

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 our engagement letter to you.

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 consider 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, and
- (b) other office costs which we incur on your behalf. These costs may include LINZ search and registration fees, legal forms, and photocopying cost.

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.

2.6 **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.

2.7 **Payment**

Invoices are payable within 14 days of the date of the invoice unless alternative arrangements have been made with us.

2.8 **Advance payment for costs**

We may ask you to pay us an amount 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.

2.9 **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 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 while acting for you. We will not disclose 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 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.

8 Trust Account

8.1 We maintain a trust account for all client funds (except money 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. We will only lodge these funds on interest bearing deposit if the net return to you is likely to be over \$100.00.

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 correctly identify our trust account. Due to the risk of Cyber-crime, you should not rely on email for our trust account details before paying money to us. We are not responsible for any loss if this occurs. For any significant sum you should rely on an account number we have provided to you face to face at the office, or you should telephone the office to confirm the account number

Please also advise us once funds are paid to us by

- an email or telephone call to us or;

- 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.

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. This liability limitation amount will accrue to the benefit of any director or employee or agent of Wain & Naysmith Limited who may have acted in relation to the services provided to you, so that in no circumstances shall such person be liable for more than this amount. Please let us know if you require greater coverage, and we will endeavour to arrange that as required.

9.3 If at your request, we provide services to other third parties in the course of any matter (or various related matters) on which you engage us, all of them and you will be subject to this limitation on our liability. You must ensure all those other third parties agree to this.

10 Tax and other Specialist Advice

10.1 We are not tax advisors, and do not provide tax advice in relation to income tax, or GST or the Brightline rules. It is not our responsibility to check tax consequences for you before completing a transaction or confirming a contract for sale and purchase unconditional on your behalf. If you have any questions about tax implications of your proposed transaction, you should consult a suitable tax advisor. We can assist by referring you to a suitable advisor if requested to do so.

10.2 We are not financial advisors, and do not provide advice on the quality or wisdom of any investment. We can assist by referring you to a suitable advisor if requested to do so.

10.3 We are not building or engineering specialists. If you have any questions about building or engineering issues, you should consult a suitable expert. We can assist by referring you to a suitable expert if requested to do so.

10.4 Although we may discuss Council records with you, you must make your own assessment in relation to Council property records, and issues relating to a Land Information Memorandum ("LIM"). It is not our responsibility to check these issues for you before completing a transaction or confirming a contract for sale and purchase unconditional on your behalf. If you have any questions about Council records or a LIM you should consult a suitable expert. We can refer you to a suitable expert if requested to do so.

11 **Anti-Money Laundering and IRD numbers**

We must comply with requirements relating to anti Money Laundering and Land Transfer legislation. To do so we will usually require information about you relating to identification, address and IRD numbers. For AML requirements, options include:

- (a) Aply. We use a biometric verification service called Aply - see <https://www.aplyid.com> . This requires you to have a mobile phone with a camera, and a current passport or driver's licence. If you wish to complete this, please confirm your mobile phone number so we can send through the relevant text message link to you. The process then takes approximately 5 minutes.
- (b) Certified copies. Alternatively, you can visit us or a local JP/solicitor/notary public/court registrar with your documents to be certified.

Tax number/s. For Land Transfer procedures we will often also need;

- (i) Your New Zealand IRD number and
- (ii) Any overseas tax number if you are a tax payer overseas.

This is a requirement regardless of whether tax is payable in relation to the transaction or whether you have ever been a taxpayer in New Zealand. For example, if you are registered as an owner on a title you will almost always need a NZ IRD number if you wish to sell or otherwise dispose of that property. In such circumstances, it will be your responsibility to obtain an IRD number if one has not yet been issued for you.

12 **General**

12.1 These Terms apply to any engagement and to any future engagement, whether we send you another copy of them.

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

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

13 **Feedback**

13.1 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 enquiries@wainlaw.co.nz.

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.

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.
- 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.