

# TERMS OF TRADE

These Standard Terms of Trade ("*Terms*") apply in respect of all work carried out by me for you, except to the extent that I otherwise agree with you in writing. These apply whether or not you have signed the duplicate Letter of Engagement if you orally advise us our terms are acceptable or if you instruct us to act for you. These Terms are subject to change pursuant to a subsequent Letter of Engagement or as notified on our website.

## 1. SERVICES

1.1 The services which I am to provide for you are outlined in my engagement letter.

## 2. FINANCIAL

### 2.1 Fees:

(a) The fees which I will charge or the manner in which they will be arrived at, are either set out in my engagement letter or will be calculated as set out below. Refer the heading below: "Factors to be taken into account in charging for my services".

(b) **Base Fees (our fees):** If the engagement letter specifies a Base Fee then that is the minimum you will be charged. It is not a Maximum. You will be charged additional fees and disbursements for matters not included in the Base Fee.

(c) **Estimates:** If the engagement letter specifies an estimate of my fee then the estimate is given in good faith but is not a quote and the final account could be higher than that estimated. Where practical I will endeavour to advise you if I expect my fee to exceed the estimate and provide you with a revised estimate. Please note it is not always possible to estimate fees accurately.

(d) **Office expenses (our internal fees):** We will charge you as a fee at 6.0% plus GST of the fee shown on the invoice to cover our internal office expenses.

(e) **Administration expenses (our internal fees):** We will charge an administration fee of \$55.00 including GST on each invoice to cover our internal administration expenses.

(f) **Sundry expenses (our internal fees):** We may charge you a variable Sundry Fee of up to but not exceeding \$50.00 (inclusive of GST) to cover internal sundry expenses (and as an aid rounding an invoice).

(f) **Conveyancing - additional expenses (our internal fees):** On all conveyancing transactions we will charge you the following additional fees (inclusive of GST) on our invoices: an e-dealing certification fee of \$40.00 (inclusive of GST) to cover our internal e-dealing expenses.

(g) **Land Information New Zealand (LINZ):** LINZ Search and Registration fees are charged at cost payable by me to a third party, in this case LINZ.

(h) **Disbursements:** We will charge you for all disbursements we incur on your behalf, being payments to third party service providers at cost (e.g Land Information New Zealand "LINZ", Court Filing Fees, Accountants and otherwise).

(h) **Non-refundable deposit:** On all Conveyancing Transactions a deposit of \$100.00 including GST is payable as a fee upon execution of the agreement and is not refundable if the transaction does not become unconditional. This is to help to offset some of our upfront costs if the transaction does not become unconditional.

(i) **Referral to another Barrister and/or Solicitor for advice:** You authorise me to refer any aspect of or all of the services we agree to provide you to another Barrister and or Solicitor of my choosing entirely at my discretion. This includes but is not limited to Mary Spillane, L.L.B. and Glenn Mason, L.L.B. (practising in Palmerston North) and/or any Barrister and or Solicitor employed by Alison Green Lawyer limited and/or Terrace End Law Centre Limited. His/her/their fees (or those of their firm) will be payable by you and included as a disbursement on my invoice. I may also seek payment in advance.

(j) **Factors to be taken into account in charging for my services:** With the exception of a base fee then I will charge for my services, taking into account the following: time, skill, responsibility, importance and results actioned, urgency, value of property and risk, complexity, locality, experience and reputation, limiting other engagements, fixed or conditional, quote estimate, fee agreement and practice costs. Time is only one of the factors taken into consideration but where my fees take time into consideration time is calculated on an hourly basis and the hourly rates are set out below. Time spent is recorded in 6 minute units, with time rounded up to the next unit of 6 minutes. To the extent time is a factor the hourly rate is \$450.00 plus GST per hour. Appointments are charged at a minimum of 5 units, letters are charged at a minimum of 5 units, telephone call are charged at a minimum of 2 units, emails from are charged at a minimum of 2 units, emails to are charged at a minimum of 3 units. The time to set up a new relationship file is charged at a minimum of 10 units. This is to allow for review and for file management.

2.2 **Disbursements paid by deduction:** You authorise us to deduct from any funds held on your behalf disbursements we incur on your behalf as they arise in the ordinary course of managing your matter without providing you with a dated invoice immediately.

2.3 **Fees paid by deduction:** You authorise us to deduct our fees calculated in accordance with our Terms of Trade from any funds held on your behalf in respect of which we will provide you with a dated invoice immediately.

2.3 **GST (if any):** Is payable by you on my fees and charges.

2.4 **Invoices:** I will send interim invoices to you either periodically or on completion of the matter or on termination of my engagement. I may also send you an invoice when I incur a significant expense.

2.5 **Payment:** Invoices are payable within 14 days of the date of the invoice except: (a) in the case of conveyancing transactions when all invoices are payable on or before the settlement date; and (b) in the case of Separation and Relationship Property Agreements and Property Contracting Out Agreements when all invoices are payable before the agreement is completed. You authorise me to deduct your fees from funds held in my Trust Account on your behalf. This is unless alternative arrangements have been made with me. I may require interest to be paid on any amount which is more than 7 days overdue. Interest will be calculated at the rate of 10% from the date payment became due. If any account remains overdue after three (3) months then an amount of ten percent (10.0%) of the account overdue (up to a maximum of five hundred dollars (\$500.00)) shall be levied for administration fees which sum shall become immediately due and payable.

2.6 **Security:** I may ask you to pre-pay amounts to me, or to provide security for my fees and expenses. You authorise me:

(a) to debit against amounts pre-paid by you; and

(b) to deduct from any funds held on your behalf in my trust account any fees for which I have provided an invoice.

2.7 **Third Parties:** Although you may expect to be reimbursed by a third party for my fees and expenses, and although my invoices may at your request or with your approval be directed to a third party, nevertheless you remain responsible for payment to me if the third party fails to pay me.

## 3. CONFIDENTIALITY

3.1 I will hold in confidence all information concerning you or your affairs that I acquire during the course of acting for you. I will not disclose any of this information to any other person except:

(a) to the extent necessary or desirable to enable me to carry out your instructions; or

(b) to the extent required by law or by the Law Society's *Rules of Conduct and Client Care for Lawyers*.

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

3.3 I will of course, not disclose to you confidential information which I have in relation to any other client.

## 4. TERMINATION

4.1 You may terminate my retainer at any time.

4.2 I may terminate my retainer in any of the circumstances set out in the Law Society's *Rules of Conduct and Client Care for Lawyers*.

4.3 If my retainer is terminated you must pay me all fees due up to the date of termination and all expenses incurred up to that date.

## 5. RETENTION OF FILES AND DOCUMENTS

5.1 You authorise me (without further reference to you) to destroy all files and documents for this matter 7 years after my engagement ends, or earlier if I have converted those files and documents to an electronic format.

## 6. CONFLICTS OF INTEREST

6.1 I have procedures in place to identify and respond to conflicts of interest. If a conflict of interest arises I will advise you of this and follow the requirements and procedures set out in the Law Society's *Rules of Conduct and Client Care for Lawyers*.

## 7. DUTY OF CARE

7.1 My duty of care is to you and not to any other person. Before any other person may rely on my advice, I must expressly agree to this.

## 8. TRUST ACCOUNT

8.1 I maintain a trust account for all funds which I receive from clients (including monies received for payment of my invoices). You authorise me **not** to put these funds on interest bearing deposit, except at our discretion, for the purposes of section 114 of the Lawyers and Conveyancers Act 2006. You also agree that if the funds are placed on interest bearing deposit I am not responsible for obtaining the best interest rate available or for any loss you may suffer as a result of any delay placing funds on interest bearing deposit.

8.2 My Trust Account is held with ASB Bank Limited. You agree that I am not liable for losses to clients of funds held in my Trust Account caused by Bank failure, freeze of funds in a failed bank, Deposit Guarantee Scheme, Open Bank Resolution Policy or otherwise.

## 9. GENERAL

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

9.2 I am entitled to change these terms from time to time, in which case I will send you amended terms or display them on our website.

9.3 My relationship with you is governed by New Zealand law and New Zealand Courts have exclusive jurisdiction.

## 10. PRIVACY ACT 1993

10.1 You allow me to:

(a) collect, retain and use personal information about you, for the purposes of assessing your credit worthiness, administering my rights against you and/or marketing any services provided by me.

(b) disclose information about you to any other credit provider, lawyer who has acted for you previously or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by you.

(c) where you are an individual the authorities under clause 10.1 are authorities for the purposes of the Privacy Act 1993.

(d) A lawyer whom I have engaged for the purposes of completing some or all of the services we have agreed to provide you pursuant to clause 2.1(i) of these Terms of Trade.

## 11. DEFAULT AND CONSEQUENCES OF DEFAULT

11.1 If you default in payment of any invoice when due, you shall indemnify me from and against all costs and disbursements incurred by me in pursuing the debt including legal costs on a solicitor and own client basis and my collection agency costs.

11.2 Without prejudice to any other remedies I may have, if at any time you are in breach of any obligation (including those relating to payment) I may suspend or terminate the supply of services to you and any of my other obligations under the terms and conditions. I will not be liable to you for any loss or damage you suffer because I have exercised my rights under this clause.

## 12. SECURITY AND CHARGE

12.1 Despite anything to the contrary contained herein or any other rights which I may have howsoever:

(a) Where you are the owner of land, realty or any other asset capable of being charged you agree to mortgage and/or charge all of your joint and/or several interest in the said land, realty or any other asset to me or my nominee to secure all amounts and other monetary obligations payable under these terms and conditions. This includes a lien over all material we hold for you including safe custody and file material both physical and electronic. We will not release safe custody and/or file material until all our fees have been paid. You acknowledge and agree that I shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.

(b) Should I elect to proceed in any manner in accordance with this clause and/or its sub-clauses you shall indemnify me from and against all my costs and disbursements including legal costs on a solicitor and own client basis.

(c) You agree to irrevocably nominate, constitute and appoint me or my nominee your true and lawful attorney to perform all necessary acts to give effect to the provisions of clause 12.1.

13. **JOINT AND SEVERAL LIABILITY AND GUARANTEE:** The shareholders, directors and guarantors of a client that is a company hereby irrevocably guarantee the due and punctual payment of all moneys owing by the client but I may proceed in the first instance directly against any or all of the shareholders, directors and/or guarantors. If more than one their liability shall be joint and several.

14. **CONSENT TO TAPE PHONE CALLS AND MEETINGS:** You authorise me to tape telephone calls, meetings and any other conversations I have with you or anyone else in connection with you.

15. **AML/CFT:** You must provide me with all information I request in relation to due diligence including proof of your identification, address and if requested, source of funds, and any other information I request to enable me to comply with Anti-Money Laundering and Countering Financing of Terrorism Act 2009 ("AML/CFT"). I do not agree to act for you unless I am entirely satisfied with the information you provide. You consent to me verifying your identity and credit worthiness with third parties, conducting identity and credit checks and disclosing privileged information to the Commissioner of Police at my discretion. The time and cost spent obtaining this information will be charged to you when our fees are calculated.