

# OUR BUSINESS TERMS

## 1. The purpose of this document

- 1.1. This document:
  - sets out the standard terms on which we do work for our clients. It explains what you can expect from us and what you agree to when we work for you
  - includes information we are required to tell you under the New Zealand Law Society's Rules of Conduct and Client Care for Lawyers
  - applies to your current work and to any future work that we do for you, unless we agree in writing to change these terms.
- 1.2. Occasionally we may change these terms. If we make changes, we will send you the amended document.
- 1.3. We value our relationship with our clients. If you have any questions, please contact the partner responsible for your work.

## 2. Our letter of engagement for each job

- 2.1. For each new piece of work we do for you, we will give you a 'letter of engagement'. The letter will outline:
  - what we will do for you in that work, and
  - the person with overall responsibility for your work.
- 2.2. The person with overall responsibility for your work will be the one we believe is most suited to your work and to our relationship with you. Where appropriate, other members of our staff may also be involved, under that person's supervision. An example of when this may happen is where involving another staff member enables us to do your work more efficiently, quickly, and at the lowest cost to you.

## 3. Who we can accept instructions from

- 3.1. Unless you let us know differently, you agree that we can accept instructions from any of the following:
  - if you are a **company**, from any of your directors or employees or any other person you have authorised to instruct us
  - if you are a **trust**, from any of the trustees or officers of that trust
  - if you are a **partnership**, from any of your partners or officers of that partnership
  - if you are a **couple**, from either of you.

## 4. Our duties to you

- 4.1. Our obligations to you are described in the Rules of Conduct and Client Care for Lawyers. See [www.lawsociety.org.nz](http://www.lawsociety.org.nz).
- 4.2. Subject to any overriding duties we have (eg to the Courts and the justice system) when we do work for you, we will:
  - protect your privacy and confidentiality
  - act competently, promptly, and according to your instructions
  - protect and promote your interests
  - give you clear information and advice
  - keep you informed about progress
  - treat you fairly and respectfully
  - charge you a fee that is fair and reasonable.
- 4.3. Our duties are owed to you, the client named in our letter of engagement. Nobody else (such as family members, shareholders, directors, or related companies) can rely on our advice without our written consent.

## 5. Verifying your identity and conducting credit checks

- 5.1. In some circumstances, we are required by law to verify your identity. We must do this by sighting either a driver's licence, passport, or some other form of government issued photographic ID of you. We will hold an electronic copy of this ID in our system for future reference.
- 5.2. We may carry out reasonable credit checks on you. You authorise anyone we contact to provide us with information we request as part of our credit enquiries.
- 5.3. We may provide information to credit agencies about any account you have failed to pay by the due date.

## 6. How we maintain your privacy and confidentiality

- 6.1. 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 or
  - the law requires us to, or the Rules of Conduct and Client Care for Lawyers allow us to.

- 6.2. You agree that we may provide any information we hold relating to your United States Foreign Account Tax Compliance Act (FACTA) or Common Reporting Standard (CRS) status, or other FACTA or CRS matters to IRD and to our banks if they request information to be able to meet their FACTA obligations.

Please ask us if you would like more information about FACTA or CRS.

## **7. How we avoid conflicts of interest**

- 7.1. Before we agree to do any work for you, we will do our best to find out if any conflict of interest exists.
- 7.2. 'Conflict of interest' means that we have duties to someone else that might lessen our ability to act wholly in your best interests.
- 7.3. If we find a conflict at any time, we will immediately let you know and tell you how we plan to deal with the conflict. That may mean we stop working for you, the other client, or both.

## **8. Scope of our work**

- 8.1. Unless we say otherwise, we are not qualified to give:
- investment advice – you should get that advice from a qualified financial advisor
  - tax advice – you should get that advice from your accountant or tax advisor
  - insurance advice – you should get that advice from an insurance broker, or
  - advice about foreign laws – we can help you to contact a lawyer in the other country.
- 8.2. Unless we agree to do so in writing, we will not remind you about dates (eg PPSR, lease or consent expiry dates) or update our advice after it is given.

## **9. Our intellectual property**

- 9.1. Unless we agree otherwise:
- we retain ownership of all opinions, documents, and other intellectual property created by us
  - you must not provide our advice to others (such as using our opinions in any public document or statement).

## **10. Guarantee**

- 10.1. If you are a company or other incorporated entity, we may need personal guarantees from your directors or shareholders.

## **11. How you can help us**

- 11.1. You can help us by:
- giving us clear instructions
  - asking if there is anything you are not sure of
  - telling us if you have any important time limits
  - dealing promptly with any questions we have
  - telling us if your contact details change and
  - keeping in touch.
- 11.2. Please ask if you are concerned about anything or do not hear from us when expected.

## **12. Our email correspondence with you**

- 12.1. You authorise us to use any email address that you give us to communicate with you about the work we do for you.
- 12.2. We have virus protection software and security protocols in place. However, we cannot guarantee that electronic communications will always be free from viruses or other defects, are secure, or will be received.
- 12.3. We may occasionally email you information we feel is relevant and useful to you. If you do not want to receive that information, please let us know.

## **13. Our legal costs**

### *Fee*

- 13.1. We will always charge you a fair and reasonable fee.
- 13.2. Unless we agree with you otherwise, we will calculate our fee based on the time we spend on a job. The calculation will be based on our hourly rates, adjusted where appropriate for other factors permitted by the Rules of Conduct and Client Care for Lawyers. Such factors include the complexity, urgency, importance, specialised knowledge, responsibility and risks involved, and the results achieved.
- 13.3. We will give you a fee estimate if you ask for one. Special fee arrangements may be available for certain work (eg capped fee). Any estimate or special fee arrangement for a job will be outlined in our letter of engagement.
- 13.4. If you have any questions about our fee, please ask.
- 13.5. In some cases, you may be eligible for legal aid. If you want to apply for legal aid, we will refer you to another firm as we do not carry out legal aid work.

## GST

13.6. Unless we state otherwise, our fee, estimates and hourly rates do not include GST or expenses and disbursements, which are payable by you.

### *Office expenses*

13.7. We charge you an amount to cover office expenses (such as photocopying, printing, phone calls, faxing and file storage). We normally calculate this office expense at a standard rate of 4% of our legal fee, up to \$60 (including GST). If expenses are greater than \$60, the fee charged will be higher. This expense is shown separately in our account to you.

### *Disbursements*

13.8. When we do work for you, we may have to cover some expenses or make other payments on your behalf (such as searches, registration, travel, court charges, couriers, and agency). These expenses will be shown separately in our account to you.

### *Changes*

13.9. Hourly fee rates, office expenses and disbursements may change from time to time.

## 14.

### **Our money handling procedures**

- 14.1. We maintain a trust account for all funds we hold on behalf of clients (except funds we receive for payment of accounts).
- 14.2. If we hold funds for you of more than \$10,000, and will hold them for more than one week, we will place them in an interest-bearing deposit with our bank. We are not responsible for obtaining the best interest rate available. We are not responsible for any loss of interest you suffer as a result of delay in placing your funds in an interest-bearing deposit account.
- 14.3. We charge a 5% administration fee on the gross interest earned on funds held on interest-bearing deposit.
- 14.4. 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).
- 14.5. We will automatically send out an annual Withholding Tax Certificate where the gross interest earned is greater than \$50. We will not send a certificate for lesser amounts of interest unless you ask us to do so.
- 14.6. 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.

## 15.

### **Paying our account**

- 15.1. We issue accounts monthly and on completion of a job or the ending of our engagement. We may also send you an account when we incur a significant expense.
- 15.2. You agree to pay our account within 14 days of the date of the account, unless we have agreed alternative arrangements.
- 15.3. For property transactions, our account:
  - for a purchase or refinance is payable on settlement
  - for a sale will be deducted from the sale proceeds.However, if appropriate, we may invoice you monthly, in which case our account is payable within 14 days.
- 15.4. If you have any questions about an account, please contact us straight away.
- 15.5. Sometimes we may need you to pay the legal costs in advance. If we do, we will hold your payment in our trust account and only deduct our legal costs when we issue you an account.
- 15.6. If we hold funds in our trust account on your behalf, we may deduct from these funds any legal costs for which we have issued you an account. "Funds" means money from any source, including any judgment, sale proceeds, or settlement amount.
- 15.7. We may charge interest on overdue accounts at the rate of 15% a year. We may take action to recover overdue accounts and charge you the cost of that recovery. These charges must be paid by you.
- 15.8. Any failure or delay by us to charge interest on an unpaid account or to exercise any of our other rights will not operate as a waiver of those rights.
- 15.9. At your request or with your approval, we may send our account 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.

## 16.

### **Professional Indemnity Insurance and the Lawyers' Fidelity Fund**

- 16.1. We hold professional indemnity insurance that exceeds the New Zealand Law Society's minimum standards. If you would like further information about our insurance, please ask.

- 16.2. The New Zealand Law Society operates a Lawyers' Fidelity Fund to compensate clients who suffer theft of money or property entrusted to lawyers. The Fund covers losses of up to \$100,000 per individual claimant. It does not cover loss where you have instructed us to invest money on your behalf (subject to limited exceptions set out in the Lawyers and Conveyancers Act).

## 17. The limits of our liability to you

- 17.1. Except where otherwise provided by law, the total amount that we have to pay you if we are found liable for any loss or damage is the greater of:
- \$1 million
  - \$0.75 million for each partner in our firm.
- This limit meets the New Zealand Law Society minimum standard. The limit applies whatever you are claiming for, and however the liability arises.
- 17.2. If you are more than one person (such as a couple or partnership), this maximum is the maximum combined amount that we have to pay you together.
- 17.3. If you engage us to do work for the purposes of a business, you agree the Consumer Guarantees Act does not apply. Otherwise, nothing in this paragraph 17 limits any rights you may have under that Act.
- 17.4. We are not liable for any loss or liability because:
- we relied on information provided by you or a third party (including public records and expert witnesses)
  - you did not provide us with all information required for your instructions or the scope of our work
  - you did not receive or read a communication we sent you.

## 18. How we handle complaints

- 18.1. We will respond to any complaints promptly and fairly.
- 18.2. Please contact us straight away if you have a question about an account or if you are unhappy with any other aspect of our work. You may contact:
- the partner responsible for your work, or
  - our General Manager by phone, post, or email to [complaints@gibsonsheat.com](mailto:complaints@gibsonsheat.com)
- 18.3. The New Zealand Law Society also has a complaints service. Please telephone 0800 261 801 for information and advice about making a complaint.

## 19. Ending our engagement

- 19.1. You may end our engagement at any time by giving us reasonable notice.
- 19.2. If we have good cause, we may decide to stop working for you, such as if you:
- do not provide us with instructions promptly
  - are unable to, or do not, pay our fee as agreed, or
  - against our advice, act in a way we believe is inconsistent with our fundamental obligations as lawyers, or highly imprudent. This does not apply to litigation.
- 19.3. If we decide to stop working for you, we will give you reasonable notice and help you find another lawyer.
- 19.4. Before you take your documents, you must pay our fee for the work we have done for you. We may keep a copy of any documents you take.
- 19.5. These terms will continue to be enforceable after:
- the end of our engagement, and
  - any changes to our partnership or the incorporation of our firm.

## 20. Destroying files

- 20.1. You authorise us to destroy all files and documents about a piece of work seven years after that work has been completed. We may destroy paper files or documents earlier if we have an electronic copy of them. We will not destroy any documents we have agreed to hold in safe custody for you (such as wills).

## 21. New Zealand law applies

- 21.1. Our relationship is governed by New Zealand law and the New Zealand Courts have exclusive jurisdiction.

### Wellington

PO Box 2966  
Wellington 6140

T: 04 496 9990  
F: 04 496 9991

### Lower Hutt

Private Bag 31905  
Lower Hutt 5040

T: 04 569 4873  
F: 04 569 4874

### Masterton

PO Box 562  
Masterton 5840

T: 06 370 6480  
F: 06 377 7496

The logo for Gibson Sheat, featuring the word "gibson" in red and "sheat" in black, with a small red circle containing the number "95" to the left.

The WriteMark logo, featuring the word "WRITE" in black, "MARK" in red, and "PLAIN ENGLISH STANDARD" in black below it. A stylized checkmark is above the "K". Below the logo is the text "The WriteMark is a quality mark awarded to".

The WriteMark is a quality mark awarded to documents written to a high standard of plain English.  
[www.writemark.co.nz](http://www.writemark.co.nz) T: 04 384 6447