

## DUNCAN COTTERILL TERMS OF ENGAGEMENT

### 1 Introduction – Our Relationship

- 1.1 These terms apply to all services provided by us to you. If we have agreed in writing any other specific terms inconsistent with these terms then that other agreement prevails.
- 1.2 If we change these terms, the changes apply to any instructions we receive from you after the changed terms are published on our website.
- 1.3 We are bound by, and will comply with the Lawyers Conduct and Client Care Rules of the New Zealand Law Society (**Rules**).

### 2 Services

- 2.1 You authorise us to provide legal services, as defined in the Lawyers and Conveyancers Act 2006, to you on each instruction from you that we accept and to incur reasonable expenses on your behalf. These may include engaging external barristers and experts, and law firms in other countries. You agree to meet the costs of these.
- 2.2 Our services will not include the provision of legal advice on tax matters, including the tax implications associated with any agreement, transaction, or settlement on which we are advising you, or foreign law matters unless we have agreed in writing to provide that advice.
- 2.3 Any advice we provide you is solely for your benefit and may not be relied on by any other person unless we agree in writing.

### 3 Communications

- 3.1 We will communicate with you electronically, unless otherwise requested or agreed.
- 3.2 We take a number of precautions to ensure that our electronic communications with you are secure, reliable, received in a timely manner, and free from viruses and other defects. As electronic communications are subject to risks of interference and depend on matters outside our control, however, we do not give any warranty as to those matters. If you are concerned that an electronic communication that appears to come from us has been interfered with or is fraudulent, please contact us immediately.
- 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. Unless you tell us otherwise, we will assume that you agree to receive this information.

### 4 Legal Fees

- 4.1 Our fees are calculated in accordance with the Rules. The Rules provide that our fee must be fair and reasonable. The factors that we are able to take into account include:
- 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 engagement of us 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 by two or more people, each person is jointly and severally liable for the payment of our fees.
- ### 5 Estimates and quotes
- 5.1 We will provide a fee estimate if you request one.
- 5.2 Our fee estimate may be stated as a range. 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 and any areas of particular uncertainty. For more complex matters we will endeavour to break the work down and give an estimate prior to the start of each stage.

5.3 Any estimate is a guide. The amount of the final fee may be more or less depending on all the circumstances, and we reserve the right to charge a fee that exceeds the estimate for any reason. If we are going to significantly exceed our estimate we will contact you to discuss a revised estimate, but any failure to do so does not prevent us from charging a fee in excess of our estimate.

5.4 Unless otherwise stated, any fee estimate or rate will not include office charges, disbursements or GST.

## **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, expert witness fees, witness fees, registration fees, costs incurred in verifying your identity and travel. We may request payment of these costs in advance, and may stop work on your matter until these are paid, or money is held in our trust account to secure payment.

## **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 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 If we hold money in our trust account on completion of a matter, you agree to us using those for payment of our fees including disbursements.

## **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 20th of the month following the date of the invoice we may stop work or terminate our representation of you.

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). You will be charged 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 Funds held by us may be placed on call or term deposit with our banks. Any such deposit may be conditional on you providing information for the purposes of clauses 11 and 12 in these terms of engagement.

10.3 Duncan Cotterill takes a commission on:

10.3.1 Interest earned by you from call and term deposits in our trust account; and

10.3.2 Dividends and other distributions received by us where Duncan Cotterill is managing or administering your investments (or a part of them).

10.4 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.

## **11 Foreign Account Tax Compliance Act (FATCA), OECD Common Reporting Standard (CRS) and other information gathering**

11.1 FATCA is a US law directed at reducing tax evasion by US taxpayers which has effect in New Zealand. New Zealand has also endorsed the OECD's CRS which facilitates the exchange of information on financial accounts between countries.

11.2 You acknowledge that before we are able to conduct a transaction (including any trust transaction) for you, we may be required by law to obtain information about you (for example, to verify your identity and/or the identity of the persons who own or control you). In addition, our bank is required by law to obtain certain information about you (**Bank Information**) if you conduct a trust account transaction with us (including in connection with the requirements of FATCA and the CRS). You must provide all such information on request.

11.3 You acknowledge that we may be required by law to disclose information about your details, affairs and particular transactions including where disclosure is required by anti-money laundering and countering of the financing of terrorism rules. If we are required to make such a disclosure, we will only do so to an appropriate person and only to the extent reasonably necessary or required. You consent to us making, and waive whatever right that you may have to be advised that we have made, a disclosure of this nature.

- 11.4 In addition, you consent to the disclosure of your Bank Information to our bank and to the New Zealand Inland Revenue Department (**IRD**), and waive whatever rights you might have to be advised that we have made such a disclosure.
- 11.5 The Land Transfer Act 2017 and related tax legislation require buyers and sellers of residential property to provide certain information (including Tax Statements relating to the property transaction and IRD numbers or their offshore equivalents) as part of the land transfer process. You must provide all such required information to us upon request, and as we cannot provide tax advice notwithstanding any assistance we may provide in good faith it is your responsibility to ensure that the information provided is correct. This information will be provided to Land Information New Zealand (**LINZ**) and the IRD. Failure to provide this information may mean that a property transaction will be delayed or even cancelled. We will have no liability to you if we cannot conduct or complete a property transaction for you because you have not provided us with the required information to our satisfaction when required.
- 12 Verifying your identity**
- 12.1 We are required by law to apply procedures to guard against the risk of money laundering under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (**AML/CFT Act**). Consequently, we may be required to obtain evidence to verify your identity. This may be necessary even though we have acted for you before, or even if you are known to a member of staff. 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.
- 12.2 We will advise you what information and documents are required for these purposes. These may relate to you, any other relevant person (such as beneficial owners), the source of funds, the transaction and ownership structure and any other relevant matters. Please provide the information and documentation promptly. We may be required to suspend, terminate or refuse to enter into a business relationship or to delay, block or refuse to process a transaction if the required information or documents are not provided.
- 12.3 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 monitoring required under the AML/CFT Act. You authorise us to collect information about you, to hold and use such information and to make any other enquiries we think appropriate to confirm information provided to us about you is true and comply with any other legal obligations we may have. Where you provide us with information regarding any other individual, you confirm that such individual has authorised you to provide this information to us for these purposes.
- 13 Confidentiality**
- 13.1 We will not disclose confidential information obtained as a result of acting for you unless permitted by these terms (which disclosure is deemed to be authorised by you), required or authorised by you or required or permitted by law or regulation, including the Rules.
- 14 Privacy**
- 14.1 We collect, hold, process and store information about you in accordance with our Privacy Statement which is available at <https://duncancotterill.com/about-us/privacy>.
- 15 Conflicts of Interest**
- 15.1 We comply with our obligations under the Rules and under other laws on conflicts of interest. We can act for another client in relation to a separate matter, even if that client's interests are adverse to yours. We do not need to inform you or obtain your consent to act in that case.
- 15.2 We may also act for clients who operate in the same market or whose commercial interests differ. We are entitled to act for those clients, provided we do so in accordance with our obligations under the Rules and under other laws on conflicts of interest, and do not breach our obligations to keep your information confidential.
- 16 Files and Documents**
- 16.1 Subject to any legal requirement, we retain the files we establish on a matter for a period of 7 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. If you wish to uplift those documents, you must let us know before that period has expired.
- 16.2 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.
- 16.3 We may store your files and documents with a document storage company in which case the documents will be held subject to our agent's terms and conditions of service. Neither we nor our agent will have any liability to you in relation to the provision of this service. We reserve the right to cease providing this service and return these documents to you at any time.
- 16.4 Where we store your files electronically, we may use servers that are located outside New Zealand for that purpose. We may also use file sharing sites that are located outside New Zealand to efficiently transfer documents when required.
- 16.5 If you uplift your files or other documents at any time, we may make copies of them before they are uplifted. You agree to pay the costs of those copies.
- 17 Limitation of Liability**
- 17.1 To the extent permitted by law, our aggregate liability to you (whether in contract, tort, equity or otherwise) in relation to the legal services we provide to you is NZ\$2,000,000 or (if greater) the amount of five times our fee (excluding disbursements and GST).

## **18 Insurance**

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

## **19 Lawyers' Fidelity Fund**

- 19.1 The New Zealand Law Society operates a Fidelity Fund. This may reimburse clients who suffer financial loss due to theft or misappropriation of funds by lawyers. The maximum compensation available from the Fidelity Fund is \$100,000. With limited exceptions the Fidelity Fund does not cover losses relating to investments made on the client's behalf.

## **20 Complaints**

- 20.1 If you have a complaint regarding our services, you should raise this with the lawyer dealing with the matter or the partner responsible for it. If you are dissatisfied with their response you may make a formal complaint to the Client Care Partner of the firm in writing. Further details of our complaints procedure are available on request.
- 20.2 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.

## **21 Termination of engagement**

- 21.1 You may terminate this agreement at any time by providing notice to us.
- 21.2 We may end our engagement upon reasonable notice to you, and subject to our obligations in the Rules.
- 21.3 You must pay our fees and disbursements for work done, together with any other charges we have incurred on your behalf to the end of the engagement.

## **22 Governing Law**

- 22.1 These terms of engagement will be governed by and construed in accordance with the laws of New Zealand.
- 22.2 Any legal action, suit or proceeding, or any other matter arising out of or in connection with these terms or legal services provided by us to you, will be submitted to the exclusive jurisdiction of the Courts of New Zealand.

## **23 Client care and service**

- 23.1 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.
- 23.2 The obligations lawyers owe to clients are described in the Rules. Those obligations are subject to other overriding duties, including duties to the courts. If you have any questions, please visit [www.lawsociety.org.nz](http://www.lawsociety.org.nz), or call 0800 261 801.