



## **STANDARD TERMS OF ENGAGEMENT**

These standard Terms of Engagement (Terms) apply in respect of all work carried out by Blackwood Montagna Limited for you, our client. Our Terms apply every time you ask us to provide legal services, except to the extent that we otherwise agree with you in writing.

### **1) Engagement**

- a) You have engaged us to provide you with legal services and authorised us to act as your legal representative.
- b) This engagement applies to you and any other legal entity controlled by you, whether now or in the future, that you instruct us to create or instruct us to act for.
- c) By instructing us or continuing to instruct us, you agree to our Terms.
- d) Our aim is to work with you to provide high quality legal services and excellent customer service. Please do not hesitate to contact our Practice Manager if you wish to provide feedback or make a complaint. Contact details may be found on [www.bmlegal.co.nz](http://www.bmlegal.co.nz).

### **2) Our duties**

We have a duty to you to:

- a) act competently, in a timely way, and in accordance with instructions received and arrangements made;
- b) protect and promote your interests and act for you free from compromising influences or loyalties;
- c) discuss your objectives with you and outline how these should best be achieved;
- d) provide you with information about the work to be done, who will do it and the way the services will be provided;
- e) charge you a fee that is fair and reasonable and let you know how and when you will be billed;
- f) give you clear information and advice;
- g) protect your privacy and ensure appropriate confidentiality;
- h) treat you fairly, respectfully and without discrimination;
- i) keep you informed about the work being done and advise you when it is completed;
- j) let you know how to make a complaint and deal with any complaint promptly and fairly.

Our relationship with you is governed by the Rules of Conduct and Client Care for Lawyers (Rules). These can be found in full on the NZ Law Society website [www.lawsociety.org.nz](http://www.lawsociety.org.nz) or by phoning 0800 261 801. Those obligations are subject to other overriding duties, including duties to the courts and to the justice system.

### **3) Confidentiality**

- a) We will hold in confidence all information concerning you or your affairs that we acquire during the course of acting for you. We will not disclose any of this information to any other person except:
  - i. to the extent necessary or desirable to enable us to carry out your instructions; or
  - ii. to the extent required by law and/or the Rules.
- b) Confidential information concerning you will, as far as practicable, be made available only to those within our firm who are providing legal services for you.

### **4) Communications and Privacy**

- a) You authorise us to use the contact details you have provided to communicate with you.
- b) You agree to keep these details updated during the period of our engagement.
- c) You authorise us to collect and hold information about you or your entities that allows us to act effectively for you and to conduct business with you. This includes but is not limited to:
  - i. your personal details – name, contact details, details of identity, identity documents;
  - ii. financial information – bank account or credit card numbers, statements of account, IRD information, company information, asset details and ownership information, loan or mortgage information;
  - iii. deeds and documents – any document or deed, either created by us on your instructions or transmitted to us by you or your agents;
  - iv. should we choose to, you authorise us to disclose your personal and related entity name(s) and contact details in order to obtain identity verification, credit checks or to collect monies owned by you.
- d) We may record telephone calls made to or from our offices for training, quality assurance, and record-keeping purposes. By engaging our services, you consent to such recordings. Any recordings will be stored securely and handled in accordance with our privacy obligations under the Privacy Act 2020.

### **5) Fees**

- a) We will charge fees for our services and issue invoices to you; or, on your instructions, to your agent.
- b) Our invoicing and payment terms are detailed below. Fees, expenses and costs incurred or payments made by us on your behalf will be charged.
- c) Our fees are established according to the Rules of Conduct and Client Care for Lawyers. The following factors will be taken into account:
  - i. the time and labour expended;
  - ii. the skill, specialised knowledge, and responsibility required to perform the services properly;
  - iii. the importance of the matter to you and the results achieved;
  - iv. the urgency and circumstances in which the matter is undertaken and any time limitations imposed, including those imposed by you;
  - v. the degree of risk assumed by us in undertaking the services, including the amount or value of any property involved;
  - vi. the complexity of the matter and the difficulty or novelty of the questions involved;
  - vii. the experience, reputation and ability of the lawyer;
  - viii. the possibility that the acceptance of the particular retainer will preclude engagement of the lawyer by other clients;
  - ix. whether the fee is fixed or conditional (whether in litigation or otherwise);
  - x. any quote or estimate of fees given by the lawyer;
  - xi. any fee agreement (including a conditional fee agreement) entered into between the lawyer and the client;

- xii. the reasonable costs of running a practice;
- xiii. the fee customarily charged in the market and locality for similar services.

- d) Fee rates for staff delegated to work on your project will apply. Varying fee rates reflect the experience and specialisation of professional staff. Time spent is recorded in 6 minute units, with time rounded up to the next unit of 6 minutes. Individual rates are adjusted at times and are available on request.
- e) If we specify a fixed fee, we will charge this for the agreed scope of services provided that work is completed within six months. Work which falls outside that scope or time frame will be charged according to the Rules. We will advise you when it becomes necessary for us to extend services outside the agreed scope.
- f) We may require advance payment from you for fees. You agree to provide this within 7 days of notification.
- g) We encourage you to discuss your budget and desired outcomes with us. When possible, we will give you an estimate of fees, disbursements and expenses on request. We will, on request, provide information or updates of the current cost of our services at any time.
- h) If you have instructed us to act for you in respect of litigation, our fees will be payable by you irrespective of the outcome of the litigation. We will act in accordance with your instructions and strive to obtain the best possible outcome for you; however, all litigation involves elements of risk and uncertainty and no assurances can be given as to the outcome.
- i) If you apply for legal aid and your application is approved, the Ministry of Justice Legal Aid Service will cover our fees in line with the conditions set out in your grant of aid. You will receive separate confirmation detailing the terms of your legal aid approval. If your legal aid is later withdrawn, or if a request to increase your grant is declined, you will be responsible for paying our fees yourself, based on the hourly rates listed above.
- j) By instructing us to proceed with any work, you acknowledge and agree that you are responsible for payment of all fees and expenses incurred in accordance with this Terms of Engagement. In the event that any invoice remains unpaid after the due date, you will be liable for all reasonable costs we incur in recovering the overdue amount, including (but not limited to) collection agency fees, legal costs on a solicitor-and-client basis, and any administrative or incidental charges associated with the recovery process. By authorising us to proceed, you confirm your acceptance of and agreement to this liability.

**6) Disbursements and Expenses**

- a) For time-based invoicing, our hourly rates are reviewed annually on 1 December. We typically issue interim invoices monthly. Each invoice includes an office service charge of \$120 or such other amount percentage as may be agreed or notified from time to time (Inclusive of GST) to cover routine administrative costs such as photocopying, printing, phone calls and document handling. Additional administration, AML/CFT, or compliance charges may apply as agreed or required by law.
- b) Invoices are payable within 7 days of issue. If payment is overdue, we may suspend work until the account is settled. You are responsible for any costs incurred in recovering overdue payments. We may require advance payments or security for our fees and expenses at our discretion.
- c) Invoices are payable in New Zealand dollars unless otherwise agreed. If we agree to bill another party on your behalf, you remain liable if they do not pay. Your and any agent acting on your behalf are jointly and severally liable for all payment obligations under this engagement. Where instructions are not given on behalf of a company or trust, the signatory(ies) personally guarantee all payment obligations. We may deduct our fees from any funds held in our trust account for you, provided that such deductions are made only after an invoice has been issued and with your written authorisation. An administrative fee of up to 10% may be charged on interest earned on funds held on interest-bearing deposit.

**7) GST (where applicable)**

Is payable by you on our fees and charges.

**8) Invoices**

We may send interim invoices to you, normally monthly, and on completion of the matter, and on termination of our engagement. We may also send you an invoice when we incur a significant expense.

**9) Payment**

- a) Conveyancing invoices are due either 7 days from the invoice date, or on settlement, whichever occurs earlier.
- b) All other invoices are payable within 7 days of the date of each invoice, unless alternative arrangements have been made with us.
- c) We prefer to receive payment by electronic funds transfer directly to our Trust Account. Details are made available to clients.
- d) We reserve the right to charge interest on any amount which is more than 7 days overdue unless prior payment arrangements have been agreed. Interest will be calculated at the rate of 10% above our firm's main trading bank's 90-day bank bill buy rate as at the close of business on the date payment became due.
- e) We reserve the right to suspend work on your matter if you do not pay us on time or make alternative payment arrangements with us prior to your account becoming overdue.
- f) You authorise us to deduct our fees, disbursements, expenses and any interest on overdue amounts or debt collection costs from any monies pre-paid by you, or from any funds held on your behalf in our trust account any amounts for which we have provided an invoice.
- g) 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 your third party, you remain responsible for payment and interest if the third party fails to pay us according to our standard payment terms.
- h) Should we be required to incur debt collections costs, you agree to pay these on invoice.

**10) Security**

If we require it, you agree to provide security for our fees and expenses, including a personal guarantee for instructions to act on behalf of entities such as companies or other incorporated bodies.

**11) Anti-Money Laundering and Compliance**

Under the AML/CFT, FATCA and CRS Acts, we must conduct due diligence on you and associated persons, which may include beneficial owners and persons with effective control. By engaging us, you agree to assist us in meeting these obligations and acknowledge that we may conduct reasonable inquiries for compliance purposes. Where you or any associated person has foreign tax residency, you agree to provide all information and complete any forms required for FATCA/CRS compliance before we can place funds on deposit or act further.

**12) Court Awarded Costs in Litigation**

An unsuccessful litigation party may be ordered to make payment of costs and expenses in favour of the successful party. Generally, costs are calculated in accordance with a set scale intended to reflect approximately two-thirds of the actual cost. However, this is always at the discretion of

the Court, which may order anything from 0% to 100% of the costs actually incurred. Whether or not you are successful in the litigation, our fees will remain payable by you in accordance with these Terms, irrespective of the level of any Court costs awarded and the subsequent recovery of those Court costs.

**13) Termination**

- a) You may terminate our engagement by writing to us at any time. We may terminate our retainer in any of the circumstances set out in the Rules.
- b) In the event of termination, you must pay us all fees due up to the date of termination and all expenses incurred up to that date.

**14) Files and Documents**

- a) We own the copyright of all documents or outputs created during the course of our engagement. You are authorised to copy and use these documents for the purpose for which they were created only. You may not use documents or outputs we have created as a precedent for other situations unless we agree to this in writing.
- b) You authorise us, at our discretion, to retain your files and any documents we hold until all amounts owed to us have been paid in full.
- c) If our engagement is terminated, you authorise us to return to you or your representative all files and documents, provided all fees due and expenses incurred have been paid to us.
- d) You authorise us (without further reference to you) to destroy any files and documents (other than any documents that we hold in safe custody for you) seven years after our engagement ends, or earlier if we have converted those files and documents to an electronic format.

**15) Conflicts of Interest**

We will maintain strict confidentiality regarding all information acquired through our work for you that concerns you, your business, or your instructions. In accordance with the Privacy Act 2020. You have the right to access and request correction of your personal information held by us. For any privacy concerns or requests, please contact our offices. The only exceptions are:

- a) Where you authorise us to disclose information.
- b) Where disclosure is required by law, including under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT Act) and associated regulations, or under the Foreign Account Tax Compliance Act (FATCA) and Common Reporting Standard (CRS) obligations.

Similarly, we cannot disclose to you any confidential information obtained through acting for other clients. Confidential information will be shared within our firm only with personnel who need access to it to carry out your instructions. If we are legally required to disclose information about you or any associated person, we may be prohibited from informing you of such disclosure.

**16) Duty of Care**

Our duty of care is to you and not to any other person. No other person or entity may rely on the advice we give you unless we expressly agree to this in writing. Also, if your instructions are to assist with regard to the conveyancing on the purchase of a property by you, we will not advise with regard to the commercial prudence of the transaction.

**17) Trust Account**

We maintain a trust account for all funds which we hold on behalf of clients (except monies received for payment of our invoices). Significant funds will normally be lodged in an interest-bearing deposit with a bank. In that case we will charge an administration fee of 5% of the interest derived.

**18) 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.

**19) Lawyers' Fidelity Fund**

The Law Society maintains the Lawyers' Fidelity Fund for the purpose 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 and 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.

**20) Complaints**

- a) 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.
- b) 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 the firm's Director, who may be contacted by letter or by email at [peter@bmlegal.co.nz](mailto:peter@bmlegal.co.nz).
- c) If you are not satisfied with the way we have dealt with your complaint, the New Zealand Law Society has a complaints service to which you may refer the issue. You can call the 0800 number for guidance, lodge a concern or make a formal complaint. Matters may be directed to - Lawyers Complaints Service, PO Box 5041, Wellington 6140, Phone: 0800 261 801

**21) General**

- a) These Terms apply to any current engagement and, until these Terms are changed, to any future engagement, whether or not we send you another copy of them.
- b) We are entitled to change these Terms from time to time. Our current terms and conditions are available from our website: [www.bmlegal.co.nz](http://www.bmlegal.co.nz) or on request.
- c) Our relationship with you is governed by New Zealand law and New Zealand courts have exclusive jurisdiction.