

TERMS OF ENGAGEMENT FOR PROVISION OF SERVICES BY FARRY AND CO LAWYERS

The Lawyers and Conveyancers Act (Lawyers Conduct and Client Care Rules) 2008 requires all lawyers to provide their clients with a Terms of Engagement which sets out the terms governing our business relationship with You.

Unless We agree otherwise in writing, these terms apply whenever We provide services to You.

1. Your Instructions

- 1.1 The services which We are to provide to You are as instructed by You from time to time.
- 1.2 By instructing Us to provide You with legal services You are deemed to have accepted these terms of engagement.
- 1.3 Unless You instruct us otherwise in writing, You agree that We can accept instructions from any of the following:
 - Where We provide services to a company, from any officer or employee of that company or any other person You have authorised to work with us;
 - Where We provide services to a trust, from any trustee or officer of that trust;
 - Where We provide services to a partnership, from any partner or officer of that partnership;
 - Where We provide services to a couple, from either person.

2. Our obligations to You

In carrying out the services provided to You We will:

- (a) discuss Your objectives and how they are best achieved;
- (b) provide You with information about the work to be done, who will do it and keep you informed about progress with the job
- (c) act competently, promptly, and in accordance with Your instructions;
- (d) protect Your privacy, ensure appropriate confidentiality and avoid conflicts of interest;
- (e) charge fair and reasonable fees;

The obligations We owe to You are set out in full in the *Rules of Conduct and Client Care for Lawyers* ("the Rules") at <http://www.lawsociety.org.nz/for-lawyers/regulatory-requirements/rules-and-regulations>. Those obligations are subject to other overriding duties, including duties to the Courts and to the Justice System.

3. Our Charges

- 3.1 Our fees are charged in accordance with guidelines laid down by the Rules. We take into account a combination of factors as set in the Rules including time spent, urgency and complexity of the work.
- 3.2 Sometimes We may provide an estimate of likely fees for a job. This will be based on information provided and available at the time. Please note that this is neither a quote nor a cap on Our fees but is Our best range estimate of Our likely costs in the matter. If the work does not proceed as We had envisaged due to unexpected matters, or if the work proves more involved than originally anticipated, We will charge for that additional work. If it appears that the estimate will be exceeded, We will advise You of this as soon as reasonably practicable.
- 3.3 Where our fees are calculated on an hourly basis, the hourly rates are those that are advised to You from time to time. The differences (if any) in those rates reflect the experience and specialisation of our professional staff.
- 3.4 If a fixed fee is agreed by us in writing then We will charge this for the agreed scope of our services. Work which falls outside that scope will be charged in accordance with clause 3.1. 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.
- 3.5
 - (a) In addition to Our fees we will charge You disbursements incurred on Your behalf. Disbursements are out of pocket expenses payable to third parties such as registration and filing fees, court charges, courier fees, search fees, on-line enquiries, travel and accommodation costs, and matters of a similar nature. Disbursements also include payments made on Your behalf to third parties such as fees of outside counsel, agents, experts and other professionals and are charged at the amount charged to Us.
 - (b) Our invoices will include an office service charge to cover the cost of general office services such as photocopying, printing, binding, telecommunications, broadband/internet courier expenses and file storage. The amount of that charge will be a minimum of \$60 plus goods and services tax for each matter but if the actual costs of these services are higher than that charge then We will charge You the higher cost.
 - (c) We may charge You an estimate of some disbursements.
 - (d) Some disbursements also incur additional administration charges to cover the costs We incur in the process of providing those third party services.
- 3.6 We are not required to pay the amounts referred to in clause 3.5 for You unless We receive payment from You first. We have the right to ask for these specific amounts or for an approximate amount to cover these expenses to be paid in advance into our trust account. We may require You to enter a payment arrangement directly with the third party at our discretion.
- 3.7 Unless We state otherwise, all fees are plus GST
- 3.8 Although You may expect to be reimbursed by a third party for our fees and expenses, You will normally be expected to pay our fees and expenses and obtain repayment from the relevant third party. If We agree Our invoice may, at Your request, be directed to a third party, however You remain responsible for payment to Us, if the third party fails to pay Us.
- 3.9 In some cases You may be eligible to apply for legal aid. If You want to apply for legal aid, We may refer You to another lawyer as We do not usually carry out legal aid work.

4. Invoices and Payment

- 4.1 We will send invoices to You on completion of Your job, or termination of Our engagement. We may also send interim invoices to You usually on a monthly basis or when We incur a significant expense.
- 4.2 Invoices are payable within 14 days from 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 14 days overdue. Interest will be calculated at the rate of 10% above our main trading bank's 90-day bank bill buy rate as at the close of business on the date payment became due.
- 4.3 We may stop doing work (and instruct others to stop doing work) for You if Your credit limit is exceeded or if payment is not received by Us when due. We will have no liability for any loss suffered by You when work is stopped for this reason.
- 4.4 If there is more than one person instructing Us, each person is jointly and severally liable for payment in due time of all Our accounts and other charges.
- 4.5 If We have to take steps to recover any unpaid account, the costs of recovery (including debt collection charges) are all payable by You.
- 4.6 You authorise us to debit against any funds held on Your behalf in our trust account in respect to any matter; any expenses including office services or disbursements. We may also deduct from any such funds any fees for which We have provided an invoice.
- 4.7 Sometimes We may also ask You to pay a deposit based on Our estimate of the fees and disbursements. We may choose not to begin work until We receive Your deposit, even if deadlines are due.

5. Trust Account

We maintain a trust account for all funds which We receive from clients (except monies received for payment of Our invoices). If We are holding significant funds on Your behalf We will where appropriate normally lodge those funds into an on call interest bearing deposit account with Our bank. In that case, We may charge an administration fee, currently the greater of \$30.00 or 7.5% of the interest earned. These fees may change from time to time. You will be notified of any change.

6. 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.

7. Lawyers Fidelity Fund

The Law Society maintains the Lawyers Fidelity Fund for the purposes of providing clients of lawyers with protection against loss arising from theft by lawyers. The maximum amount payable as compensation by the Fidelity Fund to an individual 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.

8. Duty of Care

Our duty of care is to You and not to any other person or entity. Before any other person or entity may rely on Our advice or services, We must expressly agree to this in writing.

9. Conflicts of Interest

We have procedures in place to identify and respond to conflicts of interest. If a conflict of interest arises We will consult with You about the best way to resolve the matter and in accordance with the Rules.

10. Retention of Files

At the end of Your job We will keep Your file for the minimum period stipulated by any relevant legislation or earlier if We have converted those files to an electronic format. At the end of this period We may destroy or delete the file without contacting You further.

11. Complaints Procedure

We have procedures for handling any complaints, 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 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 You may refer Your complaint to the Managing Partner. If You are not satisfied with the result of Our complaint procedures, then You have the right to lodge a written complaint with the New Zealand Law Society's complaints service – details of which are available on www.adls.org.nz. Queries can be referred to complaints@lawsociety.org.nz or telephone 0800 261 801.

12. Confidentiality and Privacy

12.1 We will treat all information We hold about You as private and confidential. We will not share any information We hold about You, unless:

- The law requires Us to
- We need to so that We can carry out Our work for You
- You agree, or ask Us to.
- The information is already known to the public or those We disclose it to.

12.2 We may also use contact details and other information (e.g. subjects You are interested in) to keep You informed about developments in relevant areas of law and other services or products We offer. If You do not want to be provided with this information please let Us know at any time.

13. Electronic Communications

If You ask Us to transmit any document or communication to You or any other party electronically, You indemnify Us in respect of any claim You may have as a result of any unauthorised copying, recording, reading or interference with that document after transmission, for any delay or non-delivery of any document and for any damage caused to Your system or any files by the transmission (including by a computer virus).

14. AML/CFT, FATCA and CRS

14.1 We must comply with Our obligations under all laws binding on Us, including:

- Anti-money laundering and countering financing of terrorism laws; and
- Laws relating to tax reporting and withholding tax or levies.

14.2 In order to do so, We may be required to conduct customer due diligence on You, persons acting on Your behalf, and other relevant persons such as relevant beneficial owners or persons who have effective control of You and (in the case of a trust) the beneficiaries of the trust. We may not be able to act or continue acting for You, or to complete trust account and other transactions for You, until this is completed.

14.3 We may be required to provide information about You, persons acting on Your behalf, and other relevant persons as described above to government agencies. We may not be permitted to tell You or such persons if We do provide such information. We may also be required to provide such information to banks with which We place Your funds through Our trust account, and information provided to banks may in turn be passed on by them to tax and other regulatory authorities in New Zealand and overseas.

14.4 We are not responsible 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.

15. Termination

15.1 You may end Our engagement by giving Us reasonable written notice. You must pay Our fees for work done and for other charges incurred up to the time of termination.

15.2 We may end Our engagement, at any time upon reasonable notice to You.

15.3 Upon termination of the engagement, all outstanding fees and other charges (up to the time of termination) will be billed to You. When You pay the account You may uplift Your file. Until Your account is paid We have a right to keep any of Your property including all files and documents in Our possession (this is called a solicitor's lien).

15.4 You acknowledge that We are entitled to retain a full copy of your files and documents and are entitled to charge the costs of duplication of same.

15.5 Where We have provided an undertaking to any person or entity that has not been completed You may not terminate Our engagement or revoke Your instructions without Our consent until the undertaking is completed or We are released from it.

15.6 We may suspend your work if you have not:

- paid Our accounts on time;
- given Us information that We have asked for or it is not accurate;
- done something that You are required to do.

16. Limitation of Liability

16.1 Where the Consumer Guarantees Act 1993 or other legislation implies conditions or warranties or gives other rights to You and it is not lawful or possible to exclude those rights, then such conditions, warranties or other rights shall (but only to the extent required by law) apply to Our arrangements with You. Except as stated above, all implied conditions, warranties and rights are expressly excluded.

16.2 Subject to clause 16.1 Our liability in respect to the provision of services to You whether in negligence or otherwise shall be limited to the maximum amount payable under Our Professional Indemnity Insurance from time to time.

16.3 Except as specified in clauses 16.1 and 16.2 We shall not be liable to You or any person claiming under or through You in contract or in tort for any indirect or consequential loss, suffered by You or any other person, arising out of or relating to Our performance or non-performance (including, by way of example and not in limitation, liability due to negligence or default by Us) or any error (whether negligent or not) in information supplied to You.

16.4 We often have to obtain and rely on external information or public records (e.g. government agencies or registers) to carry out Your instructions. This information may not always be accurate or complete. We do not accept responsibility and will not be liable for any direct or indirect damage or loss caused by errors or omissions in external information.

16.5 In providing conveyancing (property) services to Our clients We do not carry out valuations of property or businesses, nor determine whether the property or business meets Your investment profile. We recommend You should consult a suitably qualified professional such as a Registered Valuer, Financial Adviser and/or Accountant in relation to these issues.

- 16.6 We do not provide investment advice in respect to financial products. Again, We recommend You always obtain appropriate advice from a suitably qualified Financial Adviser or Accountant in relation to specific financial products.
- 16.7 In providing services to You we shall not be liable to You or any person claiming under or through You for any loss or liability caused or contributed to by inaccurate or incomplete information supplied by You or because You did not receive or read a communication we sent You.
- 17. Personal Guarantee**
If You are instructing Us in the capacity of director or shareholder of a company, or as settlor or trustee of a trust or executor or administrator of an estate then You will be personally and primarily liable to Us for Our fees and other costs. While the company, trust or estate will also be liable for Our fees and other costs We may require you personally to pay if payment has not been made when due by the company, trust or estate.
- 18. General**
- 18.1 These terms and any other agreement We have with You are:
(a) governed by New Zealand law and subject to the exclusive jurisdiction of the New Zealand courts;
(b) binding on You and Your executors, administrators and successors; and
(c) personal to You. You may not assign or transfer any rights or obligations under these terms or any other agreement that We have with You.
- 18.2 These terms apply to any current engagement and also to any future engagement, whether or not We send You another copy of them.
- 18.3 We are entitled to change these terms from time to time. We will advise You of any changes.
- 18.4 In these terms of engagement, "We", "Us", "Our" and "the Firm" means Farry and Co or its successors and assigns, including Our employees, consultants and contractors engaged by Us, and "You" and "Your" means the client or entity engaging the services of Farry and Co together with its successors and assigns.
- 18.5 There is no need for You to sign these terms of engagement in order to accept them. By continuing to instruct Us to work for You will constitute your acceptance of these terms of engagement or any amendment subsequently made to them unless you expressly advise us to the contrary in writing. If that occurs We may decline to continue to act for You. Please note the provisions of clause 15 will apply in those circumstances.