

## **Terms of Engagement**

Berry & Co's *Terms of Engagement* set out the basis of our professional relationship with you in accepting and actioning your instructions. Unless we agree different terms, in writing, these terms apply whenever you instruct us to act for you.

### **Scope of our work and role**

We will represent you and provide advice to you on all legal matters that properly fall within the scope of your instructions to us. These services are outlined in our engagement letter. If you are expecting us, or would like us, to perform any services in addition to those we have recorded or described, it is important that you let us know. We will ensure there is a clear understanding with you of the scope, importance and timeframe of each instruction.

Any advice given by us is solely for your benefit and may not be relied on by another person unless we agree to that in writing.

We are not responsible for advising you on any tax issues, unless you specifically instruct us to do so.

Our name and advice may not be used in connection with any offering document, financial statement, report or other public document without our written consent.

When our instructions on a matter are completed, our representation to you will end. We are not obliged to notify you of any subsequent changes or law, or provide any further services to you relating to that matter.

### **Our fees and other charges**

#### *Professional Fees*

Our fees are charged on the basis of the New Zealand Law Society Rules which require that fees be fair and reasonable for the services provided. In setting our fees, we take into account a number of factors including the following

- Time spent, including time investing the facts and researching the law
- Skill, specialised knowledge and responsibility required
- Importance of the matter to you and the results achieved

- Urgency and circumstances in which your matter is carried out
- Degree of risk assumed by us in undertaking the services, including the value of any property involved
- Complexity of the matter and the difficulty, or novelty, of the questions involved
- Experience, reputation and the ability of the lawyer
- Possibility that the acceptance of your instructions may preclude engagement of the lawyer by other clients
- Whether the fee is fixed or conditional
- Any estimate of fees given to you
- Any fee agreement (including a conditional fee agreement) between you and us
- Reasonable costs of running a law office, and the
- Fee customarily charged in the market for similar services.

We will provide you with an estimate of our fee, if this is requested. Please note, the estimate is not a firm quote. We will let you know if it becomes apparent that the fee estimate may be exceeded.

#### *Disbursements*

Our fees for professional services incorporate the costs of secretary and other support assistance provided by the office staff to our lawyers.

In providing services to you, we may incur additional out of pocket expenses (disbursements) such as courier costs, filing fees, court fees, travel, accommodation or meals, or have to make payments to third parties on your behalf. These will be charged separately from our fee, and will be itemised on our invoice to you.

#### *GST*

GST is payable by you on our fees and charges.

#### *Invoices*

We will provide you with invoices at regular periods (usually monthly). We may also invoice you when we incur a significant expense on your behalf.

### *Payment*

Invoices are payable within 14 days of the date of the invoice, unless alternative arrangements have been made with us. If payment of our invoice is overdue, we may:

- Not perform any further work for you until all unpaid invoices are paid in full
- Retain custody of any of your property (including documents or files) until all unpaid invoices are paid in full, and
- Charge interest at the rate of 5% 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.

### *Security*

As security we may ask you to pre-pay amounts to us, or to provide security for our fees and out of pocket expenses. You authorise us to:

- Debit against amounts pre-paid by you, and to
- Deduct from any funds held on your behalf in our trust account any fees or out of pocket expenses for which we have provided an invoice.

### *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 remain responsible for payments to us if the third party fails to pay us.

### **Confidentiality**

Client confidentiality is essential to us both. We will hold in confidence all information concerning you or your affairs that we acquire during the course of acting for you. Will not disclose any of this information to any other person except to the extent:

- Necessary or desirable to enable us to carry out your instructions, and

- Required by law or the NZLS Rules.

Confidential information concerning you will, as far as practicable, be made only available to those within Berry & Co who are providing legal services for you. We will not disclose to you confidential information which we have in relation to any other client.

### **Termination**

You may terminate this agreement at any time. We may terminate this agreement in any of the circumstances set out in the NZLS Rules.

If the agreement is terminated you must pay us all fees due up to the date of termination, and all disbursements incurred up to that date.

### **Retention of Files and Documents**

You may leave documents in our possession after your matter has concluded. However, we usually destroy our files (other than any documents that we hold in safe custody for you, such as Wills and deeds) seven years after a matter is completed. If you do not retrieve your documents within that period, we have your authority to destroy them.

### **Conflicts**

We have procedures 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 NZLS Rules' requirements and procedures.

### **Duty of Care**

Our duty of care is to you and not to any other person. Before any other person may rely on our advice, we must expressly agree to this.

### **Intellectual Property**

We retain all ownership rights in all intellectual property of any kind created by us for you. You may not reproduce our intellectual property or provide it to a third party without our express consent.

### **Electronic Communications**

We may communicate with you and others at times electronically. These communications can be subject to interference or interception or contain viruses or other defects ('corruption'). We do not accept responsibility for, and will not be liable for any damage or loss caused in connection with, or as a consequence of, the corruption of an electronic communication.

### **Trust Account**

We maintain a trust account for all funds received 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 the firm's bank. In that case, we will charge an administration fee of 8% of the interest derived. If we deposit funds on your behalf, we will need either your IRD number or a copy of your interest withholding tax exemption certificate.

We may deduct from funds held on your behalf in our trust account any fees, costs or disbursements for which we have provided an invoice.

### **General**

These terms apply to any current matter and also to any future matter, whether or not we send you a copy of them.

We are entitled to change these terms from time to time, in which case we will either send you an amended document and/or publish it on our website.

*New Zealand law governs our relationship and New Zealand courts have non-exclusive jurisdiction.*