

## APPENDIX B

### CLIENT CARE AND SERVICE INFORMATION

#### INTRODUCTION

This document contains information which the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (**NZLS Rules**) require us to provide to you.

Our standard terms of engagement (**Terms of Engagement**) which (subject to any other agreement we make with you) govern our relationship with you are available on the firm's website at [www.duncancotterill.com](http://www.duncancotterill.com) and should be read in conjunction with this information.

#### INFORMATION REQUIRED BY NZLS RULES

**Fees** - We calculate our fees in accordance with the guidelines laid down by the New Zealand Law Society and take into account several factors having regard to the circumstances of the matter and the nature of our work for you.

Payment of accounts is required by the 20<sup>th</sup> of the month following the date of the invoice unless we have made other arrangements with you and with your consent we may deduct fees and expenses from funds held in our trust account on your behalf.

Further information about the basis on which fees are charged and when payment of fees is to be made are set out in our Terms of Engagement, which are available on our website at [www.duncancotterill.com](http://www.duncancotterill.com), or upon request.

**Insurance** - We hold professional indemnity insurance that meets or exceeds the minimum standards set by the New Zealand Law Society.

**Lawyers' Fidelity Fund** - The legal profession also operates a Lawyers' Fidelity Fund through the New Zealand Law Society which may reimburse clients who suffer pecuniary loss due to theft or misappropriation of funds by lawyers. The maximum amount payable by the Fidelity Fund by way of compensation to an individual claimant is limited to \$100,000. However, subject to certain limited exceptions as set out in the Lawyers and Conveyancers Act 2006 the Fidelity Fund does not cover a client for any loss relating to money where the lawyers have been instructed to invest the funds on behalf of the client.

**Complaints** - It is the policy of Duncan Cotterill to investigate complaints and expressions of dissatisfaction fully and promptly.

If you have a concern or complaint relating to the work being carried out for you, or a bill that you have been sent, you should raise this in the first instance with the lawyer dealing with the matter or the partner responsible who will endeavour to resolve the matter. If you are uncomfortable doing that or are dissatisfied with the response, you

should make a formal complaint addressed to the Client Care Partner of the firm, in writing, giving full details of the nature of your complaint.

The Client Care Partner, or another independent partner nominated by him or her, will then look into the matter and deal with it in accordance with our complaints procedure. Further details of our complaints procedure are available on request.

The New Zealand Law Society also maintains a complaints service and you are able to make a complaint to that service at any time. To make a complaint or for more information on this service you should contact the Law Society at 0800 261 801 or refer to its website at [www.lawsociety.org.nz](http://www.lawsociety.org.nz). The Law Society's address is PO Box 5041, Lambton Quay, Wellington 6145.

**Client care and service** - Whatever legal services your lawyer is providing, he or she must:

- Act competently, in a timely way, and in accordance with instructions received and arrangements made.
- Protect and promote your interests and act for you free from compromising influences or loyalties.
- Discuss with you your objectives and how they should best be achieved.
- Provide you with information about the work to be done, who will do it and the way the services will be provided.
- Charge you a fee that is fair and reasonable and let you know how and when you will be billed.
- Give you clear information and advice.
- Protect your privacy and ensure appropriate confidentiality.
- Treat you fairly, respectfully and without discrimination.
- Keep you informed about the work being done and advise you when it is completed.
- Let you know how to make a complaint and deal with any complaint promptly and fairly.

The obligations lawyers owe to clients are described in the New Zealand Law Society's *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.

If you have any questions, please visit [www.lawsociety.org.nz](http://www.lawsociety.org.nz), or call 0800 261 801.

## DUNCAN COTTERILL TERMS OF ENGAGEMENT

### 1. Introduction – Our Relationship

- 1.1. These terms apply to all legal services provided by us to you, unless we have an alternative arrangement with you in writing.
- 1.2. Your continued instructions will constitute acceptance of these terms - there is no need for you to sign them. If you have any questions about these terms, please contact the solicitor responsible for your file.

### 2. Services

- 2.1. Where appropriate, we may delegate your instructions to a solicitor or professional other than the solicitor originally instructed.

### 3. Communications

- 3.1. We will report to you periodically on the progress of any matter and will always try to keep you informed of any unexpected delays or changes in the character of the work being undertaken. You are welcome to request a progress report at any time.
- 3.2. If you provide us with a facsimile number or email address then we may fax or email our communications to you without first letting you know, unless you tell us otherwise.
- 3.3. From time to time we may send you information such as client newsletters, updates and other material that may be relevant or of interest to you. These may be sent in electronic form to the electronic address details provided by you. Unless you tell us otherwise, we will assume that you agree to receive this information. If you would prefer not to receive such information, please let us know.

### 4. Legal Fees

- 4.1. Our fees are calculated in accordance with the guidelines set by the New Zealand Law Society and take into account factors including:
  - The time and labour expended.
  - The skill, specialised knowledge and responsibility required to perform the services properly.
  - The importance of the matter to you and the results obtained.
  - The urgency and circumstances in which the matter is undertaken and any time limitations imposed, including those imposed by you.
  - The degree of risk assumed by us in undertaking the services including the amount and value of any property involved.
  - The complexity of the matter and the difficulty or novelty of the questions involved.
  - The experience, reputation and ability of the lawyer.
  - The possibility that the acceptance of the particular retainer will preclude employment of the lawyer by other clients.
  - Whether the fee is fixed or conditional (whether in litigation or otherwise).
  - Any quote or estimate of fees that we have given you.
  - Any fee agreement (including a conditional fee agreement) entered into between us and you.
  - The reasonable costs of running a practice.
  - The fee customarily charged in the market and locality for similar legal services.
- 4.2. Where we have been instructed jointly by two or more people, each person shall be jointly and severally liable for the payment of our fees.
- 4.3. Our fees are payable by you regardless of whether the matter is resolved by settlement or by hearing, and regardless of whether you achieve the result that you want.
- 4.4. In any litigation, costs are ordinarily payable by the unsuccessful party to the successful party. Costs include legal costs, any disbursements, and experts' fees. Costs are usually calculated on a scale set by the Court, which is designed to allow the successful party to recoup approximately two thirds of its legal costs. However, the Court has the discretion to

make any award of costs that it chooses. It may award full costs to the successful party, or it may not award any costs.

- 4.5. If you are successful, we will endeavour to obtain the maximum recovery of your costs that we are able to. Our full fees will remain payable by you in accordance with these terms of engagement. Any costs paid by the other party to you, and which are held in our trust account, will be applied in reduction of our outstanding fees (if any). If you are awarded only a portion of your costs, the full amount will still be payable by you to us.
- 4.6. If you are unsuccessful, you may be ordered to pay some of the other party's costs. You will also still have to pay our fees. We will endeavour to have the costs that you may have to pay reduced as much as possible, but the amount to be paid will be determined by the Court. If the Court awards costs to the other party, this may be more than the fees that we have charged you.
- 4.7. If you are a plaintiff, you are not obliged to continue legal proceedings after they have been commenced (except in some limited circumstances). However, if you discontinue proceedings, you are likely to be ordered to pay costs to the other party. You will also still have to pay our fees.
- 4.8. During a litigation process, you may be required to exchange relevant documents with the other parties. You should take steps to ensure that all documents (including electronic records) which relate to this matter are retained in an accessible form. If you are not sure whether a document is relevant, you should talk to us.
- 4.9. You are our client, and we have a duty to act in your best interests. However, in matters that are before the Court, we also have overriding duties as officers of the Court. This means that we have a duty to be completely honest with the Court, and to put all relevant law before the Court so that it can make its decision, whether the information supports your case or not. We also cannot put information before the Court if we believe that information to be untrue or misleading.

### 5. Estimates

- 5.1. We will provide a fee estimate if you request one.
- 5.2. We will endeavour to ensure that any estimate of our fee is realistic, and where appropriate, we will state any significant assumptions in making the estimate. However, any estimate is only a guide, and the amount of the final fee may be more or less depending on all the circumstances. Our fee estimate may be stated as a range.
- 5.3. Unless otherwise stated, any fee estimate will not include office charges, disbursements or GST.
- 5.4. We emphasise that any fee estimate is not a quote, nor a cap on what may be charged.

### 6. Expenses/Disbursements

- 6.1. In addition to fees for our professional services, our bills will include expenses and disbursements incurred on your behalf. These costs may include (but are not limited to) photocopying, courier, telephone and facsimile, search fees, court filing fees, registration fees and travel.
- 6.2. If we need to incur an expense or disbursement on your behalf which amounts to more than a nominal sum, we may request payment in advance.

### 7. Billing

- 7.1. We will normally send you a monthly account on an interim basis for ongoing matters involving work spread over more than one month.
- 7.2. Final accounts will be rendered on completion of each matter.
- 7.3. We may ask you for funds in advance to be held in trust and applied by us with your approval in payment of our fees and expenses.

## 8. Payment

- 8.1. Our accounts are payable by the 20<sup>th</sup> of the month following the date of the invoice, unless alternative arrangements have been agreed with you in writing.
- 8.2. Duncan Cotterill accepts payment by cheque, cash, credit card or by direct credit.
- 8.3. For conveyancing matters, payment of our legal fees and expenses is required on settlement of the transaction.
- 8.4. With your consent, we may deduct our fees and expenses from funds held in our trust account on your behalf.
- 8.5. Part payment of an account will not be accepted as partial settlement of the full amount of the account unless we agree in writing to accept the reduced amount as full settlement.

## 9. Unpaid Accounts

- 9.1. Should you have difficulty in meeting any of our accounts, please contact us without delay so that we may discuss whether a payment arrangement is appropriate.
- 9.2. If our account to you or any part of it remains unpaid beyond the 20<sup>th</sup> of the month following the date of the invoice we may stop work on your matter, or terminate our representation in a manner which is consistent with our obligations.
- 9.3. You will be liable for all costs associated with the collection and recovery of your overdue and unpaid account (including costs on a solicitor/client basis and any credit agency fees) and we reserve the right to charge you interest on overdue accounts at the rate of 2% per month on the outstanding amount.
- 9.4. Information you have provided may be used to assist in the collection of your overdue account and we may obtain from and give to any third party (including credit agencies) information which will assist us to obtain payment of the outstanding debt.

## 10. Funds - Trust Account

- 10.1. Duncan Cotterill operates a trust account. Money received by you or on your behalf may be held to your credit in the trust account. Payments out of the trust account will be made to you or to others with your authority. Written authorisation from you may be required where payment is to be made to a third party.
- 10.2. A full record of the Duncan Cotterill trust account is kept at all times. A statement of trust account transactions detailing funds received and payments made on your behalf will be provided at any time upon your request.
- 10.3. Where appropriate, funds will be placed on call deposit with a trading bank registered under section 69 of the Reserve Bank Act 1989. Funds may also be placed on term deposit. Your written authority will be required for a term investment.
- 10.4. Interest earned from call deposits or term deposits, less withholding tax and an interest collection commission payable to Duncan Cotterill will be credited to your account.
- 10.5. In accordance with the Lawyers and Conveyancers Act 2006, monies held in our trust account but which are not placed on call or term deposit will not earn you interest.
- 10.6. If you request a payment from our trust account to be made by direct credit to your account, we will require evidence of the account number in one of the following forms:
  - Original or faxed bank deposit slip.
  - Signed hand written bank deposit slip.
  - Signed letter from you.
  - Copy of cheque or bank statement.
  - Letter from your bank.
- 10.7. Because of audit requirements, text messages and emails are insufficient as evidence of your account number.

## 11. Confidentiality

- 11.1. Information disclosed to us by you will be afforded confidentiality to the fullest extent allowed by law, and by the New Zealand Law Society's rules. All of our staff sign a confidentiality agreement which means that information will not

be disclosed to anyone outside the firm except, so far as necessary, to further your interests.

## 12. Privacy

- 12.1. In order to provide services to you, and as part of our continuing effort to improve the services we offer, we maintain a database of basic client information (such as names, contact details and IRD number where appropriate). From time to time we may request that you confirm the accuracy of the information we hold about you. Such information will be used by us, our staff and agents for the purposes of acting on your behalf.
- 12.2. It may be necessary to obtain information on your behalf from other people, companies or institutions. One common instance is the confirmation of local council rate details on the sale of your property.
- 12.3. If you are an individual, you have a right to access information which we hold about you and may request correction of such information.

## 13. Verifying your Identity

- 13.1. We may ask you to show us documents verifying your identity. We are legally required by the Financial Transactions Reporting Act 1996 and the procedures for electronic registration of land transactions to take a copy of documents verifying the identity of the client in some transactions.

## 14. Conflicts of Interest

- 14.1. We take steps to ensure that no conflict of interest arises between clients from whom we have taken instructions. On the rare occasions that a conflict or potential conflict does arise, we will follow the New Zealand Law Society's rules. In particular we will:
  - 14.1.1. Advise the clients involved of the conflict or potential conflict.
  - 14.1.2. Advise the clients involved that they should take independent advice and arrange that advice if required.
  - 14.1.3. Decline to act further for any client in the matter where to continue to act would, or would be likely to, disadvantage any of the clients involved.

## 15. Files and Documents

- 15.1. Subject to any legal requirement, we retain the files we establish on a matter for a period 10 years after a matter is completed. We may hold that file electronically rather than physically. After that time we may destroy the file without contacting you.
- 15.2. We may agree to hold important legal documents or deeds relating to your legal affairs for safe keeping (e.g. signed wills, trust deeds, leases and commercial contracts). We will hold these documents at your risk, and we may also send them to a reputable secure document storage company in which case the documents will be held subject to our agent's terms and conditions of service. While all reasonable care will be taken, neither we nor our agent will have any liability (direct or indirect) in relation to the provision of this service. These documents will not be destroyed unless requested by you or unless rendered obsolete by the passage of time or for other valid reasons, and you may request the return of these documents at any time. We also reserve the right to cease providing this service and return these documents to you at any time.
- 15.3. If you uplift your files or other documents at any time, we may make copies of them before they are uplifted.

## 16. Governing Law

- 16.1. These terms of engagement will be governed by and construed in accordance with the laws of New Zealand.

## 17. Feedback

- 17.1. Client satisfaction is a primary objective of Duncan Cotterill and feedback from clients is very helpful to us. If you would like to comment on any aspect of the service provided, please contact the partner responsible for your file or alternatively, contact Terry McLaughlin, our Chief Executive.