

Standard Terms of Engagement

These Standard Terms of Engagement ("Terms") apply in respect of work carried out by Kevin McDonald & Associates ("us") for you, except to the extent that we otherwise agree with you in writing.

1. Services

- 1.1. The services which we are to provide for you are outlined in our engagement letter or in respect of certain legal services, set out on the website of our online software partner, justly.co.nz.

2. Financial

2.1. Fees:

- (a) The fees which we will charge or the manner in which they will be arrived at, are set out in our engagement letter.
- (b) If the engagement letter specifies 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.
- (c) Where our fees are calculated on an hourly basis, the hourly rates are set out in our engagement letter. The differences in those rates reflect the experience and specialization of our professional staff. Time spent is recorded in 6 minute units, with time rounded up to the next unit of 6 minutes.
- (d) An agency charge is payable to Clifton Agency Limited for search and registration services provided by Kevin McDonald & Associates. Clifton Agency Limited is a company associated with Kevin McDonald & Associates.

- 2.2. **Disbursements and expenses:** In providing services we may incur disbursements or have to make payments to third parties on your behalf. These will be included in our invoice to you when the expense is incurred. We may

require an advance payment for the disbursements or expenses which we will be incurring on your behalf.

- 2.3. **GST (if any):** Is payable by you on our fees and charges.

- 2.4. **Invoices:** We will send interim invoices to you, usually monthly and on completion of the matter, or termination of our engagement. We may also send you an invoice when we incur a significant expense.

- 2.5. **Payment:** Invoices are payable within 7 days of the date of the invoice, unless alternative arrangements have been made with us.

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

- (a) to debit against amounts pre-paid by you; and
- (b) to deduct from any funds held on your behalf in our trust account; and
- (c) any fees, expenses or disbursements for which we have provided an invoice.

- 2.7. **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 payment to us if the third party fails to pay us.

- 2.8. **Unpaid Invoices:** If payment of our invoice by you is overdue, we may:

- (a) Not perform any further work for you until all unpaid invoices are paid in full;
- (b) Retain custody of any of your property (including documents or files) until all unpaid invoices are paid in full; and
- (c) Charge interest on any amount overdue at a rate of no more than 5% p.a. above the prevailing indicator lending rate of the firm's banker.

3. Confidentiality

- 3.1. 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 allowed or required by law or the Law Society Rules.
- 3.2. You are not entitled to any confidential information we have or obtain in relation to any other client or prospective client.

4. Termination

- 4.1. You may terminate our retainer at any time.
- 4.2. We may terminate our retainer in any of the circumstances set out in the Law Society's *rules of Conduct and Client Care for Lawyers*.
- 4.3. If our retainer is terminated you must pay us all fees due up to the date of termination and all expenses incurred up to that date.

5. Retention of files and documents

- 5.1. You authorise us (without further reference to you) to destroy all files and documents for this matter (other than any documents that we hold in safe custody for you) 7 years after our engagement ends.
- 5.2. If this agreement is terminated, we may retain copies of documents or records which we delivered to you or to another lawyer.

6. Intellectual Property

- 6.1. We retain all ownership rights on 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.

7. Electronic Communications

- 7.1. We may communicate with you and others at times by electronic means. These communications can be subject to interference or interception, 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 is a consequence of, the corruption of an electronic communication.

8. Conflicts of Interest

- 8.1. 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 requirements and procedures set out in the Law Society's *Rules of Conduct and Client Care for Lawyers*.

9. Duty of Care

- 9.1. Any advice given by us is:
 - (a) Solely for your benefit. It may not be relied on by any other person unless we agree to that in writing;
 - (b) Not to be disclosed, referred to or used other than for the purpose for which it was sought;
 - (c) Not to be made public or published;
 - (d) Limited to the matters stated in it;
 - (e) Limited to and governed by New Zealand law; and
 - (f) Subject to changes in the law after the date that is given.
- 9.2. We are not responsible for advising you as to taxation issues unless you specifically request us to do so.
- 9.3. 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.
- 9.4. When our instructions on the matter are completed, our representation of you will end. We are not obliged to notify you of any subsequent change of law, or to provide any further services related to that matter.

10. Trust Account

- 10.1. 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.

11. General

- 11.1. These Terms apply to any current engagement and also to any future engagement, whether or not we send you another copy of them.
- 11.2. We are entitled to change these Terms from time to time, in which case we will send you amended Terms.

Our relationship with you is governed by New Zealand law and New Zealand courts have non-exclusive jurisdiction.

Information for Clients

Set out below is the information required by the *Rules of Conduct and Client Care for Lawyers* of the New Zealand Law Society ("Law Society")

1. **Fees:** The basis on which fees will be charged and when payment of fees is to be made is set out in our Standard Terms of Engagement.

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

2. **Professional Indemnity Insurance:** We hold professional indemnity insurance that meets the minimum standards specified by the Law Society.
3. **Lawyers Fidelity Fund:** The Lawyers Fidelity Fund established by the New Zealand Law Society is available to reimburse people who suffer loss by reason of the theft by a lawyer of money or other valuable property entrusted to the lawyer. The fund provides a limited form of cover up to specified maximums in certain circumstances.

4. **Complaints:** If you have a complaint about our services or charges, you may refer your complaint to the person who performed the 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 Kevin McDonald, Principal.

Kevin McDonald may be contacted as follows:

by letter;

by email: kevin@kevinmcdonald.co.nz

by telephoning him at (09) 486 6827.

The New Zealand Law Society also maintains a complaints service and you are able to make a complaint to that service. To do so you should contact the Auckland Branch of the New Zealand Law Society by letter to P O Box 4417, Shortland Street, Auckland 1140; by telephone at 0800 261 801 or facsimile (09) 373 2620.

5. **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.

6. **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.lawsociety.org.nz or call 0800 26180