

Mawhinney & Co

Terms of Engagement

The standard terms of engagement with Mawhinney & Co are set out below. They apply to all services we provide unless varied by written agreement. Your continued instructions signifies your acceptance of these terms.

General scope and quality of our work

At all times we will act to the best of our ability on your behalf, within the scope of your instructions and in accordance with the Rules of Conduct and Client Care for Lawyers of the New Zealand Law Society ("Law Society") which govern the practice of law. All advice we give to you will be based on our best professional judgment and legal knowledge but should not be taken as a guarantee of any particular outcome as, among other things, we will be relying on the completeness of your instructions, the accuracy of the information provided to us and the actions taken by any other parties involved.

Our duty of care is to you and not any other person. Before any other person may rely on our advice, we must expressly agree to this. If, during the course of our engagement we provide services to entities related to or associated with you, then such services will be provided on the same terms as these standard terms.

How you can help us

We will always do our best to be available and responsive to you, and to provide services which are technically accurate, innovative, timely and based on sound common sense. You can help us by:

- Giving us clear instructions, if possible in writing.
- Telling us if you have any important time limits.
- Telling us if you have a fixed budget limit.
- Making sure we have understood each other and asking us if you are not sure about anything.
- Dealing with any important questions promptly.
- Keeping in regular touch with us – please ask us for a progress report if you are concerned about anything, or do not hear from us when you expect.
- Telling us if you have changed your address or contact details.

Confidential information

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 this 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 Law Society's Rules of Conduct and Client Care for Lawyers.

We will, of course, not disclose to you confidential information which we have in relation to any other client.

Personnel

Either Russell Mawhinney (Principal and Solicitor), Scott Young (Consultant Solicitor) or Holly Egerton (Solicitor) will be responsible for carrying out the work on each file. From time to time we may seek your approval to engage specialist outside advisers to be involved if their particular skills are required, or if it is more cost effective to have them attend to particular aspects of the work.

Our fees

Our fees are calculated in accordance with the guidelines laid down by the New Zealand Law Society. They are based on a number of considerations, including the time spent attending to your instructions, the complexity of the job, its urgency and the degree of skill, knowledge and responsibility involved.

Cost estimates

We are happy to give you an estimate of the costs you are likely to incur for any work we do for you. Because we cannot predict exactly what will be involved, any estimate we give of our fee will normally be a range between a minimum and a maximum figure. We reserve the right to update our estimate if unforeseen events occur and, as the matter progresses, if more accurate estimates are possible. Any cost estimate will normally be for our fee plus the expenses and disbursements we incur on your behalf, and will exclude GST.

Fixed quotes

For some well-defined services we may be able to give you a fixed quote. This will normally be expressed as a fixed fee plus expenses, disbursements and GST. When we give a fixed quote, we will always record it in a letter, which will set out the fee, state clearly that it is a fixed quote, describe the services included within the fixed quote and set out any conditions.

Office expenses and disbursements

Office expenses may include (but are not limited to) items such as postage, stationary costs, photocopying, printing and tolls. Our Office expense charge is calculated at the rate of 5% of the fee charged (on amounts up to \$5,000.00) and 2.5% on amounts over \$5,000.00 up to a maximum of \$375.00.

Disbursements may include a file archiving charge and items such as LIM fees, Land Transfer registration fees, LINZ and PPSR search fees, Companies Office charges, agency costs, couriers, court filing fees and other costs incurred on your behalf. These items are on-charged to you at cost. We may require funds from you in advance to pay the disbursements we incur on your behalf. This money will be held in your name in our trust account until we pay the disbursements incurred. If the total disbursements incurred are less than that, the balance will be recorded as a credit on our final invoice to you.

Timing of our invoices

It is our practice to interim bill on a regular basis depending on the nature and amount of work being done, to ensure that you are able to monitor closely our costs and disbursements. We will always send a final invoice following completion of the work and a trust account statement if we have handled funds on your behalf. An invoice may include an amount to cover future disbursements we anticipate incurring on your behalf. Each invoice we send is separate from any other. Second and subsequent invoices relating to the same ongoing work will not normally include any amount remaining unpaid from any earlier invoice. We may require payment from you before commencing or continuing work.

Payment of our invoices

Unless we have made a different arrangement with you, or the work relates to a conveyancing transaction (when all of our costs are payable on settlement of the transaction) payment in full of any invoice is due **within 7 days** of the date of the invoice. You can pay any invoice by cash, cheque (payable to Mawhinney & Co Trust Account) or bank transfer. If you, as our client, comprise more than

one person (e.g. business partners or a married couple) each of you is separately responsible for paying all amounts owing to us.

When we are holding money paid by you in advance to cover our fees and disbursements, the Solicitor's Trust Account Rules allow us to draw on that money for our fees and disbursements when invoiced. Your acceptance of these terms means you authorise us to deduct any outstanding fees, expenses and disbursements from any funds held in our trust account on your behalf, upon provision of an invoice to you, unless those funds are held for a particular purpose.

Delay or difficulty in paying our invoices

If you anticipate having difficulty paying an invoice on time, please immediately contact us. We may make an arrangement with you for payment by instalments via our Feefunders payment option.

We reserve the right to charge interest on any invoice unpaid after the due date unless prior arrangements have been made. Interest will be calculated from the due date of the invoice at 18% p.a.

We may also stop doing any further work until the invoice is paid and we have the right to retain possession of your file and any documents belonging to you until we are paid.

We may deduct any amount for which we have sent you an invoice, any expenses and disbursements we have incurred and any accrued interest from any funds we hold on your behalf.

Feefunders Payment Option

Whilst for some matter types we require payment at the time work is completed, in other cases it is more convenient for clients to spread the cost over a period of 3, 6 or 9 months for cashflow reasons. We are able to accommodate this via our arrangement with Feefunders (subject to you meeting the requirements set by Feefunders). Please let us know if you are interested and we will be able to let you know if you qualify.

Third Party

Although you may expect to be reimbursed by a Third Party for fees and expenses and although our invoices may, at your request or with your approval, be directed to a Third Party, nevertheless you remain responsible for payment to us if a Third Party fails to pay us.

Credit enquiries

By engaging us, you authorise us to carry out reasonable credit enquiries and you authorise anyone we contact to provide to us any information about you that we reasonably request as part of our credit enquiries. You also authorise us to provide information about you to credit agencies in connection with any amount owed to us which is overdue for payment.

Money Handling Procedures

All money to be paid to us for the purposes of investment by you should, wherever possible, be paid by bank transfer directly into "Mawhinney & Co Trust Account" at ASB Bank Limited, Queenstown branch, account number **12-3195-0024419-02** or in cash. If paid by bank transfer we will require fax confirmation from your bank, stating that the funds are cleared and will not be reversed, before we are able to deal with such funds.

Any investment property (such as security certificates) to be delivered to us on your behalf should be hand-delivered, posted by registered mail or couriered to us. Any investment property we receive will be stored in a secure place until disbursed in accordance with your instructions or these terms of engagement. All investment money we receive will be held in a trust account in your name. If we are holding significant funds on your behalf, we would normally lodge those funds

on interest bearing deposit with a bank. In that case we will charge an administration fee of 5% of the interest derived. Withholding tax will be deducted and paid to the Inland Revenue Department on the interest you earn. If we have your IRD number, you can select to have withholding tax deducted at 19.5%, 33% or 39%. If we do not have your IRD number, it will be deducted at 39%, as required by the Inland Revenue Department.

Financial Assurance Scheme

The receipt, holding and disbursement of investment money on our clients' behalf is subject to inspection pursuant to the New Zealand Law Society Financial Assurance Scheme which operates under the provisions of the Lawyers and Conveyancers Act 2006 and the Trust Account Regulations.

Professional Indemnity Insurance

We hold professional indemnity insurance that exceeds the minimum standards specified by the New Zealand Law Society.

Lawyers Fidelity Fund

The New Zealand Law Society maintains the Lawyers' Fidelity Fund for the purposes 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 \$100,000.00. 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.

Conflicts of interest

Sometimes a conflict of interest may arise. Where this occurs, we will always contact you so that we can discuss and resolve the matter in accordance with our obligations under the Rules of Conduct and Client Care for Lawyers.

Information about you

As part of our continuing effort to improve the services we offer, we collect and store certain client information. This helps make sure we send letters and invoices to you at the right address. It also helps us to send you information about services we offer, send you information on legal topics likely to be of interest or importance to you and let you know about events we are sponsoring. Most importantly, it helps alert us to any potential conflict of interest we might have in acting both for you and any of our other clients. We may collect the information either from you or from other people as a result of providing our services. You have the right at any time to have access to any information we hold about you and to ask for any incorrect information to be corrected. We assure you that all information about you that we collect and store, always remains confidential and will be used only for the purposes outlined in these terms of engagement or in carrying out your instructions to us or to the extent required by law or by the Law Society's "Rules of Conduct and Client Care for Lawyers".

Record of Telephone Communication

In some cases, for convenience, we may record telephone conversations to ensure that we correctly understand client instructions, particularly where a matter is complicated. Please let us know if you object to this.

Verifying Your Identity and The Source of Funds

We are required by law to verify your identity and in some circumstances, the source of funds for a transaction. We may also wish to carry out reasonable credit checks on you from time to time depending on the matters being dealt with.

You authorise us to collect information about you (including customer due diligence information and credit reports), to obtain, exchange, hold, and use such information, and to make any other enquiries we consider as appropriate to:

- Confirm that information provided to us about you is true;
- Undertake initial and on-going customer due diligence and monitoring in accordance with the Anti-Money Laundering and Countering Financing of Terrorism Act (AML/CFT Act);
- Enforce debt and legal obligations (including recovery of money owed to us);
- Comply with other legal obligations we may have.
- You authorise any person (including credit reporters) to disclose information (including credit information) to us in response to such enquiries.

You accept that we may use customer due diligence services (including electronic based services from a third party) to verify your identity and conduct other customer due diligence or monitoring required under the AML/CFL Act, and that we may use credit reporting services to credit check you, and that when we use such services:

- the other third party or credit reporter (each a Service Provider) will exchange information about you for that purpose and the Service Provider may hold information on its system and use to provide their customer due diligence service 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 shared with credit agencies.

Storing Records of Legal Work and Trust Account Transactions

You authorise us (without further reference to you) to destroy all files and documents for this matter (other than any documents that we hold in safe custody for you) seven (7) years after our engagement ends. If we have converted those files and documents to an electronic format the paper copies may be destroyed earlier. Records of all investment money and investment property will be kept in accordance with the Lawyers and Conveyancers Act (Trust Account) Regulations 2008 and the Privacy Act 1993. Records of your transactions through our trust account are stored in computerised form. You may have access to all records relating solely to your investment money and investment property without charge during normal business hours. Any investment money or investment property we receive on your behalf cannot be used for the benefit of anyone other than you unless you owe us money in which case we may deduct the amount due from investment money we hold for you.

Termination

You may terminate our retainer at any time. We may terminate our retainer in any of the circumstances set out in the Law Society's Rules of Conduct and Client Care for Lawyers. If our relationship is terminated, you must pay us all fees due up to the date of termination and all expenses incurred up to that date.

Limitations of Liability

We do not provide any financial or taxation advice to our clients. Any other limitations on the extent of our obligations to you or any limitation or exclusion of liability are set out in our letter of engagement.

Questions and Complaints

We maintain a procedure for handling any complaints by clients, designed to ensure that complaints are dealt with promptly and fairly. If you have a question about any invoice we sent you or if you are unhappy with any other aspect of our work, please tell us about it straight away. You should contact us in the following manner:

- By letter addressed to the Principal, Mawhinney & Co, P.O. Box 1754, Queenstown 9348
- By email to russell@mawhinney.co.nz;
- By telephoning Russell at 03-450-0000.

Our Principal will investigate whatever it is you are unhappy about and contact you to discuss it. This will be at no extra cost to you. Misunderstandings can arise; generally, these can be resolved with little inconvenience or formality. Of course, we need to know when we do not get things quite right so that we can get them right the next time. The New Zealand Law Society operates the Lawyers Complaints Service and you are able to make a complaint to that service. To do so, phone 0800 261 801 and you will be connected to the nearest Complaints Service Office, which can provide information and advice about making a complaint.

Client Care and Service Information

We are bound by the client care and service information set out in the Rules of Conduct and Client Care for Lawyers:

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 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.

If you have any questions, please visit www.lawsociety.org.nz or call 0800 261 800.

General

We may change these terms of engagement from time to time, in which case we will send you amended terms.

Our obligations under these terms of engagement and our duties of care are owed to you and not to any other person.

As always, we greatly value your custom. If you have any questions about these terms of engagement, please ask. We will do our best to help.

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