

# TERMS OF ENGAGEMENT



## 1. Introduction

- 1.1 We are pleased to act for you and set out below the information required by the New Zealand Law Society's (**Law Society**) *Rules of Conduct and Client Care for Lawyers* (**Rules**), and our standard Terms of Engagement (**Terms**).
- 1.2 These Terms apply to our current and future services to you except to the extent we agree with you otherwise in writing. We are entitled to change these Terms from time to time, in which case we will send you our amended Terms and/or upload the amended Terms to our website.
- 1.3 You will be deemed to have accepted these Terms by continuing to instruct us to work for you.

## 2. Services

- 2.1 The services we are to provide to you are outlined in our letter of engagement (**Letter**) as well as any further instructions that you may provide to us.
- 2.2 In order to provide you with efficient advice and cost-effective services, we reserve the right to delegate all or some of your work to other professionals in our firm.
- 2.3 The advice we give you is solely for your benefit and may not be relied on by any other person unless we agree to that in writing.

## 3. Fees

- 3.1 Our fees are calculated using our hourly charge out rates and recorded in 6-minute increments.
- 3.2 Our fees include, but are not limited to, time spent on any communications, meetings, document review or drafting, advice, research, inquiries, ID checks, title searches, time spent on AML/CFT certification, and any other actions we may undertake whether or not we are ultimately instructed. Our fees exclude GST, third party costs and disbursements.
- 3.3 If you request a fee estimate, we will endeavour to provide one. An estimate is intended as a guide only and not a fixed fee or quote. A fee estimate may fall within a range or be related to a particular step of the process. Where an estimate includes any assumptions, they will be stated and you must tell us if those assumptions are wrong or if they change.
- 3.4 Our final fee may differ from the estimate given. If it appears that the actual fee will significantly exceed the estimate, we will let you know.
- 3.5 Any estimate is given with the understanding that:
  - (a) your instructions are complete
  - (b) no unforeseen circumstances arise requiring additional work
  - (c) you respond promptly to our requests for information or instructions
  - (d) third parties and any other professionals i.e. lawyers, accountants, business advisers etc. are cooperative and reasonable
  - (e) third-party consents and approvals are provided promptly without extended negotiations; and
  - (f) there are no unanticipated proceedings, objections, or applications are raised by you or others on your behalf.
- 3.6 If we have agreed to a fixed fee, this is for a scope of work which will be specified. Any work which falls outside the fixed fee scope of work will be charged on an hourly rate basis.
- 3.7 In fixing our final fee we are entitled to take into account such matters as the time spent; time and labour expended, the skill

specialised knowledge and responsibility required to perform the services properly; the importance of the matter and the result achieved; the urgency and circumstances in which the matter is undertaken including any time limitations imposed, the degree of risk assumed by the lawyer in undertaking the service and the value of the property involved; the complexity, difficulty or novelty of the questions involved; the experience, reputation and ability of the lawyer; the possibility of the retainer precluding the lawyer undertaking other client work; any fixed fee or estimate provided; the reasonable costs of running a practice; and general market rates for similar work undertaken.

## 4. Retainers

- 4.1 Before commencing or continuing work, we may request that you pre-pay funds into our trust account to provide security for our fees and expenses (**Retainer**).
- 4.2 At our sole discretion, we may delay starting work or suspend existing work on your matter, until such time as the Retainer is received.
- 4.3 When paying the Retainer, you irrevocably authorise and instruct us apply those funds against any invoiced fees, office services and disbursements whether existing or future.
- 4.4 Where we act for you in multiple matters, we may open separate trust accounts for each. In such cases, you irrevocably authorise and instruct us to transfer funds from the Retainer held for one matter, to another where there are insufficient funds available to cover an outstanding invoice.

## 5. Disbursements & Office Service Fees

- 5.1 In providing services to you, we may incur third party costs on your behalf. You authorise us to incur these costs, which may include but are not limited to, search fees, court filing fees, registration fees, process server costs, and Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (**AML/CFT Act**) checks, amongst other things. We may ask that you pay these costs in advance otherwise they will be included in our invoice to you when the expense is incurred.
- 5.2 We also apply charges for general office services including photocopying, document preparation, telephone costs, and confirmations as required by the AML/CFT Act etc. Office service fees are charged at 4.5% of the total fee per invoice.

## 6. Goods & Services Tax (GST)

- 6.1 GST is payable by you on our fees, disbursements and office service fees, unless otherwise exempt.

## 7. Payment

- 7.1 Invoices are rendered on a monthly basis, but we may also send you an invoice when a milestone has been completed or if we incur a significant expense. You will also receive an invoice on completion of the matter or on termination of our engagement. Examples of milestones that will be invoiced include, but are not limited to:
  - (a) Probate being granted
  - (b) interim distributions from an estate
  - (c) when a property agreement becomes unconditional; and
  - (d) when court timetabling, litigation or dispute resolution events occur.

- 7.2 Our invoices are payable by the 7<sup>th</sup> day following the date of the invoice, unless alternative arrangements have been agreed to by us in writing.
- 7.3 For your own financial safety, we encourage you to contact our reception on 09 486 0177 to personally verify our trust account number before you pay any money to us for the first time, or if it appears that our bank account number has changed since your last payment, or if you have any concerns.
- 7.4 If we are holding money for you in our trust account, you agree to us applying those funds towards payment of our invoices, unless you instruct us otherwise in writing in advance.
- 7.5 For your convenience, our invoices may be paid via POLi pay or by credit card. A transaction fee may be added at the time of processing the payment to cover our direct and indirect costs in providing these alternative payment facilities.

## 8. Overdue Payments

- 8.1 If payment of our invoice is not made on time, then, without prejudice to our other rights, we may:
- (a) Require interest to be paid on any amount which is overdue. Interest will be calculated at the rate of 15% on the balance of the invoice outstanding apportioned daily from the day the payment was due through to the day it is received by us in cleared funds.
  - (b) Stop our work for you and/or require an additional payment of fees in advance or other security before recommencing work; and
  - (c) Recover from you in full, any costs of recovering or attempting to recover any overdue payment of our fees. This includes all costs on a solicitor/client basis and other costs of recovery and disbursements.
- 8.2 Any information you have provided to us in the course of providing you with services may be used to assist in the collection of any overdue invoice, and we may obtain from and give to any third party (including credit agencies) information which will assist us to obtain payment of the outstanding debt.

## 9. Payment of Fees by Third Parties

- 9.1 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, you remain responsible for payment to us in accordance with these Terms if the third party fails to pay us.

## 10. Deposit funds – Trust Account

- 10.1 We operate a Solicitors Trust account. Money received by us for your benefit will be held for your credit in our trust account. Payments out of the trust account will be made to you or to third parties with your authority. Written authorisation may be required from you where payment is to be made to a third party.
- 10.2 If we are holding significant funds on your behalf we may lodge those funds on interest bearing deposit (IBD) via our bank. In such case we may charge an administration fee of up to 5% of the gross interest earned to reflect the time and expense of administering your funds. Any such deposit may be conditional on you providing information for the purposes of clauses 11 and 12 of these Terms.
- 10.3 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.

## 11. Foreign Account Tax Compliance Act (FACTA), OECD Common Reporting Standard (CRS) & Other Information Gathering

- 11.1 FATCA is a U.S. law aimed at reducing tax evasion by U.S. taxpayers, with effect in New Zealand. New Zealand has also adopted the OECD's CRS, which enables the international exchange of financial account information.
- 11.2 You acknowledge that, before we can complete a transaction (including any trust-related transaction) for you, we may be legally required to collect information about you (such as verifying your identity or identifying the people who own or control you). Additionally, our Bank is legally obligated to collect certain information about you (referred to as **Bank Information**) if you conduct a trust account transaction with us, including for compliance with FATCA and CRS requirements. You must provide in a timely manner all requested information.
- 11.3 You acknowledge that we may be required by law to disclose information about your details, affairs, or specific transactions, particularly when required by anti-money laundering and counter-terrorism financing regulations. If such disclosure is required, we will only disclose information to an appropriate party and only to the extent reasonably necessary or required by law.
- 11.4 You consent to such disclosures and waive any rights to be informed of them. Further, you consent to our disclosing your Bank Information to our Bank and to the New Zealand Inland Revenue Department (**IRD**), waiving any rights you may have to be notified of these disclosures.
- 11.5 Under the Land Transfer Act 2017 and relevant tax laws, buyers and sellers of residential property must provide certain information, including Tax Statements related to the property transaction and IRD numbers (or their offshore equivalents), during the land transfer process. You must provide all such required information upon request. Although we may assist in good faith, we cannot provide tax advice: it remains your responsibility to ensure the accuracy of the information supplied. This information will be provided to Land Information New Zealand (**LINZ**) and the IRD. Failure to provide this information may result in delays or cancellation of a property transaction. We will not be liable if we cannot proceed with or complete a property transaction because you have not supplied the necessary information to our satisfaction when required.
- ## 12. Verifying your Identity
- 12.1 To comply with the AML/CFT Act, we are legally required to implement procedures to mitigate the risk of money laundering. As a result, we may need to obtain evidence to verify your identity. This requirement applies even if we have previously acted for you or if an employee of our firm is familiar with you. We will conduct customer due diligence, monitor accounts, retain records, and report any unusual or suspicious transactions in compliance with the AML/CFT Act, FATCA, CRS, or other legal requirements.
- 12.2 We will inform you of the information and documentation needed for these purposes. This may include details about you, any relevant persons (such as beneficial owners), the source of funds, the transaction, ownership structure, and any other pertinent information. Please provide the requested information and documents promptly. If these are not provided, we may be obligated to suspend, terminate, or decline a business relationship, or delay, block, or refuse to process a transaction.
- 12.3 You agree that we may use third party customer due diligence services, including third-party electronic services (**AML**

**Agent**) to verify your identity and conduct other monitoring required under the AML/CFT Act. You authorise us to collect, hold, and use information about you, as well as to make necessary inquiries to confirm the accuracy of this information and fulfil any legal obligations. If you provide us with information about another individual, you confirm that the individual has authorised you to share this information with us for these purposes. Any charges incurred by us or our AML Agent to comply with our obligations under the AML/CFT Act may be charged back to you as a disbursement.

### 13. Limitation of Liability

13.1 We confirm that we meet the Law Society's requirements for professional indemnity cover. We will provide you with particulars of the minimum standards upon request.

13.2 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.

### 14. Lawyers Fidelity Fund

14.1 If a client suffers pecuniary loss due to theft by his/her solicitors of funds or other valuable property entrusted to them this Fund is available to claim against up to a maximum of \$100,000.00. Details of this fund are available through [www.lawsociety.org.nz](http://www.lawsociety.org.nz).

### 15. Communications

15.1 We will obtain from you contact details, including email address, postal address and telephone numbers. You will advise us if any of your contact details change.

15.2 Unless otherwise agreed, we will primarily communicate with you and others by electronic means. As electronic communications may be subject to interception, interruption, error or virus (**Corruption**), we do not accept responsibility and will not be held liable, for any damage or loss caused by the corruption of an electronic communication.

15.3 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.

15.4 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 to opt out of receiving these communications.

### 16. Client Conduct / Care Rules

16.1 When providing legal services to you we 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. We will 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. We will 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. We will treat you fairly, respectfully and without discrimination, keep you informed about the work being done and advise you when it is completed. We have set out below how to make a complaint and will deal with any complaint promptly and fairly.

### 17. Conflicts of Interest

17.1 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 Rules. This may mean we cannot act for you further in a particular matter and we may terminate our engagement.

### 18. Confidentiality & Information Retention

18.1 Provision of personal information is voluntary but if you do not provide full information, this may impact on our ability to provide the services.

18.2 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 or by the Rules.

18.3 Confidential information concerning you will as far as practicable be made available only to those within our firm who are providing legal services to you.

18.4 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.

18.5 Subject to clause 18.2, 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.

18.6 We will, of course, not disclose to you, confidential information which we have in relation to any other client. We will comply with all applicable laws (including the Privacy Act 2020) when we collect, use and disclose personal information about you.

18.7 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 an electronic record 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.

18.8 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 2020 or any other law. We may charge you our reasonable costs for doing this.

18.9 Where we hold a document that belongs 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.

- 18.10 You authorise us (without further reference to you) to store your files and documents with third-party online storage service providers such as but not limited to our Practice Management software provider, Google Drive, Dropbox, and/or SharePoint/OneDrive. In some situations, we may also store physical records either in our office or with third party storage services.
- 18.11 Subject to any other legal requirement, you authorise us to destroy all files and documents for any matter (other than any documents that we hold in safe custody for you) 7 years after the matter is concluded or earlier if we have converted those files and documents to an electronic format. E-files may be deleted after 7 or 10 years depending on their purpose.
- 18.12 We may, at our option, return documents (either in hard copy or electronic form) to you rather than retain them. All original documents may be released to you upon completion of a matter unless we specifically notify you that we will retain an original document on your behalf in our safe custody. We periodically audit the deeds and documents held in our safe custody. In the event that we believe that certain documents and deeds have expired, we will notify you at your last known address to uplift the deed or document. If we do not receive a response from you, you authorise us to destroy the deed or document.

## **19. Use of AI Platforms**

- 19.1 We may use generative legal AI tools, such as LawY and Matter AI and CoCounsel (Thomson Reuters' AI Assistant) etc, to assist us in providing legal services, including but not limited to document drafting, legal research, and summarising information. These tools are designed to enhance efficiency and accuracy but are always subject to human oversight.
- 19.2 While AI can enhance the speed and efficiency of legal services, it cannot replace the legal judgment and responsibility of our lawyers. All final advice and legal decisions remain the responsibility of our firm's legal professionals.
- 19.3 Any data used with AI tools will be handled in accordance with New Zealand's Privacy Act 2020 and our firm's confidentiality obligations.
- 19.4 By engaging our services, you consent to the use of legal AI tools where appropriate in the handling of your matter.

## **20. Termination**

- 20.1 Where you give us any instruction we are entitled to rely on that instruction as agreement of our Terms. You may, by giving us notice, terminate our engagement at any time on any file. We may also, by giving you reasonable notice, terminate our engagement at any time.
- 20.2 If our engagement is terminated by either party, you must pay to us all fees, disbursements and office expenses incurred to the date of termination. As a general rule, we have the right to retain certain original documents and correspondence on your file until such time as all outstanding fees, disbursements and office service fees have been paid.

## **21. Feedback & Complaints**

- 21.1 We value feedback, positive or negative. Please do not hesitate to contact us if you have any comments or questions about these Terms or any related matters. Please send your feedback or make a formal complaint to a Director, or our Operations Manager, Erin Robson, at [erobson@schnauer.com](mailto:erobson@schnauer.com)

- 21.2 If you are not satisfied with the way in which we have handled your complaint, the Law Society has a complaints service to which you may refer the issue. You can call the Law Society on 0800 261 801 for guidance, to lodge a concern or to make a formal complaint.

## **22. General**

- 22.1 If, during the course of providing legal services to you we create new 'works' protected by Copyright Law, you agree that we are the original owners of those works. Upon payment in full of our invoice for the relevant matter, you are then granted an automatic, irrevocable and non-exclusive licence to use the works.
- 22.2 We are not financial advisers regulated by the Financial Advisers Act 2008 and we are not permitted to give you financial advice. However, we may need to refer to or comment on your financial arrangements when this is incidental to the legal advice we are giving you. At all times you are responsible for seeking appropriate financial or taxation advice.
- 22.3 Our relationship with you is governed by New Zealand law and New Zealand Courts have exclusive jurisdiction.