

TERMS OF ENGAGEMENT

These are our standard terms of engagement. They apply for each matter where you instruct us to act for you unless varied by written agreement and your instructions will be deemed to be acceptance of these terms.

The scope and quality of work

We commit to providing you with the best legal services possible where the advice given will be based on our experience and professional judgement. This should not be taken as a guarantee regarding outcomes. Our duty of care is to you. Before any other person may rely on our advice, we must expressly agree to this.

Managing your file

The names and status of the person or persons who will have overall responsibility for the services we provide for you are set out in our letter of engagement. To manage your matter efficiently and cost effectively, please provide us with:

- Clear instructions, if possible in writing.
- Your expectations including your desired outcome, and any changes in these.
- All information and correspondence relevant to the matter.
- Important time constraints for completing the work.
- The name(s) of anyone else who has authority to give instructions on your behalf.
- Your current contact details.

Please do not hesitate to ask us to clarify any aspect that you may be unsure of.

Fees

The setting of fees is dependant on a number of factors and the manner in which they will be arrived at are set out in our engagement letter. Estimating fees is dependant on: the complexity, importance and urgency of a matter; the skill, specialised knowledge, responsibility and risk involved; the results achieved; and the time expended by relevant staff including their experience, reputation and ability.

Fee Estimates

Estimates are a guide to the costs that may be incurred on a matter. They are not a quote or maximum fee. We will keep you regularly updated on the progress of your matter and will advise you in advance whether the fee estimate needs to be adjusted. Estimates will normally be for our fee plus the expenses and disbursements we will incur on your behalf, and will exclude GST.

Fixed Fees

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.

Disbursements and expenses

In providing services we may incur disbursements or have to make payments to third parties on your behalf. GST is payable by you on our fees, disbursements and expenses.

An internal disbursement recovery fee of 7% of the total GST exclusive fee will be charged. This fee will typically include disbursements such as photocopying, faxes, couriers, national telephone toll calls and mobile telephone calls that do not exceed \$10 each.

We will invoice you all third party disbursements as they are incurred. Where any of these disbursement costs exceed \$150 we will ask for a payment in advance before we commence the work. Where an independent professional advisor is required to be engaged, it is expected that this fee will be paid by you prior to their engagement; or an independent arrangement be made between you and the independent professional concerned. In the event that your matter proceeds to court, we will require an advance payment to cover the preparation and time in court. We will advise you of this by telephone and/or in writing and will provide you with our trust account details so that payment can be made by direct debit.

Invoices

It is our practice to bill on a monthly basis where the matter is ongoing and on completion of the matter or on termination of our engagement. Invoices are payable within 7 days of the date of the invoice and upon completion of the matter unless alternative arrangements have been made with us. When we are holding money on your behalf in our trust account, we may draw on that money for our fees and disbursements

when invoiced. You authorise us to deduct our fees and disbursements from any judgment, settlement or other money received by us on your behalf. Although you may expect a third party to pay our invoices, or you may request us to direct our invoices to a third party, you remain responsible for the timely payment of our invoices.

Delay or difficulty in paying our invoices

If you anticipate having difficulty paying an invoice on time, please immediately contact our credit controller. We may be able to make alternative payment arrangements such as payment by instalments. You may be required to pay interest on any amount which is more than 7 days overdue. Interest will be calculated at the rate of 5 % above our firm's trading bank's 90-day bank bill buy rate as at the close of business on the date payment became due.

If your account remains unpaid we may not continue to act on your behalf. You will be liable for all costs associated with the collection and recovery of your overdue and unpaid account. Information you have provided to us may be used to assist in collecting an overdue account.

Professional Indemnity Insurance

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

Lawyers Fidelity Fund

The New Zealand 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. 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.

Questions and complaints

We maintain a procedure for handling questions or complaints by clients designed to ensure that these are dealt with promptly and fairly. Please state your concerns clearly in writing and address your letter to your Liaison Partner. Alternatively you may refer your concerns to the legal staff member acting for you, or you can contact the Finance Manager and/or Operations Manager by letter, phone and or email (as listed on our website). In addition, the New Zealand Law Society operates the Lawyers Complaints Service. To make a complaint to that service, phone 0800 261 201 to be connected to your nearest Complaints Service Office.

Privacy

We will hold in confidence all information concerning you or your affairs that we acquire during the course of acting for you. You have the right to access this information and you may request us to correct this information if it is not correct. 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 required by law or by the Law Society's *Rules of Conduct and Client Care for Lawyers*.

Under the Financial Transactions Reporting Act 1996 we are required to take a copy of documents verifying the identity of every new client. 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. We will of course, not disclose to you confidential information which we have in relation to any other client.

Termination

You may terminate our retainer or significantly modify your instructions at any time. Please advise us in writing as soon as possible. If on termination of our services, you request that we release your file to another solicitor, we do not guarantee the accuracy of third party information obtained within the file. Until we receive notification in writing we may continue with our original instructions that may incur further costs for you in the meantime.

As defined by the *Rules of Conduct and Client Care for Lawyers* there may be instances where we may be unable to act for you. These circumstances may include:

- Conflicts of interest.
- Your unwillingness or inability to pay our normal fee for the relevant work.
- Lack of available time.
- Instructions falling outside our normal field of practice.
- Instructions that could require us to breach any professional obligation.

We will always try to identify any issues in advance and discuss these with you. If for any reason we are unable to continue to act for you, we will advise you writing. 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.

Retention of files

You authorise us (without further reference to you) to destroy all files and documents for this matter (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. This does not include any documents we agree to hold for you in safe custody.

Records of all investment money and investment property will be kept in accordance with the Lawyers and Conveyancers Act (Trust Account) Regulations 2008 and the Privacy Act 1993. Records of your transactions are stored in electronic form. Any investment money or investment property we receive on your behalf cannot be used for the benefit of anyone other than you unless you owe us money in which case we may deduct the amount due from investment money we hold for you.

Trust Account

We maintain a trust account for all funds which we receive from clients (except monies received for payment of our invoices). Where funds are invested on Interest Bearing Deposit on your behalf a handling fee of 5% of the interest earned is charged.

Unsolicited Electronic Messages Act 2007

Under this act, you must consent to receiving commercial emails from us. Consent can be either explicit, inferred or deemed. We will infer that we have your consent to send you commercial emails from time to time unless you inform us otherwise by letter or email. The email address for unsubscribing to commercial emails is: unsubscribe@fortunemanning.co.nz.

Client Feedback

Your feedback is key to the continuing success of our quality management system. Any questions or comments that you may have regarding our work may be directed in writing to your Liaison Partner, our Finance Manager and/or our Operations Manager. Our contact details are: PO Box 4139 Auckland 1010, phone (09) 915 2401 or by email feedback@fortunemanning.co.nz.

Client Care and Service

The New Zealand 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 *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.lawyers.org.nz or call 0800261 801.

Any limitations on the extent of our obligations to you or any limitation or exclusion of liability are set out in our letter of engagement. We are entitled to change these Terms from time to time, in which case we will send you amended Terms.