

## Terms of Engagement

These Standard Terms of Engagement ('Terms') apply in respect of all work carried out by us for you, except to the extent that we otherwise agree in writing.

### 1. Our Terms of Engagement

- 1.1 This document sets out the standard terms and conditions on which we carry out work for our clients.
- 1.2 These Terms include certain information we are required to provide under the Lawyers and conveyancers Act (Lawyers Conduct and Client Care) Rules 2008 ('Rules').
- 1.3 Our Terms apply to any current work and to any future work that we do for you. By engaging us to act for you, you confirm your acceptance of these Terms.
- 1.4 Occasionally, we may change these Terms. Please visit <http://mactodd.co.nz/about/terms-and-conditions/> for the most up to date version of these Terms.

### 2. Our Letter of Engagement

- 2.1 We will send you a letter of engagement every time you instruct us in a new matter. This letter will outline:
  - (a) What you have asked us to do for you;
  - (b) The Director who will have overall responsibility for the work done on your file. Other members of staff may also be involved under that Directors supervision where appropriate; and
  - (c) The current hourly rates of the Director and staff members involved in your file.

### 3. Our Duty of Care to You

- 3.1 In carrying out work for you, we will:
  - Act competently, promptly and according to your instructions;
  - Protect your privacy and confidentiality;
  - Keep you informed of progress; and
  - Charge you a fee that is fair and reasonable according to the reasonable fee factors in the Rules.
- 3.2 Our duty of care is to you, the client named in our letter of engagement. No one else may rely on the

advice that we give to you without our written consent.

### 4. Client Care and Service

- 4.1 The obligations lawyers owe to clients are described in the Rules. 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.lawyers.org.nz](http://www.lawyers.org.nz) or call 0800 261 801.
- 4.2 As members of the New Zealand Law Society, Mactodd Lawyers are committed to ensuring that our client's expectations of how we will provide our services are met. How we will do this is detailed below. Whatever legal service your lawyer is providing, they 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 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 when it is completed; and
  - Let you know how to make a complaint and deal with any complaint promptly and fairly.

### 5. Conflicts of Interest

- 5.1 We have procedures in place to identify and deal with conflicts of interest.
- 5.2 We will let you know if a conflict of interest or potential conflict arises and will tell you how we plan to deal with that conflict.

5.3 Our obligations under the Rules may mean that we have to stop working for you, or the other client, or both.

## 6. Taking Instructions from You

6.1 Unless you let us know otherwise:

- (a) if you are a couple, we can accept instructions from either of you;
- (b) if you are a company, we can accept instructions from any director or employee of the company or any other person you have authorised to instruct us;
- (c) if you are a trust, we can accept instructions from any of the trustees or officers;
- (d) if you are a partnership, we can accept instructions from any of the partners or officers;
- (e) if you are a body corporate or incorporated society, we can accept instructions from any person holding themselves out as being authorised by the officers to instruct us.

## 7. Verifying your Identity and Source of Funds, and Credit Checks

7.1 We are required by law to verify your identity and, in some circumstances, the sources of funds for a transaction.

7.2 We may carry out reasonable credit checks on you from time to time.

7.3 You authorise us to collect information about you (including customer due diligence information and credit reports), to obtain, exchange, hold and use such information, and to make any other enquiries we think appropriate to:

- (a) Confirm information provided to us about you is true;
- (b) Undertake initial and on-going customer due diligence and monitoring in accordance with the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT Act);
- (c) Enforce debt and legal obligations (including recovery of money owed to us); and

(d) Comply with other legal obligations we may have.

7.4 You authorise any person (including credit reporters) to disclose information (including credit information) to us in response to such enquiries.

7.5 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 customer due diligence or monitoring required under the AML/CFT Act, and that we may use credit reporting services to conduct a credit check on you, and that when we use such services;

(a) The other third party or credit reporter (each a 'Service Provider') will exchange information about you for that purpose and the Service Provider may hold information on its system and use it to provide their customer due diligence service or credit reporting service (as the case may be) to their other customers;

(b) We may use the Service Provider's services in the future for any authorised purpose (including in relation to ongoing customer due diligence or the provision of credit). This may include using the Service Provider's monitoring services to receive updates if information held about you changes; and

(c) If you default in your payment obligations to us, information about that default may be given to credit reporters and given by credit reporters to their other customers.

## 8. Privacy & Confidentiality

8.1 We consider client confidentiality to be of the utmost importance. We will treat all information we hold about you as private and confidential and will not disclose any information we hold on your behalf or about you unless:

- (a) You request us to do so;
- (b) Or where we are required to do so in order to provide our services to you;
- (c) We are required to by law (e.g. Inland Revenue and other government agencies have powers to compel us to provide information we have about you); and
- (d) The Rules permit us to.

8.2 Information concerning you will be held at our office. Under the Privacy Act 2020 you have the right to access and to correct your personal information held by us.

8.3 The AML/CFT Act requires us to collect from you and retain information required to verify your identity and in some circumstances, the source of funds for a transaction. This is referred to in the AML/CFT Act as 'customer due diligence'.

## 9. Communication

9.1 Our aim is to communicate regularly, professionally and within reasonable timeframes. To achieve this we will, where possible:

- (a) Endeavour to reply to all telephone messages within 24 hours of receiving them. If you are unavailable and have a telephone messaging system, a brief message will be left.
- (b) Endeavour to provide an interim response to all written correspondence within 5 working days from the date of receipt in our office.
- (c) Endeavour to respond to all emails correctly addressed within 48 hours of receiving them.
- (d) We do not accept liability for any loss arising from non-receipt of any communication including email.

We will take all reasonable care but cannot guarantee that our emails to you will always be:

- Free from defects
- Secure; or
- Received promptly, or at all.

Sometimes we send certain clients emails that might not relate to the work we are currently doing but that contain information that we think might be of interest. Please let us know if you do not want to receive these emails.

## 10. Fees, Expenses and Disbursements

10.1 Our fees are usually calculated based on the time spent on your matter at our hourly rates, which will be provided in our Letter of Engagement. The differences in those rates reflect the experience and specialisation of our professional staff. Time spent is recorded in 6 minute units, with time rounded up to the next unit of 6 minutes.

10.2 Occasionally our fees may be adjusted (as permitted by the Rules) to take into account factors such as complexity of the work, the skill and specialised knowledge required to carry out the work, the urgency within which the advice is required and responsibility and risk involved in carrying out the work.

10.3 Please ask us if you would like an estimate of our fees for your matter. If we give you an estimate, we will let you know as our work progresses if the estimate is likely to be exceeded, and the reasons for that.

10.4 If the engagement letter specified a fixed fee, we will charge this for the agreed scope of our services. Work which falls outside that scope will be charged on an hourly rate basis. 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.

10.5 Clients may be requested to remit a retainer within 3 days of receipt of our Letter of Engagement. The level of the retainer will depend upon the type and extent of work required and will be credited towards invoices issued for our services rendered. Failure to remit the retainer fee within the specified time frame may result in delay or cancellation of services at the discretion of Mactodd Lawyers.

10.6 Our hourly rates and all fees charged (including estimates and fixed fees) are exclusive of GST unless otherwise stated.

10.7 Disbursements and Expenses:

- (a) Disbursements are payments that may have to be paid to any other person for work to be done, for example, court filing fees, Land Information New Zealand search fees, registration fees. Disbursements may be included in your account or may be billed separately, in advance, to cover these costs.
- (b) An office expense fee calculated at 7% of the GST exclusive amount of our fee is included to cover photocopying, printing, phone calls, postage and other incidental office expenses.

10.8 Our fees, hourly rates, office expenses and disbursements may change from time to time at our discretion without notice.

## 11. Our Invoices

11.1 We usually render interim invoices on a monthly basis. This keeps you informed as to progress to date and fees incurred, as well as spreading payments over time.

11.2 We may also send you an invoice if we incur a significant expense on your behalf.

11.3 If you receive an invoice from us and you would like to speak to someone about it, please contact the Director who has overall responsibility for your work or our accounts department by email [accounts@mactodd.co.nz](mailto:accounts@mactodd.co.nz).

11.4 Although you may expect to be reimbursed by a third party for our fees and expenses, and although our invoices may be at your request or with your approval be directed to a third party, nevertheless you remain responsible for payment to us if the third party fails to pay us.

## 12. Payment Terms

12.1 Invoices are payable within 14 days of the date of the invoice.

12.2 Interest is charged on overdue accounts at the rate of 15% per annum.

12.3 If you have a question about your account, please contact us as soon as possible.

12.4 If you elect to pay our account by credit card, we will charge you an additional 1.5% of the amount you pay to cover any merchant service fees.

12.5 If your invoice remains unpaid (and we have not made other arrangements with you), steps may be taken to recover monies owing. Should such steps be necessary, all debt collection fees including any solicitor's costs as charged at our usual rates will also be payable by you. This is our last resort to recover debts – we prefer to come to an arrangement with you without having to take such steps.

12.6 We reserve the right to stop work if any invoice remains outstanding after 30 days and/or if we have reasonable cause to believe that you will not meet the costs of ongoing work being undertaken, or a request for information or action remains unsatisfied.

12.7 When we receive funds on your behalf, such as in a standard conveyancing transaction, our fees and expenses are generally deducted upon receipt. If this arrangement does not suit your specific

circumstances, it is important that you discuss this with us as soon as possible, so that an alternative arrangement can be made.

## 13. Trust Account

13.1 We operate a trust account for all funds we hold on behalf of clients (except funds received in payment of our invoices).

13.2 If we hold funds on your behalf, we will deposit them in an interest bearing deposit account where reasonable and practical to do so. You acknowledge that we cannot place your funds in an interest bearing deposit account if you have not provided us with any information we request relating to your FATCA and CRS status. We are not responsible for obtaining the best interest rate available or for any loss of interest you suffer as a result of failure to or delay in placing your funds in an interest bearing deposit account.

13.3 We generally charge a 10% administration fee on the gross interest earned on funds held in an interest bearing deposit account. Withholding tax will be deducted on the interest earned and paid to Inland Revenue. If we have your IRD number, you can elect to have withholding tax deducted at your applicable rate. If we do not have your IRD number, we are required to deduct it at the default rate, which may be higher than your actual rate.

13.4 Where you transfer funds to our trust account in a foreign currency, we will convert those funds into New Zealand dollars at the prevailing exchange rate offered by our bank. We are not responsible for seeking or obtaining a better exchange rate.

13.5 Security: We may ask you to pre-pay amounts to us, or to provide security for our fees and expenses. You authorise us to:

- Debit against amounts pre-paid by you; and
- Deduct from any funds held on your behalf in our trust account

any fees, expenses or disbursements for which we have provided an invoice.

13.6 Guarantee: We may require a guarantee from a corporate client's shareholders.

13.7 Credit Checking: All new clients may be required to give us permission to obtain any private information from any source relating to financial and other details, for credit reference purposes.

#### 14. Storing Records

- 14.1 We will keep a record of all material documents we receive or create working for you on each instruction on the following basis.
- 14.2 We may at any time, keep a document electronically and destroy paper originals. This includes any original documents you give to us unless you tell us you do not want them to be destroyed, in which case, we may return the documents to you once we have made an electronic copy. We will not destroy any original documents we have agreed to hold in safe custody for you e.g. your Will.
- 14.3 We may, at any time, dispose of documents that are duplicates, do not contain any substantive information, or belong to us.
- 14.4 If you ask us to provide documents to you or another person, we are not obliged to retain copies of those documents, but we may do so for our own records.
- 14.5 We will provide you with copies of documents you are entitled to under the Privacy Act 2020 or any other law if you ask us to. We may charge you our reasonable costs to do so.
- 14.6 You authorise us (without further reference to you) to destroy, or delete, in the case of electronic documents, all files and documents relating to an instruction seven years (in accordance with the New Zealand Law Society Regulations) after that matter has been completed. We may retain files and documents for longer at our discretion. To cover our costs we charge a small fee of \$35.00 for file management and storage.
- 14.7 Data Storage: Our Practice Management Software, LEAP Legal Software, utilises Amazon Web Services (AWS) data storage in Australia.

#### 15. Use of Artificial Intelligence (AI) Tools

- 15.1 In providing legal services to you, we may use artificial intelligence (AI) tools to assist with tasks such as preparing and reviewing documents, analysing documents and information, conducting legal research, summarising material and improving efficiency in our workflows.
- 15.2 AI tools are used as an aid only. All legal advice, opinions and documents provided to you are reviewed and approved by a suitably qualified lawyer.

We remain fully responsible for the legal services we provide to you.

- 15.3 We only use enterprise grade AI tools that are designed for professional use and which incorporate appropriate safeguards relating to confidentiality, data security and information handling.
- 15.4 We follow best practice in relation to the control, use and storage of confidential and sensitive information when using AI tools. This includes taking reasonable steps to ensure that client information is not used to train public AI models and is handled consistently with our professional obligations, privacy obligations and these Terms.
- 15.5 If you have any concerns about our use of AI tools in your matter, or if you do not wish us to use AI tools in relation to your instructions, please let us know as soon as possible so that this can be discussed.

#### 16. The Lawyers' Fidelity Fund

- 16.1 This Fund exists to provide compensation for clients who suffer a pecuniary loss in certain circumstances. These circumstances are the theft by a lawyer of money or other valuable property entrusted to that lawyer while they are providing legal services to the public or while they are acting as a solicitor-trustee. It should be noted though that the Fund will not pay compensation in respect of money instructed to be invested in a Bank in New Zealand, or in some private loans such as family loans.
- 16.2 This is only a short summary of the major provisions in the Lawyers and Conveyancers Act 2006 relating to the Fidelity Fund. If you would like further information please ask us.

#### 17. Professional Indemnity Insurance

- 17.1 We hold current Professional Indemnity Insurance which exceeds the minimum standards specified by the New Zealand Law Society (from time to time).

#### 18. Limitation Of Liability

- 18.1 Any limitations on the extent of our obligations to you or any limitation or exclusion of liability will be set out in our Letter of Engagement.

#### 19. Complaints Procedure

- 19.1 We will provide you with a competent, timely service following your instructions, but if you have any

complaint at all about our service please raise it with the partner responsible for your matter, or, if you prefer, our Managing Director who will deal with it promptly and fairly.

19.2 If you are not satisfied with the outcome, you have the right to take the matter up with the New Zealand Law Society which runs a complaints service. The New Zealand Law Society may be contacted by writing to PO Box 5041, Lambton Quay, Wellington 6145 or [complaints@lawsociety.org.nz](mailto:complaints@lawsociety.org.nz).

## **20. Termination**

20.1 At all times you have the right to terminate our services upon giving us reasonable written notice to that effect.

20.2 We may terminate our engagement with you if we have lawful cause which includes (but not limited to) any of the circumstances in clause 12.6 above.

20.3 If our engagement is terminated, you must pay us all fees due up to the date of termination and all expenses incurred up to that date.

20.4 You grant to us an enforceable lien over your file, whereby we are entitled to withhold your file, deeds and documents, pending payment in full of all amounts owing to us for fees, expenses and disbursements invoiced up to the date of termination of our retainer with you.

20.5 These Terms will continue to be enforceable despite our engagement coming to an end.

## **21. Website and Feedback**

21.1 Please visit our Website [www.mactodd.co.nz](http://www.mactodd.co.nz) to find out more about this firm, Directors and professional staff.

21.2 At the completion of any matter we would appreciate you taking the time to complete the Client Feedback Form on our Website. Your opinions are important to us.

## **22. General**

22.1 These Terms apply to any current engagement and also to any future engagement, whether or not we send you another copy of them.