

Information for Clients and Terms of Engagement

INTRODUCTION

1. This section contains:
 - a) information which the Rule of Conduct and Client Care for Lawyers of the New Zealand Law Society (the “**NZLS Rules**”) requires us to provide to you;
 - b) our standard terms of engagement (“**Terms**”) which (subject to any other agreement we make with you) govern the relationship between you and us.
2. In this section “we” or “us” refers to Wisheart Macnab & Partners and “you” means the client or potential client of Wisheart Macnab & Partners.

INFORMATION REQUIRED BY NZLS RULES

3. **Fees:** The basis on which fees will be charged, and when payment of fees is to be made, are set out in paragraph 6 of our Terms.
4. **Complaints:** If you have a complaint about us or our services you may:
 - a) refer your complaint to the person in the firm who has overall responsibility for your work;
 - b) if you do not wish to refer your complaint to that person, or you are not satisfied with the response received from that person, refer your complaint to the Practice Manager who may be contacted as follows:
 - i) by email at: enquiries@wmp.co.nz
 - ii) by telephoning our offices and asking to speak to the Practice Manager.
5. You may also make a complaint to the complaints service established by the New Zealand Law Society. To do so, you should contact the New Zealand Law Society at PO Box 5041, Lambton Quay, Wellington, 5145 or telephone 04 472 7837, or 0800 261 801.
6. **Insurance:** We hold indemnity insurance that exceeds the minimum standards specified by the New Zealand Law Society but we limit our liability to the amount of our liability insurance unless otherwise agreed with us.
7. **Fidelity Fund:** The Law Society 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.

8. **Client care and service:** The New Zealand Law Society Client Care and Service Information is set out below:

Whatever legal services your lawyer is providing, he or she must:

- Act competently, in a timely way, and in accordance with any 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 at a fee that is fair and reasonable and let you know 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.

9. The obligations lawyers owe to clients are described in the Rule 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.

If you have any questions, please visit www.nz-lawsoc.org.nz or call 0800 261 801.

Terms of Engagement

1. APPLICATION

These terms apply to our relationship with you. However, if these terms are inconsistent with any other agreement we have made with you (whether generally or in respect of a specific instruction) then that other agreement prevails over these terms.

2. AUTHORITY

We have the usual authority of a lawyer to act on your behalf in relation to each instruction we accept. This includes your authority, where reasonable, to incur expenses; engage law firms in other regions or jurisdictions; and engage external barristers or experts.

3. CONFIDENTIAL INFORMATION

We will not disclose to any other person any confidential information which we obtain as your lawyers except to the extent allowed or required by law or the NZLS Rules. Possession of confidential information will not preclude us acting for any other person.

You are not entitled to any confidential information we have or obtain in relation to any other client or prospective client.

4. CONFLICTS

We will comply with the NZLS Rules in respect of conflicts of interest.

Our acting for you will not restrict us from acting for another client in relation to any separate matter, even if that other client's interests may be adverse to yours. We will not be required to obtain any further consent from you to act for that other client.

If you believe a conflict of interest has arisen or may arise, please inform us immediately.

5. ADVICE AND SERVICES

5.1 Any advice given by us is:

- a) solely for your benefit. It may not be relied on by any other person unless we agree to that in writing;
- b) not to be disclosed, referred to or used other than for the purpose for which it was sought;
- c) not to be made public or published;
- d) limited to the matters stated in it;
- e) limited to and governed by New Zealand law; and
- f) subject to changes in the law after the date it is given.

5.2 We are not responsible for advising you as to taxation issues unless you specifically request us to do so.

Our charges for office services (photocopying, faxing, phone calls and the like) are on-charged at market rates and are subject to change accordingly.

5.3 Our name and advice may not be used in connection with any offering document, financial statement, report, or other public document without our written consent.

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

5.5 We are not responsible for general business advice or the merits of entering into a specific agreement whether as vendor, purchaser or otherwise unless you have specifically asked us for such advice and it has been given to you in writing.

6. FINANCIAL

6.1 Professional fees

Our fees are charged on the basis of the NZLS Rules which require that fees be fair and reasonable for the services provided.

We may change our rates for fees and services from time to time. At regular periods (usually monthly) we will provide you with our invoice and, if applicable, a statement of funds which we have handled on your behalf.

We can provide fee estimates or quotes. Special fee arrangements can be made to meet the particular requirements of any transaction. These can include success fees, fixed fees and capped fees.

We recommend that you discuss with us the exact nature of the work and the manner in which it is to be undertaken. Sometimes an acceptance by you of transaction risks could reduce legal costs involved.

6.2 Office services and disbursements

Our fees for professional services incorporate the overhead cost of secretarial, word processing and other assistance provided to our lawyers. We may charge extra for word processing overtime.

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

Alternatively, we may render a disbursement invoice to you when the expense is incurred.

6.3 Travel arrangements

Travel and accommodation will be booked in advance. You must reimburse us the amount billed.

6.4 GST additional

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

6.5 Invoices

We normally issue invoices monthly. We also issue an invoice on completion of your matter.

6.6 Payment

Our invoices are to be paid by you within 14 days of invoice unless otherwise arranged by us.

6.7 Security

We may ask you to pre-pay amounts to us, or to provide security for expenses and our fees. We will have your authority to draw on the amounts paid towards our fees and expenses, as they become due.

6.8 Trust Account

Our firm maintains separate trust accounts 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 a registered bank.

We may charge an administration fee of 10% of the gross interest earned. If we deposit funds on your behalf, we will need either your IRD number or a copy of your interest withholding tax exemption certificate.

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.

6.9 Unpaid invoices

If payment of our invoice by you is overdue, we may:

- a) not perform any further work for you until all unpaid invoices are paid in full;
- b) retain custody of any of your property (including documents or files) until all unpaid invoices are paid in full;
- c) charge interest on any amount overdue at a rate of no more than 1.5% per month.
- d) we may forward overdue invoices to a third party for collection in which case any costs incurred by us will be passed on to you.

6.10 Third parties

You must pay our invoices whether or not:

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

7. TERMINATION

You may terminate this agreement at any time. We may terminate this agreement 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.

8. RETENTION OF YOUR DOCUMENTS

You may leave documents in our possession after conclusion of your matter. However, we usually destroy our files 7 years after a matter is completed. If you do not retrieve your documents within that period, we have your authority to destroy them.

If this agreement is terminated, we may retain copies of documents or records which we deliver to you or to another lawyer. If we do this, we will pay the cost of producing copies.

9. INTELLECTUAL PROPERTY

We retain all ownership rights in all intellectual property of any kind created by us for you. You may not reproduce our intellectual property or provide it to a third party without our express consent.

10. ELECTRONIC COMMUNICATIONS

We may communicate with you and others at times 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.

11. GOVERNING LAW – CHANGES

11.1 New Zealand law governs our relationship and New Zealand Courts have non-exclusive jurisdiction.

11.2 We may change these terms at any time, and will forward a copy of any changed terms. The change will bind you in respect of any matters on which we accept instructions after notification of the change.

12. PROFESSIONAL INDEMNITY INSURANCE and LIABILITY LIMITATION

The Lawyers & Conveyancers Act (Lawyers: Indemnity) Rules 2008 deals with professional indemnity insurance. We have in place insurance cover of not less than the amount of \$2 million and such insurance complies with the terms of the Rules.

In these circumstances we limit our liability to the amount of \$2 million unless otherwise negotiated and agreed.

In cases where a client may wish to have greater coverage, we will negotiate and arrange cover at higher levels as required.

13. CLARIFICATION

If you have any questions relating to these terms please contact the person in the firm with overall responsibility for your work.