



## **STANDARD TERMS OF ENGAGEMENT AND INFORMATION FOR CLIENTS**

*These standard Terms of Engagement ("Terms") apply in respect of all work carried out by Luscombe Legal Limited for our clients, except to the extent that we otherwise agree in writing.*

### **1. GENERAL**

These Terms apply to any current or future engagement, whether or not another copy of this document is sent to our client.

We are entitled to change these Terms from time to time, in which case clients will be sent an amended Terms.

Our relationship with clients is governed by New Zealand law and the New Zealand courts have non-exclusive jurisdiction.

### **2. SERVICES**

The services we provide each client will be outlined in an engagement letter, or as subsequently agreed either in writing or by verbal instructions.

### **3. CLIENT INFORMATION & RESPONSIBILITIES**

Our client will provide in a candid, full and timely fashion all information and documents reasonably required to enable us to provide the Services.

Unless specifically stated in the engagement letter, we will have no responsibility to independently verify the accuracy of such information and documents.

We will not be liable for any loss or damage arising from any inaccuracy, incompleteness or other defect in any information or documents supplied by our client.

### **4. DUTY OF CARE**

Our duty of care is to the client and not to any other person. Before any other person may rely on our advice, we must expressly agree to it.

### **5. TRANSLATIONS**

We will give our advice in English. If we provide a translation into any other language the English version will prevail in the event of any inconsistency.

### **6. CONFIDENTIALITY**

We will hold in confidence all information concerning our client or their affairs acquired during the course of acting for them.

We will not disclose any of this information to any other person except:

- To the extent necessary or desirable to enable us to carry out the client's instructions properly; or
- To the extent required by law or by the Law Society's Rules of Conduct and Client Care for Lawyers.

Confidential information concerning our clients will as far as practicable be made available only to those within our firm who are providing or assisting in the services for which we are instructed to act, or will be disclosed only as instructed by a client (eg to their employer, or spouse). In the event of extensive communications or cooperation with a client's employer or proposed employer, agent, sponsor, or spouse we may require our client to sign an express authority including an appropriate waiver of confidentiality.

We will not disclose to our client confidential information which we have in relation to any other client.

## **7. PERSONS RESPONSIBLE FOR WORK & CHARGE-OUT RATES**

The names of persons who will have the general carriage of or overall responsibility for the services provided for our clients will be set out in our letter of engagement.

Those persons, and their hourly charge out rates (exclusive of GST), in the event of work charged on a time and attendance basis or under a fee variation, will be:

Mark Luscombe	Lawyer & firm principal	\$400.00 per hour
Charlotte Scott	Lawyer, senior immigration counsel	\$250.00 per hour
Holly Bailey	Senior Case Manager	\$150.00 per hour
Hayden Blummont	Law Clerk, case assistant	\$100.00 per hour
Krystle Kurupo	Law Clerk, case assistant	\$100.00 per hour
Rachel Robinson-Ledwith	Employer relationship manager	\$150.00 per hour
Lawan Gilbert	Interpreter, Thai case assistant	\$ 80.00 per hour
Carlo Tondelli	Interpreter, Italian case assistant	\$ 80.00 per hour

The differences in these rates reflect the person's diversity of experience and specialization.

## **8. REPORTING**

We will report to our clients orally or in writing at appropriate times throughout the engagement when there are developments or matters that require decisions or input from the clients. However, the clients may contact us for updates on progress at any time.

However if such a client's requests become unreasonable or overly repetitive we may charge on a time and attendance basis for the provision of such updates in addition to any fee estimate previously given. We will notify a client when such requests are falling into this category.

## **9. FINANCIAL MATTERS**

### **A. FEES**

Fees are charged in the manner in which they are determined and are either set out in, or enclosed with, our engagement letter.

There are 3 ways we charge our legal fees:

**i. Fixed Fees:** Fixed fees are offered to clients for a range of “transactional” matters, particularly temporary visas based on:

1. the information provided by the client(s),
2. our assessment of likely time, expertise and effort required to complete the service relying on that information,
3. our working knowledge of immigration policy and network of helpful professional relationships,
4. our collection of templates, documents, and legal precedents,
5. our prior successes and professional judgment concerning possible outcomes (good and bad),
6. the value, importance or desired result sought or derived by the client and related parties, and
7. urgency, including out of hours, out of office, or out of country attendances.

When our attendances remain within the scope of the agreed services then we will adhere to the fixed fee estimate (with the exception of disbursements properly incurred), regardless of time spent, and the outcome. This works both ways – we don’t surprise our clients with an extra charge when we are successful, but we don’t refund legal fees if unsuccessful. (*see section 15 below concerning the procedure for complaints about our services*).

Any breakdown of costs we provide to support a fixed fee estimate is indicative only and we may adjust any component of such breakdown.

**ii. Fee Variations:** When extra work (outside the scope), regardless of whether a client is directly responsible or not, or unanticipated attendances become necessary during a fixed fee engagement we will notify our client as soon as reasonably practicable of the reasons for such work being necessary, what we propose to do, and provide an estimate of the likely amount of such further attendances.

We reserve the right to complete such additional work on either a revised fixed fee basis, or on a time and attendance basis for the extra work (see below) in addition to the original fixed fee.

We may require a further retainer to be paid by our client before commencing such additional work.

**iii. Time & Attendance Fees:** Some clients’ problems, circumstances, or change of circumstances or solutions needed can be too complex and difficult to predict. In such circumstances we may decline to offer a fixed fee, and charge on an hourly rate basis (in accordance with the hourly rates at section 7 above, or such other rate as we may agree in writing).

In such an instance we will endeavour to provide our clients with an estimate of fees at the start, and we will bill monthly for our services based on time spent, unless otherwise agreed. Alternatively we may provide a fee estimate for a limited scope or set of tasks with a bill of costs and case review at the completion of those tasks. If so that will be recorded in the letter of engagement.

Time spent is calculated in 6 minute units, with time rounded up to the next unit of 6 minutes. Time recording is not limited to meetings with a client. Phone calls, research, perusal of documents, receiving and replying to emails are all chargeable attendances in such an instance.

## **B. INVOICES, DISBURSEMENTS & OFFICE SERVICE CHARGES**

Interim invoices will be sent to the client on completion of specific tasks, termination of the engagement, or when significant disbursements or payments to third parties on behalf of a client have occurred.

Our invoices include an office service charge to cover the cost of photocopying, tolls, mobiles, printing and binding, fax and ordinary postage and handling. The office service charge is 5% of all fees on all invoices.

### **C. GST**

GST, if any, is payable by the client on fees, disbursements and any other charges.

In the event that we offer a zero rated fixed fee (without GST) based on our understanding of a client's tax status or location offshore, and GST is imposed or assessed by Inland Revenue, then the client will pay such GST in addition to the fixed fee.

### **D. DEPOSITS**

The client may be required to pre-pay amounts, or provide security for our fees and expenses by the payment of a retainer. Our ordinary terms are to require a full deposit equivalent to the fixed fee estimate and disbursements for temporary visas.

The client authorizes us to:

- debit against amounts pre-paid by the client; and
- deduct from any funds held on the client's behalf in the trust account any fees, expenses or disbursements for which an invoice has been provided.

### **E. PAYMENT**

Invoices are payable within 7 days of the date of the invoice, unless alternative arrangements have been made prior to acceptance of instructions.

Prior to commencement of the matter we are happy to discuss any reasonable payment arrangements to suit our client's circumstances.

If the client perceives that there are going to be difficulties paying an account within the required 7 days, the client may contact the Firm Principal, Mark Luscombe immediately to discuss other alternatives.

If the client defaults in payment of any invoice when due, the client shall indemnify Luscombe Legal Limited from and against all legal costs, disbursements and interest for collection or attempted collection of the defaulted amount.

Interest will be charged on any amount which is more than 7 days overdue and will be calculated at the rate of 2.5% compounding.

Payment can be paid:

- In full, either by cash, by EftPos or electronic transfer or
- By deduction from monies held in the client's trust account, or
- Where a payment arrangement has been agreed, by fixed regular installments by cash, EftPos or electronic transfer.

### **F. RECEIPTS**

Receipts will not be issued to clients for their records unless the client pays by cash or EftPos or requests it.

### **G. THIRD PARTIES**

Although a client may expect to be reimbursed by a third party for our fees and expenses, and although our invoices may at the client's request or with the client's approval be directed to a third party, the client remains responsible for payment if the third party fails to pay by the due date.

## **10. CONFLICT OF INTEREST**

We have procedures in place to identify and respond to conflicts of interest. If such a conflict arises the client will be notified and the procedure detailed in the Law Society's Rules of Conduct and Client Care for Lawyers will be followed. For completeness, a joint instruction on behalf of an employee and employer may create the potential for a conflict of interest at a later date. We will notify the parties of the potential for such a conflict of interest in the engagement, and advise what we intend to do if in our view a conflict does arise at a later date.

## **11. LIMITATION**

Our advice is given relying on the accuracy of information clients give us and the applicable immigration policy in place at the time we provide our clients with advice.

We accept no liability for the failure of a client's case in circumstances where they have withheld material information, do not observe reasonable deadlines for the provision of information or documents, have a health issue that was not known to us, a character issue, or policy changes.

Any other limitations on the extent of our obligations to the client or any limitation or exclusion of liability will be set out in our letter of engagement.

## **12. TERMINATION**

The engagement will continue until all the Services have been provided unless sooner terminated by agreement.

Either party may terminate the engagement by written notice or if the other party fails to remedy a material breach of the engagement. Termination will not affect the client's obligation to pay fees for all Services performed up to termination. More particularly, any alternative payment arrangement made prior to termination shall be null and void. All invoices rendered upon termination are payable within 7 days.

Any of the terms and conditions of the engagement letter or the Terms that are intended to apply after completion of the Services will continue to apply following termination.

## **13. TRUST ACCOUNT**

A trust account is maintained for all funds received from clients (except monies received for payment of our invoices). If significant funds are held on the client's behalf, these funds are normally lodged on interest bearing deposit with a bank.

In that case, an administration fee of 2.5% of the interest derived will be charged.

## **13. CLIENT DOCUMENTATION**

The client authorises us (without further reference to the client) to destroy all files and documents for this matter (other than any documents that we hold in safe custody for the client) 7 years after the engagement ends, or earlier if those files and documents have been converted to electronic format.

## **14. INSURANCE**

### **A. Professional Indemnity Insurance:**

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

## **B. Lawyers' Fidelity Fund**

The Law Society maintains the Lawyers' Fidelity Fund for the purpose of providing clients of lawyers with protection against pecuniary loss arising from theft by lawyers.

The maximum amount payable by the Fidelity Fund by way of compensation to an individual claimant is limited to \$100,000.

Except in certain circumstances specified in the Lawyers and Conveyancers Act 2006, the Fidelity Fund does not cover a client for any loss relating to money that a lawyer is instructed to invest on behalf of the client.

## **15. COMPLAINTS**

Complaints by clients are taken seriously. We maintain a procedure for handling complaints to ensure that a complaint is dealt with promptly and fairly.

If a client has a complaint about the services or charges, the client may refer the complaint to the person in our firm who has overall responsibility for the client's work.

If the client does not wish to refer the complaint to that person, or the client is not satisfied with that person's response to the client complaint, the client may refer the complaint to Matthew Lawson, Solicitor. He may be contacted as follows:

Matthew Lawson  
Lawson Robinson Limited  
73 Raffles Street,  
Napier  
ph 06 8335012  
Email: [mlawson@lawsonrobinson.co.nz](mailto:mlawson@lawsonrobinson.co.nz)

The Law Society operates the Lawyers Complaints Service and the client is able to make a complaint to that service by calling 0800 261 801.

## **16. CLIENT CARE AND SERVICES**

The Law Society client care and service information is set out below.

Whatever legal services the 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 the client's interests and act for the client free from compromising influences or loyalties.*
- *Discuss with the client the client's objectives and how they should best be achieved.*
- *Provide the client with information about the work to be done, who will do it and the way the services will be provided.*
- *Charge the client a fee that is fair and reasonable and let the client know how and when the client will be billed.*
- *Give the client clear information and advice.*
- *Protect the client's privacy and ensure appropriate confidentiality.*
- *Treat the client fairly, respectfully and without discrimination.*
- *Keep the client informed about the work being done and advise the client when it is completed.*
- *Let the client 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 the client has any questions, please visit [www.lawsociety.org.nz](http://www.lawsociety.org.nz) or call 0800 261 801.

#### **17. ACCEPTANCE OF TERMS**

We will presume that these terms are acceptable unless written notification from the client is received to the contrary.

**1 DECEMBER 2019**