

TERMS OF ENGAGEMENT

1. The purpose of this document

1.1 This document:

- sets out the standard terms on which we do work for our clients;
- explains what you can expect from us and what you agree to when we work for you;
- includes information we are required to tell you under the New Zealand Law Society's Rules of Conduct and Client Care for Lawyers; and
- 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 each matter

2.1 For each new matter you engage us for, we will give you a 'letter of engagement'. The letter will outline:

- what we will do for you on that matter; and
- the person with overall responsibility for that matter. Other members of our staff may also be involved, under the supervision of that person, where appropriate.

3. Our duties to you

3.1 When we do work for you, we will:

- Protect your privacy and confidentiality;
- Act competently, promptly and according to your instructions;
- Protect and promote your interests;
- Give you clear information and advice;
- Keep you informed about progress;
- Treat you fairly and respectfully; and
- 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).

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 companies) can rely on our advice without our written consent.

4. Your privacy and confidentiality

- 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: You agree or ask us to;
- We need to so we can carry out work for you; or

- *The law requires us to, or the Rules of Conduct and Client Care for Lawyers permit us to.*

4.1 *Information we hold about you will as far as practicable be only made available to our directors, partners and staff who are doing work for you.*

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 a job 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:*

- *investment advice. You should get that advice from a qualified financial advisor;*
- *tax advice (unless we agree in writing with you to provide such advice). You should get that advice from your accountant or tax advisor; or*
- *advice about foreign laws. We can help you to contact a lawyer in the other country.*

6.2 *Unless we agree to do so in writing, we will not:*

- *Remind you about dates (e.g. PPSR, lease or consent expiry dates); or*
- *Update advice after it is given.*

7. *Intellectual property*

7.1 *Unless we agree otherwise:*

- *We retain ownership of all opinions, documents and other intellectual property created by us;*
- *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. If you do not want to receive that information, let us know.*

9. *Storing records*

9.1 You authorise us to destroy all files and documents about a matter seven years after that matter has been completed. We may destroy paper files or documents earlier if we have an electronic copy of them. We will not destroy any documents we have agreed to hold in safe custody for you (such as Wills).

9.2 All archived files are stored off-site. To retrieve these files there is a cost payable by you. If you uplift your files or other documents at any time, we may make copies of them (at your cost) before they are uplifted. All original deeds held by us on your behalf or other documents we have agreed to keep for long term safe custody will be kept in our deeds room or a similar facility.

10. How you can help us

10.1 You can help us by:

- giving us clear instructions;
- asking if there is anything you are not sure of;
- dealing promptly with any questions we have;
- telling us if your contact details change; and
- 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 company, we can accept instructions from any of your directors or employees or any other person you have authorised to instruct us;
- if you are a trust, we can accept instructions from any of your trustees or offices;
- if you are a partnership, we can accept instructions from any of your partners or officers;
- if you are a couple, we can accept instructions from either of you.

12. The Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT Act)

12.1 This is now law. 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:

- confirm information provided to us about you is true; and
- undertake initial and ongoing customer due diligence, monitoring and reporting in accordance with the AML/CFT Act; and
- consider if we can act on your behalf.

13. Verifying your identity/Credit checks

13.1 In all circumstances we are required to verify your identity;

13.2 We may carry out reasonable credit checks on you. You authorise anyone we contact to provide us with information we request as part of our credit enquiries.

13.3 *We may provide information to credit agencies about any account you have failed to pay by the due date.*

14. Our fees and expenses

14.1 *We will always charge you fair and reasonable fees.*

14.2 *Unless we agree with you otherwise, our fees will be calculated based on the time we spend on a matter 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 our hourly rates on request.*

14.3 *The difference in hourly 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.*

14.4 *We will give you an estimate of fees if you ask for one. Special fee arrangements may be available for certain work (e.g. capped fees). Any estimate or special fee arrangement for a job will be outlined in our letter of engagement.*

14.5 *If you have any questions about our fees, please ask.*

GST

14.6 *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

14.7 *We charge you a fee to cover office expenses (such as photocopying, printing, phone calls, faxing and file storage).*

Disbursements

14.8 *When we do work for you, we may have to cover some expenses or make other payments on your behalf (such as search fees, registration fees, travel costs, accommodation, court charges and agents' fees). These will be included separately in our account to you.*

Changes

14.9 *Fees, hourly rates, office expenses and disbursements may change from time to time without notice.*

Legal aid

14.10 *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 work on that matter on a legally aided basis. If not, we will refer you to another firm.*

15. Money handling procedures

15.1 *We maintain a trust account for all funds we hold on behalf of clients (except funds we receive for payment of accounts).*

- 15.2 *If we hold funds on your behalf we may deposit them, subject to your compliance with Bank's tax disclosure requirements, in an interest-bearing deposit with a bank, where reasonable and practicable. 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.*
- 15.3 *You must first complete all necessary self-certification forms to the Bank's satisfaction before we can lodge these funds on interest bearing deposit.*
- 15.4 *We generally charge a commission of 7.5% (up to \$250.00 per quarter, or \$1,000.00 annually) on the gross interest earned on funds held in an interest-bearing deposit.*
- 15.5 *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).*
- 15.6 *When 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.*
- 15.7 *Are subject to the AML/CFT Act.*

16 Paying your account

- 16.1 *We issue accounts monthly and on completion of a job or the conclusion of our engagement. We may also send you an account when we incur a significant expense.*
- 16.2 *Our accounts must be paid by the 7th day after the date of our account. However, we reserve the right to stipulate a shorter payment period. We may deduct from any funds held on your behalf in our trust account any fees, expenses or disbursements for which we have provided an invoice.*
- 16.3 *If you have any questions about an account, please contact us straight away.*
- 16.4 *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.*
- 16.5 *If we hold funds in our trust account on your behalf (including any judgment, safe proceeds, settlement amount or other money), any fees, office expenses or disbursements we have issued you an account for may be deducted.*
- 16.6 *We may charge interest on unpaid accounts at the rate of 18% per annum, calculated on a daily basis and charged monthly. We may take action to recover unpaid accounts and charge you for any costs (on a solicitor and client basis) we incur to recover any amount which is overdue.*
- 16.7 *Any failure or delay by us to charge interest on an unpaid account or to exercise any of our other rights will not operate as a waiver of those rights.*

16.8 *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.*

17 Guarantee

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

18 Limiting our liability to you

18.1 *The maximum amount that we will have to pay you is the amount set by the New Zealand Law Society as the minimum indemnity limit on our professional indemnity insurance. This limitation applies 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.*

18.2 *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.*

18.3 *If you engage us to do work for the purposes of a business, you agree the Consumer Guarantees Act does not apply. Otherwise nothing in this clause 17 limits any rights you may have under the Consumer Guarantees Act.*

18.4 *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.*

19 Ending our engagement

19.1 *You may end our engagement at any time by giving us reasonable notice.*

19.2 *If we have good cause, we may decide to stop working for you, such as if you:*

- *give us an instruction that would require us to breach a professional obligation;*
- *do not provide us with information or instructions promptly;*
- *mislead or deceive us in a material respect;*
- *act in a suspicious or unlawful manner;*
- *are unable to do, or do not, pay our fees as agreed;*
- *against our advice, act in a way we believe is inconsistent with our fundamental obligations as lawyers or in a way which is highly imprudent.*

This does not apply to litigation.

19.3 *We may also decide to stop working for you if we consider your conduct and/or your dealing with us to be such that the relationship we have with you is not working and cannot be rectified, or for any other reason that is consistent with the Client Care Rules.*

19.4 *If we decide to stop working for you, we will give you reasonable notice and help you find another lawyer.*

19.5 *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.*

19.6 *The enforceability of these terms is not affected by:*

- *the ending of our engagement; or*
- *any changes to our directors or partners of our firm.*

20 New Zealand law applies

20.1 *Our relationship is governed by New Zealand law and the New Zealand courts have exclusive jurisdiction.*

21 Professional Indemnity Insurance and Lawyers' Fidelity Fund

21.1 *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.*

21.2 *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).*

22 How we handle complaints

22.1 *We are committed to providing services of the highest professional standards.*

22.2 *We will deal with any complaints promptly and fairly.*

22.3 *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 person responsible for your work; or*
- *our Director by phone, post or email to:*

barry@rodgersandco.co.nz

Phone (07) 349 6393

PO Box 1203, Rotorua 3040

barry@simplylaw.co.nz

Phone (07) 577 1787

PO Box 3089, Greerton, Tauranga, 3142

22.4 *The New Zealand Law Society also has a complaints service. Please telephone 0800 261 801 for information and advice about making a complaint.*

23 Client care and service information

23.1 *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:

- (a) act competently, in a timely way, and in accordance with instructions received and arrangements made:*
- (b) protect and promote your interests and act for you free from compromising influences or loyalties;*
- (c) discuss with you your objectives and how they should best be achieved:*
- (d) provide you with information about the work to be done, who will do it and the way the services will be provided:*
- (e) charge you a fee that is fair and reasonable and let you know how and when you will be billed:*
- (f) give you clear information and advice:*
- (g) protect your privacy and ensure appropriate confidentiality:*
- (h) treat you fairly, respectfully, and without discrimination:*
- (i) keep you informed about the work being done and advise you when it is completed:*
- (j) Let you know how to make a complaint and deal with any complaint promptly and fairly.*

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 or call 0800 261 801.