



Barristers, Solicitors & Notaries since 1861

## TERMS OF ENGAGEMENT

### These Terms of Engagement

These are our standard terms of engagement as your lawyers. They apply to all services we provide unless varied by written agreement. We will take your continued instructions as your acceptance of these terms so please ask us if you have any questions about them. Please keep this copy for your records.

### General scope and quality of our work

At all times we will act to the best of our ability on your behalf, within the scope of your instructions and in accordance with the **Lawyers and Conveyancers Act (Lawyers; Conduct and Client Care) rules 2008** which govern the practice of law. All advice we give to you will be based on our best professional judgment and legal knowledge but should not be taken as a guarantee of any particular outcome, as, among other things, we will be relying on the completeness of your instructions, the accuracy of the information provided to us and the actions taken by any other parties involved.

Our duty of care is to you and not any other person. Before any other person may rely on our advice, we must expressly agree to this. If, during the course of our engagement we provide services to entities related to or associated with you, then, such services will be provided on the same terms as these standard terms.

### How you can help us

We will always do our best to be available and responsive to you, and to provide services which are technically accurate, innovative, and timely and based on sound common sense. You can help us to do this by:

Giving us clear instructions, preferably in writing.

- Telling us if you have any important time limits.
- Tell us if you have a fixed budget limit.
- Making sure we have understood each other and asking us if you are not sure about anything.
- Dealing with any important questions promptly.
- Keeping in regular touch with us – please ask us for a progress report if you are concerned about anything or do not hear from us when you expect to.
- Telling us if you have changed your address or contact details.

### Confidential information

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:

- to the extent necessary or desirable to enable us to carry out your instructions; and
- to the extent required by the **Lawyers and Conveyancers Act (Lawyers; Conduct and Client Care) rules 2008**. We will of course, not disclose to you confidential information which we have in relation to any other client.

### Personnel

Usually one Director, Consultant, Associate or Solicitor is responsible for carrying out the work on each file. From time to time other members of our professional staff may also be involved if their particular

skills are required, or if it is more cost effective for you to have others attend to particular aspects of the work.

### Our fees

Our fees are calculated in accordance with the New Zealand Law Society Rules of Conduct and Client Care. They are based on a number of considerations, including the time spent attending to your instructions, the complexity of the job, its urgency and the degree of skill, knowledge and responsibility involved.

### Cost estimates

We are happy to give you an estimate of the costs you are likely to incur for any work we do for you. Because we cannot predict exactly what will be involved, any estimate we give of our fee will normally be a range between a minimum and a maximum figure. We reserve the right to update our estimate if unforeseen events occur and, as the matter progresses, if more accurate estimates are possible. Any cost estimate will normally be for our fee plus the expenses and disbursements we incur on your behalf, and unless specifically stated otherwise, will exclude GST.

### Fixed quotes

For some well-defined services we may be able to give you a fixed quote. This will normally be expressed as a fixed fee plus expenses, disbursements and will clearly show where GST has been applied. When we give a fixed quote we will always record it in a letter, which will set out the fee, state clearly that it is a fixed quote, describe the services included within the fixed quote and set out any conditions.

### Office Administration Expenses and disbursements

**Administrative expenses** may include, (but are not limited to) such items as photocopying, printing, faxing, tolls, postage, courier and stationery. Our office administration expense recovery charge is calculated by applying a flat percentage rate to each invoice issued. The flat percentage rate is 5% on amounts up to \$5000 and a further 2.5% on amounts over \$5,000.00 up to a maximum administration fee of \$375.

**Disbursements** are dealt with separately to administration expenses and are on-charged to you at the same rate that we are charged to access these services on your behalf (including GST as applicable). These are itemised in detail on your invoice. Disbursements examples can include (but are not limited to) fees relating to Land Information New Zealand, PPSR Register, Companies Office or other separately listed items such as court document filing and external agency fees as applicable.

We may sometimes need the necessary funds from you in advance to pay the disbursements we incur on your behalf. This money will be held in your name in our trust account until we pay the disbursements incurred. If the total disbursements incurred are less than that, the balance will be recorded as a credit on our final invoice to you, and will be refunded.

### Timing of our invoices

It is our practice to interim bill on a regular basis, monthly, two monthly, or three monthly, depending on the nature and amount of work being done. Taking this approach enables you to closely monitor costs and disbursements. An invoice may include an amount to cover future disbursements we anticipate incurring on your behalf. Each invoice we send is separate from any other. Second and subsequent invoices relating to the same matters will not normally include any amount remaining unpaid from any earlier invoice. Depending on the circumstances we may sometimes require payment from you before continuing work, or commencing new matters. We will send a final invoice following completion of the work and if we have handled funds on your behalf, a trust account statement will also be provided.

### **Payment of our invoices**

Unless we have made a different arrangement with you, or the work relates to a conveyancing transaction (which is payable at time of settlement of the transaction) **payment in full of any invoice is due no later than 14 days following the date of the invoice.** You can pay any invoice by cash, cheque (payable to Preston Russell Law Trust Account), EFTPOS or bank transfer. You can also settle an invoice by Credit card (VISA or BANKCARD) but this will incur a handling charge of 3% of the invoice value. If you, as our client, comprise of more than one person (e.g. business partners or a married couple) each of you is separately responsible for paying all amounts owing to us. When we are holding money paid by you in advance to cover our fees and disbursements, New Zealand Law Society rules allow us to draw on those funds to cover our fees and disbursements when invoiced. In the absence of instructions to the contrary, we will deduct any outstanding fees and disbursements from any judgment, settlement or other money received by us on your behalf.

### **Delay or difficulty in paying our invoices**

If you anticipate having difficulty paying an invoice on time, please immediately contact the Director, Consultant, Associate or Solicitor who sent you the invoice or our credit control manager.

**We reserve the right to charge interest** on any invoice remaining unpaid after the due date, unless prior arrangements have been made. Interest will be calculated from the due date of the invoice at 18% p.a.

We would also normally stop doing any further work until the invoice is paid and we have the right to retain possession of your file and any documents belonging to you until we receive payment. We may also deduct any amount from any funds we hold on your behalf to settle unpaid invoices, expenses and/or disbursements we have incurred and any accrued interest that may apply.

### **Third Party**

In some instances you may expect to be reimbursed by a third party for fees and expenses, and our invoices may, (at your request or with your approval) be directed to that Third Party, However should any third party fail to make payment, then you remain responsible for those fees.

### **Money handling procedures**

It is preferable that all money to be paid to us by you is transacted by way of bank transfer directly into "Preston Russell Law Trust Account" at ASB Bank Limited, Invercargill branch - account number 12-3195-0007889-00 or by eftpos or cash at our reception, or by cheque made out to "Preston Russell Law" and crossed "not transferable" or "account payee only". Any property (such as security certificates) to be delivered to us on your behalf should be hand-delivered, posted by registered mail or couriered to the Director responsible for your legal affairs. Any property we receive will be stored in a secure place until disbursed in accordance with your instructions or these terms of engagement. All funds we receive will be held in a trust account in your name. If we are holding significant funds on your behalf we would normally lodge those funds on interest bearing deposit with a bank. In that case we will charge an administration fee of 7.5% of the interest derived. Withholding tax will be deducted and paid to the Inland Revenue Department on the interest you earn. If we have your IRD number, you can select to have withholding tax deducted at 19.5%, 33% or 39%. If we do not have your IRD number, it will be deducted at 39%, as required by the Inland Revenue Department.

### **Financial Assurance Scheme**

The receipt, holding and disbursement of funds on our clients' behalf are subject to inspection pursuant to the New Zealand Law Society Financial Assurance Scheme which operates under the provisions of the Lawyers and Conveyancers Act 2006 and the Trust Account Regulations.

### **Professional Indemnity Insurance**

We hold professional indemnity insurance that exceeds the minimum standards specified by the New Zealand Law Society.

### **Lawyers Fidelity**

The New Zealand 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 \$100,000.00. 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.

### **Conflicts of interest**

Sometimes a conflict of interest may arise. Where this occurs we will always contact you so that we can discuss and resolve the matter in accordance with our obligations under the **Rules of Conduct and Client Care for Lawyers.**

### **Information about you**

As part of our continuing effort to improve the services we offer, we collect and store certain client information. This helps make sure that our communications to you arrive at the right address. It also helps us to send you information about services we offer, information on legal topics likely to be of interest or importance to you and enable us to let you know about events we may be sponsoring that may also be of interest to you. Most importantly it helps alert us to any potential conflict of interest we might have in acting both for you and any of our other clients. We may collect the information either from you or from other people as a result of providing our services. You have the right at any time to access any information we hold about you and to ask for any incorrect information to be updated. We assure you that all information about you that we hold will always remain confidential and will be used only for the purposes outlined in these terms of engagement or in carrying out your instructions to us, or to the extent required by law or by the Law Society's "Rules of Conduct and Client Care for Lawyers".

### **Record of Communications**

In certain circumstances, the writer will on occasion record telephone conversations and save them for future reference. This can ensure we undertake instructions accurately in regard to complex matters, and has a time cost saving element, as dictation of file notes related to telephone conversations can be less time intensive than manual note taking. If you object to this option please let us know and all telephone instructions will be manually noted.

### **Verifying your identity, source of funds & credit checks**

We are required by law to verify your identity and in some circumstances, the source of funds for a transaction. We may also wish to carry out reasonable credit checks on you from time to time depending on the matters being dealt with.

You authorise us to collect information about you (including customer due diligence information and credit reports), to obtain, exchange, hold, and use such information, and to make any other enquiries we consider as appropriate to:

- Confirm that information provided to us about you is true;
- Undertake initial and on-going customer due diligence and monitoring in accordance with the Anti-Money Laundering and Countering Financing of Terrorism Act (AML/CFT Act);
- Enforce debt and legal obligations (including recovery of money owed to us);
- Comply with other legal obligations we may have.

- You authorise any person (including credit reporters) to disclose information (including credit information) to us in response to such enquiries.

You accept that we may use customer due diligence services (including electronic based services from a third party) to verify your identity and conduct other customer due diligence or monitoring required under the AML/CFT Act, and that we may use credit reporting services to credit check you, and that when we use such services:

- the other third party or credit reporter (each a Service Provider) will exchange information about you for that purpose and the Service Provider may hold information on its system and use it to provide their customer due diligence service or credit reporting service (as the case may be) to their other customers;
- we may use the Service Provider's services in the future for any authorised purpose (including in relation to ongoing customer due diligence or the provision of credit). This may include using the Service Provider's monitoring services to receive updates if information held about you changes, and;
- if you default in your payment obligations to us, information about that default may be shared with credit agencies.

#### **Storing records of legal work and trust account transactions**

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) seven (7) years after our engagement ends. If we have converted those files and documents to an electronic format the paper copies may be destroyed earlier. Records of all investment money and investment property will be kept in accordance with the Lawyers and Conveyancers Act (Trust Account) Regulations 2008 and the Privacy Act 1993. Records of your transactions through our trust account are stored in computerised form. You may have access to all records relating solely to your investment money and investment property without charge during normal business hours. Any investment money or investment property we receive on your behalf cannot be used for the benefit of anyone other than you unless you have accounts outstanding, in which case we may deduct the amount due from investment money we hold for you.

#### **Termination**

You may terminate our relationship at any time. We may terminate our engagement with you in any of the circumstances set out in the Law Society's Rules of Conduct and Client Care for Lawyers". If our relationship is terminated, you must settle all fees due and expenses incurred up to the date of termination.

#### **Limitations of Liability**

We do not provide any financial or taxation advice to our clients. Any other limitations on the extent of our obligations to you or any limitation or exclusion of liability are set out in our letter of engagement.

#### **Questions and Complaints**

We maintain a procedure for handling any complaints by clients, designed to ensure that complaints are dealt with promptly and fairly. If you have a question about any invoice you have received from us, or if you are unhappy with any other aspect of our service to you, please tell us about it straight away. You should in the first instance discuss the matter with the Director responsible for the work we do for you. However If you wish to speak to someone else, you are most welcome to contact our Chief Executive as follows:

- By letter addressed to General Manager, Preston Russell Law P.O. Box 355 Invercargill 9840.
- By email at [sue.boyle@prlaw.co.nz](mailto:sue.boyle@prlaw.co.nz);

- By telephoning her at 03 211 0080.

Our General Manager will investigate the issues you have raised and will contact you to discuss it. This will be at no additional cost to you. Misunderstandings can arise; generally these can be resolved with little inconvenience or formality. And of course we need to know when we do not get things quite right so that we can get them right the next time.

You are also able to make a complaint to the New Zealand Law Society Lawyers Complaints Service. To do so, phone 0800 261 801 and you will be connected to the nearest Complaints Service Office where you will be guided through the options available to you.

#### **Client Care and Service Information**

Below is a copy of the client care and service information set out in the **Rules of Conduct and Client Care for Lawyers**:

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 have 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](http://www.lawsociety.org.nz) or call 0800 261 800.

#### **General**

We may change these terms of engagement from time to time, in which case we will send you amended terms.

Our obligations under these terms of engagement and our duties of care are owed to you and not to any other person.

As always, we greatly value your custom. If you have any questions about these Terms of Engagement, please ask, we will do our very best to help you.