

## STANDARD TERMS OF ENGAGEMENT

The following terms and conditions apply between us as a firm and you as the client:

### 1 General

- 1.1 These standard terms of engagement (**Terms**) apply in respect of all work carried out by us for you 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. Our relationship with you is governed by New Zealand law and New Zealand courts have exclusive jurisdiction.

### 2 Services

- 2.1 The services we are to provide for you (**Services**) are outlined in our letter of engagement along with any further instructions that you provide to us in writing (or that we record in writing).
- 2.2 In order to provide you with efficient advice and services and to provide the most cost-effective service, it may be that part or all of your instructions will be delegated to other professionals in our firm. In appropriate cases it may also involve utilising the expertise of external Counsel.

### 3 Communications

- 3.1 We will obtain from you contact details, including email address, postal address and telephone numbers. We may provide documents and other communications to you by email (or other electronic means). You will advise us if any of your contact details change.
- 3.2 We will report to you periodically on the progress of any engagement and will inform you of any material and unexpected delays, significant changes or complications in the work being undertaken. You may request a progress report at any time.

### 4 Financial

- 4.1 **Fees:** The basis upon which we will charge our fees is set out in our engagement letter.
  - a If the engagement letter specifies a fixed fee, we will charge this for the agreed scope of the 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 of the agreed scope and, if requested, give you an estimate of the likely amount of the further costs.
  - b Where our fees are calculated on an hourly basis, the hourly rates of the people we expect to undertake the work are set out in our engagement letter. Any differences in those rates reflect the different levels of experience and specialisation of our professional staff. Time spent is recorded in six-minute units.
  - c Hourly fees may be adjusted (upwards or downwards) to ensure the fee is fair and reasonable to take into account matters such as the complexity, urgency, value and

importance of the Services. Full details of the relevant fee factors are set out in Rule 9 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (Rules).

- d If we give you an estimate of our fee:
  - i It is an estimate only and we will review it if necessary. The final fee may be more or less than the amount of the estimate (although our estimates are as accurate as possible, based on information available to us at the time);
  - ii The estimate does not include disbursements or GST.

4.2 **Disbursements and Third-Party Expenses:** In providing the Services we may incur disbursements or have to make payments to third parties on your behalf. You authorise us to incur these disbursements (which may include such items such as the costs of conducting CDD in respect of you including but not limited to agent's fees in respect of CDD, search fees, court filing fees, process server fees, registration fees and travel and courier charges) which are reasonably necessary to provide the Services. You also authorise us to make payments to third parties on your behalf which are reasonably required to undertake the Services (which may include items such as experts' costs or Counsel's fees). These will be included in our invoice to you, shown as "disbursements" when the expenses are incurred (or in advance when we know we will be incurring them on your behalf).

4.3 **GST:** Our services will usually attract Goods and Services Tax (**GST**). If this is the case, GST is payable by you on our fees and charges.

4.4 **Invoices:** We will send interim invoices to you, usually monthly, and on completion of the matter, or termination of our engagement. We may send you invoices more frequently when we incur a significant expense or undertake a significant amount of work over a shorter period of time.

4.5 **Payment:** Invoices are payable within 7 days of the date of the invoice unless alternative arrangements have been made with us.

- a You authorise us to deduct our fees and other expenses from funds held in our trust account on your behalf on provision of an invoice to you unless those funds are held for a particular purpose. For transactional work we may require our fees to be paid on settlement or from the proceeds of settlement.
- b If you have difficulty in paying any of our accounts, please contact us promptly so that we may discuss payment arrangements.
- c If your account is overdue, we may:
  - i require interest to be paid on any amount which is more than 7 days overdue, calculated at the rate of 15% per annum from the date payment became due until the date payment is made in full. This does not affect our other rights to recover payment;
  - ii stop work on any matters in respect of which we are providing Services to you;
  - iii require an additional payment of fees in advance or other security before recommencing work;

- iv recover from you in full any costs we incur (including on a solicitor/client basis) in seeking to recover the amounts from you, including our own fees and the fees of any collection agency.

4.6 **Security:** We may ask you to pre-pay amounts to us, or to provide security for our fees and expenses. We may do this, on reasonable notice, at any time. 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, expenses or disbursements for which we have provided an invoice.

4.7 **Third Parties:** Although you may expect to be reimbursed by a third party for our fees and expenses, and although our invoices may at your request or with your approval be directed to a third party, you remain responsible for payment to us in accordance with these Terms if the third party fails to pay us.

4.8 **Trust Accounting:** We operate a trust account. All money received from you or on your behalf will be held to your credit in our trust account (except monies received for payment of our invoices).

- a Payments out of the trust account will be made either to you or to others with your authority. Written authorisation from you (and if we are acting for more than one of you, from all of you) will be required when payment is to be made to a third party. Before making a payment to another account we may require verification of the account details by provision of (for example) a copy of a deposit slip or bank statement showing the account number, a signed authority from you including the bank account details, or a signed letter from the relevant financial institution providing bank account details.
- b Unless it is not reasonable or practicable to do so, or you expressly instruct us otherwise, when we hold significant funds for you for more than a short period of time we will place them on call deposit with a bank registered under section 69 of the Reserve Bank of New Zealand Act 1989, subject to your having completed to the bank's satisfaction any request for information relating to the deposit or certification required by the bank and you having provided to us either your IRD number or a copy of your interest withholding tax exemption certificate. Interest earned from call deposits, less withholding tax and an interest administration fee payable to us of 7.5% of the interest, will be credited to you. Otherwise, your funds will be held in our trust account with our bank, which is not interest bearing. We are not responsible for seeking or obtaining a better interest rate from any other bank or financial institution at the time your funds are placed on interest bearing deposit, or for any loss of interest that you may suffer as a result of any delay in placing your funds on interest bearing deposit.
- c In order to meet our obligations under the Foreign Account Tax Compliance Act (**FATCA**) and the OECD Common Reporting Standard (**CRS**), we are required to obtain certain information from you before we can lodge funds on interest bearing deposit. To gather that information, we ask clients to complete and sign and return the relevant 'self-certification' form(s), prior to putting funds on call on their behalf. We are unable to place funds on call for any client who has not provided us with this information except where we are holding funds in escrow (as stakeholder). You acknowledge and agree that you shall have no claim against C & C Legal for failure to place funds on interest bearing deposit (or failure to do so promptly) due to any non-compliance by you with the terms of this clause.

- d By completing the self-certification forms, you consent to us releasing the information to our bank or regulatory body to the extent necessary to comply with all relevant legislation.
- 4.9 **Transfers and Payments of Client's Trust Money:** If there is more than one person comprising the client, we are entitled to act on the individual instructions of one of you as to where transfers of or payments from your funds are to be made. You each jointly and severally instruct and authorise C & C Legal to make transfers or payments on such basis. Any variation to this authority must be communicated in writing by you to us.
- 4.10 By placing money with us, you agree we will have no liability however arising for the loss of any amounts deposited by us on your behalf in accordance with these payment procedures and conditions where the loss results from the act, neglect or default of a bank or financial institution.

## 5 Confidentiality and Personal Information

- 5.1 **Confidence:** 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 as expressly or impliedly agreed by you; or
  - c as necessary to protect our interests in respect of any complaint or dispute; or
  - d to the extent required or permitted by law.
- 5.2 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.
- 5.3 **Personal information and Privacy:** In our dealings with you we will collect and hold personal information about you. We will use that information to carry out the Services and to make contact with you about issues we believe may be of interest to you. Provision of personal information is voluntary but if you do not provide full information this may impact on our ability to provide the Services.
- 5.4 Subject to clause 5.1, you authorise us to disclose, in the normal course of performing the Services, such personal information to third parties for the purpose of providing the Services and any other purposes set out in these Terms.
- 5.5 We may disclose your name and address to third parties such as credit agencies to perform a credit reference or to undertake credit management or collection processes if it is reasonable to do so.
- 5.6 **Verification of identity:** The Financial Transactions Reporting Act 1996 requires us to collect from you and to retain information required to verify your identity. We may therefore ask you to show us documents verifying your identity (such as a passport or driver's licence). We may retain copies of these documents. We may perform such other customer verification checks as to your identity and checks as to the source of any funds associated with any transaction to which the Services relate as we consider to be required by law.

5.7 **Compliance:** Please refer to section 7 'Compliance' regarding information that may be required to be provided to third parties.

## 6 Documents, Records and Information

6.1 We will keep a record of all important documents which we receive or create on your behalf on the following basis:

- a We may keep a record electronically and destroy originals (except where the existence of an original is legally important such as in the case of wills and deeds).
- b At any time, we may dispose of documents which are duplicates, or which are trivial (such as emails which do not contain substantive information), or documents which belong to us.
- c We are not obliged to retain documents or copies where you have requested that we provide them to you or to another person and we have done so, although we are entitled to retain copies for our own records if we wish to do so.

6.2 We will provide to you on request copies or originals (at our option) of all documents to which you are entitled under the Privacy Act 2020 or any other law. We may charge you our reasonable costs for doing this.

6.3 Where we hold documents that belong to a third party you will need to provide us with that party's written authority to uplift or obtain a copy of that document.

6.4 Unless you instruct us in writing otherwise, you authorise us and consent to us (without further reference to you) to destroy (or delete in the case of electronic records) all files and documents in respect of the Services 7 years after our engagement ends (other than any documents that we hold in safe custody for you or are otherwise obliged by law to retain for longer). We may retain documents for longer at our option.

6.5 We may, at our option, return documents (either in hard or electronic form) to you rather than retain them. If we choose to do this, we will do so at our expense.

6.6 We own copyright in all documents or work we create in the course of performing the Services.

## 7 Compliance

7.1 We are obliged to comply with all laws applicable to us in all jurisdictions, including (but not limited to):

- a Anti-money laundering (AML) and countering financing of terrorism (CFT) laws;
- b Foreign Account Tax Compliance Act (FATCA) and OECD Common Reporting Standard (CRS); and
- c Laws relating to tax and client reporting and withholdings.

7.2 We may be required to undertake customer due diligence on you, persons acting on your behalf and other relevant persons such as beneficial owners and controlling persons. We may not be able to begin acting, or to continue acting, for you until that is completed.

- 7.3 To ensure our compliance and yours, we may be required to provide information about you, persons acting on your behalf or other relevant persons to third parties (such as government agencies). There may be circumstances where we are not able to tell you or such persons if we do provide information.
- 7.4 Please ensure that you and/or any of the persons described previously are aware of and consent to this. It is important to ensure that all information provided to us is accurate. If the information required is not provided, or considered by us to be potentially inaccurate, misleading, or in contravention of any law, we may terminate or refuse to enter into an engagement.

## **8 Conflicts of Interest**

- 8.1 We are obliged to protect and promote your interests to the exclusion of the interests of third parties and ourselves as set out in the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (Rules). This may result in a situation arising where we have a conflict of interest.
- 8.2 We have procedures in place to identify and respond to conflicts of interest or potential 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. This may mean we cannot act for you further in a particular matter and we may terminate our engagement.

## **9 Duty of Care**

- 9.1 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.
- 9.2 Our advice is not to be referred to in connection with any prospectus, financial statement, or public document without our written consent.
- 9.3 Our advice is opinion only, based on the facts known to us and on our professional judgement, and is subject to any changes in the law after the date on which the advice is given. We are not liable for errors in, or omissions from, any information provided by third parties.
- 9.4 Our advice relates only to each particular matter in respect of which you engage us. Once that matter is at an end, we will not owe you any duty or liability in respect of any related or other matters unless you specifically engage us in respect of those related or other matters.
- 9.5 Unless otherwise agreed, we may communicate with you and with others by electronic means. We cannot guarantee that these communications will not be lost or affected for some reason beyond our reasonable control, and we will not be liable for any damage or loss caused thereby.

## **10 Limitations of Liability**

- 10.1 To the maximum extent permitted by law, our total liability to you (or to any other person claiming through you, including any executor, assignee or nominee) whether in contract or any other legal ground, including negligence, howsoever arising out of your engagement of us on

any matter, or series of related matters, will be limited to the amount paid out under any relevant insurance policy held by us.

- 10.2 In no circumstances will we be liable to you for indirect consequential or special losses of any kind.
- 10.3 You may not commence any action against us more than one year after that cause of action has arisen.

## **11 Business Clients**

- 11.1 Where we are providing services to you for the purposes of a business, to the fullest extent legally permissible:
  - a we will have no liability for any direct or indirect loss of profits or for any indirect, special or consequential loss; and
  - b the Consumer Guarantees Act 1993 will not apply.

## **12 No Tax or Investment Advice**

- 12.1 Our scope of Services excludes any advice and we do not accept responsibility in relation to:
  - a The income tax or GST consequences of any transaction or activity undertaken by you; or
  - b The quality of any investment including, without limitation property.

## **13 Advice on New Zealand law only**

- 13.1 We can only advise you on New Zealand law. If we do provide assistance in relation to matters governed by foreign law (outside of New Zealand) it is on the basis that we are not advising on foreign law and accept no liability for your rights and obligations under foreign law.

## **14 Termination**

- 14.1 You may terminate our retainer at any time.
- 14.2 We may terminate our retainer in any of the circumstances set out in the Rules including the existence of a conflict of interest, non-payment of fees, and failure to provide instructions.
- 14.3 If our retainer is terminated you must pay us all fees, disbursements and expenses incurred up to the date of termination.

## **15 General**

- 15.1 Our relationship with you will be governed by New Zealand law and New Zealand courts will have non-exclusive jurisdiction.
- 15.2 These Terms, as amended from time to time, apply to any current engagement and also to any future engagement, whether or not we send you another copy of them.

15.3 We are entitled to change these terms from time to time. These amended Terms may be posted on our website [www.contractconsult.co.nz](http://www.contractconsult.co.nz) or provided to you. These amended Terms will apply from the time that you next commence a new matter with us. If you disagree with any of the amended Terms you may terminate our retainer.