

TERMS OF ENGAGEMENT

1. **General**
- 1.1 These Terms of Engagement (Terms) apply to any current engagement and also to any future engagement, whether or not we send you another copy of them. We are entitled to change these Terms from time to time, in which case we will send you amended Terms. Our relationship with you is governed by New Zealand law and New Zealand courts have exclusive jurisdiction.
2. **Services**
- 2.1 The services we are to provide for you (the Services) are outlined in our letter of engagement along with any further instructions that you provide to us in writing (or that we record in writing).
- 2.2 The names and status of the person or persons who will have the general carriage of or overall responsibility for the Services are set out in our letter of engagement.
- 2.3 In order to provide you with efficient advice and services, and to provide the most cost-effective service, it may be that part or all of your instructions will be delegated to other professionals in our firm.
3. **Your Obligations to Us**
- 3.1 **Availability:** If you have instructed us to attend to settlement of a sale or purchase on your behalf, you must be contactable on the day of settlement, should the need arise to contact you urgently.
- 3.2 **Information:** In order for us to carry out your instructions you have an obligation to ensure that we receive all relevant information when we are initially instructed to act. You must ensure that we are promptly advised of any change to known information, any new information or a change in your circumstances that may affect our ability to carry out your instructions. You are responsible for the accuracy of the information that you provide to us.
4. **Communications**
- 4.1 We will obtain from you contact details, including email address, postal address and telephone numbers. We may provide documents and other communications to you by email (or other electronic means). You will advise us if any of your contact details change.
- 4.2 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.
5. **Financial**
- 5.1 **Fees:** The basis upon which we will charge our fees is set out in our letter of engagement.
 - (a) 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 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 of the agreed scope and, if requested, give you an estimate of the likely amount of the further costs.
 - (b) Otherwise, we charge for our services according to criteria approved by the New Zealand Law Society. This includes charging for expertise, time spent, value, urgency, complexity and performance. 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 (Rules).
 - (c) Where our fees are calculated on an hourly basis, the hourly rates of the people we expect to undertake the work are set out in our letter of engagement. Any differences in those rates reflect the different levels of experience and specialisation of our professional staff. Time spent is recorded in six-minute units.
- (d) Hourly fees may be adjusted (upwards or downwards) to ensure the fee is fair and reasonable to take into account matters such as the complexity, urgency, value and importance of the Services.
- 5.2 **Disbursements and Third Party Expenses:** In providing the Services we may incur disbursements and payments to third parties on your behalf. You authorise us to incur these disbursements (which may include such items such as search fees, registration fees and courier charges) which are reasonably necessary to provide the Services. These will be included in our invoice to you, shown as "disbursements".
- 5.3 **Office Expenses and Anti-money Laundering Charges:** In addition to disbursements, we may charge a fee to cover out of pocket costs which are not included in our fee and which are not recorded as disbursements. These include items such as file opening, photocopying, printing, postage, phone calls. Where AML/CFT due diligence is required we will include a charge for attendances involved.
- 5.4 **GST:** 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.
- 5.5 **Invoices:** We may send interim invoices to you and on completion of the matter, or 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.
- 5.6 **Payment:** Property transaction accounts are to be paid at the time settlement is completed. In all other circumstances invoices are payable within 14 days of the date of the invoice, unless alternative arrangements have been made with us.
 - (a) 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.
 - (b) If you have difficulty in paying any of our accounts, please contact us promptly so that we may discuss payment arrangements.
 - (c) If your account is overdue we may:
 - (i) require interest to be paid on any amount which is more than 14 days overdue, calculated at the rate of 4% above the overdraft rate that our firm's trading bank charges us for the period that the invoice is outstanding;
 - (ii) stop work on any matters in respect of which we are providing services to you;
 - (iii) require an additional payment of fees in advance or other security before recommencing work;
 - (iv) 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.
 - (d) Payment may be made by bank cheque payable to "Fenton McFadden Trust Account" or by direct credit to our trust account number 06-0453-0012637-02 ANZ, Te Puke.
- 5.7 **Fees and disbursements in advance:** We may ask you to pre-pay amounts to us, or to provide security for our fees and expenses. We may do this, on reasonable notice, at any time.
- 5.8 **Estimates:** You may request an estimate of our fee for undertaking the Services at any time. If possible we will provide you with an estimate (which may be a range between a minimum and a maximum amount or for a particular task or step). 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.

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- Unless specified, an estimate excludes GST, disbursements and expenses.
- 5.9 **Third Parties:** 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.
- 5.10 **Trust Accounting:** We operate a trust account. All money received from you or on your behalf will be held to your credit in our trust account.
- (a) 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 will 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.
- (b) 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.
- (c) Unless it is not reasonable or practicable to do so, when we hold significant funds for you for more than a short period of time we will place them on call deposit with a bank registered under section 69 of the Reserve Bank of New Zealand Act 1989. Interest earned from call deposits, less withholding tax and an interest administration fee payable to us of 5% of the interest, will be credited to you.
6. **Confidentiality and Personal Information**
- 6.1 **Confidence:** 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.
- 6.2 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.
- 6.3 **Personal information and Privacy:** In our dealings with you we will collect and hold personal information about you. We will use that information to carry out the Services and to make contact with you about issues we believe may be of interest to you. Provision of personal information is voluntary but if you do not provide full information this may impact on our ability to provide the Services.
- 6.4 Subject to clause 6.1, 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.
- 6.5 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.
- 6.6 The information we collect and hold about you will be kept at our offices and/or at secure file storage sites (including electronic file storage sites) elsewhere.
- 6.7 **Verification of identity:** The Financial Transactions Reporting Act 1996 requires us to collect from you and to retain information required to verify your identity. We may therefore ask you to show us documents verifying your identity (such as a passport or driver's licence). We may retain copies of these documents. We may perform such other 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 we consider to be required by law.
- 6.8 **Reporting:** If we hold funds in an interest-bearing deposit with our bank on your behalf (including any judgment, sale proceeds, settlement amount, or other money), you authorise us to:
- (a) provide any information we hold relating to your United States Foreign Accounts Tax Compliance Act (FATCA) or Common Reporting Standard (CRS) status, or other FATCA or CRS matters, to Inland Revenue and to our bank if they request information to be able to meet their FATCA or CRS obligations; and
- (b) if you do not provide any such information we request, report your non-response, identity, and reportable balance to our banks and Inland Revenue (who will in turn pass this information to the relevant foreign tax authority).
- (c) Please ask if you would like more information about FATCA or CRS.
7. **Documents, Records and Information**
- 7.1 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 a record electronically 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.
- 7.2 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.
- 7.3 Where we hold documents that belong 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.
- 7.4 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 the Service 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.
- 7.5 We may, at our option, return documents (either in hard or electronic form) to you rather than retain them. If we choose to do this, we will do so at our expense.
- 7.6 We own copyright in all documents or work we create in the course of performing the Services 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.
8. **Conflicts of Interest**
- 8.1 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

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- and Client Care) Rules 2008 (Rules). This may result in a situation arising where we have a conflict of interest.
- 8.2 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.
9. **Duty of Care**
- 9.1 Our duty of care is to you and not to any other person. We owe no liability to any other person, including for example any directors, shareholders, associated companies, employees or family members unless we expressly agree in writing. We do not accept any responsibility or liability whatsoever to any third parties who may be affected by our performance of the Services or who may rely on any advice we give, except as expressly agreed by us in writing.
- 9.2 Our advice is not to be referred to in connection with any prospectus, financial statement, or public document without our written consent.
- 9.3 Our advice is opinion only, based on the facts known to us and on our professional judgement, and is subject to any changes in the law after the date on which the advice is given. We are not liable for errors in, or omissions from, any information provided by third parties.
- 9.4 Our advice relates only to each particular 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.
- 9.5 Unless otherwise agreed, we may communicate with you and with others by electronic means. We cannot guarantee that these communications 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.
10. **Client Care and Service**
- 10.1 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 instruction 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.
- 10.2 The obligations lawyers owe to clients are described in the Rules. Those obligations are subject to other overriding duties, including duties to the courts and to the justice system.
- 10.3 If you have any questions, please visit:
- www.nz-lawsoc.org.nz/hmcomplaints.asp; or
 - Phone the Law Society on (07) 838-0264.
11. **Limitations on our Obligations or Liability**
- 11.1 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.
12. **Termination**
- 12.1 You may terminate our retainer at any time.
- 12.2 We may terminate our retainer in any of the circumstances set out in the Rules including the existence of a conflict of interest, non-payment of fees, and failure to provide instructions.
- 12.3 If our retainer is terminated you must pay us all fees, disbursements and expenses incurred up to the date of termination.
13. **Feedback and Complaints**
- 13.1 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 Partner responsible for your business.
- 13.2 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 are not satisfied with the way that that person has dealt with your complaint, please raise the matter with the Partner responsible for your business. We will inquire into your complaint and endeavour in good faith to resolve the matter with you in a way that is fair to all concerned.
- 13.3 If you are not satisfied with the way we have dealt with your complaint the New Zealand Law Society has a complaints service to which you may refer the issue. You can call the 0800 number for guidance, lodge a concern or make a formal complaint. Matters may be directed to:
- Lawyers Complaints Service
PO Box 5041
Wellington 6140
New Zealand
Phone: 0800 261 801
- To lodge a concern: www.lawsociety.org.nz/for-the-community/lawyers-complaints-service/concerns-form
To make a formal complaint: www.lawsociety.org.nz/for-the-community/lawyers-complaints-service/how-to-make-a-complaint
Email: complaints@lawsociety.org.nz
14. **Professional Indemnity Insurance**
- 14.1 We hold professional indemnity insurance that meets or exceeds the minimum standards specified by the Law Society. We will provide you with particulars of the minimum standards upon request.
15. **Lawyers Fidelity Fund**
- 15.1 The 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.
- 15.2 The maximum amount payable by the Fidelity Funds by way of compensation to an individual claimant is limited to \$100,000.
- 15.3 Except in certain circumstances specified in the Lawyer & 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.