

# PITT & MOORE

LAWYERS AND NOTARIES PUBLIC

## Standard Terms of Engagement

---

These Standard Terms of Engagement (“Terms”) apply in respect of all work carried out by us for you, except to the extent that we otherwise agree with you in writing.

### 1. Services

The services which we are to provide for you are outlined in our engagement letter.

### 2. Financial

#### 2.1 Fees:

(a) The fees which we will charge or the manner in which they will be arrived at, are set out in our engagement letter.

(a) If the engagement letter specifies a fixed fee, we will charge this for the agreed scope of our 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 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 are set out in our engagement letter. We are entitled to change the hourly rates from time to time. Please do not hesitate to contact us at any time in the future if you would like details of our current rates. The differences in those rates reflect the experience and specialisation of our professional staff. Time spent is recorded in 6 minute units, with time rounded up to the next unit of 6 minutes.

#### 2.2 Disbursements and expenses:

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 expense is incurred. We may require an advance payment for the disbursements or expenses which we will be incurring on your behalf.

#### 2.3 Office and Administration Fee:

In addition to the Fees and Disbursements mentioned above there are administration tasks performed to effectively deliver the appropriate legal services to you. These fees have been set to a flat rate of \$60 for each matter we open for you.

#### 2.4 GST (if any):

Is payable by you on our fees and charges.

#### 2.5 Invoices:

We will send interim invoices to you, usually monthly and on completion of the matter, or termination of our engagement. We may also send you an invoice when we incur a significant expense.

# PITT & MOORE

LAWYERS AND NOTARIES PUBLIC

## 2.6 **Payment:**

Invoices are payable on the 20<sup>th</sup> day of the month following the date of the invoice, unless alternative arrangements have been made with us. We may require interest to be paid on any amount which is more than 7 days overdue. Interest will be charged at the rate of twelve per cent (12%) per annum and will be calculated on a daily basis from the due date for payment of the amount concerned. We may take action to recover unpaid amounts and charge you the cost of that recovery including, without limitation, recovery for our time.

## 2.7 **Security:**

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

## 2.8 **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, nevertheless you remain responsible for payment to us if the third party fails to pay us.

## 2.9 **Money handling procedures:**

- (a) If we hold funds on your behalf, we will place them in an interest-bearing deposit ("IBD") with a bank where reasonable and practicable. You acknowledge that we cannot place your funds on IBD if you have not provided us with any information we request relating to your United States Foreign Accounts Tax Compliance Act (FATCA) and Common Reporting Standard (CRS) status or other information we may require to place the funds on IBD. We are not responsible for obtaining the best interest rate available or for any loss of interest you suffer as a result of our failure or delay in placing your funds on IBD.
- (b) You agree that we are not required to place funds on IBD for you when it appears to us, acting reasonably, that the gross amount of interest to be earned on such funds is likely to be \$500.00 or less or in any other case where we consider, acting reasonably, that the time and cost of obtaining information and certifications necessary to place the funds on IBD is likely to more than outweigh the benefit of interest earned.

## 3. **Confidentiality**

- 3.1 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:

# PITT & MOORE

## LAWYERS AND NOTARIES PUBLIC

- (a) where we engage, with your approval a third party, to verify your address and identity as outlined in paragraph 9;
  - (b) to the extent necessary or desirable to enable us to carry out your instructions;
  - (c) to the extent required by law or by the Law Society's Rules of Conduct and Client Care for Lawyers; or
  - (d) to the extent any law requires us to (e.g. where Inland Revenue, the Financial Markets Authority and/or other government agencies have powers to compel us to provide information we have about you).
- 3.2 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.
- 3.3 If we hold funds in our trust account on your behalf (including any judgment, sale proceeds, settlement amount, or other money), you authorise us to:
- (a) provide any information we hold relating to your FATCA or CRS status, or other FATCA or CRS matters, to Inland Revenue and to our banks if they request information to be able to meet their FATCA or CRS obligations; and
  - (b) if you do not provide any such information we request, report your non-response, identity, and reportable balance to our banks and Inland Revenue (who will in turn pass this information to the relevant foreign tax authority).

Please ask us if you would like more information about FATCA or CRS.

## 4. Conditionality and Termination

- 4.1 Our retainer is conditional upon (and remains conditional upon) our having successfully completed such customer due diligence and monitoring as is from time to time required by our AML/CFT Compliance Programme (established in accordance with the Anti-Money Laundering and Countering Financing of Terrorism Act 2009). This means that we will not commence or continue work for you unless and until we are satisfied that our customer due diligence and monitoring obligations under that Compliance Programme have been complied with in full.
- 4.2 You may terminate our retainer at any time.
- 4.3 In addition to our rights under 4.1 above, we may terminate our retainer in any of the circumstances set out in the Law Society's *Rules of Conduct and Client Care for Lawyers*.
- 4.4 If our retainer is terminated you must pay us all fees due up to the date of termination and all expenses incurred up to that date.

## 5. Storing Records

- 5.1 We will keep a record of all material documents we receive or create working for you on each instruction on the following basis:

# PITT & MOORE

## LAWYERS AND NOTARIES PUBLIC

- (a) we may, at any time, keep a document electronically and destroy paper originals (this includes any original documents you give to us unless you tell us you do not want them to be destroyed, in which case, we may return the originals to you once we have made an electronic copy). We will not destroy any original documents we have agreed to hold in safe custody for you (e.g. your Will);
  - (b) we may, at any time, dispose of documents that are duplicated, do not contain substantive information, or belong to us; and
  - (c) if you ask us to provide documents to you or another person, we are not obliged to retain copies of those documents, but we may do so for our own records.
- 5.2 We will provide you with copies of documents you are entitled to under the Privacy Act of any other law if you ask us to. We may charge you our reasonable costs to do so.
- 5.3 You authorise us (without further reference to you) to destroy, or delete in the case of electronic documents, all files and documents relating to an instruction seven years after that instruction has been completed. We may retain files and documents for longer at our option.

## **6. 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 *Rules of Conduct and Client Care for Lawyers*.

## **7. 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.

## **8. Trust account**

We maintain a trust account for all funds which we receive from clients (except money received for payment of our invoices). If we are holding significant funds on your behalf we will normally lodge those funds on interest bearing deposit with a bank. In that case we will charge an administration fee of seven per cent (7%) of the interest derived.

## **9. Verifying your identity and source of funds, and credit checks**

- 9.1 As from 1 July 2018 we are required by law to verify your identity and, in some circumstances, the source of funds for a transaction.
- 9.2 We may wish to carry out reasonable credit checks on you from time to time.

# PITT & MOORE

## LAWYERS AND NOTARIES PUBLIC

9.3 You authorise us to collect information about you (including customer due diligence information and credit reports), to obtain, exchange, hold, and use such information, and to make any other enquiries we think appropriate to:

- (a) confirm information provided to us about you is true;
- (b) undertake initial and ongoing customer due diligence and monitoring in accordance with the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT Act);
- (c) enforce debt and legal obligations (including recovery of money owed to us); and

comply with other legal obligations we may have.

9.4 You authorise any person (including credit reporters) to disclose information (including credit information) to us in response to such enquiries.

9.5 You accept that we may use customer due diligence services (including electronic based services from a third party) to verify your identity and conduct other customer due diligence or monitoring required under the AML/CFT Act, and that we may use credit reporting services to credit check you, and that when we use such services:

- (a) Service Providers will exchange information about you for that purpose and the Service Provider may hold information on its system and use it to provide their customer due diligence service or credit reporting service (as the case may be) to their other customers;
- (b) we may use the Service Provider's services in the future for any authorised purpose (including in relation to ongoing customer due diligence or the provision of credit). This may include using the Service Provider's monitoring services to receive updates if information held about you changes; and
- (c) if you default in your payment obligations to us, information about that default may be given to Service Providers and given by Service Providers to their other customers.

## **10. Limitation of Liability**

10.1 Any limitations on the extent of our obligations to you or any limitation or exclusion of liability are set out in our letter of engagement.

10.2 To the maximum extent permitted by law, our total liability to you (whether in contract, tort (including negligence) or otherwise) in connection with any matter (or series or related matters) on which you engage us will not exceed:

- (a) the amount available to be paid out under any relevant insurance held by us, up to a maximum of NZ\$20,000,000; and
- (b) in any other case, NZ\$2,000,000.

# PITT & MOORE

LAWYERS AND NOTARIES PUBLIC

## 11. General

- 11.1 These Terms apply to any current engagement and also to any future engagement, whether or not we send you another copy of them.
- 11.2 We are entitled to change these Terms from time to time.
- 11.3 We are entitled to change the people who will have the general carriage of or overall responsibility for the services we provide for you, in which case we will provide you with the names and status of the people who will be providing services to you.
- 11.4 Our relationship with you is governed by New Zealand law and New Zealand courts have non-exclusive jurisdiction.