



NICOLA GOSS LAW LIMITED – TERMS OF ENGAGEMENT & CLIENT CARE INFORMATION

Welcome and thanks for the opportunity to work with you. Before we (Nicola Goss Law Limited) can start providing your 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 (**NZLS Rules**) 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, we will send you the updated terms. If you continue to instruct us following the 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 nicola@gosslaw.co.nz.

2. Services

2.1 For each new job we do for you, we will give you a "letter of engagement". The letter of engagement will outline the work that we are expecting to do for you (**services**), the basis on which fees for that work will be charged and the name of the person who will have overall responsibility for that work.

2.2 When appropriate, other staff may also be involved, under that person's supervision (e.g. where involving another staff member enables us to do the work more efficiently, quickly, and at a lower cost to you).

2.3 Our duty of care is to you, the client named in our letter of engagement, 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. Who we can accept instructions from

3.1 Unless you let us know otherwise, you agree that we can accept instructions from any of the following:

- If you are a **couple**, we can accept instructions from either of you;
- If you are a **trust**, we can accept instructions from any of the trustees or officers of that trust;
- If you are a **company**, we can accept instructions from any of the directors or employees or any other person you have authorised to instruct us;
- If you are a **partnership**, we can accept instructions from any of the partners or officers of that partnership;

- If you are a **body corporate** or **incorporated society**, we can accept instructions from any person holding themselves out as being authorised by the officers to instruct us.

4. Communications

- 4.1 We will ask you for contact details, including email address, postal address and telephone numbers. You will advise us if any of your contact details change.
- 4.2 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.
- 4.3 Unless otherwise agreed, we may communicate with you and with others by email (or other 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.
- 4.4 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.

5. Verifying your identity/ Credit Checks

- 5.1 You authorise us to collect information about you (including customer due diligence information and credit reports), and to make any other enquiries we think appropriate to:
- carry out reasonable credit checks on you
 - confirm information provided to us about you is true
 - undertake initial and ongoing customer due diligence and monitoring in accordance with the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (**AML/CFT Act**) and to enable us to meet our obligations under the United States Foreign Account Tax Compliance Act (**FATCA**) and the Common Reporting Standard (**CRS**)
 - enforce debt and legal obligations (including recovering money owed to us)
 - comply with any other legal obligations we may have
- 5.2 You authorise any person (including credit reporters) to disclose information (including credit information) to us in response to such enquiries.
- 5.3 You accept that we may use third party services (each a **service provider**) to verify your identity and conduct other customer due diligence or monitoring required under the AML/CFT Act, and for credit checking. When we use these services:
- each service provider will exchange information about you for that purpose and the service provider may hold information on its system (which you may request and access) and use it to provide their customer due diligence or credit reporting service (as the case may be) to their other customers;
 - we may use the service provider's services in the future for any authorised purpose (including in relation to ongoing customer due diligence or the provision of credit). This may include using the service provider's monitoring services to receive updates if information held about you changes; and
 - if you default in your payment obligations to us, information about that default may be given to credit reporters and given by credit reporters to their other customers.

6. Compliance

- 6.1 Some of the laws that we must comply with may affect you. These laws include:
- AML/CFT Act; and
 - Laws relating to tax and client reporting and withholdings.
- 6.2 We may be required by law to undertake customer due diligence on you, persons acting on your behalf and other relevant persons such as beneficial owners and controlling persons. We may not be able to begin acting, or to continue acting, for you until that is completed.
- 6.3 We may be required to provide information about you, persons acting on your behalf or other relevant persons to third parties (such as government agencies). We may also be required to disclose information about a transaction that you are involved in if required by law. There may be circumstances where we are not able to tell you if we do provide information. By engaging us, you consent to, and waive any right to be advised of, the disclosures described in this clause 6.3.
- 6.4 Please ensure that you and/or any of the persons described previously are aware of and consent to this. It is important to ensure that all information provided to us is accurate. If the information required is not provided, or considered by us to be potentially inaccurate, misleading, or in contravention of any law, we may terminate or refuse to enter into any engagement.
- 6.5 We have no liability to you:
- if we cannot provide you, or complete, the services (including completing a transaction) because you have not supplied information that we have asked for.
 - for any impact on you (including a delay, investigation or other event) resulting from our compliance with our legal obligations.

7. Your privacy and confidentiality

- 7.1 We consider client confidentiality to be extremely important. We will treat all information we hold about you as private and confidential. We will not use it or share it unless:
- You agree or ask us to;
 - We need to so that we can carry out our work for you;
 - The law requires us to (e.g. AML/CFT Act, IRD, The Financial Markets Authority, and other government agencies can compel us to provide information), or the NZLS Rules allow us to.
- 7.2 The assurances in clause 7.1 are subject to the provisions at clause 5 regarding use of information for the purpose of credit checks/control and verification of identity and at clause 6 regarding compliance.
- 7.3 Information concerning you will be held at our office and/or at secure electronic file storage sites elsewhere. If you are an individual, you have the right to access and correct this information.

8. Fees, Invoicing and Payment

Fees

- 8.1 The basis on which fees will be charged is set out in our letter of engagement and these Terms.
- 8.2 Where possible, we will give you a fixed fee for an agreed scope of work. Where this is not possible, we will 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.
- 8.3 Our fees will be calculated in accordance with the NZLS Rules for a fair and reasonable fee and will take into account several factors including:
- the time and labour expended;
 - the skill, specialised knowledge, and responsibility required to perform the services properly;
 - the importance of the matter to you and the results achieved;
 - the urgency and circumstances in which the matter is undertaken and any time limitations imposed, including those imposed by you;
 - the degree of risk assumed by us in undertaking the services, including the amount or value of any property involved;
 - the complexity of the matter and the difficulty or novelty of the questions involved;
 - the experience, reputation, and ability of the person who acts for you;
 - the possibility that the acceptance of the particular retainer will preclude employment of that person by other clients;
 - whether the fee is fixed or conditional (whether in litigation or otherwise);
 - any quote or estimate of fees given to you by us;
 - any fee agreement (including a conditional fee agreement) entered into between you and us;
 - the reasonable costs of running a practice; and
 - the fee customarily charged in the market and locality for similar legal services.

GST

- 8.4 Our services will usually attract Goods and Services Tax (**GST**). If this is the case, GST is payable by you on our fees and charges.

Disbursements and Office Expenses

- 8.5 In addition to our fees, we will charge you for any expenses and disbursements incurred by us to third parties on your behalf (e.g. search fees, court filing fees, registration fees, third-party verification service fees for verifying your identity and address, travel and courier charges). You authorise us to incur these expenses which will be shown separately on our invoice. We may also charge a fee to cover our out of pocket costs which are not included in our fee and which are not covered by disbursements. These include items such as photocopying, printing, postage and phone calls. This fee will be between \$20 and \$100 per matter, depending on expenses incurred.
- 8.6 We reserve the right to request payment of these disbursements from you in advance.

Invoices

- 8.7 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

- 8.8 For conveyancing matters (i.e. sale, purchase or refinancing transactions), payment of our fees, expenses and disbursements is required on settlement of the transaction. You agree to us:
- requiring that fees, expenses and disbursements be received from you or your lender prior to settlement of a purchase or refinancing transaction and deducting the same upon settlement; and
 - deducting our fees, expenses and disbursements from your sale proceeds, unless another arrangement is agreed with us in writing prior to settlement.
- 8.9 For all other matters, payment is required within 7 days of the date of the invoice, unless alternative arrangements have been made with us.
- 8.10 You authorise us to deduct our fees, expenses and disbursements 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.
- 8.11 If our invoices are not paid by the due date, we may charge interest at the rate of 2% per calendar month calculated on a daily basis and charged monthly from the date when payment becomes due until the date of payment.
- 8.12 We may also take action to recover unpaid invoices. You will be liable for all costs and disbursements we incur in seeking payment of our invoices including but not limited to legal costs on a solicitor and own client basis, debt collection agency costs and bank dishonour fees.
- 8.13 Any failure or delay by us to charge interest on an unpaid invoice or to exercise any of our other rights will not operate as a waiver of those rights.
- 8.14 At your request or with your approval, we may send our invoices to a third party to pay on your behalf. You are still responsible for payment by the due date if the third party does not pay us.

9. Trust Account

- 9.1 We operate a trust account for all funds received from clients (except those received for payment of our invoices).
- 9.2 Where we are holding funds on your behalf our policy is that funds will only be placed on interest bearing deposit in the following circumstances:
- Where, having regard to the amount of the funds held and the time for which they are likely to be held, the total gross interest accrued is likely to exceed \$200.00;

- You have provided us with your IRD number;
- You have provided us with your marginal tax rate;
- You have provided us with all necessary information for us to complete customer due diligence under the AML/CFT Act; and
- You have provided us with the necessary information to comply with FATCA and CRS.

9.3 We charge a 5% administration fee on the gross interest earned on funds held on interest bearing deposit.

9.4 We are not responsible for obtaining the best interest rate available, or for any loss of interest from delay in placing your funds in an interest bearing deposit account.

9.5 Withholding tax will be deducted on the interest earned and paid to the IRD. If we have your IRD number, you can elect to have withholding tax deducted at your applicable rate. If we do not have your IRD number, we are required to deduct tax at the default rate (which may be higher than your actual rate).

9.6 Where you transfer funds to our trust account in a foreign currency, we will convert those funds into New Zealand dollars at the prevailing exchange rate offered by our bank. We are not responsible for seeking or obtaining a better exchange rate.

10. Scope of our work

10.1 We are not qualified to give:

- Investment advice. You should obtain that advice from a qualified financial advisor;
- Tax advice. You should obtain that advice from your accountant or tax advisor; or
- Advice about foreign laws.

10.2 Unless we agree to do so in writing, we will not:

- Remind you about future dates; or
- Update advice after it is given.

11. Storing records

11.1 You authorise us to destroy all files and documents about a job 7 years after that job has been completed. You acknowledge that we operate an electronic office and authorise us to destroy paper files and documents earlier if we have an electronic copy of them.

11.2 This includes any original documents you have given us, unless you have told us that you do not want them destroyed. In that case we may return the originals to you once we have made an electronic copy.

11.3 We will not destroy any documents we have explicitly agreed to hold in safe custody for you (such as Wills).

12. Our intellectual property

12.1 Unless we agree otherwise:

- We own the 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.
- You must not provide our advice to others (such as using our opinions in any public document or statement)

13. Conflicts of Interest

13.1 We have procedures in place to identify and respond to conflicts of interest. If a conflict of interest arises we will advise you of this and follow the requirements and procedures set out in the NZLS Rules. This may mean we cannot act for you further in a particular matter and we may terminate our engagement.

14. Professional Indemnity Insurance

14.1 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.

15. Lawyers' Fidelity Fund

15.1 The New Zealand Law Society operates a lawyer's fidelity fund to compensate 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.

15.2 Except in certain circumstances set out 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.

16. Limitations on our Obligations or Liability

16.1 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 the amount available to be payable under the professional indemnity insurance held by us.

17. Termination

17.1 You may terminate our retainer at any time by giving us reasonable notice.

17.2 We may terminate our retainer in any of the circumstances set out in the NZLS Rules including the existence of a conflict of interest, non-payment of fees, and failure to provide instructions.

17.3 Before you take your documents, you must pay us all fees, disbursements and expenses incurred for the work we have done for you. We may keep a copy of any documents you take.

18. Complaints

18.1 We are committed to providing services of the highest professional standards. If you have any concerns or complaints about our services, please raise them as soon as possible with Nicola Goss nicola@gosslaw.co.nz.

18.2 We will deal with any complaints promptly and 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.

18.3 If you are not satisfied with the way we have dealt with your complaint the New Zealand Law Society has a complaints service and you are able to make a complaint to that service. Please email complaints@lawsociety.org.nz or phone 0800 261 801 for information and advice about making a complaint.

19. Client Care and Service Information

18.1 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 NZLS Rules. 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.

Client signature

Date: