



Terms of engaging our professional services

These terms of professional service apply every time we supply you with legal services, unless we agree to different terms in writing. By instructing us to provide you with legal services, you will be treated as having agreed to these terms of professional service.

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New Zealand Law and Rules Paramount (start)

1. These terms of professional service, and any variation of these terms, are subject to New Zealand Law and from the start of 1 August 2008, the Lawyers and Conveyancers (Lawyers: Conduct and Client Care) Rules 2008 (the Rules). The Rules override these terms, or any variation of these terms, if there is any conflict between these agreed terms and the Rules.

Our professional legal services (start)

2. We will provide to you New Zealand based professional legal services in response to your instructions. This applies unless there is a good reason for us not to act for you or to stop acting for you. For example, a good reason may be:
 - (a) your instructions are outside our normal fields of practice.
 - (b) you do not provide us with sufficient or timely instructions.
 - (c) our existing commitments will not allow sufficient time to be devoted to your instructions.
 - (d) we are already acting for another party in the same transaction or matter.
 - (e) we will have a conflict of interest if we accept your instruction.
 - (f) we have reasonable grounds to doubt your bona fides or that have or are misleading or deceiving us in a material respect.
 - (g) you are unwilling or unable to pay the normal fee for the relevant legal services.
 - (h) acting for you will breach any law, professional obligation or the Rules.

Before we can act for you, we will require your name, if you work for a company -your position and name of the company, postal address, billing address (if different), physical address and full contact details.

3. We may confirm our understanding of your instructions in an engagement letter. If we do this, you must tell us right away if it does not accurately reflect your instructions.
4. Once instructed, we must act competently, in a timely way, and in accordance with instructions received and arrangements made. We must act to protect and promote your interests when we carry out your instructions within the confines of your instructions and to the exclusion of the interests of third parties. In doing so, we will exercise our professional judgment for you at all times, within the bounds of the law. We must be independent and be free from compromising influences and loyalties. However, our duty to protect your interests is subject to our overriding duties as officers of the High Court, our obligation to uphold the rule of law and to facilitate the administration of justice in New Zealand. We must not attempt to obstruct, prevent, pervert, or defeat the course of justice.
5. We will use legal processes only for proper purposes. We will not advise you to engage in conduct which we know to be fraudulent or criminal.
6. Our duty to take reasonable care is owed to you and only you. Our legal services are only for you. No one else (including anyone close to you) is entitled to rely on anything we say or do for you. If anyone else (including anyone close to you) want to rely on anything we say or do, then they can only do so if we first agree to this in writing.
7. What we will do for you is limited to your instructions. Any advice we give to you can only be used for the purposes for which it was given. If, after we have carried out your instructions, something further happens, we will not advise you on what has happened unless you instruct us to do so.

Communications and reporting (start)

8. We must:
 - (a) discuss with you your objectives and how they should best be achieved.
 - (b) provide you with information about the work to be done, who will do it and the way the services will be provided.
 - (c) give you clear information and advice.
 - (d) keep you informed about the work being done and advise you when it is completed.

You must tell us right away if you think we have misunderstood your instructions or anything you have told us or given to us.

9. We can communicate with each other in a number of ways, including emails. If we send to you emails, and vice versa, then these are not always secure. They can also include viruses, worms, Trojan horses and other harmful and malicious codes. To manage these risks, we use a standard firewall and antivirus software (currently by Norton 360). However, you should still scan all emails we send to you before opening them. We are not responsible for, and will not be liable in contract, tort (including negligence), equity, statute or otherwise, for any loss, damage, liability, costs or expense directly or indirectly caused by any email that is intercepted or which contains any virus, worm, Trojan horse or other harmful or malicious codes or defects.

Disclosure and use of information (start)

10. We must protect your privacy and ensure appropriate confidentiality. We will not divulge without your agreement your confidential information and documentation to any one else, except as required by law or as stated in these Terms.

11. We may give your information and documentation to members of our staff who work for us on your transaction or matter.

We may also give your confidential information and documentation to service agents, experts and advisors, retained barristers, other persons and entities (including parties on the other side of a transaction or matter) and government agencies responsible for processing a transaction or matter. We will only do this to the extent necessary to carry out your instructions, to comply with our professional duties or as required by law.
12. We may collect personal information about you while acting for you. This can include personal information about people who work with you or for you. If we do this, we will hold it at our **offices**. We may need to use this information when we act for you. We can also use this information to keep you informed as to legal developments, tell you about our other services or let you know about upcoming webinars and seminars. Generally, individuals have the right to access any personal information we hold about them and to correct it. You should also refer to our **Privacy** Policy in relation to information provided over our web site.
13. We must promptly disclose to you all information we have or acquire that is relevant to the matter in respect of which we are engaged for you. However, this only includes anything we know or have that is specifically known by the particular lawyer acting for you. Further, we will not divulge any other client's confidential information and documentation to you, unless our other client has agreed to this or we are required to do so by law.
14. We have no duty to utilise information and documentation you have previously given to us in relation to any other transaction or matter. This is because, for example, that information or documentation may be out of date, archived, previously returned to you or unknown to the particular lawyer acting for you. It is therefore important you tell us about everything we should know, and give us copies of all documents we should have, to be able to properly act for you in relation to any specific transaction or matter.

Information from other persons and entities (start)

15. From time to time we may need to obtain information from other persons and entities to properly carry out your instructions. This information may not be complete, truthful or accurate. We are not responsible for, and will not be liable in contract, tort (including negligence), equity, statute or otherwise, for any loss, damage, liability, costs or expense directly or indirectly caused by such information not being truthful, accurate or complete.

Retaining your information and documents (start)

16. Once we have finished acting for you in relation to a particular matter or transaction, we can return to you any documents we do not need to professionally retain. All information and documents we retain will be kept for the minimum legal period but, in any event, for no longer than 7 years. After that period ends, you authorise us (without further reference to you) to destroy the information and documents.

Intellectual property (start)

17. If we draft any document for you or provide any document to you that we have prepared (whether hard copy or electronic) you own the document. However, as between you and us, we retain all right, title and interest in all intellectual property in the document. You cannot on sell the document, provide a copy of it to anyone else or license anyone else to use the document.

Our fees and other costs (start)

18. We must charge you a fee that is fair and reasonable and let you know how and when you will be billed. So, when you instruct us, you agree to pay our fair and reasonable

- fees, costs and disbursements for carrying out your instructions. This includes your paying any applicable goods and services tax.
19. You remain responsible for paying our fair and reasonable fees, costs and disbursements even if we are entitled to bill someone else for what we do for you or you are entitled to require someone else to reimburse you for them.
 20. Our fees are usually based on our usual hourly rates x time taken. You can ask us what these are at anytime. However, when we set our fees, we can also take into account a number of other matters. These are set out in the Rules. These include:
 - (a) the time we spend on your transaction or matter. (This includes the time spent on investigating the facts and researching the law.)
 - (b) the degree of skill, knowledge and responsibility required.
 - (c) the value or amount of what is at issue.
 - (d) the complexity, novelty, importance and urgency of your transaction or matter.
 - (e) the reasonable costs of running a practice.
 - (f) the result of what we have done for you.
 - (g) any quote or estimate of fees we give to you.
 - (h) the degree of risk assumed by us in undertaking the services.
 - (i) our experience, reputation and ability.
 - (j) the possibility that our accepting the particular retainer will preclude our being engaged by other clients.
 - (k) if our fee is conditional or fixed (whether in litigation or otherwise).
 - (l) any fee agreement we have entered into.
 21. You can ask us for an estimate of what we expect our fees, costs and disbursements may be for carrying out your instructions. Because of the nature of the services we provide, any estimate we give will be our "best guessestimate." This will be particularly the case if the extent or duration of the work has not been or is not able to be quantified. If what we do for you does not proceed as expected, we can charge for what we actually ended up doing for you. We will tell you if it becomes apparent that the estimate is likely to be exceeded.
 22. You can ask us, at any time, for the amount of our fees, costs and disbursements incurred but not yet billed.
 23. We can charge you for any costs and disbursements we incur when carrying out your instructions. These may include, for example, such things as copying, printing, telephone, fax and mobile phone charges, couriers, travel and accommodation costs, registration fees, public agency fees, court costs, the costs and charges of other persons (such as experts, barristers and researchers, including Auckland District law Society legal research costs.) Further, we may ask you to pay a third party's charges directly (including without limitation; airfares, accommodation costs and court costs).
 24. We will bill you once we have completed carrying out your instructions. This applies unless what we do lasts for more than one month. If so, then we can bill you on a regular basis (usually monthly.) We can bill you more than once during a month if we significant incur costs and disbursements on your behalf. Alternatively, we can ask you to pay any of these costs and disbursements directly.
 25. Our bills are required to be paid within 20 days of the date of our bill (or such other period as we may agree on in writing.) If you do not pay us within the required period, we are entitled to charge you interest on the outstanding amount. The interest rate will be our current overdraft interest rate with our bank applying at close of business on the day payment became due plus 5%.

26. If you think you will not be able to pay our bills on time, you should discuss this with us. We can, but do not have to, allocate a credit limit for what we do for you. If we do, we can increase, decrease or withdraw this credit limit at any time. We can also make reasonable credit enquiries of other appropriate persons and entities about you.
27. If we think you might not be able to pay our bills on time, we can request you to give to us security for payment. This may take the form of your lodging an agreed amount as security for payment in another lawyers trust account. It may also take the form of your providing a personal guarantee or a registrable all obligations mortgage (Memorandum no. 1995/4004, as varied from time to time.) You authorise the lawyer into whose trust account the security has been paid to debit against amounts pre-paid by you and to deduct from any funds held on your behalf in that lawyers trust account any fees, expenses and disbursements for which we have provided an invoice.

How we will treat you (start)

28. We must treat you fairly, respectfully and without discrimination.

No trust account (start)

29. We do not operate a trust account. This means we do not receive or hold monies for you. We also do not bill in advance of our carrying out work for you, but see further clause 22 above.

You can change lawyers at any time (start)

30. You have the unequivocal right to change from us to another lawyer at any time.

Complaints (start)

31. We must let you know how to make a complaint and deal with any complaint promptly and fairly. If you have a complaint about our services or charges, you may refer your complaint to our principal, Mr Tony Paterson. You can contact Mr Paterson by calling him (00 64 9 575 4636), post (P O Box 25 203, St Heliers, Auckland, New Zealand), fax (00 64 9 575 4636) or by email tony.paterson@markitlaw.com. Depending on the nature of the complaint we can refer the complaint to an independent lawyer for consideration. We will discuss this with you if we intend to do this. In any event, who you may refer your complaint to and their contact details can change. We will tell you if they do.

Ending our relationship (start)

32. We can both end our relationship at anytime by giving the other reasonable notice. We will only do so if there is a good reason for us to stop acting for you. If we stop acting for you, all our unpaid fees, costs and disbursements for work done up and until we stopped acting for you become immediately payable by you. These must be paid without set off or deduction.

Lawyers fidelity fund (start)

33. 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. Except in certain circumstances specified in the Lawyers & 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.

Professional indemnity insurance (start)

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

Limits of our liability to you (start)

35. Our liability to you in contract, tort (including negligence), equity, statute and otherwise for all loss, damage, liability, costs and expense you may incur directly or indirectly in connection with our services is limited to the lesser of: (a) 10 times the total fees we have charged (excluding GST and disbursements) for the specific service at issue; and (b) \$100,000.

The limits of liability apply unless a different limit of liability is set out in our letter of engagement.

We can assert a lien over your documents (start)

36. If we have carried out work for you, but not been paid for that work, we have the right to assert a lien over all your documents and correspondence we retain on your file. We can do this until we are paid. If you instruct another lawyer we may require that other lawyer to undertake to pay our outstanding fees, costs and disbursements before releasing our file to them subject to the further requirements stated in the Rules.

Jurisdiction and governing law (start)

37. These terms and whatever services we perform for you are governed by, and only by, New Zealand law. Any dispute or difference about these terms must be brought and heard in New Zealand. You will not object to the New Zealand courts exercising jurisdiction over any dispute or difference. You waive any jurisdictional, venue, or inconvenient forum objections you could have to the New Zealand courts.

You can not assign any rights (start)

38. You cannot assign, transfer or sublicense any rights, benefits, interest or privileges you might have in connection with these Terms and the services we perform for you without our prior written consent.

Severability (start)

39. If a clause or part of a clause of these Terms can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from these Terms, but the rest of these Terms are not affected.

Waiver (start)

40. The fact we fail to do, or delay in doing, something we are entitled to do under these Terms, does not amount to a waiver of any obligation of, or breach of obligation by, you. A waiver by us is only effective if it is in writing. Our written waiver is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

These terms - when they apply and changes to them (start)

41. 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. If we do, we will notify you of the changes. For example, we may change these terms in our letter of engagement with you.