

SCHEDULE 2

Terms of Engagement and New Zealand Law Society Client Care and Service Information

TERMS OF ENGAGEMENT

These Standard Terms of Engagement (“Terms”) apply in respect of all work carried out by us for you, except to the extent that we otherwise agree with you in writing.

1 Services

1.1 The services which we are to provide for you are outlined in Schedule 1 of our engagement letter.

2 Financial

2.1 Unless we have provided you with a fixed fee quote in writing our fees will be calculated in accordance with the New Zealand Law Society and will take into account several factors including specialised knowledge, skills or responsibility required, the amounts involved, the importance of the matter, urgency and the results achieved.

2.2 We often provide estimates of the likely fees based on our experience with similar matters. The estimates are given as a guide only and not as a fixed quotation. The amount of the final fee may be more or less than the estimate depending on all the circumstances. Any estimate by us is not a quote or a fixed fee, nor is it a cap on what may be charged by us. If we are going to significantly exceed any estimate provided by us we will contact you to discuss a revised estimate.

2.3 In addition to our fees we will also charge you for

- (a) any third party disbursements incurred by us on your behalf. These disbursements may include courier costs, court filing fees, travel costs, Council rates, and LIM fees. We reserve the right to request payment of these disbursements from you in advance, and
- (b) other office costs which we incur as a consequence of our services being provided to you. These costs may include LINZ search and registration fees, legal forms, photocopying, telephone, and facsimile fees.

2.4 GST (if any) is payable by you on our legal fees and office costs.

2.5 For a variety of reasons some matters are not completed. If this occurs, we will charge you for the work undertaken and costs incurred up to the time of termination. In some circumstances, we may be required to incur additional time or expense following the completion or termination of a matter. We will charge for this in the normal way.

We are happy to discuss any aspect of our fees and charges with you at any time.

2.3 Invoices

We will send interim invoices to you, usually monthly and on completion of the matter, or termination of our engagement. We may also send you an invoice when we incur a significant expense.

2.4 Payment

Invoices are payable within 14 days of the date of the invoice, unless alternative arrangements have been made with us. We will require interest to be paid on any amount which is more than 7 days overdue unless other arrangements are made. Interest will be calculated at the rate of 5% above our firm’s main trading bank’s 90-day bank bill buy rate as at the close of business from the date upon which payment was due.

2.5 **Security**

We may ask you to pre-pay amounts to us on account of our fees and expenses. You authorise us:

- (a) to debit against amounts pre-paid by you; and
- (b) to deduct from any funds held on your behalf in our trust account any fees, expenses or disbursements for which we have provided an invoice.

2.6 **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.

3 **Confidentiality**

3.1 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) to the extent required by law or by the Law Society's Rules of Conduct and Client Care for Lawyers.

3.2 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.

3.3 We will of course, not disclose to you confidential information which we have in relation to any other client.

4 **Termination**

4.1 You may terminate our retainer at any time.

4.2 We may terminate our retainer in any of the circumstances set out in the Law Society's *Rules of Conduct and Client Care for Lawyers*.

4.3 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.

5 **Retention of files and documents**

5.1 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.

6 **Conflicts of Interest**

6.1 We have procedures in place to identify and respond to 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 Law Society's *Rules of Conduct and Client Care for Lawyers*.

7 **Duty of Care**

7.1 Our duty of care is to you and not to any other person. Before any other person may rely on our advice, we must expressly agree to this.

7.2 Our services do not include advice on the quality of any investment

8 **Trust Account**

8.1 We maintain a trust account for all funds which we receive from clients (except monies received for payment of our invoices). If we are holding significant funds on your behalf we will normally lodge those funds on interest bearing deposit with a bank. In that case we will charge an administration fee of 7.5% of the interest derived.

8.2 If you deposit funds to our trust account by direct credit, or arrange for another person to do so on your behalf, it is your responsibility to advise us of this. You can advise us as follows:

- a) by an email to the person who is completing work for you, or to enquiries@wainlaw.co.nz, or a telephone call to us and;
- b) by including your name in the direct credit banking reference. Please also include your invoice number or client number if you are aware of this.

8.3 If you deposit funds to our trust account, and those funds are required within 5 working days for a settlement, it is **your responsibility** to ensure that these are **cleared funds** which can be drawn on. This can be as follows:

- a) by delivering a bank cheque to us payable to Wain & Naysmith Limited Trust account or;
- b) by having funds transferred to our trust account **and having your bank forward us a letter by fax or email confirming that the funds have been deposited, that these are cleared funds, will not be reversed, and may be drawn on.**

9. Professional Indemnity Insurance:

9.1 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.

9.2 Our liability to you is limited to the amount of \$500,000.00 unless otherwise negotiated and agreed. Please let us know if you require greater coverage, and we will endeavour to arrange that as required.

9.3 No legal proceedings may be commenced later than two years after the date on which the party bringing the claim became aware or ought reasonably to have become aware of the facts giving rise to the claim. In any event, no legal proceedings may be commenced more than four years after the date on which the facts giving rise to the claim occurred.

10. General

10.1 These Terms apply to any engagement and also to any future engagement, whether or not we send you another copy of them.

10.2 We are entitled to change these Terms from time to time, in which case we will send you amended Terms.

10.3 Our relationship with you is governed by New Zealand law and New Zealand courts have nonexclusive jurisdiction.

11. Feedback

11.1 Client satisfaction is important to us. Your feedback is very helpful. If you would like to make any comment about our services please forward this to the director responsible for your file, or alternatively to our Practice Manager, Kirsty Crawford.

INFORMATION FOR CLIENTS

Set out below is the information required by the *Rules of Conduct and Client Care for Lawyers of the New Zealand Law Society* ("Law Society").

1 **Fees:**

The basis on which fees will be charged is set out in our letter of engagement.

2 **Professional Indemnity Insurance:**

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.

3 **Lawyers Fidelity Fund:**

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. 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.

4 **Complaints:**

We maintain a procedure for handling any complaints by clients, designed to ensure that a complaint is dealt with promptly and fairly.

If you have a complaint about our services or charges, you may refer your complaint to the person in our firm who has overall responsibility for your work.

If you do not wish to refer your complaint to that person, or you are not satisfied with that person's response to your complaint, you may refer your complaint to one of the directors or to our office manager Duncan Carr.

They may be contacted as follows:

- by letter;
- by email at enquiries@wainlaw.co.nz;
- by telephoning them at (03) 520 6103.

The Law Society also maintains a complaints service and you are able to make a complaint to that service. To do so you should contact the Lawyers Complaints Service at PO Box 494 Wellington 6140, telephone 0800 261 801, fax 04 471 0375.

5 **Persons Responsible for the Work:**

The names and status of the person or persons who will have the overall responsibility for the services we provide for you are set out in our letter of engagement:

6 **Client Care and Service:**

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

If you have any questions, please visit www.lawsociety.org.nz.

7 **Limitations on extent of our Obligations or Liability:**

Any limitations on the extent of our obligations to you or any limitation or exclusion of liability are set out in our terms of engagement.