

# **Terms of Engagement**

## **Incorporating Rules of Conduct & Client Care for Lawyers of the New Zealand Law Society (“the Law Society”)**

These terms of engagement (“the terms”) apply in respect of all work carried out by us for you, except when otherwise agreed between us in writing. We are entitled to change these terms from time to time, in which case we will send you the amended terms.

### **1. Services**

The services we are to provide are outlined in our engagement letter or, as subsequently agreed and set out in any replacement or supplementary engagement letter or other communication (“the services”).

The services may include our advice and recommendations to you, but it is understood and agreed that the implementation of such advice and recommendations is your decision.

We will act in your best interests to carry out your instructions.

We will report to you in accordance with any terms in the engagement letter.

By instructing us, you accept liability to pay our legal costs and all disbursements incurred in respect of such instructions.

### **2. How does BlackmanSpargo charge?**

Our fees are charged according to the Law Society’s guidelines. In fixing the fee, we take account of such matters as:

- The time and labour expended
- The skill, specialised knowledge and responsibility required to perform the services properly
- The importance of the matter to you and the results achieved
- The urgency and circumstances in which the matter is undertaken and any time limitations imposed, including those imposed by you
- The degree of risk assumed by the lawyer in undertaking the services, including the amount or value of any property
- The complexity of the matter and the difficulty or novelty of the questions involved
- The experience, reputation, and ability of the lawyer
- The possibility that the acceptance of the particular retainer will preclude engagement of the lawyer by other clients
- Whether the fee is fixed or conditional (whether in litigation or otherwise)
- Any quote or estimate of fees given by the lawyer
- Any fee agreement (including a conditional fee agreement) entered into between you and the lawyer
- The reasonable costs of running a practice
- The fee customarily charged in the market and locality for similar legal services

### **3. Fees**

The fees we will charge and the manner in which they are set, will be shown in our engagement letter.

All fees charged will be based on the Law Society’s requirement that all professional fees shall be fair and reasonable for both you and us.

In providing services, we may incur disbursements or have to make payments to third parties on your behalf. 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 which we will be incurring on your behalf.

GST (if any) is payable by you on our fees and charges.

### **4. When will you be billed?**

We may send interim invoices to you regularly during the transaction to ensure that work is paid for as various steps are completed. You are then kept informed on the ongoing costs incurred.

Otherwise, invoices will be sent on completion of the matter, or termination of our engagement. We may also send you an invoice when we incur a significant expense.

We may bill you on a monthly basis.

### **5. What about cash payments the client has to make?**

If we instruct any other person (including counsel or another practitioner), we reserve the right to require payment of that person’s estimated costs into our trust account beforehand. We may require you to enter into a payment arrangement directly with that person.

### **6. When do you have to pay?**

Invoices are payable on the 20<sup>th</sup> of the month following the date of the invoice. Interest at 18% per annum, calculated monthly, will be charged on all overdue accounts. All costs incurred in the recovery of any overdue account are payable by you.

You authorise us to deduct all fees and expenses from any money we may be holding or receive for you (for example from the sale of your house) unless alternative arrangements are made in advance.

### **7. What if you can’t pay on time?**

If you anticipate difficulty in the payment of any invoice, you must contact us immediately on receipt of the invoice and discuss arrangements for payment.

Failure to pay invoices on time may, at our discretion, lead to suspension of the services or termination of the engagement. All reasonable fees up to suspension or termination shall be and remain payable, notwithstanding the suspension or termination.

### **8. Lien**

Where we have not been paid for work completed, we have the right to retain original documents and your file until such time as all outstanding fees, disbursements and other expenses have been paid. We reserve the right to retain any such documents and files, even if the monies are due for services unrelated to those documents or file.

### **9. Retention of files and documents**

The workpapers produced by us in the course of providing services are our property and we are entitled to retain work papers and copies of any documents created in the course of performing services.

You authorise us (without further reference to you) to destroy all files and documents for this matter (other than any documents that we hold in safe custody for you) 7 years after our engagement ends, or earlier if we have converted those files and documents to an electronic format.

### **10. Terms & termination**

We 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 Client 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.

Any of the terms and conditions of the engagement letter or the terms that are intended to apply after completion of the services will continue to apply following termination.

### **11. Confidentiality**

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:

- (a) to the extent necessary or desirable to enable us to carry out your instructions; and
- (b) to the extent required by law or by the Law Society’s Rules of Conduct and Client Care for Lawyers.

We will not disclose to you confidential information which we have in relation to any other client.

## **12. Indemnity**

In the event we become involved in any claim (including actual or threatened litigation of any form) in relation to the services, we will immediately notify you. You agree, to the extent permitted by law, to indemnify BlackmanSpargo, its directors and employees in all respects including its reasonable costs and expenses involved in defending any such actual or threatened litigation. Where legal counsel is retained for these purposes, those costs, will be met by you. We will use our best endeavours to agree the quantum of any such costs, recognising the need to respond to such litigation on a prompt and reasonable basis. You agree to meet our reasonable costs and expenses incurred in relation to any inquiry or proceeding initiated by any person.

## **13. Restrictions**

Unless we have agreed in writing, no advice or information provided to you is to be made available, directly or indirectly to any third party, or be used or relied upon by any third party. We will have no liability to any such third party. You indemnify us against any claim arising from a third party's release of such advice or information.

## **14. Email**

While we use standard virus-checking software, we accept no responsibility for viruses or anything similar in emails or attachments which come from us. We also do not accept responsibility for changes to, or interception of, emails or attachments after they leave our information systems.

## **15. No assignment**

You may not assign the benefit of the services to any third party without our written consent. For the avoidance of doubt, the sole beneficiary of the services under this contract is you. No other party is intended to take a benefit under the Contract and Commercial Law Act 2017.

## **16. Guarantee**

On occasions, instructions may be taken from companies or other corporate bodies and/or family trusts and/or third party individuals at your request. In such instances, these terms will apply to the receipt of such instructions and the person or persons from whom we receive instructions unconditionally guarantees to us the performance of all obligations expressed or implied in these terms.

## **17. Investment**

From time to time, we may receive various funds on your behalf and, unless otherwise instructed (or the quantum of the funds retained is so minimal as to not warrant investment), all funds will be deposited to your credit in an interest-bearing deposit account within our trust account. All interest accrued, minus usual Resident Withholding Tax and our handling commission, at a rate of 5% of gross interest accrued, will be for your credit. We will, at such time as all funds are released to you, provide a statement identifying the sum of all interest received and any deductions made.

## **18. Privacy & information**

You authorise us to collect, retain and use information about you for the purposes of carrying out legal services for you, maintaining client records, credit records and credit control and providing information on services available to you.

You further authorise any other person to provide us with such information as we may require to carry out legal services for you.

When information can be readily retrieved, you may obtain access to and request correction of that information.

Unless otherwise required pursuant to the engagement, we will have no responsibility to independently verify the accuracy of any information and documents provided by you or any third party.

We will not be liable for any loss or damage arising from any inaccuracy, incompleteness, or any defect in any information or documents supplied by you.

## **19. General**

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

We are entitled to change these terms from time to time, in which case we will send you amended terms.