



## TERMS OF ENGAGEMENT AND CLIENT CARE

### 1 Services

- 1.1 Thank you for instructing the writer and her firm, Sandi Anderson, Barrister & Solicitor to assist you in legal matters.
- 1.2 This document is an attempt to set out the basis on which I will meet your legal needs but of course I'm very happy always to discuss the specific requirements that you have from time to time.

### 2 Fees

- 2.1 I will charge a fee which is fair and reasonable for the services provided having regard to your interests and my interests. In determining the fee, the following may be taken into account:
  - The time and labour expended. At the present time:
    - As Principal, my time is charged at \$425.00 per hour plus GST; and
    - Legal Executive/Legal Assistant's time is charged at \$200.00 per hour plus GST, but there are no additional charges for secretarial, word processing and similar services.
    - We also charge for general office services and for disbursements incurred on your behalf.
    - General office expenses include photocopying, facsimiles, telephone communications, printing and similar. GST will only be charged as and when required by law.
    - Disbursements include out of pocket expenses such as courier costs, title and instrument searches, Land Registration Fees, filing costs, Court charges, fees of agents, experts, consultants and other professionals and any travel costs. Disbursements are only charged if properly incurred in relation to your transaction and charged to you at the amount charged to us. Where GST has been charged that will be identified, otherwise all disbursements are GST inclusive.
    - The cost for retrieving an old file from our secure off-site storage is \$25.00 plus GST.
  - The skill, specialised knowledge and responsibility required to perform the services properly.
  - The importance of the matter to you and the results achieved.
  - 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 me in undertaking the services including the amount or value of the property involved.
  - The complexity of the matter and the difficulty or novelty of the questions involved.
  - The experience, reputation and ability of the members of my firm working on your matter.
  - The possibility that the acceptance of the particular instructions will preclude employment of me by other clients.
  - Whether the fee is fixed or conditional.

*Sandrine Anderson - Principal*

Lucy Tere - Legal Executive | Chelsea Brown - Legal Executive | Annette Houghton - Trust Accountant

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- Any quote or estimate of fees given by me.
- Any fee agreement entered into between you and me.
- The reasonable costs of running my firm.
- The fee customarily charged in the market and locality for work similar to yours.

2.2 Unless otherwise stated all fees are plus GST. The GST will be charged at the rate required by the law unless you are zero rated or exempt.

2.3 I will provide for you an estimate upon request. If that estimate is likely to be exceeded I shall let you know.

2.4 There are other methods of charging which suit certain types of work and I shall discuss those with you where they are appropriate.

2.5 All work done by me is charged on a fees basis apart from a commission of 6% which is taken on all gross interest accruing on funds deposited with my bank through my bulk deposit scheme.

### **3 Payment of fees**

3.1 My fees are to be paid within 14 days of my account being sent except on conveyancing matters where fees are payable immediately prior to or on settlement.

3.2 You authorise me to deduct my fees and expenses from funds held in my trust account on your behalf upon my issuing an invoice. My final account will be sent to you shortly after I have completed your work.

3.3 I do, however, issue interim accounts where that is appropriate.

3.4 My fees may be deducted from funds held in my trust account on your behalf.

3.5 I will ask you to pay a retainer, usually \$550.00 and this will be held in my trust account and will only be paid to me by deduction when an account has been forwarded to you.

3.6 Out of pocket expenses are to be paid by you immediately upon request but substantial out of pocket expenses will be asked for in advance.

3.7 Interest may accrue on unpaid accounts at the rate of 12% per annum as from the due date until payment. Other action to recover unpaid fees may also be taken and the cost of such recovery may be added to the account due by you.

### **4 Files and Documents**

4.1 When your instructions have been completed I shall keep your file for a period of 7 years from completion and then destroy it. You are welcome to uplift your file provided that all fees and expenses have been paid. Please give me reasonable notice before collection your file should you wish to do so. By instructing me to act as your lawyer, you authorise me to destroy those papers or files seven years after the date of my final bill. This does not include any documents that you have given me for safekeeping: I will hold those documents until you tell me otherwise.

### **5 The Lawyers' Fidelity Funds (the Fund)**

5.1 This Fund exists to provide compensation of up to \$100,000.00 per claim 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. 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.

### **6 Professional Indemnity Insurance**

6.1 I hold current Professional Indemnity Insurance which meets or exceeds the minimum standards from time to time specified by the New Zealand Law Society. I will provide you with particulars of the minimum standards upon request.

## **7 Limitation of Liability**

- 7.1 I do not accept liability for any loss arising from non receipt of any communication including email communications.

## **8 Right to Terminate your Retainer**

- 8.1 You are entitled to terminate your instructions to me upon giving me reasonable notice. I may terminate the retainer if there is good cause, such as you not providing me with instructions in a sufficiently timely way or in your unwillingness, ability or failure to pay my fee on an agreed basis, or, except in litigation matters, your adopting against my advice a course of action which I believe is highly imprudent, and may be inconsistent with my fundamental obligations as lawyers.
- 8.2 If I terminate this retainer I will give you reasonable notice so that you can arrange alternative representation and I shall give you reasonable assistance to find another lawyer.
- 8.3 My fees for services reasonably and properly provided to you prior to the termination of retainer shall be paid by you to uplifting your records and I may retain copies of your documents and records.

## **9 Suspension of Services**

- 9.1 I reserve the right to stop work on your retainer if interim accounts are not paid on time or a request for information or action remains unsatisfied.

## **10 If you have a Complaint**

- 10.1 I maintain a procedure for handling any complaints by clients, designed to ensure that a complaint is dealt with promptly and fairly.
- 10.2 If you have a complaint about my services or charges, you may refer your complaint to the person in my firm who has overall responsibility for your work.
- 10.3 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 Sandi Anderson. She may be contacted as follows:
- by letter;
  - by telephoning her at 09 378 8668
- 10.4 The Law Society operates the Lawyers Complaints Service and you are able to make a complaint to that service. To do so, phone **0800 261 801** and you will be connected to the nearest Complaints Service Office, which can provide information and advice about making a complaint.

## **11 Email**

- 11.1 As emails are not always secure, or may have defects (such as viruses), I do not accept responsibility and will not be liable for any damage or loss caused by an email that is intercepted, or has a virus of other defect.

## **12 Privacy and Confidentiality**

- 12.1 I will treat all information I hold about you as private and confidential and will not disclose any information I hold on your behalf or about you unless I am required to do so by law or where it is necessary to do so to provide my services to you or when requested by you or with your consent.

## **13 Conflicts of Interest**

- 13.1 I have procedures in place to identify and respond to conflicts of interest. If a conflict of interest arises I 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*.

## **14 Duty of Care**

- 14.1 My duty of care is to you and not to any other person. Before any other person may rely on my advice, I must expressly agree to this.

## **15 Trust Account**

- 15.1 I maintain a trust account for all funds which I receive from clients (except monies received for payment of my invoices). If I am holding significant funds on your behalf I will normally lodge those funds on interest bearing deposit with a bank. In that case I will charge an administration fee of 6% of the gross interest derived.

## **16 The Bright Line Test**

- 16.1 Please note that the Bright Line Test has now been extended from two years to five years. For any agreement signed on 28 March 2018 or earlier the period for the Bright Line Test remains at two years. Any agreement entered into or signed, where the first interest in the land passes after 29 March 2018 will have a five year period.
- 16.2 The Bright Line period starts from the date of acquisition. For a standard sale and purchase the date of acquisition is the date the title is registered and the Bright Line date is the date the sale and purchase agreement is entered into.
- 16.3 For land bought off the plan, the acquisition date is the date the agreement is entered into.
- 16.4 The only exclusions for this is the main home (which can be a Trust if it is the settlor's main home), but it should be noted that you can only have one main home at one time and no more than two in the Bright Line period.
- 16.5 The Bright Line Test only applies to residential land; that is land that has a dwelling on it, including land with an arrangement to build a dwelling on it, or bare land that may be used for building a dwelling under the relevant operative scheme or plan. It does not include land used predominantly as a business premise or farm land.

## **17 Foreign Account Tax Compliance Act (FATCA)**

- 17.1 To the extent that we hold funds in our trust account on your behalf whether on deposit or otherwise, you authorise us to disclose any information required to be disclosed to either this firm's bank or the Inland Revenue Department pursuant to FATCA requirements. You authorise us to collect FATCA information from you in relation to such funds on an ongoing basis and whenever monies are held in our trust account and disclose such information as and when required under FATCA.

## **18 Our monitoring obligations (AML/CFT/CML)**

- 18.1 We are obliged to comply with all laws applicable to us in all jurisdictions, including (but not limited to):
- Anti-money laundering (AML) and countering financing of terrorism (CFT) laws; and
  - Laws relating to tax and client reporting and withholdings (CML).

We may be required to undertake customer due diligence on you, persons acting on your behalf, and other relevant persons such as beneficial owners and controlling persons. We may not be able to begin acting, or continue acting, for you until this is completed.

To ensure our compliance and yours, we may be required to provide information about you, persons acting on your behalf, or other relevant persons to government agencies. There may be circumstances where we are not able to tell you or such persons if we do provide information.

Please ensure that you and/or any of the persons described previously, are aware of and consent to this. It is important to ensure that all information provided to us is accurate. If the information required is not provided or considered by us to be potentially inaccurate, misleading, or in contravention of any law, we may terminate or refuse to enter into an engagement.

Please note that if we are required to undertake customer due diligence in order to comply with our AML obligations, we will be charging a CDD fee.

## **19 My Obligations under the Investment Advisers (Disclosure) Act 1996**

- 19.1 This Act requires me to inform you that, when I receive money or property from you or from other people on your behalf, and when I distribute any of that money or property these are the procedures that I will follow, unless you instruct me otherwise:
- Any money that you pay to me for settlement or other purposes should be in cleared funds, and paid either by bank cheque or direct credit, made payable to “Sandi Anderson Trust Account”. Any certificates that you provide to me should be delivered to Sandi Anderson’s office and I will give you a receipt.
  - If I receive money or property from other people on your behalf, I will hold it in trust for you unless you instruct me otherwise. I will follow your instructions as to how money or property that I hold on your behalf is to be applied or distributed. If money has not been provided to me as cleared funds I may delay distributing it until I have received confirmation that the funds have been cleared.
  - The firm will keep records of all moneys and investment property that I hold on your behalf for at least the period that is legally required. During my normal office hours I can provide you with details of any financial transactions that relate to you. I will not provide you with receipts unless you specifically ask for them.
  - Money that I hold in my trust account on your behalf will not be audited. Similarly, property that I hold on your behalf and distribute will not be audited.
- 19.2 I cannot withhold from you, nor use for my own benefit, any money or property that I hold in trust on your behalf, except for money that I use to pay fees and expenses that I incur through acting as your lawyer, or for money that I deduct as my commission from the interest received on money that I hold on your behalf, or when I am legally required to withhold the money from you.

## **20 Client care and service information**

- 20.1 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.
- 20.2 The obligations lawyers owe to clients are described in the *Rules of conduct and client care for lawyers* (the rules). Those obligations are subject to other overriding duties, including duties to the courts and to the justice system.
- 20.3 If you have any questions, please visit [www.lawsociety.org.nz](http://www.lawsociety.org.nz) or call 0800 261 801.

## **21 Limitations on Extent of our Obligations**

- 21.1 Any limitations on the extent of our obligations to you or any limitation or exclusion of liability is set out in my letter of engagement and these terms.

## **22 General**

- 22.1 These Terms apply to any current engagement and also to any future engagement, whether or not I send you another copy of them.
- 22.2 I am entitled to change these Terms from time to time, in which case I will send you amended Terms.
- 22.3 My relationship with you is governed by New Zealand law and New Zealand courts have non-exclusive jurisdiction.
- 22.4 Where a client is a company, the person signing these terms of service personally guarantees payment by the company to me.
- 22.5 Where the name of a guarantor is completed on the front page of the letter of engagement that guarantor could be called upon to meet the obligation for fees if appropriate.

## **23 Acceptance of Terms of Engagement**

- 23.1 By instructing me to provide you with legal services you are deemed to have accepted these terms of engagement and I look forward to working with you.
- 23.2 These terms will apply to our relationship with you.
- 23.3 You do not need to sign these terms of engagement in order to accept them.
- 23.4 We will take your instructions to carry out work for you as acceptance of these terms and any changes to the terms which are either emailed to you or posted on our website, [www.sandianderson.co.nz](http://www.sandianderson.co.nz)