

# Terms of Engagement

## What are these terms of engagement?

These terms of engagement (Terms) set out the basis of our professional relationship with you, in accepting and actioning your instructions.

## When do these Terms apply?

These Terms apply whenever you instruct us to act for you, or use our services, unless we agree (in writing) to vary them.

## What is our role in acting for you?

Our role is to provide you with the legal services we agree on, unless a conflict of interest or other factors prevent us from providing the legal services to you.

We will use due care and skill. We will act in accordance with your instructions, subject to any ethical or legal duties.

Nobody except you may rely on our advice to you without our written consent.

## Who will work with you?

We will usually ask you to nominate the partner responsible for each matter to work with you. That person will then involve other partners and staff to assist on your matter, as appropriate.

## How are our fees calculated?

Our fees are calculated taking into account the time we spend on a matter, charged at our hourly rates, and adjusted where appropriate to reflect other factors permitted by the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (Conduct Rules).

These factors may include the specialised knowledge and responsibility required, the importance of the matter, the urgency and circumstances in which we carry out your instructions, and the results achieved. We typically review and change our rates at the beginning of each year.

We will give you a fee estimate on request. This will be a guide only, and not a fixed quote. We will also, on request, periodically advise you of the level of fees incurred or inform you when fees reach a specified level.

## What other charges will be payable?

We also charge for general office services and disbursements we incur on your behalf.

General office services include photocopying, document production and delivery costs, telephone expenses, and routine on-line searching. These are charged at a flat rate of NZ\$50 or 2.5% of our fee, whichever is greater.

Disbursements include out-of-pocket expenses such as travel and accommodation costs, registration and filing costs, court charges, and the fees of any agents, experts, and other professionals we appoint. These are charged at the amount charged to us.

Where you have asked us to instruct counsel from outside our firm, then you must, on demand, pay us the fees for which that counsel bills us.

If we hold funds on interest-bearing deposit in our trust account on your behalf, we may charge an administration fee. That fee will be 5% of the gross interest earned while these funds are in our trust account.

We will also charge goods and services tax (GST) at the rate required by law. Unless we indicate otherwise, our stated rates and any estimates of costs do not include GST.

## When will our fees and charges be payable?

Our general practice is to send interim invoices on a regular basis, usually monthly. We will also send an invoice on completion of each matter. Our invoices are payable on receipt.

If our invoice is not paid promptly, we have the right to:

- deduct any amount outstanding from any money we are holding on your behalf;
- not do any further work for you;
- retain your papers and files, and other property belonging to you that is in our possession; and
- charge interest at Westpac New Zealand's Indicator Lending Rate (or any rate Westpac substitutes for it) on any amount outstanding one month after the date of the invoice. This interest accrues on the outstanding balance until the amount outstanding has been paid in full, and is payable on demand.

You must pay us when our invoice is due, whether or not you expect somebody else to reimburse you for our fees and/or charges (and whether or not you receive that reimbursement).

## Do we require payment in advance?

We may ask you for a payment in advance for amounts we need to pay to third parties on your behalf, or as security for our fees and charges.

We will hold this money in our trust account. It will be used to pay any charges as they are due, and ourselves immediately after sending you our invoice.

We will send you a statement showing how this money has been applied.

### How will we deal with conflicts of interest?

A legal conflict of interest may arise in a matter on which you have instructed us. We have procedures to deal with issues that arise if the interests of two or more clients conflict. If a legal conflict does arise, we will contact you as soon as possible. Whether we can continue to act for you in a legal conflict situation will be addressed by us in accordance with the Conduct Rules.

#### Commercial competitors

Subject to the Conduct Rules:

- we may accept instructions from other clients or potential clients working in the same or competing markets and whose commercial (but not legal) interests conflict with your interests. This may include acting, on a non-exclusive and confidential basis, in a transaction or matter for other clients.
- you consent to us not disclosing to you any information we hold for any other client.

### What customer checks will be done?

We are required to comply with all laws binding on us in all applicable jurisdictions, including:

- the Anti Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT Act);
- the United States Foreign Account Tax Compliance Act, the intergovernmental agreement between the United States and New Zealand relating to it, and relevant provisions of the Tax Administration Act 1994 (together, FATCA); and
- the Common Reporting Standard for the Automatic Exchange of Information in Tax Matters between Participating Jurisdictions (CRS).

We will perform customer due diligence and account monitoring, keep records, and report any unusual or suspicious transactions where required by the AML/CFT Act, FATCA, CRS or any other law.

We may also be required to assist any bank or other entity with whom we transact as your agent, or with whom we deposit money on trust for you, to comply with that entity's legal obligations in any jurisdiction.

We will periodically advise you what information and documents are required for these purposes. These purposes may relate to you, any other relevant person (eg any beneficial owner), the source of funds/wealth, the transaction, the ownership structure, tax identification details, and any other relevant matter. Please provide the information and documents requested promptly. We may retain the information and documents, provide them to a bank or other entity (where applicable) to deal with in accordance with their terms, and disclose them to any law enforcement or regulatory agency or court as required by law.

We or the bank or other entity (as the case may be) may:

- suspend, terminate, or refuse to enter into a business relationship;
- delay, block, or refuse to process a transaction (including by refusing to handle and deposit money on trust for you); and
- report a transaction

without notice to you if:

- the required information or documents are not provided; or
- it is suspected that the business relationship or transaction is unusual, may breach any applicable law, or may otherwise relate to conduct that is illegal or unlawful in any country.

### How will we use and store your personal information?

We will treat all your personal information as confidential.

Our Privacy Policy details what we may do with your personal information, your rights and other information related to the protection of your personal information.

You may review our Privacy Policy [here](#).

We may also use your personal information to keep you informed about legal developments, other legal services, or seminars we offer.

Please let us know if you do not want your personal information used for this purpose.

The records relating to your matter will be stored electronically in an on-premises data centre or by 3rd party data management, processing and storage service providers.

### How do we treat email communications?

Our incoming email messages are scanned for content and viruses and are cleared by our email security system. On rare occasions, a legitimate email may be deleted before its intended recipient at our firm reads it.

Emails are not always secure or may have defects, such as viruses. We do not accept responsibility (and will not be liable) for any damage or loss caused by an email that is intercepted or that has a defect.

### What happens if we rely on external information and public records?

We often obtain and rely on external information (eg from your accountant) or public records (eg from a government agency or registry) to carry out your instructions.

This information may not always be accurate, complete, or up-to-date. We do not accept responsibility to investigate or verify external information or public records and will not be liable for any damage or loss caused by errors or omissions in them.

### What happens if we receive residential land sale proceeds on your behalf?

If you sell residential land and we receive the sale proceeds on your behalf, we may be legally required to withhold residential land withholding tax (RLWT) from the proceeds.

This will apply if, under the Income Tax Act 2007:

- you are an "offshore RLWT person";
- the land is "residential land" in New Zealand; and
- you sell the land within an applicable "bright-line" period.

In this event, we must remit the RLWT to the Inland Revenue Department (IRD). We will account to you for the net sale proceeds only, after withholding RLWT and any other amounts we are permitted to deduct (including our fees).

You must provide us with all the information we need to determine whether you are liable for RLWT and (if so) for how much. This includes both the information the Tax Administration Act 1994 requires you to provide and any other information we reasonably request. If you do not give us all this information, we may assume that RLWT applies and withhold it.

We have no liability to you for or in relation to any amount we withhold and remit to IRD as RLWT.

### How does our engagement end?

You may end our engagement by written notice to us. You must pay our fees for work done and for other charges we incur up to the end of our engagement.

We may end our engagement on reasonable notice to you. Our right to end our engagement may be subject to some restrictions set out in the Conduct Rules.

If we end our engagement, we will bill you for all outstanding fees and other charges, up to the time of termination.

### What do we do with your file and documents?

If you require, we will send all documents to you at the end of the matter. We will retain a digital copy of your file for the minimum period required by law.

### Is there a time limit for any claim against us?

Any claim you have against us must be filed within two years after the *date of the act or omission on which the claim is based*. Otherwise, the claim cannot be filed and we will have no liability for that act or omission or for its consequences (to the extent permitted by law).

In these Terms, “*claim*” and “*the date of the act or omission on which the claim is based*” have the same meanings as in the Limitation Act 2010.

This time limit overrides the time periods under that Act, and applies regardless of when any fact relevant to the claim was first discovered or able to be discovered.

### Is our liability capped?

To the extent permitted by law, our aggregate liability to you (whether in contract, equity, tort, statute, or otherwise) arising out of your engagement of us on a matter (or any series of related matters) will not exceed:

- the amount available to be paid out under any relevant insurance held by us, up to a maximum of NZ\$10,000,000 (including interest and costs); or
- in any other case, the greater of:
  - NZ\$2,000,000; or
  - five times the amount of our applicable fee (excluding our office services charge, disbursements, and GST), up to a maximum of NZ\$5,000,000 (including interest and costs).

If one or more of the above limits of liability is ineffective or unenforceable for any reason, the other limits of liability will still be effective.

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 liability to you and all those persons and entities in respect of that

matter (or matters) will be subject to this limitation on liability. You will need to ensure that those persons and entities agree to this.

You may not recover from us in contract, equity or tort, under statute or otherwise, any amount with respect to any loss of profit, data or goodwill, or any indirect or consequential costs, loss or damage in connection with claims arising out of these Terms or otherwise relating to the services provided. This applies to the extent permitted by law, and whether or not the likelihood of such loss or damage was contemplated.

### How is liability apportioned?

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:

- your own acts or defaults or by the acts or defaults of other persons for whose actions or defaults you are responsible; or
- 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. 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.

### Do the the Fair Trading Act 1986 and Consumer Guarantees Act 1993 apply?

If and to the extent you acquire our services in trade, for the purposes of section 5D of the Fair Trading Act 1986 and section 43 of the Consumer Guarantees Act 1993, you and we agree to the extent permitted by law that:

- you and we are all in trade;
- sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 and the provisions of the Consumer Guarantees Act 1993 do not apply in relation to these Terms or as between you and us; and
- it is fair and reasonable to exclude their application.

Nothing in these Terms modifies or negates your rights or remedies in the Fair Trading Act 1986 or Consumer Guarantees Act 1993 if you have not acquired our services in trade.

### What happens if these Terms are updated?

Our standard Terms are updated from time to time and are available to be looked at on our website. Unless expressly agreed with you in writing, our updated Terms will apply from the date we publish the updated Terms on our website (with respect to any work performed after the date of publication).

### Are these Terms severable?

Any provision of these Terms which is illegal, void or unenforceable is only ineffective to the extent of that illegality, voidness or unenforceability. The remaining provisions remain valid.

### **What law governs these Terms, and which courts can hear disputes?**

These Terms, and any other agreement we have with you, are governed by New Zealand law.

The New Zealand courts have non-exclusive jurisdiction to hear and determine all disputes and issues arising under any of these Terms and any other agreement we have with you.

### **Who is bound by these Terms?**

These Terms, and any other agreement we have with you, are binding on you and any successor to your rights and obligations.

You may not assign or transfer any rights or obligations under these Terms or any other agreement we have with you.

### **Who can you contact with questions?**

We encourage you to contact us if you have any comments or questions about these Terms or any related matters. Please contact the partner you usually deal with, or our Quality Manager, at:

**Email:** feedback@simpsongrierson.com

**Telephone:** +64 9 358 2222 or +64 4 499 4599 or +64 3 365 9914

**Mail:** **Auckland:**  
Private Bag 92518,  
Auckland 1141, New Zealand

**Wellington:**  
PO Box 2402,  
Wellington 6140, New Zealand

**Christchurch:**  
PO Box 874,  
Christchurch 8140, New Zealand

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