



## TERMS OF ENGAGEMENT

These Terms of Engagement ("terms") apply to all work carried out by me for you except to the extent that are otherwise agreed by me in writing.

1. Services - The services I am to provide to you are outlined in my engagement letter
2. Information to be provided by you - To help me to obtain all the necessary information to deal with matters.
  - (a) Please provide me with all information that is or may at any time become relevant including:  
All background information.  
Any factors including timetables which are relevant to you.
  - (b) Please make sure that I have understood your instructions correctly and:
    - Ask me what is happening if you are unsure about any matters including costs.
    - Supply me promptly with all information and instructions that are needed - if I have to chase you or you do not provide all that is needed this takes time and will add to your costs.
  - (c) You authorise me to seek any information on your behalf from any third parties by instructing me to act.
  - (d) You agree to advise me of your current address from time to time and that until you notify me in writing of a change that I may serve all documents at your last known address.
3. What You Can Do to Help Me - to deal with matters cost effectively on your behalf please:  
See me before signing anything and before making changes to documents - it will usually save you time and money in the long run.
  - Make sure you give me all relevant information and a copy of all papers.
  - Telephone and make an appointment to see me instead of just dropping in. I am always pleased to see clients but I am not always available and I would like to avoid any inconvenience to you.
  - Do not leave things until the last minute if you can avoid it - urgency will usually increase time and costs.
  - Prepare for any meeting (make a list of all matters you wish to discuss and bring a copy of all documents that may be useful or relevant sorted into date order oldest at the top, most recent underneath).
  - Provide me with written instructions when requested and you agree that otherwise I may stop working for you until I receive what I consider to be proper instructions.
  - If you have any problems questions or complaints about matters ask me.
4. Basis of Charging- my costs on all matters will be based on my time for all attendances etc including telephone calls, correspondence and emails at my hourly rate as advised to you (charged in 6 minute units rounded up to the next 6 minute unit and a minimum of 2 units (ie 12 minutes)) plus disbursements (i.e. expenses incurred on your behalf) plus GST and taking into account all relevant circumstances including:
  - (a) The time and labour spent
  - (b) The skill, specialised knowledge and responsibility required
  - (c) The circumstances of any matters including any urgency and including time limits imposed by you
  - (d) The importance to you and the results achieved
  - (e) The complexity of the matter and the difficulty or novelty of the issues involved
  - (f) The value and/or amount of any property or money involved and the degree of risk
  - (g) The number and importance of the documents and/or court appearances involved
  - (h) A fair and reasonable return for the legal services provided and
  - (i) The reasonable costs of running a law practice.
5. Cost of Matters - it is not possible to provide an accurate estimate of my actual costs on matters:
  - (a) The costs and the outcome will be affected by the conduct of the other party and therefore I cannot guarantee the duration, the outcome or the costs.
  - (b) If my engagement letter specifies a fixed fee I will charge this for the agreed scope of services. Work which falls outside that scope will be charged on an hourly rate basis.
  - (c) Any estimate or quote is on the basis:
    - That I assume all matters are straightforward and without any delays or complications.
    - That only those disbursements specifically stated are included and you agree to pay the disbursements actually incurred.
    - Of the information you have told me at the time of any estimate.
    - Any estimate is an indication and not a quote. If matters become prolonged extra costs are likely to be incurred.
    - If any work does not proceed as expected or proves more complicated than originally anticipated I may charge for all additional work.
  - (d) If any assumption upon which an estimate or quote is based changes I am entitled to increase my fees and to charge for the matter on an ordinary time and attendance basis and above the amount of any estimate or quote.
  - (e) If at any time you are concerned about costs please ask for a bill.

**JOHN PATRICK HICKEY LLB**

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6. Papers and Documents

Material that you provide to me remains yours. Work that I create remains my property and

- (a) At the end of the matter or following payment of all outstanding costs, any original documents or other property which belong to you which I hold will be returned if requested by you. Any file will be stored and kept for at least 7 years. During storage it will be obtainable if required. You authorise me (without further reference to you) to destroy all files and documents 7 years after my engagement or the matter ends or earlier if those files and documents have been converted to electronic format. If you send me any papers which you wish to have returned, please let me know.
- (b) You accept the risk of interference or interception of any communication method (especially telephone calls, mail and e-mail), that I am not responsible for any alterations after a document leaves my office and I have not received any e-mails until a hard copy has been printed in my office.
- (c) Where work has been done by me and/or costs incurred and I have not been paid then I have the right to retain the original documents and the correspondence on your files until such time as all outstanding fees, disbursements and other expenses have been paid. This is known as a lien. This will be particularly important in circumstances where you decide for whatever reason to instruct another law firm. You must pay all outstanding fees, disbursements and other expenses before I release your files to your new solicitors. Alternatively, that other law firm may be obliged to give an undertaking to me to pay all outstanding fees and disbursements before your file is released.

7. Payment of Fees – It is my normal practice to ask clients to make payments on account for costs and disbursements. I accept all instructions from you and you agree that I act for you on all matters on the basis that:

- (a) (i) I may request an advance for my costs and disbursements and I will need to receive that advance (which is not an estimate of my costs). My costs will be based on my time and attendances.
- (ii) Payments may have to be made to other people for work to be done, for example filing fees, search fees, agency fees and similar payments (called disbursements). I am not required to pay these amounts for you unless I receive payment from you first. I have the right to ask for these specific amounts or for an approximate amount to cover these expenses to be paid in advance to ensure that I am not out of pocket.
- (iii) If I instruct any other person (including counsel or another lawyer) on your behalf I have the right to require payment of that person's estimated fees into my trust account beforehand. By instructing that person I undertake an obligation to pay that person's fees and accordingly require to be protected for them. I may require you to enter a payment arrangement directly with that person.
- (b) I may render bills and interim bills for my costs regularly and from time to time, even if a matter is not completed and even if an advance is not paid, when I incur a significant expense, on termination of my engagement, on settlement or completion of a matter. You authorise me to bank any funds received for you and to deduct any costs, expenses and disbursements owed by you to me from any funds received and/or held by me on your behalf provided I render an invoice.
- (c) I will advise you when I realise it becomes necessary for me to provide services outside the agreed scope of services and if requested and able to do so, give you an estimate of the likely amount of the further costs.
- (d) You agree to pay my bills (including GST) to my office within 7 days of a bill being sent. (If at any time you anticipate or have any difficulty paying my costs or wish to apply for Legal Aid, please contact me as soon as possible so that appropriate arrangements can be made.) At any time I may ask you to pre-pay amounts to me or to provide security for my fees and expenses. If within seven days of a bill being posted to your address as advised to me any costs are not paid, interest before and after judgment at 1½ per cent per month calculated on a monthly basis by equal monthly payments from the date of the bill, together with all my further costs in recovering any payments, on a solicitor and own client basis, are payable by you and I may stop acting for you (and instruct others to stop work) and hold all documents and all files until I am paid all outstanding costs on all matters. I will have no liability for any loss suffered by you if work is stopped for this reason. You agree that if I am not paid within 7 days of a bill being sent without demand being made you will execute an on demand mortgage over any real estate owned by you (and including as trustee or beneficiary) as security for my fees in the form of the Auckland District Law Society Mortgage All Obligations form (approval number 2007/2169) and incorporating the provisions in Memorandum registered under Number 2007/4238 and for that purpose to properly execute a LINZ Authority & Instruction form.
- (e) I am acting on your behalf and you indemnify me for any acts by me on your behalf.
- (f) (i) You authorise me to use information provided by you to credit check you and if you default in payment to list you with Veda Advantage.
- (ii) Veda Advantage may disclose your detail to those using Veda Advantage services. You may seek access to Veda Advantage information and correction of any errors.
- (g) The costs payable by you include time spent meeting my obligations as a lawyer in relation to any matter or instructions from you whether before or after termination and costs incurred in obtaining recovery on a solicitor own client basis at the same hourly rate.
- (h) If you have difficulty paying an account contact me immediately to discuss arrangements for payment.

8. Confidentiality

I will hold in confidence confidential information concerning you or your affairs acquired during the course of acting for you. Unless expressly or impliedly authorised by you I will not disclose any of this information to any other person:

- (a) Except to the extent necessary or desirable or as required to observe my professional and legal obligations including my obligations under the Lawyers and Conveyancers Act 2006 or considered by me as necessary to enable me to carry out your instructions and if any joint instructions in accordance with those joint instructions or

- (b) Except to the extent required by law or by the Law Society's *Rules of Conduct and Client Care for Lawyers* ("Rules of Conduct")
- (c) Confidential information concerning you will as far as practicable be made available to those within my firm who are providing services for you.
- (d) I will of course, not disclose to you confidential information which I have in relation to any other client unless I have their authority.
9. Joint Instructions and Conflicts - If you have asked me to act on behalf of several people and/or a company and/or a business or trust I have agreed to do so on the basis that:
- (a) I am acting on behalf of:
- (i) Each person personally and on your behalf for your company and/or business and/or trust. I am only acting for the company and/or business and/or trust on your behalf and not otherwise.
- (ii) Each person and any company and/or business are each personally jointly and severally liable for the whole of my costs on all matters, and
- (b) You will each waive any rights against me and you hereby waive any such rights and any liability I may have as a result of any conflict you indemnify me accordingly against any liability incurred by acting for more than one person or entity
- (c) Unless you instruct me otherwise, you each authorise and instruct me to act for all of you and to discuss any matters concerning any joint case with each of you
- (d) If there is a conflict between any of you:
- (i) You will each advise me as soon as you become aware of any conflict or other reason which may mean that it is not appropriate for me to act or continue acting for you.
- (ii) I may stop acting for you and/or follow the procedures set out in the Law Society's Rules of Conduct.
- (e) Although you may expect to be reimbursed by a third party for my fees and expenses and although my invoices may at your request or with your approval be directed to a third party, nevertheless you remain responsible for payment to me if the third party fails to pay me.
10. Contract  
These terms of business are a contract between the parties for the provision of legal services. If you have any doubts about matters, please ask. You may discuss matters with and/or obtain advice from another solicitor if you wish. If you do not discuss matters with and/or obtain advice from another solicitor, you are waiving your right to seek other legal advice on the terms of this contract.
11. Jurisdiction  
These terms of business are governed by New Zealand law and subject to the exclusive jurisdiction of the New Zealand Courts and unless otherwise agreed the Courts nearest to my office.
12. Trust Account  
I maintain a trust account for all funds which I receive from clients (except monies received for payment of invoices which are not held on trust). If I am holding significant funds on your behalf for any length of time I will normally lodge those funds on interest bearing deposit with a bank. In that case I will charge an administration fee of 5% of the interest derived.
13. Termination  
At any time
- (a) You may terminate my retainer at any time
- (b) You may terminate my retainer in any of the circumstances set out in the Law Society's *Rules of Conduct*
- (c) If my retainer is terminated you must pay me all fees and costs as referred to in paragraph 7 of these terms and all expenses incurred up to that date.
- (d) You are bound by these terms until payment in full of all sums is made. Termination does not release you from liability for payment of any unpaid costs and does not release you from any existing liability or further liability in relation to costs and interest or liability in paragraph 7.
14. General
- (a) These Terms apply to any current engagement and also to any future engagement, whether or not I send you another copy of them.
- (b) I am entitled to change these Terms from time to time, in which case I may send you amended Terms.

Agreed:

Name: \_\_\_\_\_ Signature: \_\_\_\_\_

Name: \_\_\_\_\_ Signature: \_\_\_\_\_

Date: \_\_\_\_\_