

# Terms of Engagement and Client Service Information

## Boyle Mathieson

### Terms of Engagement (“Terms”)

#### **Applicability and Duration of These Terms**

These Terms and any amendments will apply to any current engagement and also to any future engagement (whether or not we send you another copy of them), except to the extent that we agree otherwise in writing. There is no need for you to sign these Terms in order to accept them; you will accept these Terms by commencing or continuing to instruct us to carry out legal services. We may amend these Terms from time to time. We will advise you of any amendments.

#### **Services**

The services we are to provide for you are outlined in our engagement letter. We are committed to carrying out the services competently, in a timely way, and in accordance with your instructions. Our obligations relating to client care and service are described below, under “Information for Clients”. You can assist us by giving clear instructions, discussing any time constraints, asking if you are uncertain of anything, and by telling us if we are not meeting your expectations.

#### **Confidentiality**

We will hold in strict confidence all information concerning you or your affairs that we acquire through our work for you. We will not disclose any confidential information except to the extent necessary or desirable to enable us to carry out your instructions, unless authorised or required by law (including by the Law Society's *Rules of Conduct and Client Care for Lawyers*). The reverse also applies and we are not able to disclose to you information we obtain through work for other clients.

#### **Duty of Care**

Our duty of care is to our named client. We do not owe any duty of care or liability to any other person. Before any other person may rely on our advice, we must expressly agree in writing to this. If, during the course of our engagement, we provide services to entities related to or associated with you, those services will be provided on these Terms (and you will ensure that those entities agree to this).

#### **Conflicts Of Interest**

We have policies in place to identify and respond to conflicts of interest. If a conflict of interest arises we will advise you of this and follow the requirements and procedures set out in the Law Society's *Rules of Conduct and Client Care for Lawyers*

#### **How We Charge**

Our fees are charged on the basis that they will be fair and reasonable, having regard to the circumstances of the matter and the nature of our work for you. The time we spend on the services at the applicable hourly rates are important factors, however we will also consider the results achieved and the urgency, the level of skill, knowledge and responsibility required, the complexity, and the importance and value of the transaction (including the value of property involved). Our invoices will include a charge for general office services such as photocopying, fax and telephone communications, deliveries, online searches and the like.

If the engagement letter specifies a base fee, we will charge the base fee for the specified scope of our services included within the base fee. Additional work which falls outside that scope will be charged for in addition.

Where our fees are calculated on the basis of time spent in doing the work, the hourly rates are set out in our engagement letter. Time spent is recorded in 6 minute units, with time rounded up to the next unit of 6 minutes. Where we do work on the basis of a joint instruction from you and one or more other persons or entities, your liability for payment of our invoice is joint and several.

#### **Disbursements and expenses**

By instructing us to act, you authorise us to incur and/or pay such disbursements or expenses on your behalf as we consider are necessary or desirable to put your instructions into effect - such as land registration fees, valuation fees, accountant's fees, court fees or other fees or expenses payable to third parties. These will be included in our invoice to you when the disbursement or expense is incurred. We may require payment in advance for such disbursements or expenses, particularly where it is necessary for us to engage specialist advice or services on your behalf.

#### **GST**

Any GST applicable to our fees and charges is payable by you.

#### **Invoicing**

Subject to any separate agreement to fix the point at which we will issue our invoice (as to which, see below, under “*Agreed delay of issue of invoice*”), our usual practice is to render periodic invoices for services, throughout the course of completing the services, with a final invoice on termination of our engagement or completion of the services.

#### **Agreed delay of issue of invoice**

We may agree with you to fix the point at which we will invoice you for our fees instead of invoicing periodically. This is likely to be when your ability to pay the invoice will depend on the resolution of a case or settlement of a transaction. In those instances, our professional obligations to you will be completed only at the time the case is resolved or the transaction is settled or if for any reason our engagement ceases, in which case we will issue an invoice requiring payment at that time and not before.

If we have separately agreed with you to fix in this way the point at which our fees will be invoiced, we may deduct payment of our fees from any funds held on your behalf in our trust account, once an invoice has been issued. If you are entitled to receive any money during a transaction we are working on, you agree that this shall be paid into our trust account and we may direct the payer accordingly.

#### **Estimates**

We may indicate to you the likely level of our fees and other charges for the whole of or for stages of the services, in the form of an estimate. Any such estimate is given by way of guidance, based on the circumstances known to us at the time and is not a fixed quote. Unless specified otherwise by us in writing, GST, disbursements and our office service charge are excluded from any estimate or other indication we may give of fees. Any work you ask us to do outside the scope of our estimate will be charged for separately in addition. This includes supplementary reporting or explanations, and any additional work we do because any of our assumptions are not correct. We will do our best to advise you in the event we come to believe that any assumption underlying an estimate is no longer

valid. Please feel free to inquire at any time as to the current amount of our fees and any other charges.

#### **Payment of Invoices**

We may ask you, at any time and from time to time, to pre-pay amounts to us, or to provide security for our fees and expenses. Where we request that you pre-pay any amount, we are under no obligation to carry out work until such amount has been received by us in clear funds.

Our invoices are payable on issue. You authorise us: (1) to debit against amounts pre-paid by you; and (2) to deduct from any funds held on your behalf in our trust account any fees, expenses or disbursements for which we have issued an invoice. We require that you pay our invoices by the 20<sup>th</sup> of the month following the month of the invoice. If we do not receive payment within that period, and if no other arrangement has been agreed between us prior to expiry of that period, we may at our discretion: (1) stop doing any further work for you; and/or, (2) charge you for our time spent (on a solicitor/client basis) in recovering or attempting to recover any outstanding amount owed to us; and/or, (3) charge you interest on any overdue amount (including on any costs as set out at (3) above) at the rate of 14% per annum, calculated on a daily basis, with rest days being the last day of each calendar month. Any payment made during any calendar month is deemed to have been paid on the last day of the month in which it is paid.

#### **Third Parties**

Although you may expect to be reimbursed by a third party for our fees and expenses, and although our invoices may at your request or with your approval be directed to a third party, nevertheless you are and at all times remain personally responsible for payment to us.

#### **Electronic Communications**

You acknowledge that unless otherwise agreed in writing, we may communicate by electronic means with you and others in connection with your work. You accept that such communications, including internet based communications, may be subject to interference, interception, viruses or be otherwise corrupted. We will not be responsible or liable for any loss or damage of any nature as a result of any lack of confidentiality or security or the inaccuracy, unreliability, or incompleteness of any such communication.

#### **Information Required From You**

From time to time we may require further information from you. You should endeavour to provide any such information to us as promptly as possible. You are responsible for accuracy in the information provided to us. We may carry out a credit check on you or any associated person/s prior to accepting your instructions and/or from time to time thereafter. You hereby authorise any Government or private agency or person (including but not limited to Work and Income New Zealand, Inland Revenue Department, Housing New Zealand, New Zealand Police, Ministry of Social Development, Ministry of Justice) to advise us if requested of your address and phone number, if you have not paid our invoice within 28 days of its issue. You authorise us to contact any person to obtain details as to your address and phone number if you have moved without advising us.

#### **Termination**

Where you have given us an instruction which we have relied on, for instance by giving an undertaking to a third party, you may not revoke that instruction. You may otherwise terminate or engagement at any time. We may terminate our engagement for good cause on giving you reasonable notice, verbally or in writing sent to any address you have provided to us.

If for any reason our engagement is terminated prior to completion of your instructions, we will invoice you for the work undertaken up to the time of termination. These Terms will continue to apply after any termination of our engagement or any changes in our partnership.

Provided you have paid all sums due to us, on termination of our engagement we will, on request, provide you with a copy of your documents held by us on the file created for your work, after taking a complete copy of such documents at your cost.

#### **File Retention and Document Destruction**

We are entitled to retain possession of all files and documents in our possession or control while there is any money owed to us by you on any account.

Subject to any legal requirement, we will retain the hard copy file that we create for the services relating to any one matter, for 6 years after we finish working for you on that matter. We may (in our sole discretion) destroy all hard copy file documents after 6 years, except for documents which you have instructed us in writing are to be held by us for safe-keeping, such as Wills and Deeds.

You agree that if you wish to retain all or part of any paper file held by us, you will advise us in writing before the services relating to that matter are completed. You agree that we may delete electronic records and data relating to any matter forthwith on completion the instruction to which such records relate.

#### **Legal Aid**

If you wish to apply for legal aid from the Ministry of Justice in respect of any services to be performed by us, we will assist you to submit an application. You agree to do all things necessary to assist yourself to obtain legal aid such as providing to us and to the Ministry of Justice copies of your bank statements, a letter from the Inland Revenue Department as to relevant assessable income in the preceding year and letters from Work and Income New Zealand attesting to the amount of any payments that you may have received in the preceding year. You agree that notwithstanding that you may have applied to the Ministry of Justice for a grant of legal aid, if legal aid is not granted then you will pay our normal charges for private clients. You accept that we cannot guarantee that you will receive legal aid – that decision is for the Ministry of Justice.

#### **Trust Account**

We maintain a trust account for all funds which we receive from clients (except monies received for payment of our invoices). If we are holding significant funds on your behalf we will normally lodge those funds on interest bearing deposit with a bank. In that case we may charge an administration fee of 5% of the interest earned.

#### **Our Monitoring Obligations**

We are obliged to comply with all laws applicable to us including (without limitation) laws aimed at stopping money laundering and the financing of terrorism, and laws relating to tax and client reporting and withholdings. We may be required to undertake due diligence on you and/or persons acting on your behalf and/or related persons such as beneficial owners and/or persons controlling relevant entities. We may be required to provide information about you and/or such persons to government agencies. We may not be able to begin work for you or to continue with work, until our due diligence is completed. If any information provided to us in this context is considered by us to be potentially inaccurate, misleading or in contravention of any relevant laws, we may terminate or refuse to enter into any engagement.

### **Limitation of Liability**

To the extent permitted by law, our total liability to you in connection with any matter (or series of related matters) on which you engage us will not exceed, if an amount is available to be paid out under our relevant insurance policies in respect of our liability, that amount, up to a maximum of NZ\$5,000,000 (including interest and costs); or in any other case, NZ\$500,000 (including interest and costs). This limitation applies to liability of all kinds, whether in contract, tort (including negligence), equity or otherwise.

### **Governing Law, Jurisdiction and Assignment**

Our relationship with you is governed by New Zealand law and New Zealand courts have exclusive jurisdiction. You may not transfer or assign your rights or obligations under these Terms.

### **Partial Invalidity**

The illegality, invalidity or unenforceability of a provision of these Terms under any law does not affect the legality, validity or enforceability of that provision under another law or the legality, validity or enforceability of another provision. If any provision is held to be void or unenforceable but such provision would not be void or unenforceable if part of the wording was deleted or modified, then such provision shall apply with the modifications necessary to make it valid and effective according to its apparent intent.

### **Interpretation**

In each case, unless inconsistent with the context: (1) the words "client", "you" or "your" include all persons who provide instructions to carry out legal services and the executors, administrators and assigns of such person/s; (2) the promises contained or implied in these Terms bind each such person, and if more than one, jointly and severally as the principal party; (3) references to "the firm", "us", "we" or "our" are references to the firm Boyle Mathieson, Lawyers / Notary Public, Henderson, Auckland.

## **Client Service Information**

### **Fees**

The basis on which fees will be charged is set out in our letter of engagement and in our above Terms. Any fee estimate, base fee, time recorded for work done on your instruction, or similar would only be provided to you as a guide. Unless otherwise agreed, we will not require payment until we have issued an invoice to you.

### **Professional Indemnity Insurance**

We hold professional indemnity insurance that meets or exceeds the minimum standards specified by the Law Society. We will provide you with particulars of the minimum standards upon request.

### **Lawyers Fidelity Fund**

The Law Society maintains the Lawyers Fidelity Fund for the purposes of providing clients of lawyers with protection against pecuniary loss arising from theft by lawyers. The maximum amount payable by the Fidelity Fund by way of compensation to an individual claimant is limited to \$100,000. Except in certain circumstances

specified in the Lawyers & Conveyancers Act 2006 the Fidelity Fund does not cover a client for any loss relating to money that a lawyer is instructed to invest on behalf of the client.

### **Complaints**

We maintain a procedure for handling any complaints by clients, designed to ensure that a complaint is dealt with promptly and fairly. If you have a complaint about our services or charges, you may refer your complaint to the person in our firm who has overall responsibility for your work. If you do not wish to refer your complaint to that person, or you are not satisfied with that person's response to your complaint, you may refer your complaint to Fiona Mathieson of this firm, on (09) 837 6004, or by email at [fmathieson@bmlaw.co.nz](mailto:fmathieson@bmlaw.co.nz) or by letter. The Law Society also maintains a complaints service and you are able to make a complaint to that service by phoning 0800 261 801.

### **Persons Responsible for the Work**

The names and status of the person or persons who will have the general carriage of or overall responsibility for the services we provide for you are set out in our letter of engagement.

### **Client Care and Service**

The Law Society client care and service information is set out below. 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 *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.lawyers.org.nz](http://www.lawyers.org.nz) or call 0800 261 801.