

ROUT MILNER FITCHETT

TERMS OF ENGAGEMENT

1. INTRODUCTION

- 1.1. These Terms of Engagement ("Terms") are the standard terms on which Rout Milner Fitchett ("us" "we") provide legal and related services and includes information we are required to provide by the *Rules of Conduct and Client Care for Lawyers* issued by the New Zealand Law Society ("Rules of Conduct").
- 1.2. Our client on any matter will be the party identified as such in our *Letter of Engagement* sent on the matter or as otherwise agreed ("you").

2. AGREEMENT

- 2.1. Subject to any different or additional terms agreed in writing these Terms apply in respect of all work carried out by us including future work whether or not we send you another copy of our Terms.
- 2.2. You may accept these terms by signing the *Acceptance* on page 5, or your acceptance will be assumed if you ask us to continue acting for you.
- 2.3. We may change the Terms from time to time, in which case we will send you amended Terms.
- 2.4. Our relationship with you is governed by New Zealand law and New Zealand courts have exclusive jurisdiction.

3. CLIENT CARE AND SERVICE COMMITMENT

- 3.1. In providing you legal services we will:
 - protect and promote your interests;
 - discuss with you your objectives and how they should 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 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; and

- let you know how to make a complaint and deal with any complaint promptly and fairly.

- 3.2. The obligations lawyers owe to clients are described in the Rules of Conduct. Those obligations are subject to overriding duties, including duties to the courts and to the justice system. If you have any questions, please visit www.lawsociety.org.nz or call 0800 261 801.

4. LETTER OF ENGAGEMENT

- 4.1. Outlined in our *Letter of Engagement* is:
 - 4.1.1. the services which we are to provide for you (including any limit on our obligations to you) ("Services");
 - 4.1.2. who will work with you, i.e., a Partner with overall responsibility any other person; and
 - 4.1.3. our fees and how we calculate fees.

5. DUTY OF CARE

- 5.1. 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 it.

6. ANTI-MONEY LAUNDERING & COUNTERING FINANCING OF TERRORISM REQUIREMENTS

- 6.1. Depending on the Services in accordance with the Anti-Money Laundering and Countering Financing of Terrorism Act 2009, we will not be able to carry out any work on your file until we receive:
 - 6.1.1. Proof of identification (including your full name and date of birth) and
 - 6.1.2. Proof of your address.
- 6.2. The best form of proof of identify is a copy of the main information page of your current passport.
- 6.3. If you have already provided us with this information previously, we do not require this again unless it has expired or your circumstances have changed.
- 6.4. If you are seeing us about company or trust business, we will need information about the company or trust including the people associated with it (such as directors and shareholders, trustees and beneficiaries).

7. CONFIDENTIALITY

Confidence

7.1. 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:

- 7.1.1. to the extent necessary or desirable to enable us to carry out your instructions;
- 7.1.2. as expressly or impliedly agreed by you;
- 7.1.3. as necessary to protect our interests in respect of any complaint or dispute; or
- 7.1.4. to the extent required or permitted by law.

Personal information and Privacy

7.2. In our dealings with you we will collect and hold personal information about you. We will use that information to carry out the Services and to make contact with you about issues we believe may be of interest to you. Provision of personal information is voluntary but if you do not provide full information this may impact on our ability to provide the Services.

7.3. Subject to clause 7.1, you authorise us to disclose, in the normal course of performing the Services, such personal information to third parties for the purpose of providing the Services and any other purposes set out in these Terms.

7.4. We may disclose your name and address to third parties such as credit agencies to perform a credit reference or to undertake credit management or collection processes if it is reasonable to do so.

7.5. The information we collect and hold about you will be kept at our offices and/or at secure file storage sites (including electronic file storage sites) elsewhere. If you are an individual, you have the right to access and correct this information. If you require access, please contact our office administrator.

8. CONFLICTS OF INTEREST

8.1. We have procedures in place to identify and respond to conflicts of interest. If a conflict of interest arises we will advise you of this and follow the requirements and procedures set out in the Rules of Conduct.

9. FINANCIAL

Fees

9.1. Unless otherwise agreed, our fees reflect the time we spend on a matter charged at our hourly rates set out in our *Letter of Engagement* and adjusted where appropriate to reflect other factors permitted by the Rules of Conduct. Those factors may include the complexity, urgency, value and importance of the services we provide to you.

9.2. Differences in hourly rates reflect the experience and specialisation of our staff. Time spent is recorded in 6 minute units, with time rounded up to the next unit of 6 minutes.

9.3. Hourly rates may change from time to time without notice to you.

9.4. If the *Letter of Engagement* specifies a fixed fee, we will charge this for the agreed scope of our services. Work which falls outside that scope will be charged at our hourly rates and we will advise you as soon as reasonably practicable if it becomes necessary for us to provide services outside the agreed scope.

Disbursements and Expenses

9.5. In providing services we may incur disbursements or have to make payments to third parties on your behalf. You authorise us to incur these disbursements (which may include such items as search fees, court filing fees, registration fees, and travel and courier charges) which are reasonably necessary to provide the Services. You authorise us to make payments to third parties on your behalf which are reasonably required to undertake the Services (which may include items such as experts' costs or counsel's fees). These will be included and specified on our invoice to you when the expense is incurred.

9.6. We may charge an office service fee in addition to disbursements to cover incidental expenses such as telephone toll charges, fax charges, photocopying and office stationery used.

GST (if any)

9.7. Our services will usually attract Goods and Services Tax (GST). If this is the case, GST is payable by you on our fees and charges.

Invoices and Payment

9.8. We will send invoices to you, usually monthly (on ongoing matters) and on completion of the matter, or on termination of our engagement. We may also send you invoices more frequently when we incur a significant expense or undertake a significant amount of work over a shorter period of time.

- 9.9. Invoices are payable within 14 days of the date of the invoice, unless alternative arrangements have been made with us in writing.
- 9.10. You authorise us to deduct our fees and other expenses from funds held in our trust account on your behalf on provision of an invoice to you.
- 9.11. If you have difficulty in paying any of our accounts, please contact us promptly so that we may discuss payment arrangements.
- 9.12. If your account is overdue, we may:
- 9.12.1. require interest to be paid on any amount which is more than 14 days overdue, calculated at the rate of 12% above the overdraft rate that our firm's main trading bank charges us for the period that the invoice is outstanding;
 - 9.12.2. stop work on any matters in respect of which we are providing services to you;
 - 9.12.3. require an additional payment of fees in advance or other security before recommencing work; and
 - 9.12.4. recover from you in full any costs we incur (including on a solicitor/client basis) in seeking to recover the amounts from you, including our own fees and the fees of any collection agency.
- 9.13. Payment may be made by:
- 9.13.1. direct credit to our bank account 12 3165 0170925 02; or
 - 9.13.2. Eftpos transaction at our office. Credit card transactions will incur a 2.5% fee.

Fees and disbursements in advance

- 9.14. We may ask you to pre-pay amounts to us, or to provide security for our fees, disbursements, and expenses. We may do this, on reasonable notice, at any time.

Estimates

- 9.15. You may request an estimate of our fee for undertaking the Services at any time. If possible, we will provide you with an estimate (which may be a range between a minimum and a maximum amount or for a particular task or step). An estimate is not a quote. Any significant assumptions included in the estimate will be stated and you must tell us if those assumptions are wrong or change. We will inform you if we are likely to exceed the estimate

by any substantial amount. Unless specified, an estimate excludes GST, disbursements and expenses.

Third Parties

- 9.16. 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.

10. TRUST ACCOUNTING

- 10.1. We operate a trust account. All money received from you or on your behalf will be held to your credit in our trust account. For that we require:
- 10.1.1. your IRD number;
 - 10.1.2. your bank account number; and
 - 10.1.3. completed and signed self-certification form (10.3 below).
- 10.2. If we are holding significant funds on your behalf we would normally lodge those funds on interest bearing deposit ("IBD") with a bank unless it is not reasonable or practicable to do so. Interest earned from IBD deposits will be credited to you less withholding tax and an interest administration fee payable to us of 7% of the interest derived.
- 10.3. We will send you a self-certification form to complete to satisfy the requirements of the Common Reporting Standards and Foreign Act Tax Compliance Act and the Foreign Account Tax Compliance Act. The exact form will depend on whether you are an individual, trust, company, or other entity. If we have not provided you with the relevant form, please contact us for it.
- 10.4. We are not liable for any loss in relation to funds which are not placed on IBD where we have not been provided with a correctly completed self-certification form and we will not be liable for the information provided in the self-certification form.

11. DOCUMENTS, RECORDS AND INFORMATION

- 11.1. We will keep a record of all important documents which we receive or create on your behalf on the following basis:
- 11.2. You authorise us (without further reference to you) to destroy all files and documents (except where the existence of an original is legally important such as in the case of wills and deeds) 7 years after our

engagement ends, or earlier if we have converted those files and documents to an electronic format.

- 11.3. 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.
- 11.4. We own copyright in all documents or work we create in the course of performing the Services but grant you a non-exclusive licence to use and copy the documents as you see fit for your own personal or commercial use. However, you may not permit any third party to copy, adapt or use the documents without our written permission.

No maintenance or renewal of registrations

- 11.5. We do not keep a record of *Financing Statements* registered on the Personal Property Securities Register or *trade marks* registered with the Intellectual Property Office, nor information lodged with the *Companies Office*. The renewal of any such registrations is your responsibility and we do not accept any liability for any loss caused by the non-renewal of such registrations.
- 11.6. We do not keep a record of usernames / identities or passwords in connection with such registrations.

12. TAX MATTERS

- 12.1. We take no responsibility for the provision of any specialised advice as to tax matters and any tax questions should be directed to your accountant, or another suitably qualified advisor.
- 12.2. Where your matter relates to the sale and purchase of a residential property, there may be tax consequences (including for example GST and the bright-line property rule) and it is your responsibility to ensure that you have taken appropriate advice regarding tax matters.

13. PROFESSIONAL INDEMNITY INSURANCE

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

14. LAWYERS FIDELITY FUND

- 14.1. The Law Society maintains the Lawyers Fidelity Fund for the purpose 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 \$100,000.00. 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.

15. COMPLAINTS

- 15.1. We maintain the following procedure for handling any complaints by clients to ensure a complaint is dealt with promptly and fairly.
- 15.2. First, if you have a complaint about our services or charges, you may refer your complaint to the Partner in our firm who has day to day responsibility for your work.
- 15.3. Secondly, if you do not wish to refer your complaint to that person, or you are not satisfied with that person's response at step 1, you may refer your complaint to another partner either *Craig Morice* or *Rob Fitchett* or *Luke Acland* (as applicable), each of whom shares responsibility for our work:
 - craig.morice@rmf-law.co.nz;
 - rob.fitchett@rmf-law.co.nz;
 - luke.acland@rmf-law.co.nz
- 15.4. Thirdly, if your complaint relates to all of the partners above, you should contact Michael Ducray of Ducray Law. He will look into your complaint and try to resolve at no cost to you. Mr Ducray can be contacted as follows:

michael.ducray@propertylawcentre.co.nz
PO Box 241, Nelson;
03 546 9507.
- 15.5. You may also contact the complaints service run by the New Zealand Law Society (visit www.lawsociety.org.nz or call 0800 261 801).

16. TERMINATION

- 16.1. You may terminate our retainer at any time.
- 16.2. We may terminate our retainer in any of the circumstances set out in these Terms and in the Law Society's *Rule of Conduct and Client Care for Lawyers*.
- 16.3. If our retainer is terminated, you must pay us all fees incurred up to the date of termination and all expenses incurred up to that date.