

## TERMS OF ENGAGEMENT AND CLIENT CARE INFORMATION

### 1. Introduction

- 1.1. These terms and conditions (**Terms**) apply to all work carried out by Gilding Baker Law Limited (**we** and **us**) for you.
- 1.2. “**You**” are our client – as addressed in our letter of engagement. We owe our duty to you, and no one else may rely on our advice to you. Unless you inform us otherwise, if you are a couple, we may accept instructions from either of you; if you are a company, partnership, or trust/trustees (including executors), we may accept instructions from any one of the Directors, partners, trustees, officers, or employees.
- 1.3. In instructing us to act for you, or continuing with your instructions after receipt of these Terms, you agree to these Terms.

### 2. Client Care Information

- 2.1. Whatever legal services we provide, we must:
  - (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 with you your objectives and how they 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; protect your privacy and ensure appropriate confidentiality;
- (g) treat you fairly, respectfully, and without discrimination;
- (h) keep you informed about the work being done and advise you when it is completed; and
- (i) let you know how to make a complaint and deal with any complaint promptly and fairly.

- 2.2. 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](http://www.lawsociety.org.nz) or call 0800 261 801.

### 3. Services

- 3.1. A Director will have overall responsibility of our work for you and that Director will sign the engagement letter we send to you.
- 3.2. The scope of the services we will provide is set out in our engagement letter or otherwise as agreed in writing (**Services**). When we receive new instructions from you during the course of our engagement, this may expand the Services and increase our fee.
- 3.3. Our Services rely on the information and instructions you provide being accurate and complete.
- 3.4. The scope of our services excludes tax advice, investment advice and advice about foreign laws.

#### **4. Trust Account**

- 4.1. Funds we receive on your behalf are held in our trust account (except funds received for payment of our invoices). If we are holding significant funds on your behalf we will lodge these on interest bearing deposit, where reasonable and practicable. In that case we will charge an administration fee of 5% of the net interest derived (i.e. after the deduction of RWT).

#### **5. Fees**

- 5.1. Our fees are set out in our engagement letter. Our fees will be fair and reasonable.
- 5.2. Where we provide a fee estimate, this is limited to the Services, based on the information supplied, and subject to unexpected delays, complications or an increase in the scope of work that may arise in carrying out the Services.
- 5.3. Where our fees are calculated on an hourly basis, the hourly rates are as set out in our engagement letter. Time spent is recorded in six minute units, with time rounded up to the next unit of six minutes. When on an hourly rate fee, you can request an estimate of fees. We will promptly inform you if it becomes apparent that that fee estimate is likely to be exceeded.
- 5.4. In determining what constitutes a fair and reasonable fee a number of factors will be taken into account including not only the amount of time devoted by Directors and staff to the Services, but any urgency involved, the amount or value of the money or property involved, the degree of complexity and resulting skill required, the results achieved and any other criteria that are relevant.
- 5.5. You are responsible for any disbursements we incur on your behalf, including but not limited to, registration fees (court, land, or security), ADLS legal forms, courier fees and third party service providers (e.g. ID verification or document servers). We do not charge any margin on these costs.
- 5.6. We do not charge separately for office expenses. We may charge our time spent on compliance requirements for your matter.

- 5.7. Where we engage another professional to help advise on your matter, e.g. an accountant, or barrister or specialist lawyer or consultant, you authorise us to share your matter information with them and you agree to pay the costs of that third party delivering services as part of our Services to you.

- 5.8. We may invoice our fees, disbursements and/or third party costs at regular intermittent intervals or at the conclusion of our work. Our final account will be charged within a reasonable time and will contain information to identify the matter, the period to which it relates and the work undertaken.

#### **6. Payment**

- 6.1. Payment of our invoice is due within seven days of the date of the invoice (**Due Date**). We may charge interest on any amount not paid by the Due Date at the rate of 2.5% per month on the amount outstanding calculated from the Due Date until payment is received in full.
- 6.2. You are responsible for the payment of our fees, even if you intend (or it is contractually agreed) that another party will pay them.
- 6.3. If your account is overdue, we may stop work on your matter and/or take action to recover unpaid amounts and you accept responsibility for all costs incurred in association with the collection of any outstanding amounts, including debt recovery and on a solicitor client basis.

#### **7. Payment by Deduction**

- 7.1. We may require payment in advance for any disbursement or expense we will be incurring on your behalf, or for you to provide security for our fees and expenses.
- 7.2. You authorise us to pay our invoice from amounts pre-paid by you and from any funds held on your behalf in our trust account.
- 7.3. Where we complete a sale or purchase transaction, you agree our invoice may be deducted from funds received from you or your lender or settlement proceeds prior to settlement.

## **8. IT Communications**

- 8.1. Our communications may be via email, phone or other electronic means. We do not guarantee the security of those communications and we are not liable for any loss suffered because of any breach of security or other default in our electronic services.

## **9. Privacy and Confidentiality**

- 9.1. A lawyer has a duty to protect and to hold in strict confidence all information concerning a client, the retainer, and the client's business and affairs acquired in the course of the professional relationship.
- 9.2. You authorise us to collect, store, use and disclose any information (including your personal information) for the purposes of carrying out your instructions and any reasonably related purpose.
- 9.3. You authorise us to collect information about you and other relevant persons as necessary for compliance with our obligations (including anti-money laundering, land registration, and taxation). In certain circumstances, if we cannot obtain the necessary information from you, we must refuse to act to you.
- 9.4. We may disclose your information to the extent necessary or desirable to enable us to carry out your instructions and our related business operations, or as required by law.
- 9.5. We may provide access to your information to our employees and third parties where we are obtaining services on your behalf or for necessary business operations (e.g. for specialist advice on your matter, for identity verification through service providers, or IT support).
- 9.6. Under the Privacy Act 2020, you have the right to request access to, and correction of, your personal information held by us. We may charge you the reasonable costs of carrying out this request.

## **10. Document Retention**

- 10.1. We endeavour to operate a paper light office. We primarily store information by electronic means using a cloud-based

system. We may also hold your information on a hard drive or other back up system.

- 10.2. At any time, we may dispose of documents that are duplicates, or trivial (e.g. emails that do not contain substantive information) or documents that belong to us, or documents that we have received that we deem we are not required to retain.
- 10.3. We may, but are not required to, retain documents or copies where you have requested that we provide them to you or another person and we have done so.
- 10.4. Unless you instruct us in writing otherwise, you authorise us and consent to us destroying or deleting all files, records and documents in respect of the Services seven years after our engagement ends, without further reference to you. This does not apply to documents we hold in safe custody for you (e.g. wills and enduring powers of attorney) or are otherwise obliged by law to retain for longer. We may retain documents for longer at our option.

## **11. Intellectual Property**

- 11.1. We own copyright in all documents or work we create in the course of performing the Services. We grant you a non-exclusive license to retain, use and copy the documents for the purposes for which they were prepared, but not otherwise. You may not permit any third party to copy, adapt or use the documents without our prior written permission.

## **12. Professional Indemnity and Lawyers Fidelity Fund**

- 12.1. We hold professional indemnity insurance that meets or exceeds the New Zealand Law Society's minimum standard. We can provide further information on this insurance on request.
- 12.2. The New Zealand Law Society operates a Lawyers' Fidelity Fund to compensate client who suffers theft of money or property entrusted to lawyers. The maximum amount payable to an individual claimant under the fund is \$100,000. The fund does not apply to money instructed to be invested.

### **13. Conflict of Interest**

- 13.1. We have procedures in place to identify and respond to conflicts of interest. If a conflict arises, we will advise you of this and follow the requirements and procedures set out in the New Zealand Law Society's *Rules of Conduct and Client Care for Lawyers*.

### **14. Limitation of Liability**

- 14.1. Our advice is based on the information you have given us and information received from others on your behalf. We apply professional judgment based on the law at the time of our advice. We are not liable for errors in, or omissions from, any information provided to us.
- 14.2. To the extent permitted by law, our aggregate liability to you (whether in contract, tort, equity or otherwise) in connection with our Services is limited to the amount available to be paid from the professional indemnity insurance held by the firm.
- 14.3. We shall not be liable for any loss caused or contributed to by inaccurate or incomplete information supplied by you or third parties (including public records) or because you did not receive, read or follow a communication we sent you.

### **15. Concerns and Complaints**

- 15.1. If you have a concern or complaint, please let us know as soon as possible. We will do our best to address your concerns.
- 15.2. The New Zealand Law Society operates the Lawyers Complaints Service and you can make a complaint to that service, details of which are available on its website.

### **16. Termination**

- 16.1. You may terminate our Services at any time.
- 16.2. We may terminate our Services in any of the circumstances set out in the New Zealand Law Society's *Rules of Conduct and Client Care for Lawyers*.
- 16.3. If our Services are terminated, you must pay our fees, disbursements, third party costs

and expenses that have accrued up to the date of termination.

### **17. General**

- 17.1. Our relationship is governed by New Zealand law and the New Zealand courts have exclusive jurisdiction.
- 17.2. Neither of us will be deemed to have waived any right under these Terms unless the waiver is in writing and confirmed by both parties.
- 17.3. If any term or provision of these Terms is held to be invalid or unenforceable, it may be severed without affecting the enforceability of the remaining provisions.
- 17.4. We are entitled to change these Terms from time to time with notice to you.
- 17.5. These Terms apply to any current engagement and to any future engagement, whether or not we send you another copy of them.