

TERMS OF ENGAGEMENT

1. **The purpose of this document**

1.1 This document:

- sets out the standard terms on which we do work for our clients;
- explains what you can expect from us and what you agree to when we work for you;
- includes information we are required to tell you under the New Zealand Law Society's Rules of Conduct and Client Care for Lawyers; and
- applies to any current work and to any future work we do for you (unless we agree in writing to change these terms).

1.2 Occasionally we may change these terms. If we make changes, we will send you the updated terms, which will apply to any work undertaken for you subsequent to your receipt of the same.

2. **Our letter of engagement for each job**

2.1 For each new job we do for you, we will give you a 'letter of engagement'. The letter will outline:

- what we will do for you on that job; and
- the person / partner with overall responsibility for that job. That person / partner will be the one we believe is most suited to that job and to our relationship with you. Other members of our staff may also be involved, under that person's / partner's supervision, where appropriate (such as where this enables us to do the job in a more efficient and timely manner). If we do not advise you in writing, then the person with overall responsibility will be the person you have instructed to do that job.

3. **Our duties to you**

3.1 When we do work for you, we will:

- protect your privacy and confidentiality;
- act competently, promptly and according to your instructions;
- protect and promote your interests
- give you clear information and advice;
- keep you informed about progress;
- treat you fairly and respectfully; and
- charge you a fee that is fair and reasonable,

subject to any overriding duties we have (e.g. to the courts and the justice system).

3.2 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.

4. **Your privacy and confidentiality**

4.1 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;
- it is necessary in order to carry out your instructions;
- the law requires us to; or
- the Rules of Conduct and Client Care for Lawyers permit us to.

4.2 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.

4.3 You agree that we may provide any information we hold relating to your United States Foreign Account Tax Compliance Act (FACTA) or Common Reporting Standard (CRS) status, or other FACTA or CRS matters, to IRD and to our banks if they request information to be able to meet their FACTA obligations. Please ask us if you would like more information about FACTA or CRS.

5. **How we avoid conflicts of interest**

5.1 When we do work for you, we will always protect and promote your interests.

5.2 Before we accept a job from you, we will do our best to find out if any conflict of interest exists.

5.3 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.

6. **Scope of our work**

6.1 We are not qualified to give:

- investment advice. You should get that advice from a qualified financial advisor;
- tax advice, save as to advice which relates to compliance process and is routine in conveyancing matters. It will NOT extend to tax obligations that arise from those transactions. You should get that advice from your accountant or tax advisor;
- insurance advice. You should get that advice from an insurance broker; or
- advice about foreign laws. We can help you to contact a lawyer in the other country.

6.2 Unless we agree to do so in writing, we will not:

- remind you about dates (e.g. PPSR, lease or consent expiry dates); or
- update advice after it is given.

7. **Intellectual property**

7.1 Unless we agree otherwise:

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

8. **Emails**

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

8.2 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. You should be cautious about using a smart phone in a public place when communicating to us in emails, particularly about money transfers.

8.3 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.

9. **Storing records**

9.1 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).

9.2 You agree that we may make a charge for providing you, or any other person authorised by you, with copies of documents held or retained by us.

10. **How you can help us**

10.1 You can help us by:

- giving us clear instructions;
- asking if there is anything you are not sure of;
- telling us if you have any important time limits;
- dealing promptly with any questions we have;
- telling us if your contact details change; and
- keeping in touch. Please ask if you are concerned about anything or do not hear from us when expected.

11. **Who we can accept instructions from**

11.1 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.

- 11.2 If we accept instructions to act on behalf of a company, which instructions are received from you as a director or shareholder of that company, then in consideration of our undertaking of that work for the company, you agree to and do hereby personally guarantee the company's due and punctual payment of all fees, disbursements and expenses incurred by it in account of our providing such advice. Your liability pursuant to this guarantee shall be as a principal obligator as to the whole of all such monies and is not contingent upon the company's liability to us.
- 11.3 If we receive instructions from you to act on behalf of the trustees of a trust and you are a beneficiary of such trust, or if you instruct us as one of the partners in a partnership, then in consideration of our undertaking that work for the trustee's or partnership as the case may be, you agree to and do hereby personally guarantee the trustees or partnerships due and punctual payment of all fees, disbursements and expenses incurred by it in account of our providing such advice. Your liability pursuant to this guarantee shall be as a principal obligator as to the whole of all such monies and is not contingent upon the liability of your co-trustee's or partners to us.
12. **Verifying your identity / Credit checks**
- 12.1 We are now required by law to verify your identity and obtain proof of your residential address. We are also required under the Anti-Money Laundering and Countering Financing of-Terrorism Act 2009 to report suspicious transactions and activity.
- 12.2 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.
- 12.3 We may provide information to credit agencies about any account you have failed to pay by the due date.
13. **Our fees and expenses**
- Fees*
- 13.1 We will always charge you fair and reasonable fees.
- 13.2 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). We will provide you with our hourly rates on request.
- 13.3 We will give you an estimate of fees if you ask for one. Special fee arrangements may be available for certain work (e.g. capped fees). Any estimate or special fee arrangement for a job will be outlined in our letter of engagement.
- 13.4 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, nevertheless you remain responsible for payment to us if the third party fails to pay us.
- 13.5 If you have any questions about our fees please ask.
- GST*
- 13.6 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*
- 13.7 We charge you a fee to cover office expenses (such as photocopying, printing, phone calls, faxing and file storage). This fee is calculated based on a percentage of the legal fees charged. These will be included separately in our account to you.
- Disbursements*
- 13.8 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, rates, mortgage repayments and agents' fees). These will be included separately in our account to you. Some disbursements may include a reasonable mark-up.
- Changes*
- 13.9 Fees, hourly rates, office expenses and disbursements may change from time to time [without notice].
- Legal aid*
- 13.10 In some cases, you may be eligible for legal aid. If you want to apply for legal aid, we will let you know whether we would be prepared to work on that job on a legally aided basis. If not, we will refer you to another firm.

13.11 Except in simple (short time period) transactions, we render accounts on a monthly basis.

14. Money handling procedures

14.1 We maintain a trust account for all funds we hold on behalf of clients (except funds we receive for payment of accounts).

14.2 If we hold funds over \$40,000.00 for longer than 1 month 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.

14.3 We generally charge a 5.5% administration fee on the gross interest earned on funds held in an interest-bearing deposit.

14.4 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).

14.5 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.

14.6 We will not transact money through our trust account without having first obtained the required documents to prove your identity and address.

14.7 Occasionally there may be 'small' balances left in credit in our trust account, which usually arise from protracted financial administration. These 'small' balances are ones where it is uneconomic in fee-paying time for the balances to be reconciled to determine how they arise. In such cases you authorise us to pay such small dormant balances to a charity without further reporting requirements to you. The firm currently supports the Sarjeant Gallery Trust Board.

15. Paying your account

15.1 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.

15.2 Our accounts must be paid no later than 14 days after the date of our account.

15.3 If you have any questions about an account, please contact us straight away.

15.4 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.

15.5 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.

15.6 We may charge interest on unpaid accounts at the rate of 12% per annum calculated and compounded on a daily basis on all unpaid accounts, which interest shall continue to accrue as a contractual sum due following entry of judgment and down to the date of payment in full.

15.7 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.

15.8 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.

15.9 If you have not paid your account(s) in full when required to do so, we may refer such account(s) to credit control and/or debt collection/enforcement company/agency (each a "Credit Control Agent") and instruct them to act in our behalf in collecting such overdue payments from you. If we instruct a Credit Control Agent to collect any overdue monies from you, in addition to an obligation to pay to us all such monies due together with interest thereon pursuant to clause 15.6, you will also be obliged to, and shall, indemnify us from all costs, expenses, charges and fees howsoever described or arising as a result resulting from of our engagement of the Credit Control Agent and any steps taken by the Credit Control Agent in our behalf in collection of all monies due to us, including (without limitation) the Credit Control Agent's fees, costs and expenses, court filing fees and disbursements, service and service agents costs, and solicitor costs on a solicitor and own client/indemnity basis, to the intent and effect that we shall be fully indemnified for all costs losses and expenses of, incidental to, or arising in any way from your non-payment of our accounts/monies in any way due to us. If we elect to undertake such debt collection/enforcement work ourselves, you acknowledge and agree that we will be entitled in doing so to charge you, at our ordinary commercial rates, for undertaking all steps necessary to recover, or to attempt to recover, such monies from you, and we shall likewise be entitled to recover on an indemnity

basis all fees costs and expenses arising as a result of our taking such steps/your failure to pay the monies due to us when required to do so (including, without limitation, all court filing fees and disbursements, service and service agents costs). We may recover these monies as a debt due from you.

15.10 If any proceedings arise out of our provisions of services to you, or are necessitated in order that we may recover any monies owing by you, or are otherwise (in our opinion) necessary to enforce or attempt to enforce our rights under these terms and conditions, then such proceedings shall be filed and determined in the Whanganui registry of either the District or High Court; this clause comprises an irrevocable agreement as to nomination of the venue and forum for the determination of any such disputes. Any proceedings filed other than in the Whanganui Registry of the appropriate Court shall be transferred to that registry, as of right, upon application by any party thereto.

15.11 If we are required to effect service of any documents upon you for any reason, including where personal service would otherwise be a requirement at law, you agree that we may effect service by couriering any such documents to the address you provided to us at the time of our engagement (or if we have earlier provided work to you, such address provided on that earlier occasion) via tracked delivery service. Such documents shall be conclusively deemed, for all purposes at law to have been personally served on you, upon the date of delivery to such address as evidenced by the courier delivery confirmation record. No defence predicated upon lack of notice or personal service may be advanced contrary to the provisions of this clause, and all such rights entitlements and defences are irrevocably waived by you. We may at our election, and in the alternative, effect service by sending such documents to you via email to the email address we have ordinarily used to communicate with you in the course of our instructions, in which instance service shall be deemed to have occurred upon successful delivery of such email to your email address, which delivery you acknowledge and agree shall comprise, for all purposes at law, personal service upon you and the fact of such service will be conclusively evidenced upon production of a delivery receipt.

16. **Guarantee**

16.1 If you are a company, partnership or trust we may require personal guarantees in addition to those given in clauses 11.2 and/or 11.3.

17. **Limiting our liability to you**

17.1 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.

17.2 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.

17.3 If you engage us to do work for the purposes of a business, you agree the Consumer Guarantees Act does not apply. Otherwise nothing in this clause 17 limits any rights you may have under the Consumer Guarantees Act.

17.4 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.

18. **Ending our engagement**

18.1 You may end our engagement at any time by giving us reasonable notice.

18.2 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 fail to secure guarantee(s) when required to do so; 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.

18.3 If we decide to stop working for you, we will give you reasonable notice and help you find another lawyer.

18.4 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.

- 18.5 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.

19. **New Zealand law applies**

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

20. **Professional Indemnity Insurance and Lawyers' Fidelity Fund**

- 20.1 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.
- 20.2 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).
- 20.3 Except in the context of Treadwell Gordon Solicitors Nominees Limited, Treadwell Gordon gives no investment advice.

21. **How we handle complaints**

- 21.1 We are committed to providing services of the highest professional standards.
- 21.2 We will deal with any complaints promptly and fairly.
- 21.3 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 Practice Manager by phone, post or email to Jacqui Powell – (06) 3490570 / jep@treadgord.co.nz.
- 21.4 The New Zealand Law Society also has a complaints service. Please telephone 0800 261 801 for information and advice about making a complaint.

22. **Client care and service information**

- 22.1 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:

- 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 overriding duties, including duties to the courts and to the justice system.

If you have any questions, please visit 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 31 May 2018