

## **{mds} law Standard Terms of Engagement**

### **1. Explanation of Terms**

- (a) These are our standard terms of engagement. These apply to all services we provide unless varied by written agreement. Please ask us if you have any questions about them. Please keep a copy of this for your records.

### **2. Scope & Quality of Work**

- (a) At all times we will act to the best of our ability on your behalf, within the scope of your instructions and in accordance with the *Rules of Conduct and Client Care for Lawyers (Rules)*. All advice we give to you will be based on our best professional judgment and legal knowledge but should not be taken as a guarantee of any particular outcome.

### **3. Your responsibilities**

- (a) We will do our best to be available to you and provide services which are accurate and timely. You can help us do this by:
  - (i) Giving us clear instructions on a timely basis in writing if possible;
  - (ii) Providing us with accurate and complete information;
  - (iii) Telling us if you have any time limits;
  - (iv) Making sure we understand each other and asking questions if you are not sure about something;
  - (v) Keeping in regular touch with us; and
  - (vi) Informing us if you have changed your address or contact numbers or are going to be away from your usual point of contact.

### **4. Personnel**

- (a) Usually one Partner, Associate or Solicitor will have overall responsibility for the work on each file. From time to time other members of our professional staff may also be involved if a particular skill is required or if it is more cost effective to have others attend to particular aspects of work.

### **5. Our fees**

- (a) Our fees are calculated taking into account a number of factors including the time and labour expended, the complexity, urgency, importance, skill, specialised knowledge, the responsibility and risk involved, the results achieved and the experience, reputation and ability of the lawyers.

### **6. Cost estimates**

- (a) If the engagement letter specifies an estimate then, subject to the above, our charge will be based on that estimate for the agreed scope of our services. Work which falls outside that scope will 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 scope and, if requested, provide you with an estimate of the likely further costs.

### **7. Expenses/disbursements**

- (a) Expenses and disbursements may include items like agency costs, tolls, search and LIM fees, couriers and Court filing fees. These will be included in our invoice to you when the expense is incurred. We may require an advance payment for the disbursements or expenses. This money will be held in your name in our trust account until we pay the disbursements.

## **8. Invoices**

- (a) It is our practice to send interim invoices on a monthly basis depending on the nature and amount of work being done. We will always send a final invoice on completion of the work and a trust account statement if we have handled funds on your behalf. Each invoice is separate from any other. We may require payment from you before commencing or continuing work. GST is payable by you on our fees and charges.

## **9. Payment**

- (a) Payment of our invoices is required by the 20<sup>th</sup> of the month following the date of the invoice unless otherwise agreed in advance. You can pay our invoice by cheque made payable to MDS Law Trust Account, bank transfer to MDS Law Trust Account with ASB Bank 123191-0031259-02 or by cash or credit card. If you are, as our client, more than one person, each of you is separately responsible for paying all amounts owing to us. Although you may expect to be reimbursed by a third party for our fees and expenses and you may request our invoices be directed to a third party, you remain responsible for payment to us. When we are holding money on your behalf in our trust account, we may draw on that money for our fees and disbursements when invoiced. You authorise us to deduct our fees and disbursements from any settlement or other monies received by us on your behalf.

## **10. Delay or difficulty in paying**

- (a) If you anticipate having difficulty paying us please contact the Partner, Associate or Solicitor who sent you the invoice. We may make arrangements for you to pay us in instalments. We reserve the right to charge interest on any invoice remaining outstanding after the due date. Interest is charged at 15% p.a. (minimum charge \$5.00). We would also normally stop doing any further work until the invoice is paid, after giving reasonable notice to you and reasonable assistance to find another lawyer. We also reserve the right to recover any costs we incur in pursuing any debt you owe us (which may include legal costs). We have the right to retain your file and any documents belonging to you until we are paid.

## **11. Credit enquiries**

- (a) By engaging us you authorise us to carry out reasonable credit enquiries and you authorise anyone we contact to provide to us any information about you that we reasonably request as part of our credit enquiries. You also authorise us to provide information about you to any credit agency in connection with any overdue amount owed to us by you, and that credit agency may provide information about your default to their customers.

## **12. Verifying your identity**

- (a) We are required by law to apply procedures to guard against the risk of money laundering under the Anti-Money Laundering & Countering Financing of Terrorism Act 2009 (AML/CFT Act). Consequently, we may be required to obtain evidence to verify your identity. This may be necessary even though we have acted for you before, or even if you are known to a member of staff. We will perform Customer Due Diligence (CDD) and account monitoring, keep records and report any unusual or suspicious transactions where required by the AML/CFT Act, FATCA, CRS or any other law. You agree that evidence of identification provided by you may be used by us at any time to complete ongoing CDD as required. In some situations we may also be required to evidence source of wealth and funds before we are able to complete a transaction. If you are unable or unwilling to provide evidence of identification and/or source of wealth and funds when requested, we reserve the right to discontinue to work for you.

## **13. Confidentiality**

- (a) We will not disclose confidential information obtained as a result of acting for you unless permitted by these terms (which disclosure is deemed to be authorised by you), required or authorised by you or required or permitted by law or regulation, including the Rules.

#### **14. Privacy**

- (a) We will collect, hold, process and store information about you in accordance with our Privacy Policy which is available to view at <https://www.mdslaw.co.nz/Privacy-Policy>.

#### **15. Money handling procedures**

- (a) Money you pay to us can be by way of cheque made payable to MDS Law Trust Account, bank transfer to MDS Law Trust Account with ASB Bank 123191-0031259-002 or in cash. Money for purchases needs to be cleared funds. It would be preferable and save delay if funds are transferred direct bank to bank. Electronic transfers direct from a cheque account are not cleared funds. Please add your name and our reference to the transaction in any electronic transfer. Any investment property (such as certificates) should be hand-delivered, posted by registered mail or couriered to the Partner responsible for your legal affairs. All investment money we receive will be held in our trust account in your name. Any investment property we receive will be held in a secure place until disbursed in accordance with your instructions or these terms of engagement.
- (b) In respect of any remaining client trust account credit balances that may arise, MDS Law reserves the right not to refund amounts less than \$10. For any other amounts, funds will be refunded to you, or, where your contact details or bank account details are not available, credited to the Inland Revenue Department's unclaimed monies account within a period of 6 months after the completion of a matter.

#### **16. Financial assurance scheme**

- (a) The receipt, holding and disbursement of investment money on our clients' behalf is subject to inspection pursuant to regulations under the Lawyers and Conveyancers Act 2006.

#### **17. Interest on money we hold**

- (a) Whenever it is reasonable and practicable to do so we will lodge any funds held in our trust account on your behalf in a bank deposit account bearing interest. Interest earned from call or term deposits, less withholding tax and an interest collection commission (5% on the gross interest) payable to MDS Law will be credited to your account. Withholding tax will be deducted on the interest earned and paid to the IRD. If we have your IRD number, you can elect to have withholding tax deducted at your applicable rate. Please advise us if this changes. As required by the IRD if we do not have your IRD number, it will be deducted at the default rate (which may be higher than your actual rate).

#### **18. Professional indemnity insurance**

- (a) We hold professional indemnity insurance that exceeds the minimum standards specified by the New Zealand Law Society.

#### **19. Lawyer's fidelity fund**

- (a) The New Zealand 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 \$100,000.00. 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 a client.

## **20. Conflicts of interest**

- (a) Sometimes conflicts of interest may arise. 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 and Client Care for Lawyers*.

## **21. Storing records of legal work/trust account transactions**

- (a) You agree that we may convert your file into an electronic format. We will store your file for at least seven years after the date of our final invoice. After that we may destroy your file (we may destroy it earlier if we have converted it into an electronic format). This does not include any documents we agree to hold for you in safe custody. Records of all investment money and investment property will be kept in accordance with the Lawyers and Conveyancers Act (Trust Account) Regulations 2008 and the Privacy Act 1993. Records of your transactions through our trust account are stored in electronic form.

## **22. Termination**

- (a) You may terminate our retainer at any time. We may terminate our retainer in any of the circumstances set out in the *Law Society's Rules of Conduct and Care for Lawyers*. If our retainer is terminated you must pay us all fees due up to the date of termination and all expenses incurred up to that date.

## **23. Complaints**

- (a) We maintain a procedure for handling any complaints by clients, designed to ensure that complaints are dealt with promptly and fairly. If you have a complaint about our services please contact our Business Manager, Wayne Christie. Your complaint can be made by letter, email or telephone: Contact details are:
- WayneChristie@mDSLAW.CO.NZ
  - Ph: +64 3 379 1930
- (b) The Law Society also maintains a complaints service and you are able to make a complaint to that service. To do so, phone 0800 261 801 and you will be connected to the nearest Complaints Service Office, which can provide information and advice about making a complaint.

## **24. Client care and services information**

- (a) Below is a copy of the Client Care and Services Information set out in the *Rules of Conduct and Client Care for Lawyers*:
- (b) Whatever legal services your lawyer is providing he or she must:
- (i) Act competently, in a timely way, and in accordance with instructions received and arrangements made.
  - (ii) Protect and promote your interests and act for you free from compromising influences or loyalties.
  - (iii) Discuss with you your objectives and how they should best be achieved.
  - (iv) Provide you with information about the work to be done, who will do it and the way the services will be provided.
  - (v) Charge you a fee that is fair and reasonable and let you know how and when you will be billed.
  - (vi) Give you clear information and advice.
  - (vii) Protect your privacy and ensure appropriate confidentiality.
  - (viii) Treat you fairly, respectfully and without discrimination.

- (ix) Keep you informed about the work being done and advise you when it is completed.
- (x) Let you know how to make a complaint and deal with any complaint promptly and fairly.
- (xi) The legal obligations lawyers owe to clients are subject to overriding duties, including duties to the courts and justice system.

**25. General**

- (a) We may change these terms of engagement from time to time. If we do they will be posted on our website and dated. These terms apply to any current engagement and any future engagement.

*Updated November 2022*