

SKINNERS

LITIGATION **LAW** DISPUTES

TERMS OF ENGAGEMENT

These Terms of Engagement (“Terms”) apply in respect of all work carried out by Skinners Law NZ Limited (“we” or “us”) for you, except to the extent that we otherwise agree with you in writing.

Services

1. The services we are to provide for you are outlined in our engagement letter.
2. We are only qualified to give advice on New Zealand law. Any assistance that we give you in relation to matters governed by foreign law is given strictly on the basis that we accept no responsibility in relation to your legal position under that foreign law.
3. We do not provide accountancy and/or tax advice and it is important that you take separate accounting and/or tax advice as you consider appropriate.

Communications

4. We will obtain from you contact details, including email address, postal address, and telephone numbers. We may provide documents and other communications to you by email (or other electronic means). You will advise us if any of your contact details change.
5. The nature of the services that we provide to clients means that we are often out of the office attending Court, or at mediations / settlement conferences. Whilst we endeavour to return phone calls and emails as soon as possible (and within 24 hours when urgent), please be aware that on the days that we are in Court, or at mediations / settlement conferences, it may take slightly longer for us to return your calls, and / or email you a response. We trust that you understand this.
6. We will report to you periodically on the progress of any engagement and will inform you of any material and unexpected delays, significant changes or complications in the work being undertaken. You may request a progress report at any time.
7. You agree that we may provide you from time to time with other information that may be relevant to you, such as newsletters and information bulletins. At any time, you may request that this not be sent to you.

Fees

8. We will charge you fair and reasonable fees. Unless we agree with you otherwise, our fees will be calculated primarily based on the time we spend on your matter, charged at our hourly rates and adjusted where appropriate to take into account the factors permitted by the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (“Rules”) which include (but aren’t limited to) the complexity, urgency, importance, specialised knowledge, responsibility and risk involved, and the results achieved.
9. Our current hourly rates of the people we expect to undertake work for you are set out in our engagement letter. Any differences in those rates reflect the different levels of experience and specialisation of our individual staff members. Time spent is recorded in six-minute units.
10. We may change our hourly rates from time to time without notice to you. Please contact us at any stage over the course of the engagement if you would like an update as to the current hourly rates that apply.
11. You may request an estimate of our fee for undertaking the services at any time. If possible, we will provide you with an estimate (which may be a range between a minimum and a maximum

amount or an estimate for a particular task or step). An estimate is not a quote (or a fixed fee) and it is not a cap on what may be charged by us. We will contact you to discuss if it becomes apparent at any point that the actual fee is likely to exceed the estimate by a substantial amount. If we provide you with an estimate of fees, it is given on the basis that (in addition to any further assumptions that may be set out in the engagement letter):

- a. your instructions and any documents you provide to us to carry out the services are ordered and complete;
- b. no unforeseen circumstances arise which require additional work;
- c. you respond to our requests for information, documents or instructions in a timely and efficient manner;
- d. third parties and other lawyers, accountants, business advisers (and the like) involved in the matter are co-operative and reasonable and do not through their actions place us under unreasonable time frames;
- e. consents and approvals from third parties are given promptly and do not involve protracted negotiations; and
- f. no proceedings, objections or applications are brought that have not already been anticipated by you or us on your behalf.

Disbursements and expenses

12. In providing our services we may incur disbursements or expenses to third parties on your behalf. You authorise us to incur these disbursements and expenses (which may include such items as search fees, Court filing fees, travel and accommodation costs, courier charges and service agent costs) which are reasonably necessary for us to provide the services to you. Where the disbursement or expense is less than \$200 plus GST, we will pay the third party direct (on your behalf) and then issue an invoice to you. Where the disbursement or expense is more than \$200 plus GST, we will usually require you to pay the third party direct. Any disbursement or expense will be in addition to any estimate given by us for our fees. Please be aware that if you do not pay the third party the disbursement / expense when due, it may result in further work to be completed by us, which may in turn increase our fees to you. An example of this is paying filing fees to the Ministry of Justice on time.

GST

13. Our services will usually attract GST. If this is the case, GST is payable by you on our fees and charges and is in addition to any estimate given.

Invoices

14. We will send interim invoices to you, usually monthly and on completion of the matter or termination of our engagement. We may also send you an invoice when we incur a significant expense or where we undertake a significant amount of work in a short period of time.

Payment

15. Invoices in relation to preparing for (or attending) a Court hearing / judicial settlement conference or mediation are due immediately on receipt. All other invoices are payable within seven days of the date of the invoice.
16. If you may have difficulty in paying any of our accounts, please contact us promptly and before the invoice is due so that we can discuss payment arrangements.

17. Where payment has not been made by the due date we may:
- a. require interest to be paid on any overdue amount at the rate of 10% per annum, calculated on a daily basis;
 - b. stop work on any matter in respect of which we are providing services to you; and/or
 - c. recover from you in full any costs we incur (including on a solicitor / client basis) in seeking to recover the amounts from you, including our own fees and the fees of any collection agency.

Guarantor

18. Where the name of a guarantor is included on the engagement letter then that person personally and irrevocably guarantees full payment of any amount due to us from you.
19. Such guarantor shall be liable to pay our fees, disbursements, and expenses as if he/she, or it, was a primary debtor and we have no obligation to pursue you first for the debt.

Security

20. We may ask you to provide security for our fees, expenses, or disbursements for which we have provided an invoice.

Third Parties

21. Although you may expect to be reimbursed by a third party for our fees 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.

Trust Account

22. Please note that unlike some other firms, we do not operate a trust account.

Confidentiality

23. We will hold in confidence all information concerning you or your affairs that we acquire during the course of acting for you. We will not disclose any of this information to any other person except:
- a. to the extent necessary or desirable to enable us to carry out your instructions; or
 - b. as expressly or impliedly agreed by you; or
 - c. as necessary to protect our interests in respect of any complaint or dispute; or
 - d. to the extent required or permitted by law.

Personal Information and Privacy

24. In our dealings with you we will collect and hold "personal information" as that term is defined in the Privacy Act 2020 ("Privacy Act") about you. We will use that personal information to carry out the services and to make contact with you about issues we believe may be of interest to you. Provision of personal information is voluntary but if you do not provide full information this may impact on our ability to provide the services.
25. Subject to clause 23, you authorise us to disclose, in the normal course of performing the services, such personal information to third parties for the purpose of providing the services and any other purpose set out in these Terms.

26. We may disclose your name and address to a credit agency to perform a credit reference or to undertake credit management processes if we deem it necessary to do so.
27. The information we collect and hold about you will be kept at the location of our office premises being the B:HIVE, Smales Farm, 74 Taharoto Road, Takapuna. Given our use of “cloud” based technology, we also use independent service providers to electronically store the information elsewhere. We will use such security safeguards as are reasonable in the circumstances to protect the information.
28. If you are an individual, you have the right to access and correct this information as set out in the Privacy Act. If you require access, please contact James or Ruth Skinner.

Electronic Recordings

29. If you wish to record any conversations that you have with us, you must inform us first.

Documents, Records, and Information

30. We will keep a record of all material documents we receive or create working for you on each instruction on the following basis:
 - a. we may, at any time, keep a record electronically and destroy paper originals (this includes any original documents you give to us unless you tell us in writing that you do not want them destroyed, in which case, we may return the originals to you once we have made an electronic copy). We will not destroy any original document that we have agreed in writing to hold in safe custody for you;
 - b. we may, at any time, dispose of documents that are duplicates, do not contain substantive information, or that belong to us;
 - c. if you ask us to provide documents to you or another person, we are not obligated to retain copies of those documents, but we may do so for our own records.
31. We will provide to you on request copies of all documents to which you are entitled to under the Privacy Act or any other law. We may charge you our reasonable costs for doing this.
32. Where we hold documents that belong to a third party you will need to provide us with that party’s written authority to uplift or obtain a copy of that document.
33. You authorise us and consent to us (without further reference to you) to destroy (or delete in the case of electronic records) all files and documents in respect of the services seven years after our engagement ends (other than any documents that we hold in safe custody for you or are otherwise obliged by law to retain for longer). We may retain documents for longer at our option.
34. We may, at our option, return documents (either in hard or electronic form) to you rather than retain them. If we choose to do this, we will do so at our expense.

Intellectual Property

35. We retain all ownership rights in all intellectual property of any kind created by us for you (including copyright in all documents or work that we create in the course of performing the services). You will however, subject to payment of our fees, be entitled to use the documents as our licensee for the purposes for which they were produced.
36. You may not permit any third party to copy, adapt or use any documents or work we create without our prior written permission.

Conflicts of Interest

37. We are obliged to promote and protect your interests to the exclusion of the interests of third parties and ourselves as set out in the Rules. This may result in a situation arising where we have a conflict of interest.
38. We have procedures in place to identify and respond to conflicts of interest or potential conflicts of interest. If a conflict of interest arises, we will advise you of this and follow the requirements and procedures set out in the Rules. This may mean we cannot act for you further in a particular matter and we may terminate our engagement.

Duty of Care

39. Our duty of care is to you and not to any other person. We owe no liability to any other person, including for example any directors, shareholders, associated companies, employees, or family members unless we expressly agree in writing. We do not accept any responsibility or liability whatsoever to any third parties who may be affected by our performance of the services or who may rely on any advice we give, except as expressly agreed by us in writing.
40. Our advice is opinion only, based on the facts known to us and on our professional judgement, and is subject to any changes in the law after the date on which the advice is given. We are not liable for errors in, or omissions from, any information provided by third parties.
41. Our advice relates only to each particular matter in respect of which you engage us. Once that matter is at an end, we will not owe you any duty or liability in respect of any related or other matters unless you specifically engage us in respect of those related or other matters.
42. Unless otherwise agreed, we may communicate with you and with others by electronic means. We cannot guarantee that these communications will not be lost or affected for some reason beyond our reasonable control, and we will not be liable for any damage or loss caused thereby (including but not limited to any damage or loss suffered from any viruses).

Limitation of Liability

43. We are not responsible for any failure to advise on any matter that falls outside the scope of our engagement, and we have no responsibility to you to update any advice to take account of events or changes in the law that take place after our advice was given.
44. We will not be liable, whether in contract, tort (including negligence), equity or otherwise, for:
 - a. any loss of profit or revenue, exemplary damages or any indirect or consequential loss or damage howsoever described or claimed; or
 - b. any loss or damage to the extent it is attributable to your conduct or a failure by you to take reasonable care of your own interests.
45. To the extent allowed by law, our total liability to you for any claim against us in relation to our engagement (whether in contract, tort (including negligence), equity or otherwise) will not exceed:
 - a. the amount which we actually receive as indemnification from our professional indemnity insurers for the claim; or
 - b. in situations where we do not receive indemnification from our professional insurers for the claim, an amount equal to our paid fees on the matter (excluding GST and expenses and disbursements).

Termination

46. You may terminate our retainer at any time.

47. We may terminate our retainer in any of the circumstances set out in the Rules including:
- a. the existence of a conflict of interest;
 - b. non-payment of fees;
 - c. failure to provide instructions; and
 - d. if you engage in behaviour towards one of our lawyers or a person associated with us that amounts to bullying, discrimination, harassment, racial or sexual harassment, threatening behaviour, or violence.
48. If our retainer is terminated, you must pay us all fees, disbursements and expenses incurred up to the date of termination.

Feedback

49. Client satisfaction is one of our primary objectives and feedback from clients is helpful to us. If you would like to comment on any aspect of the service provided by us, including how we can improve our service, please contact James Skinner.

General

50. These Terms apply to any current engagement and also to any future engagement, whether or not we send you another copy of them.
51. We are entitled to change these Terms from time to time. Our latest and current terms at any particular time will be those available on our website.
52. Our relationship with you is governed by New Zealand law and New Zealand courts have non-exclusive jurisdiction.
53. If there is more than one person comprising you, each person is jointly and severally liable for payment of all our fees, disbursements, and expenses.