

# TERMS OF ENGAGEMENT

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Thank you for engaging us to carry out work for you, we value our relationship with you. Please take time to read this document so that you understand the terms of our engagement.

## 1. Our Terms of Engagement

- a. This document sets out the standard terms and conditions ('Terms') on which Gallaway Cook Allan ('we') carry out work for our clients.
- b. These Terms include certain information we are required to provide under the Rules of Conduct and Client Care for Lawyers issued by the New Zealand Law Society.
- c. The person named in our letter of engagement will be the client ('you').
- d. These Terms will apply whenever you ask us to carry out work for you. You don't need to sign any documents to confirm that you accept these Terms. By engaging us to act for you, you confirm your acceptance.
- e. Occasionally, we may change these Terms. Please refer to [Terms of Engagement](#) for the most up to date version of these Terms.

## 2. Our Letter of Engagement

- a. We will send you a letter of engagement every time you ask us to carry out work for you on a new matter (unless we agree an alternative arrangement with you). This letter will confirm:
  - what you have asked us to do for you; and
  - the partner who will have overall responsibility for all work done on your matter.
- b. Our letter of engagement will also usually set out our current hourly rates. These may not be included if we agree an alternative fee arrangement with you.
- c. If you have any questions or comments about any letter of engagement we send you, please let us know as soon as you can. It is really important that we clearly understand what you have asked us to do for you and your expectations of us.

## 3. New Zealand Law

- a. Our relationship with you is governed by New Zealand law and the exclusive jurisdiction of the New Zealand courts.

*We have various legal obligations and professional responsibilities whenever we carry out work for you.*

## 4. Our Duty of Care to You

- a. In carrying out work for you we will:
  - use all due care and skill;
  - follow your instructions;
  - keep you informed of our progress; and
  - comply with our professional responsibilities and obligations.
- b. Nobody else can rely on the advice that we give to you and you may not disclose our advice to anybody else (unless we agree in writing or you are required to do so by law).

## 5. Client Care and Service

- a. We have legal obligations and professional responsibilities to you which are set out in the Rules of Conduct and Client Care for Lawyers issued by the New Zealand Law Society. The following statement summarises these responsibilities.
- b. Whatever legal services we provide to you, the Rules require that we 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.
- c. The obligations described in the Rules of Conduct and Client Care for Lawyers 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](http://www.lawsociety.org.nz) or call the New Zealand Law Society on 0800 261 801.

## 6. Conflicts of Interest

- a. We have procedures in place to identify and deal with conflicts of interest.
- b. We will let you know if we find a conflict of interest, or a potential conflict of interest, and tell you how we plan to deal with that conflict.
- c. Our obligations under the Rules of Conduct and Client Care for Lawyers may mean that we have to stop working for you, or the other client, or both.

*It is important that you understand how we calculate our fees, the process for paying our fees, what other payments you may be required to make for work we carry out for you and how we deal with your money held in our trust account.*

## 7. Our Fees, Expenses and Disbursements

- a. Our fees for all work we carry out for you will be fair and reasonable.
- b. Our fees are usually calculated based on the time we spend on your matter at our hourly rates set out in our letter of engagement. Sometimes we adjust our fees to take into account other relevant factors, such as the complexity of the work, the skill and specialist knowledge required to carry out the work, the urgency within which our advice is required, and the risks involved in carrying out the work.

- c. Please ask us if you would like us to give you an estimate of our fees. If we give you an estimate, we will let you know as our work for you progresses if the estimate is likely to be exceeded (and the reasons for that).
- d. If the scope of work that you need us to carry out is well-defined then we may be able to give you a fixed price for that work.
- e. Our hourly rates and all fees charged (including estimates and fixed fees) are exclusive of GST unless otherwise stated.
- f. We also charge a fee for office expenses that covers things like printing and photocopying, mobile and toll calls, postage, and storing your files. This is a fixed fee, calculated based on the amount of total fees charged for the work we carry out for you on each matter.
- g. From time to time we may make payments on your behalf and/or incur expenses in carrying out your work. Examples of these payments and expenses include court filing fees, search fees, registration fees, courier charges and travel costs. We will charge you for these payments and disbursements, which will be identified separately in our invoice to you.
- h. Please ask us if you have any questions about our fees, office expenses or disbursements.

## 8. Our Invoices

- a. We usually send invoices monthly (so that you are kept fully informed of our fees as work on your matter progresses) and also when all work on a matter has been completed.
- b. We may also send you an invoice if we incur a significant expense on your behalf.
- c. Our invoices are due for payment within 14 days of the date of the invoice.
- d. If you receive an invoice from us and you would like to speak to someone about it, please contact the partner who has overall responsibility for your work or Kate Robertson, our Credit Controller on (03) 474 9797.
- e. At your request or with your approval we may send our invoice for work carried out on your matter to a third party for payment. If that third party does not pay us, you will be responsible for paying our invoice.

## 9. Payments

- a. There may be times when we ask you to prepay fees, expenses and/or disbursements. If you make any advance payments to us, we will hold these amounts in our trust account and deduct our fees, expenses and/or disbursements when we issue our invoice that relates to these amounts.
- b. If we are holding funds in our trust account on your behalf, you agree that we can deduct any invoiced fees, expenses and/or disbursements.
- c. If you don't pay an invoice on time, and you haven't contacted us to discuss your invoice, we may decide to:
  - stop all work we are doing for you; and
  - hold on to any of your property (including files and documents) until you have paid our invoice in full. We may also ask you to pay our fees in advance and/or provide other security before we start working on your matter(s) again.
- d. We will charge interest of 10% per annum compounding monthly on any amount not paid after 60 days.
- e. If any amount that you owe us continues to remain unpaid we may take action to recover that amount and charge you the costs we incur in taking such action.
- f. If we don't charge interest and/or take other action to recover costs from you straight away, that doesn't mean we have waived our rights to do so.

## 10. Our Trust Account

- a. We operate a trust account for all funds we hold on behalf of our clients (except funds received for payment of our invoices).
- b. Unless you tell us not to, we may deposit any funds we hold on your behalf into an interest-bearing deposit account with a bank, either on call or for a fixed term. We are not responsible for obtaining the best interest rate available from any bank or for any loss of interest that you suffer as a result of any delay in placing your funds on interest-bearing deposit.
- c. We charge a 7.5% administration fee on the gross interest earned on funds held on your behalf on interest-bearing deposit.

- d. We will deduct withholding tax from gross interest earned unless you provide us with an exemption certificate. If you provide us with your IRD number, you can elect to have withholding tax deducted at your applicable rate. If you do not provide us with your IRD number then we are required to deduct it at the default rate.

*It is important that we know who can instruct us to carry out work for you.*

## 11. Taking Instructions From you

- a. Unless you tell us otherwise:
  - if you are a couple, we can take instructions from either of you;
  - if you are a company, we can take instructions from any director or employee of the company, or any other person you have approved to instruct us;
  - if you are a trust, any trustee or officer of the trust;
  - if you are a partnership, any partner or officer of the partnership.

*We prefer email as the most efficient way to keep in touch with you.*

## 12. Our Emails to You

- a. We may communicate with you by email. Please let us know if you prefer an alternative method of communication.
- b. We will take all reasonable care but cannot guarantee that our emails to you will always be:
  - free from defects;
  - secure; or
  - received promptly, or at all.
- c. Sometimes we send certain clients emails that might not relate to the work we are currently doing but that contain information that we think might be of interest. Please let us know if you do not want to receive these types of emails.

*We know that your information and documents are important to you and we have certain responsibilities to you in relation to how we protect and store your information and documents.*

### **13. Your Confidentiality**

- a. Client confidentiality is very important to us. We will treat all information relating to you, and the work we do for you, as strictly confidential.
- b. We will not use or disclose any of this information unless:
  - you tell us that we can; or
  - we need to, to carry out your instructions;
  - we have to, to comply with legal obligations;
  - we are allowed to under the Rules of Conduct and Client Care for Lawyers.
- c. We may 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 the Inland Revenue Department and to our banks if they request information to be able to meet their FATCA or CRS obligations. Please ask us if you would like more information about FATCA or CRS.

### **14. Anti-Money Laundering**

- a. Under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AMLCFT Act) we are required to verify your identity, and in some circumstances the source of funds for a transaction. This is referred to in the AMLCFT Act as 'customer due diligence'
- b. You authorise us to collect information from you, and use that information, to undertake customer due diligence and carry out any ongoing monitoring required under the AMLCFT Act. You accept that we may use a third party service provider to assist us with this due diligence process and any ongoing monitoring, and that this may incur a charge that may be passed on to you.
- c. You acknowledge that we cannot act (or continue to act) for you, or complete any transactions through our trust account for you, until customer due diligence has been completed.

### **15. Storing Your Records**

- a. You acknowledge that we operate an electronic office and you authorise us to destroy paper files and documents (including original documents) once we have made an electronic copy of them. If you tell us not to destroy any original documents you give to us, these may be returned to you once we have made an electronic copy.
- b. We will not destroy any documents we have agreed to hold in safe custody for you.
- c. We may dispose of documents relating to work we are carrying out for you that:
  - are duplicate copies; or
  - do not contain substantive information.
- d. You agree that we may charge for providing you, or any other person authorised by you, with copies of documents we are holding for you.
- e. You authorise us to destroy or delete all hard copy and electronic files and documents relating to work we have done for you seven years after all work on the relevant matter has been completed.

*We have our limitations, both in terms of what matters we can advise you on and our liability to you.*

### **16. Limits On Our Advice**

- a. There are some things that we are not qualified to give advice about, including:
  - tax advice;
  - investment advice;
  - advice on laws that apply in other countries.
- b. If you need advice on any of the above matters we can help you find an appropriate advisor.

### **17. Our Professional Indemnity Insurance**

- a. We hold professional indemnity insurance at a level that exceeds the minimum standards specified by the New Zealand Law Society. Please let us know if you would like further information about our insurance.

## **18.Lawyers' Fidelity Fund**

- a. The New Zealand Law Society maintains a Lawyers' Fidelity Fund to compensate clients who suffer theft of any money or property that has been entrusted to lawyers. An individual claimant can be paid up to \$100,000.
- b. In most cases the Lawyers' Fidelity Fund will not be available to compensate you if you have instructed us to invest money on your behalf and you have lost money on that investment.

## **19.Limiting Our Liability to You**

- a. To the extent permitted by law, our total aggregate liability to you (or any other persons) in connection with any matter (or series of related matters) on which you engage us, is limited to the greater of:
  - The amount paid out for that liability under any relevant insurance held by us, up to a maximum of NZ\$20 million (including interest and costs); or
  - NZ\$1 million or (if greater) the amount of five times our applicable fee (excluding our service charge, disbursements and GST).
- b. To the extent permitted by law, we are not liable to you for any indirect or consequential loss or damages (including, without limitation, loss of profit, opportunity, anticipated savings, time or goodwill) in connection with any matter (or series of related matters) on which you engage us.
- c. The limits 19(a) and (b) apply to the extent permitted by law, whatever you are claiming for in connection with any matter (or series of related matters), and however liability arises or might arise (whether in contract, tort (including negligence), equity, or otherwise).
- d. 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.

- e. 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 19 limits any rights you may have under the Consumer Guarantees Act.
- f. 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.

## **20.Our Complaints Procedure**

- a. If you have a complaint about any aspect of the work we are doing for you, please let us know as soon as you can. You can contact:
  - the partner who has overall responsibility for your work.
- b. We will deal with your complaint promptly and fairly.
- c. The New Zealand Law Society also provides a complaints service. If you would like information and advice about making a complaint please telephone 0800 261 801.

## **21.Ending Our Engagement**

- a. You can end our engagement at any time by giving us a reasonable period of notice.
- b. We can end our engagement if we have good cause, for example if you fail to pay any amounts owing to us for work we have carried out for you.
- c. You will pay us for all work we have carried out and for any other costs and expenses we have incurred on your behalf up to the time our engagement ends.
- d. These Terms will continue to be enforceable despite our engagement coming to an end.