



WCM LEGAL

A Division of WCM LEGAL Limited

LAWYERS & NOTARY PUBLIC

TERMS OF ENGAGEMENT

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 as required by the *Rules of Conduct and Client Care for Lawyers* of the New Zealand Law Society (“Law Society”); and
- (d) Applies to any current work and to any future work we undertake 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 notify you.

Our letter of engagement for each instruction

2.1 For each new instruction, we will give you a “letter of engagement”. The letter will outline:

- (a) the services which we are to provide;
- (b) the names and status of the person or persons who will have overall responsibility for the services we provide for you; and
- (c) the charges relating to the work undertaken

Who we can accept instructions from

3.1 Unless you let us know otherwise:

- (a) if you are a **couple**, we can accept instructions from either of you;
- (b) if you are a **trust**, we can accept instructions from any of your trustees or officers;
- (c) if you are a **partnership**, we can accept instructions from any of your partners or officers;
- (d) 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; and
- (e) if you are a **body corporate** or **incorporated society**, we can accept instructions from any person holding themselves out as being authorised by the officers to instruct us.

Client Care and Service

- 4.1 The Law Society client care and service information is set out below;
- 4.2 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 interest 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.
- 4.3 The obligations Lawyers owe to clients are described in the *Rules of Conduct and Client Care for Lawyers*. These obligations are subject to other overriding duties, including duties to the Courts and justice system.
- 4.4 If you have any questions, please visit www.lawyers.org.nz or call the New Zealand Law Society on 0800-261 801.

Verifying your identity and source of funds, and credit checks

- 5.1 We are required by law to verify your identity and, in some circumstances, the source of funds for a transaction.
- 5.2 We may wish to carry out reasonable credit checks on you from time to time.
- 5.3 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) undertake initial and on-going customer due diligence and monitoring in accordance with the Anti-Money Laundering and Countering Financing of Terrorism Act (**AML/CFT Act**);
 - (c) enforce debt and legal obligations (including recovery of money owed to us); and

- (d) comply with other legal obligations we may have.
- 5.4 You authorise any person (including credit reporters) to disclose information (including credit information) to us in response to such enquiries.
- 5.5 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:
- (a) 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;
 - (b) 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
 - (c) 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.

Conflicts of Interest

- 6.1 We have procedures in place to identify and respond to 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 Law Society's *Rules of Conduct and Client Care for Lawyers*.

Scope of our work

- 7.1 We are not qualified to give:
- (a) investment advice. You should get that advice from a qualified financial advisor;
 - (b) specialist tax advice. You should get that advice from your accountant or tax advisor;
 - (c) insurance advice. You should get that advice from your insurance broker; or
 - (d) advice about foreign laws. We can help you to contact a lawyer in the other country.
- 7.2 Unless we agree to do so in writing, we will not:
- (a) remind you about dates (e.g. PPSR, lease, or consent expiry dates); or
 - (b) update advice after it is given.

Your privacy and Confidentiality

- 8.1 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) to the extent required by law or by the Law Society's *Rules of Conduct and Client Care for Lawyers*.
- 8.2 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.
- 8.3 We will of course, not disclose to you confidential information which we have in relation to any other client.
- 8.4 If we hold funds in our trust account on your behalf, you authorise us to:
- (a) provide 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, you acknowledge that we are obliged 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).
- 8.5 If we undertake a conveyancing transaction on your behalf, you authorise us to provide information in respect of the transaction to Inland Revenue and Land Information New Zealand as required by the Residential Land Withholding Tax legislation.

Intellectual property

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

Emails

- 10.1 We may communicate with you by email about the work we do for you.
- 10.2 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.
- 10.3 We may occasionally email you information we think is relevant and useful to you. If you do not want to receive that information, let us know.

Retention of files and documents

- 11.1 You authorise us (without further reference to you) to destroy all files and documents for your matter(s) (other than any documents that we hold in safe custody for you) 7 years after our engagement ends, or earlier if we have converted those files and documents to an electronic format.

Financial

12.1 Fees:

- (a) The fees which we will charge or the manner in which they will be arrived at, are set out in our engagement letter.
- (b) If the engagement letter 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 engagement letter. The differences in those rates reflect the experience and specialisation of our professional staff. Time spent is recorded in six minute units, with time rounded up to the next unit of six minutes. Our hourly rates are subject to annual review and may be increased during the course of your instructions to reflect such review.
- (d) If you have applied for Legal Aid and that application is declined by the Legal Services Agency then you agree to be bound by these standard terms of engagement.

12.2 Disbursements and expenses:

In providing services we may incur disbursements or have to make payments to third parties on your behalf. We will also charge office expenses to recover our costs relating to file opening, file storage (a minimum charge of \$40.00 plus GST), copying and printing (a minimum charge of \$25.00 plus GST) and an administration charge to cover the work involved in completing AML/CFT identity verification requirements (a minimum charge of \$125.00 plus GST for Standard Due Diligence and a minimum charge of \$375.00 plus GST (should Enhanced Due Diligence be required)). These charges will be included in our invoice to you. We may require an advance payment for the disbursements or expenses which we will be incurring on your behalf.

12.3 GST:

Is payable by you on our fees and charges.

12.4 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.

12.5 Payment:

Invoices are payable within 14 days of the date of the invoice, unless alternative arrangements have been made with us. We may require interest to be paid on any amount which is more than 7 days overdue. Interest will be calculated at the rate of 2% above our firm's main trading Bank's 90-day Bank bill rate as at the close of business on the date payment became due. All collection and/or legal costs incurred in respect of the recovery of any unpaid fees will be payable by you in addition to the original debt. If at the end of the transaction, we are holding funds for you, we will deduct our fee from those funds before paying out the balance to you.

If we hold funds on your behalf you authorise us to deduct our fees from those funds (unless they have been provided for a particular purpose) and send you an invoice as required by the Lawyers and Conveyancers Act (Trust Account) Regulations 2008.

12.6 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.
- (c) any fees, expenses or disbursements for which we have provided an invoice.

12.7 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.

Trust Account

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

13.2 If we hold funds on your behalf, we will deposit them in an interest-bearing deposit with a bank where reasonable and practicable. 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. We are not responsible for obtaining the best interest rate available or for any loss of interest you suffer as a result of our failure or delay in placing your funds in an interest-bearing deposit.

- 13.3 Withholding tax will be deducted on the interest earned and paid to Inland Revenue. 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 of 33% (which may be higher than your actual rate).
- 13.4 We charge a 5% administration fee on the gross interest earned on funds held in an interest-bearing deposit.
- 13.5 Where you transfer funds to our trust account or we remit funds to you in a foreign currency, we will convert those funds at the prevailing exchange rate offered by our bank. We are not responsible for seeking or obtaining a better exchange rate.
- 13.6 If we hold a small value of funds on your behalf (less than NZ \$20.00) and we are unable to contact you, you authorise us to pay the funds to Life Flight Trust - emergency air services charity.

Limitations on Extent of our Obligations or Liability

- 14.1 Any limitations on the extent of our obligation to you or any limitation or exclusion of liability are set out in our letter of engagement.

Termination

- 15.1 You may terminate our retainer at any time.
- 15.2 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*.
- 15.3 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.

Professional Indemnity insurance:

- 16.1 We hold professional indemnity insurance that meets or exceeds the minimum standards specified by the Law Society. We will provide you with particulars of the minimum standards upon request.

Lawyers Fidelity Fund

- 17.1 The Law Society maintains the Lawyers Fidelity Fund for the purposes of providing clients of Lawyers with protection against pecuniary loss arising from theft by Lawyers. The maximum amount payable by the Fidelity Fund by way of compensation to an individual claimant is limited to \$100,000.00. Except in certain circumstances specified in the Lawyers & Conveyancers Act 2006, the Fidelity Fund does not cover a client for any loss relating to money that a Lawyer is instructed to invest on behalf of the client.

Complaints

- 18.1 We maintain a procedure for handling any complaints by clients, designed to ensure that complaint is dealt with promptly and fairly.
- 18.2 If you have a complaint about our services or charges, you may refer your complaint to the person in our firm who has overall responsibility for your work.
- 18.3 If you do not wish to refer your complaint to that person, or you are not satisfied with that person's response to your complaint, you may refer your complaint to Jon Parker.

He may be contacted as follows:

- (a) By letter
- (b) Email: jon.p@wcmlegal.co.nz
- (c) Telephone: 04-473 7537

The Law Society also maintains a complaints service and you are able to make a complaint to that service.

To do so you contact:

The Lawyers Complaints Service,
New Zealand Law Society,
PO Box 5041,
Wellington 6140.

Telephone: 0800 261 801

Website: www.lawsociety.org.nz/for-the-community/lawyers-complaints-service/concerns-form

Email: complaints@lawsociety.org.nz

Duty of Care

- 19.1 Our duty of care is to you and not to any other person. Before any other person may rely on our advice, we must expressly agree to this.

New Zealand law applies

- 20.1 Our relationship with you is governed by New Zealand law and New Zealand Courts have exclusive jurisdiction.