

## TERMS OF ENGAGEMENT

### FEES AND CHARGES

- Fees are calculated in accordance with the New Zealand Law Society (“Law Society”) guideline including:
  - Skills , specialised knowledge and responsibility
  - Time involved
  - Complexity
  - Urgency
  - Importance of the work and the results achieved
  - Risk
  - Experience, reputation, and ability of the lawyer(s)/legal executive involved
  - The lawyer(s)/legal executive involved not being available to other clients because of their commitment to the required work
  - Fixed or conditional fees
  - Any quote or estimate of fees given by the lawyer/legal executive
  - Any fee agreement entered into between the lawyer/legal executive and client
  - The reasonable costs of running a practice
  - The fee customarily charged in the market and locality for similar legal services(s)
  - Payment in advance may be requested for disbursements.
- Our fees are charged on a time and attendances basis and the hourly rates of our team are as follows:
  - Partners - \$300.00
  - Associates - \$250.00
  - Senior Legal Executive - \$220.00
  - Senior Solicitors - \$230.00
  - Junior Solicitors - \$150.00Plus GST and disbursements.
- Each lawyer’s/legal executive hourly rate is subject to review at least annually. Time is recorded in units of 6 minutes, with time rounded up to the nearest unit of 6 minutes.
- Estimates will be provided upon request.
- Where the work required falls outside of the scope of any initial estimate, we will advise you as early as practicable that the initial estimate no longer applies.

## **PAYMENT OF ACCOUNTS**

- Accounts are due for payment either on settlement of transactions or otherwise within 7 days following the date of the tax invoice (“due date”). If you have difficulty meeting any account, please let us know.
- An account will be sent on completion of your instructions or interim accounts will be sent monthly.
- Outstanding accounts will incur interest at the rate of 1% per month charged at our discretion.
- We may ask you to pre-pay amounts to us, or to provide security for our fees and expenses. You authorise us 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.
- You may wish to make periodic payments into our trust account on account of fees, expenses or disbursements.
- 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 still remain responsible for payment to us if the third party fails to pay us.

## **CONFIDENTIALITY**

- If legal requirements require proof of identity, any of following forms are acceptable:
  - Drivers Licence
  - Firearms Licence
  - Passport
  - Other Government Issued Photo ID
- We 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:
  - To the extent necessary or desirable for us to carry out your instructions; or
  - To the extent permitted or required by law or by the Law Society’s Rules of Conduct and Client Care for Lawyers.
- This information will only be made available to those within our firm who are providing legal services for you, as far as this is practicable. We will not disclose to you confidential information which we have concerning any other client.
- We may retain copies of your documents and records should we provide you with the original of these.
- If we receive a request for information from your accountant, you authorise us to supply the requested information and you agree to pay us our usual fee for doing so.

## **FILE DESTRUCTION**

- Generally, files will be destroyed 10 years after file closure.

### **CONFLICTS OF INTEREST**

- 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 Rule of Conduct and Client Care for Lawyers.

### **DUTY OF CARE**

- 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 in writing.

### **TRUST ACCOUNT**

- We maintain a trust account for all funds which we receive from clients (except moneys received for payment of our invoices).
- You can pay your funds to us by direct credit or by cheque made payable to "Brent Kelly Law Limited".
- Any funds that we receive from you, or on your behalf, are held on trust for you until distributed in accordance with your instructions.
- If your payment to us is not made in cleared funds (for example, by personal cheque) then we may wait until the funds have cleared before disbursing the funds in accordance with your instructions.
- If we received funds for you, we will (subject to any other obligations we have) pay them to you once we are satisfied that those funds have been cleared through the banking system. This may mean that if funds are paid to us electronically you may not receive them until the next banking day.
- We will not issue you with a receipt unless you request one.
- We keep records of your funds going into, or out of, our trust account and of any of your funds that have been put on interest bearing deposit.
- If we are holding significant funds on your behalf we will normally lodge those funds on interest bearing deposit with our bank. In that case we will charge an administration fee of up to 6% of the gross interest earned.
- Each year you will be sent a Resident Withholding Tax Certificate (if applicable). While we do not have a policy of regularly sending records of your funds to you, we will supply you with a copy of your records on request *unless* we are prevented from doing so ethically or by law. If appropriate, a reasonable charge may be made for providing you with a copy of your records.
- We will not use any of your funds for our own benefit. However, we may lawfully claim a set off against, or lien over, all or part of your funds (including their proceeds) for any of your debts due to us.

### **ELECTRONIC COMMUNICATION**

- Where we correspond with you using electronic communications (as defined in the Electronic Transactions Act 2002 (the "ETA")), the rules set out in the ETA will apply **except** that electronic communications sent out to us will be deemed to be received at the time they come to our attention.
- Electronic communication will be used unless you advise to the contrary.

## **ACKNOWLEDGEMENT OF TERMS OF ENGAGEMENT**

- These terms outline the terms upon which instructions are accepted.
- These terms apply to any current engagement and any future engagement, whether or not we send you another copy of them.
- Your instructions represent acceptance of these terms.
- We may unilaterally change these terms over time. You will be notified of any such changes.
- Our relationship with you is governed by New Zealand law and the New Zealand courts have exclusive jurisdiction.

## **INFORMATION FOR CLIENTS**

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').

### **FEES**

The basis upon which fees will be charged is set and when payment of fees is to be made is set out in our 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.

### **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.

### **LAWYERS FIDELITY FUNDS**

The Law Society maintains the Lawyers Fidelity Fund ("Fidelity Fund") for the purposes of providing clients of lawyers for protection against pecuniary loss arising from their lawyers. The maximum amount payable by the Fidelity Fund by way of compensation to an individual claimant is limited to \$100,000.00. Except in certain circumstances specified in the Lawyers & 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.

### **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 that person, or you are not satisfied with that person's response to your complaint, you may refer your complaint to Alex McIvor or Mark Davies – Partners  
Alex or Mark may be contacted by the following methods:

- By letter to P O Box 149, Te Awamutu

- By email to [alex@kellys.co.nz](mailto:alex@kellys.co.nz) or [mark@kellys.co.nz](mailto:mark@kellys.co.nz)
- By telephoning either of them on 07 871 7878

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.

#### **PERSON RESPONSIBLE FOR THE WORK**

The name and status of the person (or persons) that will have the general carriage of or overall responsibility for the services we provide for you are set out in our Letter of Engagement.

#### **CLIENT CARE AND SERVICE**

The Law Society client care and service information is set out below:

Whatever legal services your lawyer(s)/legal executive is providing, he or she 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.
- Provide you with 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 obligation lawyers/legal executives 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.lawyers.org.nz](http://www.lawyers.org.nz) or call 0800 261 801

#### **LIMITATIONS ON EXTENT OF OUR OBLIGATIONS OR LIABILITY**

Any limitations on the extent of our obligations to you, or any limitation or exclusive liability, are set out in our Terms of Engagement.