

LAWYERS

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‘Standard Terms of Engagement’

1. Introduction

1.1 These Standard Terms of Engagement (“Terms”) have been prepared subject to the obligations of lawyers under the Lawyers and Conveyancers Act 2006 (“LCA”) and the Rules of Conduct and Client Care for Lawyers (“LCCC Rules”).

1.2 The Terms:

- (a) apply in respect of all work carried out by us for you, except to the extent that we otherwise agree with you in writing; and
- (b) are to be read in conjunction with our accompanying engagement letter, and ‘Information for Clients’ provided.

2. Services

2.1 The legal services we are to provide for you are outlined in our engagement letter.

3. Financial

3.1 *Legal Fees*

- (a) The fees we will invoice you, or the manner in which they will be arrived at, are set out in our engagement letter.
- (b) If the engagement letter specifies a fixed fee, we will invoice this for the agreed scope of our legal 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 legal services outside the agreed scope and, if requested, give you an estimate of the likely amount of the further costs.
- (c) Where our legal fees are calculated on an hourly basis, the hourly rates are set out in our engagement letter. The differences in those rates reflect the experience and specialisation of our professional staff. Time spent will be recorded in 6-minute units, with time rounded up to the next unit of 6 minutes.

3.2 *Fair and Reasonable*

The LCCC Rules require that the fee must be “fair and reasonable for the services provided, having regard to the interests of both client and lawyer and having regard also to the factors” set out in the **appendix** to these Terms.

3.3 *Disbursements and Expenses*

In providing legal services we may incur disbursements or have to make payments to third parties on your behalf. These will be included in our invoice to you when the expense is incurred. We may require an advance payment for the disbursements or expenses which we will be incurring on your behalf. For example, these disbursements or expenses may include Government or territorial authority search costs and fees, and related agency fees, Land Information New Zealand (LINZ) search, registration and related agency fees, and Law Society Library research costs. Additionally, with your prior approval, the fees and disbursements of any other solicitor, firm of solicitors or barrister retained, or the fees and costs of other consultants and experts payable but with you remaining responsible for payment direct as provided below.

3.4 *GST (if any)*

Is payable by you on our fees and charges.

3.5 *Invoices*

Depending on the nature of the instructions and the timeframe estimated to complete the required legal work we will send interim invoices to you, usually monthly and on completion of the matter, or on termination of our engagement. As mentioned, we may also send you an invoice when we incur an expense on your behalf for which we are out-of-pocket.

3.6 *Payment*

Invoices are payable within 14 days of the date of our invoice, unless alternative arrangements have been made with us. We may require interest to be paid on any overdue amounts. Interest will be calculated on a daily basis at a rate 2% per annum above the rate our firm's bank charges us on our overdraft facility from time-to-time, and is payable from the date payment became due.

3.7 *Security*

We may ask you to pre-pay amounts to us, or to provide security for 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.

3.8 *Third Parties*

There may be circumstances where you have an expectation to be reimbursed by a third party for our fees and expenses, or you may request that our invoice(s) be directed to a third party for payment. One example is where you may have a tenant who is liable to reimburse all or part of your legal costs and expenses under the relevant lease, and there may be other examples. Even if we agree to our invoice(s) being so re-directed in any such case, you remain responsible for payment to us if the third party fails to pay us within the 14-day time period stipulated. This is because you are our client, not the third party. We are not party to the contract you may have with the third party, eg: the lease in the above example.

3.9 *Other Firms of Solicitors/Barristers/Consultants*

You are directly responsible for the payment of the fees and disbursements of any other firm of solicitors, barrister or consultants whom, with your consent, we instruct on your behalf to assist us with or provide the legal services described in the engagement letter.

4. Information and Confidentiality

4.1 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 LCCC Rules.

4.2 Confidential information concerning you will as far as practicable be made available only to those persons within our firm who are providing the legal services for you, or to any other firm of solicitors, barrister or consultants whom, with your consent, assist us to provide you with the legal services.

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

5. Termination

- 5.1 You may terminate our retainer at any time.
- 5.2 We may terminate our retainer in any of the circumstances set out in the LCCC Rules, namely where:
- (a) the lawyer is discharged from the engagement by the client; or
 - (b) the lawyer and the client have agreed that the lawyer is no longer to act for the client; or
 - (c) the lawyer terminates the retainer for good cause and after giving reasonable notice to the client specifying the grounds for termination.
- 5.3 The term 'good cause' as defined in the LCCC Rules includes:
- (a) instructions that require the lawyer to breach any professional obligation;
 - (b) the inability or failure of the client to pay a fee on the agreed basis or, in the absence of an agreed basis, a reasonable fee at the appropriate time;
 - (c) the client misleading or deceiving the lawyer in a material respect;
 - (d) the client failing to provide instructions to the lawyer in a sufficiently timely way;
 - (e) except in litigation matters, the adoption by the client against the advice of the lawyer of a course of action that the lawyer believes is highly imprudent and may be inconsistent with the lawyer's fundamental obligations.
- 5.4 If our retainer is terminated then you must pay us all fees due up to the date of termination and all expenses incurred up to that date. You authorise us to retain copies of your documents and records.

6. Retention of Files and Documents

- 6.1 You authorise us (without further reference to you) to destroy all or any of our files and documents relating to your affairs (other than any documents we hold in safe custody for you) 7 years after our engagement ends, or earlier if we have stored files and documents in an electronic format. Alternatively, if we so desire, we may return your files and documents to you.

7. Conflicts of Interest

- 7.1 We have procedures in place to identify and respond to any 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 LCCC Rules.

8. Duty of Care

- 8.1 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 in writing.

9. 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 to you in any way whether directly or indirectly in connection with or as a consequence of our provision of the legal services to you are set out in our engagement letter.

10. Complaints

The LCCC Rules require that all practising lawyers establish and maintain appropriate procedures for handling complaints by clients to ensure that each complaint is dealt with promptly and fairly.

The procedure we maintain for handling any complaints by clients designed to ensure that a complaint is dealt with promptly and fairly is set out in our 'Information for Clients' provided to you.

11. Trust Account

- 11.1 We maintain a trust account for all funds which we receive from or on behalf of 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 our bank. In that case we will charge an administration fee of 5% of the interest earned.

12. Intellectual property/copyright

- 12.1 We retain intellectual property and copyright in all documents we prepare for you in our provision of the legal services. The term "documents" includes our precedents on which they are based. You are entitled to use the documents we prepare for you only in respect of our provision of the legal services, and not for any other purpose, and in any event contingent on payment by you to us of all legal fees, disbursements and expenses due and owing to us as provided in our engagement letter. We may, at your expense, provide you with additional read-only, .pdf, or hard copies of the documents, but we are not obliged to do so, and in any event not in Word or other editable form. If we agree to provide you with documents in Word or other editable form we reserve the right to withdraw at any time our permission for you to use, complete or edit them. These terms are also designed to protect you, as in our experience clients may make errors completing documents, which may weaken their contractual position and risk incurring high legal costs to rectify contracts and resolve disputes.

13. General

- 13.1 These Terms apply to any current engagement and also to any future engagement, whether or not we send you another copy of them.
- 13.2 We are entitled to change these Terms from time-to-time, in which case we will send you amended Terms. The latest version of our terms will be published on our web site www.r-r.co.nz
- 13.3 Our relationship with you is governed by New Zealand law and New Zealand courts have non-exclusive jurisdiction.

Appendix

Fair and Reasonable Fee Factors – Rule 9.1 LCCC Rules

The factors to be taken into account in determining the reasonableness of a fee in respect of any service provided by a lawyer to a client include the following:

- (a) The time and labour expended.
- (b) The skill, specialised knowledge, and responsibility required to perform the services properly.
- (c) The importance of the matter to the client and the results achieved.
- (d) The urgency and circumstances in which the matter is undertaken and any time limitations imposed, including those imposed by the client.
- (e) The degree of risk assumed by the lawyer in undertaking the services, including the amount or value of any property involved.
- (f) The complexity of the matter and the difficulty or novelty of the questions involved.
- (g) The experience, reputation, and ability of the lawyer.
- (h) The possibility that the acceptance of the particular retainer will preclude engagement of the lawyer by other clients.
- (i) Whether the fee is fixed or conditional (whether in litigation or otherwise).
- (j) Any quote or estimate of fees given by the lawyer.
- (k) Any fee agreement (including a conditional fee agreement) entered into between the lawyer and client.
- (l) The reasonable costs of running a practice.
- (m) The fee customarily charged in the market and locality for similar legal services.