

TERMS OF ENGAGEMENT

These Terms of Engagement (“Terms”) apply in respect of all work carried out by us for you (“Services”), except where we otherwise agree with you in writing.

1. AUTHORITY TO ACT

- 1.1 We have the usual authority of a lawyer to act on your behalf in relation to each instruction we accept. This includes your authority, where reasonable, to incur expenses; engage law firms in other regions or jurisdictions; and engage external barristers or experts.
- 1.2 We may disclose your name and contact details (which may include email, phone and address) to third parties such as credit agencies to perform a credit reference or to undertake credit management or collection processes if it is reasonable for us to do so.

2. CUSTOMER DUE DILIGENCE

- 2.1 Before we can start work for you, we may need to complete customer due diligence as required by the Anti-Money Laundering and Countering Financing of Terrorism Act 2009. This may include customer due diligence on you, persons acting on your behalf and other relevant persons such as beneficial owners and controlling persons. We may not be able to begin acting, or to continue acting, for you until that is completed.
- 2.2 We have appointed an agent, First AML, to carry out customer due diligence for us as required. You authorise us to disclose your name and contact details, and the names and contact details of any other persons we are required to conduct customer due diligence on, (which may include email, phone and address) to First AML for the purposes of conducting customer due diligence and reporting back to us. First AML will contact you and/or the persons concerned directly to conduct customer due diligence. Please provide all of the information requested by First AML. All information provided will be treated as confidential and used for the purposes of completing customer due diligence and our file opening processes. If First AML is unable to complete customer due diligence, then by law we will not be able to act for you.
- 2.3 We are required to keep this information up to date so First AML may need to contact you from time to time to ensure the documents relied on for customer due diligence are current. Further information about First AML is available here: <https://www.firstaml.co.nz/>.
- 2.4 First AML currently charge a fee of \$31 plus GST for each New Zealand person/entity that needs to be verified as part of customer due diligence. For ‘complex cases’ (including where multiple persons/entities need to be verified as part of customer due diligence), First AML currently charge a fee of \$240 plus GST. These costs will be charged to you separately from our fees and will be itemised on our invoices.

3. CONFIDENTIAL INFORMATION

- 3.1 We will 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 New Zealand Law Society Rules. Possession of confidential information will not preclude us acting for any other person.
- 3.2 You are not entitled to any confidential information we have or obtain in relation to any other client or prospective client.
- 3.3 You authorise us to disclose information about you and persons associated with you to any bank with which we place, or seek to place, your funds through our trust account.

4. CONFLICTS

- 4.1 Burton Partners have procedures in place to identify and respond to any conflicts of interest. If any unforeseen conflict of interest or potential conflict of interest arises, we will advise you of this and follow the requirements and procedures as set out in the New Zealand Law Society's Rules of Conduct and Client Care for Lawyers.
- 4.2 If you believe a conflict of interest has arisen or may arise, please inform us immediately.

5. DUTY OF CARE

- 5.1 Our duty of care is to you and not to any other person or corporation. Before any other person or corporation may rely on our advice, we must expressly agree to this.
- 5.2 We are not responsible for advising you as to taxation issues unless you specifically request us to do so and we agree in writing.
- 5.3 We are not responsible for giving advice in connection with the value or quality of any transaction (including any investment or divestment) and accept no liability for doing so.
- 5.4 Our name and advice may not be used in connection with any offering document, financial statement, report or other public document without our prior written consent.
- 5.5 We are only qualified to advise on New Zealand law. In the event we assist you in respect of matters governed under foreign law, we will do so only on the basis that we accept no responsibility (and will have no liability whatsoever) in relation to your legal position under that foreign law.
- 5.6 We provide the Services in English. If we correspond with you or any other person in any other language, we will not be liable in respect of any translation-related issues. If we provide a translation into any other language, then the English version will prevail in the event of any inconsistency.
- 5.7 When our instructions on a matter are completed, our representation of you will end. We are not obliged to notify you of any subsequent change of law, or to provide any further Services related to that matter.

6. FINANCIAL

Professional fees

- 6.1 Our fees are charged in a manner consistent with the New Zealand Law Society Rules. These Rules require that fees be fair and reasonable for the Services provided, having regard to the circumstances of the matter and the nature of our work for you. While the time and resources involved will be important factors, we will also consider the results achieved and the urgency, level of skill, complexity, responsibility and specialist knowledge involved.
- 6.2 We review, and may adjust, our hourly rates on 1 April each year. This review takes into account the promotion of our lawyers through their respective experience levels.
- 6.3 At regular periods (usually monthly) we will provide you with our invoice and, if applicable, a statement of funds which we have handled on your behalf.
- 6.4 We recommend that you discuss with us the exact nature of the work and the manner in which it is to be undertaken. Sometimes an acceptance by you of transaction risks can reduce legal costs involved.

Office services and disbursements

- 6.5 Our fees for professional services incorporate the overhead cost of secretarial, word processing and other assistance provided to our lawyers. We may charge extra for word processing overtime.
- 6.6 Disbursements (such as courier costs, Ministry of Justice, Ministry of Economic Development and Land Information New Zealand search and registration fees) and other external costs (such as experts, overseas lawyers and barristers) including any accommodation or travel costs are charged separately from our fees and itemised on our invoices. When we carry out Land Information New Zealand searches, Companies Office searches (including PPSR searches) or incorporations on your behalf we will charge an additional fee of \$5 per search or incorporation towards the overhead costs. If we are required to expend significant amounts on disbursements or other external costs, we may request you pay these in advance.
- 6.7 Alternatively, we may render a disbursement invoice to you when the expense is incurred.
- 6.8 Charges for office services (photocopying, faxing, phone calls and the like) are generally passed on for payment by you when appropriate.

GST additional

- 6.9 Our fees and charges are plus GST (if any), which is payable by you.

Invoices

- 6.10 We normally issue invoices monthly. We also issue an invoice on completion of your matter.
- 6.11 All invoiced amounts are payable in New Zealand dollars.
- 6.12 If you are required under applicable laws to make any withholdings or deductions from any amounts payable to us under our invoices, you will gross-up those amounts so that we actually receive the amounts we would have received if those withholdings or deductions had not been required.

Payment

- 6.13 Our invoices are to be paid by you within 14 days of invoice unless otherwise arranged with us.

Security

- 6.14 We may ask you to pre-pay amounts to us, or to provide security for expenses and our fees. We will have your authority to draw on the amounts paid towards our fees and expenses, as they become due.

Estimates and quotes

- 6.15 If we provide any estimate or quote, we do so subject to the following assumptions:
- (a) your instructions are complete and materially accurate;
 - (b) the matter will proceed and be completed in the manner anticipated in your instructions;
 - (c) the matter does not become protracted;

- (d) you will provide all necessary information or instructions for us to do our work in a timely and efficient manner;
 - (e) no unforeseen impediments arise and require additional work; and
 - (f) all parties and other advisers involved in the matter will be pragmatic, co-operative and reasonable.
- 6.16 Any work you ask us to do outside the scope of our estimate or quotation will be charged for separately. This includes supplementary reporting or explanations, and any additional work we do because any of our assumptions are not correct. We will endeavour to advise you if any of the assumptions underlying an estimate or quotation cease to be valid.
- 6.17 We are also open to discussing special fee arrangements to meet the particular requirements of any transaction. These can include success fees, fixed fees and capped fees.

Trust account

- 6.18 Our firm maintains separate trust accounts for all funds which it receives from clients (except for funds which are for payment of our invoices).
- 6.19 If it is necessary for us to hold significant amounts on your behalf, we may lodge those funds on interest earning deposit with a registered bank. Regardless of the quantum, we are not able to place funds on interest bearing deposit for you unless you first complete and provide certain information to us as required by our bank in order to discharge its statutory duties.
- 6.20 We may charge an administration fee of 5% of the net interest earned. If we deposit funds on your behalf, we will need either your IRD number or a copy of your interest withholding tax exemption certificate.
- 6.21 We may deduct from funds held on your behalf in our trust account any fees, costs or disbursements for which we have provided an invoice.
- 6.22 If we are required by law to make a deduction from funds held on your behalf (such as a withholding tax payment) we are authorised by you to make any such payment on your behalf.

Unpaid invoices

- 6.23 If payment of any of **our** invoices by you is overdue, we may:
- (a) not perform any further work for you until all unpaid invoices are paid in full;
 - (b) retain custody of any of your property (including documents or files) until all unpaid invoices are paid in full; and/or
 - (c) charge interest on any amount overdue at a rate of no more than 5% p.a. above the Official Cash Rate as published from time to time by the Reserve Bank of New Zealand.

Third parties

- 6.24 You must pay our invoices whether or not:
- (a) you have a right of indemnity or recovery from a third party;
 - (b) any third party seeks assessment of any of our invoices; or

(c) you receive any amount from a third party.

6.25 Where we have an arrangement with you that we will address an invoice to another person, you will pay that invoice if that other person does not pay it by the due date.

7. VERIFICATION OF IDENTITY

7.1 The Financial Transactions Reporting Act 1996 requires us to collect from you and to retain information required to verify your identity. We may therefore ask you to show us documents verifying your identity (such as a passport or driver's license). We may retain copies of these documents. We may perform such other customer verification checks as to your identity and as to the source of any funds associated with any transaction to which the Services relate as we consider to be required by law. We are also authorised to disclose any such information where we are required to do so by law.

8. TERMINATION

8.1 Where you give us any instruction and we rely on that instruction (for example, by giving an undertaking to a third party), you may not revoke that instruction. Otherwise, you may terminate this agreement at any time.

8.2 We may terminate this agreement in the circumstances permitted by the New Zealand Law Society Rules.

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

9. RETENTION OF YOUR DOCUMENTS

9.1 You authorise us (without further reference to you) to destroy all files and documents for this matter (other than any documents that we hold in safe custody for you) seven years after our engagement ends, or earlier if we have converted those files and documents to an electronic format.

9.2 If this agreement is terminated, we may retain copies of documents or records which we deliver to you or to another lawyer. If we do this, you will pay the cost of producing copies.

10. INTELLECTUAL PROPERTY

10.1 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.

11. ELECTRONIC COMMUNICATIONS

11.1 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 for, and will not be liable for any damage or loss caused in connection with, or as a consequence of, the corruption of an electronic communication.

12. PROFESSIONAL INDEMNITY INSURANCE AND LIMITATION ON OUR LIABILITY

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

12.2 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 the greater of:

- (a) the amount available to be paid out under our relevant professional indemnity insurance policies in respect of our liability to you, up to a maximum of NZ\$10,000,000 (including interest and costs); and
- (b) NZ\$2,000,000 or (if greater) an amount equal to five times our paid fees (excluding office service charges, disbursements and GST).

12.3 If we provide services to any persons or entities related to or associated with you, or to anyone else at your request (whether or not we also advise you), on a matter (or series of related matters) on which you engage us, then our aggregate liability to you and all those persons and entities in respect of that matter (or series of related matters) will be subject to the limitation contained at clause 12.2 (and you will ensure that those persons and entities agree to this).

13. **GENERAL**

13.1 New Zealand law governs our relationship and New Zealand Courts have non-exclusive jurisdiction.

13.2 We may change these Terms at any time, and 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.

13.3 These Terms apply to any current instruction, and to any future instruction, whether or not we send you another copy of them. There is no need for you to sign these Terms in order to accept them - you will accept these Terms by continuing to instruct us to work for you.

13.4 You may not transfer or assign your rights or obligations under these Terms or in relation to any engagement of us on any matter.

13.5 In the event of any conflict or inconsistency between these Terms and our letter of engagement, the letter of engagement will prevail.

13.6 The enforceability these Terms is not affected by any changes to the partners of Burton Partners.

13.7 In these Terms, "we" and "us" means Burton Partners, and "you" means the party identified as such in our letter of engagement or as otherwise agreed. Where you are a company or other corporate or unincorporated entity, we act only for you. We do not act for your shareholders, directors or members, unless we agree otherwise in writing.