

TERMS OF ENGAGEMENT- VICTORIAN LAWYERS

1 WELCOME

- 1.1 Thank you for choosing us to represent/act for you.
- 1.2 Our core values are commitment and integrity. We will represent and advise you on legal matters in accordance with your instructions.

2 APPLICATION

- 2.1 These terms apply to our relationship with you. However if these terms are inconsistent with any other written agreement we have made with you (whether generally or in respect of a specific instruction) then that other agreement prevails over these terms. We may change these terms from time to time and will publish the latest version on our website www.victorianlawyers.co.nz. If you continue to engage us then you accept the latest terms.

3 AUTHORITY

- 3.1 We have the usual authority of a lawyer to act on your behalf in relation to each instruction we accept. This includes your authority, where reasonable, to incur expenses; engage law firms in other regions or jurisdictions; and engage external Barristers or experts or legal servers. You agree to pay all fees and costs associated.
- 3.2 In the event we are unable to attend to your file for any reason (absence from country, illness etc), then you authorise us to instruct an external lawyer of our choice to continue working on your file. You also consent to pay all fees and costs associated with the instruction to an external lawyer in relation to your file.

4 General

- 4.1 These Standard Terms of Engagement (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. Our relationship with you is governed by New Zealand law and New Zealand courts have exclusive jurisdiction.

5 Advice and Services

- 5.1 Any advice given by us is:
 - (a) Solely for your benefit. It may not be relied on by any other person unless we agree to that in writing;
 - (b) Not to be disclosed, referred to or used other than for the purpose for which it was sought;

- (c) Not to be made public or published;
- (d) Limited to matters stated in it;
- (e) Limited to and governed by New Zealand law; and
- (f) Subject to changes in the law after the date it is given.

- 5.2 We are not responsible for advising you as to Taxation issues.
- 5.3 Our name and advice may not be used in connection with any offering document, financial statement or any other public document without our prior written consent.
- 5.4 The services we are to provide for you (the 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).
- 5.5 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.
- 5.6 When our instructions on a matter are completed, our representation of you will end. We are not obliged to notify you of any subsequent change of law, or provide any further services related to that matter.

6 Communications

- 6.1 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.
- 6.2 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.
- 6.3 You agree that we may provide you from time to time with other information that may be relevant to you, such as newsletters and information bulletins. At any time you may request that this not be sent to you. [*This is required if you propose to collect personal information from clients and use it for a mailing list or other marketing purposes. You should be as clear as possible about the purposes for which you are collecting personal information to comply with the Privacy Act 1993.*]

7 Financial

- 7.1 **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 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).

- 7.2 **Disbursements and Third Party Expenses:** In providing the Services we may incur disbursements and payments to third parties on your behalf. You authorise us to incur these disbursements (which may include such items such as search fees, court filing fees, registration fees and travel, courier charges, service of legal document by servers) which are reasonably necessary to provide the Services. Please be aware that if we have to travel to any location for your matter, then we charge travelling disbursements which include our time spent in travelling, and which is calculated at the rate/fee of \$165.00 plus GST per hour for the travelling time spent by the lawyer/staff travelling. In the event that we have to travel to South Island or to any other country or travel by plane in relation to your matter, then you will be liable to pay for all related costs including but not limited to flights, parking, accommodation, car hire. 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 (or instructing a lawyer to replace us) and or legal server 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). Please note however that disbursements are charged separately from our fees and itemised in our invoices. If we are required to expend significant amounts on disbursements or other external costs, we may require you to pay these in advance.
- 7.3 **Office Service Charge Fee (Administrative expenses):** In addition to disbursements, we will also charge fees to cover out of pocket costs which are not included in our fee and which are not recorded as disbursements. For conveyancing matters, we charge a fee of \$55 administrative expenses. These include items such as photocopying and printing, postage and phone calls. Please note however that these disbursements are charged separately from our fees and itemised in our invoices
- 7.4 **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.
- 7.5 **Overseas withholding Tax:** If you are required by law to make a deduction for any tax, levy, duty or other similar charges outside New Zealand from any amount payable to us, the amount payable shall be the amount of any such deduction PLUS the payment that would have been due if no deduction had been required. You must also provide us reasonable documentation to verify the amount of any tax, levy, duty or other similar charges withheld and paid to a tax authority
- 7.6 **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.

- 7.7 **Payment:** Invoices are payable from the date of issue 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.
 - 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 at our discretion:
 - i require interest to be paid on any amount which is more than 14 days overdue, calculated at the rate of 10 % above the overdraft rate that our firm's main trading bank charges us for the period that the invoice is outstanding;
 - 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.
 - d Payment may be made by electronic transfer to our Trust Account.
- 7.8 **Fees and disbursements in advance:** We may ask you to pre-pay amounts to us, or to provide security for our fees and expenses. You consent and provide your authority to us to draw on the amounts paid towards our fees and expenses, as they become due. We may deduct from funds held on your behalf in our Trust account any fees, costs and disbursements for which we have provided an invoice.
- 7.9 **Security for payment of fees:** You agree and consent to the registration of a mortgage and/or PPSR security and/or a Caveat and/or such other security in our favour against you and any assets you may own. We may exercise this option at any time we deem relevant. You consent to us acting as your Attorney to execute such document required to register such security, which shall remain in place until our fees are fully paid. You will become liable on a solicitor client basis for all costs we incur as a result of such attendances.
- 7.10 **Estimates:** You may request in writing an estimate of our fee for undertaking the Services at any time. If possible we will provide you with an estimate (which may be a range between a minimum and a maximum amount or for a particular task or step). An estimate is not a quote. Any significant assumptions included in the estimate will be stated and you must tell us if those assumptions are wrong or change. We will inform you if we are likely to exceed the estimate by any substantial amount. Unless specified, an estimate excludes GST, disbursements and expenses.
- 7.11 **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.
- 7.12 **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.

- 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, cheque 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 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 to you periodically and at any time upon your request.
- c Unless it is not reasonable or practicable to do so, 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. Interest earned from call deposits, less withholding tax [and an interest administration fee payable to us of 5% of the interest], will be credited to you. We charge an administration fee of 5% net interest upon maturity or closure.

8 Our monitoring Obligations

- 8.1 We are obliged to comply with all binding law in all jurisdictions, including (but not limited to):
- (a) AML/CFT: the Anti-Money Laundering and Countering Financing of Terrorism Act 2009; and
 - (b) FATCA: the USA's Foreign Account Tax Compliance Act (FATCA), the USA/New Zealand intergovernmental agreement relating to FATCA and related changes to New Zealand legislation.
 - (c) Laws relating to tax and client reporting and withholdings.
- 8.2 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.
- 8.3 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.
- 8.4 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.

9 Confidentiality and Personal Information

- 9.1 **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.
- 9.2 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.
- 9.3 **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.
- 9.4 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.
- 9.5 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.
- 9.6 The information we collect and hold about you will be kept at our offices and/or at secure file storage sites (including electronic file storage sites) elsewhere. If you are an individual, you have the right to access and correct this information. If you require access, please contact our [*insert contact person eg Privacy Officer*]
- 9.7 **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.

10 Documents, Records and Information

- 10.1 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.
- 10.2 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 1993 or any other law. We may charge you our reasonable costs for doing this.
- 10.3 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.
- 10.4 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. 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.
- 10.5 We own copyright in all documents or work we create in the course of performing the Services but grant you a non-exclusive licence to use and copy the documents as you see fit for your own personal or commercial use. However, you may not permit any third party to copy, adapt or use the documents without our written permission.
- 10.6 **Use of external records:** In providing our services to you, we may rely on information provided to us by third parties (eg government agencies, public registries, witnesses or experts). If the information provided by such sources is inaccurate or incomplete, we do not accept responsibility for any such errors or omissions and will not be liable for any connected damage or loss.

11 Conflicts of Interest

- 11.1 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.
- 11.2 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.

12 Duty of Care

- 12.1 Our duty of care is to you and not to any other person. We owe no liability to any other person, including for example any directors, shareholders, associated companies, employees or family members unless we expressly agree in writing. We do not accept any responsibility or liability whatsoever to any third parties who may be affected by our performance of the Services or who may rely on any advice we give, except as expressly agreed by us in writing.

- 12.2 Our advice is not to be referred to in connection with any prospectus, financial statement, or public document without our written consent.
- 12.3 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.
- 12.4 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.
- 12.5 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.

13 Limitations on our Obligations or Liability

- 13.1 To the extent allowed by law, our aggregate liability to you (whether in contract, tort, equity or otherwise) in connection with our Services is limited to the maximum amount of \$ 1 million only (which includes interest and costs) which is available to be payable under the Professional Indemnity Insurance held by the firm.

14 Electronic Communications

- 14.1 We may communicate with you and others at times by electronic means. These communications can be subject to interference or interception or contain viruses or other defects ("corruption"). We do not accept responsibility for, and will not be liable for any damage or loss caused in connection with, or as a consequence of, the corruption or hacking of an electronic communication.

15 Termination

- 15.1 You may terminate our retainer at any time.
- 15.2 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.
- 15.3 If our retainer is terminated you must pay us all fees, disbursements and expenses incurred up to the date of termination.
- 15.4 If our engagement is terminated, we may retain copies of documents or records that are delivered to you or another lawyer.
- 15.5 It is our practice to photocopy all documents/files that are being collected by the client or that are being sent to a third party at the client's instructions. You agree to pay our fees and disbursements for the same. Our fees for attendance of administrative tasks such as photocopying are calculated at \$165.00 plus GST per hour. We charge for photocopying at the rate of \$0.50 for black and white copies, and \$1.00 for coloured copies.

16 Feedback and Complaints

- 16.1 Client satisfaction is one of our primary objectives and feedback from clients is helpful to us. If you would like to comment on any aspect of the service provided by us, including how we can improve our service, please contact the Partner responsible for your business or our [e.g. *Practice Manager - insert name of person*].
- 16.2 If you have any concerns or complaints about our services, please raise them as soon as possible with the person to whom they relate. They will respond to your concerns as soon as possible. If you are not satisfied with the way that that person has dealt with your complaint, please raise the matter with the Partner responsible for your business or with our [*insert name of person responsible for the internal complaints process*]. We will inquire into your complaint and endeavour in good faith to resolve the matter with you in a way that is fair to all concerned.
- 16.3 If you are not satisfied with the way we have dealt with your complaint the New Zealand Law Society has a complaints service to which you may refer the issue. You can call the 0800 number for guidance, lodge a concern or make a formal complaint. Matters may be directed to:

Lawyers Complaints Service
PO Box 5041
Wellington 6140
New Zealand

Phone: 0800 261 801

To lodge a concern:

www.lawsociety.org.nz/for-the-community/lawyers-complaints-service/concerns-form

To make a formal complaint:

www.lawsociety.org.nz/for-the-community/lawyers-complaints-service/how-to-make-a-complaint

Email: complaints@lawsociety.org.nz

17. Independent Advice

- 17.1 These terms modify some of the duties owed by lawyers to their clients. We recommend that you seek independent legal advice before accepting them.

VICTORIAN LAWYERS

Information for Clients

1. INTRODUCTION

- Please read carefully the information which the Rules of Conduct and Client Care for Lawyers of the New Zealand Law Society (the “NZLS Rules”) requires us to provide to you;
- Please be aware that our standard terms of engagement (“Terms”) which (subject to any other agreement we make with you) govern the relationship between you and us.
- In this section “we” or “us” refers to Victorian Lawyers and “you” means the client or potential client of Victorian Lawyers.

2. FEES

- Fees: The basis on which fees will be charged, and when payment of fees is to be made, are set out in paragraph 7 of our Terms.

3. COMPLAINTS

- We maintain a procedure for handling complaints by clients, designed to ensure that a complaint is dealt with promptly and fairly.
- If you have a complaint about us or our services you may:
 - a) refer your complaint to the person in the firm who has overall responsibility for your work;
 - b) if you do not wish to refer your complaint to that person, or you are not satisfied with the response received from that person, refer your complaint to the Director of our Firm to:

Deep Purusram
Director
Victorian Lawyers Limited
PO Box 272 1020
Papakura 2244
Email: deep@victorianlawyers.co.nz

- (c) You may also make a complaint to the complaints service established by the New Zealand Law Society. To do so, you should contact the New Zealand Law Society at PO Box 5041 Lambton Quay, Wellington 5145, or telephone 04 472 7837.

4. 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.

5. FIDELITY FUND

The Lawyers Fidelity Fund established by the New Zealand Law Society is available to reimburse people who suffer loss by reason of the theft by a lawyer of money or other valuable property entrusted to the lawyer. 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 & 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.

6. CLIENT CARE & SERVICE

- The New Zealand Law Society Client Care and Service Information is set out below: Whatever legal services your lawyer is providing, he or she must:
 - a) Act competently, in a timely way, and in accordance with any instructions received and arrangements made.
 - b) Protect and promote your interests and act for you free from compromising influences or loyalties.
 - c) 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.
 - d) Charge you a fee that is fair and reasonable and let you know when you will be billed. · Give you clear information and advice.
 - e) Protect your privacy and ensure appropriate confidentiality.
 - f) Treat you fairly, respectfully and without discrimination.
 - g) Keep you informed about the work being done and advise you when it is completed.
 - h) 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.

7. LIMITATIONS ON EXTENT OF OUR OBLIGATIONS OR LIABILITY

Any limitations on the extent of our obligations to you or any limitation or exclusion of liability will either be expressly mentioned in our Terms of engagement or will be notified to you in writing.