

OUR TERMS OF ENGAGEMENT

When do these terms apply?

Unless we otherwise agree with you in writing, these terms apply in respect of all work we do for you, subject to any other terms that we agree with you in writing.

Our Commitments to you

Our firm is committed to serving you professionally and ethically. We make the following commitments to you:

- We will provide you with the legal services that you request or that we agree on and in doing so we will protect and promote your interests and act for you free from compromising influences or loyalties, unless a conflict of interest or other factors prevent us from doing so. If this is the case we will contact you immediately.
- We will treat you fairly, respectfully and without discrimination.
- We will protect your privacy and will ensure appropriate confidentiality.
- We will act competently, in a timely way, and in accordance with instructions received and arrangements made. We will give you clear information and advice. In turn we will need your full and timely cooperation to help us represent you.
- We will discuss with you your objectives and how they should best be achieved.
- We will provide you with information about the work to be done, who will do it and when you will be billed.
- We will communicate with you and keep you informed about work being done. We will use our best endeavours to return your telephone calls promptly. We will send to you copies of significant correspondence and other documents. We will advise you when the work is completed.

Our commitments to you are consistent with the obligations lawyers owe to clients described in the *Rules of Conduct and Client Care for Lawyers*. Those obligations and our commitments to you 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 or call (04) 472 7837.

Our Duty of Care

Our duty of care is to you and not to any other person. We owe no liability to any other person, including for example any directors, shareholders, associated companies, employees or family members unless we expressly agree in writing. We do not accept any responsibility or liability whatsoever to any third parties who may be affected by our performance of the Services or who may rely on any advice we give, except as expressly agreed by us in writing.

Our advice is not to be referred to in connection with any prospectus, financial statement, or public document without our written consent.

Our advice is opinion only, based on the facts known to us and on our professional judgement, and is subject to any changes in the law after the date on which the advice is given. We are not liable for errors in, or omissions from, any information provided by third parties.

Our advice relates only to each particular matter in respect of which you engage us. Once that matter is at an end, we will not owe you any duty or liability in respect of any related or other matters unless you specifically engage us in respect of those related or other matters.

Unless otherwise agreed, we may communicate with you and with others by electronic means. We cannot guarantee that these communications will not be lost or affected for some reason beyond our reasonable control, and we will not be liable for any damage or loss caused thereby.

Conflicts of Interest

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 New Zealand Law Society's *Rules of Conduct and Client Care for Lawyers*.

Confidentiality

We keep confidential 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
- as expressly or impliedly agreed by you; or
- as necessary to protect our interests in respect of any complaint or dispute; or
- to the extent required or permitted by law.

Confidential information concerning you will as far as is practicable be made available only to those within our firm who are providing legal services for you.

We will, of course, not disclose to you confidential information which we have in relation to any other client unless that client has expressly agreed to release that information to you

Limitations on the extent of our obligations or Liability

To the extent allowed by law, our aggregate liability to you (whether in contract, equity, tort or otherwise) arising out of your engagement of us on a matter (or any series of related matters) is limited to the amount available to be payable under the Professional Indemnity Insurance held by the firm.

We may rely on, or provide you with, information obtained from third parties. This information may not always be accurate and complete. We do not accept responsibility and will not be liable for any damage or loss caused by errors or omissions in information obtained from third parties.

When dealing with the conveyancing of property we do not give advice in relation to the quality of the investment and, for the avoidance of doubt, we specifically exclude liability (whether in contract, equity, tort or otherwise) arising out of the giving of such advice.

Any other limitations on the extent of our obligations to you will be set out in a separate engagement letter.

Professional Indemnity Insurance

We hold current Professional Indemnity Insurance providing cover when acting as lawyers. As with all insurances this cover has limitations and is subject to certain exclusions, terms and conditions. Our Professional Indemnity Insurance meets or exceeds the minimum standards specified by the New Zealand Law Society.

The Lawyers' Fidelity Fund ("the Fund")

The New Zealand Law Society maintains the Lawyers Fidelity Fund for the purposes of providing clients of lawyers with protection against pecuniary loss arising from theft by a lawyer of money or other valuable property entrusted to that lawyer while they are providing legal services to the

public or while they are acting as a solicitor-trustee. The maximum amount payable by the Fidelity Fund by way of compensation to an individual claimant is limited to \$100,000. Except in limited circumstances 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.

Professional Fees

In setting our fees we take into account the following factors:

- the time and labour expended;
- the skill, specialised knowledge and responsibility required to perform the services properly;
- the importance of the matter to you and the results achieved;
- the urgency and circumstances in which your matter is undertaken and any time limitations imposed, including those imposed by you;
- the degree of risk assumed by us in undertaking the services, including the amount or value of any property involved;
- the complexity of the matter and the difficulty or novelty of the questions involved;
- the experience, reputation and ability of the lawyer undertaking the services;
- the possibility that the acceptance of the particular retainer will preclude engagement of us by other clients;
- whether the fee is fixed or conditional;
- any quote or estimate of fees given by us;
- any fee agreement entered into between us and you;
- the fee customarily charged in the market and locally for similar legal services; and
- the reasonable costs of running a practice.

We will charge you a fee that is fair and reasonable having regard to these factors.

If we agree to a fixed fee in writing (not an estimate) we will charge this for the agreed work. Work which falls outside that scope will be charged in accordance with the above. We will advise you as soon as is reasonably practicable if it becomes necessary for us to provide services outside the agreed scope and if requested and if possible, give you an estimate of the likely amount of the further costs.

GST is payable by you on our fees.

Disbursements

Disbursements are incidental expenses incurred in doing your work that we pay on your behalf to other people. They include court filing fees, travel and accommodation expenses, the fees of agents, experts and other professionals and are charged at the amount charged to us. When you have instructed us to engage outside counsel then you will, upon demand pay to us the fees billed to us by that outside counsel.

You are responsible for reimbursing our firm for disbursements. Disbursements may be included with our accounts or may be billed separately. We may require payment for disbursements in advance. You acknowledge that when we incur expenses and disbursements for you we are acting as your agent and you will be principally liable for them.

Office Expenses Disbursement

Our invoices include an office expenses disbursement to cover the cost of routine copying, printing, binding, telephone, fax, postage, deliveries, database searches (excluding LINZ, Companies office and PPSR search fees which are charged separately) and matters of a similar nature. This fee is not calculated on a direct cost basis but is an estimated sum spread over all accounts rendered by us. For matters other than conveyancing transactions and estate administration the office service charge is \$40 for fees up to \$1,000, \$60 for fees between \$1,001 and \$2,000, and 3% of fees for all other

invoices. For conveyancing transactions and estate administration we will endeavour to provide you with an estimate of the office service charge at the outset. This fee is not calculated on a direct cost basis but is an estimated sum spread over all accounts rendered by us.

Our Estimate of Costs

If we are able to estimate of the costs of acting for you will set that out in a separate letter of engagement to you.

Important notes regarding our estimates:

- *An estimate is not a quote. This is because it is not possible to anticipate every eventuality in carrying out the Services. The final figure may be slightly less or slightly more than the estimate. However we will notify you in advance if we are likely to exceed the estimate by any substantial amount.*
- *Unless specified, an estimate excludes GST, disbursements and expenses.*
- *Even if the matter we are working on for you is not concluded for whatever reason, with the result that the full scope of the Services is not required, we still need to make a charge for our time and effort up to the point at which the Services ended.*

Retainer

Before commencing work on your behalf, we may require you to prepay amounts to us (a retainer) or to provide us with security. The retainer will be deposited in our trust account and held by us on the basis that you authorise us to deduct our fees and other expenses from the funds held on your behalf on provision of an invoice to you. Any unused portion of the retainer will be returned to you upon completion or termination of our services. Further retainers may be necessary as the matter progresses and the earlier retainer has been used.

Accounts

Our accounts are due for payment 14 days after the date of the account unless prior arrangements are made with us in writing.

If you are instructing us on behalf of a company or trust, then your instructions are accepted on the basis that you remain personally liable (along with the company or trust) to pay our fees and incidental expenses and that you personally guarantee payment of our costs and disbursements in the event that the company defaults in payment.

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.

If any account is not paid within 14 days, interest will be charged on the outstanding balance at the rate of 18% per annum from the date upon which payment was due, and you will be responsible for any reasonable debt collection costs (including legal costs on a solicitor/client basis) that we incur in recovering outstanding amounts due to us.

If your accounts remain outstanding after 60 days, no further work will be undertaken by any lawyer of the firm until appropriate arrangements are made.

You authorise us:

- to debit against amounts pre-paid by you; and
- 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.

Settlement Monies

For property and financing transactions where payment of monies is due by you, we require clear funds for the correct amount to be deposited with us no later than the morning of the settlement.

Trust Account

We operate a trust account for all funds which we receive from clients.

A full record of our trust account is kept at all times. A statement of trust account transactions detailing funds received and payments made on your behalf will be provided to you periodically and at any time upon your request.

Unless it is not reasonable or practicable to do so, when we hold significant funds for you for more than a short period of time we will place them on call deposit with a bank registered under section 69 of the Reserve Bank of New Zealand Act 1989, subject to your having completed to the bank's satisfaction any request for information relating to the deposit or certification required by the bank. Interest earned from call deposits, less withholding tax and an interest administration fee payable to us of 7.5% of the interest, will be credited to you.

We are not responsible for obtaining the best interest rate available from any bank at the time your funds are placed on interest bearing deposit, or for any loss of interest that you may suffer as a result of any delay in placing your funds on interest bearing deposit.

Payments out of the trust account will be made either to you or to others with your authority. Written authorisation from you (and if we are acting for more than one of you, from all of you) will be required when payment is to be made to a third party. Before making a payment to another account we may require verification of the account details by provision of (for example) a copy of a deposit slip, cheque or bank statement showing the account number, a signed authority from you including the bank account details, or a signed letter from the relevant financial institution providing bank account details.

Termination of Legal Services

At all times you have the right to terminate our services by giving us written notice to that effect. You must pay our fees for work done and for other charges incurred up to the time of termination.

We may (subject to our ethical obligations and in any of the circumstances set out in the Law Society's *Rules of Conduct and Client Care for Lawyers*) end our engagement at any time before the completion of your matter by giving you reasonable written notice. We may end our engagement if our fees and charges are not paid when due.

In the event of termination, you are responsible for fees and disbursements incurred up to the time of termination (plus any costs of obtaining Court approval to withdraw as your lawyer, when necessary).

Retention of Files and Documents

You authorise us (without further reference to you) to destroy all files and documents (other than any documents that we hold in safe custody for you) seven years after our engagement ends, or earlier if we have converted those files and documents to an electronic format.

You are welcome to uplift your file provided that all fees and costs have been paid. Please give us reasonable notice before collecting your file should you wish to do so.

We own copyright in all documents or work we create in the course of performing the Services but grant you a non-exclusive licence to use and copy the documents as you see fit for your own

personal or commercial use. However, you may not permit any third party to copy, adapt or use the documents without our written permission.

Privacy Information

Over the course of your involvement with us, we may collect and hold personal information concerning you. Failure to provide us with information may preclude us from providing services to you or limit the quality of the services provided.

Information concerning you will be used by us to provide legal services, to obtain credit or other references, to undertake credit management and to inform you of issues and developments that may be of interest to you. You authorise us to obtain from any person, or release to any person, any information necessary for those purposes, and you authorise any person to release information to us that we require for those purposes.

Information concerning you will be held at our office. Under the Privacy Act 1993 you have the right of access to, and correction of, your personal information held by us.

Verifying Your Identity

Please do not be offended if we ask you to show us documents verifying your identity. We are legally required by the Financial Transactions Reporting Act 1996 and for the on-line land titles system to take a copy of documents verifying the identity of clients.

Communications

We will obtain from you contact details, including email addresses, postal address and telephone numbers. You will advise us if any of your contact details change.

If you have a preferred method for our firm communicating with you, please let us know.

We regularly communicate with clients by email. If you would prefer us not to in your case, please let us know so that other arrangements can be made. As emails are not always secure, or may have defects (such as viruses), we do not accept responsibility and will not be liable for any damage or loss caused by an email that is intercepted, misdirected, or has a virus or other defect.

We also use Telecoms eTXT service and are able to contact you by text message if that is your preferred option.

You agree that we may provide you from time to time with other information that may be relevant to you, such as newsletters and information bulletins. At any time you may request that this not be sent to you.

We do not accept any liability for loss arising from non-receipt of any communication, including computer email communications.

If you have any doubts about the authenticity of any communication or documents purportedly sent by us, please contact us immediately.

Changes by others to documents

If we transmit or provide any document to you or another party, and changes are made to that document by someone other than us, we are not responsible for any loss caused by the changes unless we have specifically approved them.

If you have a Complaint

We are committed to providing a professional, efficient and courteous service to all our clients. If you feel that we have failed to achieve an acceptable standard of service we want you to tell us. We regard it as an opportunity to monitor and improve our quality of service. We will investigate your concerns objectively and try to generate a positive and speedy solution.

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 either of the directors of the firm, Peter Attewell or Stephen Clews. They may be contacted as follows:

- by letter to P O Box 641 Whakatane;
- by email to p.attewell@acandc.co.nz; or to s.clews@acandc.co.nz; or to c.cooper@acandc.co.nz
- by telephoning 07 307 0570.

The Law Society operates the Lawyers Complaints Service and you are able to make a complaint to that service. To do so, phone 0800 261 801 and you will be connected to the nearest Complaints Service Office, which can provide information and advice about making a complaint.

Agreement

You will be bound by these terms if, after having been sent a copy of them, you instruct us or continue to instruct us.

These Terms apply to any current engagement and also to any future engagement, whether or not we send you another copy of them.

We are entitled to change these Terms from time to time. Publication of these terms and any changes to them on our web site (www.acandc.co.nz) is sufficient notice to you of the terms and any changes.