

## YOU + US: STANDARD TERMS

- 1 These terms (**Terms**) apply any time you ask us to work for you. Because these Terms form part of our contract with you, if you disagree with any of them, you need to let us know immediately. Otherwise we will take your continued instructions as acceptance of these Terms. We may change these Terms from time to time and when we do we will update these Terms on our website or when you next engage us to work for you.
- 2 We also refer you to our YOU + US Engagement email or letter (**Engagement**), which contains any additional terms we have agreed with you, such as the scope of our work for you.
- 3 Our relationship with you is governed by New Zealand law and New Zealand Courts have exclusive jurisdiction.

### Client care and service

- 4 We act according to the requirements of the New Zealand Law Society (**Law Society**) and we are obliged to tell you that whatever legal services your lawyer is providing, they must:
  - 4.1 act competently, in a timely way, and in accordance with instructions received and arrangements made;
  - 4.2 protect and promote your interests and act for you free from compromising influences or loyalties;
  - 4.3 discuss with you your objectives and how they should best be achieved;
  - 4.4 provide you with information about the work to be done, who will do it and the way the services will be provided;
  - 4.5 charge you a fee that is fair and reasonable and let you know how and when you will be billed;
  - 4.6 give you clear information and advice;
  - 4.7 protect your privacy and ensure appropriate confidentiality;
  - 4.8 treat you fairly, respectfully and without discrimination;
  - 4.9 keep you informed about the work being done and advise you when it is completed; and
  - 4.10 let you know how to make a complaint and deal with any complaint promptly and fairly.
- 5 The obligations lawyers owe to clients are described in the *Rules of Conduct and Client Care for Lawyers* (**Rules**). Those obligations are subject to other overriding duties, including duties to the Courts and to the justice system. If you have any questions, please visit [www.lawsociety.org.nz](http://www.lawsociety.org.nz) or call 0800 261 801.

### Confidentiality

- 6 We will hold in confidence all information concerning you or your affairs that we acquire while working for you. We will only disclose confidential information if it is necessary or desirable to enable us to carry out your instructions or required by law.
- 7 If you are also a client of Helio Trusts Limited (**Helio**) or TP Trust Management Limited (**TPTML**) we may disclose your confidential information to Helio or TPTML (as applicable) to enable them to carry out your instructions (including your personal information to enable them to meet their obligations under anti-money laundering rules) or as required by law.
- 8 We may provide any information we hold relating to any Foreign Account Tax Compliance Act (**FATCA**) or OECD Common Reporting Standard (**CRS**) matters, to the Inland Revenue Department and to our institutional banks if they request information to be able to meet their FATCA or CRS obligations.

### Privacy

- 9 In your dealings with us we will collect and hold personal information about you.
  - 9.1 If you are an organisation this may include collecting and holding personal information about your personnel. We may also source information from publicly available sources. We will use that information to undertake our business, carry out the Engagement, make contact with you in the future about issues we believe will be of interest to you and to comply with our legal obligations. Failure to provide information we request (including information requested under clause 15 may prevent or hinder us from starting the engagement, or providing our services to our customary standards, or at all.
  - 9.2 We may disclose your name and address to a credit agency to perform a credit reference or to undertake credit management processes if we deem it necessary to do so.

- 9.3 Subject to our legal and ethical obligations to maintain client/lawyer confidentiality at all times you authorise us to disclose, in the normal course of performing the Engagement, such personal information to third parties for the purposes mentioned in clauses 9.1 and 9.2 above.
- 9.4 The information we collect and hold about you will be kept at our offices and/or at files storage sites elsewhere in New Zealand. We may also use service providers who store (on our behalf) the information overseas and information may be stored electronically. We use such security safeguards as are reasonable in the circumstances to protect it. Our address, as the person that collects and holds the information is Level 3, 329 Durham Street, Christchurch, New Zealand or Level 1, 62 Cass Street, Ashburton, New Zealand or 20 Harley Street, Nelson, New Zealand.
- 9.5 If you are an individual you have the right to access and correct this information as set out in the Privacy Act 2020. If you require access, please contact Kirsten Todd at the details set out in clause 35.

#### **Files and documents**

- 10 We retain all files and any documents electronically for at least seven years after completion of the matter. We may destroy any physical files held any time after that. Deeds such as Wills, Trust Deeds, and Powers of Attorney are stored in our Deeds' Room permanently, or until you uplift them.
- 11 If you give us a paper document, or we receive one on your behalf, you authorise us to destroy it after making an electronic copy of that document. We will not destroy Wills or any other document we have agreed in writing to hold in safe custody for you.

#### **Ethical Duties**

- 12 We take steps to ensure that no conflict of interest arises between clients for whom we are engaged. On the rare occasions that a conflict or potential conflict does arise, we will follow the Rules. In particular we will:
- 12.1 advise the clients involved of the conflict or potential conflict.
  - 12.2 advise the clients involved that they should take independent advice and arrange that advice if required; and
  - 12.3 decline to act further for any client in the matter where to continue to act would, or would be likely to disadvantage any of the clients involved.
- 13 Our relationship is one involving a very high degree of trust and confidence between us. Either you or we may terminate the engagement at any time if either of us believes that relationship has been undermined for any reason.
- 14 We may also stop work on a matter or terminate the engagement if required by law to do so, including, without limitation, if required to do so under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

#### **Anti-Money Laundering and Countering Financing of Terrorism**

- 15 We may ask you and others associated with you for information that enables us to meet our obligations under anti-money laundering and countering financing of terrorism laws (including personal information and in some circumstances, information relating to the source of your funds or wealth). If you cannot or do not provide us with the information we request we may not be able to act or continue to act for you.
- 16 We may use a third party service provider (such as Centrix or Aply ID) to verify the accuracy of the information you provide to us. We will ensure that our service provider is subject to terms that require them to treat your information strictly confidential.

#### **Limitations on our obligations or liability**

- 17 You agree that our liability is limited as follows:
- 17.1 where we have to obtain and rely on external information or public records we do not accept any liability for direct or indirect loss caused by errors or omissions in such information;
  - 17.2 the liability of our firm and all staff within our firm, howsoever arising shall be limited to the sum of \$1,500,000 in aggregate in respect of each matter upon which we have accepted your instructions to act;
  - 17.3 our firm and all staff within our firm will not be liable to you for any loss of revenue or income, loss of profits, loss of opportunity or any indirect or consequential loss of whatsoever nature;

- 17.4 our advice is given only for your benefit and in your interest. It is not to be relied on by third parties unless we agree in writing;
  - 17.5 we do not accept liability for loss arising from non-receipt of any communication, including emails; and
  - 17.6 we do not accept liability for loss arising from cybercrime, including but not limited to the hacking of emails and/or tampering with bank account details.
- 18 We do not provide advice on taxation or insurance matters, unless specifically agreed otherwise by you. Nor do we give investment advice. Investment advice should be obtained from a properly qualified financial adviser or financial advice provider in terms of the Financial Markets Conduct Act 2013.

### **Fees and other charges**

- 19 Our fees are based on relevant factors specified by the Law Society as listed below:
- 19.1 the time and labour expended;
  - 19.2 the skill, specialised knowledge and responsibility required to perform the services properly;
  - 19.3 the importance of the matter to the client and the results achieved;
  - 19.4 the urgency and circumstances in which the matter is undertaken and any time limitations imposed, including those imposed by the client;
  - 19.5 the degree of risk assumed by the lawyer in undertaking the services, including the amount or value of any property involved;
  - 19.6 the complexity of the matter and the difficulty or novelty of the questions involved;
  - 19.7 the experience, reputation, and ability of the lawyer;
  - 19.8 the possibility that the acceptance of the particular retainer will preclude engagement of the lawyer by other clients;
  - 19.9 whether the fee is fixed or conditional (whether in litigation or otherwise);
  - 19.10 any quote or estimate of fees given by the lawyer;
  - 19.11 any fee agreement (including a conditional fee agreement) entered into between the lawyer and client;
  - 19.12 the reasonable costs of running a practice; and
  - 19.13 the fee customarily charged in the market and locality for similar legal services.
- 20 If our Engagement gives an estimated fee, it is based on our experience with similar matters and is given as a guide only, not a fixed price quotation. Any estimate applies to the scope of our services set out in our Engagement. Work which falls outside that scope will be charged in line with paragraph 199. We will advise you if it is necessary to provide services outside that scope and give a fee estimate if requested.
- 21 Where appropriate, our Engagement will state the hourly rates of the key staff working on your matter. Applying the factors set out in paragraph 199, the fee charged may be more or less than the time recorded. At any time you may request a fee estimate and/or an indication of the level of fees already incurred.
- 22 We will charge you for disbursements. These include registration and filing costs, LIM fees, court charges, fees of other professionals, travel expenses, and larger one-off administrative costs including support staff time for large file management or copying services. We may obtain funds from you in advance for significant disbursements.
- 23 We also charge a general office administration fee on each invoice rendered. This fee includes minor photocopying, facsimiles, routine telephone communications, deliveries, routine online searches and enquiries of a similar nature. The administration fee is calculated as follows:

<b>Our Fee</b>	<b>Administration Fee (inclusive of GST)</b>
\$1 - \$1,000	\$90
\$1,001 - \$1,500	\$115
\$1,501 - \$2,000	\$150
\$2,001 - \$5,000	\$180
\$5,001 - \$10,000	\$295
> \$10,000	4.95% of the fee

- 24 GST (if any) is payable on all professional fees. Administration charges and disbursements are inclusive of GST.
- 25 From time to time you may expect to be reimbursed by a third party for our fees and expenses. Because our legal retainer is with you and even though we may, at your request or with your approval, direct our invoice to that third party, you nevertheless remain responsible for payment if the third person fails to pay us.
- 26 Our general practice is to issue interim accounts monthly. Unless you tell us otherwise, we will send accounts by email. We also issue an account on the completion of each matter. We will let you know when your work has been completed. We will also let you know if further work needs to be done in the future, but we will only carry out that work if you tell us to do so.
- 27 Our accounts are payable 20<sup>th</sup> of the month following invoice date. If an account is not paid promptly, we may elect:
- 27.1 not to do any further work and to retain custody of your files and documents, until all accounts are paid in full; and
- 27.2 to charge interest at up to 1.5% per month on any outstanding amount and such interest may accrue (and be charged) on and from the due dates of the account; and
- 27.3 to take action to recover the debt and all costs we incur in doing so, including interest and third party debt recovery costs are payable by you.
- 28 You authorise us to deduct our costs if we:
- 28.1 are drawing down funds to complete a matter for you (and you authorise us to draw down sufficient funds to meet our account); and
- 28.2 receive or hold money in our trust account on your behalf, before paying the balance to you.

### **Litigation**

- 29 If your matter is litigious it may be desirable to engage the services of a barrister to provide expert counsel and/or to appear in the Court proceedings. If we do so, we may ask you to enter into a separate fee agreement directly with that barrister. If you are successful in obtaining an order for costs payable by other parties in the litigation, it will most likely be for an amount substantially less than the costs payable under this agreement and/or any separate agreement with a barrister. If so, that will not affect your obligation to pay us. It is also possible that the Court may make an order that you pay (part of) another party's costs. Those costs would be in addition to those payable to us under this agreement.

### **Legal aid**

- 30 You may wish to apply for a grant of Legal Aid. In the event that Legal Aid is not granted, you will be liable for our accounts charged, in accordance with these Terms.

### **Trust account**

- 31 We operate a trust account. All money received by you or on your behalf will be held to your credit in the trust account. Payments out of the trust account will be made to you or to others with your authority.
- 31.1 A full record of our trust account is kept at all times. A statement of trust account transactions detailing funds received and payments made on your behalf will be provided at any time upon your request.
- 31.2 If we are holding funds on your behalf, we will lodge them on interest-bearing deposit with a trading bank only where it is practical to do so having regard to the amount involved, the amount of interest likely to be earned, our costs of administration, and where you have completed to our bank's satisfaction any request for information relating to the deposit. Where funds are placed on interest-bearing deposit, we charge an administration fee of 5% of the gross interest earned, which will be deducted from that gross interest.
- 31.3 In accordance with the Lawyers and Conveyancers Act 2006, moneys held in our trust account which are not held on call or term deposit will not earn you interest.

31.4 If you request a payment from our trust account to be made by direct credit to your account, you will provide to us such information or documents as we reasonably require to make the payment, these may include:

- (a) bank deposit slip.
- (b) email from you confirming bank account number.
- (c) copy of your bank statement.
- (d) instructions from your bank.

We will verify the bank account number for all payments over \$10,000. Where we have made payment to that bank account before, we may rely on prior verification.

### **Key dates**

32 It is up to you to ensure you do not overlook ongoing key dates that fall after our work for you is completed. For example, it is not our responsibility to record or to remind you of rent review dates, lease renewals and Personal Property Securities Register Financing Statement expiry dates.

### **Professional indemnity insurance and Lawyers' Fidelity Fund**

33 We hold professional indemnity insurance that meets or exceeds the minimum standards specified by the Law Society. The Society's Lawyers Fidelity Fund provides clients of lawyers with protection against monetary loss arising from theft by lawyers. The maximum compensation amount payable by the Fidelity Fund to an individual claimant is \$100,000.00. Except as 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.

### **Termination**

34 We may terminate our engagement if you do not pay our fees when due. We may otherwise terminate our engagement in any of the circumstances set out in the Law Society's Rules. If our engagement is terminated you must pay us all fees due up to the date of termination and all expenses incurred up to that date.

### **Complaints**

35 We seek to ensure that a complaint is dealt with promptly and fairly. If you have a complaint about our services or charges please refer it to either the Partner who has overall responsibility for your work; or Kirsten Todd. Kirsten is a Partner of the firm and may be contacted by letter (PO Box 442, Christchurch 8140, email (kirsten.todd@tp.co.nz) or by telephone ((03) 963 8015).

36 You may also use the Law Society's complaints service by contacting the Complaints Service Office on 0800 261 801 and you will be connected to the nearest Complaints Service Office, which can provide information and advice about making a complaint.