

CONVEX LEGAL - TERMS OF ENGAGEMENT & CLIENT CARE INFORMATION



Welcome and thanks for the opportunity to work with you. Before we (Convex Legal Limited) can start providing great legal services, we need to set out the basis of our professional relationship.

1. Introduction

- 1.1 Unless we agree otherwise in writing, these Terms of Engagement ('Terms') will govern how we will work together and contain information that the New Zealand Law Society's Rules of Conduct and Client Care for Lawyers require us to provide to you.
- 1.2 These Terms apply to any current and all future matters. From time to time, we may vary these Terms. If we do so, the varied terms will appear on our website www.convexlegal.co.nz/fineprint. If you continue to instruct us following a variation of these Terms, you will be deemed to have agreed to the varied terms.
- 1.3 If you have any questions about these Terms, please contact us (hello@convexlegal.co.nz).

2. Services

- 2.1 We will provide you with the services as outlined in our email (or letter) sent to you at the beginning of each new matter ('email (or letter) of engagement'), along with any further instructions that you provide to us in writing (or that we record in writing).
- 2.2 Our duty of care is to you and not to any other person. We do not accept any responsibility or liability whatsoever to any third parties who may be affected by our performance of the services or who may rely on any advice we give, except as expressly agreed by us in writing.

3. Communications

- 3.1 We will ask you for contact details, including email address, postal address and telephone numbers. We may provide documents and other communications to you by email (or other electronic means). You will advise us if any of your contact details change.
- 3.2 We will report to you periodically on the progress of any matter and will inform you of any material and unexpected delays, significant changes or complications in the work being undertaken. You may request a progress report at any time.
- 3.3 You agree that we may provide you from time to time with other information that may be relevant to you, such as newsletters and information bulletins. At any time, you may request that this not be sent to you.
- 3.4 Unless otherwise agreed, we may communicate with you and with others by electronic means. We cannot guarantee that these communications will not be lost or affected for some reason beyond our reasonable control, and we will not be liable for any damage or loss caused thereby.

4. Fees, Invoicing and Payment

Fees

- 4.1 The basis on which fees will be charged is set out in our email (or letter) of engagement and these Terms.
- 4.2 Where possible, we will give you a fixed fee for an agreed scope of work. Where this is not possible, we'll endeavour to provide you with an estimate of fees. Any estimate given by us is a guide only and is not a fixed fee or a cap on what we may charge you. If we are going to significantly exceed any estimate provided by us we will contact you to discuss a revised estimate.
- 4.3 Our fees will be calculated in accordance with the New Zealand Law Society's guidelines for a fair and reasonable fee and will take into account several factors including:
 - a. the time and labour expended

- b. the skill, specialised knowledge, and responsibility required to perform the services properly
- c. the importance of the matter to you and the results achieved
- d. the urgency and circumstances in which the matter is undertaken and any time limitations imposed, including those imposed by you
- e. the degree of risk assumed by us in undertaking the services, including the amount or value of any property involved
- f. the complexity of the matter and the difficulty or novelty of the questions involved
- g. the experience, reputation, and ability of the person who acts for you
- h. the possibility that the acceptance of the particular retainer will preclude employment of that person by other clients
- i. whether the fee is fixed or conditional (whether in litigation or otherwise)
- j. any quote or estimate of fees given to you by us
- k. any fee agreement (including a conditional fee agreement) entered into between you and us
- l. the reasonable costs of running a practice
- m. the fee customarily charged in the market and locality for similar legal services.
- n. GST is payable by you on our fees and charges. Unless otherwise stated, any quote, estimate or charge out rate will not include GST.

Disbursements and Expenses

- 4.4 In addition to our fees, we will charge you for any expenses and disbursements incurred by us to third parties on your behalf. We reserve the right to request payment of these disbursements from you in advance.

Invoices

- 4.5 We will send interim invoices to you, usually monthly, and on completion of the matter, or termination of our engagement. We may send you invoices more frequently when we incur a significant expense or undertake a significant amount of work over a shorter period of time.

Payment

- 4.6 For conveyancing matters, payment of our fees, expenses and disbursements is required on settlement of the transaction.
- 4.7 For all other matters, payment is required within 14 days of the date of the invoice, unless alternative arrangements have been made with us. If you have difficulty in paying any of our invoices, please contact us promptly so that we may discuss payment arrangements.
- 4.8 You authorise us to deduct our fees and other expenses from funds held in our trust account on your behalf on provision of an invoice to you, unless those funds are held for a particular purpose.
- 4.9 If our invoices are not paid by the due date, we may charge interest at the rate of 15% per annum. You will be liable for all debt collection and legal costs, together with interest, we incur in seeking payment of our invoices.

Trust Account

- 4.10 We operate a trust account for all funds received from clients (except those received for payment of our invoices). Unless it is not reasonable or practicable to do so, when we hold significant funds for you for more than a short period of time we will place them on interest bearing deposit with a trading bank. In these cases, we will charge an administration fee of 6% of the gross interest derived.

5. Confidentiality

- 5.1 We will not disclose to any other person any confidential information that we obtain as your lawyers except to the extent required by law or the New Zealand Law Society Rules, or where you authorise us to do so.

6. Privacy

- 6.1 While acting for you, we may collect and hold personal information about you. We will use that information to carry out the services, to obtain credit or other references, to undertake credit management, and to inform you of issues we believe may be of interest to you.
- 6.2 You authorise us to obtain from any person, or release to any person, any information necessary for any of those purposes, and you authorise any person to release to us information that we may require for any other those purposes.
- 6.3 We may disclose your name and address to third parties such as credit agencies to perform a credit reference or to undertake credit management or collection processes if it is reasonable to do so. Information concerning you will be held at our offices and at secure electronic file storage sites elsewhere. If you are an individual, you have the right to access and correct this information.

7. Verification of identity /Anti-Money Laundering Obligations /Tax Reporting Laws

- 7.1 Some of the laws that we must comply with may affect you. These laws include:
 - a. the Anti-Money Laundering and Countering Financing of Terrorism Act 2009
 - b. tax reporting laws such as the US Foreign Account Tax Compliance Act (FATCA).
- 7.2 We may be required by law to obtain information about you (including to verify your identity and the identity of persons who act on your behalf or who own and control you, e.g. directors, shareholders, and other beneficial owners), to monitor transactions, and to disclose information about you to third parties, including the New Zealand Inland Revenue Department, the New Zealand Department of Internal Affairs, and other authorities (both in New Zealand and offshore). Without limit, we may be required to disclose information about a transaction that you are involved in if required by law or we think it is suspicious.
- 7.3 A bank involved in a trust account transaction may need to obtain information about you to comply with its legal obligations. You must supply that information to us if we ask for it, for on-supply to the bank to meet those obligations. For clarity, you consent to the bank, in turn, disclosing that information to regulatory authorities both in New Zealand and offshore.
- 7.4 By engaging us, you consent to, and waive any right to be advised of, the disclosures described in clause 7.2.
- 7.5 If you do not supply any information we ask for, we may be unable to provide you, or complete, the services.
- 7.6 We have no liability to you:
 - a. if we cannot provide you, or complete, the services (including completing a transaction) because you have not supplied information that we have asked for
 - b. for any impact on you (including a delay, investigation or other event) resulting from our compliance with our legal obligations.

8. Document Retention and Ownership

- 8.1 We will store your files and documents for you without charge if you wish for at least 6 years following completion of our engagement. After that time we may destroy these files and documents, except documents we have agreed with you to keep.
- 8.2 We own copyright in all documents or work we create while performing the services but grant you a non-exclusive licence to use and copy the documents as you see fit for your own personal or commercial use. However, you may not permit any third party to copy, adapt or use the documents without our written permission.
- 8.3 We reserve the right to exercise a general lien over any and all files and documents we hold on your behalf while you owe us money either for services rendered or for any other reason. If you uplift your files or other documents at any time, we may make copies of them before they are uplifted.

9. Conflicts of Interest

9.1 We take steps to ensure that no conflict of interest arises between clients for whom we act. If a conflict of interest arises we will advise you of this and follow the requirements and procedures set out in the New Zealand Law Society Rules. This may mean we cannot act for you further in a particular matter and we may terminate our engagement.

10. Lawyers' Fidelity Fund

10.1 The legal profession also operates a lawyers' fidelity fund through the New Zealand Law Society which may reimburse clients who suffer pecuniary loss due to theft or misappropriation of funds by lawyers. The maximum amount payable by the fidelity fund by way of compensation to an individual claimant is limited to \$100,000.00.

10.2 However, subject to certain limited exceptions as set out in the Lawyers and Conveyancers Act 2006, the fidelity fund does not cover a client for any loss relating to money where the lawyer invests the funds on behalf of the client.

11. Insurance

11.1 We hold professional indemnity insurance that meets or exceeds the minimum standards specified by the New Zealand Law Society. We will provide you with the particulars of the minimum standards upon request.

12. Limitations on our Obligations or Liability

12.1 To the extent allowed by law, our aggregate liability to you (whether in contract, tort, equity or otherwise) in connection with our services is limited to:

- a. If an amount is available to be paid under the Professional Indemnity Insurance held by the firm, that amount
- b. In any other case, an amount equal to five times our related fees (excluding any administrative charges, disbursements, and GST).

13. Termination

13.1 You may terminate our retainer at any time. We may terminate our retainer in any of the circumstances set out in the *New Zealand Law Society Rules* including the existence of a conflict of interest, non-payment of fees, and failure to provide instructions.

13.2 If our retainer is terminated you must pay us all fees, disbursements and expenses incurred up to the date of termination.

14. Complaints

14.1 If you have any concerns or complaints about our services, please raise them as soon as possible with the person to whom they relate. They will respond to your concerns as soon as possible. If you are not satisfied with the way that that person has dealt with your complaint, please raise the matter with the Katherine Mexted (Director of Convex Legal). We will inquire into your complaint and endeavour in good faith to resolve the matter with you in a way that is fair to all concerned. Any dispute between us is to be resolved by the New Zealand courts in accordance with New Zealand law.

14.2 If you are not satisfied with the way we have dealt with your complaint the New Zealand Law Society has a complaints service to which you may refer the issue. To do so, you can contact the New Zealand Law Society at Lawyers Complaints Service, PO Box 5041, Wellington 6140 or on 04 472 7837.

15. Persons responsible for the work

15.1 The name and status of the person (or persons) who will have the general carriage of or overall responsibility for the service we provide for you will be set out in the email (or letter) of engagement we send you. Where we haven't provided this information, Katherine Mexted (Director) will have overall responsibility for the services and will be supported by other members of the Convex Legal team.

16. Tax and accounting services

16.1 We do not provide advice as to the tax or accounting implications of the work we carry out. However, we have a close working relationship with Convex Accounting Limited and there's a family relationship between the business owners. By engaging us, you acknowledge that Convex Legal will not, in any circumstances, provide you with any tax or accounting services.

16.2 If you wish to receive tax or accounting services from Convex Accounting Limited, you must separately request, and engage, Convex Accounting. You're never compelled to use Convex Accounting – we're not for a second looking to replace all your professional advisers. That said, we're always happy to introduce and make the process between the two separate businesses as simple as possible for you.

New Zealand Law Society 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 New Zealand Law Society's 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 261 801.