

## TERMS OF ENGAGEMENT

*The purpose of this document is to set out the basis on which we act for our clients.*

*Please read carefully and contact us with any queries.*

### 1 General

- 1.1 These Standard Terms of Engagement (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, in which case we will send you amended Terms.
- 1.2 For each matter on which we act for you, we will send you a “Letter of Engagement”. That letter will contain details of the matter on which we are acting, who will carry out the work on that matter and the basis upon which we will charge our fees.

### 2 Services

- 2.1 The services we are to provide for you (the Services) are outlined in our letter of engagement along with any further instructions that you provide to us in writing (or that we record in writing).
- 2.2 In order to provide you with efficient advice and services and to provide the most cost-effective service, it may be that part or all of your instructions will be delegated to other members of our firm.

### 3 Communications

- 3.1 We may provide documents and other communications to you by email (or other electronic means). You will advise us if any of your contact details change.
- 3.2 Although we have our communication systems administered by our IT Provider, we do not guarantee that our email or other forms of electronic communication are secure, will be received or that any form of electronic communication we use does not contain a virus or have any other defects.
- 3.3 We cannot guarantee that any communications will not be lost or affected for some reason beyond our reasonable control and we will not be liable for any damage or loss caused thereby.
- 3.4 We may accept instructions from (unless you advise us otherwise in writing);
- (a) Any directors or employees or any other person you have authorised to instruct us when our client is a company;
  - (b) Any of the trustees when our client is a trust;
  - (c) Any of the partners or officers when our client is a partnership;
  - (d) Either of you when our client is a couple.

### 4 Financial

- 4.1 **Fees:** The basis upon which we will charge our fees is set out in our Letter of Engagement.
- (a) **Payment** – Our fees are payable 14 days after our account is rendered or sooner if (i) we hold funds in our trust account (whereupon fees/disbursements may be deducted as per (b) below); or (ii) the fees relate to a standard transaction (e.g. sale/purchase/financing) whereupon they will be payable upon settlement.
  - (b) **Payment by Deduction** - We may deduct our fees (and any disbursements/expenses) from any funds held on your behalf upon issue of an invoice whether or not we have pre-approved any account with you.

## 4.2 Other Financial Matters

- (a) **Disbursements and expenses:** In providing services we may incur disbursements or have to make payments to third parties on your behalf. These will be included in our invoice to you when the expense is incurred.
- In particular when invoicing we will normally charge an extra sum (typically \$50.00 plus GST – but this may vary depending on the size and extent of the services we provide) being a contribution towards office expenses (i.e. forms, faxes, photocopying, telephone and mobile calls, postage, printing and sundry).
- We also will normally charge an extra amount of \$20.00 (inclusive of GST) as a contribution towards the licence fees we pay to LINZ (Land Titles Office) where our service includes registering documents at LINZ.
- (b) **Deposit Funds:** If we are holding significant funds on your behalf we will normally lodge those funds on interest bearing deposit via our bank subject to you having completed (to our bank's satisfaction) any request for information relating to the deposit or certification required by our bank. In that case we may charge an administration fee of up to 5% of the gross interest earned to reflect the time and expense of administering your funds.
- (c) **Overdue Payments:** We may require interest to be paid on any payment which is overdue. Interest will be calculated at the rate of 10% p.a. apportioned on a daily basis from the day the payment was due through to the day it is received by us in cleared funds. We may also add the costs of recovering or attempting to recover any overdue payment to our fees. This includes all costs on a solicitor/client basis and other costs of recovery and disbursements. If your account is overdue we may stop work on any matters in respect of which we are providing services to you.
- (d) **Payment in Advance:** Before commencing services we may require a payment in advance towards fees, disbursements or other charges. This payment will be deposited into our trust account and it may be used to pay any invoice rendered by us or for any disbursement incurred on your behalf. We reserve the right to decline to act if there is a failure or delay of any payment in advance requested.
- (e) **Third Parties:** Although you may expect to be reimbursed by a third party for our fees and expenses 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.

## 5 Confidentiality and Personal Information

- 5.1 **Confidence:** 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:
- (a) to the extent necessary or desirable to enable us to carry out your instructions; or
  - (b) as expressly or impliedly agreed by you; or
  - (c) as necessary to protect our interests in respect of any complaint or dispute; or
  - (d) to the extent required or permitted by law.
- 5.2 **Verification of identity:** Various legislation does (or will) require us to collect from you and to retain information required to verify your identity. We may therefore ask you to show us documents verifying your identity (such as a passport or driver's licence). We may retain copies of these documents. We may perform such other customer verification checks as to your identity and checks as to the source of any funds associated with any transaction to which the Services relate as we consider to be required by law. We may charge you our reasonable costs for doing this.

## 6 Documents, Records and Information

- 6.1 We will keep a record of all important documents which we receive or create on your behalf. We may at our option keep a record electronically and destroy originals (except where the existence of an original is legally important such as in the case of Wills).
- 6.2 We will provide to you on request copies or originals (at our option) of all documents to which you are entitled under the Privacy Act 1993 or any other law. We may charge you our reasonable costs for doing this.
- 6.3 Where we hold documents that belong to a third party you will need to provide us with that party's written authority to uplift or obtain a copy of that document.
- 6.4 Unless you instruct us in writing otherwise, you authorise us and consent to us (without further reference to you) to destroy (or delete in the case of electronic records) all files and documents in respect of the Services seven (7) years after our engagement ends or earlier if we have converted those files and documents to an electronic format (other than any documents that we hold in safe custody for you or are otherwise obliged by law to retain for longer). We may retain documents for longer at our option. Any costs we incur in storing your files offsite and/or retrieving any files offsite and/or couriering or delivering such file(s) to you and/or a third party are payable by you on or before provision of such files to you.
- 6.5 We may, at our option, return documents (either in hard or electronic form) to you rather than retain them.

- 6.6 We own copyright in all documents or work we create in the course of performing the Services. You may not permit any third party to copy, adapt or use the documents without our written permission.

## 7 Duty of Care and the Scope of our services

- 7.1 Our duty of care is to you and not to any other person. We owe no liability to any other person, including for example any directors, shareholders, associated companies, employees or family members unless we expressly agree in writing. We do not accept any responsibility or liability whatsoever to any third parties who may be affected by our performance of the Services or who may rely on any advice we give, except as expressly agreed by us in writing.
- 7.2 Our advice relates only to each particular matter in respect of which you engage us. Once that matter is at an end, we will not owe you any duty or liability in respect of any related or other matters unless you specifically engage us in respect of those related or other matters.
- 7.3 We do not update advice once it has been given or remind clients about expiry dates (for example Lease or PPSR expiry dates) unless we have agreed to do so in writing.

## 8 Limitations on our Obligations or Liability

- 8.1 To the extent allowed by law, our aggregate liability to you (whether in contract, tort, equity or otherwise) in connection with our Services is limited to the amount available to be payable under the Professional Indemnity Insurance held by the firm.
- 8.2 This is the total amount that we will have to pay whether or not you are more than one person (for example a couple or a partnership).
- 8.3 Nothing in this clause limits any rights you have under the Consumer Guarantees Act 1993, unless you ask us to act for you for business purposes, in which case you confirm that the Consumer Guarantees Act 1993 does not apply.
- 8.4 We are not liable for losses caused because you did not read or receive a communication we sent to you.
- 8.5 We are not liable for errors in or omissions from any information provided by third parties.

## 9 Termination

- 9.1 You may terminate our retainer at any time.
- 9.2 We may terminate our retainer in any of the circumstances set out in the Lawyers and Conveyancers Act (Lawyers Conduct and Client Care Rules 2008) ("the Rules") including the existence of a conflict of interest, non-payment of fees and failure to provide instructions.
- 9.3 If we cease acting for you, you must pay us all fees due up to the date of termination and all disbursements and expenses incurred up to that date and we may withhold any of your documents and/or files until our fees/expenses have been paid to us in cleared funds. We may keep a copy of any records you take.

## 10 Feedback and Complaints

- 10.1 Client satisfaction is one of our primary objectives and feedback from clients is helpful to us. If you would like to comment on any aspect of the service provided by us, including how we can improve our service, please contact the Director responsible for your business.
- 10.2 If you have any concerns or complaints about our services, please raise them as soon as possible with the person to whom they relate. They will respond to your concerns as soon as possible. If you are not satisfied with the way that that person has dealt with your complaint, please raise the matter with the Director responsible for your business. We will inquire into your complaint and endeavour in good faith to resolve the matter with you in a way that is fair to all concerned.
- 10.3 If you are not satisfied with the way we have dealt with your complaint the New Zealand Law Society has a complaints service to which you may refer the issue. You can call the 0800 number for guidance, lodge a concern or make a formal complaint. Matters may be directed to:

Lawyers Complaints Service  
PO Box 5041  
Wellington 6140  
New Zealand

Phone: 0800 261 801

To lodge a concern:  
[www.lawsociety.org.nz/for-the-community/lawyers-complaints-service/concerns-form](http://www.lawsociety.org.nz/for-the-community/lawyers-complaints-service/concerns-form)

To make a formal complaint:  
[www.lawsociety.org.nz/for-the-community/lawyers-complaints-service/how-to-make-a-complaint](http://www.lawsociety.org.nz/for-the-community/lawyers-complaints-service/how-to-make-a-complaint)

Email: [complaints@lawsociety.org.nz](mailto:complaints@lawsociety.org.nz)

## 11 Client Care Information

11.1 We are committed to complying with the Rules. The following details describe some of our professional responsibilities to you:

- (a) When providing legal services to you we 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.
- (b) Professional Indemnity Insurance – We have professional indemnity insurance which exceeds the minimum cover prescribed by the New Zealand Law Society.
- (c) Lawyers Fidelity Fund – If a client suffers pecuniary loss due to theft by his/her solicitors of funds or other valuable property entrusted to them this Fund is available to claim against up to a maximum of \$100,000.00.

## 12 Governing Law

12.1 Our relationship with you is governed by New Zealand law and New Zealand Courts have exclusive jurisdiction.

We value our relationships with our clients and look forward to working with you.

**Schnauer Legal Limited**

*Effective from February 2018*