

## Terms of engagement

These terms of engagement and client information apply to all work undertaken by Greenwood Roche, unless we otherwise agree with you in writing.

The document is in two parts. The first part sets out our standard terms of engagement and the second part details information for clients required by the *Rules of Conduct and Client Care for Lawyers* issued by the New Zealand Law Society.

Please read this information carefully and feel free to contact us with any queries.

### **PART 1: STANDARD TERMS OF ENGAGEMENT**

#### **1 Services**

- 1.1 The services which we are to provide for you from time to time will be outlined in a letter of engagement which we will provide to you for each new matter or which, if agreed by you, will govern each matter on which we work for you. We will advise you on those legal issues that fall within the scope of your instructions.
- 1.2 Our engagement on a matter will end once the instructions have been completed. We will only advise you on further issues arising in connection with the matter (such as renewal dates, changes in law or post-transaction notifications) if you specifically engage us to do so.
- 1.3 We do not provide financial, accounting or investment advice but we will, if you request, assist you to obtain such advice.

#### **2 Duty of Care**

- 2.1 We will act in accordance with your instructions and any applicable professional or legal obligations. Our duty of care is to you and not to any other person. However, this duty of care is subject to our overriding duties owed to the courts and to the justice system.
- 2.2 Before any other person may rely on our advice, we must expressly agree to this.

#### **3 Fees, Charges, Disbursements and Expenses**

##### *Fees*

- 3.1 The fees which we will charge or the manner in which they will be arrived at will be set out in each new letter of engagement, unless established by prior arrangement with you.
- 3.2 If the letter of engagement specifies that fees are to be calculated on an hourly basis, individual solicitors' hourly rates will be set out in that letter. The differences in those rates for each matter reflect the experience and specialisation of our solicitors. Time spent is recorded in 6 minute units, with time rounded up to the next unit of 6 minutes. Hourly rates are generally reviewed annually.
- 3.3 If the letter of engagement specifies a fixed fee, we will charge this for the agreed scope of our services, subject to any assumptions and qualifications set out in that letter and

otherwise in these terms of engagement. Work which falls outside the scope will be charged on an hourly rate basis unless otherwise agreed. This includes supplementary reporting or explanations, and any additional work required because any of our assumptions and qualifications are incorrect. We will advise you as soon as reasonably practicable if it becomes necessary for us to provide services outside the agreed scope and, if requested, give you an estimate of the likely amount of the further fees, disbursements and expenses.

3.4 We can give estimates of likely fees based on our experience with similar matters. Estimates are given as a guide only and not as a fixed quotation. Upon request, we will also inform you periodically of the level of fees incurred or inform you when fees reach a specified level.

3.5 If we provide any estimate or specify a fixed fee, we do so subject to the following assumptions and qualifications:

- (a) your instructions are complete and accurately describe our role;
- (b) the matter will proceed and be completed as anticipated in your instructions and within any indicated, or a normal, timeframe;
- (c) you will provide any information or instructions we require to do our work in a timely and efficient manner;
- (d) no unforeseen circumstances will arise and require additional work;
- (e) all parties and other advisers involved in the matter will be co-operative;
- (f) any third party or regulatory consents or approvals will be given in a timely manner and will not involve protracted negotiations; and
- (g) any cost breakdown we provide is indicative only, and we may adjust any component.

*Office service charges, disbursements and expenses*

3.6 In addition to our fees, we will charge a general office service charge to cover internal office expenses such as printing, photocopying, file storage, telephone and IT costs. This will be included in our invoices to you and charged at a standard rate of 2% of our invoiced fees.

3.7 In providing services we may incur disbursements or have to make payments to third parties on your behalf. These will be included in our invoice to you when the disbursement or expense is incurred, unless otherwise agreed. We may require an advance payment for larger disbursements or expenses which we will be incurring on your behalf.

*GST (if any)*

3.8 GST is payable by you on our fees and on charges, disbursements and expenses, unless our services are zero-rated.

*Invoices*

3.9 We will usually send monthly interim invoices to you and an invoice on completion of the matter, termination of our engagement or when you request one.

*Payment*

- 3.10 Invoices are payable by the 20<sup>th</sup> of the month following the invoice date unless alternative arrangements have been made with us. We reserve the right to charge interest on late payments, calculated at our bank overdraft rate.

*Security*

- 3.11 We may ask you to pre-pay amounts to us or to provide security for our fees, charges, disbursements and expenses. 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, charges, disbursements or expenses for which we have provided an invoice.

*Third parties*

- 3.12 Although you may expect to be reimbursed by a third party for our fees, charges, disbursements and expenses and although our invoices may at your request or with your approval be directed to a third party, you will nonetheless remain responsible for payment to us if the third party fails to pay us.

**4 Confidentiality and Privacy**

- 4.1 We will hold in confidence all information concerning you or your affairs that we acquire while 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) to the extent required by law or by the Law Society's Rules of Conduct and Client Care for Lawyers.
- 4.2 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.
- 4.3 We will not disclose to you confidential information which we have in relation to any other client.
- 4.4 We will observe the provisions of our Privacy Policy which is included in the Privacy Policy section on our website [www.greenwoodroche.com](http://www.greenwoodroche.com). You consent to us processing personal information in accordance with our Privacy Policy.

**5 Electronic Communications**

- 5.1 We will generally communicate with you and others by electronic means, unless otherwise agreed with you. We will not be responsible for any damage or loss caused in connection with or as a consequence of any interference with, interception or corruption of, or any viruses or other defects contained in, any electronic communication or any non-receipt due to technical issues.
- 5.2 If you have any doubts about the authenticity of any communication or document purportedly sent by us, please contact us immediately.

## **6 Use of Electronic Systems and Technology**

- 6.1 We may use electronic document, knowledge and client management systems, generative artificial intelligence (*AI*) capabilities and tools, and associated platforms and technologies to process, produce, store and transmit documents, data and information in connection with our services. These may be hosted or provided by third parties and may involve the use of facilities located within or outside New Zealand.
- 6.2 Where we use third party service providers to host data and information or provide any such systems, capabilities, tools or facilities, we will take reasonable steps to ensure that your personal information and data are handled securely and in accordance with applicable privacy laws, but:
- (a) while we carefully select reputable providers, they are independent contractors and not our partners, employees or agents; and
  - (b) to the extent permitted by law, we do not accept responsibility and will not be liable for any damage or loss arising from their acts or defaults that are beyond our reasonable control.
- 6.3 We may from time to time use AI tools (including generative AI models) in connection with or to assist in providing services to you. We maintain and observe internal policies and procedures governing the responsible, ethical and secure use of AI tools.
- 6.4 Our use of AI tools:
- (a) supplements, rather than replaces, our professional judgment;
  - (b) does not detract from our professional and legal duties or obligations to you; and
  - (c) does not affect our responsibility for the services we provide to you.
- 6.5 If you do not wish us to use AI tools in providing services to you, you must advise us in writing. Any opt-out will apply prospectively.

## **7 Retention of Files and Documents**

- 7.1 We may store your files, documents and personal information in any format we choose at our offices or at premises outside our offices, including data storage facilities or online storage (including cloud-based platforms) located within or outside New Zealand, which may be provided by independent service contractors.
- 7.2 You authorise us (without further reference to you) to destroy all files and documents for each matter on which we act for you (other than any documents that we hold in safe custody for you) 10 years after our engagement ends, or earlier if we have converted those files and documents to an electronic format.

## **8 Conflicts of Interest**

- 8.1 We have procedures in place to identify and respond to conflicts of interest.
- 8.2 We may accept instructions from other parties operating in the same or competing markets including parties whose commercial or legal interests may differ from or conflict with your

own, provided that those instructions do not involve the use of confidential information we have obtained from you.

- 8.3 If you have instructed us to act for you as a bidder, or an adviser or financier to a bidder, in relation to a competitive sales process, then unless otherwise expressly agreed:
- (a) our engagement is on a non-exclusive basis; and
  - (b) we may also act for one or more other bidders and/or their advisers or financiers, with separate legal teams.
- 8.4 In a competitive sales process or if you have otherwise agreed to engage us on a non-exclusive basis in relation to a matter:
- (a) we will take steps to establish an information barrier around the relevant legal services team and keep information in respect of your affairs confidential to that team; and
  - (b) we will not be permitted to provide you with access to confidential information that is held by us as a result of us acting for another party.
- 8.5 If, in the course of acting for you or any other party for whom we are also acting, a legal conflict of interest or dispute arises or matters otherwise become contentious between you and that another party in relation to any matter on which you have instructed us, we will advise you of this and follow the requirements and procedures set out in the Law Society's Rules of Conduct and Client Care for Lawyers. We will raise and endeavour to resolve the issue with all affected parties (unless precluded by obligations of confidentiality or other constraints). However, this may require us to cease acting for one or more of the parties.
- 8.6 If we have not been instructed by you on a matter or we cease to act for you, we may act for other parties, including parties whose interests are adverse to your own, provided that we do not hold any confidential information belonging to you that is relevant to the matter or we have taken steps to maintain the confidentiality of information that is relevant to you.

## 9 **Limitation of Liability**

- 9.1 To the extent permitted by law, our total aggregate liability to you (or any other person) in connection with any matter or series of related matters on which you engage us is limited to:
- (a) if an amount is available to be paid out under any relevant insurance held by us, that amount, up to a maximum of NZ\$20,000,000 (including interest and costs); and
  - (b) in all other cases, an amount equal to five times the amount of our applicable paid fees (excluding charges, disbursements, expenses and GST).

This limitation applies to liability:

- (i) of all kinds, whether in contract, tort (including negligence), equity, under statute or otherwise; or
- (ii) arising from any aspect of our involvement in any matter, including the provision of professional services, the use, storage and transmission of data or information and the use of any electronic communications.

- 9.2 Notwithstanding paragraph 9.1, to the extent permitted by law, our aggregate liability for any loss, damage or liability arising from a breach of confidentiality attributable to a data breach, use of legal technology or human error (including, without limitation, accidental disclosure, unauthorised access, loss or corruption of your confidential information or data) will not in any circumstances exceed NZ\$200,000. This sub-limit is separate from, and not additional to, the overall cap in paragraph 9.1.
- 9.3 Notwithstanding paragraphs 9.1 and 9.2, to the extent permitted by law, we will not be liable for:
- (a) any loss, cost or liability caused or contributed to by inaccurate or incomplete information supplied by you or third parties or because you did not receive or read a communication we sent to you;
  - (b) indirect, consequential or special loss or any loss of revenue, profits, goodwill, business, data (including customer data), savings or opportunity; or
  - (c) any loss, cost or liability caused by or arising out of any event or circumstance beyond our reasonable control, including:
    - (i) fire, flood, storm, earthquake, landslide, volcanic eruption or other forces of nature or explosion;
    - (ii) strikes, lockouts or labour disputes;
    - (iii) sabotage, terrorist activity, revolution, riot, epidemic, pandemic or national emergency, act of war, warlike operations or civil disturbance;
    - (iv) power failures, electronic communication failures, cyber attacks, virus or other malicious software attacks or infections; or
    - (v) changes to laws or regulations (except to the extent that we may be specifically engaged to advise you on those changes).
- 9.4 If we provide services to any persons or entities related to or associated with you on a matter or series of related matters on which you engage us, then our total aggregate liability to you and all those persons and entities in respect of that matter or matters will be subject to the above limitations on liability.
- 9.5 If you claim compensation, damages or contribution from us for loss or damage arising from acts or defaults (including negligence) on our part, and some or all of that loss or damage was due to or contributed to by:
- (a) your own acts or defaults or by the acts or defaults of other persons for whose actions or defaults you are responsible; or
  - (b) the acts or defaults of one or more other persons, not being partners, employees or agents for whose conduct we are responsible,

then our liability to you will be several and not joint with these other persons. In those circumstances, we will be liable only for that proportion of the loss or damage which our acts or defaults bear relative to the totality of the conduct of all persons causing or contributing to the loss or damage. This applies to the extent permitted by law.

9.6 No action may be brought against us, regardless of form, more than two years after the date on which the party bringing the action became aware or ought reasonably to have become aware of the act or omission on which the action is based. In any event, no action may be commenced against us more than four years after the date of the act or omission on which the claim is based.

## 10 **Termination**

10.1 You may terminate our engagement at any time.

10.2 We may terminate our engagement in any of the circumstances set out in the Law Society's Rules of Conduct and Client Care for Lawyers or in these terms.

10.3 If our engagement is terminated (whether by you or us) you must pay us all fees due and all charges, disbursements and expenses incurred up to the date of termination.

10.4 If our engagement is terminated, we will have no further obligation to update you, advise you of any matter or provide any further services to you. These terms of engagement will otherwise continue to apply to the engagement notwithstanding its termination.

10.5 If you ask us to deliver your files back to you or to another person, we will give you electronic access to all your documents filed under your relevant matters, and we will work with you in good faith to deliver hard copies if that is practicable. We may keep a copy of them. You similarly undertake to provide us with future access to those materials, upon request, if we elect not to keep copies. We reserve the right to charge for any attendances and copying.

## 11 **Trust Account**

11.1 We maintain a trust account for all funds which we receive from clients (except money received for payment of our invoices).

11.2 If you instruct us to hold any trust funds in an interest bearing account, you must provide us with either your IRD number or your interest withholding tax exemption. Otherwise, the bank may deduct withholding tax at its default rate.

11.3 In some circumstances, we are required by laws related to tax reporting and withholdings, including the United States' Foreign Account Tax Compliance Act (*FATCA*) and the Common Reporting Standard (*CRS*) for the Automatic Exchange of Information developed by the OECD in tax matters between participating jurisdictions, to obtain signed declarations and collect other information from clients before lodging client funds on interest bearing deposit. If we are holding significant funds on your behalf we will lodge those funds on interest bearing deposit with a bank:

- (a) if you have signed a FATCA declaration and provided us with any other information we request relating to your FATCA and CRS status (where required);
- (b) if the interest earned on those funds is likely to exceed \$200; and
- (c) once we have received your specific instruction to lodge those funds on interest bearing deposit.

11.4 We do not charge an administration fee against interest earned.

11.5 Where we receive an electronic communication from (or purported to be from) you and that communication includes a direction or request to transfer funds which we hold on your behalf, we may elect not to make that transfer until we have independently verified, to our satisfaction, that direction or request by means other than electronic communication. We are not liable for any damage or loss (direct or indirect) caused by or arising from our refusal to act on any electronic communication comprising a direction or request to transfer funds where we have not been able to verify independently that direction or request to our satisfaction.

## 12 **Due Diligence and Monitoring Obligations**

12.1 We are required to comply with laws including:

- (a) anti-money laundering and countering financing of terrorism laws, including the Anti-Money Laundering and Countering Financing of Terrorism Act 2009;
- (b) laws relating to tax reporting and withholdings, including FATCA and the USA/New Zealand intergovernmental agreement relating to FATCA (and related changes to New Zealand legislation) and the CRS regime.

12.2 We (or our relevant service providers) will undertake due diligence, monitoring and reporting and liaise with banks, the Police and other government agencies as required to comply with such laws. This may relate to you, persons acting on your behalf and other persons associated with you (such as your beneficial owners, persons who have or may have effective control of you, members of your governing body and, in the case of a trust, the beneficiaries of the trust).

12.3 We may require you to provide certain information from time to time to ensure our compliance with such laws. If that information is not provided or is considered by us to be potentially inaccurate, misleading or in breach of any law, we may have a statutory obligation to terminate or refuse to enter into an engagement and to make a report to relevant authorities.

12.4 If we are required by law to make any disclosure about you, persons acting on your behalf or other persons associated with you, we may be prohibited from telling you or such persons about such disclosure.

12.5 We are not liable to you, or anyone else, for anything done or not done by us (including any provision of information by us to any third party or any withholdings made) in order to comply with our legal obligations.

## 13 **Barristers, External Counsel and Third Party Agents**

### *Use of barristers, external counsel and third party agents*

13.1 In connection with your matter, we may, with your agreement, instruct a barrister sole or external counsel or engage third party agents or service providers such as LINZ accredited suppliers, expert witnesses, search agencies or process servers) (*third party agents*) to provide specialist advice, representation, advocacy or support services.

13.2 Barristers sole, external counsel and third party agents are independent practitioners or contractors. They are not our employees, partners or agents and are not under our supervision or control.

- 13.3 If we instruct a barrister sole or external counsel or engage a third party agent, we may either collect their fee from you on their behalf or ask you to enter into a separate agreement with them.

*Barristers sole and external counsel*

- 13.4 Where we instruct a barrister sole or external counsel, the barrister or external counsel will act as an independent legal practitioner and will owe professional duties directly to you.
- 13.5 We will consult with you and take reasonable care in selecting and instructing a barrister sole or external counsel, but, subject to paragraph 13.9, we are not responsible or liable for the barrister's or external counsel's acts, omissions, legal advice or conduct of the matter.

*Third party agents*

- 13.6 Where we engage a third party agent, we will take reasonable care in selecting and instructing that third party agent and in communicating relevant information and instructions, but, subject to paragraph 13.9, we are not responsible or liable for any act, omission, error, delay, or advice of a third party agent, including any services or work product provided by that agent.
- 13.7 Each third party agent is responsible for their own professional conduct and work and for maintaining any required licences, accreditations, and professional indemnity insurance.

*Our ongoing obligations*

- 13.8 If a barrister, external counsel or a third party agent is instructed or engaged to provide any advice, representation or services to you or on your behalf, then unless we agree otherwise:
- (a) we will not independently review, verify or provide separate legal advice on any advice, services or work product provided by the barrister, external counsel or third party agent (as applicable); and
  - (b) we will pass on the barrister's, external counsel's or third party agent's advice or updates (as applicable), and assist with administrative coordination, but our role will be limited to that extent.
- 13.9 The limitations in paragraphs 13.5, 13.6 and 13.8 do not limit or exclude our obligations to you in all other respects under law or by the Law Society's Rules of Conduct and Client Care for Lawyers, including our duty to act competently, in a timely manner, and in accordance with your instructions and interests.

**14 Foreign Law Matters**

- 14.1 We will only provide advice to you in accordance with the laws of New Zealand. If we agree to assist you in relation to overseas projects, matters or documentation governed by any foreign law, we do so subject to your acknowledgement that:
- (a) we are only qualified to advise on New Zealand law;
  - (b) we do not hold overseas practising certificates or insurance cover for any foreign jurisdictions;

- (c) our advice is given under the laws of New Zealand, and (where related to overseas projects, matters or documentation governed by a foreign law) is subject to your own supervision and review for matters governed by that foreign law;
- (d) our liability in respect of such matters will be assessed under and subject to principles of New Zealand law in that context; and
- (e) we do not accept any responsibility (and we will not have any liability, whether in contract, tort (including negligence), equity, under statute or otherwise) in relation to your legal position under that foreign law.

## 15 **General**

- 15.1 These terms will also apply to any future engagement, whether or not we send you another copy of them.
- 15.2 We are entitled to change these terms from time to time, in which case we will send you amended terms.
- 15.3 Our relationship with you is governed by New Zealand law and New Zealand courts have non-exclusive jurisdiction.
- 15.4 You may not transfer or assign your rights or obligations under these terms or in relation to any engagement of us on any matter.

## **PART 2: 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.

### 1 **Fees**

- 1.1 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.
- 1.2 We may deduct from any funds held on your behalf in our trust account any fees, expenses, charges or disbursements for which we have provided an invoice.

### 2 **Professional Indemnity Insurance**

- 2.1 We hold professional indemnity insurance that meets or exceeds the minimum standards specified by the New Zealand Law Society. We will provide you with particulars of the minimum standards upon request.

### 3 **Lawyers' Fidelity Fund**

- 3.1 The New Zealand Law Society maintains the Lawyers' Fidelity Fund for the purposes 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**

- 4.1 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.
- 4.2 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 any of our partners.
- 4.3 Our partners may be contacted by letter, email or telephone at the details listed on the Contact Us section of our website [www.greenwoodroche.com](http://www.greenwoodroche.com).
- 4.4 The New Zealand Law Society also operates a complaints service and has powers that require it to investigate complaints about its members. You may make a complaint to that service by contacting the New Zealand Law Society on 0800 261 801.

#### **5 Persons Responsible for the Work**

- 5.1 The names and status of the person or persons who will have the general carriage of or overall responsibility for the services we provide for you are set out in our letter of engagement.

#### **6 Client Care and Service**

- 6.1 The Law Society client care and service information is set out below.
- 6.2 Whatever legal services your lawyer is providing, he or she must:
  - (a) act competently, in a timely way, and in accordance with 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;
  - (d) provide you with information about the work to be done, who will do it and the way the services will be provided;
  - (e) charge you a fee that is fair and reasonable and let you know how and when you will be billed;
  - (f) give you clear information and advice;
  - (g) protect your privacy and ensure appropriate confidentiality;
  - (h) treat you fairly, respectfully and without discrimination;
  - (i) keep you informed about the work being done and advise you when it is completed; and
  - (j) let you know how to make a complaint and deal with any complaint promptly and fairly.

- 6.3 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.
- 6.4 If you have any questions, please visit the New Zealand Law Society's website at [www.lawsociety.org.nz](http://www.lawsociety.org.nz) or call the New Zealand Law Society on 0800 261 801.

**7 Limitations on Extent of our Obligations or Liability**

- 7.1 Any limitations on the extent of our obligations to you or any limitation or exclusion of liability are set out in our standard terms of engagement or otherwise in any letter of engagement we provide to you.