

## Standard terms & client information

Effective 1 April 2020

### Standard terms

#### 1. Introduction

- 1.1 These terms apply to work carried out by Matthews Law (**we** or **us**) for our clients (**you**), except to the extent that we agree otherwise in writing. We can change these terms by notice to you or by publication on our website. Changes will be effective immediately. Your continued instructions will confirm your acceptance of our terms and any changes to them.
- 1.2 These terms include information which the Rules of Conduct and Client Care for Lawyers of the New Zealand Law Society (**NZLS Rules**) require us to provide you.

#### 2. Our services and advice

- 2.1 The services we will provide to you, and the name and status of the person(s) responsible for those services, will be set out in an engagement letter or email or incorporated in correspondence between us (**engagement terms**).
- 2.2 We will represent you on legal matters within the scope of the engagement terms. We rely on you providing full instructions, and our advice assumes that you advise us of all relevant facts.
- 2.3 Our advice is solely for your benefit, and must not be disclosed to, or relied on by, third parties (except your other advisors or as required by law) without our written consent (not to be unreasonably withheld). Our advice is limited to the matters specified in it and is subject to any changes in law.
- 2.4 We are only responsible for advising on New Zealand law. We are not responsible for advising you on tax matters. We can engage, or facilitate your engagement of, other experts (eg specialist lawyers or economists) to advise on aspects of a matter with your consent.
- 2.5 When your instructions on a matter are completed, our engagement for that matter will end. We are not obliged to notify you of subsequent law changes or to provide further services relating to that matter.

#### 3. Confidential information

- 3.1 We will not disclose any confidential information which we obtain as your lawyers to any other person, except to the extent required by law or the NZLS Rules, or where you authorise us to do so. Nor will we disclose confidential information about our other clients to you.
- 3.2 We can disclose information about you that we have acquired in our professional relationship if it is widely known or a matter of public record. We can disclose that you are a client, and our involvement in any public or non-confidential matters, to reputable legal directories for ranking purposes.
- 3.3 We have no duty to disclose information to you which is not known to the lawyers advising you on your matter, or is otherwise subject to privilege, or which is confidential to another client. If any of our lawyers undertakes activities outside the firm (such as a directorship, trusteeship or other governance role) information obtained in those roles is private to the individual and we have no obligation to you in relation to that.

#### 4. Conflicts of interest

- 4.1 We will comply with the NZLS Rules in respect of conflicts of interests. Acting for another client on a separate matter does not normally constitute a legal conflict, even if the other client's interests differ to yours.

4.2 However our work is often strategically significant, especially in the core competition and regulatory areas. Consequently where possible we prefer to have ongoing relationships with clients and to act for one major player in an industry at any time (exceptions may include situations where there are common interests, where parties are not material competitors, and where we receive international and domestic “one-off” type referrals). In return we seek a level of commitment from our clients and open discussions about expected workflows.

## 5. Fees and related financial matters

5.1 **Our fees:** We will charge you for the services at our standard rates for the relevant work, except to the extent we agree otherwise in our engagement terms.

5.2 We encourage fixed fee work (where practical), and are happy to provide estimates (where appropriate) or work to particular cost parameters. If provided, estimates will be a guide only. We prefer to scope work at the outset so that you and we are clear on the work required where possible. We can charge you a fee for scoping larger projects or unique matters to the extent this involves consideration of legal issues.

5.3 Our fees are charged in accordance with the NZLS Rules, which require that fees be fair and reasonable for the services provided.

5.4 Our fees usually reflect the time spent based on our hourly rates but this may be adjusted to reflect other factors permitted by the NZLS Rules (for example, skill and specialist knowledge, the matter’s importance, the result achieved, urgency, risk, complexity, novelty, the possibility that acceptance of the instructions precludes our engagement by other clients, and fees customarily charged for such matters). Unless otherwise agreed in writing, any work that is “out of scope” or unscoped (including supplementary reporting or explanations, and any additional work we do because any of our assumptions are not correct) will be charged on that basis.

5.5 Our hourly rates are periodically reviewed and can change. Any change will take effect from 1 January each year or otherwise from the date we advise you of the change.

5.6 **Other charges (expenses):** We may incur expenses (disbursements) on your behalf. You will be liable for these and we can require advance payment of them. These may include third party costs such as filing fees, photocopying (if outsourced for larger volumes of work), barristers’ or other specialists’ fees and expenses, offshore client-related bank fees, couriers or travel-related costs. We will discuss any major or unusual expenditure with you before incurring those costs.

5.7 **Office services:** We will charge you a standard service charge (at a rate of 4% of the amount of our fee) to cover general office services provided by us (for example: general photocopying, printing, phone charges, deliveries and postage).

5.8 **GST (if any):** This is payable by you on our fees and expenses.

5.9 **Invoices:** We will generally issue invoices monthly and on completion of the matter (or termination of our engagement). For new clients or on particular projects we may issue invoices on a more regular (eg weekly) basis. We can also issue an invoice when we incur a material expense.

5.10 Our invoices do not usually include itemised or hourly breakdowns of our attendances. We are happy to provide time records on request.

5.11 **Payment:** Invoices are payable within 14 days of the invoice date.

5.12 **Overdue amounts:** Interest will accrue on any overdue amounts from the day after payment was due until the day payment is made in full. Interest will be payable on demand and will be calculated at the rate 5% above our main trading bank’s 90-day bank bill buy rate as at the close of business on the day payment became due. You agree to pay any costs we incur in recovering overdue amounts from you.

5.13 **Third parties:** You are responsible for payment of our invoices on the due date even if you expect to be reimbursed by a third party (even if our invoices are directed to a third party).

## **6. Termination, suspension and assignment**

- 6.1 You can terminate our engagement at any time by written notice. We can terminate our engagement in any circumstances set out in the NZLS Rules.
- 6.2 If any amounts you owe us are overdue then, unless and until you pay those amounts in full, we can stop providing services to you and you will not be entitled to rely on any advice we have provided to you.
- 6.3 Enforceability of these terms is not affected by our engagement being terminated. If our engagement is terminated for any reason, you must pay us all fees accrued up to the date of termination and all expenses incurred up to that date, together with the costs of recovery.
- 6.4 You can only assign or transfer your rights under this agreement with our written consent.

## **7. Retention of files and documents**

- 7.1 Our files are generally stored electronically with third party providers. You authorise us (without reference to you) to:
- a. destroy all physical files and documents for any matter at any time if we hold or have converted those files and documents to an electronic format and choose to do so; and
  - b. destroy all files and documents (including electronic copies) for any matter 7 years after our engagement ends if we choose to do so.
- 7.2 If you provide us with copies of additional documents/information that we do not need to hold for the purposes of our ongoing advice (for example, a USB stick with copies of a large volume of documents prepared in response to a regulatory investigation or information request) you authorise us (without reference to you) to destroy those documents/that information at any time if we choose to do so, provided we retain all underlying advice and related work product.
- 7.3 If you uplift your files and documents we may first make copies (in any format) at your cost for our records, and require you to settle any outstanding invoices.

## **8. Intellectual property (IP)**

- 8.1 We retain all ownership rights in IP created by us, but grant you a non-exclusive licence to use and copy all documentation created by us for you in connection with our engagement. We can suspend or revoke that licence if any amounts you owe us are overdue. You must not reproduce our IP or provide it to a third party without our written consent.

## **9. Electronic communications**

- 9.1 We may communicate with you and others by electronic means. We are not responsible for, or liable for, any damage or loss caused in connection with the interception or corruption of an electronic communication.

## **10. Professional indemnity (PI) insurance**

- 10.1 We hold PI Insurance that meets or exceeds the minimum standards specified by the NZLS. We will provide you with particulars of the minimum standards upon request.

## **11. Limitation of liability**

- 11.1 Our aggregate liability to you and any of your related parties in connection with any matter (or series of related matters) is limited to and will not exceed:
- a. the amount available to be paid out under our relevant insurance policy; or
  - b. where no amount is available to be paid out under our relevant insurance policy, 5 times our fees applicable to the matter (or series of related matters), excluding office services charges, disbursements and GST.

## 12. Privacy

- 12.1 We will collect, use and hold personal information about you for the purposes of providing services to you. We will do so in accordance with our privacy policy published on our website.

## 13. Consumer Guarantees Act and Fair Trading Act

- 13.1 If you acquire the services for business purposes you and we agree that the provisions of the Consumer Guarantees Act 1993, and sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986, will not apply and that contracting out of these provisions is fair and reasonable.

## 14. Lawyers' Fidelity Fund

- 14.1 The NZLS maintains the Lawyers' Fidelity Fund for the purpose of providing clients of lawyers with protection against pecuniary loss arising from theft by lawyers. The maximum amount payable by the Fidelity Fund by way of compensation to an individual claimant is limited to \$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.

## 15. Complaints

- 15.1 We maintain a procedure for handling any complaints by clients, designed to ensure that a complaint is dealt with promptly and fairly. If you have a complaint about our services we would be happy to meet with you to discuss it so that we can attempt to resolve it as quickly and amicably as possible. Email [practice.manager@matthewslaw.co.nz](mailto:practice.manager@matthewslaw.co.nz) in the first instance. If you do not wish to do so, or we cannot resolve the complaint, we invite you to refer the complaint to another solicitor who may act as an intermediary to resolve any outstanding issues.
- 15.2 If you do not wish to do the above, or you are not satisfied with the response to your complaint, you may contact the NZLS Lawyers Complaints Service. To do so, call **0800 261 801** and you will be connected to the nearest Complaints Service Office, which can provide information and advice about making a complaint.

## 16. Governing law

- 16.1 Our relationship with you is governed by New Zealand law and New Zealand courts have non-exclusive jurisdiction.

## Client care & service information

We are committed to complying with the NZLS Rules. Key elements are as follows.

Whatever legal services we provide, we 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 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.

Please visit [www.lawsociety.org.nz](http://www.lawsociety.org.nz) or call **0800 261 801** if you have any questions.