

## TERMS OF ENGAGEMENT

These terms of engagement set out the standard terms on which Lowndes Ltd (*we, us or our*) provides services to clients.

Our client on any particular matter (*you*) will be identified in the letter of engagement we send on the matter or as otherwise agreed.

**1. Who Will Work With You?** We will tell you in our letter of engagement who has overall responsibility for the services we provide to you.

In order to provide services in an effective, efficient and timely manner, others may assist from time to time with the conduct of your matter.

We have the usual authority of a lawyer to act on your behalf in connection with each instruction we accept from you. This includes your authority, where reasonable, to engage law firms in other parts of New Zealand or in foreign jurisdictions; engage barristers or experts and incur expenses.

**2. Duty of Care:** Our duty of care is to you and not to any other person. Before any other person may rely on our advice, we must expressly agree to this in writing.

**3. Estimates:** If requested, written estimates of fees will be provided before work commences. Estimates are provided as a guideline only and are based on our professional judgment. Estimates are not maximum or fixed fee quotations.

**4. Quotations:** In certain circumstances quotations will be provided. Any quotation provided will be recorded in writing and clearly labelled as a quotation rather than an estimate.

**5. Rate Changes:** We adjust the hourly rates of our lawyers and assistants from time to time. Our current hourly rates relevant to the services we provide are available on request.

**6. Expenses and Disbursements:** Our fees include a charge for sundry office services, which include photocopying, facsimiles, voice and data communications, postage and deliveries. There is a scale charge based on the fee value of each invoice, however this may be increased where large amounts of these services are provided.

We will charge for out-of-pocket expenses and disbursements which we pay or are liable to pay others on your behalf including registration and filing fees, Court charges, fees of agents (including agents conducting customer due diligence on our behalf as required by the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 and associated regulations), experts and other professionals, travel and accommodation costs.

**7. Trust Account:** We maintain a trust account for all funds which we receive from clients (except monies received for payment of our invoices). If we are holding significant funds on your behalf we will normally lodge those funds on interest bearing deposit with a bank. We may charge an administration fee of 5% of the interest earned.

**8. Payment:** Our usual practice is to bill our clients on a monthly basis.

Payment of our accounts is required 14 days following the date of the invoice. However we may require payment of significant disbursements in advance.

You authorise us to deduct our fees, expenses or disbursements from any funds held on your behalf in our trust account upon issuing an invoice.

If you pay our account by credit card, you also agree to pay us a processing fee equivalent to the amount charged to us by our credit card provider for processing the payment of your invoice by credit card.

**9. GST:** GST (if applicable) is payable by you on our fees and charges. All our rates, estimates and quotations are exclusive of GST unless otherwise stated.

**10. Fee Disputes:** If you wish to dispute any invoice of ours you must do so in writing to us before the due date for payment of the invoice, specifying the grounds for the dispute in reasonable detail and setting out the amount you consider is due.

By the due date for the invoice you must pay us the amount you have stated that you consider is due, and must pay into our trust account the balance of the invoice. The balance will be held by us in trust and applied in accordance with the resolution of the dispute over the invoice.

If you do not follow the above steps you are deemed to have accepted that the invoice is payable in full.

Any dispute will be dealt with as a complaint using the procedure described in clause 4 of our Information for Clients.

**11. Guarantees:** We may ask for a guarantee for payment of our fees. If this requirement is set out in our letter of engagement, we will not undertake substantial work until a copy of the letter signed by the guarantor(s) has been returned to us.

**12. Legal Aid:** For information on your financial eligibility for legal aid please visit [www.justice.govt.nz/courts/going-to-court/legal-aid/](http://www.justice.govt.nz/courts/going-to-court/legal-aid/). It is not our practice to work on civil legal aid matters.

*"It is no use saying, 'We are doing our best.' You have got to succeed in doing what is necessary."*

WINSTON CHURCHILL



**13. Default:** Where accounts are not paid on time, we reserve the right to stop work on your affairs, and to charge interest at 5% per annum above our firm's main trading bank's usual overdraft lending rate on a daily basis from the due date, without prejudice to our rights to recover any unpaid amounts. You will be responsible for all costs incurred by us (including our legal fees at normal hourly rates) in recovering any such unpaid account.

**14. Third Parties:** Although you may expect to be reimbursed by a third party for our fees and charges, and although our invoices may at your request or with your approval be directed to a third party, nevertheless you remain responsible for immediate payment to us if the third party fails to pay us on the due date.

**15. Conflict of Interest:** 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 Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (Lawyers: Conduct and Client Care Rules).

Our acting for you does not restrict us from acting on separate matters for other clients, by reason only that their commercial or legal interests may differ from yours.

**16. Information:** You warrant that all information you provide us with is accurate and not misleading and you agree that we may rely on that being so.

**17. Public Records and Other External Information or Advice:** In supplying our services we may rely on and/or provide you with advice or information we have obtained from third parties (e.g. experts, witnesses, governmental authorities and public records or registers). We do not accept responsibility and will not be liable for any loss or damage caused by errors and omissions in that advice or information.

**18. Privacy:** In acting for you we may collect personal information about you. If we collect personal information about people who are employees, directors or principals of yours you will make sure that these people are aware that our acting for you involves collection of personal information about them.

If we do not collect this personal information, we may not be able to carry out your instructions.

Personal information will be used by us to provide legal services to you, to conduct customer due diligence on you as required by the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 and associated regulations, to obtain credit or other references about you, to undertake credit management and to tell you about issues and developments that may be of interest to you. You authorise us to obtain from any person or release to any person any information necessary for these purposes, and you authorise any person to release information to us that we require for these purposes.

If you are an individual, under the Privacy Act 1993 you have the right of access to, and correction of, your personal information held by us.

**19. Confidentiality:** We will hold in confidence all information concerning you or your affairs that we acquire during the course of acting for you.

We will not disclose any of your information to any other person except to the extent necessary or desirable to enable us to carry out your instructions, or to the extent required by law or by the Lawyers: Conduct and Client Care Rules or as permitted under clause 18 (Privacy) above.

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

**20. Intellectual Property:** All copyright and other intellectual property arising or created or provided by us in connection with our services (including all intellectual property rights in any document, advice or thing created by us in the course of providing the services to you) remains our property.

**21. Termination:** Where you give us any instruction and we rely on that instruction (e.g. by giving an undertaking to another person), you may not revoke that instruction.

Except as provided above, you may terminate our engagement at any time on any matter or matters.

We may, on reasonable notice to you, terminate our engagement in any of the circumstances set out in the Lawyers: Conduct and Client Care Rules.

If our engagement is terminated you must pay us all fees (billed and unbilled) up to the date of termination and all expenses and disbursements incurred up to that date.

**22. Retention of Files and Documents:** We are generally entitled to retain all your files and documents while money is owing to us by you. We keep all files we establish on a matter for at least seven years after our engagement on that matter ends. We may hold that file electronically rather than in hard copy.

After expiry of that period we have your authority to destroy that file without further reference to you. We will not destroy documents we have agreed to hold in safe custody for you.

If at your request we destroy any files or documents in advance of our usual destruction date, we will not be liable to you and you will indemnify us for any liability to a third party in relation to the matter, files and documents.

If you uplift your files and other documents at any time we may make copies of them before they are uplifted. We may charge our time, and any photocopying charges, at our usual rates relating to the review of the files, copying of them where we do, and making them ready for your uplifting.

*“The good lawyer is not the man who has an eye to every side and angle of contingency, and qualifies all his qualifications, but who throws himself on your part so heartily, that he can get you out of a scrape.”*

RALPH WALDO EMERSON



**23. Electronic Communication:** Unless otherwise agreed with you, we may communicate with you at times by electronic means.

Although we will take reasonable precautions we cannot and do not warrant that these communications will be complete, secure and free from viruses or other defects and will not be delayed or fail to be received.

**24. Foreign Law:** We are only qualified to advise on New Zealand law. If you instruct us in respect of any matter that is governed by foreign law, we only act on the basis that we are not responsible for advising you in relation to your legal position under that foreign law.

As we are a member of multinational associations of law firms, if you wish, we can assist you in the servicing of your legal needs worldwide by referring you to a member firm in the appropriate jurisdiction.

We can assist you to do this by either:

- (a) With your permission engaging the foreign law firm on your behalf, in which case the foreign firm's fees will be a disbursement payable by you to us; or
- (b) Referring you directly to the member law firm overseas, in which case your relationship will be with that firm.

In no circumstances will we have responsibility for the services any foreign law firm provides you.

**25. Limitations of Obligations:** We are not responsible for any failure to advise on any matter that falls outside the scope of our engagement and we have no responsibility to you to update any advice to take account of events or changes in the law that take place after it is issued.

**26. Limitation of Liability:** We will not be liable, whether in contract, tort (including negligence) or otherwise, for:

- (a) Any loss of profit or revenue, exemplary damages or any indirect or consequential loss or damage howsoever described or claimed;
- (b) Any loss or damage arising from (including as a result of any delay caused by) any corruption or loss of data stored electronically, failure of any hardware, software or communications network or equipment, contamination of data (including any virus or other malicious computer code) or the malicious or intentional acts of any third party, including any unauthorised access or denial-of-service attack; or
- (c) Any loss or damage to the extent it is attributable to your conduct or a failure by you to take reasonable care of your own interests.

To the extent allowed by law, our aggregate liability, including that of our directors, consultants and employees, to you or any other person for any claim against us under or in relation to our engagement (whether in contract, tort, including negligence, or otherwise) will not exceed the amount which we actually receive as indemnification from our

professional indemnity insurers for the claim (plus any excess payable by us in relation to the claim under our professional indemnity insurance cover). This is agreed to be a reasonable restriction on our liability.

Our current level of professional indemnity cover exceeds the minimum standards specified by the New Zealand Law Society. We will provide you with particulars of the minimum standards upon request.

**27. Limitation Period:** You may not bring any action against us, regardless of form, more than three years after the cause of action has arisen.

**28. Consumer Guarantees Act 1993 and other legislation:** Nothing in these Terms is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying any rights you have under the Consumer Guarantees Act 1993 or the Fair Trading Act 1986, or rights you have under any other legislation, to the extent that those rights cannot be contracted out of.

**29. Future Instructions:** Unless otherwise agreed in writing, these Terms will apply to all instructions received from you, including matters currently in train and future instructions.

**30. General:** Our relationship with you is governed by New Zealand law and the New Zealand Courts have exclusive jurisdiction.

These Terms and our letter of engagement constitute the entire agreement between us relating to your engagement of us and our provision of legal services to you, and supersede and extinguish any prior agreements, undertakings, representations, warranties and arrangements of any nature whatever, whether or not in writing. You acknowledge and agree that you have not relied on any statement or representation other than those expressly set out in these Terms or our letter of engagement.

We are entitled to change these Terms from time to time, in which case we will make the amended Terms available to you.

The enforceability of our contract with you is not affected by termination of our engagement or any changes to the shareholding or directors of Lowndes Ltd.

If there is any conflict between these Terms and our letter of engagement, the terms of our letter of engagement have precedence.

*"I think it is an immutable law in business that words are words, explanations are explanations, promises are promises - but only performance is reality."*

HAROLD S. GENEEN

