

## OUR TERMS OF BUSINESS - CLIENT CARE AND SERVICE INFORMATION

(Please read this information carefully)

### 1. Your instructions and acceptance

- 1.1 This document contains our standard terms of business (“Terms”) that apply every time you engage us to provide legal services (“Services”) to you, unless we have agreed in writing to an alternative arrangement with you. We may update these Terms from time to time and they will be available on our website.
- 1.2 We will provide you with the Services that you request and that we agree to provide. We will outline the scope of the Services in our letter of engagement to you. You can ask us to expand or limit the scope of those Services at any time, in writing.
- 1.3 You must tell us immediately in writing if you do not accept these Terms, or if the Services outlined in our letter of engagement are not what you want us to do. If you don’t, you will be taken to have accepted these Terms and the Services outlined and they form the basis of our contract with you.
- 1.4 We provide our Services to you and only you. If any other person or entity wants to act on or rely on our advice, they may only do so if we both previously agree in writing.

### 2. Our general standards

- 2.1 Our relationship with you is important. Our goal is to provide you with “Effective Solutions – Peace of Mind”.
- 2.2 When providing Services to you, we will:
  - a) Act competently, in a timely way, and in accordance with instructions received and arrangements made.
  - b) Protect and promote your interests and act for you free from compromising influences or loyalties.
  - c) Discuss with you your objectives and how they should best be achieved.
  - d) Provide you with information about the work to be done, who will do it and the way the Services will be provided.
  - e) Charge you a fee that is fair and reasonable and let you know how and when you will be invoiced.
  - f) Give you clear information and advice.
  - g) Protect your privacy and ensure appropriate confidentiality.
  - h) Treat you fairly, respectfully and without discrimination.
  - i) Keep you informed about the work being done and advise you when it is completed.
  - j) Let you know how to make a complaint if you want to, and deal with any complaint fairly.
- 2.3 For our commercial clients, our staff may attend your place of work. Where that happens, health and safety legislation places responsibility for their safety on you.
- 2.4 Our engagement is usually governed by New Zealand law and any disputes about this engagement are to be dealt with in the jurisdiction of New Zealand.

### 3. Communication

- 3.1 We will obtain from you contact details including an email address, postal address and telephone numbers. If you have a preferred method of communication, let us know.
- 3.2 You must tell us if your contact details change. We do not accept any liability for loss arising from non-receipt of any communication, including email communications.
- 3.3 From time to time we will provide you with information that may be relevant to you such as newsletters and information bulletins. You may tell us at any time if you do not want to receive such communication from us.
- 3.4 You must tell us all relevant information about your matter. We can only advise you based upon the information provided to us.

### 4. Allocation of your work

- 4.1 You may nominate the person from our firm that you wish to be responsible for your instructions, however in order to provide you with the most efficient, specialist and cost effective service, the work to achieve your instructions may be performed by more than one member of our firm at our discretion. You agree to this.

### 5. Our fees to you

- 5.1 We will explain the basis of our fees in our letter of engagement to you.
- 5.2 Our fees are charged based on the criteria laid down by the New Zealand Law Society. These include:
  - a) The time and labour expended.
  - b) The skill, specialised knowledge, and responsibility required.

- c) The importance of the matter to you and the results achieved.
  - d) The urgency and the circumstances of your instructions.
  - e) The value or amount of any property and/or money and degree of risk associated with your instructions.
  - f) The complexity of the matter and the difficulty or novelty of the issues involved.
  - g) The experience, reputation and ability of the person in our firm doing the work.
  - h) The possibility that the acceptance of your work will preclude us from being engaged by other clients.
  - i) Whether the fee is fixed and/or conditional (whether in litigation or otherwise).
  - j) Any quote or estimate of fees given.
  - k) The reasonable costs of running our firm.
  - l) The fee customarily charged in the market and our locality for similar legal Services.
- 5.3 Where our fees are calculated mainly on the hours worked in completing your instructions, hourly rate details will be provided if required or requested. The differences in hourly rates of our professional staff reflect their experience and specialisation, and they may change from time to time without notice to you. They also cover our support staff, office systems and infrastructure.
- 5.4 If we can, we will give you an estimate of our costs in our letter of engagement. This will however not always be possible and instead hourly rates of our professional staff may only be able to be specified for your work. When an estimate is given, it will be our "best guess", on the basis of the information we have as at the date of the letter as to what the fee is likely to be. It is not a quote, a fixed fee or a cap on what we may charge. This is important for your understanding.
- 5.5 If the work does not proceed as either of us had expected, or if it turns out to be more complicated than we anticipated, we will tell you and, if possible, give you a new estimate or explanation as to the basis of future costs to complete it.
- 5.6 In certain circumstances our letter of engagement may specify a fixed fee or a quotation rather than an estimate. This will only be applicable where it is recorded as such in writing and clearly labelled by our firm as a fixed fee or quotation, not an estimate. We will charge this for the agreed scope of our Services. Work which falls outside the scope of work on which the fixed fee is based will in many cases, but not all, be charged on an hourly rate basis. We will advise you as soon as reasonably practicable if it becomes necessary for us to provide Services outside the agreed fixed fee scope.
- 5.7 GST is payable by you on our fees and charges unless otherwise stated. You are responsible for your own taxation arrangements.
- 5.8 We may, at any time, require that you (or other persons) provide us with a signed personal guarantee to be liable to us and to pay our invoices without deduction in relation to any Services that we provide, at that time or in the future, before we provide any Services. We will normally, but not exclusively, require this when we are providing Services to a company. If a guarantee of this nature is required, then you will need to co-operate with us. Any such guarantee shall be wholly enforceable by Corcoran French despite any change in our firm's partnership.
- 5.9 We may invoice you at various stages of your instructions to us in addition to at the end of our work.

## **6. Disbursement costs**

- 6.1 We will charge you a set file administration charge to cover the opening, subsequent administration, closure, and storage of your file. This fee also covers basic fax charges, postage, stationery, and similar expenses. Some administrative expenses (such as photocopying and specific forms used) will be charged separately to you at our then applicable rates. Property transactions will also incur a separate charge in relation to communication reporting software, where it is used for your work.
- 6.2 In providing the Services we may incur expenses on your behalf, including but not limited to court filing fees, registration fees, search fees, council LIM charges, travel costs, and experts' fees.
- 6.3 You authorise us to incur all expenses and to make payments to third parties for these expenses when they are reasonably necessary to provide the Services.
- 6.4 All charges, expenses and payments made to third parties on your behalf will be charged to you and will appear on your invoice as disbursements. They are to be paid without deduction.
- 6.5 We may require you to pay money to us in advance for anticipated disbursements and you will need to promptly co-operate with us when asked to do so. If you don't, this could negatively affect the Services we can provide to you.

## **7. Credit enquiries**

- 7.1 You authorise us to conduct credit checks about you with, and obtain credit and other personal information from, credit agencies and to provide your personal information to those agencies at any time.

## **8. Payment**

- 8.1 Our accounts (i.e. our invoices and statements) for fees and disbursements are to be paid without deduction strictly within 14 days of when they are sent to you.
- 8.2 For conveyancing matters, payment of our legal fees and disbursements is however required on the settlement of the transaction.
- 8.3 We may however at any time and at our discretion require payment in advance of our completing work for you.
- 8.4 You expressly authorise us to deduct from any funds held on your behalf in our trust account any and all fees, expenses or disbursements for which we provide an invoice.
- 8.5 We accept payment of our accounts by cash, eftpos, cheque, direct credit, Visa and Mastercard. If you pay any account by cheque, you need to be aware that form of payment can take time to clear through our banks and until that has occurred we will not consider the account has been paid.

## **9. Unpaid accounts**

- 9.1 If you have any difficulty in payment of an account from our firm then you must contact us immediately on receipt of it to discuss arrangements to pay it.
- 9.2 We will charge interest at the rate of 24% per annum, calculated and applied daily, on all overdue accounts, fees, disbursements and any other charges that remain unpaid after the due date for payment.
- 9.3 If you do not fully pay our accounts, we may refer them to a debt recovery agent or commence recovery proceedings in court against you. If this is necessary you shall reimburse us for all costs in recovering payment of the account(s), including our full in-house time and attendances on a solicitor/client basis, court costs and any other disbursements and any fees charged by a debt recovery agent/solicitor or more generally. This clause is also for the benefit of and enforceable by our debt recovery agent under the Contract and Commercial Law Act 2017.
- 9.4 Should we not immediately pursue recovery of any outstanding account that does not mean that we waive any rights that we have or any obligations you have. That shall equally apply for all other Terms.
- 9.5 If any clause in these Terms is found to be invalid or unenforceable, the remainder of them shall not be affected and they shall remain valid and enforceable.

## **10. Monies paid by you to us – trust account**

- 10.1 We maintain a trust account for all funds which we receive from our clients. Interest is not earned on funds in our trust account.
- 10.2 If we hold significant funds on your behalf (except monies received for payment of our costs) we may lodge those funds on interest bearing deposit with our bank, unless the cost associated with the time taken to do so is disproportionate to any benefit to be gained. If you want such lodgement to occur, then you need to tell us in writing. When monies are placed on such a deposit bank account, we will charge an administration fee by way of a commission on the interest derived and the time of the professional staff involved will also be charged for.
- 10.3 For property, financing, and other transactions where payment of settlement monies is to be paid by you, we require a bank cheque or cleared funds for the correct amount to be deposited with us no later than the morning of the settlement. If this does not happen, your transaction may not be completed at the settlement time previously agreed. We will not be liable for any penalties, interest, charges or any other liability whatsoever as a result of you not depositing funds by the time required.

## **11. At any time you can tell us to stop working for you**

- 11.1 At any time, and for any reason, you may withdraw your instructions to us or ask us to assign another professional staff member to your matter. Please tell us immediately should you wish to do so.
- 11.2 If you do, you remain liable at that point for the all fees and expenses we have incurred up to that date plus any and all costs in completing any matter that we, as your solicitors, are required to complete (for example, as required by the court or the Court Rules).

## **12. We may stop working for you**

- 12.1 We reserve the right to suspend, terminate or cease acting for you if we find lawful cause, for instance, in the event that:
  - a) You require us to act unlawfully, unethically or in breach of our professional obligations.
  - b) You fail to give us adequate instructions.
  - c) You unreasonably refuse to act in accordance with our advice.
  - d) You indicate that you have lost confidence in us or this is clear to us.

- e) You fail to pay any of our accounts or monies requested in advance of legal work within the time required of you, or if or we believe that you will not meet the reasonable costs of the work being or to be undertaken.
  - f) You lose legal capacity.
  - g) A more than minimal risk of conflict of interest arises.
- 12.2 If your account(s) still remains outstanding after 60 days it is likely that no further work will be undertaken by our firm for you until arrangements acceptable to us are made with us to bring your account(s) back into good standing.

**13. Documents and uplifting your file**

- 13.1 Should you wish to uplift a file we have for you, you may do so providing all costs in relation to that file are paid in full. You will need to give us reasonable notice before collecting your file should you wish to do so.
- 13.2 Our file may also be held electronically and we may incur time in retrieving all of the documents and data for you. We may charge you for the time associated with that retrieval.
- 13.3 Our file may also be held in physical form in off-site storage. You consent to that. If such a file needs to be retrieved to meet your uplift request, you will be charged the retrieval cost we incur.
- 13.4 You recognise that our files usually contain a mixture of property of yours and that of our firm. We will only provide you with documents, records, funds or property held on your behalf upon any file request. This is however subject to the lien that we have until our fees are paid in full as referred to above Drafts of documents, file notes, internal firm correspondence, memoranda and financial records that we prepare while working on your file shall be property of, and for the benefit of, our firm and shall not be provided to you upon file request or otherwise unless we expressly agree to the contrary.

**14. Retention of your file**

- 14.1 We may hold the information and documentation for your file in an electronic format. This includes copies of documents you have provided to us. Original copies of documents may not therefore be retained. You agree to this.
- 14.2 If you do not request your file, we will retain it for a period consistent with NZ Law Society Guidelines (currently 7 years) after our engagement ends, or earlier if we have converted the file and documents on it to an electronic format, and which you agree to. At that time we may destroy the physical or electronic copy of the file without further notice to you. You must tell us if you require retention of a particular document.

**15. Conflict of interest**

- 15.1 We have procedures in place to identify and respond to conflicts of interest.
- 15.2 If a conflict of interest arises, we will advise you of this and follow the requirements and procedures set out by the New Zealand Law Society.

**16. Confidentiality and Privacy**

- 16.1 We will hold in confidence all information concerning you and your affairs that we acquire during the course of acting for you. We will not disclose this information to any other person except to the extent:
- (a) necessary or desirable to enable us to carry out your instructions and to undertake our business; or
  - (b) required by law or by the Rules of Conduct and Client Care for Lawyers, or
  - (c) required in order for us to comply with anti-money laundering (AML) requirements including making your files and personal information available to our AML auditors or regulators.
- 16.2 Confidential information concerning you will, as far as practicable, be made available only to those within our firm who are providing legal Services (including support functions) for you and our service providers.
- 16.3 Information concerning you will be held at our offices and on our computer systems and devices. We refer you to our Privacy Policy which outlines in more details our obligations to manage the personal information we hold about you. Our Privacy Policy is available for you to download or read on our website. Under the Privacy Act 1993 you have the right of access to, and correction of, your personal information held by us.
- 16.4 The Financial Transactions Reporting Act 1996 and the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 require us to collect from you and retain information required to verify your identity and in some instances require us to report information which you agree to.

**17. Audit**

17.1 Our trust account is not audited but is subject to regular inspection by the New Zealand Law Society. You consent to the disclosure of information necessary to enable such inspections or any audit to be completed.

## **18. Risk management**

18.1 Our firm has an active in-house risk management process in place to ensure issues are brought to the attention of Partners and our General Manager.

18.2 We hold professional indemnity insurance that at least meets or exceeds the minimum standards specified by the New Zealand Law Society. We will provide you with particulars of our cover upon request.

18.3 We are members of the New Zealand Law Society. The Society maintains a lawyers Fidelity Fund ("the Fund").

18.4 The Fund exists to provide compensation of up to \$100,000 per claimant for clients who suffer a pecuniary loss in certain circumstances. These circumstances are the theft by a lawyer of money or other valuable property entrusted to that lawyer while they are providing legal services to the public or while they are acting as a solicitor-trustee.

18.5 The Fund will not pay compensation in respect of monies instructed to be invested unless they are funds invested in a bank in New Zealand, or in some private loans such as family loans.

18.6 We do not provide financial planning or broker services and provide no investment or accounting advice to clients. Should you pay us monies with instructions to invest them, it will not be subject to compensation from the Fund.

18.7 This is only a short summary of the major provisions in the Lawyers and Conveyancers Act 2006 relating to the Fund. If you would like further information please ask us.

## **19. Limitation of our liability**

19.1 To the extent permitted by law our total liability to you in connection with any Services or other matter (or series of related Services or matters) on which you engage us shall not exceed the sum of \$500,000 ("The Liability Cap") (including all interest, costs and/or losses whatsoever).

19.2 The Liability Cap will apply to liability of whatever kind howsoever arising, whether in contract, in tort (including negligence), statutory, in equity or otherwise.

19.3 If we provide any Services to any persons or entities related to or associated with you or to anyone else at your request (whether or not we also advise you) on a matter or series of related matters, then our aggregate liability to you and all those persons and entities in respect of those Services or that matter (or series of related Services or matters) will be subject to The Liability Cap. You will ensure that those persons or entities agree to this.

19.4 The Liability Cap will accrue to the benefit of any partner, employee or agent of Corcoran French who may have acted in connection with the Services or matter, so that in no instance shall such person be liable for more than The Liability Cap.

## **20. Complaints**

20.1 We have a procedure for handling any concerns or complaints by clients, which is designed to ensure that a concern or complaint is dealt with promptly and fairly.

20.2 If you have any concern or complaint about our work or our fees let us know. You should first contact the person responsible for your file or the person who supervised the work that was completed for you. They may request that you put your concern or complaint in writing so it is clear as to what they need to consider.

20.3 If you do not wish to refer your concern or complaint to that person, or you are not satisfied with that person's response to your concern or complaint, you may refer your concern or complaint in writing to our firm's General Manager or any Partner of the firm. We will consider what you say and provide a response by way of outcome to you.

20.4 If you are not satisfied with the outcome of any concern or complaint, you have the right to take the matter up with the New Zealand Law Society which operates a complaint service on telephone 0800-261-801.

**If you have any questions about these Terms please discuss those with the person responsible for your work, or contact our General Manager or a Partner on telephone (03) 379 4660 or via email or letter. No variations to these Terms will occur unless they are confirmed to you in writing from us.**