlement, are payable by deduction on settlement. On any such settlement we may also deduct fees that have been invoiced to you in respect of any other matters.

2.5 Invoices:

We may 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. We reserve to stop work on any matters in respect of which we are providing services to you if you have not paid any invoice on time.

2.6 **Payment:**

Invoices are due and payable on or before the 20th day of the month following the date of the invoice, unless alternative arrangements have been made with us. If payment is not received by the 20th day of the month following the date of the invoice, interest will be charged at the rate of 1.5% per month.

2.7 **Security:**

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,
- any fees, expenses or disbursements for which we have provided an invoice.

2.8 **Costs of Collection:**

You will pay our legal costs and the costs of collection in respect of the collection of any overdue accounts from you.

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.

3 **Confidentiality and Personal Information**

3.1 **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.

3.2 **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.

3.3 **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.

3.4 Subject to clause 3.1, 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.

3.5 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.

- 3.6 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 us.
- 3.7 **Verification of identity:** The Financial Transactions Reporting Act 1996 requires us to collect from you and to retain information required to verify your identity (identity information). 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.
- 3.8 We may use any identity information that you have provided to us to verify your identity against government databases, including by providing that identity information to third parties.

4 Termination

- 4.1 You may terminate our retainer at any time.
- 4.2 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*
- 4.3 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.

5 Documents, Records and Information

- 5.1 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.
- 5.2 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.
- 5.3 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.
- 5.4 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.
- 5.5 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.

- 5.6 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.

6 Conflicts of Interest

- 6.1 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.
- 6.2 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.

7 Duty of Care

- 7.1 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.
- 7.2 Our advice is not to be referred to in connection with any prospectus, financial statement, or public document without our written consent.
- 7.3 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.
- 7.4 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.
- 7.5 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.

8 Trust Accounting

- 8.1 We operate a trust account. All money received from you or on your behalf will be held to your credit in our trust account.
- a Payments out of the trust account will be made either to you or to others with your authority. 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. Before making a payment to another account we may 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 screenshot that clearly shows the account name and 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.

- b Before we make any payment, whether to you or to a third party on your authority, we will call you to verify the bank account the payment is to be made to. We do not accept any liability for any payment to an incorrect bank account where you have instructed us to make payment and we have verified that account.
- c 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.
- d 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. Interest earned from call deposits, less withholding tax and an interest administration fee payable to us of 5% of the interest, will be credited to you.
- e If we request payment or funds from you, you should call our office to confirm the request and to verify our account number. We recommend that you use a phone number from a source that you can trust, as people who send malicious emails can sometimes change the contact details as well,
- f If we hold a small value of funds on your behalf (less than \$10.00) and we are unable to contact you, you authorise us to pay the funds to Cancer Society of New Zealand Incorporated.

9 Limitations on our Obligations or Liability

- 9.1 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.

10 Communications

- 10.1 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.
- 10.2 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.
- 10.3 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.

11 General

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