

# Terms of Engagement

## 1. These terms

These terms apply whenever you instruct us to act for you, unless we agree otherwise in writing.

## 2. Charges and payment

2.1 *Fees.* The fees we charge will be in accordance with the Rules of Conduct and Client Care for Lawyers of the New Zealand Law Society ("Law Society Rules"). Unless stated otherwise in our engagement letter, our fees will be calculated taking into account the time our lawyers, legal executives, secretaries and other staff spend on your matter, charged at our hourly rates, and adjusted when appropriate to reflect other factors specified in the Law Society Rules. Time each person spends on your matter is recorded in 6 minute units, with time rounded up to the next unit of 6 minutes.

2.2 *Disbursements and Office Services.* Our invoices will also include charges for 'Disbursements' and 'Office Services'.

(a) Disbursements are payments we make to third parties on your behalf, such as search, registration, courier, court filing, travel, agency, document service, forms and external lawyers' fees and costs. These will be charged to you at the cost to us.

(b) Office services charges cover postage, faxes, telephone calls, stationery, file storage, file destruction, copying and printing. For files with normal print volumes the office services charge is set at a flat rate of 5% of our fee on each invoice. For files with high print volumes the office service charge is 2.5% of our fee on each invoice plus 20 cents (GST inclusive) per page for copying and printing.

(c) Sometimes we may require you to pre-pay anticipated disbursements and office services charges. Otherwise we may incur them without prior reference to you, and invoice you afterwards.

2.3 *GST* (if any) is payable by you on our fees and charges.

2.4 *Payment.* Invoices for most transactions requiring a settlement must be paid on the settlement date. All other invoices must be paid within 14 days of the date of invoice, unless otherwise stated.

2.5 *Late Payment.* If payment of our invoice is overdue, then we may (to the extent permitted by law):

- (a) suspend or terminate work for you; and
- (b) charge interest on overdue amounts at the rate of 18% per annum, calculated daily.

2.6 *Cost Recovery.* You must pay to us all costs of recovery of overdue accounts, including a charge for our time (at our usual hourly rates for private

client legal work), disbursements, office services charges, debt collector's charges, and interest.

2.7 *Security and authorisation to deduct.*

(a) We may ask you to pay fees, disbursements and office services charges in advance, or to provide a guarantee or other form of security for our fees and charges.

(b) You authorise us to debit against amounts pre-paid by you, and to deduct from any other funds held on your behalf in our trust account, any fees, disbursements or charges for which we have provided you with an invoice or in the case of disbursements where we may not yet have provided an invoice to you.

2.8 *Third parties.* Although you may expect to be reimbursed by a third party for our fees and charges, 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.

2.9 *Changes to fees / charges.* We may change our hourly rates and other charges from time to time. The new rates will apply to any work we do for you after we notify you of the change.

## 3. Indemnity and Guarantee

3.1 When we accept instructions to act for a limited liability company or trust, we do so on the basis that each director or trustee who instructs us is personally liable (in addition to the client) to pay our fees and charges, and personally indemnifies us for payment of those fees and charges.

3.2 If we ask for a written guarantee or other security for payment of our fees and charges, we may wait until the signed copy of the guarantee or security has been returned to us before performing substantial or further work.

3.3 When we act for a trust, the personal liability to us of a trustee who has no beneficial interest in the trust assets ("**independent trustee**") will be limited to the assets of the trust, unless that independent trustee has acted dishonestly, is in wilful breach of trust, or instructed us without having the power or authority to do so in their capacity as trustee.

## 4. Trust account

We maintain a trust account for all funds which we receive from clients (except funds received for payment of our invoices). If we hold significant funds on your behalf we will normally lodge those funds on interest earning deposit with a bank provided you have completed, signed and returned to us all documentation required to enable us to comply with our statutory monitoring obligations.

In that case we will charge an administration fee of 5% of the gross interest earned.

## **5. Our duty of care and advice**

- 5.1 Our duty of care is to you and not to any other person. Before anyone else relies on our advice, we must expressly agree to this in writing.
- 5.2 After we have completed work on a matter, we are not obliged to notify you of any subsequent changes of law or provide any further services (such as reminders of dates).
- 5.3 We are not responsible for providing financial or investment advice. We are not responsible for advising on tax issues unless we agree to this.

## **6. Confidentiality and privacy**

- 6.1 We will hold in strict confidence all information about you and your affairs that we obtain as your lawyers. We will not disclose that information except to the extent:
  - (a) expressly or impliedly authorised by you;
  - (b) necessary or desirable to carry out your instructions; or
  - (c) allowed or required by law or the Law Society Rules.
- 6.2 We will not disclose to you confidential information we hold in relation to other clients.
- 6.3 While acting for you we may collect, hold, use and disclose personal information about you or individuals associated with you. Our practices relating to the use and disclosure of personal information are set out in the Privacy Statement in the Information for Clients sheet provided to you with our engagement letter.
- 6.4 You authorise us to obtain from any person, use, hold and release to any person any information (including personal information) for the purposes set out in these terms and the Information for Clients sheet. You authorise any person to release to us any information we require for these purposes.

## **7. Intellectual property**

We retain ownership of all intellectual property (including copyright) in any work we create for you, unless we agree otherwise in writing.

## **8. Termination**

- 8.1 You may terminate our engagement at any time. We may terminate our engagement in any of the circumstances permitted by the Law Society Rules.
- 8.2 You must pay us for all work done, and disbursements and offices services incurred, up to the date our engagement ends or which we are required to complete or incur after that date.

## **9. Files and Documents**

- 9.1 We retain ownership of all opinions and documents created by us or that you or any other person involved in your affairs provide to us. After our engagement on a matter ends we will keep the file and any documents you leave with us for at least 10 years. We may then destroy them (other than

documents we have specifically agreed to hold in safe custody for you) without further notice to you. We may destroy paper files and documents earlier if we have an electronic copy of them.

- 9.2 We may make a reasonable charge for providing a copy of documents held or retained by us. Before we provide any copies to you you must pay all outstanding fees and charges owed to us, plus the cost of copying the file at 20 cents (GST inclusive) per page, subject to any exception in the Law Society Rules.

## **10. Electronic communications**

We may communicate with you and others by electronic means (including email). We cannot guarantee that electronic communications are always reliable, secure or free of defects. Because of this we do not accept responsibility for (and will not be liable for) any damage or loss caused by non-receipt of, or any viruses or defects in, or interception or interference with, any electronic communications.

## **11. Limitation of our liability**

- 11.1 To the extent permitted by law but subject to clause 11.4, our total liability to you (whether in contract, tort, statute, equity or otherwise) in connection with any matter (or series of related matters) on which you engage us, is limited to:
  - (a) any amount available to be paid out to you for that liability under our insurance policies; or
  - (b) \$500,000, where there is no amount available to be paid out to you under our insurance policies.
- 11.2 We may rely on information you provide, external information (eg: from your accountant) and public records when acting for you. We do not accept responsibility to verify this information.
- 11.3 If you are in trade and you acquire our services in trade, the Consumer Guarantees Act 1993 (**CGA**) will not apply.
- 11.4 If you are not in trade or you acquire our services other than in trade, nothing in these terms limits any rights you have under the CGA or any liability we have to you under the CGA.

## **12. General**

- 12.1 In these terms “we” and “us” means Thomson Wilson and “you” means our client.
- 12.2 These terms are not affected by any change to our partnership or the incorporation of our firm.
- 12.3 We may change these terms from time to time, in which case we will send you amended terms. The changed terms will apply in respect of any instructions you give us after the change.
- 12.4 Our relationship with you is governed by New Zealand law and New Zealand courts have exclusive jurisdiction.

Effective from 29 June 2018