

# Key Features of our Relationship with you.

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## What we will do for you:

- We will keep you informed about the work we are doing. If you have a question or concern about what we are doing, please contact us so we can discuss it.
- If you are concerned about how much the work will cost, just let us know. We will give you an estimate of our fee based on the work we think we will need to do. If this changes at any time, we will let you know and provide an updated estimate.

## What we need from you:

- Please take time to confirm your requirements. It is important that you do this so we can do our best to meet your expectations and deliver the service you require.
- Please keep up to date with the payment of our fees or any agreed payment arrangements so we can continue to act on your behalf.
- Please provide all the information we need to act on your behalf and advise us of any changes to your circumstances, as this may affect the advice you require.

***Our full terms and conditions are attached.*** Please take time to read these carefully. We are happy to discuss and explain any of these if they are unclear.

# TERMS OF ENGAGEMENT

These Terms of Engagement (the Terms) will apply every time you engage us to provide legal services to you, unless we agree otherwise with you in writing. These Terms apply to any current engagement also to any future engagement, whether or not we send you another copy of them. Your continued instructions to us will be deemed your acceptance of these Terms.

## 1. Services

- 1.1. When you instruct us to provide legal services to you, we will provide you with our engagement letter detailing the scope of services, the basis on which fees will be charged and the person who will have overall responsibility for the services we provide to you.
- 1.2. Our services are limited to legal services only. We do not provide any financial or investment advice in connection with any engagement. We also do not provide any other professional advice such as tax and accounting advice and we do not accept any responsibility for any action you take without first seeking relevant non-legal professional advice.

## 2. Duty of Care

- 2.1. Our duty of care and other duties under these Terms are owed solely to you and not to any other person who may rely on our advice. We do not accept any responsibility to any third party who may rely on any advice we give to you.
- 2.2. Our advice relates only to each matter in respect of which you engage us. Once that matter is at an end, we will not owe you any duty or liability in respect of any related or other matters unless you specifically engage us in respect of those related or other matters.

## 3. Communication

- 3.1. 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.

- 3.2. 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 that this not be sent to you. Unless you tell us otherwise, we will assume you agree to receive this information.
- 3.3. Unless otherwise agreed, we may communicate with you and with others by electronic means (for example, by email). However, we cannot guarantee that these communications are error-free and will not be lost or affected for some reason beyond our reasonable control, and we will not be liable for any damage or loss caused thereby.
- 3.4. As email is not secure and may be read, copied, interfered with or impaired in transit, you agree to assume the risks associated with such transmission and to release us from any claim you may have arising from transmission defects. Transmission defects also include the non-receipt by you of any email communication. When you correspond with us by email then your email to us is deemed to be received only once receipt is personally acknowledged by us to you and not by any automated reply you may receive.

## 4. Our Fees

- 4.1. Fee basis – The basis upon which we will charge our fees is set out in our engagement letter with you. Namely:
  - If the engagement letter specifies a fixed fee, we will charge this for the agreed scope of the services. Work which falls outside that scope (such as having to spend additional time resolving an issue or complication, or a complexity that has been discovered) will be charged on an hourly rate basis unless we provide a further fixed fee quote to you. We will advise you as soon as reasonably practicable if it becomes necessary for us to provide services outside of the agreed scope and, if requested, give you an estimate of the likely amount of the further costs.
  - Where our fees are calculated on an hourly basis, the hourly rates of the people we expect to

undertake the work are as follows:

Director/Principal – \$350 plus GST  
 Solicitor/Associate – \$220 - \$320 plus GST  
 Legal Executive - \$180 - \$230 plus GST

- Any differences in hourly rates reflect the different levels of experience and specialisation of our professional staff. Time spent is recorded in six-minute units.
- Our fees may be adjusted (upwards or downwards) to ensure the fee is fair and reasonable and accounts for matters such as the complexity, urgency, value, and the importance of the services. Full details of the relevant fee factors are set out in Rule 9 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.

4.2. Our services will usually attract Goods and Services Tax (GST). If this is the case, GST is payable by you on our fees and charges.

4.3. Under the Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) Act 2009 we are required to carry out additional work in identifying our clients, obtaining source of wealth and source of income, assessing the risk in transactions and reporting certain matters to the New Zealand Police Financial Intelligence Unit (FIU). We may charge a reasonable fee for carrying out AML/CFT work in addition to our legal fees.

4.4. Estimates – You may request an estimate of our fee for undertaking our services at any time. If possible, we will provide you with an estimate. An estimate is not a quote. Any significant assumptions included in the estimate will be stated and you must tell us if those assumptions are wrong or change. We will inform you if we are likely to exceed the estimate by any substantial amount. Unless specified, an estimate excludes GST, disbursements, and expenses.

4.5. Disbursements – In undertaking work for you, we may incur disbursements and payments to third parties on your behalf. These can include Land Information New Zealand (LINZ) title search fees,

LINZ registration fees, local council fees, courier fees, court filing fees, valuation fees, agency fees, travel charges, and legal forms fees. You authorise us to incur these disbursements which are reasonably necessary to provide services to you. You also authorise us to make payments to third parties on your behalf which are reasonably required to undertake the services (which may include items such as experts' costs or counsel's fees). These will be included in our invoice to you, shown as disbursements when the expenses are incurred (or we may require payment in advance for disbursements when we know we will be incurring them on your behalf).

4.6. Service Fee – In addition to disbursements, we may charge a fee of up to \$200.00 to cover costs which are not included in our legal fee and which are not recorded as disbursements. These may include items such as postage, licences costs, bank administrative fees, and other compliance costs (such as for AML/CFT verification requirements).

## 5. Invoices

- 5.1. We may, depending on the circumstances, send interim invoices to you, usually monthly, for ongoing matters involving work spread over more than one month. We will send you our final accounts on completion of the matter or upon termination of our engagement. We may send you invoices more frequently when we incur a significant expense or undertake a significant amount of work over a shorter period of time.
- 5.2. We may ask you to pay fees in advance, but in those instances your funds will be held in our trust account and, with your consent, only deducted from the trust account and paid to us once we have provided an invoice to you.

## 6. Payment

- 6.1. Our invoices are payable within 14 days of the date of the invoice, unless otherwise agreed.
- 6.2. For conveyancing matters, payment of our legal fees and expenses is required on settlement of the transaction.

6.3. You authorise us to deduct our fees and other expenses from funds held in our trust account on your behalf on provision of an invoice to you, unless those funds are held for a particular purpose.

6.4. 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.

6.5. All invoiced amounts are payable in New Zealand dollars, unless we agree otherwise.

## **7. Credit card payments**

7.1. Payments by credit card attract a merchant service fee which is charged to us. For this reason, credit card payments are intended to be used for payment of our fees only and not for the transfer of other money into our trust account (trust monies). Trust monies should be paid to us by direct credit into our bank account ensuring that the funds will clear in time for us to pay out on them.

7.2. Credit card payments will attract a 4% transaction fee.

## **8. Unpaid Accounts**

8.1. If you have difficulty in paying any of our accounts, please contact us promptly so that we may discuss payment arrangements.

8.2. Where any invoiced amount or any part of it remains unpaid beyond the relevant payment due date, we may:

- Charge you interest at the rate of 15% per annum commencing from the due date and charged to your account on a monthly basis until payment is made in full. If we are required to take recovery action against you all collection costs will be payable by
- Stop work on any matters in respect of which we are providing services to you.

- Require an additional payment of fees in advance or other security before recommencing work.

- Recover from you, in full, any costs we incur (including on a solicitor/client basis) in seeking to recover the amounts from you, including our own fees and the fees of any collection agency.

## **9. Personal Guarantee**

9.1. Where the client is a company or other separate legal entity (such as a trust), we require the client's obligations to be guaranteed by a natural person, such person to complete and sign the Guarantor Schedule under these Terms of Engagement.

9.2. The person who completes and signs the Guarantor Schedule personally guarantees full payment of our fees and guarantees compliance with the client's other obligations under these Terms of Engagement.

## **10. Trust Account**

10.1. We operate a trust account. All money received from you or on your behalf will be held to your credit in our trust account.

10.2. Payments out of the trust account will be made either to you or to others with your authority. Written authorisation from you (and if we are acting for more than one of you, from all of you) will be required when payment is to be made to a third party. Before making a payment to another account we may require verification of the account details by provision of (for example) a copy of a deposit slip, cheque or bank statement showing the account number, a signed authority from you including the bank account details, or a signed letter from the relevant financial institution providing bank account details.

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.

10.4. Where appropriate (for example, when we hold significant funds for you for more than a short

period of time), funds will be placed on call deposit with a bank registered under section 69 of the Reserve Bank of New Zealand Act 1989, subject to your having completed to the bank's satisfaction any request for information relating to the deposit or any certification required by the bank (such as a Tax Residency and Foreign Tax Information Self Certification Form). Under New Zealand law, we must collect and hold your tax residency information on file for 7 years to place your funds on interest-bearing investment. The information that is completed on the self-certification may be provided to our financial institution (ANZ Bank) who may disclose it to the IRD or other international tax entities.

If you do not consent for your details to be disclosed as aforementioned, or you do not complete any tax residency certification required by us or the bank, we will be unable to place your funds on call deposit and will assume that you instruct us to hold your funds in a non-interest bearing account.

10.5. Funds may also be placed on term deposit. Your written authority will be required for a term investment.

10.6. Interest earned from call deposits or term deposits, less withholding tax and an interest administration fee (also known as collection commission) payable to us, will be credited to you. In accordance with the Lawyers and Conveyancers Act 2006, moneys held in our trust account which are not held on call or term deposit will not earn you interest.

## 11. Residential Land Sale Proceeds

11.1. You acknowledge that we may be required by law to withhold residential land withholding tax (RLWT) from your residential sale proceeds and remit the RLWT to the Inland Revenue Department. You agree to provide us with all information we reasonably request to assess whether you are liable to pay RLWT. If you withhold providing us with such information, then you acknowledge we may assume that RLWT is payable and withhold the same.

## 12. Ownership and Management of Files and Documents

12.1. We will keep a record of all documents which we receive or create on your behalf on the following basis:

- We may keep a record electronically and destroy originals (except where the existence of an original is legally important such as in the case of wills & deeds).
- 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.

12.2. 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 1993 or any other law. We may charge you our reasonable costs for doing this.

12.3. We may, at our option, return documents (either in original hardcopy or electronic form) to you rather than retain them. If we choose to do this, we will do so at our expense.

12.4. Unless you instruct us in writing otherwise, you authorise us and consent to us (without further reference to you) to destroy (or delete in the case of electronic records) all files and documents in respect of services provided to you, 7 years after our engagement ends (other than any documents that we hold in safe custody for you or are otherwise obliged by law to retain for longer). We may retain documents for longer at our option.

12.5. Should you wish to have any of your files or documents uplifted, we may keep copies of that material before you collect it, and we may charge you our reasonable costs taking into account administrative and processing time.

12.6. You will own all documents we create on your behalf during our engagement, including any correspondence, reports and other documents prepared for your use.

12.7. We own the copyright and all other intellectual property rights in all documents or work we create in the course of providing services to you, but grant you a non-exclusive licence to use and copy the documents as you see fit for your own personal or commercial use. However, you may not permit any third party to copy, adapt or use the documents without our written permission.

12.8. We reserve the right to exercise a general lien over any and all files and documents we hold on your behalf while you owe us money either for services rendered or for any other reason.

### **13. Verification of Identity in Compliance with Legislation**

13.1. We are required by law to collect and retain certain information about our clients including for the purposes of verifying our client's identity. We may be required to undertake customer due diligence on you, persons acting on your behalf and other relevant persons such as beneficial owners and controlling persons. We may not be able to begin acting, or to continue acting, for you until that is completed.

By accepting our engagement, you agree to provide us, or a third-party provider, with all information and documents which we are required to collect and to complete the necessary verification of identification documents. You also agree to ensure that all information provided to us concerning you and any relevant person is accurate and complete.

13.2. We, or our third-party provider, may ask you to show us or provide us with documents verifying your identity (such as a passport, driver's licence and marriage certificate), including in the case of an organisation, documents as to its ownership and control and source of wealth or income. We are required by the Financial Transactions Reporting Act 1996 and the procedures for electronic registration of land transactions to take a copy of these documents in some transactions.

13.3. You must also provide any information and documents as soon as reasonably practicable where we reasonably request it in order for us to

meet our obligations under any law, including, without limitation, under the Anti-Money Laundering and Countering Financing of Terrorism

Act 2009. Any delay by you in doing so may hold up work on the matter.

13.4. We, or our third-party provider, may perform such customer verification checks as to your identity and checks as to the source of any funds associated with any transaction to which the services relate as required by law.

13.5. From time to time, reconfirmation may be required, or you may be contacted to update information and documents to ensure they are current.

### **14. Personal Information and Privacy**

14.1. In your dealings with us we will collect and hold personal information about you. If you are an organisation this may include collecting and holding personal information about your personnel. We may also source information from publicly available sources. We will use that information to undertake our business, carry out the engagement, make contact with you in the future about issues we believe will be of interest to you, and to comply with our legal obligations. Failure to provide information we request may prevent or hinder us from starting the engagement, or providing our services to our customary standards, or at all.

14.2. Our Privacy Policy applies as part of these Terms and our engagement with you. Please enquire with us for a copy of our full Privacy Policy. Our Privacy Policy can also be accessed via our website. You consent to us processing your personal information in accordance with our Privacy Policy.

### **15. Confidentiality**

15.1. We will hold in strict confidence all information concerning you or your affairs that we acquire through our work for you, to the fullest extent allowed by law and the New Zealand Law Society's Rules of Conduct and Client Care for Lawyers. We will not disclose any of this information to any other person except:

- to the extent necessary or desirable to enable us to carry out your instructions; or
- to the extent necessary for a third party engaged by us to provide advice or otherwise complete your instructions; or
- as expressly or impliedly agreed by you; or
- as necessary to protect our interests in respect of any complaint or dispute; or
- to the extent required or permitted by law.

15.2. You acknowledge that if we are required by law to disclose information to a third party, we may be prevented by law from telling you that we have done so.

15.3. Confidential information concerning you will, as far as practicable, be made available only to those within our firm, or engaged by us, who are providing legal services for you.

15.4. You agree that information disclosed to us that is in the public domain (other than through our fault) is not subject to confidentiality.

15.5. We will not disclose to you any confidential information which we have in relation to any other client.

## **16. Conflicts of Interest**

16.1. We are obliged to protect and promote your interests to the exclusion of the interests of third parties and ourselves as set out in the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008. This may result in a situation arising where we have a conflict of interest.

16.2. We have procedures in place to identify and respond to conflicts of interest or potential 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.

16.3. We may act for other clients whose commercial or legal interests differ from yours. However, we will not act without your consent for any other client where that client's instructions:

- are substantially related to any active matter on which we are working for you, or
- involve confidential information which we hold on your behalf that would disadvantage you if disclosed to the other client and there is a real risk that the personnel within our firm who would act for that other client would obtain that information.

## **17. Professional Indemnity Insurance**

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

## **18. Lawyer's Fidelity Fund**

18.1. The Law Society maintains the Lawyers Fidelity Fund to protect lawyers' clients 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 NZ\$100,000.00. The Fidelity Fund will not usually cover a client for any loss relating to money that a lawyer is instructed to invest on behalf of the client.

## **19. Limitation of Liability**

19.1. To the extent permitted by law, our total liability to you in connection with any matter (or series of related matters) on which you engage us is limited to the amount available to be payable under the Professional Indemnity Insurance we hold.

19.2. We do not accept liability for any loss arising from non-receipt of any communication, including email communications.

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



## 20. Client Care and Service Information

20.1. 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 the justice system.

20.2. 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 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.

If you have any questions, please visit [www.lawsociety.org.nz](http://www.lawsociety.org.nz) or call **0800 22 3030**.

## 21. Termination of Services

21.1. Where you give us any instruction and we rely on that instruction (for example, by giving an undertaking to a third party), you may not revoke

that instruction. However, you may terminate your engagement with us at any time on any matter by giving us reasonable notice in writing. This notice of termination will not affect any previous instructions you have given us that we have already acted on.

21.2. We may elect to discontinue your work if there is good cause, such as you not providing us with instructions in a sufficiently timely way, or in your inability or failure to pay our fee on an agreed basis, or if in our reasonable opinion our relationship has broken down, or except in litigation matters, you're adopting a course of action against our advice which we believe is highly imprudent, or in circumstances where we are legally (or otherwise) obliged to do so. If we take this course of action, we will give you reasonable notice so that you can arrange alternative representation and we shall give you reasonable assistance to find another lawyer. You will remain liable for our fees for the services reasonably and properly incurred by you up until the point of termination of our retainer.

21.3. If our retainer is terminated, you must pay to us all fees due up to the date of termination and all expenses incurred up to that termination date, including fees and costs for services reasonably provided to you until the point of termination. Provided that you have paid all of our invoices on all matters, we will (on request) provide to you all the documents that we have obtained or created through working for you on the matter(s) in question. Before we provide your documents to you, we may retain copies of your documents and records.

21.4. Upon termination, relevant sections of these Terms (including, but not limited to, the parts that relate to confidentiality, privacy, ownership of files, and limitation of liability) will continue to apply with respect to the instructions you gave us and the matter we have provided advice on for you. Should you be unsure what sections will continue to apply, please feel free to contact us to discuss.

## 22. Feedback and Complaints

22.1. We are committed to providing a professional, efficient, and courteous service to all our clients.



Client satisfaction is one of our primary objectives and feedback from clients is helpful to us. If you would like to comment on any aspect of the service provided by us, including how we can improve our service, please contact the staff member or director responsible for your matter. Alternatively, you are welcome to send us an email at [feedback@mitchellnewman.co.nz](mailto:feedback@mitchellnewman.co.nz)

22.2. If you have any concerns or complaints about our services, please raise them as soon as possible with the person to whom they relate. They will respond to your concerns as soon as possible. If you do not wish to talk to that person about your complaint, or you are not satisfied with the way that that person has dealt with your complaint, please raise the matter with the director responsible for your matter or send us an email at [complaints@mitchellnewman.co.nz](mailto:complaints@mitchellnewman.co.nz). We will endeavour in good faith to investigate your concerns objectively and

to generate a positive and speedy solution that is fair to all parties concerned. You will be provided a response from us in writing.

22.3. If you remain unsatisfied, the New Zealand Law Society has a complaints service to which you may refer the issue. Matters may be directed to the Canterbury office of the New Zealand Law Society at 307 Durham Street, Christchurch 8013; PO Box 565, Christchurch 8140, New Zealand; Telephone: **0800 261 801**  
Email: [complaints@lawsociety.org.nz](mailto:complaints@lawsociety.org.nz)

## **23. Amendments to these Terms**

23.1. We may at any time amend these terms of engagement, in which case we will notify you of the amended terms. Your continued use of our services will be deemed your acceptance of the amended terms.