

Terms of Engagement

This document:

- Sets out the standard terms on which we do work for our clients.
- Explains what you can expect from us and you agree to when we work for you.
- Provides information that we are required to advise you of under the New Zealand Law Society's Rules of Conduct and Client Care for Lawyers.
- Applies to any current work and to any future work we do for you, unless otherwise agreed with you.

We may change these Terms.

1. Letter of Engagement

- 1.1 We will send you a letter of engagement for each new job.
- 1.2 If we are completing repeat jobs for you of the same nature we may with your agreement send you a single letter of engagement for all matters. However this will be discussed with you at the time and an updated letter of engagement will be provided where appropriate.
- 1.3 The letter of engagement will outline:
 - What work we will do for you.
 - The person with the overall responsibility for the job, and other members of staff that may be involved under that person's supervision.

2. Financial

2.1 Fees, Disbursements and Expenses

Our letter of engagement will include information relating to our fees. Our fees are based on what is fair and reasonable for the services provided having regard to:

- a. the time and labour expended.
 - b. the skill, specialized knowledge and responsibility required to perform the services properly.
 - c. the urgency and circumstances of which the matter is undertaken and any time limitations imposed, including those imposed by you.
 - d. the degree of risk assumed by the lawyer in undertaking the services, including the value of any property involved.
 - e. the complexity of the matter and the degree of difficulty and novelty of the questions involved.
 - f. whether the fee is fixed and any quote or estimate given by us.
- 2.2 Our estimates of the likely fees are based on our experience with similar matters. Estimates are given as a guide only and not as a fixed fee.
 - 2.3 If our letter of engagement specifies a fixed fee, we will charge this fee for the agreed scope of our 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 services outside the agreed scope and if requested, give you an estimate of the likely amount of the further costs.
 - 2.4 Where our 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 is recorded in 6-minute units, with time rounded up to the next unit of 6 minutes.
 - 2.5 In completing searches or registration for you with Land Information New Zealand (LINZ) a fee is charged for this service. This fee will be included in your invoice and will be payable to Uxorum which is a partnership that Lewis' has an interest in. The rate of fees charged will be set out in our letter of engagement.
 - 2.6 GST is payable by you on our fees and charges.
 - 2.7 In providing 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.
 - 2.8 We normally issue invoices monthly. We will also send you an invoice on completion of the matter or termination of our engagement. We may also send you an invoice when we incur a significant expense.

- 2.9 Invoices are payable within ten (10) days of the date of the invoice, unless alternative arrangements have been made with us. We may require interest to be paid on any amount that is more than 7 days overdue. Interest will be calculated at the rate of 15 % per annum.
- 2.10 We may ask you to pre-pay amounts to us, or to provide security for our fees and expenses. You authorise us to:
- a. Debit against amounts pre-paid by you; and
 - b. Deduct from any from any funds held on your behalf in our trust account; any fees, expenses or disbursements for which we have provided an invoice.
- 2.11 Credit Check and Debt Collection
- a. You authorise us (without further reference to you) to obtain information about you from you or any other person (including any credit or debt collectors or law enforcement agencies) and you consent to any such person providing us with that information.
 - b. You agree that we may use any information we have about you relating to your credit worthiness and may give that information to any other person, including any credit or debt collection agency for credit arrangements and debt collection purposes. If you are a natural person you have rights under the Privacy Act to access and request correction of any personal information about you.
 - c. You agree to pay all fees charged by any credit or debt collection or law enforcement agencies, including any court fees should you fail to pay any invoice within the time period stipulated in clause 2.9 above or specified on our invoice to you.
- 2.12 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*.
- a. The lawyer may terminate the retainer for good cause and after giving reasonable notice to the client specifying the grounds of termination.
 - b. Good cause includes:-
 - i. Instructions that require the lawyer to breach any professional obligations.
 - ii. 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.
 - iii. The client misleading or deceiving the lawyer in a material respect.
 - iv. The client failing to provide the lawyer with instructions in a sufficiently timely way.
 - v. 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 impudent and may be inconsistent with the lawyer's fundamental obligations.
- 4.3 If our retainer is terminated you must pay us all the fees up to the date of termination and all expenses incurred up to that date.
- 4.4 To the extent permissible by law, Lewis' reserves the right to assert a lien over any documents, information and correspondence in our possession until such time as our fees and all disbursements incurred on your behalf have been paid in full.

5.0 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.

6.0 Conflicts of Interest

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

6.2 If we find a conflict of interest at any time we will immediately advise you and will tell you how we plan to deal with the conflict. This may mean we stop working for you, the other client or both.

6.3 We will follow the requirements and procedures set out in the Law Society's *Rules of Conduct and Client Care for Lawyers*.

7.0 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.

8.0 Scope of our Work

8.1 We are not qualified to give:

- a. Investment advice. You should get that advice from a qualified financial advisor.
- b. Accounting or financial advice. You should get that advice from your accountant.

8.2 We are only qualified to advise on New Zealand law. If we assist you in respect of matters governed by foreign law, we do so on the basis that we do not accept responsibility in relation to your legal position under that foreign law.

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

- a. Remind you about dates (eg PPSR, lease or consent expiry dates); or
- b. Update advice after it has been given.

9.0 Emails

9.1 We may communicate with you by email about the work we do for you. We will use this form of communication where it is available unless you instruct us otherwise.

9.2 We have security protocols in place and virus protection software, however we cannot guarantee that electronic communications will always remain free from viruses or other defects are secure or will be received.

9.3 We may occasionally email you information we feel is relevant and useful to you. If you do not want to receive the information, let us know.

10.0 Trust Account

10.1 We maintain a trust account for all funds that 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 5% of the gross interest derived each quarter up to a maximum of \$100.

11.0 General

11.1 Our relationship with you is governed by New Zealand law and New Zealand courts have non-exclusive jurisdiction.

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. Client Care and Service

The Law Society client care and service information is set out below. 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 interest 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 questions, please visit www.lawsociety.org.nz or ask us and we can provide you with a copy of the Rules.

2. **Persons Responsible for the Work**

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

3. **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 letter of engagement.

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 partners, Simon Makgill or Lisa Ware.

Lewis

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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 Law Society.

Contact details are:

New Zealand Law Society

P O Box 5041

Lambton Quay

WELLINGTON 6145

Tel: 0800 261 801

General enquiries email: inquiries@lawsociety.org.nz

5. **Professional Indemnity Insurance**

We hold professional indemnity insurance that meets the minimum standards specified by the Law Society. We will provide particulars of the minimum standards upon request.

6. **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.