



Terms of engagement

7 JULY 2016

INTRODUCTION

1. These terms of engagement are the standard terms on which TGT Legal (“we”) provide legal and related services to clients. In these terms “you” refers to the client who engages us.
2. Subject to any different or additional terms set out in writing or otherwise agreed, these terms will exhaustively constitute the agreement governing our relationship and will apply to you whenever we act for you. You do not need to sign any formal documentation to indicate your acceptance. Your acceptance will be assumed from your continuing to engage us.

THE SCOPE OF OUR ROLE

3. We will act upon the matters that fall within the scope of your instructions received in writing or otherwise. We have the usual authority of solicitors to act on your behalf in relation to all matters necessary or incidental to your engagement of us. Our role will be limited to providing advice under and in accordance with New Zealand law. In no circumstances will we be responsible for advising you as to the merits or otherwise of purchasing, holding or disposing of investments or other assets.
4. It is critical that we share an understanding of your instructions and expectations. If you have any special requirements that you do not believe are reflected in these terms, please advise us as soon as possible and we will discuss it with you.

DUTIES

5. The law requires lawyers to provide service that meets the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent lawyer. Unless otherwise agreed in writing or required by law, our duties are owed to you and will not extend to others and any advice or opinion we give in the course of our engagement may only be relied upon by you.
6. One partner will have overall responsibility for the work undertaken for you. He or she will involve other partners or professional staff to perform parts of your work, where appropriate.

FILES AND DOCUMENTS

7. Information relating to your matter will be kept in a file. The file may be maintained in a paper format or an electronic format. The file, whether paper based or electronic, may be destroyed or deleted by us seven years after the completion of your matter, unless you notify us that you would like to retrieve it. If you uplift your files or other documents at any time, we may provide you with these to you in an electronic format and we may make and retain copies of them when they are uplifted. You authorise us to destroy any paper files or documents converted to an electronic format but all original deeds held by us on your behalf or other documents we have agreed to keep for long-term safe custody will be kept in our deeds room or a similar facility.

OUR PROFESSIONAL FEES AND EXPENSES

8. Our fees are charged in accordance with the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules (“Rules”), which provide that a lawyer must not charge more than a fee that is fair and reasonable for the service provided, having regard to the interests of both client and lawyer. The Rules provide factors that we may take into account in determining our fees. These are set out in Appendix 1.
9. Each of our partners and professional staff has an hourly rate reflecting his or her experience and expertise. These charge-out rates reflect some but not all of the factors referred to in the Rules. The fee charged will take into account all the factors that are relevant. The time we spend on a matter may include time travelling to and from and attending meetings and court appearances, correspondence including emails, telephone calls, research, considering relevant issues and drafting.
10. Our invoices will also include an office services charge to cover photocopying and facsimile costs, routine courier charges, telephone charges and similar office expenses. This charge is based on a scale relative to your fee and this scale is available upon request.
11. All additional disbursements incurred by us on your behalf will also be charged. These will include all out-of-pocket expenses we consider necessary for the proper conduct of your matter such as travel costs, registration and filing costs, and engaging, on your behalf, the services of other consultants (eg tax advisers, accountants, other specialist lawyers) to provide specialist advice or services. We will discuss the terms of any consultant’s engagement with you.
12. Goods and services tax at the applicable rate will also be charged unless it is not legally required.

ESTIMATES

13. We can provide you with a written estimate of fees for the job being undertaken. Whilst we determine a fee estimate based upon our professional judgement, it does not amount to a firm quotation and our fees and expenses may exceed the estimate.

TERMS OF PAYMENT

14. Our general practice is to issue interim invoices monthly, and a final invoice on completion of each matter. Unless otherwise agreed, we will send our invoices to the address last advised by you. Although our invoices may at your request or with your approval be directed to a third party, you remain responsible for payment to us if the third party fails to pay.
15. Our invoices are payable upon receipt. If “you” as the client comprises more than one person, each person is jointly and severally liable for the payment of our invoices. If any invoice is not paid promptly, we may choose not to do any further work for you and to retain your files and other documents until such time as all outstanding invoices are paid. We may also charge interest on any amount outstanding one month after the date of the invoice at a rate between 1% and 2% per month together with costs of recovery. We also reserve the right to enlist any outstanding invoices with a debt collection agency, and you will also be required to reimburse us for the costs of recovery (including the agency’s charges).
16. We may ask you to pay monies into our trust account in advance of us undertaking or completing our engagement for you. In some cases we may already have funds in our trust account that are held on your behalf. In either case, if you do not pay our invoice promptly, we reserve the right to apply those monies towards the payment of the invoice, without further notice to you.

COMPLAINTS

17. If you are unhappy with any aspect of the work we have undertaken, please discuss this with the partner with overall responsibility for the matter. If you are still concerned after that, or would like to contact another partner in the first instance, please write to the managing partner or, if he or she is the responsible partner, another partner of the firm. Your written statement must include the nature of the complaint and the reasons for your dissatisfaction, as well as your reasoned proposal for resolution of the complaint. We trust that we will be able to resolve the matter to your satisfaction but if necessary we will refer you to an independent solicitor. If you are unsatisfied with the result of our complaints procedure, you may submit a complaint to the Complaints Service operated by the New Zealand Law Society (“Law Society”) at PO Box 4417, Shortland St, Auckland 1140.

INSURANCE AND FIDELITY FUND

18. We hold professional indemnity insurance that exceeds the minimum standards specified by the Law Society.
19. The Law Society maintains the Lawyers’ Fidelity Fund for the purposes of providing clients of lawyers with protection against any pecuniary loss they suffer by reason of the theft of their money or property by a lawyer. The maximum amount payable by the Fund by way of compensation to an individual claimant is \$100,000. Except in certain circumstances specified in the Lawyers and Conveyancers Act 2006 the Fund does not cover a client for any loss relating to money that a lawyer is instructed to invest on behalf of the client.

TRUST ACCOUNT

20. Monies that you have paid or that have been paid on your behalf to TGT Legal that are not required to satisfy the payment of outstanding invoices will be held on trust in the TGT Legal trust account. Payments may be made by way of cheque, electronic transfer or telegraphic transfer. Funds will be held until an authorised person instructs TGT Legal to distribute or disburse the funds or until they are applied in payment of invoices in accordance with Regulation 9 of the Lawyers and Conveyancers Act (Trust Account) Regulations 2008.
21. Funds in the trust account may be placed on deposit and earn interest at BNZ term deposit wholesale rates, which change from time to time. TGT Legal deducts commission at 5% of the gross interest earned.

VERIFICATION OF IDENTITY

22. We may require your identity and/or the source of your funds to be verified. In that case, we will not be able to begin work for you until you have provided us with the required information.

CONFLICTS OF INTEREST

23. It may be inherent in the nature of the legal work that we are engaged to undertake that we will act for you in different capacities or for different associated parties. We can do so where there is a high degree of common interest and we do not believe our legal or ethical obligations preclude it. However, should a material divergence of interest be likely to occur or become apparent, so that there is a prospect of a real conflict of interest emerging, or we become aware of any other matter that may give rise to conflict of interest, we would discuss this with you and/or assist you or the other party as the case may be to procure independent legal representation.

ELECTRONIC COMMUNICATIONS

24. Unless otherwise agreed with you, we may communicate with you and others by electronic means. We do not accept responsibility and will not be liable for any damage or loss caused to you or your system by any such transmission, or any interference, interception, virus, other defect, delay or non-delivery relating to such a transmission.

DOCUMENTS

25. We will retain ownership of copyright and all other intellectual property rights in the papers and documents that we produce for you in the course of carrying out our engagement. However, you will be entitled to use the documents for the purposes for which they were provided subject to payment of our fees.

VARIATIONS

26. We may at any time vary these terms. The varied terms will be posted on our website: www.tgtlegal.com. The varied terms will apply from the time of publication on our website.

TERMINATION

27. You may terminate our engagement in writing at any time.

28. We may stop working for you if:

- we have a conflict of interest;
- you do not pay our invoices promptly;
- there is other good reason for us not to complete your instructions.

29. If either of us terminates the engagement these terms will survive the termination and you must pay us for all work we have done and all expenses we have incurred to the date of termination.

30. Our fees may include time and expenses reasonably incurred in connection with the transfer of your files, documents and work to you or another adviser of your choosing.

ENFORCEABILITY

31. The enforceability of this agreement is not affected by any changes to the constitution of the partnership of TGT Legal.

32. These terms of engagement and any other agreement we have with you are governed by the laws of New Zealand and are subject to the exclusive jurisdiction of the New Zealand courts.

FURTHER INFORMATION

33. Client Care and Service Information is set out in Appendix 2.

Appendix 1

FACTORS THAT WE MAY TAKE INTO ACCOUNT IN DETERMINING OUR FEES:

1. the time and labour expended;
2. the skill, specialised knowledge, and responsibility required to perform the services properly;
3. the importance of the matter to the client and the results achieved;
4. the urgency and circumstances in which the matter is undertaken and any time limitations imposed, including those imposed by the client;
5. the degree of risk assumed by the lawyer in undertaking the services including the amount or value of any property involved;
6. the complexity of the matter and the difficulty or novelty of the questions involved;
7. the experience, reputation, and ability of the lawyer;
8. the possibility that the acceptance of the particular retainer will preclude engagement of the lawyer by other clients;
9. whether the fee is fixed or conditional (whether in litigation or otherwise);
10. any quote or estimate of fees given by the lawyer;
11. any fee agreement (including a conditional fee agreement) entered into between the lawyer and client;
12. the reasonable costs of running a practice; and
13. the fee customarily charged in the market and locality for similar legal services.

Appendix 2

CLIENT CARE AND SERVICE INFORMATION

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.lawyers.org.nz or call the New Zealand Law Society on 0800 261 801.