



## TERMS OF ENGAGEMENT

These Terms of Engagement apply in respect of all work carried out by Checketts McKay Law Limited ("us" and "we") for you, except to the extent that we otherwise agree with you in writing.

If you continue to instruct us after receipt of these Terms of Engagement you are acknowledging your acceptance of these terms.

### 1. Fees

1.1 We will charge a fee which is fair and reasonable for the services provided having regard to your interest and our interests. In determining the fee, the following will, when applicable, be taken into account:

- The time spent (we will provide you with the hourly rates of our qualified employees, on request).
- The skill, specialised knowledge and responsibility required to perform the services properly.
- The importance of the matter to you, the result achieved and value of the transaction.
- The urgency and circumstances in which the 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 the property involved.
- The complexity of the matter and the difficulty or novelty of the questions involved.
- The experience, reputation and ability of the members of our firm working on your matter.
- The possibility that the acceptance of the particular instructions will preclude employment 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 you and us.
- The reasonable costs of running our firm.
- The fee customarily charged in the market and locality for work similar to yours.

1.2 Unless otherwise stated all fees and expenses are plus GST.

1.3 We will provide for you an estimate upon request. If that estimate is likely to be exceeded we shall let you know.

1.4 There are other methods of charging, which suit certain types of work, and we shall discuss those with you where they are appropriate.

1.5 Where it is applicable you may wish to apply for legal aid. In the event that legal aid is not granted you will be liable for our account charged in accordance with clause 1.1.

1.6 We maintain a trust account for all funds which we receive from clients. If we are holding significant funds on your behalf we will normally lodge those funds on interest bearing deposit with our bank. In that case we will charge an administration fee of 10% on the interest derived.

### 2. Office Expenses and Disbursements

2.1 We will charge you for office expenses in addition to our fee. Office expenses include phone calls, faxes, emails, post, photocopying, printing, forms, file storage and incidental expenses. A minimum charge based on 6% of fees charged per account will usually apply for office expenses. Office expenses may be charged in a

lump sum and may include a reasonable mark-up and/or staff processing margin.

2.2 When we do work for you, we may also incur disbursements on your behalf payable to a third party (such as search fees, registration fees, council/government charges and court fees). We may request disbursements to be paid in advance. The money for disbursements paid in advance will be held in your name in our trust account until we pay the disbursement incurred. If the total disbursements incurred are less than the funds held, the balance will be recorded as a credit on our final account to you.

2.3 On all transactions requiring LINZ dealings we will charge you an "E-dealing Administration Fee" of \$20 for the first instrument and \$10 for each subsequent instrument plus GST. These fees are to cover licensing, auditing, storage, reporting and miscellaneous matters associated with e-dealing transactions.

### 3. Payment of accounts

3.1 Our fees and expenses are to be paid on or before the 20<sup>th</sup> of the month following our account being sent, except on conveyancing matters when fees are payable on or prior to settlement.

3.2 Our fees and expenses will be payable by you regardless of the outcome of the matter on which we have been instructed.

3.3 Our final account will be sent to you shortly after we have completed your matter.

3.4 We do issue interim accounts where that is appropriate.

3.5 If we hold funds in our trust account on your behalf (including any judgement, sale proceeds, settlement amount or other money), any fees, office expenses or disbursements we have issued you an account for may be deducted.

3.6 We may ask you to pay costs in advance, but in those instances your payment will be held in our trust account and only paid to us by deduction when an account has been forwarded to you.

3.7 Interest will accrue on unpaid accounts at the rate of 1.5% per month from the due date until payment. Other action to recover unpaid accounts may also be taken and the cost we incur for such recovery shall be payable by you.

### 4. Files and documents

4.1 When your instructions have been completed we shall keep your file for a period of 10 years from completion and then destroy it.

### 5. Limitation of liability and responsibility

5.1 When conveying property, we do not give advice in relation to the quality of the investment.

5.2 We may correspond with you and others by electronic communication (generally email), unless you instruct us not to do so. As you may be aware, electronic communication cannot be guaranteed to be secure. We check all e-mails with anti-virus software. We operate a firewall and automatic spam filter which may block a small number of genuine e-mails so that they do not reach the intended recipient in our company. We shall not be liable for any loss, costs or damage you may incur directly or indirectly as a consequence of us communicating by electronic means.

5.3 We shall not be liable for any loss arising from non-receipt by any party of any communication including electronic communications.

5.4 Work which we undertake for you is solely for your use and is not to be relied upon by any other party.

### 5.5 Limitation of liability

To the extent permitted by law, our total liability to you in connection with any matter (or series of related matters) on which you engage us will not exceed:

- (a) if an amount is available to be paid out under our relevant insurance policies in respect of our liability to you, that amount, up to a maximum of NZ\$5,000,000 (including interest and costs); or
- (b) in any other case, up to a maximum of NZ\$250,000 (including interest and costs).

This limitation applies to liability of all kinds, whether in contract, tort (including negligence), equity or otherwise. We may override this limitation where it is specifically agreed with you in an engagement letter signed by us.

If we provide services to any persons or entities related to or associated with you or to anyone else at your request (whether or not we also advise you) on a matter (or series of related matters) on which you engage us, then our aggregate liability to you and all those persons and entities in respect of that matter (or series of related matters) will be subject to this limitation (and you will ensure that those persons and entities agree to this).

#### 5.6 Clause 5.5:

- (a) shall only apply when:
  - (i) you are not a consumer<sup>1</sup>; or
  - (ii) you are a consumer<sup>1</sup> but are acquiring, or hold yourself out as acquiring, our legal services for the purposes of a business; within the meaning of the Consumer Guarantees Act 1993; and
- (b) shall not apply to any liability to you that we may incur for fraud or dishonesty.

#### 6. Lawyers Fidelity Fund

6.1 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.

6.2 Except in certain circumstances specified in the Lawyers and 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.

6.3 This is only a short summary of the major provisions in the Lawyers and Conveyancers Act 2006 relating to the Fidelity Fund. If you would like further information please ask us.

#### 7. Professional Indemnity Insurance

We hold current Professional Indemnity Insurance that meets the minimum standards specified by the New Zealand Law Society.

#### 8. Right to terminate your retainer

8.1 You are entitled to terminate your instructions to us upon giving us reasonable notice. Our fees for services reasonably and properly provided to you prior to the termination of retainer shall be paid by you prior to uplifting your records and we may retain copies of your documents and records.

8.2 We may terminate the retainer if there is good cause, such as you not providing us with instructions in a sufficiently timely way or in your inability or failure to pay our fee on an agreed basis.

8.3 If we terminate the retainer we will give you reasonable notice so that you can arrange alternative representation and we shall give you reasonable assistance to find another lawyer.

#### 9. Suspension of service

We reserve the right to stop work on your retainer if interim accounts are not paid on time or a request for information or action remains unsatisfied.

#### 10. Conflicts

Conflicts may arise after we take instructions from you and we reserve the right to require either or both clients to be separately and independently advised.

#### 11. Privacy and confidentiality

We will treat all information we hold about you as private and confidential and will not disclose any information we hold on your behalf or about you unless we are required to do so by law or where it is necessary to do so to provide our services to you or when requested by you or with your consent.

#### 12. If you have a complaint

- 12.1 We will provide you with a competent, timely service following your instructions, but if you have any complaint at all about our service please raise it with the director responsible for your matter, or, if you prefer, any other director in our firm or our Practice Manager.
- 12.2 If your complaint is not resolved in a timely manner to your satisfaction we shall appoint a director who has not been involved in your matter to deal with it promptly and fairly.
- 12.3 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 for information and advice about making a complaint.

#### 13. General

- 13.1 These Terms of Engagement apply to any current engagement and also apply to any future engagement subject to clause 13.2), whether or not we send you another copy of them.
- 13.2 We are entitled to change these Terms of Engagement from time to time, in which case we will send you amended terms. The amended terms will apply from the date you receive them.
- 13.3 Our relationship with you is governed by New Zealand law.

## CLIENT CARE AND SERVICE INFORMATION

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 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.*

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 any questions, please visit [www.lawsociety.org.nz](http://www.lawsociety.org.nz) or call 0800 261 801

<sup>1</sup> In relation to the supply of legal services, a "consumer" within the meaning of the Consumer Guarantees Act 1993 means a person who acquires legal services of a kind ordinarily acquired for personal, domestic, or household use.