

## TERMS OF ENGAGEMENT

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These are our standard Terms and Conditions of Business (“Terms”) which apply in respect of all work carried out by us except to the extent that we otherwise agree with you in writing. The Terms include information which we are required to provide under the Rules of Conduct and Client Care for Lawyers issued by the New Zealand Law Society. These Terms will apply whenever you ask us to act for you on a matter. You do not need to sign any formal documentation to indicate your acceptance. It will be assumed from your continuing to engage us.

### 1. SERVICES

1.1 We will represent and advise you on all legal matters (excluding advice relating to taxation matters unless otherwise agreed in writing) within the scope of your instructions.

1.2 We will usually record those instructions on a ‘Confirmation of Instruction’ report at the outset of a matter.

### 2. FINANCIAL

2.1 Our fees are based on what is fair and reasonable for the services provided having regard to:

(a) the interests of both us and you;

(b) the time and labour expended;

(c) the skill, specialised knowledge, and responsibility required to perform the services properly. This may include the value and benefit you derive from our existing precedents and know-how;

(e) the urgency and circumstances of which the matter is undertaken, and any time limitations imposed, including those imposed by you;

(f) the degree of risk assumed by the lawyer in undertaking the services, including the amount in value of any property involved;

(g) the complexity of the matter and the difficulty and novelty of the questions involved;

(h) the experience, reputation, and the ability of the lawyer;

(i) the possibility that the acceptance of the particular retainer will preclude engagement of the lawyer by other clients;

(j) whether the fee is fixed or conditional (whether in litigation or otherwise);

(k) any quote or estimate of fees given by us;

(l) any fee agreement entered into between you and us;

(m) the reasonable costs of running a practice;

(n) the fee customarily charged in the market locally for similar legal services.

2.2 Our estimates of the likely fees are based on our experience with similar matters. Estimates are given as a guide only and not as a fixed fee. We will endeavour to give you regular updates as matters progress and knowledge of the actual scope becomes clearer.

- 2.3 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.
- 2.4 GST is payable by you on our fees and charges.
- 2.5 We normally issue invoices monthly. We also send you an invoice on completion of the matter or termination of our engagement. We may also send you an invoice when we incur a significant expense.
- 2.6 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 seven days overdue. Interest will be calculated at the rate of 2% per month compounding daily.
- 2.7 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 If payment of our invoices is not made, in accordance with clause 2.6 above, we may be required to commence debt recovery action against you. You will be responsible for the full costs of such collection costs, including, at our discretion, interest on such costs, calculated in accordance with clause 2.6 above.
- 2.9 We charge a fee for general office services such as routine photocopying, printing, telephone communications, faxes, postage and file storage. Our standard fee is \$85 plus GST. This fee is shown separately in our account to you, and we may change this fee from time to time.

### **3. ANTI-MONEY LAUNDERING AND COUNTERING FINANCING OF TERRORISM**

- 3.1 To meet our legal and regulatory obligations under the Anti-Money Laundering And Countering Financing Of Terrorism Act 2009 ("AML/CFT Act"), we may be required to collect information to verify the identity, address, source of income, or any other information required under the AML/CFT Act ("Customer Due Diligence") for you and persons and entities associated with you (potentially including your beneficial owners, persons who have or may have effective control over you and members of your governing body ("Relevant Persons"). We have appointed an AML agent, the Trust Integrity and Compliance Company to complete Customer Due Diligence on our behalf. We reserve the right to change the appointed AML agent at any time (the "AML Agent").
- 3.2 By seeking to engage us, or continuing to engage us, you:
- (a) authorise us to obtain and collect information about you and any Relevant Persons from you, from any Relevant Persons, and other sources (including any agents, credit or debt collectors, regulatory bodies or law enforcement agencies), and to pass such information on to the AML Agent.
  - (b) You consent to the AML Agent:
    - (i) contacting you, any Relevant Person or any document issuer, official record holders or other third parties for the purpose of conducting Customer Due Diligence;
    - (ii) providing us with such information collected by the AML Agent; and
    - (iii) providing us with a report on whether you, your related parties or the matter is considered high risk under the AML/CFT Act.

- 3.3 Any charges incurred by us or the AML Agent to comply with our obligations under the AML/CFT Act may be charged back to you as a disbursement.
- 3.4 You also acknowledge that, prior to completing such Customer Due Diligence, we may be prohibited from acting for you, acting for you on the relevant new matter giving rise to the need for Customer Due Diligence or completing trust account transactions for you (as the case may be).
- 3.5 You agree to ensure that each of the Relevant Persons about whom we collect, hold and disclose information as described above is aware of and consents to that collection, holding and disclosure. You also agree to ensure that all information provided to us concerning you and any Relevant Person is accurate and (where relevant) complete.
- 3.6 We are not liable to you, or anyone else, for anything done or not done by us (including any provision of information by us to any third party or any withholdings made) in order to comply with our legal obligations under the AML/CFT Act. For more information regarding our requirements in relation to the AML/CFT Act see Client Information - AML/CFT Act.

#### **4. PRIVACY**

- 4.1 You have rights under the Privacy Act 2020. We will observe the provisions of our Privacy Policy which can be viewed [here](#). You consent to us processing personal information in accordance with our Privacy Policy.

#### **5. CONFIDENTIALITY**

- 5.1 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
  - (c) if required by the Law Society's Rules of Conduct and Client Care for Lawyers.
- 5.2 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.
- 5.3 We will of course, not disclose to you confidential information which we have in relation to any other client.

#### **6. TERMINATION**

- 6.1 You may terminate our retainer at any time.
- 6.2 We may terminate our retainer for good cause in the circumstances set out in the Law Society's Rules of Conduct and Client Care for Lawyers.
- 6.3 If our retainer is terminated for any reason, you must pay us all fees due up to the date of termination and all expenses incurred up to that date.

#### **7. RETENTION OF FILES AND DOCUMENTS**

- 7.1 We may store your files, documents and personal information in any format we choose at our offices or at premises outside our offices, including data storage facilities or online storage located within or outside New Zealand, which may be operated by independent service contractors. To the extent permitted by law, we do not accept responsibility and will not be liable for any damage or loss caused by third parties.

7.2 You authorise us to destroy all files and documents we hold (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.

7.3 If you ask us to destroy any matter-related files or other documents, we will do so where it is practicable, and we are not otherwise obliged to retain them. If we destroy files or documents at your request, you waive any liability we may have in relation to the matter, files or documents and we will have no liability to you or a third party.

7.4 If you uplift your files or other documents at any time, we may make copies of them before they are uplifted.

## **8. CONFLICTS OF INTEREST**

8.1 If a legal conflict of interest arises, we will immediately advise you and discuss how to proceed.

8.2 We may accept instructions from other persons operating in the same or competing sectors and whose commercial or other non-legal interests conflict with your own, provided that we will not use confidential information we have obtained from you in undertaking those instructions.

## **9. PERSONS RESPONSIBLE FOR THE WORK**

9.1 The person who will have overall responsibility for the work will send you a "Confirmation of Instruction" report prior to undertaking significant work under a retainer.

9.2 We will arrange for each part of your work to be undertaken by the person with the most appropriate level of skill and experience.

9.3 Where appropriate, the engagement will include a formal peer review of your work.

9.4 Background information on our people can be found on our website: [Tompkins Wake](#)

## **10. LIMITATION OF LIABILITY**

10.1 Our liability to you will be subject to any limitations or exclusions which we agree with you. To the extent permitted by law, our total aggregate liability to you (or any other persons) in connection with any matter (or series of related matters) on which you engage us, is limited to the greater of:

(a) the amount available to be paid out for that liability under any relevant insurance held by us, up to a maximum of NZ\$10,000,000 (including interest or costs); or

(b) NZ\$1,000,000 or (if greater) the amount of three times our applicable fee (excluding our service charge, disbursements and GST).

This limitation applies to liability of all kinds, whether in contract, tort (including negligence), equity or otherwise.

## **11. OUR ADVICE**

11.1 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.

11.2 Any and all advice given by us is:

(a) not to be disclosed, referred to or used other than for the purpose for which it was sought;

(b) not to be made public or published;

(c) limited to the matters and context in which it was given and does not apply by implication to any other matter.

Unless required by law, you may not provide our advice to any third party or file our advice with any governmental agency without our agreement.

## **12. TRUST ACCOUNT**

12.1 We maintain a trust account for all funds which we receive from clients (except monies received for payment of our invoices). If we are holding significant funds on your behalf, we may, subject to your compliance with the bank's tax disclosure requirements, lodge those funds on interest bearing deposit with a bank. In that case we may charge an administration fee of 7% of the interest derived. Our ability to lodge these funds on interest-bearing deposit is entirely dependent on you first completing all necessary self-certification forms to the bank's satisfaction.

## **13. FOREIGN LAW MATTERS**

13.1 We are only qualified to advise on New Zealand law. If we assist you in respect of matters governed by foreign law, we do so on the basis that we do not accept any responsibility in relation to your legal position under that foreign law.

## **14. GENERAL**

14.1 These Terms apply to any current engagement and also to any future engagement, whether or not we send you another copy of them.

14.2 We are entitled to change these Terms from time to time, in which case the amended Terms will apply from the date they are published on our website.

14.3 Our relationship with you is governed by New Zealand law and New Zealand courts have exclusive jurisdiction.

## **RULES OF CONDUCT AND CLIENT CARE FOR LAWYERS OF THE NEW ZEALAND LAW SOCIETY**

Set out below is the information required by the Rules of Conduct and Client Care for Lawyers of the New Zealand Law Society ("Law Society").

### **1. Professional Indemnity Insurance**

We hold professional indemnity insurance that meets or exceeds the minimum standards specified by the Law Society.

### **2. Lawyers' Fidelity Fund**

The Law Society maintains the Lawyers' Fidelity Fund for the purpose 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. Except in certain circumstances specified in the Lawyers and Conveyances 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.

### **3. Complaints**

We maintain a procedure for handling any complaints by clients, designed to ensure that a complaint is dealt with promptly and fairly.

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.

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 our CEO.

The CEO may be contacted as follows:

- by letter;
- by email at [jon.calder@tompkinswake.co.nz](mailto:jon.calder@tompkinswake.co.nz)
- by telephoning on 07 839 4771

The Law Society operates the Lawyers Complaints Service and you are able to make a complaint to that service. To do so, phone 0800 261 801 and you will be connected to the nearest Complaints Service Office, which can provide information and advice about making a complaint.

#### 4. Client Care and Service

The Law Society client care and service information is set out below.

Whatever legal services your lawyer is providing, he or she 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.
- 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.
- 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.
- Treat you fairly, respectfully and without discrimination.
- Keep you informed about the work being done and advise you when it is completed.
- 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 other overriding duties, including duties to the courts and to the justice system.

If you have any questions, please visit [www.lawsociety.org.nz](http://www.lawsociety.org.nz) or call 0800 261 801.