

# **STANDARD TERMS OF ENGAGEMENT**

## **1. INTRODUCTION:**

- 1.1 These Terms of Engagement set out the standard Terms and Conditions in which Solomons ("we") provide legal and related services to our clients. The Terms of Engagement apply subject to any additional or alternative terms we may agree in writing with our client ("you").

## **2. THE PURPOSE OF THIS DOCUMENT:**

- 2.1 This document

- explains what you can expect from us and what you agree to when we work for you.
- includes information we are required to tell you under the New Zealand Law Society's Rules of Conduct and Client Care for Lawyers.
- applies to any current work and future work we do for you.

## **3. OUR LETTER OF ENGAGEMENT FOR EACH FILE:**

- 3.1 When instructions are received from you we will give you a "Letter of Engagement". The letter will outline:

- what we will do for you on that job
- the partner with overall responsibility for that job. Other members of our staff may also be involved, under that partner's supervision, where appropriate (such as where this enables us to do the job in a more efficient and timely manner). If we do not advise you in writing, then the person with overall responsibility will be the person you have instructed to that job.
- Confirmation that there will be no fee for the job, or otherwise what the likely fee will be

## **4. OUR DUTIES TO YOU:**

- 4.1 When we do work for you, we will:

- 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.
- Act competently, in a timely way, and in accordance with instructions received and arrangements made.
- Provide you with information about the work to be done, who will do it and the way the services will be provided.

- Protect your privacy and ensure appropriate confidentiality.
  - Treat you fairly, respectfully and without discrimination.
  - Give you clear information and advice.
  - Keep you informed about the work being done and advise you when it is completed.
  - Charge you a fee that is fair and reasonable and let you know how and when you will be billed.
  - Let you know how to make a complaint and deal with any complaint promptly and fairly.
- 4.2 The obligations lawyers owe to their 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 the justice system.
- 4.3 Our duties are owed to you, the client named in our letter of engagement. Nobody else (such as family members, shareholders, directors or related companies) can rely on our advice without our written consent.

## **5. YOUR PRIVACY AND CONFIDENTIALITY:**

- 5.1 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
  - to the extent required by law or by the Law Society's Rules of Conduct and Client Care for Lawyers
- 5.2 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.
- 5.3 We will of course, not disclose to you confidential information which we have in relation to any other client.

## **6. WHO WE CAN ACCEPT INSTRUCTIONS FROM:**

- 6.1 Unless you let us know otherwise:
- if you are a **company**, we can accept instructions from any of your directors or employees or any other person you have authorised to instruct us
  - if you are a **trust**, we can accept instructions from any of your trustees or officers
  - if you are a **partnership**, we can accept instructions from any of your partners or officers
  - if you are a **couple**, we can accept instructions from either of you

## **7. VERIFYING YOUR IDENTITY:**

7.1 In some circumstances we are required by law to verify your identity. This is generally by way of photographic identification such as a passport or drivers licence. If the law and regulations so require, this might extend to evidence of residency and address.

## **8. OUR FEES AND EXPENSES:**

8.1 We do not charge a fee for attending to a new will or a will update other than in particularly complex circumstances. If we believe your instructions are complex, we will advise you of this, and advise you of the likely fee for attending to your instructions. We will not undertake any work until you have approved our fee. In the vast majority of cases, wills and updates of wills are completed at no charge.

8.1 Where a fee is payable we will charge you a fair and reasonable fee for the services provided.

8.2 In determining the fee, the following may be taken into account:

- the time and labour expended at an hourly rate
- 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 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 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 you and us
- the reasonable costs of running our firm
- the fee customarily charged in the market and locally for work similar to yours

8.3 In some cases, where it is possible to define precisely the scope of work involved in a particular matter and there are few variables, we may provide a fixed quote.

8.4 If you have any questions about our fees please ask.

- 8.5 Unless we state otherwise, our fees, estimates and hourly rates do not include GST or office expenses and disbursements, which are payable by you.
- 8.6 We charge you a fee to cover office expenses (such as photocopying, printing, phone calls, faxing and file storage). These will be included separately in our account to you.
- 8.7 When we work for you, we may have to cover some expenses or make other payments on your behalf (such as search fees, registration fees, travel costs, court charges and agent's fees). These will be included separately in our account to you. Some disbursements may include a reasonable mark-up.
- 8.8 Fees, hourly rates, office expenses and disbursements may change from time to time without notice.
- 8.9 In some cases, you may be eligible for legal aid. If you want to apply for legal aid, we may refer you to another firm as we do not carry out legal aid work.
- 8.10 If the engagement letter specifies a fixed fee, we will charge this 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 reasonable 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.
- 8.11 Where our fees are calculated on an hourly basis, the hourly rates are set out in our engagement letter.

## **9. PAYING YOUR ACCOUNT:**

- 9.1 We issue accounts monthly and on completion of a job. We may also send you an account when we incur a significant expense.
- 9.2 Our accounts must be paid within 14 days of the date of our account.
- 9.3 If you have any questions about an account, please contact us straight away.
- 9.4 Sometimes we may require you to pay fees, office expenses and disbursements in advance. If we do, we will hold your payment in our trust account and only deduct our fees, office expenses and disbursements when we issue you an account.
- 9.5 If we hold funds in our trust account on your behalf (including any judgment, sale proceeds, settlement amount or other money) any fees, office expenses or disbursements we have issued you an account for may be deducted.
- 9.6 We may charge interest on unpaid accounts at the rate of 4% per annum above ANZ base lending rate calculated on a daily basis and charged monthly. We may take action to recover unpaid accounts and charge you the cost of that recovery.

- 9.7 Any failure or delay by us to charge interest on an unpaid account or to exercise any of our other rights will not operate as a waiver of those rights.
- 9.8 At your request or with your approval, we may send our accounts to a third party to pay on your behalf. You are still responsible for payment by the due date if the third party does not pay us.

## **10. MONEY HANDLING PROCEDURES:**

- 10.1 We maintain a trust account for all funds we hold on behalf of clients.
- 10.2 If we hold funds on your behalf we will deposit them in a interest-bearing deposit with a bank, where reasonable and practicable. We are not responsible for obtaining the best interest rate available or for any loss of interest you suffer as a result of delay in placing your funds in an interest-bearing deposit.
- 10.3 We charge 10% administration fee on the gross interest earned on funds held in an interest-bearing deposit.
- 10.4 Withholding tax will be deducted on the interest earned and paid to IRD. If we have your IRD number you can elect to have withholding tax deducted at your applicable rate. If we do not have your IRD number we are required to deduct it at the default rate (which may be higher than your actual rate).
- 10.5 Where you transfer funds to our trust account in a foreign currency, we will convert those funds into New Zealand dollars at the prevailing exchange rate offered by our bank. We are not responsible for seeking or obtaining a better exchange rate.

## **11. HOW WE AVOID CONFLICTS OF INTEREST:**

- 11.1 When we do work for you, we will always protect and promote your interests.
- 11.2 Before we accept a job from you, we will do our best to find out if any conflict of interest exists.
- 11.3 If we find a conflict at any time, we will immediately let you know and tell you how we plan to deal with the conflict. That may mean we stop working for you, the other client or both.

## **12. SCOPE OF OUR WORK:**

- 12.1 We are not qualified to give:
- investment advice. You should get that advice from a qualified financial advisor

- tax advice. You should get that advice from your accountant or tax advisor
- advice about foreign laws. We can help you to contact a lawyer in the other country.

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

- remind you about dates (e.g. PPSR, lease or consent expiry dates)
- update advice after it is given, unless requested to do so

### **13. INTELLECTUAL PROPERTY:**

13.1 Unless we agree otherwise:

- we retain ownership of all opinions, documents and other intellectual property created by us
- you must not provide our advice to others (such as using our opinions in any public document or statement)

### **14. ELECTRONIC COMMUNICATIONS:**

14.1 We may correspond with you and others by electronic communication, unless you instruct us not to do so. As you are aware, electronic communications cannot be guaranteed to be secure. We will take all reasonable care but will not be responsible for any of the risks associated with electronic communication.

### **15. HOW YOU CAN HELP US:**

15.1 You can help us by:

- giving us clear instructions
- asking if there is anything you are not sure of
- telling us if you have any important time limits
- dealing promptly with any questions we have
- telling us if your contact details change
- keeping in touch. Please ask if you are concerned about anything or do not hear from us when expected.

### **16. LIMITATION OF LIABILITY:**

16.1 The maximum aggregate amount that we will have to pay you is the amount set by the New Zealand Law Society as the minimum standard for the indemnity limit on our professional indemnity insurance. We will not have to pay you more than the maximum amount for anything caused by or resulting from anything we do or do not do, or delay in doing, whether or not it is contemplated or authorised by any agreement with you.

- 16.2 Where we are providing conveyancing services our services do not include advice in relation to the quality of any investment comprised in the property which is the subject of the conveyance. Should you wish to take advice on the quality of the investment we recommend that advice from a suitably qualified person be obtained.
- 16.3 We are not liable to you for consequential loss, including loss of profits, even if you advised us or we knew or should have known of the possibility of such loss.
- 16.4 These limitations apply to the extent permitted by law, whatever you are claiming for and however liability arises or might arise if not for this clause (whether in contract, or tort, negligence, equity, or otherwise).

## **17. ENDING OUR ENGAGEMENT:**

- 17.1 You may end our engagement at any time by giving us notice.
- 17.2 If we have good cause, we may decide to stop working for you, such as if you:
- do not provide us with instruction promptly
  - are unable to, or do not, pay our fees as agreed,
  - against our advice, act in a way we believe is inconsistent with our fundamental obligations as lawyers or highly imprudent. This does not apply to litigation.
- 17.3 If we decide to stop working for you, we will give you reasonable notice and help you find another lawyer.
- 17.4 Before you take your records, you need to pay our fees for the work we have done for you. We may keep a copy of any records you take.
- 17.5 The enforceability of these terms is not affected by:
- the ending of our engagement
  - any changes to our partners or the incorporation of our firm

## **18. STORING RECORDS:**

- 18.1 You authorise us to destroy all files and documents about a job seven years after that job has been completed. We may destroy paper files or documents earlier if we have an electronic copy of them. We will not destroy any documents we have agreed to hold in safe custody for you (such as wills).

## **19. NEW ZEALAND LAW:**

- 19.1 Our relationship is governed by New Zealand law and the New Zealand courts have exclusive jurisdiction.

## **20. PROFESSIONAL INDEMNITY INSURANCE AND LAWYER'S FIDELITY FUND:**

- 20.1 We hold professional indemnity insurance that exceeds the New Zealand Law Society's minimum standards,
- 20.2 The New Zealand Law Society operates a Lawyer's Fidelity Fund to compensate clients who suffer theft of money or property entrusted to lawyers. The Fund covers losses of up to \$100,000-00 per individual claimant. It does not cover loss where you have instructed us to invest money on your behalf (subject to limited exceptions set out in the Lawyers and Conveyancers Act).

## **21. HOW WE HANDLE COMPLAINTS:**

- 21.1 We are committed to providing services of the highest professional standards.
- 21.2 We will deal with any complaints promptly and fairly.
- 21.3 Please contact us straight away if you have a question about an account or if you are unhappy with any other aspect of our work. You may contact:
- a partner of the firm
  - The Standards Officer, NZ Law Society, Private Bag 1901, Dunedin 9054 (telephone 03-477-0596)

## **22. GENERAL**

- 22.1 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.
- 22.2 These terms may change from time to time, and if that is the case we will send you a copy of the updated material changes.
- 22.3 We encourage you to contact us with any comments or questions about these standard terms of engagement. We value our relationships with our clients. We look forward to an on-going relationship with you, so please retain this letter as the core basis of our relationship and commitment to you.