

# TERMS OF ENGAGEMENT



Mortlock McCormack Law is a law firm engaged in the provision of quality and cost effective legal, business and personal solutions for our clients. We are proud of the work we produce and the partnerships we enjoy in our community and throughout New Zealand.

We place a high value on people and will do our utmost to protect our relationship with you. We are a socially responsible business, pursuing sustainable business practices and having regard for the environment.

Our terms of business and what you can expect from us are set out below. Any work you instruct us to carry out will be on these terms. Your continued instructions indicate your acceptance of these terms.

## 1. EFFECTIVE DATE

These terms of engagement are effective from 1 July 2018 and supersede any previous editions. Together with our letter of engagement these terms will apply to the services we undertake on your behalf.

## 2. SERVICES

The services we will provide are outlined in our letter of engagement. You will receive a letter of engagement for every piece of work we carry out for you. We will not provide you with advice in respect of the quality or value of any investment you wish to make. You must consult an authorised financial advisor (AFA) should you require financial or investment advice.

## 3. FINANCIAL

### 3.1. FEES

- (i) The fee we will charge or the manner in which it will be arrived at, is set out in our letter of engagement.
- (ii) If the letter of engagement specifies a fixed fee, we will charge this for the agreed scope of our services. Fees for work that falls outside that scope will be calculated based on the range of factors applied by the New Zealand Law Society including time, expertise, importance, urgency and results achieved. If it becomes necessary to provide services outside the agreed scope we will advise you as soon as reasonably practicable and provide an estimate of the further costs.
- (iii) If the letter of engagement specifies an estimate, we will do our best to charge no more than the amount estimated for the agreed scope of our services. When it becomes apparent that the costs are likely to

exceed the estimate by more than 10%, we will advise you as soon as reasonably practicable and provide an estimate of the further costs.

- (iv) If the letter of engagement specifies the hourly rates for the people who will be undertaking work on your behalf, we will calculate our fees for the agreed scope of our services based on the range of factors applied by the New Zealand Law Society including time, expertise, importance, urgency and results achieved. If you require our estimate of the likely cost of undertaking the agreed scope of our services, please contact the Partner responsible for your matter.

### 3.2. OFFICE SERVICE FEE

We may charge a separate office service fee to cover the costs incurred in operating our office, including but not limited to printing, photocopying, communication charges, forms and precedents that incur a charge.

### 3.3. DISBURSEMENTS AND EXPENSES

We may incur disbursements or have to make payments to third parties on your behalf. These will be included in our invoice when the disbursement is incurred. We may require an advance payment for the disbursements.

### 3.4. GST

Unless an exemption in the GST Act applies, GST is payable by you on our fees and disbursements.

### 3.5. INVOICES

We will invoice you:

- (i) monthly by way of interim invoices for ongoing work (unless some other arrangement has been reached)
- (ii) at the completion of a transaction
- (iii) upon termination of our engagement
- (iv) if we incur (or will incur) a significant disbursement

### 3.6. PAYMENT

Unless otherwise specified invoices are payable by the 20th day of the month following the date of the invoice. We may charge interest on any amount that is overdue. Interest will be calculated at the rate of 1.5% per month.

### 3.7. SECURITY/PREPAYMENT

We may ask you to prepay amounts to us or to provide security for our fees and expenses. You authorise us to:

- (i) debit against amounts pre-paid by you; and
- (ii) deduct any fees, expenses or disbursements for which we have provided an invoice.

### 3.8. THIRD PARTIES

We may at your request or with your approval invoice a third party. If that third party fails to pay you will be responsible for payment.

### 3.9. TRUST ACCOUNT

We maintain a Trust Account for all funds received from clients. If these funds are placed on interest bearing deposit through our Trust Account, we will charge an administration fee of 5% of the gross interest earned.

### 3.10. SETTLEMENT MONEYS

For transactions where payment of money is due by you, we require cleared and non-reversible funds for the correct amount to be deposited no later than the morning of settlement. Proof of deposit must be supplied.

### 3.11. DORMANT BALANCES

If we hold a dormant balance for you we will make reasonable efforts to locate you to arrange for the dormant balance to be paid to you. We may deduct our reasonable costs of trying to locate you from the dormant balance. If the dormant balance is small and it is not economic for us to try to locate you we may take that dormant balance by deduction.

### 3.12. FEE RECOVERY

If we are required to take any action to receive payment of our fees, disbursements or expenses, we are authorised to use, only to the extent necessary to receive such payment, your private information as that term is used in the Privacy Act 1993. You will also be liable to pay all costs including debt collectors and legal fees incurred in taking action.

## 4. ANTI-MONEY LAUNDERING POLICY

We are required to be compliant with all obligations under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 ("the AML/CFT Law"). This means that any work we do for you will be subject to the AML/CFT Law and we may be requesting further information from you as part of our due diligence obligations. Part of our obligations under the AML/CFT Law will also involve reporting certain types of transactions to the Department of Internal Affairs and the New Zealand Police. For further information please speak to us directly and/or visit the section on our website in relation to the AML/CFT Law.

## 5. RETENTION OF FILES AND DOCUMENTS

We store all files for at least seven years. You authorize us (without further reference to you) to destroy all files and documents (other than documents we hold in safe custody) at the end of the storage period or earlier if we have converted those files and documents to an electronic format.

## 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 and thereafter follow the requirements and procedures set out in the New Zealand 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. CONFIDENTIALITY

We will hold in confidence all information concerning you or your affairs acquired during the course of acting for you. We will not disclose any of this information to any other person except:

8.1. To the extent necessary or desirable to enable us to carry out your instructions; or

8.2. To the extent required by law or by the New Zealand Law Society's Rules of Conduct and Client Care for Lawyers.

Confidential information will, as far as practicable only be made available to those persons within our firm who are providing services to you.

We will not disclose confidential information that we have in relation to any other client to you.

## 9. TERMINATION

9.1. You may terminate our engagement at any time. We may terminate our engagement for good cause after giving notice to you specifying the grounds for termination. Good cause includes:

- (i) Instructions that require us to breach any professional obligation

- (ii) Inability or failure to pay our fee at the appropriate time
- (iii) Misleading or deceiving us in a material respect
- (iv) Failing to provide instructions in a sufficiently timely way
- (v) Adopting, against our advice, a course of action that we believe is imprudent and may be inconsistent with our fundamental obligations

9.2. If our engagement is terminated, you must pay all fees, disbursements and expenses due to the date of termination.

9.3. Any charges incurred in the retrieval of files or documents from storage will be payable by you.

## 10. 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 interface 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).

## 11. OUR COMMITMENT

We value our relationship with you and are committed to attending to your affairs diligently and providing you with an efficient, effective and professional service.

## 12. GENERAL

These terms apply to any transaction 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. New Zealand law governs our relationship with you and New Zealand courts have non-exclusive jurisdiction.

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