

TERMS OF ENGAGEMENT

1. ABOUT THESE TERMS

These are the terms of engagement of Evolution Lawyers Limited (**Evolution Lawyers, we, our, or us**).

We are a New Zealand company registered under the Companies Act 1993 and an incorporated law firm under the Lawyers and Conveyancers Act 2006 (**Act**).

These terms of engagement:

- are the standard terms on which we provide legal and related services to our clients; and
- will apply to any work we do from 10 June 2024, unless, and only to the extent that, we agree in writing otherwise.

After receiving a copy of these terms, your instructions for us to provide services for any matter will be treated as acceptance of these terms. While we may ask you to indicate your acceptance by countersigning a letter of engagement, failure to obtain such a signature will not affect the applicability of any provision of these terms except the section headed "Guarantee". Your instructions for us to act, with or without a signature, will be sufficient for these terms to apply.

We may change these terms from time to time, in our absolute discretion. If we change our terms, we will give you written notice of the amended terms. The amended terms will apply from the date you receive such notice.

Please contact us if you have any comments or questions about these terms.

2. RULES OF CONDUCT AND CLIENT CARE

Evolution Lawyers, its directors, and its employed solicitors must comply with the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (**Rules**).

The Rules, which are made under the Act, describe the obligations that lawyers have to their clients. Those obligations are subject to overriding duties, including to the Court and justice system.

If you have any questions about the Rules or the obligations of lawyers, please contact us or, alternatively, visit www.lawyers.org.nz.

3. LETTER OF ENGAGEMENT

We will send you a letter of engagement before commencing work on any specific matter.

The letter of engagement will set out the name of the director of Evolution Lawyers with overall responsibility for your matter. It will also provide a brief description of the services we will provide in your matter.

Our obligations as lawyers are owed, and these terms are applicable, to the person(s) named as our client(s) in the letter of engagement.

If a client is added or replaced during a matter, whether as recorded in writing or as necessary to complete your instructions, our obligations will also be owed, and these terms will be applicable to, that added or replaced client.

When referring to “you” or “your” in these terms, we are referring to the clients named in our letter of engagement, as well as clients added or replaced in the manner described above. Unless we agree otherwise, our obligations will not extend to any other person. This includes, for example, parents, children, or other family members, and shareholders or directors of companies.

4. OUR ROLE

We will represent and advise you on all legal matters that we consider to be necessary, reasonable, and in accordance with your instructions. In doing so, we rely on you to provide instructions, information, and documents that are relevant, accurate, complete, and delivered in a manner that is timely and convenient.

If any task is not contemplated by, or reasonably required to fulfil, your instructions, please do not assume our role will extend to completing that task. If you have doubt about whether a particular task falls within the scope of our role, please contact us to confirm.

Unless we agree otherwise, our services will not include providing advice or other services related to taxation, commercial, or financial matters.

We are qualified to advise on New Zealand law. If we assist you in respect of matters governed by foreign law, we do so on the basis that we do not accept any responsibility for your legal position under that foreign law.

When your instructions on any given matter are completed, our representation for you in that matter will end.

We will only provide advice about issues arising after your matter is complete, including advice about post-transaction compliance requirements and changes to relevant law, if that advice is within the scope of your instructions.

5. INSTRUCTIONS AND COMMUNICATION

We act on the instructions you provide. If you do not instruct us to complete a task, and the task is not contemplated in our letter of engagement or these terms, expected as part of our normal role as lawyers in the matter, or so obvious that it goes without saying, the task may not be completed.

We are entitled to act on your instructions even if they are contrary to our advice or could result in an outcome that, in our view, would not be in your best interests.

Your instructions may be given to us, and we in turn may communicate with you, via any communication method that you use voluntarily or authorise the use of, whether expressly or by conduct, to provide us with instructions, information, or documents.

6. DEALING WITH AN AGENT

If you expressly or impliedly (for example, by conduct) authorise another person (**Agent**) to deal with us in connection with your matter, including receiving instructions from, or providing information, documents, or advice to, the Agent, we may continue to deal with the Agent in connection with the matter instead of dealing directly with you, provided such dealing is:

- consistent with what we consider would be reasonably expected to be within the Agent’s authority;
- consistent with your instructions;

- consistent with your best interests; and
- reasonably required to complete your instructions.

An Agent will be presumed to have authority to deal with us until the authority is expressly revoked.

Any communication with your Agent will be deemed to be communication with you.

7. USE OF OUR ADVICE

Our advice is given in your interests and solely for your benefit. No other person may rely on our advice.

Our name, advice, services, and opinions may not be used in, or in connection with, any offering document, financial statement, or other public document or statement without our prior, written consent.

8. STANDARD OF WORK

When providing legal services to you, we will:

- 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; and
- let you know how to make a complaint, and deal with any complaint promptly and fairly.

9. OUR FEES

The Rules prevent us from charging you more than a fee that is reasonable for the services provided. The factors to be considered when determining if a fee is reasonable include:

- the time and labour expended;
- the skill, specialised knowledge, and responsibility required to perform the services properly;
- the importance of the matter to you and the results achieved;
- the urgency and circumstances in which the matter is undertaken, and any time limitations imposed, including those you impose;

- the degree of risk we assume in undertaking the services, including the amount or value of any property involved;
- the complexity of the matter and the difficulty or novelty of the questions involved;
- our experience, reputation, and ability;
- the possibility that the acceptance of the retainer will preclude us being engaged by other clients;
- whether the fee is fixed or conditional (whether in litigation or otherwise);
- any quote or estimate of fees we provide;
- any fee agreement (including a conditional fee agreement) we enter into with you;
- the reasonable costs of running a practice; and
- the fee customarily charged in the market and locality for similar legal services.

We will take factors such as these into account when determining our fee. However, generally, and unless we have agreed a fixed fee, our fees will be calculated on an hourly basis.

10. HOURLY RATES

Our hourly rates vary depending on the person providing the services.

The rates are divided into the following seven categories.

CATEGORY	FOR	RATE
A	Directors	\$500
B	Senior Associates	\$400
C	Associates	\$300
D	Solicitors Legal Executives	\$200
E	Law Graduates	\$100
F	Legal Administrators Law Clerks	\$50

All hourly rates are in New Zealand dollars and exclusive of Goods and Services Tax (GST).

11. INVOICING AND PAYMENT

Fees will be invoiced monthly, or at other frequencies at our discretion, and on completion of the matter, unless otherwise agreed. Payment is due within 14 days of the date the invoice is provided.

Our invoices may be paid by electronic funds transfer to our bank account, by debit or credit card, or, if we hold funds for you in our trust account, by way of deduction from those funds. We do not accept payment of our invoices by any other method, including cash or cryptocurrency.

Unless we agree otherwise in writing, your obligation to pay our invoices is not conditional on the completion, settlement, or other successful outcome of your matter.

Please let us know as soon as possible if you are unable to pay our invoice by the due date.

12. RETAINERS

We may, at any time, require you to pay a retainer to us before commencing or continuing work on your matter. We will hold any such retainer in our trust account to pay future invoices.

The decision whether to require a retainer, and the amount of any retainer, will be at our absolute discretion. However, the retainer may not exceed the amount of fees that we estimate will be required to complete our instructions.

We may pay our invoices from funds held on retainer, without requiring further authorisation from you.

If we require a retainer from you under this clause and the retainer is not paid within 14 days of our request for payment, we may suspend or cease acting for you.

13. OVERDUE INVOICES

If an invoice is not paid when due, we may do any or all the following without notice to you:

- Cancel any discount on fees that we have granted, provided the discount relates to an outstanding amount owed to us, or any discount that we have agreed to grant in the future. After cancelling a granted discount, we may then issue a new invoice for the discounted fee amount plus GST.
- Charge interest on the outstanding amount at the rate of 15% per annum, calculated daily based on a year of 365 days, from the due date until the date of actual payment.
- Report the overdue invoice to a credit reporting agency and record the default for the purposes of future credit checks or credit enquiries.
- Charge you for the fees, expenses, and disbursements we incur in attempting to recover your outstanding indebtedness, including legal fees on a solicitor-client basis. If we act for ourselves in enforcing or attempting to enforce our rights under these terms, we will be entitled to solicitor-client costs in an amount equal to the time incurred by us in the matter multiplied by the relevant hourly rate set out above, plus the expenses and disbursements set out in these terms. Our time will be calculated as if we were acting for a client of the firm in the proceeding and otherwise in accordance with these terms.
- Suspend or cease acting for you.

It is your responsibility to pay our invoices when due. If we are acting for more than one person in a matter, each client, and all of them together, will be responsible for paying our invoices. It does not matter if you expect another person to reimburse you or pay the fee on your behalf.

Your responsibility to pay our invoice will not be affected by our invoice being addressed to another person.

14. DEBT RECOVERY

We may commence debt recovery action against you if an invoice is not paid when due. In that event, we may charge you the following debt recovery costs, in addition to the amounts payable under clause 13:

- \$300 for issuing a formal written demand.
- \$500 for issuing a statutory demand under the Companies Act 1993.

For the purpose of serving the above documents, and any other document in debt recovery proceedings in any court or Tribunal (including breach of contract claims, liquidation proceedings, and bankruptcy proceedings), on you, you agree that we may effect service by email to the address we last used to communicate with you about your matter.

15. ESTIMATES AND FIXED FEES

We will provide a fee estimate for a matter upon request. Any fee estimate will be indicative based on the information you provide and the assumptions we are reasonably able to make. No estimate we provide will be treated as a quote or maximum fee unless specifically stated to be a “fixed fee” in the letter of engagement.

To the extent we provide a fixed fee in our letter of engagement, the fee will only extend to the services described in that letter.

If you ask us, we will keep you updated if we believe the fee estimate needs to be adjusted or will be exceeded.

If we have provided a fixed fee for any service, we will advise you if we believe additional attendances are required. Those additional attendances will not be included in the fixed fee.

Any estimate or fixed fee will be subject to the following assumptions:

- Your instructions are accurate and complete.
- The estimate or fixed fee is based on the minimum attendances that we anticipate will be required to complete the matter.
- The matter will proceed to completion in the manner anticipated by your instructions and within any indicated, or a normal, timeframe.
- You will provide any required information, documents, or instructions in a timely and efficient manner.
- No unforeseen impediments will arise.
- Any third party or regulatory consents or approvals will be given in a timely manner.
- All persons involved in the matter, including individuals, companies, institutions, and organisations, as well as their advisers and agents, will be co-operative and reasonable.

All estimates and fixed fees will include our fee only and will exclude GST and any anticipated disbursements and expenses, unless stated otherwise.

16. CONVEYANCING FEE ESTIMATES

In addition to the assumptions noted above, when we give a fee estimate for a conveyancing matter our fee estimate:

- will not consider the particular facts and circumstances of your transaction. It is our standard fee estimate for the type of transaction that you wish to complete;
- will not cover any changes to parties (for example, nominated purchasers), documents (for example, variations), dates (for example, condition and settlement dates), or other requirements for the transaction;
- assumes simple loan documentation from the lender (if any), with no unexpected, unusual, or onerous lender requirements or conditions;
- assumes there will be one meeting (either in person or via a video conferencing service) during which every document required for the transaction will be fully executed; and
- will likely be exceeded if you are a first home buyer. Not only do first home buyers usually have additional financing requirements, for example KiwiSaver withdrawals and Home Start grants, but also have more questions and a greater need for advice than those who have bought a house before.

17. CUSTOMER DUE DILIGENCE

We are a reporting entity for the purposes of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (**AMLCFT Act**).

You acknowledge that, under and to the extent required by the AMLCFT Act, we may be required to complete simplified, standard, or enhanced customer due diligence (**CDD**) on you and other people before or after establishing a business relationship. Our other obligations under the AMLCFT Act include having to report suspicious activity.

We have appointed an agent, First AML, to carry out CDD for us as required. You authorise us to disclose your name and contact details (which may include email address, phone number, and residential address) to First AML for the purposes of conducting CDD and reporting back to us.

First AML will contact you directly to conduct CDD. Please provide all the information requested by First AML. Information provided will be treated as confidential and used for the purposes of CDD and our file opening processes. If First AML is unable to complete CDD, then we may not be able to act for you.

We are required to keep CDD information up to date. First AML may need to contact you from time to time to ensure the documents relied on for CDD are current.

Further information about First AML is available here: <https://www.firstaml.com/privacy-policy>.

Please note that even if CDD is not legally required under the AMLCFT Act, we may still require each client to provide us with a copy of their photo identification. If any client is unable to provide their photo identification, we may suspend or cease acting for you until photo identification is provided.

18. DISBURSEMENTS AND EXPENSES

We will charge you for the disbursements and expenses that need to be incurred to provide services to you or complete your instructions.

Disbursements and expenses are chargeable in addition to our fee and stated exclusive of GST.

Disbursements are costs that we incur and pay to third parties on your behalf and on charge to you. Examples include search and registration fees payable to Landonline to complete conveyancing transactions, incorporation and annual return filing fees paid to the Companies Office to satisfy compliance requirements under the Companies Act 1993, filing fees payable to the Ministry of Justice for court proceedings, and fees incurred with agents, experts, barristers, and other professionals engaged to assist with your matter.

It will be up to us to determine, in our absolute discretion but acting reasonably, if any disbursement is necessary for your matter. We will not require your separate authorisation.

Expenses are set internal costs that we charge in addition to disbursements paid to third parties.

We charge an office administration expense fee of \$100 on every invoice we issue to you. This fee covers office and other administration costs that we incur when providing our services to you.

If we are required to travel more than 10 kilometres to meet you, we may charge a mileage expense. Mileage is charged at the rate of \$0.95 per kilometre.

Finally, we charge expenses for completing CDD in accordance with the AMLCFT Act. The CDD expense for an individual is \$50. The CDD for a company, trust, or other entity is \$200. This fee may be charged more than once, depending on our obligations under the AMLCFT Act.

19. CREDIT CARD PAYMENT FEES

You may pay our invoices by credit card using Stripe. Such payments may incur a credit card payment fee.

You acknowledge that credit card payment fees are charged by, and paid directly to, Stripe. Such fees will not be treated as disbursements or expenses under clause 18, but as separate fees payable as between you and Stripe.

20. TRUST ACCOUNT

We may ask you to pay us an amount that needs to be paid to a third party on your behalf, or that we need to take as security for, or in advance of, our costs. We will hold any such amount in our trust account.

We will not make any deduction from the funds we hold for you in our trust account without your authority, unless the deduction is a payment to you, a transfer to an interest-bearing deposit account, or is in payment of one or more of our invoices.

We will send you a statement showing how funds held in trust have been applied regularly (at least every 12 months) and at the end of each matter.

We will not accept any payment from you or any other person, nor pay any amount on your behalf or on behalf of any other person, in cash, bearer instruments, cryptocurrency, or other money or instruments that are the equivalent of cash. Any such money or instruments must be converted into New Zealand currency (if necessary), deposited into a New Zealand bank account owned and operated by you or on your behalf, and subsequently transferred to our trust account by electronic funds transfer, to be used in your matter.

If we hold funds on interest-bearing deposit in our trust account on your behalf, we may charge and deduct an administration fee. That fee will be 5% of the gross interest earned while these funds are in our trust account. The interest rate is based on ASB Bank Limited's applicable interest rate for professional trust accounts. We are not responsible for obtaining the best interest rate available from any bank or any loss of interest that you might suffer as a result of any delay in placing your funds on interest-bearing deposit.

21. REPORTING OBLIGATIONS

We may be required to report certain information about you under the Foreign Account Tax Compliance Act (US) (**FATCA**) and the OECD's Common Reporting Standard (**CRS**). You consent to us providing information required by law to meet FATCA, CRS, and any other reporting obligation that we may have.

22. EFFECTIVE MATTER MANAGEMENT

To assist the efficient management of your matter, please provide us with:

- clear instructions, preferably in writing and by email;
- your expectations, including the desired outcome of the work we complete;
- all information including correspondence relevant to the matter;
- important time constraints and deadlines for completing the work;
- the name(s) of anyone else who has authority to give instructions on your behalf; and
- your current contact details.

23. CONFLICTS OF INTEREST

A conflict of interest may arise during us acting for you. We will contact you immediately upon becoming aware of a potential conflict of interest.

In the event of a conflict of interest, we may need to cease working for you.

24. COSTS OF LITIGATION

If your matter involves litigation of any form, we recommend that you consider the following:

- If the Court grants an award of costs in your favour, the amount of the award will most likely be less than fees, expenses, and disbursements due under these terms of engagement. Unless you have a contractual entitlement, only in rare cases, such as a serious abuse of process, will the Court be prepared to award full recovery of your actual legal costs.
- If you are unsuccessful in any Court procedure, the Court may make a costs award against you. Your legal requirement to pay any costs award will not affect your liability under these terms.

25. PRIVACY AND CONFIDENTIAL INFORMATION

We will keep confidential all information concerning you or your affairs that we acquire while acting for you. You have the right to access this information and you may request that we correct any information that is incorrect.

Confidential information will, as far as practicable, be made available only to those people within Evolution Lawyers who are providing legal services to you. We will not disclose any confidential information to a third party, except to the extent necessary or desirable to enable us to carry out your instructions, or as required by law, including the Rules.

We will sometimes need to collect, use, and disclose personal information about your employees, directors, or other people associated with you or your transactions, to carry out your instructions. Please make sure that these people are aware that our acting for you may involve collecting, using, and disclosing personal information about them. In most cases they can request access to the personal information we hold about them.

26. ELECTRONIC COMMUNICATIONS

We will communicate with you and others by electronic means. These communications can be subject to third-party intrusion or contain viruses or other defects.

We do not accept responsibility and will not be liable for any damage or loss caused by such intrusion, virus, or other defect of an electronic communication.

If you have any doubts about the authenticity of any communication or document appearing to be sent by us, please contact us immediately.

27. COMPLAINTS

We maintain procedures for handling complaints by clients, which are designed to ensure they are dealt with promptly and fairly.

In the first instance, you may refer any complaint to the person who has overall responsibility for your work. Please email your written complaint to:

- Tamina Cunningham-Adams, Director, at tamina@evolutionlawyers.nz; or
- Thomas Bloy, Director, at thomas@evolutionlawyers.nz.

The New Zealand Law Society operates the Lawyers Complaints Service. To make a complaint to that service, phone 0800 261 201 to be connected to your nearest Complaints Service Office.

28. PROFESSIONAL INDEMNITY INSURANCE

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

29. LAWYERS' FIDELITY FUND

The New Zealand Law Society maintains the Lawyers' Fidelity Fund to provide clients 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. Except in certain circumstances specified in the Act, the Fidelity Fund does not cover a client for any loss relating to money that a lawyer is instructed to invest on behalf of a client.

30. END OF THE ENGAGEMENT

You may end our engagement at any time by notice in writing. Until we receive such notice, we may continue acting on a matter for you.

If we become unable to act for you at any time, we will notify you in writing. The Rules provide certain circumstances where we may no longer act, including:

- conflict of interest;
- your unwillingness or inability to pay our reasonable fee for completed work;
- lack of available time;
- instructions falling outside our normal areas of practice; and
- instructions that could require us to act in breach of any law or professional obligation.

We will endeavour to identify any potential situation preventing us from acting for you as soon as practicable.

At the end of our engagement, we will provide an invoice for all work completed and not already billed.

If we terminate your engagement while acting as solicitor on record for any litigation, you will continue to be liable for the fees, disbursements, and expenses we incur in connection with our withdrawal as counsel from that litigation. We may charge those fees, disbursements, and expenses to you in accordance with these standard terms, as if you were our client for the matter.

If you have given us an instruction that we have relied upon, including by giving an undertaking to a third party, you may not revoke that instruction, even if our engagement is terminated.

31. RETENTION OF FILES

You authorise us to destroy all files and documents for this matter, other than any documents that we have agreed to hold in safe custody for you:

- seven years after our engagement ends, or such longer period as required by law; or
- earlier if we have converted those files and documents to an electronic format.

If you, or an authorised agent, requests an uplift of files and documents held by us, we may charge a reasonable fee based on time and attendances to attend to your request. Our terms of engagement will apply to that attendance, even if our engagement has been terminated.

32. LIMITATION OF LIABILITY

To the extent permitted by law, our aggregate liability to you, whether in contract, equity, tort, or otherwise, arising out of our provision of legal or other services to you, for this matter and any other matter you have with us, is limited to the greater of:

- the total amount charged in accordance with these terms; or

- the amount available to be paid out under any relevant insurance held by us, up to a maximum of NZ\$1,500,000.

When providing you with legal advice, we may rely on, or provide you with, information obtained from third parties, including government agencies, public registers, or experts. This information may not be accurate or complete. Accordingly, we do not accept responsibility for any damage or loss caused by errors or omissions in information obtained from third parties.

33. NO ASSIGNMENT

You may not assign or otherwise transfer your rights or obligations under these terms.

34. GOVERNING LAW

These terms of engagement and any other agreement we have with you are governed by New Zealand law and will be subject to the exclusive jurisdiction of the New Zealand courts.

35. GUARANTEE

This section applies if, and to the extent that:

- our client for a matter is a company or other entity with separate legal personality; and
- an individual (**Guarantor**) has signed a letter of engagement or other document confirming that he or she personally guarantees the company's obligations to us.

The Guarantor provides a continuing, all-obligations, and personal guarantee of the payment of all amounts the client owes to us under these terms from time to time, including amounts owed under invoices issued by us, for interest, and for costs. If the client defaults to pay any such amount when due, we may, on written demand, require the Guarantor to pay the amount. The Guarantor's liability under this clause will not be discharged, including for anything that could discharge the liability but for this clause, until we provide written confirmation of such discharge.