



## **Terms of Engagement**

**1 July 2018**

## Terms of engagement

### Introduction

1. These terms of engagement (as varied from time to time) ("**terms**") are the standard terms on which TGT Legal ("**we**" or "**us**") provides legal and related services to clients. In these terms "**you**" refers to the client who engages us.
2. These terms apply whenever we act for you on a matter. They take precedence over any other terms unless we have expressly agreed in writing to those other terms. Your acceptance of these terms 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 each of your instructions. We are only qualified to advise on New Zealand law and our role will be limited to advising you under and in accordance with New Zealand law.
4. 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.
5. We will set out the name of the partner who has overall responsibility for the work we undertake for you in our initial engagement letter. He or she will involve other partners or professional staff to perform work, where appropriate. It is critical that we share an understanding of your instructions and expectations so please let us know if you have any specific requirements.

### Duties

6. The law requires lawyers to provide legal services that meet the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent lawyer. Our duties are owed to you and will not extend to any other person unless we expressly agree otherwise in writing or it is required by law. Any advice we give in the course of our engagement may only be relied upon by you and we have no liability whatsoever to any third party who may rely on our advice.

### Due diligence obligations

7. We have legal obligations under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 ("**AML CFT Act**"), the Tax Administration Act 1994 ("**TRA**"), the Foreign Account Tax Compliance Act ("**FATCA**") and the Common Reporting Standard ("**CRS**") that may include carrying out "customer due diligence". To meet our obligations, we will collect and verify information about you and may collect and verify information about individuals, entities and legal arrangements (such as companies and trusts) you are associated with. We may also need to collect information about you and others associated with you from third parties to meet our obligations. You authorise us to collect information about you, and will ensure that others associated with you authorise the collection of information about them from third parties.
8. If you are unable to provide any of the requested due diligence information or satisfy our due diligence requirements we may not be able to act or continue acting for you or complete trust account transactions for you.

### Confidentiality, files and documents

9. We have a duty to protect and to hold in strict confidence all information concerning you and your business and affairs acquired in the course of our business relationship. We also have obligations under the Privacy Act 1993. We will collect, use and disclose personal information in accordance with these terms and our Privacy Policy which is set out in Appendix 3 and on our website.
10. Information relating to your matter including documents we receive and create on your behalf will be kept in a file. We may keep the file in a paper format, an electronic format or in a combination of formats. We may destroy any original documents converted to an electronic format unless the existence of an original paper document is required by law or we have agreed to hold the document on your behalf for long term safe custody.
11. The file together with the information and documents it contains 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 wish to retrieve the file or any documents at any time, we may provide the file or documents to you in an electronic format and we may make and retain copies of the file or relevant documents.

12. We retain ownership of copyright and all other intellectual property rights in the documents we create on your behalf. However, you may use the documents for the purposes for which they were provided subject to payment of our fees.

### **Our professional fees and expenses**

13. 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 services 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.
14. Each of our partners and professional staff has an hourly rate reflecting his or her experience and expertise. These 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, corresponding including emailing and making and receiving telephone calls, researching, considering relevant issues and drafting.
15. Our invoices will also include an office services charge to cover photocopying 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. Our invoices may also include a due diligence charge to cover the reasonable costs incurred by us in carrying out due diligence on you and, as applicable, individuals, entities and legal arrangements associated with you.
16. All 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 (such as tax advisers, accountants and other specialist lawyers) to provide specialist advice or services. We will discuss the terms of any consultant's engagement with you.
17. Goods and services tax at the applicable rate will also be charged unless it is not legally required.

### **Estimates**

18. We can provide you with a written estimate of fees for the services to be provided, on request. 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**

19. Our general practice is to issue interim invoices, and a final invoice on completion of each matter. Unless otherwise agreed, we will send our invoices to the email address or, if we do not have an email address for you, to the postal 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.
20. 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. Payments may be made by cheque, electronic transfer, telegraphic transfer or by one of the other payment options available on our website.
21. If any invoice is not paid promptly, we may choose not to do any further work for you and to retain your file and documents until such time as all outstanding invoices are paid. We may charge default interest:
  - (a) on any amount outstanding at the date one month after the date of the invoice (**Default Date**), from the Default Date until the date when payment is made;
  - (b) at a rate between 1% and 2% per month as determined by us.

We may also enlist any outstanding invoices with a debt collection agency. You will, at our discretion, reimburse us for all costs incurred by us in obtaining or attempting to obtain a remedy for your failure to pay.

22. We may ask you to pay funds into our trust account in advance of us undertaking or completing your matter. 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 may apply those funds towards the payment of the invoice, without further notice to you.

## Trust account

23. Funds that you have paid or that have been paid on your behalf to us that are not required to satisfy the payment of outstanding invoices will be held on trust in the TGT Legal trust account. Funds will be held until you or a person authorised by you in writing instructs us 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.
24. Funds in the trust account may be placed on deposit (subject to receipt of any requested due diligence information), on call (unless you instruct us otherwise) and earn interest at the appropriate BNZ interest rate, which changes from time to time. A commission at a rate of 5% of the gross interest earned is payable by you to us for the provision of this service. A statement of trust account transactions will be provided to you periodically and at any time on request.

## Complaints

25. If you are unhappy with any aspect of the work we have undertaken, please discuss it with the partner with overall responsibility for your work or, if you would like to talk to another partner in the first instance, another partner. We trust that we will be able to resolve the matter to your satisfaction but if you are unsatisfied with the result, 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.

## Liability

26. To the extent permitted by law and subject to paragraph 28:
  - (a) we will not be liable for any indirect or consequential loss or damage arising out of your engagement of us;
  - (b) any liability we do have to you arising out of your engagement of us on any matter or series of related matters and whether in contract, tort (including negligence or otherwise) is limited to the greater of:
    - (i) the amount available to be paid out under any relevant insurance held by us;
    - (ii) an amount equal to five times the total fees (excluding our service charge, due diligence charge, disbursements and goods and services tax) charged in the 12 month period immediately preceding the date you notify us of your claim.
27. For the avoidance of doubt, the limitation of liability in paragraph 26 also applies when we are acting as a trustee either individually or through a trustee company.
28. The Consumer Guarantees Act 1993 will not apply if you are in business and acquiring our services for the purposes of a business. If the Consumer Guarantees Act 1993 does apply, nothing in these terms has the effect of excluding or modifying any guarantee, right or remedy available under the Consumer Guarantees Act 1993.

## Insurance and Fidelity Fund

29. We hold professional indemnity insurance that exceeds the minimum standards specified by the Law Society.
30. 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 out of the Fidelity 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 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

31. 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 may do so:
  - (a) where, in non-contentious matters, our interests and your interests correspond in all respects; or
  - (b) where you and the other parties give your informed consent to our acting for you and the other parties in respect of the matter,

and we do not believe our legal or ethical obligations preclude it. If a divergence of interest is 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, if appropriate, assist you or the other parties as the case may be to procure independent legal representation.

### **Electronic communications**

32. 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.

### **Termination**

33. You may terminate our engagement in writing at any time.
34. We may terminate our engagement if:
- (a) we have a conflict of interest;
  - (b) you do not pay our invoices promptly;
  - (c) we are unable to carry out or complete due diligence or we are not satisfied with the results;
  - (d) there is other good cause for termination.
35. 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.
36. 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**

37. The enforceability of these terms is not affected by any changes to the constitution of the partnership of TGT Legal.
38. These terms are governed by the laws of New Zealand and the New Zealand courts have exclusive jurisdiction.

### **Further information**

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

**TGT Legal**  
**Level 7, 3-13 Shortland St**  
**PO Box 4039**  
**Shortland St**  
**Auckland 1140**  
**Telephone 09-920 8660**

## Appendix 1

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### 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

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### 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. 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 the Law Society on 0800 261 801.

## Appendix 3

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### Privacy policy

#### Personal Information

Personal information is information about an identifiable individual and includes your name, date of birth, address, telephone number and email address.

#### Browsing our website and emailing an enquiry

We do not collect personal information about you if you simply browse our website or read information on it. When you visit our website we do collect general technical information about your visit so that we can get a better understanding of how people are using our site. However, this information does not include any identifiable information about you.

If you email an enquiry to us or register your details to receive further information we will use your information:

- for the purposes for which you supplied it; and
- for dealing with any legal or commercial conflicts.

#### Client information and “customer due diligence”

If you request legal and related services from us we will collect personal information from you.

We have legal obligations under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (**AML CFT Act**), the Tax Administration Act 1994 (“**TRA**”), the Foreign Account Tax Compliance Act (“**FATCA**”) and the Common Reporting Standard (“**CRS**”) that may include carrying out “customer due diligence”. We will collect personal information from you, and may need to collect personal information about you from third parties to meet our obligations. We may also need to collect personal information about other individuals you are associated with either directly from the individual concerned or from third parties.

We may not be able to act or continue acting for you or complete trust account transactions for you, if any of the requested information is not provided.

#### Use and disclosure of personal information

We will use your personal information, as applicable:

- to carry out due diligence in accordance with the AML CFT Act, TAA, FATCA and CRS;
- for dealing with any legal or commercial conflicts;
- to act on your behalf in relation to all matters necessary or incidental to your engagement of us;
- for sending to you TGT Legal publications and invitations to seminars;
- for any purpose specified in our terms of engagement; and
- for any other purpose you may authorise.

We may need to disclose personal information about you to government agencies or to banks with which we place your funds to meet our legal obligations under the AML CFT Act, the TAA, FATCA and CRS. We will only disclose personal information about you if:

- it is necessary to carry out due diligence;
- it is required or authorised by law (including under the AML CFT Act, TAA, FATCA and CRS, as applicable) or rules applicable to the legal profession by which we are bound;
- disclosure is one of the purposes for which you gave us the information;
- it is in accordance with our terms of engagement; or



- it is required or authorised by you.

### **Fee Funders**

You may choose to pay your invoice using Fee Funders NZ Limited (**Fee Funders**). Any personal information collected by Fee Funders as part of this payment option is subject to Fee Funders' privacy policy. We do not have access to any information you provide Fee Funders. However, Fee Funders will notify us when they receive a payment from you or there is an issue with your payment (or non-payment, as the case may be).

### **Rights of Access and Correction**

Under the Privacy Act 1993, individuals have rights of access to and correction of their personal information. If you have any queries about this policy or requests concerning your personal information, please contact the Firm's Privacy Officer at [tracy.owen@tgtlegal.com](mailto:tracy.owen@tgtlegal.com) or 09 920 8684.

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