

Maberly & Co Terms of Engagement

Introduction

These terms of engagement are the standard terms on which Maberly & Co Limited (we) provide legal and related services to clients. They include information which we are required to provide under the Rules of Conduct and Client Care for Lawyers issued by the New Zealand Law Society in 2008 (Rules of Conduct).

Client Care and Service Information which we are required to provide to you is set out at the end of these terms.

Our client on any particular matter will be the party identified as such in the engagement letter we send on the matter or as otherwise agreed (you).

Agreement

Subject to any different or additional terms agreed in writing, these terms will apply whenever you ask us to act for you on a matter. You do not need to sign any formal documentation to indicate your acceptance. It will be assumed from your continuing to engage us.

If you have any comments or questions about these terms or any related matters, please contact us. We welcome your feedback.

Scope of our role

We will represent and advise you on all legal matters that properly fall within the scope of your instructions. We will normally set out our understanding of those instructions in an engagement letter for a one-off transaction. If we act for you on an on-going basis, we will normally agree the scope of each instruction by email. If you have any comments on what we say, please let us know as soon as you can. It is important that good communication, and a shared understanding of your instructions and expectations, be established at the outset.

We are qualified to advise only on New Zealand law matters and we are not expert in the laws of any other jurisdiction. To the extent that our instructions relate to any jurisdiction outside of New Zealand, then we advise that you take local law advice in that jurisdiction.

You may limit or expand the scope of your instructions at any time, although we may need to undertake a conflict check before accepting any substantial expansion.

We will act in accordance with your instructions and any applicable professional or legal obligations. We will use all due care and skill in doing so.

Our duties are owed to you. Unless otherwise agreed in writing or required by law, those duties will not extend to others, including for example associated parties such as shareholders or related companies, directors or employees, or parents or other family members. If any other parties wish to retain us, they should do so by separate agreement.

Our advice is given for your benefit and in your interests. If any other parties wish to rely on the advice we give you, they can only do so if both you and we agree in writing. Similarly, our name and opinions may not be used in connection with any prospectus, financial statement or other public document without our written consent. Unless required by law, you may not provide our advice to any third party or file our advice with any governmental agency without our agreement.

When your instructions on a matter are completed, our representation will end. We will advise you that the matter is completed and summarise what we have done since any previous report to you. We will only advise you further on issues arising from the matter (e.g. implementation and other dates, changes in relevant law or regulation or any post-transaction notifications) if you specifically engage us to do so.

Who will work for you?

Either Corin Maberly or Diana Collie will be responsible for a matter. They will then involve others to assist as appropriate. If at any stage you have concerns about the staffing of a matter, please contact either Corin or Diana. We are always happy to discuss this.

Confidentiality

We regard client confidentiality as of paramount importance. We do not disclose any confidential information obtained from a client or a prospective client unless required or authorised by that party, or by law or by the Rules of Conduct (Chapter 8).

Compliance

We are required to comply with all laws binding on us in all applicable jurisdictions, including:

- the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (**AML/CFT Act**); and
- the United States Foreign Account Tax Compliance Act, the intergovernmental agreement between the United States and New Zealand relating to it, and relevant provisions of the Tax Administration Act 1994 (together **FATCA**).

We will perform customer due diligence and account monitoring, keep records, and report any unusual or suspicious transactions where required by the AML/CFT Act, FATCA, or any other law.

We will advise you what information and documents are required to enable us to undertake these activities. Such information and documents may relate to you, any other relevant person (e.g. any person who controls you, or a beneficial owner), the source of funds/wealth, the transaction, the ownership structure, tax identification details and any other relevant matter.

We may retain the information and documents, provide them to a bank or any other entity (where applicable) to deal with them in accordance with their terms, and disclose them to any law enforcement or regulatory agency or court as required by law.

Please provide such information and documents promptly. By engaging with us, you consent to, and waive any right to be advised of, the disclosures described here.

If you fail to supply any information or documents that we ask for, we may be unable to provide you the services. We may also:

- delay, block, or refuse to process a transaction;
- fail to complete the services;
- suspend or terminate our business relationship; or
- report a transaction,

without notice to you if:

- the required information or documents are not provided; or
- it is suspected that the business relationship or transaction is unusual, may breach any applicable law, or may otherwise relate to conduct that is illegal or unlawful in any country.

To the extent permitted by law, we have no liability to you where we have to take the above actions and any impact on you (including delay, investigation or other event), resulting from our compliance with our legal obligations.

Fees and other charges

Unless other arrangements are made, our fees reflect the time we spend on a matter, charged at our then current hourly rates, and adjusted where appropriate to reflect other factors permitted by the Rules of Conduct. Those factors may include the specialised knowledge, skills or responsibility required, the amounts involved, the importance of the matter, urgency and the results achieved.

We can give estimates of the likely fees based on our experience with similar matters. Estimates are given as a guide only and not as a fixed quotation. Upon request, we will also inform you periodically of the level of fees incurred or inform you when fees reach a specified level.

Generally, we do not charge for office services such as photocopying, telephone calls, deliveries, routine on-line searches and inquiries and similar. However, where these charges are likely to be material on any particular matter, we reserve the right to on-charge these as disbursements.

We do charge for disbursements incurred on your behalf. Disbursements include out-of-pocket expenses such as travel and accommodation costs, registration and filing costs, court charges, fees of agents, experts and other professionals and similar. These are charged on at the amount charged to us.

Unless we state otherwise, our stated rates and any estimates of cost do not include goods and services tax (GST) and disbursements. GST is also charged as and when required by law. For offshore clients, our fees will generally be zero-rated for GST purposes.

For a variety of reasons, some instructions are not completed. If this occurs, we will charge you for the work undertaken and costs incurred up to the time of termination.

In some circumstances, we may be required to incur additional time or expense following completion or termination of a matter. We will charge for this in the normal way.

We are happy to discuss any aspect of our fees and charges with you at any time.

Accounts

Our general practice is to issue interim accounts monthly. We also issue an account on completion of each matter. Further, where a project has natural milestones (eg completion of a phase of work such as a first draft of a document or series of documents) and we consider it appropriate, we may issue invoices based on the completion of these milestones.

Our accounts are payable on the 20th of the month following the date of the invoice, unless otherwise agreed with you. Please raise any queries you have about any account within fourteen days of receiving it.

If an account is not paid promptly, we may elect:

- not to do any further work, and to retain custody of your papers or files, until all accounts are paid in full; and
- to charge interest at up to 10% p.a. on any account outstanding one month after the date of account.

Conflicts

Given the size of the New Zealand market, we are sometimes asked to act for clients whose commercial and/or legal interests conflict. We have developed policies and procedures for dealing with these issues.

Commercial conflict

We may accept instructions from other clients or potential clients operating in the same or competing markets and whose commercial interests conflict with your own, provided those instructions do not involve confidential information we have obtained from you.

Legal conflict

If a legal conflict of interest arises in relation to any matter on which you have instructed us, between your interests and those of any other client for whom we are also acting, we will contact and consult with you as soon as possible.

Non-exclusive engagement

If you have agreed to engage us on a non-exclusive basis in relation to a matter, we will establish an information barrier around the relevant legal service team and keep information in respect of your affairs confidential to that team. Similarly, we will not be permitted to provide you with access to information which is held by us as a result of a separate legal services team acting for another party or parties.

If, in the course of acting for you or any other party, a dispute arises or matters otherwise become contentious between you and that other party, we will comply with the Rules of Conduct.

Representation

If we cease to act for you or have not been instructed by you on a matter, we may act for other clients whose interests are adverse to your own, provided either:

- we do not hold confidential information belonging to you that is relevant to the matter; or
- we have taken steps to maintain the confidentiality of information which is relevant to you.

This will involve the establishment of an information barrier similar to that set up when we are engaged on a non-exclusive basis in relation to a matter.

Electronic communications

Unless otherwise agreed with you, we may communicate with you and others at times by electronic means. These communications can be subject to interference or interception or contain viruses or other defects (corruption). We do not accept responsibility and will not be liable for any damage or loss caused in connection with the corruption of an electronic communication.

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

External information and public records

In advising you we may rely on, or provide you with, information obtained from third parties (e.g., experts or witnesses or government agencies or registers). This information may not always be accurate and complete. We do not accept responsibility and will not be liable for any damage or loss caused by errors or omissions in information obtained from third parties.

Files and documents

We retain the files we establish on a matter, and any documents you leave with us, for at least six years after completion or termination of the matter. We may then destroy the files and documents. Other arrangements can be made if you prefer.

If you ask us to or if we are obliged to, we will destroy any matter-related files and other documents to the extent it is reasonably practicable for us to do so and we are not otherwise obliged to retain them.

If, at your request or if we are obliged to do so, we destroy any files or other documents in advance of our usual document destruction date, then any liability we may have in relation to the matter, files and/or documents however arising will be deemed to have been waived and will end, and you will indemnify and hold us harmless against any such liability to a third party.

If you uplift your files or other documents at any time, we may make copies of them before they are uplifted.

Limitation of liability

Our liability to you in relation to any matter is limited to ten times the amount charged by us to you on that matter (excluding any fraud or dishonesty on our part).

Termination

We (for good cause) or you may terminate our engagement at any time by giving a reasonable period of notice. You will pay our fees for work done and for other charges incurred up to the time of termination.

Complaints

If you have a complaint about our services, you may contact Corin Maberly, partner of Maberly & Co Ltd.

You may also contact the complaints service run by the New Zealand Law Society.

Insurance

We hold insurance cover which is in excess of the New Zealand Law Society requirements.

Law, jurisdiction and assignment

These terms of engagement and any other agreement we have with you are governed by New Zealand law and are subject to the exclusive jurisdiction of the New Zealand courts. You may not transfer or assign your rights or obligations under these terms.

Changes to these terms of engagement

These terms of engagement will be deemed to be modified to the extent necessary to comply with the Rules of Conduct in force from time to time.

Client care and service information

Whatever legal services we provide you, we must:

- 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.
- Let you know how to make a complaint and deal with any complaint promptly and fairly.

The obligations lawyers owe to clients are described in the Rules of Conduct and Client Care for Lawyers. Those obligations are subject to other overriding duties, including duties to the courts and to the justice system. If you have any questions, please visit www.lawsociety.co.nz.