

TERMS OF ENGAGEMENT

**Rodgers & Co
Solicitors**

Terms of Engagement

Introduction

1. These Terms of Engagement are the standard terms on which Rodgers & Co (“**we**”) provide legal and related services to clients. In these terms “**you**” refers to the client who engages us.
2. Subject to any difference or additional terms set out in writing or otherwise agreed, these terms will exhaustively constitute the agreement governing our relationship and will apply to you whenever we act for you. You do not need to sign any formal documentation to indicate your acceptance. Your acceptance will be assumed from your continuing to engage us.

The scope of our role

3. We will act upon the matters that fall within the scope of your instructions received in writing or otherwise. We have the usual authority of solicitors to act on your behalf in relation to all matters necessary or incidental to your engagement of us. Our role will be limited to providing advice under and in accordance with New Zealand law. In no circumstances will we be responsible for advising you as to the merits or otherwise of purchasing, holding or disposing of investments or other assets. Rather, you have relied on your own judgment and you have **not** sought our advice as to the merits or otherwise.
4. It is critical that we share an understanding of your instructions and expectations. If you have any special requirements that you do not believe are reflected in these terms, please advise us as soon as possible and we will discuss it with you.

Duties

5. The law requires lawyers to provide service that meets the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent lawyer. Unless otherwise agreed in writing or required by law, our duties are owed to you and will not extend to others and any advice or opinion we give in the course of engagement may only be relied upon by you.

Who will work with you?

6. The Director will have overall responsibility for the work undertaken for you. He will involve other professional staff to perform parts of your work, where appropriate.
7. In each matter in which a legal executive or solicitor is or may be involved the legal executive or solicitor is carrying out work as an authorised representative of the Director.

Files

8. Information relating to your matter will be kept in a file. The file may be destroyed by us seven years after the completion of your matter, unless you notify us that you would like to retrieve it. If you uplift your files or other documents at any time, we may make copies of them (at your cost) before they are uplifted. All original deeds held by us on your behalf or other documents we have agreed to keep for long term safe custody will be kept in our deeds room or a similar facility.
9. Where work has been done by us and we have not been paid by you, then we have the right to retain the original documents and the correspondence on your files until such time as all outstanding fees, disbursements and expenses have been paid. This is known as a lien. This is important if circumstances arise where you decide for whatever reason to instruct another law firm. You must pay all outstanding fees, disbursements and expenses before we release your files to your new solicitors.

Alternatively that other law firm may be obliged to give an undertaking to us to pay all outstanding fees, disbursements and expenses before your file is released.

Our professional fees and expenses

10. Our fees are charged in accordance with the Lawyers and Conveyancers Act 2006 (“**the Act**”) (Lawyers: Conduct and Client Care) Rules (“**Rules**”), which provide that a lawyer must not charge more than a fee that is fair and reasonable for the service provided, having regard to the interests of both client and lawyer. The Rules provide factors that we may take into account in determining our fees. These are set out in Appendix 1.
11. The Director and professional staff have an hourly rate reflecting their experience and expertise. These charge-out rates reflect some but not all of the factors referred to in the Rules. The fee charged will take into account all the factors that are relevant. Our rates are available upon request.
12. Our invoices will also include an office expenses fee to cover photocopying and facsimile costs, routine courier charges, telephone charges, stationery and similar office expenses.
13. All additional disbursements incurred by us on your behalf will also be charged. These will include all out-of-pocket expenses we consider necessary for the proper conduct of your matter such as travel costs, registration and filing costs, and engaging, on your behalf, the services of other consultants (e.g. tax advisers, accountants, other specialist lawyers) to provide specialist advice or services. We will discuss the terms of any consultant’s engagement with you and may request the consultant’s costs in advance.
14. Goods and services tax at the applicable rate will also be charged unless it is not legally required.

Estimates

15. We can provide you with a written estimate of fees for the job being undertaken. Whilst we determine a fee estimate based upon our professional judgment, it does not amount to a firm quotation and our fees and expenses may exceed the estimate.

Security for costs

16. We may require security for our fees, disbursements and expenses which security may take the form of a mortgage or general security agreement. We may also require another person to guarantee your payment of our fees, disbursements and expenses.

Third parties

17. Although you may expect to be reimbursed by a third party for our fees, disbursements and expenses, and although our invoices may at your request or with your approval be directed to a third party, nevertheless you remain responsible for payment to us if the third party fails to pay us.

Payment

18. Our accounts are due for payment 20 days from the date of the account. However, we reserve the right to stipulate a shorter payment period. We accept payment by way of cheque or bank transfer, our bank account details are 12-3263-0008884-02. Pending payment of our account, we will not usually cease work on your file, but we reserve the right to do so, and we will tell you if we do.
19. If you have difficulty meeting any account please discuss this with us immediately. You may wish to make periodic payments into our trust account on account of your

legal costs in advance of the completion of your job. Please advise if you wish to do this.

20. If your fees and expenses are to be paid by a third party, you remain responsible for payment if the third party fails to pay us. We may deduct from any funds held on your behalf in our trust account any fees, expenses or disbursements for which we have provided an invoice.

Interest and costs on overdue accounts

21. If you fail to pay monies on the due date you shall:
- Pay interest at a rate of 2.0% per month (computed from the due date) on all overdue accounts until payment is received in full by us but without prejudice to all or any of our rights and remedies at law;
 - Reimburse us for any legal costs (as between solicitor and client), any debt collection fees and any other costs incurred in recovery and administration of an overdue debt.
 - Consent to us listing you with a Consumer Credit or Collection Institution of our choice.

Complaints

22. If you are unhappy with any aspect of the work we have undertaken, please discuss this matter with the Director. If you are still concerned after that, or would like to contact another professional staff member in the first instance, please write to the Office Manager of the firm. Your written statement must include the nature of the complaint and the reasons for your dissatisfaction, as well as your reasoned proposal for resolution of the complaint. We trust that we will be able to resolve the matter to your satisfaction but if necessary we will refer you to an independent solicitor. If you are unsatisfied with the result of our complaints procedure, you may submit a complaint to the Complaints Service operated by the New Zealand Law Society ("**Law Society**") at PO Box 4417, Shortland Street, Auckland 1140.

Insurance and fidelity fund

23. We hold professional indemnity insurance that exceeds the minimum standards specified by the Law Society.
24. The Law Society maintains the Lawyer's Fidelity Fund for the purpose of providing clients and lawyers with protection against any pecuniary loss they suffer by reason of the theft of their money or property by a lawyer. The maximum amount payable by the Fund by way of compensations to an individual claimant is \$100,000.00. Except in certain circumstances specified in the Act the Fund does not cover a client for any loss relating to money that a lawyer is instructed to invest on behalf of the client.

Trust account

25. Attached as Appendix 2 is a statement required by the Securities Markets Act 1988 under which persons receiving investment money as defined in that Act must disclose their money handling procedures.

Conflicts of interest

26. It may be inherent in the nature of the legal work that we are engaged to undertake that we will act for you in different capacities or for different associated parties. We can do so where there is a high degree of common interest and we do not believe our legal or ethical obligations preclude it. However, should a material divergence of interest be likely to occur or become apparent, so that there is a prospect of a real conflict of interest emerging, or we become aware of any other matter that may give rise to conflict of interest, we would discuss this with you and/or assist you or the other party as the case may be to procure independent legal representation.

Electronic communications

27. Unless otherwise agreed with you, we may communicate with you and others by electronic means. We do not accept responsibility and will not be liable for any damage or loss caused to you or your system by any such transmission, or any interference, interception, virus, other defect, delay or non-delivery relating to such transmission.

Documents

28. We will retain ownership of copyright and all other intellectual property rights in the papers and documents that we produce for you in the course of carrying out our engagement. However, you will be entitled to use the documents for the purposes for which they were provided subject to payment of our fees.

Variations

29. We may at any time vary these terms and advise you of new terms which will apply to new work undertaken after that date.

Termination

30. You may terminate our engagement in writing at any time.
31. We may stop working for you if:
- We have a conflict of interest;
 - You do not pay our invoices promptly;
 - There is other good reason for us not to complete your instructions.
32. If either of us terminates the engagement these terms will survive the termination and you must pay us for all work we have done and all expenses we have incurred to the date of termination.

Enforceability

33. The enforceability of this agreement is not affected by any changes to the constitution of the company of Rodgers & Co.
34. These terms of engagement and any other agreement we have with you are governed by the laws of New Zealand and are subject to the exclusive jurisdiction of the New Zealand Courts.

Further information

35. Client Care and Service Information is set out in Appendix 3.

Rodgers & Co
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Appendix 1
Rodgers & Co

Factors that we may take into account in determining our fees

1. The time and labour expended;
2. The skill, specialised knowledge and responsibility required to perform the services properly;
3. The importance of the matter to the client and the results achieved;
4. The urgency and circumstances in which the matter is undertaken and any time limitations imposed, including those imposed by the client;
5. The degree of risk assumed by the lawyer in undertaking the services including the amount or value of any property involved;
6. The complexity of the matter and the difficulty or novelty of the questions involved;
7. The experience, reputation and ability of the lawyer;
8. The possibility that the acceptance of the particular retainer will preclude engagement of the lawyer by other clients;
9. Whether the fee is fixed or conditional (whether in litigation or otherwise);
10. Any quote or estimate of fees given by the lawyer;
11. Any fee agreement (including a conditional fee agreement) entered into between the lawyer and client;
12. The reasonable costs of running a practice; and
13. The fee customarily charged in the market and locality for similar legal services.

Appendix 2

Rodgers & Co

Disclosure statement and money handling procedure

The following statement is required by the Securities Markets Act 1988 which requires persons receiving investment money as defined in that Act to disclose their money handling procedures. This statement was prepared as at 1 February 2012.

Procedures for dealing with investment money

Monies that you have paid or paid on your behalf to Rodgers & Co that are not required to satisfy the payment of outstanding invoices will be held on trust in the Rodgers & Co trust account. Rodgers & Co's trust account is held at the Rotorua branch of the ASB Bank Limited under account number 12-3263-0008884-02. Payments may be made by way of cheque, electronic transfer or telegraphic transfer. Funds will be held until an authorised person instructs Rodgers & Co to distribute or disburse the funds or until they are applied in payment of fees in accordance with Regulation 9 of the Lawyers and Conveyancers Act (Trust Account) Regulations 2008 ("**Regulation 9**").

Funds in the trust account may be placed on deposit and earn interest at ASB Bank term deposit wholesale rates, which change from time to time. Rodgers & Co deducts commission at 7% of the gross interest earned.

Computerised records are kept of the amounts and dates of all deposits and withdrawals and the net balance, and the interest earned and commission deducted. You will be entitled to a statement of that information on request.

The receipt, holding and disbursement of monies in the trust account may be audited from time to time at the request of the New Zealand Law Society by an auditor nominated by the Society.

We will not use any monies held in our trust account for our own or any other person's purposes except upon an authorised person's instructions or in payment of our fees upon the issue of an invoice in accordance with Regulation 9.

Appendix 3
Rodgers & Co

Client care and service information

Whatever legal services your lawyer is providing, he or she 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.lawyers.org.nz or call the New Zealand Law Society on 0800 261 801.