



ALBANY LEGAL

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TERMS OF ENGAGEMENT

(Effective 1st April 2024)

1. APPLICATION

These Terms of Engagement (Terms) apply in respect of Albany Legal Limited NZBN: 9429042490456 current engagement and also to any future engagement whether or not we send you another copy of them. We are entitled to change these Terms from time to time. However, if these Terms are inconsistent with any other written agreement we have made with you then that other agreement prevails over these Terms.

2. AUTHORITY

You authorise us as your Solicitors/Lawyers to act on your behalf in relation to each instruction you provide us and which we accept. This includes incurring expenses, engaging external solicitors and barristers, other professionals and experts.

The person who signs the letter by which our services are engaged personally accepts full sole personal responsibility for the payment of fees and disbursements, notwithstanding that the work may be for a private limited liability company or a trust (either in existence or to be formed as a result of an instruction) and that liability will remain irrespective of the name of the party to whom the final account is rendered. **The signatory is therefore signing as a personal guarantor of all fees and expenses which may result in respect of our services.** In the event you do not sign this letter but continue to instruct us or utilise our services you will be deemed to have accepted the terms set out in the letter of engagement.

3. CONFLICTS

The New Zealand Law Society (NZLS) Conduct and Client Care for Lawyers rules (Rules) apply. Acting for you will not restrict us from acting for another client in relation to any matter that is separate from the instruction you have given us and which we have accepted, even if that other client's interest may be adverse to yours.

If you believe a conflict of interest has arisen or may arise, you must inform us immediately. If a conflict of interest arises we will advise you of this and follow the requirements and procedures set out in the NZLS Rules.

4. DOCUMENTS/RECORDS/INFORMATION

We will keep a record of all important documents which we receive or create on your behalf on the following basis:

- We 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).
- At any time, we 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 us.
- We are not obliged to retain documents or copies where you have requested that we provide them to you or to another person and we have done so, although we are entitled to retain copies for our own records if we wish to do so.

We will provide to you on request copies or originals (at our option) of all documents to which you are entitled under the Privacy Act 1993 or any other law. We may charge you our reasonable costs for doing this.

Where we hold documents that belong to a third party you will need to provide us with that party's written authority to uplift or obtain a copy of that document.

Unless you instruct us in writing otherwise, **you authorise us and consent to us (without further reference to you) to destroy (or delete in the case of electronic records) all files and documents in respect of our services six (6) years after our engagement ends (other than any documents that we hold in safe custody for you or are otherwise obliged by law to retain for longer)**. We may retain documents for longer at our option.

We may, at our option, return documents (either in hard or electronic form) to you rather than retain them. If we choose to do this, we will do so at our expense.

5. INTELLECTUAL PROPERTY

We retain all ownership rights in all intellectual property of any kind created by us for you. We grant you a non-exclusive licence to use the intellectual property but you may not reproduce or provide it to a third party without our written permission.

6. ADVICE

The advice we provide is limited to and governed by New Zealand law and is given by us solely for your benefit and no other person may rely on it unless we agree to that in writing. Our advice is not to be disclosed, referred to or used other than for the purpose for which it was sought by you.

We are not responsible for advising you on any matter other than that covered by the instruction and we do not give financial advice or advice on accounting and taxation issues.

When our instruction on a matter is completed, our representation of you will end. We are not obliged to notify you of any subsequent change in the law, or to provide any further services related to that matter.

7. SERVICES

When calculating our fees we take into account the time we spend on a matter, charged at our hourly rates, and adjust where appropriate to reflect other factors permitted by the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (Conduct Rules).

These factors may include the specialised knowledge and responsibility required, the importance of the matter, the urgency and circumstances in which we carry out your instructions, and the results achieved.

We will give you a fee estimate on request. This will be a guide only, and not a fixed quote. We will also, on request, periodically advise you of the level of fees incurred or inform you when fees reach a specified level.

Special fee arrangements can be made to meet the particular requirements of the transaction and services to be provided. These may include limited fee, success fee, fixed fee and capped fee arrangements.

In addition to our fees, we will also charge for general office services and disbursements we incur on your behalf. General office services include photocopying, document production and delivery costs, telephone expenses, and routine on-line searching. These are charged at a flat rate of \$50 or 2.5% of our fee, whichever is greater.

Disbursements (such as courier costs, Ministry of Justice, Ministry of Economic Development and Land Information NZ search and registration fees) and other external costs are charged separately from our fees and will be itemised on our invoices as disbursements. If we are required to expend significant amounts on disbursements or other external costs, we may request you pay these in advance.

Our fees and charges are plus GST (if any), which is payable by you.

8. INVOICES

We normally issue invoices monthly. We also issue an invoice on completion of your matter. **Our invoices are to be paid by you within 14 days of invoice unless otherwise arranged with us in writing.** We may ask you to pre-pay amounts to us, or to provide security for expenses and our fees. Where we are holding funds on trust on your behalf, you authorise us to utilise those funds to meet any outstanding invoices without further authorisation from you. We have your irrevocable authority to draw on the amounts paid towards our fees and expenses, as they become due.

If payment of our invoice to you is overdue, we may;

- not perform any further work for you until all unpaid invoices are paid in full; and/or
- retain custody of any of your property (including documents or files) until all unpaid invoices are paid in full; and/or

- charge interest on any amount overdue at a rate of no more than 12% p.a. apportioned on a daily basis from the day payment was due through to the day it is received by us in cleared funds.

You must pay our invoices whether or not;

- you have a right of indemnity or recovery from a third party; and/or
- any third party seeks assessment of any of our invoices; and/or
- you receive any amount from a third party.

We shall be entitled to recover all time incurred by us in the recovery or attempted recovery of unpaid account debts on a solicitor/client basis (in addition to any interest and the original invoice together with all court fees and actual costs of serving any documents related to such proceedings).

9. TERMINATION

You may terminate our engagement at any time. We may terminate in the circumstances permitted by the NZLS Rules. You must pay us for what we provide, and all expenses we have incurred, up to the date of termination.

10. CLIENT/TRANSACTION CHECKS

We are required to comply with all laws binding on us in all applicable jurisdictions, including:

- the Anti Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT Act);
- the United States Foreign Account Tax Compliance Act, the intergovernmental agreement between the United States and New Zealand relating to it, and relevant provisions of the Tax Administration Act 1994 (together, FATCA);
- the Common Reporting Standard for the Automatic Exchange of Information in Tax Matters between Participating Jurisdictions (CRS).

We will perform customer due diligence and account monitoring, keep records, and report any unusual or suspicious transactions where required by the AML/CFT Act, FATCA, CRS or any other law.

We may also be required to assist any bank or other entity with whom we transact as your agent, or with whom we deposit money on trust for you, to comply with that entity's legal obligations in any jurisdiction.

We will periodically advise you what information and documents are required for these purposes. These purposes may relate to you, any other relevant person (e.g. any beneficial owner), the source of funds/wealth, the transaction, the ownership structure, tax identification details, and any other relevant matter. Please provide the information and documents requested promptly. We may retain the information and documents, provide them to a bank or other entity (where applicable) to deal with in

accordance with their terms, and disclose them to any law enforcement or regulatory agency or court as required by law.

We or our bank the ASB Bank Limited may;

- suspend, terminate, or refuse to enter into a business relationship;
- delay, block, or refuse to process a transaction;
- report a transaction without notice where;
 - [a] the required information or documents are not provided, and/or
 - [b] it is suspected that the business relationship or transaction is unusual, may breach any applicable law, or may otherwise relate to conduct that is illegal or unlawful in any country.

Where residential land is sold and we receive the sale proceeds on your behalf, we may be legally required to withhold residential land withholding tax (RLWT) from the proceeds. This will apply if, under the Income Tax Act 2007;

- you are an 'offshore' RLWT person;
- the land is 'residential land' in New Zealand;
- you sell the land within an applicable "bright line" period.

In this event, we must remit the RLWT to the Inland Revenue Department (IRD). We will account to you for the net sale proceeds only, after withholding RLWT and any other amounts we are permitted to deduct (including our fees) have been deducted.

You must provide us with all the information we need to determine whether you are liable for RLWT and (if so) for how much. This includes both the information the Tax Administration Act 1994 requires you to provide and any other information we reasonably request. If you do not give us all this information, we may assume that RLWT applies and withhold it.

11. TRUST ACCOUNT

Our firm maintains a trust account at ASB Bank Limited (Bank) for all funds which it receives from clients (except for funds which are for payment of our invoices).

If it is necessary for us to hold significant amounts on your behalf, we may lodge those funds on interest earning deposit with the Bank. Before we deposit funds on your behalf, we will need either your IRD number or a copy of your interest withholding tax exemption certificate together with your FATCA self-certification we may charge an administration fee of 5% of the net interest earned.

If, after completion of the matter, we are holding an uneconomic balance for you (an amount less than or equal to \$20.00) and we cannot reasonably contact you to take instructions on how to deal with those uneconomic funds, then you authorise us to either return those funds to their source or donate those funds to a charity of our choice.

We may deduct from funds held on your behalf in our trust account any fees, costs or disbursements for which we have provided an invoice.

12. ELECTRONIC COMMUNICATIONS

We will communicate with you and others by electronic means. These communications can be subject to interference or interception or contain viruses or other defects (Corruption). We do not accept responsibility for, and will not be liable for any damage or loss caused in connection with, or as a consequence of, the Corruption of an electronic communication.

13. RELIANCE ON EXTERNAL INFORMATION AND PUBLIC RECORDS

We often obtain and rely on external information (e.g. from your accountant) or public records (e.g. from a government agency or registry) to carry out your instructions. This information may not always be accurate, complete, or up-to-date. We do not accept responsibility to investigate or verify external information or public records and will not be liable for any damage or loss caused by errors or omissions in them.

14. GOVERNING LAW - CHANGES

New Zealand law governs our relationship with you and New Zealand Courts have non-exclusive jurisdiction. We may change these terms at any time and will publish the changed terms on our website. The change will bind you in respect of any matters on which accept instructions after publication of the changes.

15. LIMITATION OF LIABILITY

Any claim you have against us must be filed within two years after the date of the act or omission on which the claim is based. Otherwise, the claim cannot be filed and we will have liability for that act or omission or for its consequences (to the extent permitted by law).

In these Terms, "claim" and "the date of the act or omission on which the claim is based" have the same meanings as in the Limitation Act 2010.

This time limit overrides the time periods under that Act, and applies regardless of when any fact relevant to the claim was first discovered or able to be discovered.

To the extent permitted by law, our aggregate liability to you (whether in contract, equity, tort, statute, or otherwise) arising out of your engagement of us on a matter (or any series of related matters) will not exceed:

- the amount available to be paid out under any relevant insurance held by us, up to a maximum of NZ\$5,000,000 (including interest and costs); or
- in any other case, the greater of NZ\$1,000,000 or three times the amount of our applicable fee (excluding our office service charge, disbursements and GST), up to a maximum of \$2,000,000 (including interest and costs).

If one or more of the above limits of liability is ineffective or unenforceable for any reason, the other limits of liability will still be effective.

If we provide services to any persons or entities related to or associated with you on a matter (or series of related matters) on which you engage us, then our total

liability to you and all those persons and entities in respect of that matter (or matters) will be subject to this limitation on liability. You will need to ensure that those persons and entities agree to this.

You may not recover from us in contract, equity or tort, under statute or otherwise, any amount with respect to any loss of profit, data or goodwill, or any indirect or consequential costs, loss or damage in connection with claims arising out of these Terms or otherwise relating to the services provided. This applies to the extent permitted by law, and whether or not the likelihood of such loss or damage was contemplated.

If you claim compensation, damages or contribution from us for loss or damage arising from acts or defaults (including negligence) on our part and some or all of that loss or damage was due to or contributed to by:

- your own acts or defaults or by the acts or defaults of other persons for whose actions or defaults you are responsible; or
- the acts or defaults of one or more other persons, not being partners, employees or agents for whose conduct we are responsible,

then our liability to you will be several and not joint with these other persons. We will be liable only for that proportion of the loss or damage which our acts or defaults bear relative to the totality of the conduct of all persons causing or contributing to the loss or damage. This applies to the extent permitted by law.

16. FAIR TRADING ACT 1986 AND CONSUMER GUARANTEES ACT 1993

If and to the extent you acquire our services in trade, for the purposes of section 5D of the Fair Trading Act 1986 and section 43 of the Consumer Guarantees Act 1993, you and we agree to the extent permitted by law that:

- you and we are all in trade;
- sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 and the provisions of the Consumer Guarantees Act 1993 do not apply in relation to these Terms or as between you and us; and
- it is fair and reasonable to exclude their application.

Nothing in these Terms modifies or negates your rights or remedies in the Fair Trading Act 1986 or Consumer Guarantees Act 1993 if you have not acquired our services in trade.

17. INDEPENDENT ADVICE

These terms modify some of the duties owed by solicitors/lawyers to their clients.

We recommend that you seek independent legal advice before accepting them.