

# 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 [Rules of Conduct and Client Care for Lawyers](#) (Conduct and Client Care Rules)
  - 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 notify you. You can also view our current terms on our website [www.gibsonsheat.com](http://www.gibsonsheat.com).

## 2. We will outline the work we will do for each job

- 2.1. For each new job we do for you, we will give you a 'letter of engagement' outlining:
- what work we will do, and
  - which person we believe is most suited to the job and to our relationship with you, and who will have overall responsibility for the work.
- The letter of engagement may be in the form of a letter or other written communication to you and will be sent to you by electronic means.
- 2.2. When appropriate, other staff may also be involved, under that person's supervision (such as where involving another staff member enables us to do the work more efficiently, quickly, and at a lower 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:
- any person you have authorised to instruct us
  - if you are a **couple**, from either of you
  - 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 **company**, from any of your directors or employees or any other person you have authorised to instruct us
  - if you are a **body corporate** or **incorporated society**, from any person holding themselves out as being authorised by the officers to instruct us.

## 4. Our duties to you

- 4.1. Our obligations to you are described in the [Conduct and Client Care Rules](#).
- 4.2. Subject to any overriding duties we have (for example to the Courts and the justice system) and any legal obligations we have (such as to provide information to some Government agencies) 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 entities) can rely on our advice without our written consent.

## 5. Customer checks we may do

- 5.1. You authorise us to collect information about you, and make enquiries we think appropriate to:
- carry out reasonable credit checks on you
  - confirm information provided to us about you is true
  - undertake due diligence and monitoring according to the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML), and to our obligations under the Tax Administration Act 1994 in relation to the United States Foreign Account Tax Compliance Act (FATCA) and the Common Reporting Standard (CRS)
  - enforce debt and legal obligations (including recovering money owed to us)
  - comply with other legal obligations we may have.

### *Verifying identity and source of funds*

- 5.2. We are required by AML to verify your identity, address and sometimes, your source of funds or wealth for a transaction. We may also require this information from others connected with you.
- 5.3. If you, or any person connected with you, does not provide all the requested information, or if the information is unable to be verified, then we will be unable to act for you.
- 5.4. We use third-party services (service providers) to verify your identity and conduct other due diligence or monitoring required under AML, and for credit checking. When we use these services, you agree to:
- 5.5. For AML-related service providers, you agree that:
- we can give our service provider your contact details and any information required for AML purposes
  - you will provide us with AML-related information about you, and you agree to us holding that information as long as required by law.
- 5.6. For AML-related service providers, as well as other service providers, you agree that:
- each service provider can exchange information about you, which they may hold on their system and use to provide their specific service to other customers

- we may use a service provider in the future for any authorised purpose; for example, using an update service if information about you changes.

5.7. We may provide information to credit agencies about any account you have failed to pay by the due date.

## 6. 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 (for example reporting suspicious activities or transactions under AML), or Government agencies compel us to, or the [Conduct and Client Care Rules](#) require us to.

6.2. Our [Privacy Policy](#) sets out how we may collect and use your personal information, and whom we may disclose it to. You agree that your use of any account, product or service provided by us indicated acceptance of our [Privacy Policy](#), and you authorise us to collect, use and share your personal information as outlined in the [Privacy Policy](#)

## 7. How we avoid conflicts of interest

7.1. 'Conflict of interest' means that we have duties to someone else that might lessen our ability to act wholly in your best interests.

7.2. Before we agree to do any work for you, we will do our best to find out if any conflict of interest exists.

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
- tax advice
- insurance advice, or
- advice about foreign laws.

8.2. Unless we agree to do so in writing, we will not:

- remind you about dates (such as 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, shareholders, or other officers.

## 11. How you can help us

11.1. You can help us by:

- giving us clear instructions
- asking us if you are not sure of something
- telling us if you have any important time limits
- dealing promptly with our questions
- telling us if your contact details change
- keeping in touch.

11.2. Please ask us if you have any concerns 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 think is relevant and useful to you. If you do not want to receive that information, please tell us.

## 13. Our legal fees and expenses

### Fee

13.1. We will 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 [Conduct and Client Care Rules](#) (such as the complexity, urgency, importance, specialised knowledge, responsibility and risks involved, and results achieved).

13.3. If you ask, we will give you a fee estimate. Special fee arrangements may be available for certain work (for example 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.

### Goods and Services Tax (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, and file storage) and fees we are charged by First AML, our AML agent.
- 13.8. We normally calculate this amount at a rate of 4% of our legal fee, up to \$60 (including GST). If expenses are greater than \$60, the office expenses charged will be higher.
- 13.9. Office expenses are shown separately in our account to you.

#### *Disbursements*

- 13.10. We may have to cover some expenses or make other payments on your behalf (such as search costs, registration, travel, court charges, couriers, and agents' fees).
- 13.11. You authorise us to incur these expenses which will be shown separately in our account.

#### *Changes*

- 13.12. 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.
- 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, provided we have received the FATCA/CRS forms we require from you to do this. We are not responsible for obtaining the best interest rate available, or for any loss of interest from 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 send out an annual Withholding Tax Certificate where the gross interest earned is greater than \$50, but not 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. If you pay our account by credit card, we will charge you an additional 1.5% of the amount you pay.
- 15.6. 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.
- 15.7. If we hold funds in our trust account on your behalf, you authorise us to 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.
- 15.8. 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.
- 15.9. Any failure or delay by us to charge interest on an unpaid account or to exercise any of our other rights is not a waiver of those rights.
- 15.10. If your account is overdue we may
  - stop work we are doing for you until our account is paid in full
  - require an additional payment of fees in advance, or other security, before starting work again.
- 15.11. 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 (NZLS) minimum standards. If you would like further information about our insurance, please ask.

16.2. The NZLS 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](#)). You can find more information on the Lawyers' Fidelity Fund on the [NZLS website](#).

## 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 NZLS 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 Chief Executive by phone, post, or email to [complaints@gibsonsheat.com](mailto:complaints@gibsonsheat.com)

18.3. The NZLS 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
- give us instructions that would require us to breach any professional obligation, or mislead or deceive us in any material way
- act (against our advice) in a way we believe is highly imprudent, or inconsistent with our fundamental obligations as lawyers. 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.

## 20. Enforceability of these terms

20.1. These terms will continue to be enforceable after:

- the end of our engagement
- any changes to our partnership or incorporation of our firm.

## 21. Destroying files

21.1. 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.

21.2. This includes any original documents you have given us, unless you have told us you do not want them to be destroyed. In that case we may return the originals to you once we have made an electronic copy.

21.3. We will not destroy any documents we have agreed to hold in safe custody for you (such as Wills).

## 22. New Zealand law applies

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

**GIBSON SHEAT LAWYERS**  
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