

## Information for clients

Set out below is the information required by the *Rules of Conduct and Client Care for Lawyers* of the New Zealand Law Society ('Law Society').

### 1. Fees

The basis on which fees will be charged is set out in our letter of engagement. Our terms of engagement contain further details and requirements relating to billing and the payment of fees.

We draw your attention to the special provisions in clauses 5.3 – 5.12 in relation to billing, and the restrictions on our liability to you in clause 8 of our standard terms of engagement.

### 2. Professional Indemnity Insurance

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.

### 3. Lawyers Fidelity Fund

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 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.

### 4. Complaints

We maintain a Procedure for handling any complaints by clients, designed to ensure that a complaint is dealt with promptly and fairly.

This Procedure is set out in clause 14 of our standard terms of engagement.

The Law Society also maintains a complaints service and you are able to make a complaint to that service.

**5. Persons responsible for the work**

The names and status of the person or persons who will have the general carriage of or overall responsibility for the services we provide for you are set out in our letter of engagement.

**6. Client care and service**

The Law Society client care and service information is set out below.

Whatever legal services your lawyer is providing, he or she 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.

The obligations lawyers owe to clients are described in the *Rules of Conduct and Client Care for Lawyers*. 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.lawyers.org.nz](http://www.lawyers.org.nz).

## **Standard Terms of Engagement (July 2014)**

### **1. Standard Terms**

- 1.1 This document contains our standard terms of engagement in respect of all matters in which we act for you from time to time. Unless we agree otherwise in writing, by instructing us and continuing to instruct us in any of these matters, you are deemed to accept that these terms govern our relationship and they shall bind you whether or not you have signed them. This also applies if/when we vary the terms from time to time (see clause 15.3).
- 1.2 In this document, all references to “you” include your successors, heirs, executors, administrators, assigns, and each person or entity for whom we carry out work at your request.
- 1.3 If you are a married or de facto couple, in a civil union, family, partnership, member of a body corporate (where we act for the body corporate), unincorporated group or a mixture of legal entities, each legal entity comprising “you” is jointly and severally liable for all obligations under these terms.
- 1.4 If you have any queries about these terms, please contact Adina Thorn.

### **2. No guarantee or control of outcomes**

- 2.1 You acknowledge and agree that we cannot guarantee or control the outcome of any negotiation, mediation, arbitration litigation or other process in respect of which you engage us. These outcomes are dependent upon innumerable factors that are beyond our control.
- 2.2 These factors include:
  - (a) The events that have already occurred.
  - (b) How accurately and thoroughly you brief us.
  - (c) How accurately witnesses communicate evidence.
  - (d) How the court, tribunal or other decision maker regards the evidence.
  - (e) How the court regards and applies the laws relating to the evidence.
  - (f) How committed the relevant parties are to resolving the dispute.
  - (g) The extent to which the parties are willing and able to devote resources to the conduct of the case.

### **3. Your instructions and authority**

- 3.1 Upon your engaging us, we will set out for you in writing (usually by email) our understanding of your initial instructions. If any aspect of this is incorrect or inaccurate, you must inform us immediately.
- 3.2 In giving us your initial instructions and any subsequent instructions, you must inform us as honestly and accurately as you can.

- 3.3 In giving us any information, you must update the information if it ceases to be accurate or complete in any respect.
- 3.4 If you are a married or de facto couple, in a civil union, family, partnership, body corporate, unincorporated group or a mixture of legal entities or we are representing a trust, unless otherwise instructed you agree that:
- (a) Your nominated representative has authority to act as a representative of both or all of you, or all trustees.
  - (b) We can act on your nominated representative's instructions or those of any other member of the married or de facto couple, civil union, family, partnership, unincorporated group, or any other trustee.
  - (c) Our communications may be sent to your nominated representative and it will be his or her responsibility alone to ensure that other members of the married or de facto couple, civil union, family, partnership, unincorporated group, or any other trustee are sent copies of those communications.
- 3.5 If you are a company, you agree that:
- (a) We can act on the instructions of any of your directors or senior managers and we are not bound to obtain further confirmation from other directors or senior managers.
  - (b) Unless specifically agreed in writing, we do not owe any duties to your directors or shareholders, subsidiaries, parent or related companies, or any of their directors or shareholders.
  - (c) Our communications may be sent to any of your directors and it will be that person's responsibility alone to ensure that other directors and interested individuals are sent copies of those communications.

#### **4. Fees and disbursements**

- 4.1 We do not hold a trust account.
- 4.2 Our fees will be charged on the basis that they will be fair and reasonable, having regard to the circumstances of the matter and the nature of our work. The time and labour involved is only one factor in the determination of our fees – we will also take into account other factors as set out in Rule 9.1 of the Law Society's Rules of Conduct and Client Care for Lawyers. Those factors include:
- the skill, specialised knowledge, and responsibility required to perform the services properly;
  - the importance of the matter to you and the results achieved; and
  - the urgency and circumstances in which the matter is undertaken.
- 4.3 Where a fee is calculated in whole or part on the basis of the time involved, the fee will reflect the hourly rates we charge for the lawyers involved. Rates for individual lawyers are varied from time to time to have regard to changes in skill, knowledge and expertise and to take account of changes to costs.

- 4.4 In addition to our fees, we charge separately for the actual cost of:
- (a) Disbursements (such as accommodation, couriers, court fees, library research, and travel).
  - (b) Unusually high use of resources, including secretarial overtime, IT support or binding facilities.
  - (c) Instructing experts or other advisors on your behalf.
  - (d) Legal assistants, at a rate we have agreed with you.
- 4.5 Incidental office expenses (including but not limited to photocopying, scanning, faxing and toll calls) are charged through a standard administration (“bureau”) fee.
- 4.6 In dealing with any matter for you we may have to make payment(s) to third parties on your behalf. If this occurs, we may require an advance payment for the full amount(s). On completion of the matter, we will provide you with a full statement of account. You also acknowledge and agree that:
- (i) any third parties who provide goods or services in respect of the matter are engaged by you, and not by us; and
  - (ii) you are exclusively liable and responsible for payment of all amounts charged by and due to such third parties.
- 4.7 Any costs estimate we give you upon your request will be a “best guess” as to what the fees and other costs are likely to be based on the information available at that time, and will exclude GST, disbursement and bureau fees, unless expressly stated. It is not a fixed quotation or guarantee, unless expressly stated. If, subsequently, any factors or circumstances arise which have the effect of altering or increasing the amount of work involved, we will charge for all additional fees and other costs involved. You agree to pay and be liable for such additional fees and other costs.
- 4.8 If it appears that an estimate will be exceeded, we will endeavour to advise you first and obtain further instructions.
- 4.9 We welcome communication with you throughout the engagement about your expected outcomes and legal involvement required.
- 5. Billing**
- 5.1 Our normal procedure is to bill matters on a monthly basis. However, in appropriate circumstances we may agree alternative arrangements with you.
- 5.2 Payment of fees in full in cleared funds is required upon delivery of the invoice, unless alternative arrangements have been agreed with us in advance in writing. In common with most businesses, we exercise strict credit control.

- 5.3 You agree to pay and otherwise be liable for all fees and costs and other charges. You agree to do so whether or not:
- (i) you or any third party (including the Law Society) seeks a review of our invoices;
  - (ii) you have a right of indemnity or recovery from a third party; or
  - (iii) you receive any amount from a third party.
- 5.4 If we are acting for you and one or more other persons in the same matter, each person is jointly and severally liable for payment of all our fees, costs and other charges.
- 5.5 Where we are acting for you and there is an upcoming court, tribunal or arbitration hearing, settlement conference, mediation or negotiation or other event requiring significant work by us, we reserve the right to issue you with an invoice for estimated fees and disbursements which will be incurred in respect of the relevant attendance(s) and to require you to pay these to the trust account of a solicitor nominated by us by a time specified by us. If you fail to comply with our request, you acknowledge and agree that in our sole discretion we may decide to terminate this retainer and/or cease acting for you, in accordance with clause 7.2.
- 5.6 In consideration of all our outstanding fees or costs or other charges:
- (a) At our request, you agree to provide us with an executed agreement to mortgage against the title(s) of any land you have an interest in, whether as registered proprietor or otherwise, and whether in full or in part. Such mortgage shall be on the Auckland District Law Society form of all obligations mortgage as at the date of our engagement letter. In the event that you fail to pay any fees or costs or other charges due and outstanding, you acknowledge and agree that:
    - (i) This creates an equitable mortgage and a caveatable interest. We may register a caveat against the title(s) of such land on the basis of this caveatable interest, and maintain the caveat until such time as payment of our outstanding fees or costs or other charges is made in full in cleared funds.
    - (ii) Where such mortgage is executed, we may register such mortgage and take any other enforcement steps we deem necessary.
  - (b) We take a security interest, in the form of a first charge, over the proceeds of any litigation or settlement in your favour, and retain the right to register this security under the Personal Property Securities Act 1999 at any time.
  - (c) Where such proceeds are money, you agree that those proceeds shall be held in a trust account out of which our outstanding fees, costs and other charges shall be made in priority to anyone else, including you.
- 5.7 If a third party is responsible for meeting any fees or costs or other charges relating to services supplied on your instruction, and that third party fails to pay our invoice within 14 days from the date the bill is rendered, we may issue you a bill for the same amount which you shall pay and be liable for.

- 5.8 If any fees or costs or other charges are not paid by the due date:
- (a) You acknowledge and agree that you shall pay to us liquidated damages in the amount of \$100 per day. You further acknowledge and agree that this amount is a genuine pre-estimate of our loss in the event you do not pay all outstanding fees, costs or other charges owed to us, and that you shall not challenge this clause in any court of law or tribunal.
  - (b) You acknowledge and agree that we may charge default interest on all and any outstanding amounts at a rate of 20% per annum compounded monthly.
  - (c) You acknowledge and agree that we may report your identity, contact details, and details of amounts owed to us to any credit agency or database, including but not limited to Veda Advantage. We may also publish notices containing these details in any public media, including but not limited to the *New Zealand Herald*.
  - (d) We may also elect to terminate our engagement and cease acting for you in accordance with clause 7.2 below.
- 5.9 You authorise us to deduct fees or disbursements, whether overdue or not, from funds held on your behalf.
- 5.10 You shall pay immediately on demand and otherwise be liable for, on an indemnity basis, all legal and debt collection costs, fees and expenses that we incur or may incur, in:
- (a) attempting to obtain payment of any outstanding amounts you owe us, including through third parties instructed or appointed to do so on our behalf; or
  - (b) commencing and pursuing any legal action in any court or tribunal in respect of any outstanding amounts; or
  - (c) enforcing any judgment or order granted by any court or tribunal in respect of any outstanding amounts.
- You shall pay and be liable for such costs, fees and expenses whether or not any action we take is successful or unsuccessful, in whole or in part.
- 5.11 “Legal and debt collection costs, fees and expenses” include (but are not limited to):
- (a) our own time charged at the applicable hourly rates;
  - (b) the actual fees of any solicitor or barrister we instruct on our behalf;
  - (c) the actual fees of any debt collection agent or agency we appoint on our behalf;
  - (d) all disbursements relating to the above matters, including (but not limited to) court / tribunal costs and filing / appearance fees (including with LINZ); and
  - (e) the actual costs or fees we may incur in relation to liquidation or bankruptcy processes which we may commence against you.

- (f) the actual costs or fees we may incur in relation to reporting your identify, contact details and amounts owed to us to any credit agency or database, or of publishing any notices in any public media.

5.12 In the event that:

- (a) Any of our fees or costs or other charges remain due and outstanding; or
- (b) You dispute our fees or costs or other charges (whether as to liability, or amount, or any other reason)

You acknowledge and agree that in the event either of us takes any enforcement and/or legal action in relation to such fees, the registry of the Court and/or Tribunal and/or judicial body in which any legal proceedings are filed shall be based in Auckland, even if this is not the proper registry as defined or specified by any applicable statutory or regulatory rules. You agree not to take any steps to challenge whether the registry chosen is the proper one.

5.13 Should you wish to discuss credit terms, please do not hesitate to contact us.

## **6. Reliance**

6.1 Only you can rely on our advice. If you want any third party to be able to rely on our advice, our prior written agreement is required.

6.2 The advice we give is opinion only, based on the facts known to us, and our professional judgment in the circumstances.

## **7. Termination**

7.1 You may terminate our engagement at any time.

7.2 You acknowledge and agree that we may elect, in our sole discretion, to terminate our engagement and cease acting for you immediately:

- (a) If you do not pay any outstanding fees or other amounts owed to us by the applicable due date (by default, on delivery of the invoice). Where we are acting for you on more than one matter, and you owe outstanding fees on one of those matters, we may decide in our sole discretion to cease acting for you immediately on that matter and all or some of the other matters on which we are also acting for you.
- (b) If you do not pay on our request fees in the circumstances set out in clause 5.5.
- (c) If you do not provide us with an executed agreement to mortgage in accordance with clause 5.6.
- (d) If you misrepresent or fail to disclose relevant facts to us or act contrary to, or ignore our advice.
- (e) If a conflict of interest or potential conflict of interest arises.

- 7.3 If our engagement is terminated in circumstances where you owe any outstanding fees, costs or other charges to us:
- (a) You shall become liable to pay all such fees, costs or other charges immediately.
  - (b) You acknowledge and agree that we may, in our sole discretion, register any executed deed of mortgage you have provided to us (in accordance with clause 5.6) and/or use this to lodge a caveat against the title(s) of any land you have an interest in, whether as registered proprietor or otherwise. You also acknowledge and agree that we may take any other enforcement steps.
  - (b) We are entitled to retain your files until all amounts owing are paid in full (this is known as a lien). You acknowledge and agree that we have an absolute right to do so despite any rights to access or copies you have or may have under the Privacy Act 1993.
  - (c) Alternatively, if you have instructed another solicitor to act for you, your files may be released upon receipt of an undertaking from that solicitor to us to pay all outstanding fees, costs and other charges, in advance of any fees, costs or other charges owed by you to that solicitor.
- 7.4 Before we provide your files to you, you acknowledge and agree that we may take a complete copy of them for our records, and may issue you with an invoice for the cost of copying, which you will pay immediately.
- 7.5 If our engagement is terminated, these terms continue to apply in respect of your instructions.

## **8. Our liability**

- 8.1 To the maximum extent possible at law, we exclude all liability to you for any loss suffered or incurred by you directly or indirectly as a direct or indirect result of any action or omission by us whatsoever, including negligence, breach of contract, breach of fiduciary duty or breach of statutory duty.
- 8.2 We hold professional indemnity insurance on terms and for amounts which exceed the minimum standards specified by the New Zealand Law Society. You agree that any liability we may have to you for any loss (as defined in clause 8.3 below) for which we are liable (despite clause 8.1) is limited to the Maximum Liability (as defined in clause 8.2 below).
- 8.3 In clauses 8.2:
- (a) “loss” includes any liability, cost, expense, or loss, suffered or incurred by you directly or indirectly as a direct or indirect result of any action or omission whatsoever, including negligence, breach of contract, breach of fiduciary duty or breach of statutory duty.
  - (b) “Maximum Liability” (which relates to the limit of our liability) means the amount payable by our professional indemnity insurers in respect of the relevant claim.

**9. Conflicts of interest**

- 9.1 If a conflict of interest or potential conflict of interest arises we will let you know and if bound to, or we choose to, we will cease to act for you.
- 9.2 At all times we will comply with Chapter 6 of the Law Society's Rules of Conduct and Client Care for Lawyers which deals with client interests.

**10. Confidentiality**

- 10.1 We will hold in confidence all information concerning you and your business and affairs that we acquire in the course of acting for you. We will not disclose this information to any person other than:
- to the extent necessary to carry out your instructions
  - in accordance with these terms
  - to the extent required by law or by the Law Society's Rules of Conduct and Client Care for Lawyers.

**11. Document destruction**

- 11.1 We retain files in paper or electronic form for a minimum of seven years from the time a matter is complete, and reserve the right to charge you for any applicable storage charges, which you agree to pay immediately on demand. After that time files may be destroyed without your consent.
- 11.2 If you request retrieval of such files from storage, you agree to pay and otherwise be liable for the actual cost of our time in arranging such retrieval, and the actual costs of any third party who makes such retrieval.

**12. Privacy**

- 12.1 Over the course of your involvement with Adina Thorn Limited may collect and hold personal information concerning you. Failure to provide us with information may preclude us from providing services to you or limit the quality of the services provided. Information concerning you will be used by us to provide legal services, to obtain credit or other references, to undertake credit management, and to inform you of issues and developments that may be of interest to you. You authorise us to obtain from any person or release to any person any information necessary for those purposes, and you authorise any person to release information to us that we require for those purposes.
- 12.2 Information concerning you will be held at our offices (or on our computer systems that may be off site). Under the Privacy Act 1993 you have the right of access to, and correction of, your personal information held by us.
- 12.3 The Financial Transactions Reporting Act 1996 requires us to collect from you and retain information required to verify your identity.

### **13. Communications**

- 13.1 We shall not be held liable for any loss arising from your non-receipt, for any reason, of any communication sent to you, including electronic communications.
- 13.2 Although we scan incoming and outgoing emails, we cannot guarantee that the content of any email communication or any file attachment is virus-free or has not been intercepted or amended as it passes over the internet.

### **14. Complaints**

- 14.1 If you are dissatisfied with the level of our fees, costs or other charges, or any other aspect of our service, Adina Thorn will meet with you to discuss the issue so that we can attempt to resolve it between us.
- 14.2 If you do not seek a meeting with Adina Thorn or if we are unable to resolve the matter, then at our cost we will refer the complaint to a senior barrister of our choice, who will try to resolve the complaint with us (including but not limited to, by way of mediation).
- 14.3 If you remain dissatisfied with the level of our fees, costs or other charges, in some cases you will have the right to have those fees reviewed by the New Zealand Law Society (PO Box 5041, Lambton Quay, Wellington. Phone 04 472 7837 / Fax 04 473 7909.
- 14.4 If required by us at any time, any dispute between us relating to the brief or our services is to be resolved by confidential arbitration. The arbitrator shall be Mr David Connor, applying New Zealand law and having exclusive jurisdiction. If we require, you agree to consolidate any related dispute into any such arbitration.

### **15. General**

- 15.1 These terms apply to any current and all future engagements, whether or not we send you another copy of them. There is no need for you to sign these terms of engagement in order to accept them; you will accept these terms of engagement by continuing to instruct us to work for you.
- 15.2 You acknowledge and agree that the original scope of the work you have instructed us to carry out may change over time. These terms apply to all work we carry out for you, whether inside the original scope or not.
- 15.3 We vary these terms from time to time and if we do so those varied terms will appear on our website at [www.adinathorn.co.nz](http://www.adinathorn.co.nz). By continuing to instruct us following a variation, you are deemed to have accepted those varied terms, whether or not you have read the varied terms or signed them.