

Our Terms of Engagement

These Terms of Engagement apply to all services that Carson Fox Legal (we, or us) provides to a client (our client, or you) unless otherwise specifically agreed with you.

1. Services

- 1.1 The services which we are to provide for you from time to time will be outlined in a letter (or email) of engagement which we will provide to you for each new matter or which, if agreed by you, will govern each matter on which we work for you. Allowing us to commence work without objection is deemed to be acceptance by you of these terms.
- 1.2 We are not experts in all fields of law and we will, where we consider it prudent to do so, secure advice on particular aspects of the matter from other lawyers or suitably qualified persons. We will not advise on tax issues or give you financial advice. We are only qualified to advise on New Zealand law. If we assist you on matters governed by foreign law, we do so on the basis that we do not accept any responsibility in relation to your position under that foreign law, whether or not we have obtained foreign legal advice on your behalf.
- 1.3 Our primary language is English and all documents will be completed in English. While we may communicate with you or summarise documents in another language this is done as a courtesy only and you agree we are not responsible for any miscommunication or inconsistency, and in the event of inconsistency the English version will prevail. You accept it is your responsibility to obtain your own translation of the documents and key communications during the course of our services.

2. Fees and expenses

Fees

- 2.1 The fees which we will charge or the manner in which they will be arrived at will be set out in each new letter of engagement.
- 2.2 If the letter of engagement specifies a fixed fee we will charge this for the agreed scope of our services, subject to any assumptions and qualifications set out in that letter. Work which falls outside the scope will be charged on an hourly rate basis unless otherwise agreed. 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, give you an estimate of the likely amount of the further fees, disbursements and expenses.
- 2.3 If the letter of engagement specifies that fees are to be calculated on an hourly basis, individual solicitors' hourly rates will be set out in that letter. The differences in those rates for each matter reflect the experience and specialisation of our solicitors.

Expenses

- 2.4 We will charge you for expenses incurred by us when working on your behalf (disbursements), such as travel and accommodation costs, search, registration and filing fees, courier costs, and other external costs such as fees of agents, experts and other professionals incurred by us in relation to your file. We will discuss with you any major or unusual expenditure before we incur it and where a material disbursement is likely to be incurred, we may ask that this be paid to us before that cost is incurred.

GST

- 2.5 GST is payable by you on our fees and on disbursements and expenses.

Invoices

- 2.6 We will usually send monthly interim invoices to you and an invoice on completion of the matter, termination of our engagement or when you request one.

Payment

- 2.7 Invoices are payable within 7 business days of the date of the invoice unless alternative arrangements have been made with us. We reserve the right to charge interest on late payments (calculated at the rate of 2% per calendar month) and any recovery costs incurred by us.
- 2.8 We accept payment by debit or credit card on the basis that you will, if requested by us, reimburse us for the bank charges incurred by us.

Security

- 2.9 We may ask you to pre-pay amounts to us or to provide security for our fees, disbursements and expenses.

Third parties

- 2.10 Although you may expect to be reimbursed by a third party for our fees, disbursements and expenses and although our invoices may at your request or with your approval be directed to a third party, you will still remain responsible for payment to us if the third party fails to pay us.

3. Confidentiality

- 3.1 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:
- a. to the extent necessary or desirable to enable us to carry out your instructions; or
 - b. for us to comply with the requirements of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009; or
 - c. to the extent otherwise required by the Law Society's Rules of Conduct and Client Care for Lawyers.
- 3.2 Confidential information concerning you will as far as practicable be made available only to those within our firm who are providing legal services for you.
- 3.3 We will not disclose to you confidential information which we have in relation to any other client.

4. Termination

- 4.1 You may terminate our retainer at any time.
- 4.2 We may terminate our retainer in any of the circumstances set out in the Law Society's Rules of Conduct and Client Care for Lawyers.
- 4.3 If our retainer is terminated (whether by you or us) you must pay us all fees due and all disbursements and expenses incurred up to the date of termination. Where work has been done but we have not been paid by you, then as a general rule, we have the right to retain original documents and correspondence until such time as all outstanding invoices have been paid. This is known as a lien.
- 4.4 In the event that you ask us to deliver your files back to you or to another person, we will give you electronic access to all your documents filed under your relevant matters, and will work with you in good faith to deliver hard copies if that is practicable. You similarly undertake to provide us with future access to those materials, upon request, if we elect not to keep copies. We reserve the right to charge for any attendances in complying with your requests.

5. Files and records

- 5.1 We will retain files we establish on a matter and copies of any documents you leave with us electronically (any paper copies may be securely destroyed) with our service providers (including data storage facilities or online storage located within or outside New Zealand) for at least seven years after the end of our involvement in the matter. We are under no obligation to retain them for a longer period unless we explicitly agree with you in writing that we will do so.
- 5.2 If we retain any paper file or document it may be stored at premises outside our offices, which may be operated by independent service contractors. If you uplift your files or documents they will be either electronic or paper copies (original documents will be forwarded where held) and electronic copies will be retained. We reserve the right to charge for any attendances.

6. Conflicts of Interest

- 6.1 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 Law Society's Rules of Conduct and Client Care for Lawyers.

7. **Duty of Care**

- 7.1 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 this. However, this duty of care is subject to the overriding duties owed to the courts and to the justice system.

8. **Trust Account**

- 8.1 We maintain a trust account for all funds which we receive from clients (except money received for payment of our invoices). If we are holding significant funds on your behalf these may be lodged on interest bearing deposit with a bank (but only once we have received your specific instruction to do this). We charge an administration fee of 5% of interest earned.

- 8.2 If we are required by law to make a deduction from funds held on your behalf for a tax payment (e.g. a withholding tax payment) you authorise us to make such payment. If you sell residential land and we receive the sale proceeds on your behalf, we may be legally required to withhold residential land withholding tax (**RLWT**) from the proceeds. This will apply if, under the Income Tax Act 2007:

- you are an "offshore RLWT person";
- the land is "residential land" in New Zealand; and/or
- you sell the land within the five year "bright-line" period.

- 8.3 You authorise us:

- a to debit against amounts pre-paid by you; and
- b to deduct from any funds held on your behalf in our trust account, any fees, disbursements or expenses for which we have provided an invoice.

- 8.4 If, for any reason, we have a balance of \$10.00 or less in our trust account in your name on completion of our retainer, you agree that we may treat this as an "uneconomic balance" and rather than pay it to you we may donate it to a charity of our choice.

9. **Client Checks**

- 9.1 We are required to comply with all laws binding on us in all applicable jurisdictions, including:

- the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT Act); and
- the United States Foreign Account Tax Compliance Act, the intergovernmental agreement between the United States and New Zealand relating to it, and relevant provisions of the Tax Administration Act 1994 (together, **FATCA**).

- 9.2 We will perform customer due diligence and account monitoring, keep records, and report any unusual or suspicious transactions where required by the AML/CFT Act, FATCA, or any other law.

- 9.3 We may also be required to assist any bank or other entity with whom we transact as your agent, or with whom we deposit money on trust for you, to comply with that entity's legal obligations in any jurisdiction. We will periodically advise you what information and documents are required for these purposes. These purposes may relate to you, any other relevant person (e.g. any beneficial owner), the source of funds/wealth, the transaction, the ownership structure, tax identification details, and any other relevant matter. You will need to provide the information and documents requested promptly. We may retain the information and documents, provide them to a bank or other entity (where applicable) to deal with in accordance with their terms, and disclose them to any law enforcement or regulatory agency or court as required by law.

- 9.4 We or the bank or other entity (as the case may be) may:

- suspend, terminate, or refuse to enter into a business relationship; and/or
- delay, block, or refuse to process a transaction (including by refusing to handle and deposit money on trust for you); and/or
- report a transaction, without notice to you if the required information or documents are not provided or it is suspected that the business relationship or transaction is unusual, may

breach any applicable law, or may otherwise relate to conduct that is illegal or unlawful in any country.

9.5 You authorise us to at our discretion verify your ID and address details via Centrix or any other independent identity verifier.

10. **Limitation of liability**

10.1 To the extent permitted by law, our total liability to you in connection with any matter (or series of related matters) on which you engage us will not exceed the lesser of NZ\$2,000,000 or the amount of ten times our applicable fee (excluding disbursements and GST). This limitation applies to liability of all kinds, whether in contract, tort (including negligence), equity, or otherwise.

11. **Electronic communications**

11.1 Unless otherwise agreed with you, we will communicate with you and others by electronic means. As you will be aware, such communications may not be secure and may be subject to unauthorised interception, interference, error or virus. While we will take all reasonable steps to protect our communications from such issues, we will not accept any responsibility and will not be liable to you or to any other party for any damage or loss if they occur.

12. **General**

12.1 These terms will also apply to any future engagement, whether or not we send you another copy of them.

12.2 We are entitled to change these terms from time to time, in which case we will notify you of the change.

12.3 Our relationship with you is governed by New Zealand law and New Zealand courts have non-exclusive jurisdiction.