

Beresford Law

Standard Terms of Engagement

(Effective 1 June 2023)

Application

1. These terms apply generally to our relationship with our clients. They govern any current and any future engagements, whether or not we provide another copy of them.

Alternative arrangements prevail

2. If these terms are inconsistent with any other agreement which we have made with you (whether generally or in respect of a specific instruction), the other agreement prevails over these terms.

Our client

3. Our client on any particular matter (referred to in these terms as **you**) will be the party identified as such in our email or letter of engagement. Our duty of care is to you and not to any other person.

Our obligations

4. We are obliged to protect you and promote your interests to the exclusion of the interests of third parties and to act in accordance with the requirements of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (**Rules**).

Conflicts of interest

5. We will comply with the Rules in respect of conflicts of interest. This may mean that we cannot act for you in a particular matter. If you believe that a conflict of interest has arisen or may arise, you must inform us immediately.

Authority

6. We have the usual authority of a lawyer to act on your behalf in relation to each instruction which we accept, including, where reasonable, to incur expenses and to engage barristers, experts, or law firms in other areas or jurisdictions to assist.

Advice and services

7. The services that we are to provide to you are outlined in our email letter of engagement along with any further instructions that you provide to us.

8. Any advice given by us:

- a. is solely for your benefit and may not be relied on by any other person;
- b. must not be published or used for a purpose other than for which it was sought;
- c. is limited to the matters stated in it;
- d. is limited to and governed by New Zealand law; and
- e. is subject to changes in the law after the date on which it is given.

9. We are not responsible for advising you about taxation or accounting issues or on the quality of any investment asset you are acquiring or selling. We work on the understanding that you will obtain separate advice on these matters.

Professional fees

10. Our fees are charged on the basis of time and attendance. Time spent is recorded on the basis of standard hourly rates, and in accordance with the Rules.

11. The Rules require fees be fair and reasonable for the services provided. The following factors are taken into account in determining a fair and reasonable fee:

- a. the time and labour expended;
- b. the skill, special knowledge, and responsibility required to perform the services;
- c. the importance of the matter to you and the results achieved;
- d. the urgency and circumstances in which the matter is undertaken and any time limitations imposed, including those imposed by the client;
- e. the degree of risk assumed by us in undertaking the services, including the amount or value of any property involved;
- f. the complexity of the matter and the difficulty or novelty of the questions involved;
- g. our experience, reputation, and ability;
- h. that acceptance of the particular retainer may preclude our engagement by other clients;
- i. whether the fee is fixed or conditional, whether in litigation or otherwise;
- j. any quote or estimate of fees given;
- k. any fee agreement (including a conditional fee agreement) entered into;
- l. the reasonable costs of running a practice;
- m. the fee customarily charged in the market and locality for similar legal services.

12. Many of factors (a) to (m) above are taken into account in setting hourly rates of individual lawyers which we apply in calculating our fee. Our fee is also subject factors relating to the specific instruction and to the overall requirement to be fair and reasonable.

13. We may change the hourly rates for our fees and services from time to time. We review them regularly and may adjust them from time to time.

14. Unless otherwise agreed with you at the start of our engagement, we do not provide itemised breakdowns of our attendances on matters.

Office services and disbursements

15. Our fees for professional services incorporate the overhead cost of normal secretarial, word processing, and other assistance provided to our lawyers.

16. In the legal industry charges for office services (which cover internal photocopying, library subscriptions, photocopying/printing, certifying documents, IT set-up, telecommunication services, postage, document storage costs and the like) are established by reference to a scale based on fee values. Beresford Law reserves the right to charge for office services on this basis.

17. In providing services to you, we may incur disbursements and make payments to third parties on your behalf. You authorise us to incur disbursements that are reasonably required to undertake the services. These may include, courier costs, document management, external printing/photocopying costs, Ministry of Justice fees, Land Information New Zealand fees, obtaining Council property files, fees of experts, and travel and accommodation costs.

18. Disbursements will be charged separately from our fee and will be separately itemised on our invoices or separately invoiced. We will discuss with you any major or unusual disbursement before we incur it and where a material disbursement is likely to be incurred, we may ask that this be paid to us before that cost is incurred.

Estimates

19. When we provide an estimate, it is a guide only and not a fixed quote unless otherwise agreed in writing. Any material assumptions included in the estimate will be stated and you must tell us if those assumptions are wrong or change. We will inform you if we are likely to exceed the estimate by any substantial amount. Unless otherwise stated, any fee estimate will be exclusive of GST, disbursements and service charges. Any work that you ask us to do outside the scope of our estimate will be charged for separately. This includes supplementary reporting or explanations, and any additional work we do because any assumptions are not correct.

GST additional

20. Our services will usually attract GST. If this is the case, GST is payable by you on top of our fees and charges. If at any time the Inland Revenue Department notifies us that we are required to pay an amount of GST in respect of services provided to you that is more than the amount of GST invoiced to you, you must pay the amount of the difference on demand to us.

Invoices

21. We normally issue invoices monthly, but we may also send you invoices more frequently. We will issue a final upon invoice on completion of matters.

22. Our invoices must be paid within seven days of issue unless otherwise arranged with us.

Unpaid invoices

23. If payment to us of any invoice by you is overdue, we may cease performing further work for you until all unpaid invoices are paid in full; and

- a. retain custody of any of your property (including documents or files) until all unpaid invoices are paid in full; and
- b. recover from you in full any costs we incur (including on a solicitor/client basis) in seeking to recover the amounts from you, including our own fees and the fees of any collection agency.

24. Unless we have entered into a separate arrangement with you, if an amount is overdue 10 working days after the due date, we may charge interest at the rate of 5% p.a. above our bank's prevailing indicator lending rate.

Third party payment of fees

25. Although you may expect to be reimbursed by a third party for our fees, and although our invoices may at your request or with your approval be directed to a third party, you remain responsible for payment to us in accordance with these Terms if the third party fails to pay.

Deposits

26. We may ask you to pre-pay amounts to us, or to provide security for expenses and our fees. We may cease or delay performance of our services until the requested pre-payment or security has been received.

Trust account

27. We operate a trust account for all funds which we receive from clients (except monies received for payment of our invoices).

28. To the maximum extent permitted by law, you instruct us to hold any and all funds on your behalf on non-interest bearing deposit. If we specifically agree to hold your funds on interest bearing deposit (which will only be for significant funds for more than a short period of time), we:

- a. will recommend you authorise us to place those funds on a call or term deposit with a registered bank. Interest earned from call deposits, less withholding tax and our fee for (which will be based on the greater of our time attendances or an interest administration fee payable to us of 8% of the interest), will be credited to you.
- b. will need either your IRD number or a copy of your interest withholding tax exemption certificate and any customer self-certification information required by our banker under the Tax Administration Act 1994 before funds can be placed on deposit.

29. As part of our obligations under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 we are required to collect and verify information about our clients' identity, including people acting on behalf of our client and/or with effective control of, or beneficial interests in, our client. We will not undertake any work for you until we are satisfied our obligations under the Act have been met. Any information we collect will be retained and used to meet our ongoing compliance obligations. In some instances we may use the services of a third-party provider to verify the information you provide. When you accept these terms and conditions, you authorise us to provide your details to this provider

30. We are authorised to disclose the information collected from you under clause 28 and 29 of these Terms to our banker and to any other third party we are legally required to disclose that information to.

31. If we hold funds on your behalf you authorise us to deduct our fees from those funds (unless they have been provided for a particular purpose) and send you an invoice as required by the Lawyers and Conveyancers Act (Trust Account) Regulations 2008.

Documents, records, and information

32. We will keep a record of all important documents which we receive or create on your behalf, and:

- a. We may keep a record electronically and destroy originals (except where the existence of an original is legally important);
- b. At any time, we may dispose of documents which are duplicates, or which are trivial (such as emails which do not contain substantive information), or documents which belong to us;
- c. We are not obliged to retain documents or copies if you have requested that we provide them to you or to another person and we have done so, although we are entitled to retain copies for our own records if we wish to do so.

33. We will provide to you on request copies or originals (at our option) of all documents to which you are entitled under the Privacy Act 2020 or any other law. We may charge you our reasonable costs for doing this.

34. Where we hold documents that belong to a third party you will need to provide us with that party's written authority to uplift or obtain a copy of that document.

35. Unless you instruct us in writing otherwise, you authorise us and consent to us (without further reference to you) to destroy all files and documents and delete all electronic records in respect of the services 7 years after our engagement ends (other than any documents that we hold in safe custody for you or are otherwise obliged by law to retain for longer). We may retain documents for longer at our option.

36. We may, at our option, return documents (either in hard or electronic form) to you rather than retain them. If we choose to do this, we will do so at our expense.

Confidential information

37. We will hold in confidence and not disclose to any other person any confidential information which we obtain as your lawyers except to the extent allowed or required by law or the Rules or to the extent necessary to enable us to carry out your instructions.

38. You are not entitled to any confidential information which we have or obtain in relation to any other client or prospective client.

Intellectual property

39. We retain all ownership rights in all intellectual property of any kind created by us for you. You may not reproduce our intellectual property or provide it to a third party without our express consent.

Electronic communications

40. We may communicate with you and others at times by electronic means and we do not accept responsibility for, and will not be liable for any damage or loss caused or arising in connection with, the interception or corruption of an electronic communication.

Termination

41. You may terminate this agreement at any time. We may terminate this agreement in the circumstances permitted by the Rules.

42. You must pay us for the services which we provide, and for all expenses which we have incurred, up to the date of termination.

Governing law

43. New Zealand law governs our relationship and New Zealand courts have non-exclusive jurisdiction.

Scope of our duties

44. Our advice relates only to each particular matter in respect of which you engage us. When our instructions on a particular matter are completed, our representation of you will come to an end, and we will not be obliged to notify you of any subsequent change in law, nor to provide any further services in relation to the matter or any other related matters.

45. We owe no duty and may not be held liable to any other person other than you including for example any directors, shareholders, associated companies, employees or family members unless we expressly agree in writing. Further, we do not accept any responsibility or liability to any third parties who may be affected by our performance of the services or who may rely on any advice we give, except as expressly agreed by us in writing. Our advice is not to be referred to in connection with any prospectus, financial statement, or public document without our written consent.

46. Our advice is opinion only, based on the facts known to us and on our professional judgement, and is subject to any changes in the law after the date on which the advice is given. We are not liable for errors or omissions, in or arising from, any information provided by you or third parties.

Limitation of liability

47. To the extent allowed by law, our aggregate liability to you (whether in contract, tort, equity or otherwise) in connection with our services is limited to:

- a. the amount available to be paid under the Professional Indemnity Insurance held by the firm, up to a maximum of \$2 million; and
- b. Where no amount is available to be paid out under our relevant insurance policies, the lesser of \$250,000 or 5 times our fees applicable to the matter (or series of matters) (excluding our office service charge, disbursements and GST).

Changes to terms

48. We may change these terms at any time. We will publish the changed terms on our website. The change will bind you in respect of any matters on which we accept instructions after publication of the change.