

TERMS AND CONDITIONS OF ENGAGEMENT

These Terms and Conditions of Engagement (“Terms”) apply in respect of all work carried out by Smith & Partners for the client (“you”), except to the extent that Smith & Partners otherwise agrees with you in writing.

1. SERVICES

- 1.1 The services Smith & Partners is to provide for you are outlined in Smith & Partners’ engagement letter.
- 1.2 Smith & Partners will only act on your clear instructions. Where you cannot or will not provide such instructions Smith & Partners will cease work until these are received and cannot accept any liability in such circumstances.
- 1.3 By instructing Smith & Partners you accept liability to pay the account that Smith & Partners will render for work done and all agency disbursements incurred in respect of such instructions.
- 1.4 If Smith & Partners provides professional services to you for the purposes of a business, or in relation to your business, you acknowledge that, pursuant to Section 43 of the Consumer Guarantees Act 1993 (“the Act”), the provisions of the Act shall not apply with respect to such professional services.

2. FINANCIAL

2.1 Fees:

- (a) When Smith & Partners opens a file Smith & Partners does not know how significant the work involved will be. It is therefore usually impossible to give a fixed quote.
- (b) The fees Smith & Partners will charge or the manner in which they will be arrived at, are set out in Smith & Partner’s engagement letter.
- (c) Where possible, Smith & Partners will give you an estimate. The estimate will be Smith & Partners “best guess” as to what the fee is likely to be. If however the work does not proceed as Smith & Partners had expected due to unexpected complications, or if the work proves more complicated than originally anticipated, Smith & Partners reserves the right to charge for all additional work done. This will be based on Smith & Partners’ usual hourly rate as advised to you.
- (d) If the engagement letter specifies a fixed fee, Smith & Partners will charge this for the agreed scope of Smith & Partners’ services. Work which falls outside that scope will be charged on an hourly rate basis. Smith & Partners will advise you as soon as reasonably practicable if it becomes necessary for Smith & Partners to provide services outside the agreed scope and, if requested, give you an estimate of the likely amount of the further costs.

- (e) Where fees are calculated on an hourly basis, the hourly rates are available upon request. The differences in those rates reflect the experience and specialisation of Smith & Partners' professional staff. Time spent is recorded in 6 minute units, with time rounded up to the next unit of 6 minutes.

2.2 Disbursements and expenses:

In providing services Smith & Partners may incur disbursements or have to make payments to third parties on your behalf. These will be included in Smith & Partners' invoice to you when the expense is incurred. Smith & Partners may require an advance payment for the disbursements or expenses which Smith & Partners will be incurring on your behalf.

2.3 GST:

Is payable by you on Smith & Partners' fees and charges.

2.4 When will you be billed?

If the work is going to extend over a longer period of time Smith & Partners will bill you on a monthly basis. This will help you by spreading the payments over time. It will also enable you to keep track of how much the work is costing. Where files are billed monthly your account will usually be calculated purely on the basis of the time spent. When a final bill is rendered an adjustment may be made to allow for those factors mentioned above.

2.5 Credit Policy:

You may be allocated a credit limit. Which will be:

- (a) Confidential between you and Smith & Partners;
- (b) The total amount that Smith & Partners will allow to be owed or due to it by you at any time;
- (c) Able to be increased or decreased or withdrawn by Smith & Partners at any time;
- (d) Smith & Partners may stop doing work (and instruct others to stop doing work) for you if your credit limit is exceeded and payment not received by Smith & Partners when invoiced.

2.6 When do you have to pay?

- (a) Smith & Partners' accounts are all due within seven days of rendering an invoice. If Smith & Partners is holding money for you (for example from the sale of your house) Smith & Partners will deduct the account from that money and give you a full statement.
- (b) In certain circumstances Smith & Partners may agree to fees being paid by way of automatic payment authority. Smith & Partners is not obliged to agree to such a proposal and the provisions of clause 2.11 may apply to such an arrangement.
- (c) Smith & Partners reserves the right to cease work until accounts are paid up to date.

2.7 Security:

Smith & Partners may ask you to pre-pay amounts to Smith & Partners, or to provide security for Smith & Partners' fees and expenses. You authorise Smith & Partners:

- (a) to debit against amounts pre-paid by you; and
- (b) to deduct from any funds held on your behalf in Smith & Partners' trust account any fees, expenses or disbursements for which Smith & Partners has provided an invoice.

2.8 **Third Parties:**

- (a) Although you may expect to be reimbursed by a third party for Smith & Partners' fees and expenses, and although Smith & Partners' invoices may at your request or with your approval be directed to a third party, nevertheless you remain responsible for payment to Smith & Partners if the third party fails to pay Smith & Partners.
- (b) If we are acting for you in your capacity as a landlord in terms of a lease under which the tenant is required to pay your costs and legal expenses, then if the tenant has not paid your costs, we reserve the right, three months after we have submitted the bill to the tenant, to look to you for payment of those costs. You will be aware in terms of your lease you have a right to take action against the tenant for recovery of those fees. We, on the other hand, have no such right as we have no contract with the tenant, our contract being with you as our client.

2.9 **Instructing Counsel:**

If Counsel is to be instructed Smith & Partners reserves the right to require payment of Counsel's estimated fees into Smith & Partners' trust account beforehand. By instructing Counsel Smith & Partners undertakes an obligation to pay Counsel's fees and accordingly requires to be protected for these. Smith & Partners may require you to enter a payment arrangement directly with Counsel.

2.10 **Credit checks:**

You authorise any person or company to provide Smith & Partners with such information as Smith & Partners may require in response to Smith & Partners credit enquiries.

2.11 **What if you can't pay on time?**

- (a) If you anticipate difficulty in the payment of any account you must contact Smith & Partners at the first available opportunity and discuss arrangements for payment. The provisions of clause 2.5 may apply. Interest is payable at the rate of 18 % per annum (calculated on a monthly basis) on any account more than 30 days overdue. If Smith & Partners incurs costs in obtaining payment you will be liable for those costs.
- (b) All recovery costs incurred by Smith & Partners arising out of your failure to pay by due date including full legal costs and all disbursements shall be payable by you on demand.

2.12 **Companies and Trusts:**

If you are instructing Smith & Partners in your capacity as a director or shareholder of a company or as a settlor or trustee of a trust or executor or administrator of an estate then your instructions are accepted on the basis that you remain at all times personally liable (along with the company, trust or estate) to pay Smith & Partners' fees and disbursements.

2.13 Lien:

When work has been done by Smith & Partners but Smith & Partners has not been paid by you then as a general rule Smith & Partners has the right to retain certain original documents and correspondence on your file 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 Firm. That Firm may be obliged to give an undertaking to pay all outstanding fees and disbursements before your file is released to it.

2.14 Agreement to mortgage:

In consideration of the provision by Smith & Partners of professional legal services and extending credit to you pursuant to the terms of this Agreement you agree to mortgage all your estate and interest in all real estate owned by you from time to time. Pursuant to this agreement to mortgage you hereby irrevocably grant to Smith & Partners a power of attorney to execute on behalf of you a registrable mortgage in the form customarily employed by solicitors practising in the Auckland District to secure unpaid fees and disbursements.

3. CONFIDENTIALITY

3.1 Smith & Partners will hold in confidence all information concerning you or your affairs that Smith & Partners acquires during the course of acting for you. We will not disclose any of this information to any other person except:

- (a) to the extent necessary or desirable to enable us to carry out your instructions; or
- (b) to the extent required by law or by the Law Society's Rules of Conduct and client Care for Lawyers.

3.2 Confidential information concerning you will as far as practicable be made available only to those within our firm who are providing legal services for you.

3.3 We will of course, not disclose to you confidential information which we have in relation to any other client.

4. TERMINATION

4.1 You may terminate Smith & Partners' retainer at any time.

4.2 Smith & Partners may terminate its retainer in any of the circumstances set out in the Law Society's Rules of Conduct and client Care for Lawyers

4.3 If Smith & Partners' retainer is terminated you must pay us all fees due up to the date of termination and all expenses incurred up to that date.

5. RETENTION OF FILES AND DOCUMENTS

5.1 You authorise Smith & Partners (without further reference to you) to destroy all files and documents seven years after our engagement ends, or earlier if Smith & Partners has converted those files and documents to an electronic format.

5.2 Smith & Partners will hold certain deeds and documents in safe custody for you. Smith & Partners periodically audits the deeds and documents held and in the event that Smith & Partners believes that certain deeds and documents have expired then you will be notified

at your last known address to uplift the deed or document. If Smith & Partners does not receive any response from you, you authorise us to destroy the deed or document.

6. CONFLICTS OF INTEREST

6.1 Smith & Partners have procedures in place to identify and respond to conflicts of interest. If a conflict of interest arises Smith & Partners will advise you of this and follow the requirements and procedures set out in the Law Society's Rules of Conduct and client Care for Lawyers.

7. DUTY OF CARE

7.1 Smith & Partners' duty of care is to you and not to any other person. Before any other person may rely on Smith & Partners' advice, Smith & Partners must expressly agree to this.

8. TRUST ACCOUNT

8.1 Smith & Partners maintains a trust account for all funds which it receives from clients (except monies received for payment of our invoices). If Smith & Partners is holding significant funds on your behalf Smith & Partners will normally lodge those funds on interest bearing deposit with a bank. In that case Smith & Partners will charge an administration fee of 5% of the interest derived.

9. GENERAL

9.1 These Terms apply to any current engagement and also to any future engagement, whether or not Smith & Partners send you another copy of them.

9.2 Smith & Partners is entitled to change these Terms from time to time, in which case Smith & Partners will send you amended Terms.

9.3 Smith & Partners' relationship with you is governed by New Zealand law and New Zealand courts have non-exclusive jurisdiction.

10. LEGAL AID

10.1 You may be eligible for legal aid. If you wish to apply for legal aid, it is your responsibility to ensure you provide all the information to Legal Aid that is required.

10.2 In the event that legal aid is granted, you acknowledge that you have been advised by Smith & Partners a charge to repay the cost of legal services may be taken over any property you may own now or in the future or you may be required to repay from your income.

10.3 You acknowledge that in the event of legal aid not being granted or withdrawn, you shall be fully liable for payment of fees incurred.

11. FINANCIAL ADVISERS ACT 2008 – What We Cannot Do For You

11.1 We are not financial advisers regulated by the Financial Advisers Act 2008;

11.2 We are not permitted to give you financial advice but may need to refer to or comment on your financial arrangements when this is incidental to the legal advice we are giving you;

11.3 If you need financial advice you must engage an authorised or registered financial adviser. We can assist you to identify the level of advice you need.