



## TERMS OF ENGAGEMENT AND INFORMATION FOR CLIENTS

### Services

The services which we are to provide for you and the names and status of the person or persons who will have the general carriage of or overall responsibility for the services we provide for you are set out in our letter of engagement. These terms of engagement apply to any current work and to any future work we do for you (unless we agree in writing to change these terms). Occasionally we may change these terms. If we make changes, we will send you the updated terms.

### Duty of Care

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.

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

### Anti-Money Laundering and Countering Financing of Terrorism Act 2009

We are required to comply with all laws binding on us including (but not limited to):

- a. the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT Act); and
- b. the United States Foreign Account Tax Compliance Act (FATCA); and
- c. the Common Reporting Standard (CRS).

To meet these requirements, we may be required to conduct customer due diligence on you, persons acting on your behalf, and other relevant persons such as your beneficial owners or persons who have effective control of you as a client. We may not be able to act or continue acting for you until this is completed to the required standard.

We will advise you what information and documents are required for these purposes. This information could include formal identification, address confirmation, source of funds, transaction details, ownership structures, tax identification details, and any other information considered relevant. Please ensure the information and documents requested are provided promptly to avoid any delays in us acting for you.

We will retain the information and documents and may be required to disclose them to government agencies as required by law. We may not be permitted to advise you of the instances when we are required to disclose this information. We may also be required to provide this information to banks with which we place your funds through our trust account.

### How we avoid conflicts of interest

When we do work for you, we will always protect and promote your interests. Before we accept a job from you, we will do our best to find out if any conflict of interest exists. 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.

### Scope of our work

We are not qualified to give investment, tax, or insurance advice or advice about foreign laws. You should get financial advice from a qualified financial advisor, tax advice from your accountant or tax advisor and insurance advice from an insurance broker. For property purchase files we will not be reviewing or commenting on the adequacy of any insurance policy. We can help you to contact a lawyer in the other country if you require advice about Foreign laws. Unless we agree to do so in writing, we will not remind you about dates (eg PPSR, lease or consent expiry dates) or update advice after it is given.

### Intellectual property

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

### Emails

We may communicate with you by email about the work we do for you. 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. 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.

### Storing records

You authorise us to destroy all files and documents about a job seven years after that job 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).

### Who we can accept instructions from

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 officers; 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.

## **Verifying your identity / Credit checks**

In some circumstances we are required by law to verify your identity. We may carry out reasonable credit checks on you. You authorise anyone we contact to provide use with information we request as part of our credit enquiries. We may provide information to credit agencies about any account you have failed to pay by the due date.

## **Our fees and expenses**

### **Fees**

We will always charge you fair and reasonable fees. Unless we agree with you otherwise, our fees will be calculated based on the time we spend on a job 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). Depending on the seniority, experience and expertise of the person doing the work the hourly rate can vary between \$200.00 and \$400.00 per hour plus GST. We will provide you with our specific hourly rates on request. We will give you an estimate of fees if you ask for one. Any estimate or special fee arrangement for a job will be outlined in our letter of engagement. 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. If you have any questions about our fees please ask.

### **GST**

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**

We charge you a fee to cover office expenses (such as photocopying, printing, phone calls, faxing and file storage). This fee is calculated at \$40 per matter. These will be included separately in our account to you.

### **Disbursements**

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, court charges and agents' fees). These will be included separately in our account to you. Some disbursements may include a reasonable mark-up.

### **Changes**

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

## **Money handling procedures**

We maintain a trust account for all funds we hold on behalf of clients (except funds we receive for payment of accounts). If we hold funds on your behalf we will deposit them 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. We generally charge a 5% administration fee on the gross interest earned on funds held in an interest-bearing deposit. 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). Where 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. If you instruct us to make a payment we reserve the right to take steps to verify the bank account to which you wish us to pay and the authenticity of the instructions.

## **Paying your account**

We issue accounts monthly and on completion of a job or the ending of our engagement. We may also send you an account when we incur a significant expense. Our accounts must be paid 14 days after the date of our account. If you have any questions about an account, please contact us straight away.

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.

If we hold funds in our trust account on your behalf (including any judgment, sale proceeds, settlement amount or other money), any fees, office expenses or disbursements we have issued you an account for may be deducted.

We may charge interest on unpaid accounts at the rate of 15% per annum calculated on a daily basis and charged monthly. We may take action to recover unpaid accounts and charge you the cost of that recovery.

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.

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.

## **Guarantee**

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

## **Limiting our liability to you**

In this clause we limit our liability to you. The maximum aggregate amount that we will have to pay you is the amount set by the New Zealand Law Society as the minimum standard for the indemnity limit on our professional indemnity insurance. This limit 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. 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. If you engage us to do work for the purposes of a business, you

agree the Consumer Guarantees Act 1993 does not apply. Otherwise nothing in this clause limits any rights you may have under the Consumer Guarantees Act 1993. 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.

### **Ending our engagement**

You may end our engagement at any time by giving us reasonable notice. If we have good cause, we may decide to stop working for you, such as if you do not provide us with instructions promptly, are unable to or do not pay our fees as agreed, or against our advice act in a way we believe is inconsistent with our fundamental obligations as lawyers or highly imprudent. This does not apply to litigation. If we decide to stop working for you, we will give you reasonable notice and help you find another lawyer. 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. The enforceability of these terms is not affected by the ending of our engagement or any changes to our partners or the incorporation of our firm.

### **New Zealand law applies**

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

### **Professional Indemnity Insurance and Lawyers' Fidelity Fund**

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. 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 2006).

### **How we handle complaints**

We are committed to providing services of the highest professional standards. We will deal with any complaints promptly and fairly. 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 partner responsible for your work or our Office Manager, Fina Turner by phone, post or email to [fina@webstermalcolm.co.nz](mailto:fina@webstermalcolm.co.nz). The New Zealand Law Society also has a complaints service. Please telephone 0800 261 801 for information and advice about making a complaint.

### **Client care and service information**

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](http://www.lawsociety.org.nz) or call 0800 261 801.

We value our relationships with our clients. If you have any questions about these terms, please ask. *Effective from 1 July 2018.*