

Terms of engagement

INTRODUCTION

These terms of engagement are the standard terms on which Bell Gully (“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 on our website www.bellgully.com/terms-of-engagement.

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 you 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 a confirmation of engagement or initial reporting communication. 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.

If, and to the extent, agreed at the outset or during the course of a matter, but not otherwise, our services will include legal advice on tax-related issues.

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 solely 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 offering document, financial statement or other public document or statement 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.

Our advice is strictly limited to the matters stated in it and does not apply by implication to any other matters.

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.

FOREIGN LAW MATTERS

We are only qualified to advise on New Zealand law. If we assist you in respect of matters governed by foreign law, we do so on the basis that we do not accept any responsibility in relation to your legal position under that foreign law.

WHO WILL WORK WITH YOU?

Generally, we ask you to nominate the partner or special counsel responsible for each matter. He or she will then involve others to assist as appropriate. If at any stage you have concerns about the staffing of a matter, please contact either the partner or special counsel responsible or another partner. We are always happy to discuss this.

CONFIDENTIALITY AND PRIVACY

We regard client confidentiality as of paramount importance. We will not disclose any confidential information obtained from you to any other person, and will not disclose to you any confidential information received from another client or prospective client, unless required by law or by the Rules of Conduct (Chapter 8).

We will observe the provisions of our Privacy Policy which can be viewed at www.bellgully.com/privacy-policy. You consent to us processing personal information in accordance with our Privacy Policy.

FEES AND OTHER CHARGES

Unless other arrangements are made, our fees reflect the time we spend on a matter, charged at our 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.

We also charge for general office services and for disbursements incurred on your behalf.

- General office services include photocopying, facsimiles, telephone communications, deliveries and similar. These are charged at a standard rate equal to 2.5% of our fees.
- 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 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 the 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.

Our accounts are payable (free of set off or deduction) no later than the 20th of the month following the invoice date unless the invoice is stated to be payable on settlement of the relevant matter or other arrangements have been specifically agreed. Please raise any queries you have about any account within fourteen days of receiving it.

If an account is not paid when due, we may elect:

- to deduct any amount outstanding from any money we are holding on your behalf;
- not to do any further work, and to retain custody of your papers or files, until all accounts are paid in full;
- to charge interest at up to 12% p.a. and collection fees on any amount outstanding one month after the date of the account.

CONFLICTS

Given the size of the New Zealand market, we are often 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 the use of 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 inform you as soon as possible.

Competitive sales process

If you have instructed us to act for you as a bidder, or an adviser or financier to a bidder, in relation to a competitive sales process, our engagement is on a non-exclusive basis, unless otherwise expressly agreed. This means that you agree that we may also act for one or more other bidders and/or their advisers or financiers, whose identity may not be known to you, with separate legal teams.

Non-exclusive engagement

In a competitive sales process or if you have otherwise agreed to engage us on a non-exclusive basis in relation to a matter, we will establish an information barrier around the relevant legal services 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, which may require us to cease acting for one or more parties. Before that point is reached, we will raise and endeavour to resolve the issue with all parties (unless obligations of confidentiality or other constraints preclude that).

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 may store your files, documents and personal information in any format we choose at our offices or at premises outside our offices, including data storage facilities or online storage located within or outside New Zealand, which may be operated by independent service contractors. We do not accept responsibility and will not be liable for any damage or loss caused by third parties.

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.

ANTI-MONEY LAUNDERING, FATCA, CRS AND OTHER LAWS

We must comply with our obligations under all laws binding on us, including:

- anti-money laundering and countering financing of terrorism laws; and
- laws relating to tax reporting and withholdings.

In order to do so, we may be required to conduct customer due diligence on you, persons acting on your behalf, and other relevant persons such as your beneficial owners or persons who have effective control of you and (in the case of a trust) the beneficiaries of the trust. We may not be able to act or continue acting for you, or to complete trust account transactions for you, until this is completed.

We may be required to provide information about you, persons acting on your behalf, and other relevant persons as described above to government agencies. We may not be permitted to tell you or such persons if we do provide such information. We may also be required to provide such information to banks with which we place your funds through our trust account, and information provided to banks may be in turn be passed on by them to tax and other regulatory authorities in New Zealand and offshore.

Please ensure that any of the persons described above in respect of whom we collect information are aware of and consent to this and to the provisions of our Privacy Policy which can be viewed at www.bellgully.com/privacy-policy. Please also ensure that all information provided to us is accurate. We are not responsible to you, or anyone else, for anything done or not done by us (including any provision of information by us to any third party or any withholdings made) in order to comply with our legal obligations.

LIMITATION OF LIABILITY

To the extent permitted by law, our aggregate liability to you (whether in contract, equity, tort or otherwise) arising out of your engagement of us on a matter (or any series of related matters) is limited to the greater of:

- the amount available to be paid out under any relevant insurance held by us, up to a maximum of NZ\$20,000,000; and
- NZ\$2,000,000 or (if greater) the amount of five times our applicable fee (excluding our service charge, disbursements and GST).

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.

The enforceability of this agreement is not affected by termination or by any changes to the constitution or partners of Bell Gully.

COMPLAINTS

If you have a complaint about our services, you may:

- contact the partner with overall responsibility for our services to you; or
- contact our chair or managing partner, who are authorised to deal with complaints.

You may also contact the complaints service run by the New Zealand Law Society (visit www.lawsociety.org.nz or call 0800 261 801).

INSURANCE

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

FIDELITY FUND

The Lawyers' Fidelity Fund administered by the New Zealand Law Society gives you some protection against theft of your money, up to NZ\$100,000, if it is held by us in our trust account or (subject to the qualification below) in an interest bearing deposit account (either on call or for a fixed term). That protection will not apply where you have instructed us to invest your money in an investment that is excluded from cover by the Lawyers' Fidelity Fund (such as the purchase of shares on a stock exchange, the deposit of funds for investment purposes or the purchase of an annuity).

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 or in relation to any engagement of us on any matter.

CHANGES TO THESE TERMS OF ENGAGEMENT

These terms of engagement will be deemed to be modified to the extent necessary to comply with applicable legislation and 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.org.nz or call 0800 261 801

Payment procedures and conditions

HOW TO MAKE PAYMENTS

You can make payments to Bell Gully by direct credit.

The payment should be made in cleared funds if you wish Bell Gully to make a payment using those funds within five working days of your deposit.

If you require our bank account details, please contact credit.control@bellgully.com

Terms and conditions applying to payments

PAYMENT OF INVOICES

If you are paying funds into our trust account on account of an invoice or a future invoice, you authorise us to debit the amount received against those invoices (such payment constituting your agreement that the invoice is payable once issued).

OTHER PAYMENTS

If you are paying funds into our trust account for any purpose other than for payment of our invoices, unless you expressly instruct otherwise, we may invest the funds in a separate interest bearing deposit account where practicable or reasonable. Otherwise your funds will be held in our trust account with one of our relationship banks, which is not interest bearing.

INTEREST BEARING DEPOSITS

In the absence of express instructions from you, we may deposit the funds we hold on your behalf in an interest bearing deposit account with any New Zealand trading bank and either on call or for a fixed term. We are not responsible for obtaining the best interest rate available from any bank at the time your funds are placed on interest bearing deposit, or for any loss of interest that you may suffer as a result of any delay in placing your funds on interest bearing deposit.

By placing money with us you agree we will have no liability however arising for the loss of any amounts deposited by us on your behalf in accordance with these payment procedures and conditions where the loss results from the act, neglect or default of a financial institution.

FOREIGN CURRENCY

Where you transfer funds to our trust account in a foreign currency, we will convert those funds into New Zealand dollars at the prevailing exchange rate offered by our bank. We are not responsible for seeking or obtaining a better exchange rate from any other bank or financial institution.

FIDELITY FUND

The Lawyers' Fidelity Fund administered by the New Zealand Law Society gives you some protection against theft of your money, up to NZ\$100,000 if it is held by us in our trust account or (subject to the qualification below) in an interest bearing deposit account (either on call or for a fixed term). That protection will not apply where you have instructed us to invest your money in an investment that is excluded from cover by the Lawyers' Fidelity Fund (such as the purchase of shares on a stock exchange, the deposit of funds for investment purposes or the purchase of an annuity).

AUDITS

The receipt, holding and disbursement of investment money or other investment property by Bell Gully is audited.