

# CAPITAL CHAMBERS TERMS OF ENGAGEMENT

## 1 General

- 1.1 These Standard Terms of Engagement (Terms) apply in respect of all work carried out by me for you, my client, and to any current engagement and any future engagement, whether or not I send you another copy of them.
- 1.2 Not surprisingly our relationship is a legal one (governed by NZ law and New Zealand courts have exclusive jurisdiction) and that means there are some terms and conditions you need to be aware of before we start working together.
- 1.3 If anything in these Terms is not clear, or not aligned with how you would like the relationship to work, please let me know and we can work through the detail together.
- 1.4 There is no need to sign these terms in order to accept them. I may ask you to confirm your agreement to these terms in an exchange of correspondence, but otherwise your continued instructions to me means you are happy to keep working with me under these terms.
- 1.5 I am entitled to change these Terms from time to time, in which case I/we will put the amended Terms on the Capital Chambers website. I may ask you to confirm your agreement to such changes, but otherwise your continued instructions to me means that you agree to the amended terms.
- 1.6 I am a barrister sole. Professional rules require that most barristers generally have to take instructions from you through an instructing solicitor (generally through a firm of solicitors). There are some exceptions to this for barristers authorised to accept direct instructions and for some categories of work. I will let you know if I think that applies or, if you think you may be one of the exceptions to the general rule, then please ask me. I can advise you regarding what is required and can arrange for a suitable referring solicitor if one is required. If an exception applies then I may provide you with different terms and conditions that will apply (instead of these Terms), but unless otherwise indicated or agreed these Terms will apply.

## 2 Services

- 2.1 The services I am to provide for you (the Services) are outlined in my letter of engagement along with any further instructions that you or my instructing solicitor(s) provide to me in writing (or that we record in writing, or in appropriate instances (for example where there is urgency) when I have clear oral instructions).
- 2.2 In order to provide you with efficient advice and services and to provide the most cost-effective service, it may be that part or all of your instructions will be completed by or with the assistance of instructing solicitor(s), and in some cases with input or assistance of other specialist or junior barristers. I will endeavour to ensure that work-flows are handled efficiently between me and instructing solicitor(s), and other barristers assisting with this matter.
- 2.3 I am totally committed to doing my best to ensure that your legal needs are met, in accordance with my professional obligations. I will:

- a Protect and promote your interests and act for you free from compromising influences or loyalties.
  - b Discuss with you your objectives and how they can best be achieved.
  - c Act competently, in a timely way, and in accordance with instructions received and arrangements made.
  - d Provide you with information about the work to be done, who will do it and the way the services will be provided.
  - e Protect your privacy and ensure appropriate confidentiality.
  - f Treat you fairly, respectfully and without discrimination.
  - g Give you clear information and advice.
  - h Keep you informed about the work being performed and advise you when it is completed.
  - i Charge you a fee that is fair and reasonable and let you know how and when you will be billed.
  - j Let you know how to make a complaint and deal with any complaint promptly and fairly.
- 2.4 All lawyers have obligations to their clients and these are described in the Rules of Conduct and Client Care for Lawyers. We take these obligations very seriously and always act in accordance with them unless other overriding duties like our duties to the courts and to the justice system prevail.

### **3 Duty of Care**

- 3.1 My duty of care is to you and not to any other person in respect of the matters on which you have instructed me. Before any other person may rely on advice provided, I must expressly agree to this.
- 3.2 I owe no liability to any other person, including for example any directors, shareholders, associated companies, employees or family members unless I expressly agree in writing. I do not accept any responsibility or liability whatsoever to any third parties who may be affected by my performance of the Services or who may rely on any advice I give, except as expressly agreed by me in writing.
- 3.3 My advice is not to be referred to in connection with any prospectus, financial statement, or public document without my written consent.
- 3.4 My advice is opinion only, based on the facts known to me and on my professional judgement, within the parameters of your instructions (including any limitations on the scope of my role), and is subject to any changes in the law after the date on which the advice is given. I am not liable for errors in, or omissions from, any information provided by third parties.
- 3.5 My advice relates only to each particular matter in respect of which you engage me. Once that matter is at an end, I will not owe you any duty or liability in respect of any related or other matters unless you specifically engage me in respect of those related or other matters.

- 3.6 Unless otherwise agreed, I may communicate with you and with others by electronic means. I cannot guarantee that these communications will not be lost or affected for some reason beyond my reasonable control, and I will not be liable for any damage or loss caused thereby.

## **4 Communications**

- 4.1 I will obtain from you contact details, including email address, postal address and telephone numbers. I may provide documents and other communications to you by email (or other electronic means). You will advise me if any of your contact details change.
- 4.2 I will report to you periodically on the progress of any engagement and will endeavour to keep you informed 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.

## **5 Financial**

- 5.1 My invoices are usually rendered to my instructing solicitor(s), who will then send you an invoice for the amount of my invoice, as a disbursement. In addition to any and all other obligations that my instructing solicitor(s) has to pay my fees and expenses, on receipt of an invoice from me my instructing solicitor(s) will render the corresponding disbursement invoices to you as soon as reasonably possible; and my instructing solicitor will use all reasonable endeavours to ensure the account is paid.
- 5.2 In some cases, including if you are instructing me directly or otherwise if we agree, I will invoice you directly. In those circumstances I, or my instructing solicitor(s) on my behalf (if there is one), may use all reasonable endeavours to ensure the account is paid.
- 5.3 **Fees:** The basis upon which I will charge my fees is set out in our engagement letter.
- a If the engagement letter specifies a fixed fee, I will charge this for the agreed scope of the Services. Work which falls outside that scope will be charged on an hourly rate basis. I will advise you as soon as reasonably practicable if it becomes necessary for me to provide services outside of the agreed scope and, if requested, give you an estimate of the likely amount of the further costs.
  - b Where my fees are calculated on an hourly basis, the hourly rate will be set out in my engagement letter or will be agreed with my instructing solicitor(s) (who would then cover those rates in their engagement letter to you). Where you will (or should) know my hourly rate already because I have worked for you, or my instructing solicitor(s), before and I do not advise otherwise, then my fees will be the same rate that has applied previously (most recently) for such work.
  - c If I am expecting to involve other barristers to undertake some of the work I will identify the people I expect to undertake the work and their rate(s) in advance if that is practicable, but I may at times seek such input without prior notice. Any differences in the rates for other barristers will generally reflect the different levels of experience and specialisation of those other people. I may also give you some indications regarding instructing solicitors' role and rates, but generally they will provide that information to you.
  - d My fee will be fair and reasonable in all the circumstances. I will record time spent on a file at an hourly rate plus GST where I think that is appropriate or necessary (or if

specifically required by you), but the time and labour expended is only one of the factors which I will take into account in setting the fee. Other factors to be considered include the skill, specialised knowledge and responsibility required to undertake the matter, my assessment of the value of the work, urgency and complexity.

- e My invoice will include any New Zealand goods and services tax (GST) as required by law.
- f Hourly fees may be adjusted (upwards or downwards) to ensure the fee is fair and reasonable to take into account matters such as the complexity, urgency, value and importance of the Services. Full details of the relevant fee factors are set out in Rule 9 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (Rules).

5.4 **Disbursements and Third Party Expenses:** In providing the Services I may incur disbursements and payments to third parties on your behalf. Disbursements (such as travel and accommodation expenses and bulk photocopying, typing or document assembly) will be in addition to my fees. I will normally require you to pay any substantial disbursements, (e.g. Court fees, process servers and experts) directly or to my instructing solicitor(s), and I may require you to make payments in advance to put my instructing solicitor(s) in a position to meet such costs.

5.5 **GST:** My services will usually attract Goods and Services Tax (GST). If this is the case, GST is payable by you on my fees and charges.

5.6 **Payment:** Invoices are payable by the 20<sup>th</sup> of the month of the date of the invoice, unless alternative arrangements have been made with me. I usually render invoices every month and require payment by the 20<sup>th</sup> of the month following the date of the invoice. If the time for payment is different it will be stated on the invoice.

- a Where you ask me or my instructing solicitor(s) to address an invoice to another person (or another legal entity), if that is done you will pay that re-addressed invoice if that other person or entity does not pay that invoice.
- b My invoice may be paid into my personal account details of which are given on my invoices. Where my fees are charged for as a disbursement by the instructing solicitor, as part of his invoice, they may be paid through the solicitor
- c If you have difficulty in paying any of my accounts, please contact me or my instructing solicitor(s) promptly so that we may discuss your options, including payment arrangements.
- d If your account is overdue I may:
  - i require you to pay interest calculated on a daily basis from the date the invoice was due until the date of payment at a rate equivalent to the Westpac Banking Corporation floating mortgage rate at the date of the invoice plus 2% per annum;
  - ii stop work on any matters in respect of which I am providing services to you;
  - iii require an additional payment of fees in advance or other security before recommencing work;
  - iv recover from you in full any costs incurred by me and/or my instructing solicitor(s) (including on a solicitor/client basis) in seeking to recover the amounts from you,

including my and/or my instructing solicitors' own fees and the fees of any collection agency.

- 5.7 I may require you to deposit money into my instructing solicitors' trust account to be held on account of my fees before commencing work. Money held on account of fees is not an estimate or quote for the services I am providing. It will not necessarily all be used, and my expectation is that any balance held by my instructing solicitor(s) will be repaid to you at the conclusion of the proceedings (although that is a matter for you and my instructing solicitor(s)). Equally, it may prove insufficient and further funds on account of fees could be required later. (Alternatively, in some cases I or my instructing solicitor(s) may suggest that you maintain a deposit amount in my instructing solicitors' trust account to be held on account of my and/or instructing solicitors' fees, on the basis that as the deposited funds are applied to meet legal costs you will make top up payments to maintain the deposit amount throughout the course of the matter.)
- 5.8 **Estimates:** You may request an estimate of my fee for undertaking the Services at any time. If possible, I will provide you with an estimate (which may be a range between a minimum and a maximum amount or for a particular task or step). An estimate is not a quote. Any significant assumptions included in the estimate will be stated and you must tell me if those assumptions are wrong or change. I will endeavour to inform you as soon as I reasonably can if I consider that I am likely to exceed the estimate by any substantial amount. Unless specified, an estimate excludes GST, disbursements and expenses.
- 5.9 **Third Parties:** Although you may expect to be reimbursed by a third party for my fees and expenses, and although my invoices may at your request or with your approval be directed to a third party, you remain responsible for payment to us in accordance with these Terms if the third party fails to pay me.

## 6 Confidentiality and Personal Information

- 6.1 I will hold in confidence all information concerning you and your affairs that I acquire during the course of acting for you. Similarly, information that I have obtained through acting for other clients belongs to them and I am not able to disclose it to you. I will make reasonable efforts to ensure that electronic services and communications that I provide to you will always be accurate, reliable, adequate, complete, confidential and secure. But, because of the nature of such services and communications I do not warrant or represent that they will be accurate, reliable, adequate, complete, confidential and secure.
- 6.2 I will not disclose any of this information to any other person except:
- a to the extent necessary or desirable to enable us to carry out your instructions; or
  - b as expressly or impliedly agreed by you; or
  - c as necessary to protect my interests in respect of any complaint or dispute; or
  - d to the extent required or permitted by law, and/or in accordance with the Law Society's Rules of Conduct and Client Care for Lawyers.
- 6.3 **Personal information and Privacy:** In my dealings with you I will collect and hold personal information about you. I will use that information to carry out the Services. Provision of personal information is voluntary but if you do not provide full information this may impact on my ability to provide the Services.

- 6.4 Subject to the above you authorise me to disclose, in the normal course of performing the Services, such personal information to third parties for the purpose of providing the Services and any other purposes set out in these Terms.
- 6.5 I 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.
- 6.6 The information I collect and hold about you will be kept at my chambers and/or at secure file storage sites (including electronic file storage sites) elsewhere. If you are an individual, you have the right to access and correct this information. If you require access, please contact me.
- 6.7 **Verification of identity:** This clause will apply only if and to the extent that the *Financial Transactions Reporting Act 1996* currently, or at some future time, requires me to collect from you and to retain information required to verify your identity in prescribed circumstances. I may therefore ask you to show us documents verifying your identity (such as a passport or driver's licence). I may retain copies of these documents. I may perform such other customer verification checks as to your identity and checks as to the source of any funds associated with any transaction to which the Services relate as may be required by law. I will let you know if I think this clause applies, and what I therefore require from you.

## 7 Documents, Records and Information

- 7.1 I will keep a record of all important documents which I receive or create on your behalf on the following basis:
- a I may keep a record electronically and destroy originals (except where the existence of an original is legally important such as in the case of wills and deeds).
  - b At any time, I may dispose of documents which are duplicates, or which are trivial (such as emails which do not contain substantive information), or documents which belong to me.
  - c I am not obliged to retain documents or copies where you have requested that I provide them to you or to another person and I have done so, although I am entitled to retain copies for my own records if I wish to do so.
- 7.2 I will provide to you on request copies or originals (at my option) of all documents to which you are entitled under the Privacy Act 1993 or any other law. I may charge you my reasonable costs for doing this.
- 7.3 However, you should be aware that if my engagement is terminated I am entitled to retain your files (my files regarding your matter) until my invoices are paid in full.
- 7.4 Where I hold documents that belong to a third party you will need to provide me with that party's written authority to uplift or obtain a copy of that document.
- 7.5 Unless you instruct me in writing otherwise, you authorise me and consent to me (without further reference to you) to destroy (or delete in the case of electronic records) all files and documents in respect of the Services 7 years after my engagement ends (other than any documents that I hold in safe custody for you or are otherwise obliged by law to retain for longer). I may retain documents for longer at my option.

- 7.6 I may, at my option, return documents (either in hard or electronic form) to you or to my instructing solicitor(s) rather than retain them. If I choose to do this, I will do so at my expense.
- 7.7 I own copyright in all documents or work I create in the course of 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 my written permission.

## **8 Compliance**

- 8.1 I am obliged to comply with all laws applicable to me in all jurisdictions, including (so far as they apply, but not limited to):
- a Anti-money laundering (AML) and countering financing of terrorism (CFT) laws; and
  - b Laws relating to tax and client reporting and withholdings.
- 8.2 I may be required to undertake customer due diligence on you, persons acting on your behalf and other relevant persons such as beneficial owners and controlling persons. I may not be able to begin acting, or to continue acting, for you until that is completed.
- 8.3 To ensure my compliance and yours, I may be required to provide information about you, persons acting on your behalf or other relevant persons to third parties (such as government agencies). There may be circumstances where I am not able to tell you or such persons if I do provide information.
- 8.4 Please ensure that you, and any of the persons described previously in these Terms (or identified in other correspondence regarding my instructions) to whom this would relate, are aware of and consent to the compliance arrangements set out in these Terms. It is important to ensure that all information provided to me is accurate. If the information required is not provided, or considered by me to be potentially inaccurate, misleading, or in contravention of any law, I may terminate or refuse to enter into an engagement.

## **9 Conflicts of Interest**

- 9.1 I am obliged to protect and promote your interests to the exclusion of the interests of third parties and ourselves as set out in the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (Rules). This may result in a situation arising where I have a conflict of interest.
- 9.2 I have procedures in place to identify and respond to conflicts of interest or potential conflicts of interest. If a conflict of interest arises I will advise you or my instructing solicitor(s) and follow the requirements and procedures set out in the Law Society's Rules of Conduct and Client Care for Lawyers. This may mean that I, and/or my instructing solicitor(s), cannot act for you further in a particular matter and that I and/or my instructing solicitor(s) may terminate our engagement.

## **10 Termination**

- 10.1 You may terminate my retainer at any time. Although, where you have given me an instruction that I have relied on you may not revoke that instruction.

- 10.2 I may terminate our retainer in any of the circumstances set out in the Rules including the existence of a conflict of interest, non-payment of fees, and failure to provide instructions.
- 10.3 If my retainer is terminated you must pay me all fees, disbursements and expenses incurred up to the date of termination.
- 10.4 If my engagement is terminated then these Terms will continue to apply to the extent that it is appropriate and/or implicit (as to confidentiality and privacy, and in respect of payment of fees and other sums due, for example).

## **11 Feedback and Complaints**

- 11.1 Client satisfaction is one of my primary objectives and feedback from clients is helpful to and welcomed by me. If you would like to comment on any aspect of the service provided by me, including how I can improve my service, please let me know
- 11.2 If you have any concerns or complaints about my services, please raise them as soon as possible with me. I will respond to your concerns as soon as possible.
- 11.3 If you are not satisfied with the way I have dealt with your complaint the New Zealand Law Society has a complaints service to which you may refer the issue. You can call the 0800 number for guidance, lodge a concern or make a formal complaint. Matters may be directed to:

Lawyers Complaints Service  
PO Box 5041  
Wellington 6140  
New Zealand

Phone: 0800 261 801

To lodge a concern:

[www.lawsociety.org.nz/for-the-community/lawyers-complaints-service/concerns-form](http://www.lawsociety.org.nz/for-the-community/lawyers-complaints-service/concerns-form)

To make a formal complaint:

[www.lawsociety.org.nz/for-the-community/lawyers-complaints-service/how-to-make-a-complaint](http://www.lawsociety.org.nz/for-the-community/lawyers-complaints-service/how-to-make-a-complaint)

Email: [complaints@lawsociety.org.nz](mailto:complaints@lawsociety.org.nz)