
Your firm of choice

TERMS OF ENGAGEMENT

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 Rules of Conduct and Client Care for Lawyers of the New Zealand Law Society ("NZLS Rules").
- Applies to any current instruction and to any future instruction, unless otherwise agreed with you.

We may change these Terms from time to time in the future. Our Terms will be updated from the date we publish the updated Terms on our website (with respect to work performed after the date of publication).

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. Information From You

- 2.1 We are required to comply with all laws binding on us including the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT), the Foreign Account Tax Compliance Act (US) (FATCA) and the OECD's Common Reporting Standards (CRS).

- 2.2 We will perform client due diligence and account monitoring, keep records, and report any unusual or suspicious transactions where required by AML/CFT, FATCA, CRS or any other law. We may also be required to assist any bank to comply with its legal obligations.
- 2.3 For the purposes of AML/CFT, we are required to obtain and verify certain information from you. This may include people associated with you (such as employees, directors and shareholders, trustees and beneficiaries). If we are unable to obtain the required information from you, it is likely we will not be able to act for you.

3. Financial

3.1 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 importance of the matter to you and the results achieved;
- d. the urgency and circumstances in which the matter is undertaken and any time limitations imposed, including those imposed by you;
- e. the degree of risk assumed by the lawyer in undertaking the services, including the value of any property involved;
- f. the complexity of the matter and the degree of difficulty or novelty of the questions involved;
- g. whether the fee is fixed or conditional and any quote or estimate given by us;
- h. the fee customarily charged in the market for similar legal services.

- 3.2 Our estimates of the likely fees are based on our experience with similar engagements. Estimates are given as a guide only and not as a fixed quotation.

- 3.3 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.

- 3.4 Where our fees are calculated on an hourly basis, the hourly rates are set out in our engagement letter. The difference in these rates reflect the experience and specialisation of our professional staff. Hourly rates and fees are reviewed from time to time. We reserve the right to increase hourly rates, with the new rate applying from the date of change.

- 3.5 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 the partners of Lewis Lawyers have an interest in. The rate of fees charged will be set out in our letter of engagement.

- 3.6 GST is payable by you on our fees and charges.

- 3.7 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.



3.8 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.

3.9 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.

3.10 We may ask you to pre-pay amounts to us, or to provide security for our fees and expenses. You authorize us to:

- a. Draw on any fees paid by you in advance; and
- b. Deduct from any funds held on your behalf in our trust account any fees, expenses or disbursements for which we have provided an invoice.

3.11 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.

3.11 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 3.9 above or specified on our invoice to you.

3.12 **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, you will remain responsible for payment to us if the third party fails to pay us.





4. 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:
- to the extent necessary or desirable to enable us to carry out your instructions; or
 - to the extent required by law or by the NZLS Rules.
- 4.2 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.
- 4.3 We will of course, not disclose to you confidential information which we have in relation to any other client.
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5. Termination

- 5.1 You may terminate an engagement at any time by written notice of that fact to us.
- 5.2 We may terminate or suspend an engagement in the circumstances set out in the NZLS Rules or if we are required to under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 or any other legislation.
- The lawyer may terminate the retainer for good cause and after giving reasonable notice to the client specifying the grounds of termination.
 - Good cause includes:-
 - instructions that require the lawyer to breach any professional obligations.
 - 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.
 - The client misleading or deceiving the lawyer in a material respect.
 - The client failing to provide the lawyer with instructions in a sufficiently timely way.
 - 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.
- 5.3 The enforceability of these Terms is not affected by termination and if our engagement is terminated you must pay us all the fees up to the date of termination and all expenses incurred up to that date, and the costs of recovery.
- 5.4 To the extent permissible by law, Lewis Lawyers 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.
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6. Retention of Files and Documents

- 6.1 If you require, we will send all documents to you at the end of a matter.

6.2 We will retain the files we establish for a matter, and any documents you provide to us, for seven years after completion of the matter or the termination of our engagement. If you do not retrieve your documents within that period, we have your authority to destroy them.

6.3 All files and documents that we retain will be stored electronically rather than physically, with the exception of wills, codicils, enduring powers of attorney and any other documents which are required by law to be retained in original format.

7. Conflicts of Interest

We have procedures to deal with issues that arise if the interests of two or more clients conflict.

7.1 When we accept instructions from you we will do our best to find out if any conflict of interest exists.

7.2 If a conflict of interest arises at any time we will contact you as soon as possible and tell you how we plan to deal with the conflict. This may mean we stop working for you, the other client or both.

7.3 We will follow the requirements and procedures set out in the NZLS Rules.

7.4 Where there is no legal conflict, we may accept instructions from other clients or potential clients working in the same or competing markets and whose commercial interests conflict with yours.

8. Duty of Care

8.1 Our duty of care is to you and not to any other person. You may not disclose or distribute our advice to any person (other than your other advisers or as may be required by law) and no such person may rely on our advice, unless we expressly agree to this in writing.

8.2 When you are a company or other corporate or unincorporated entity, we only act for you. We do not act for your shareholders, directors, or members unless we agree otherwise.

9. Scope of our Work

9.1 Scope of our Work

9.2 We do not advise on foreign law, or commercial, financial, taxation or other non-legal matters.

9.3 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.





10. Electronic Communications

- 10.1 Unless agreed with you, we will communicate with you and others at times by electronic means.
- 10.2 We have security protocols in place and virus protection software; however these communications can be subject to interference or interception or contain viruses or other defects ("corruption"). We do not accept responsibility and will not be liable for any damage or loss, direct or indirect, caused by an email that is intercepted or that has a defect.
- 10.3 If you have any doubts about the authenticity of any communication or document purportedly sent by us, whether electronically or otherwise, please contact us immediately.
- 10.4 We may receive from you communications by electronic means. Where any such communication, including any communication purporting to be sent by you, includes a direction or request to transfer funds, we may elect not to do so until we have independently verified, to our entire satisfaction, that direction or request by means other than an electronic communication. Without limiting anything in clause 13.0 below, we do not accept responsibility and will not be liable for any damage or loss (direct or indirect) caused by or arising from our refusal to act on any electronic communication comprising a direction or request to transfer funds where we have not been able to independently verify that direction or request to our satisfaction.
- 10.5 We produce electronic newsletters and conduct seminars for clients which cover a range of topics. We may add you to our database so that you will receive newsletters and invitations to seminars that we think will be useful for you. However, please let us know if you do not want to receive such correspondence.
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11. Trust Account

- 11.1 We maintain a trust account for all funds that we receive from clients (except monies received for payment of our invoices).
- 11.2 If we are holding significant funds on your behalf we will normally lodge those funds on interest bearing deposit (IBD) with our Bank. Before we can lodge funds on IBD we may ask you to complete a FATCA form. If the form is not completed we cannot put funds on IBD.
- 11.3 Our trust account is administered by us so to comply with our obligations under various laws, including the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 and the Tax Administration Act 1994 (Common Reporting Standards and FATCA) and you agree when instructing us that you will provide all information we ask for, as well as any authorities we request (including payment authorities) so we can meet our obligations.
- 11.4 For funds on IBD, we will charge an administration fee of 5% of the gross interest derived each quarter.
- 11.5 After twelve (12) months, any funds remaining in our trust account that we have been unable



to return to you, despite our reasonable attempts to contact you via all available communication channels, will be processed as follows:

- a. **Funds exceeding \$25:** These funds will be transferred to the Inland Revenue Department's Unclaimed Money Department.
- b. **Funds up to \$25:** These funds will be donated to a charitable organization elected by us.

12. Professional Indemnity Insurance

12.1 To the extent permitted by law, our aggregate liability to you (whether in contract, equity, tort (including negligence), statute or otherwise) arising out of your engagement of us on a matter (or any series of related matters) is limited to the greater of:

- the amount equal to five times our fee applicable to the matter (or any series of related matters) (excluding our office services charge, GST and disbursements); or
- the amount available to be paid out under our professional indemnity insurance that meets or exceeds the minimum standards specified by the Law Society. We will provide you with particulars of the minimum standard upon request.

13. Law

13.1 These Terms and our relationship with you are governed by New Zealand law and both of us agree to submit to the exclusive jurisdiction of New Zealand Courts..

14. Binding Nature

14.1 These Terms, and any other agreement we have with you, are binding on you and any successor to your rights and obligations.

14.2 You may not assign or transfer any rights or obligations under these Terms or any other agreement we have with you.

15. Acceptance of Terms

15.1 If you give us instructions or use our services, you agree to these Terms (to the extent that they are not excluded or varied by any other written agreement between us).

Information for Clients



Set out below is some key information required by the NZLS Rules.

1. Client Care and Service

Whatever legal services we are providing, 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; and
- 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 NZLS Rules. 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 NZLS Rules.

2. 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 following partners of Lewis Lawyers:

Lewis Offices

Cambridge Office: P O Box 529, Cambridge 3450
P: 07 827 5147

Hamilton Office: P O Box 9238, Hamilton 3240
P: 07 848 1222

Contacts

lisa.ware@lewislawyers.co.nz
matt.makgill@lewislawyers.co.nz
lucy.young@lewislawyers.co.nz

Website: www.lewislawyers.co.nz

The Law Society

The Law Society also maintains a complaints service and you can make a complaint to that service. To do so you should contact the New Zealand Law Society.

Contact details

P O Box 5041, Lambton Quay, Wellington 6145
P: 0800 261 801

General enquiries
e: inquiries@lawsociety.org.nz

3. Professional Indemnity Insurance

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

4. Lawyers Fidelity Fund

The Law Society maintains the Lawyers' Fidelity Fund to provide clients 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 loss relating to money that a lawyer is instructed to invest on behalf of a client.



