



# Mahony Horner Lawyers

## KEY FEATURES OF OUR RELATIONSHIP WITH YOU

### What we will do for you

- We will keep you informed about the work we are doing. If you have a question or concern about what we are doing, please contact us so we can discuss it.
- If you are concerned about how much the work will cost, just let us know. We will give you an estimate of our fee based on the work we think we will need to do. If this changes at any time, we will let you know and provide an updated estimate.

### What we need from you

- Please take time to confirm your requirements. It is important that you do this so we can do our best to meet your expectations and deliver the service you require.
- Please keep up to date with the payment of our fees or any agreed payment arrangements so we can continue to act on your behalf.
- Please provide all the information we need to act on your behalf and advise us of any changes to your circumstances, as this may affect the advice you require.

Our full terms and conditions are attached, please take time to read these carefully. We are happy to discuss and explain any of these if they are unclear.



## TERMS OF ENGAGEMENT

1. Thank you for choosing to instruct Mahony Horner Lawyers to act for you. This document sets out our Terms of Engagement. These terms form part of your contract with us, except as otherwise agreed in writing. If you have any questions about these terms, please contact the Principal responsible for your work.

### Acting for You

2. We will provide you legal services as outlined in our letter of engagement. We will not provide advice on any tax or accounting matters relating to the work we do for you, and nor will we provide advice regarding the quality of any investment made by you.
3. Our duty of care is owed to you and not to any other person. No other person may rely on our services unless we expressly agree to this in writing.
4. When we act for you, you agree that we may accept instructions as below unless you advise us otherwise in writing. If we act for:
  - a. a company, we may accept instructions from any director or officer of that company, or any employee or other person whom you authorise to work with us; and
  - b. a trust, we may accept instructions from any trustee or officer of that trust, or any other person whom you authorise to work with us; and
  - c. a partnership, we may accept instructions from any partner, officer, or employee, or other person whom you authorise to work with us; and
  - d. a couple, we may accept instructions from either individual and those instructions will bind both of you.
5. We will do our best to identify any conflict of interest. If a conflict of interest is identified then we will immediately let you know and discuss how we propose dealing with the situation.

### Verification of Identity

6. We are required to comply with the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 – this Act requires us to verify the identity of clients prior to carrying out work for them in respect of certain transactions. We are also required to identify and report any potentially suspicious activity regarding financial transactions.
7. If you are seeing us about the formation of a company or trust, or we are being asked to act for a company or trust, we will need information about the company or trust including the people associated with it such as directors and shareholders, trustees and beneficiaries. In some cases, we will also need to verify the sources of wealth and funding
8. We understand you give us your authority to carry out the necessary identity verification checks and will provide the consent of any company shareholders or trust beneficiaries for us to carry out the required identity verification checks. We will let you know if we require information from you or associated parties



to verify identity, and this could include asking to see the original or a copy of your passport, drivers licence and a bank statement or utility bill. We may not be able to carry out certain work for you before we have completed the required identity verification.

9. The Financial Transactions Reporting Act 1996 also requires us to collect and retain information required to verify your identity. We may retain copies of those verifying documents, and may perform other checks verifying your identity and as to the source of any funds associated with any transaction on which we are acting for you as we consider to be required by law. We are obliged to comply with the Foreign Account Tax Compliance Act (United States) (FATCA) and the OECD Common Reporting Standard – accordingly we need to collect additional information from those clients for whom we hold funds on interest bearing deposit and provide required information to our Bank and the IRD as required by law.

## Client Care

10. Our obligations to you are described in the Rules of Conduct and Client Care for Lawyers, which may be found in full at [www.lawsociety.org.nz](http://www.lawsociety.org.nz).
11. We hold professional indemnity insurance that exceeds the minimum standard specified by the New Zealand Law Society. If you require details of our insurance, please let us know.
12. The Law Society maintains a Lawyers Fidelity Fund for the purposes of providing clients with protection against loss arising from theft by lawyers. The maximum amount payable by the Fidelity Fund to an individual claimant is \$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 a client.
13. When providing legal services to you we will:
  - a. act competently, in a timely way, and in accordance with instructions received and arrangements made with you;
  - 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 can 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;
  - g. protect your privacy and ensure appropriate confidentiality;
  - h. treat you fairly, respectfully, and without discrimination;
  - i. keep you informed about the work being done, and advise you when it is completed; and
  - j. let you know how to make a complaint and deal with any complaint properly and fairly.



14. If you have any questions regarding our client care obligations to you please contact the Principal responsible for your work, visit [www.lawyers.org.nz](http://www.lawyers.org.nz) or telephone the Law Society on 0800 261 801.

### **Your Privacy and Confidentiality**

15. We treat all information we hold about you as private and confidential. We will not use it or share it unless we need to so that we can carry out the work you have asked us to do, or the law requires its disclosure. You authorise us to collect and hold personal information about you related to the work you have asked us to do, and as provided for by these Terms of Engagement.
16. We may use the information we hold about you to provide you with legal services and to inform you about issues and developments that may be of interest to you. We may also use this information to obtain credit references or other references about you, and we may give the information to debt-collection agencies if you have not paid an invoice when it is due. You authorise us to obtain from any person, or to release to any person, any information that is necessary for those purposes and you also authorise any person to release any information to us that we require for those purposes.
17. Under the Privacy Act 2020 you have the right to have access to personal information that we hold about you and to require us to change it if it is not correct.

### **Legal Costs**

18. We will charge you a reasonable fee for the work we carry out, and this may take into account a number of factors which are referred to in our letter of engagement including the time spent on your work by us. We have set out in our letter of engagement the specific basis on which we will charge you. We will generally invoice you monthly for the work carried out by us.
19. If the letter of engagement specifies a fixed fee, we will charge this for the agreed scope of our services. If the letter of engagement specifies an estimate, we will do our best to carry out the scope of work for that charge. However, the actual cost may differ from the estimate. For work which exceeds the specified scope, we will charge you a reasonable fee based on relevant factors including the time spent on your work. We will advise you as soon as reasonably practicable if it becomes necessary for us to provide services outside the agreed scope, and if requested give you an estimate of the likely amount of the further costs.
20. Where our fees are calculated based on an hourly rate, the rates are set out in our letter of engagement. The differences in those rates reflect the experience and specialisation of our professional staff. Time spent on your behalf is recorded in six minute units, with actual time spent rounded up to the next six minute unit.
21. GST is payable by you on our fees and charges. In addition to our fees, we will charge you any actual third party costs as a disbursement.

### **Invoicing and Payment**

22. Our general terms of payment are 14 days from the date of the invoice, unless alternative arrangements have been agreed with you. Our invoices can be paid by direct bank transfer, credit card, cheque or cash. We will not provide you with a receipt unless you specifically request one.
23. For property transactions, our costs for a purchase or refinance are payable on settlement and for a sale will be deducted from the sale proceeds.



24. If you do not pay our invoice by the due date, we may stop acting for you. In the unlikely event that this happens, we will notify you that we intend to stop acting for you. You will continue to be responsible for paying our invoices for the work we have done for you and any default interest and costs which accrue in accordance with these terms.
25. If you fail to pay any amount on the due date, we may charge default interest on the amount outstanding calculated on a daily basis at our current overdraft rate plus 1% from the due date until the date on which we receive payment. You will also be liable for any enforcement costs incurred by us in pursuing payment including solicitor/client costs.
26. We assume that where we have sent you an invoice, you authorise use of any funds held by us on your behalf to pay the costs owed to us.

### **Money Handling Procedures**

27. Any funds which we receive from you, or on your behalf, are held on trust for you until distributed in accordance with your instructions.
28. Any funds which are paid to you by us will normally be paid by direct credit from our trust account to your bank account.
29. If you make a payment to us in uncleared funds, then we will wait until the funds have cleared before distributing the funds in accordance with your instructions.
30. Any money we hold for you will be placed on interest bearing deposit on call at Westpac as soon as you have completed the required Westpac FATCA form. If we hold the money for a short period of time only, then we will not put the money on interest bearing deposit unless the net interest to be earned is over \$20.00. Interest is paid quarterly and automatically compounded unless you instruct otherwise. We reserve the right to charge a commission of 5% on any net interest earned. If the interest earned is over \$50 in a year, we will send you a Resident Withholding Tax Certificate.

### **What to Do if You Have Concerns about Our Work or a Complaint**

31. We value our relationship with you. If at any time you have any concerns about our work, our costs, or a complaint, please contact the Principal who is supervising the work, or the Client Care Partner referred to in the letter of engagement.
32. We will endeavour to resolve your concern or complaint in an effective manner. The lawyer who is supervising the work will meet with you within a week of you first contacting us with your concern or complaint.
33. If we cannot resolve your concern or complaint through meeting with you, we will ask our Client Care Principal to review the matter and formally respond to you within two weeks of the matter being referred to that person.
34. If the Client Care Principal is unable to resolve this matter to your satisfaction, then we will assist you in referring your concern or complaint to the New Zealand Law Society Complaints Service. You have a right to raise any concern or complaint regarding our work with the Law Society at any time.



## **Ending the Engagement**

35. You can end your engagement with us at any time. Please notify us of this in writing and we will then send you an invoice for our fees and disbursements up to the date of termination. We will provide you with your documents, if you wish to have them, once you have paid us all amounts owed. We may keep a copy of any documents you take.
36. We may terminate our relationship with you in any of the circumstances set out in the New Zealand Law Society's Rules of Conduct and Client Care for Lawyers. These include where fees are not paid in accordance with our Terms.

## **Documents, Records and Information**

37. When we have completed the work you have instructed us to do, we will keep all important documents that relate to that work for at least ten years. At any time you can request we give you those documents, and we will give them to you when all our costs and disbursements have been paid – we may charge you a reasonable cost for providing the documents.
38. Where we keep your documents, you authorise us to destroy those documents ten years after the date of our final invoice. We may choose to destroy paper files earlier if we retain electronic copies of the file. This does not include any particular documents that you have given us for safekeeping, for example a will. We will hold the original of those particular documents on an ongoing basis.
39. We own copyright in all documents and work we create in the course of providing legal services to you, however we grant you a non-exclusive licence to use and copy the documents (without change) as you see fit for your own use. However, you may not permit any third party to copy, adapt or use the documents without our written permission.

## **Limitation on our Liability**

40. To the extent allowed by the 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 payable under the professional indemnity insurance held by the firm.

## **General**

41. These Terms of Engagement apply to any current work and also to any future work whether or not we send you another copy of these Terms.
42. We may change our Terms of Engagement from time to time, in which case we will advise you of the changes.
43. Our relationship is governed by New Zealand law.