

OUR TERMS OF ENGAGEMENT

1. **About our Terms of Engagement**

1.1 These Terms of Engagement (“Terms”) apply to all work carried out by MacDonald Lewis Law for you except to the extent we have otherwise agreed in writing. By instructing us you are deemed to have accepted these Terms. We may, from time to time, change these Terms. If we do we will let you know in writing and the new Terms will apply to all future work which we carry out for you.

2. **Our Services**

2.1 Our understanding of your instructions will initially be set out in our initial engagement letter which we provide to you before we commence work. Any future legal services we provide to you will be as instructed by you from time to time.

2.2 The person(s) who will be working with you will be named in our initial engagement letter or as advised to you from time to time.

2.3 We don’t provide tax advice on the effect of any transactions which will form part of your instructions. It is your responsibility to ascertain the tax effect of these transactions.

2.4 Any legal services we provide to you can only be relied on by you and not by any other person. If a person wishes to rely on any work we have done they will need to instruct us accordingly.

2.5 Sometimes when we provide legal services we rely on information provided by or obtained from external sources, for example company searches of the Companies Office website. We are not liable for any errors or omissions in that third party information.

3. **Our Fees**

3.1 Unless we specifically advise otherwise our fees will base on the applicable hourly rate applicable to the individual(s) who are providing the legal services. The hourly rates of the relevant individuals will be advised in our initial engagement letter and we will advise you, if there are any changes to these hourly rates.

3.2 Our fees may also take into account other factors as allowed under the Rules of Conduct and Client Care for Lawyers issued by the New Zealand Law Society (“the Rules of Conduct”). These factors include the following:

- (a) The urgency and circumstances in which the matter is undertaken and any time limitations imposed;
- (b) The complexity of the matter and the difficulty or novelty of the questions involved
- (c) The skill, specialised knowledge and responsibility required to perform the services properly

3.3 We record our time we spend on a matter in 6 minute units and any time spent is rounded up to the next unit of 6 minutes.

3.4 Any indication we give you of the fees which may be payable in respect of a particular matter are (unless we otherwise specifically agree in writing) estimates only and not quotes. Our final fees will be based on the actual time we spend on a matter. If we believe our fees will exceed any estimate given to you we will let you know.

3.5 Our fees do not include GST which (if applicable) is payable in addition.

4. **Expense Recoveries**

4.1 General office services such as photocopying, mobile phone calls, company searches are charged at the rate of \$25.00 (incl of GST) for fees up to \$3,000.00 and \$50.00 (incl of GST) for fees over this amount. However, we reserve the right to charge an additional amount where a matter requires extensive office services such as photocopying and mobile or toll calls.

5. **Disbursements**

5.1 We charge separately for out of pocket expenses which we incur on your behalf and which are payable to third parties. These expenses are called disbursements and include such items as courier charges, LINZ registration and search fees, company incorporation fees, trademark registration fees and any barrister fees.

5.2 Where a matter is likely to incur significant disbursements we may ask you to pay for these disbursements in advance.

6. **Payments**

6.1 Where a matter is ongoing over a period of more than a month we will provide you with an invoice each month until the matter is

OUR TERMS OF ENGAGEMENT

- completed. Otherwise we will provide you with an invoice when we have completed our services. If our services are in respect of the sale or purchase of land or a property or a business, payment of our fees is required on settlement of the transaction unless the transaction does not proceed in which case our fees are payable on termination of the transaction.
- 6.2 Payment of our fees is required within 14 days of the date of our invoice. If you are unable to make payment of our fees within this period please let us know and we may agree to other payment options.
- 6.3 Unless we agree otherwise payment of fees is to be made in cleared funds. Direct credit into our trust account is preferred.
- 6.4 If you are a new customer to us we may require you to pay to us a certain amount in advance payment of fees for our services.
- 6.5 We reserve the right to charge default interest of 12% per annum (calculated on a daily basis) in respect of our fees which are not paid by the due date. You must reimburse us for all debt collection costs (include legal costs) which we or our contractors incur as a result of obtaining or attempting to obtain payment from you.
- 6.6 If you make payment to us by Visa or MasterCard we reserve the right to require you to reimburse us for the charge imposed on us by Visa or MasterCard which is around 2.8% on top of our fee charged to you.
- 6.7 If the client is a trust unless otherwise agreed by us each trustee is personally liable for our fees.
- 6.8 You will remain liable to pay our fees even if you have asked us to address our invoice to another person.
- 7. Trust Account**
- 7.1 We operate a trust account into which all amounts received from clients are deposited into.
- 7.2 We may deposit funds which we hold on your behalf (except those funds for payment of fees) into an interest bearing trust account.
- 7.3 We are not responsible for obtaining the best interest rate available at the time your funds are deposited into an interest bearing trust account.
- 7.4 We are not liable if there is a delay in depositing funds into an interest bearing trust account and are also not liable for any losses you may suffer as a result of the act, negligence or omission of any institution into which we deposit amounts on your behalf.
- 7.5 We may charge an admin fee of 5% of any net interest achieved.
- 7.6 If you do not provide us with a copy of your IRD number or a copy of your Resident Withholding Tax Exemption Certificate Resident withholding Tax will be deducted at the non-declaration rate.
- 8. Guarantee**
- 8.1 Where you are a company we may require a personal guarantee from your directors and or shareholders.
- 9. Privacy Act 1993**
- 9.1 As a result of our services we may obtain personal information about you. You agree that we may provide your personal information to any third party for debt collection purposes. Any personal information is held at our offices, 92 Parnell Road, Parnell, Auckland and you have certain right of access to your personal information under the Privacy Act 1993.
- 10. Confidentiality**
- 10.1 We will not disclose any confidential information about you to any other person unless disclosure is required in order to be able to carry out your instructions or to the extent required under the Rules of Conduct.
- 11. Conflict of interest**
- 11.1 We have procedures in place to identify conflicts 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.
- 12. Unsolicited Electronic Messages Act**
- 12.1 Under the Unsolicited Electronic Messages Act 2007, you must consent to receiving commercial emails from us. Consent can either be explicit, inferred or deemed. We will infer that we have your consent to send you commercial emails from time to time unless you inform us otherwise by letter or email.



OUR TERMS OF ENGAGEMENT

- The email address for unsubscribing to commercial emails is unsubscribe@mllaw.co.nz.
13. **Your files and documents**
- 13.1 We will retain your files and documents for the minimum period required under the law. At the end of this period the files and documents will be destroyed.
- 13.2 We have a right to retain your files and documents until all our fees are paid.
- 13.3 If you would like your files and documents returned to you please let us know. We will take a copy and may require you to reimburse us for the costs of copying and forwarding the files and documents to you. We will require you to sign an authority requesting us to return the files and documents to you.
14. **Ending our engagement**
- 14.1 You can end our engagement at any time and we may on notice to you end our engagement. However if we have given an undertaking based on your instructions you cannot revoke those instructions.
15. **General**
- 15.1 You agree that time is of the essence in respect of your obligations to us.
- 15.2 We will not be prevented from enforcing any of our rights under these Terms because on an earlier occasion we did not enforce those rights.
- 15.3 All notices to be given pursuant to this agreement will be given in accordance with Sections 185 to 189 of the Personal Properties Securities Act 1999.
- 15.4 While you are not entitled to assign your rights under these Terms we may.
- 15.5 You agree that we may issue any proceedings in respect of these Terms in any court that suits us. The law that governs these Terms is New Zealand law.
- 15.6 Any provision of these Terms that is held to be invalid or unenforceable for any reason shall be severed from and shall not affect the remaining provisions of these Terms.



OUR TERMS OF ENGAGEMENT

Set out below is the information required by the Rules of Conduct and Client Care for Lawyers of the New Zealand Law Society ("Law Society").

- 1 **Fees:** The basis on which fees will be charged is set out in our letter of engagement. When payment of fees is to be made is set out in our Standard Terms of Engagement. We may deduct from any funds held on your behalf in our trust account any fees, expenses or disbursements for which we have provided an invoice.
- 2 **Professional Indemnity Insurance:** We hold professional indemnity insurance that meets or exceeds the minimum standards specified by the Law Society. We will provide you with particulars of the minimum standards upon request.
- 3 **Lawyers' Fidelity Fund:** The Law Society maintains the Lawyers' Fidelity Fund for the purpose 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. 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 the client.
- 4 **Complaints:** We maintain a procedure for handling any complaints by clients, designed to ensure that a complaint is dealt with promptly and fairly. If you have a complaint about our services or charges, you may refer your complaint to the person in our firm who has overall responsibility for your work. If you do not wish to refer your complaint to this person, or you are not satisfied with the response to your complaint, you may refer your complaint to *Rory MacDonald* by letter or email at rory@mllaw.co.nz by telephoning him at 09 307 3324 or 0274798190. The Law Society operates the Lawyers 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.
- 5 **Client Care and Service:** The Law Society client care and service information is set out below. Whatever legal services we are providing we must:
 - *Act competently, in a timely way, and in accordance with instructions received and arrangements made.*
 - *Protect and promote your interests and act for you free from compromising influences or loyalties.*
 - *Discuss with you your objectives and how they should best be achieved.*
 - *Provide you with information about the work to be done, who will do it and the way the services will be provided.*
 - *Charge you a fee that is fair and reasonable and let you know how and when you will be billed.*
 - *Give you clear information and advice.*
 - *Protect your privacy and ensure appropriate confidentiality.*
 - *Treat you fairly, respectfully and without discrimination.*
 - *Keep you informed about the work being done and advise you when it is completed.*
 - *Let you know how to make a complaint and deal with any complaint promptly and fairly.*

The obligations lawyers owe to clients are described in the Rules of Conduct and Client Care for Lawyers. 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 or call **0800 261 801**.