

# Simmonds Stewart

Applied Commercial Law

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## TERMS OF ENGAGEMENT

### 1. These terms

- 1.1 We will provide you with legal services on and subject to these terms.
- 1.2 Unless we have agreed otherwise, these terms apply whenever you engage Simmonds Stewart to act for you. You accept and agree to these terms by continuing to engage us after we have provided them to you or have notified you of the webpage on which these terms may be reviewed by you.

### 2. Our services

- 2.1 We will provide our services:
  - a in accordance with your reasonable instructions;
  - b in a timely fashion;
  - c in an efficient manner; and
  - d with reasonable skill and care in accordance with applicable laws and legal professional duties.
- 2.2 If we consider that we do not have the necessary expertise to carry out all or any part of the services requested by you, we will promptly advise you and agree with you an appropriate course of action.
- 2.3 We may decline your instructions to act on a new matter if we have good cause to do so (including where we have a conflict of interest or a lack of available time). If this happens, we will promptly contact you.
- 2.4 Either of us may terminate our engagement on a matter, provided that, in our case, we must have good

cause and must give reasonable notice that sets out the grounds for terminating our engagement. If our engagement is terminated, you will pay our fees for work done and other charges incurred up to and including the termination date.

- 2.5 Our advice is provided, and our duties are owed, to you only. Our advice may not be used or relied upon by other persons (including persons closely associated with you) unless we agree to this in writing.

- 2.6 You agree and represent that you are acquiring our services for the purposes of a business and that the Consumer Guarantees Act 1993 does not apply to the supply of our services or these terms.

### 3. Your obligations

You will:

- a use our services efficiently and appropriately, for lawful purposes only;
- b provide us with clear instructions regarding the legal services you require us to perform; and
- c use reasonable endeavours to assist us to perform our services in accordance with these terms, including providing information, comments and feedback, or clarifying your instructions as reasonably requested by us.

### 4. Our fees

- 4.1 We will charge you fees for the performance of our services on the basis agreed with you prior to starting each new matter.
- 4.2 Our legal fees will be fair and reasonable, having regard to both of our interests and the reasonable fee factors set out in the New Zealand Law Society's *Rules of Conduct and Client Care for Lawyers*. These factors

include the time spent by us in performing the services, the skills, specialised knowledge and responsibility required, the results achieved, and the urgency of the matter.

4.3 We will add to our fees:

- a our office services charge which is set at a rate of 3% of our fees. This charge covers most expenses we incur when acting for you including photocopying, standard on-line searches, faxes, phone calls and courier costs; and
- b any third party costs incurred by us in performing our services in accordance with your instructions, including travel costs when we are required to travel, wiki hosting charges, third party professional fees, and registration and filing costs.

4.4 Our fees and other charges are exclusive of New Zealand GST which (if applicable) will be payable by you in addition to our fees and other charges.

4.5 We will normally invoice you for our fees and other charges on a monthly basis. Our invoices will include a summary of the work carried out during the billing period and any other information reasonably requested by you.

4.6 Subject to clause 4.7, you will pay our invoices in full without deduction or set off within 7 days of receipt of our invoice. If you do not make payment by the due date, we may:

- a charge you interest on the overdue monies at a rate of 5% per annum over the then current commercial overdraft rate charged by our main commercial bank. We will charge this interest on a day to day basis from the due date until all monies owing, including all interest, have been paid in full; and/or

- b cease all current work for you and retain your papers and files until all accounts are paid; and/or

- c start proceedings against you to recover all amounts owed (including interest and collection costs).

4.7 You may, on reasonable grounds, query or dispute an invoice. We will provide you with information you reasonably request in respect of that invoice and we will each use our best endeavours in good faith to resolve the query or dispute. You may, acting in good faith, withhold the relevant portion of the amount payable under that invoice until the query or dispute is resolved.

4.8 If requested, we will provide you with an estimate of the fees that you will incur for a matter. This is a guide for your general information and is not a fixed quote. Estimates do not include GST or other charges.

## 5. Confidentiality

5.1 Any information that you provide to us will be kept confidential unless (and only to the extent that) disclosure is authorised by you or is required by law or the New Zealand Law Society's *Rules of Conduct and Client Care for Lawyers*.

## 6. General

6.1 These terms are governed by New Zealand law and you agree that you are subject to the non-exclusive jurisdiction of the New Zealand courts.

6.2 Your rights under these terms are personal to you and may not be assigned or transferred in any way.

6.3 To the extent that clauses in these terms are, by their nature, intended to survive termination of our engagement, those clauses continue and are enforceable after that termination