

# TERMS OF ENGAGEMENT

These Terms of Engagement will apply to all services that Harmos Horton Lusk Limited (**we** or **us**) provides to a client unless specifically agreed with the client.

## 1. Our client

Our client on any particular matter (referred to in these Terms of Engagement (**Terms**) as our **Client** or **you**) will be the party identified as such in the Letter of Engagement unless specifically agreed otherwise.

If we agree to provide services to a person who is related to or associated with you (an **Associate**), those services will be provided on the terms set out in these Terms and, in receiving the benefit of our advice, your Associate will be deemed to have accepted these Terms. You accept these Terms on behalf of, and as agent for, all of your Associates.

We may be required by law to obtain information about you and/or your Associates (for example, to verify your identity and/or the identity of the persons who beneficially own or control you), including to satisfy our obligations under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (**AML Act**). We may appoint an agent to obtain this information on our behalf. You agree to provide all required information to us or to our agent, to our satisfaction.

If you do not provide us or our agent with the required information, we may not be able to provide you with services. We will have no liability to you however arising if we cannot provide you with services as a result of you failing to provide us or our agent with required information.

## 2. Scope of work and our role

All matters will be carried out in accordance with applicable laws and the rules of professional conduct of the New Zealand Law Society (**Law Society Rules**).

Our duties are owed to our Client and any advice given is for the benefit of our Client alone. Unless otherwise expressly agreed or required by law, our duties will not extend to any other person.

We do not purport to be experts in all fields of law and we will, where we consider it necessary or desirable to do so, secure advice on particular aspects of the matter from other lawyers.

Unless otherwise agreed with you, you consent to us engaging other lawyers to assist us to provide services to you, including for the purposes set out in the above paragraph, and you waive whatever right that you may have to be advised that we have done so. If we engage other lawyers in accordance with this paragraph, we will, prior to engaging those lawyers, make enquiries of those lawyers to ensure that they do not have a conflict of interest that would prevent them from assisting us to provide the services to you.

We will not advise on tax issues, and will, if you so request, assist you in obtaining such advice.

We are only qualified to advise on New Zealand law. If we assist you on matters governed by foreign law, we do so on the basis that we do not accept any responsibility in relation to your position under that foreign law, whether or not we have obtained foreign law advice on your behalf.

## 3. Confidentiality, disclosure of information and intellectual property rights

Confidentiality of all clients' information is of key importance to us. We will not disclose confidential information obtained as a result of acting for you unless:

- permitted by these Terms (which disclosure is deemed to be authorised by you);
- required or authorised by you; or
- required or permitted by law or the Law Society Rules.

Without limiting the above, you acknowledge that we may be required or permitted by law or the Law Society Rules to disclose information obtained as a result of acting for you (a **permitted disclosure**). For example:

- the Law Society Rules require us to disclose client information if we reasonably believe the disclosure is necessary to prevent a serious risk to the health or safety of any person;
- the AML Act requires us to disclose certain transactions and suspicious activity to relevant enforcement bodies.

If we make a permitted disclosure, we will only do so to an appropriate person and only to the extent reasonably necessary for the required or permitted purpose. You consent to us making, and waive whatever right that you may have to be advised that we have made, a permitted disclosure.

We will not disclose your confidential information to another client nor will we disclose another client's confidential information to you.

You waive whatever right you might have to receive:

- the confidential information of another client;
- information that we learn, other than as a direct result of and in the course of acting for you;
- information that any of our Directors or employees may learn in any capacity other than as your legal adviser.

You acknowledge that, under AML Act, we are required to be audited every two years. You consent to us disclosing your confidential information to the auditor, to the extent such disclosure is reasonably necessary for the auditor to conduct an audit under the AML Act. In addition, you authorise us to provide information about

you (for example, your name and contact details, ownership information and governing documents) to any agent that we appoint to conduct customer due diligence for the purposes of satisfying our obligations under the AML Act.

Our name and opinions may not be used in connection with any offering document, financial statement or other public document or statement without our prior 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 prior written agreement.

We retain all ownership rights in all intellectual property of any kind created by us for you.

If we advise you on a transaction, we may publicise our role in the transaction, provided that we will not disclose any non-public information regarding the transaction.

#### 4. Fees

We will charge a fee which is reasonable for the services we provide to you. In determining our fee, we will take into account the hourly rates of our personnel who have worked on the matter, as well as other relevant criteria approved by the New Zealand Law Society, including:

- the skill, specialised knowledge and responsibility required;
- the time expended;
- the value of any property or money involved;
- the importance of the matter to our Client;
- the complexity of the matter;
- the number and importance of the documents prepared or perused;
- the urgency and circumstances in which the business is transacted, including where our services are provided on public holidays or during our annual shutdown period beginning on or around 23 December in each year to the middle of January in the year following.

Our hourly rates are reviewed, and are subject to change, with effect from 1 April in each year. We reserve the right to vary them at different times.

Some instructions may not be completed, for reasons beyond our control. If this occurs, you will be liable to pay us for the work undertaken and costs incurred up to the time of termination.

Unless otherwise agreed with you at the start of our engagement, we do not provide itemised or hourly breakdowns of our attendances on matters.

#### 5. Estimates

If requested, we will give an estimate of the likely fees. However this will be a guide only and not a fixed quotation, unless specifically agreed otherwise in writing. Where we believe that an estimate is likely to be materially exceeded, we will endeavour to advise you and, if requested, provide you with an updated estimate.

If we provide any estimate or fixed fee arrangement, we do so subject to any assumptions stated in the estimate

or fixed fee arrangement as well as the following assumptions:

- your instructions are complete and accurately describe our role;
- the matter will proceed and be completed in the manner anticipated in your instructions and within any indicated timeframe, or otherwise within a normal timeframe for that work;
- you will provide any information or instructions we require to do our work in a timely and efficient manner;
- no unforeseen impediments will arise and require additional work;
- all parties and other advisers involved in the matter will be co-operative and will not be unreasonable; and
- any third party or regulatory consents or approvals will be given in a timely manner and will not involve protracted negotiations.

Unless stated otherwise, any fee estimate or fixed fee arrangement will be exclusive of Goods and Services Tax (**GST**), disbursements and service charges.

Any work you ask us to do outside the scope of our estimate or fixed fee arrangement 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.

For the purposes of this paragraph 5, a **fixed fee arrangement** includes a fixed quotation and a capped fee quotation.

#### 6. Other charges

In addition to our fees, you must pay us for disbursements, such as travel and accommodation costs, search, registration and filing fees, courier costs, and other external costs such as fees of agents, experts and other professionals, incurred by us in relation to the relevant matter.

We will discuss with you any major or unusual disbursement before we incur it and where a material disbursement is likely to be incurred, we may ask that this be paid to us before that cost is incurred.

You must pay us for any costs incurred by us in undertaking customer due diligence on, or in respect of:

- you;
- any of your Associates;
- any other persons that you request be involved in a trust account transaction,

in order to satisfy our obligations under the AML Act.

You also agree to pay a standard service charge, at a standard rate equal to 3.5% of our fees, to cover general office services provided by us (for example photocopying, faxes, telecoms charges, deliveries, and postage). We may change our standard services charge from time to time.

#### 7. Billing and accounts

We usually issue invoices for our services on a monthly basis, but will invoice on a different basis if we have

specifically agreed with you to do so or if we believe a different approach is appropriate.

Unless otherwise agreed with you, invoices are payable within 14 days after the date of issue. Payment can be made by direct payment to our bank account or by cheque.

If at any time the New Zealand Inland Revenue Department notifies us that we are required to pay an amount of GST in respect of services provided to you that is more than the amount of GST invoiced to you, you must pay the amount of the difference to us on demand.

Our fees and other charges and any amount of (or on account of) tax (including GST) are payable on invoice and unless otherwise agreed with you we will not issue a separate monthly statement. We reserve the right to charge interest at 15% p.a. from the due date on any amount not paid within 30 days after the invoice date.

If:

- you are required by law to make any deduction or withholding for or on account of taxation from any amount paid or payable by you to us; or
- we are required by law to make any payment of or incur any tax on or in relation to any amount received or receivable by us (except for New Zealand income tax),

then the amount paid or payable by you will be increased to the extent necessary to ensure that after making the deduction, withholding or payment, or incurring the tax, we receive and retain (free of any liability for any such deduction, withholding or payment, or loss of tax credits or relief) a net amount equal to the amount that we would have received and so retained had no such deduction, withholding or payment been made, or no such tax had been incurred. The amount of the increase is payable on demand.

You agree to pay to us on demand any costs (including legal expenses) that we incur in recovering outstanding amounts from you.

#### **8. Conflicts of interest**

If a conflict of interest arises in relation to a matter on which we have been instructed, we will discuss that conflict with you and agree a possible solution.

Where we receive instructions that give rise to a conflict of interest, we may need to refer you and the other client to other lawyers for independent legal advice. Where we are already acting for you on a matter and a conflict arises, we may have to discontinue our involvement for you in that matter.

We may accept instructions to act for other clients or potential clients who operate in the same market as you or who may otherwise compete with you, but will not act on a matter that:

- is the same matter on which we are currently acting for you, without your consent; or
- would require us to disclose confidential information that we have obtained from you.

We will not knowingly accept instructions from you to commence proceedings against another client of ours or from another client to commence proceedings against you during the term of our retainer with you.

#### **9. Electronic communications**

Unless otherwise agreed with you, we may communicate with you and others by electronic means. As you will be aware, such communications are not secure and may be subject to unauthorised interception, interference, error or virus. While we will take all reasonable steps to protect our communications from such issues, we will not accept any responsibility and will not be liable for any damage or loss if they occur.

#### **10. Information about you**

We may collect and retain information about you as part of providing services to you. We will use this information to provide services to you, to inform you of changes in our business, to advise you of matters that we reasonably believe may be of interest to you and to advise you of matters that may impact on the way in which we may in the future provide services to you.

We may store your 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.

You have the right at any time to have access to any information we hold about you and to ask us to correct any incorrect information. Should you wish to review the information held by us about you, please contact us by email at [practicemanager@hhl.co.nz](mailto:practicemanager@hhl.co.nz) or by telephone on +64 9 921 4300, or you may contact the Director who is responsible for your work.

#### **11. Files and records**

We will retain files we establish on a matter, and any documents you leave with us, for at least seven years after the end of our involvement in the matter. We may then (but are not required to) destroy them at the end of that period unless we explicitly agree with you in writing that we will retain them for a longer period.

We may store those files and documents 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 are not liable for any loss or damage:

- caused to files or documents that are stored outside our offices in data storage facilities or online storage not operated by us; or
- as a result of unauthorised access to files or documents stored in data storage facilities or online storage not operated by us.

If you uplift your files or documents, we may make copies of them before giving them to you and may require you to pay the costs of that copying before providing those files or documents to you.

## 12. Trust account

We maintain trust accounts for funds that we receive from or for the benefit of clients (except for funds which are payment of our invoices).

This paragraph 12 applies to all trust accounts operated by us from time to time, including any foreign currency trust account and any interest bearing deposit trust account.

You acknowledge that, before we are able to conduct a trust account transaction for you, we will be required by law to obtain information about you (for example, to verify your identity and/or the identity of the persons who beneficially own or control you), including to satisfy our obligations under the AML Act.

In addition, our bank may be required by law to obtain certain information about you (**Bank Information**) if you conduct a trust account transaction with us (including in connection with the requirements of the Foreign Account Tax Compliance Act (USA) and/or the OECD's Common Reporting Standard). You must provide all such information on request.

We will have no liability to you however arising if we cannot conduct a trust account transaction (or if a trust account transaction is delayed) because you have not provided us with the required information to our satisfaction.

You represent and warrant to us that any funds deposited by you, or on your behalf, in our trust account are not, and have not been, sourced from any illegal activities or obtained from the pursuit of an illegal purpose and that the trust account is not being used as a conduit for money laundering, or for funding terrorism or for any other illegal purpose.

If you choose to conduct a transaction through our trust account, you do so at your own risk. In conducting any trust account transaction for you, we may rely on:

- any instruction purporting to be signed by you or on your behalf; or
- any instruction which otherwise appears to us to be given by you or on your behalf (including email instructions that appear to be sent by you or by a person on your behalf),

**(your instructions).**

We are not required to confirm your instructions with you or take any other steps to verify any of your instructions.

We will have no liability to you for giving effect to any instruction which is given by email or other electronic means (including by way of a signed instruction which is sent by email) in circumstances where any email or other electronic system (including your system, our system or any other person's system) has been 'spoofed' or 'hacked' or otherwise compromised.

Unless you expressly instruct otherwise, we may, where practicable and reasonable, deposit the funds we hold on your behalf in an interest bearing deposit account with a New Zealand registered bank – either on call or

for a fixed term. We are not responsible for obtaining the best interest rate available 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.

You acknowledge that we may be required by law to disclose information about a trust account transaction (for example, if we believe that a transaction is suspicious or where disclosure is required by the AML Act). As noted in paragraph 3, if we are required to make such a disclosure we will only do so to an appropriate person and only to the extent reasonably necessary for the required purpose. You consent to us making, and waive whatever right that you may have to be advised that we have made, a disclosure of this nature.

In addition, you consent to the disclosure of your Bank Information to our bank and to the New Zealand Inland Revenue Department and waive whatever right that you may have to be advised that we have made such a disclosure.

We will have no liability to you however arising for the loss of any amount deposited with us on your behalf where the loss results from the insolvency, restructuring, act, omission, neglect, delay or default of a financial institution. In addition, we will have no liability to you in connection with:

- holding funds for you;
- complying with your trust account instructions; or
- any trust account transaction undertaken for you or at your request,

except to the extent that the liability is caused by our fraud or wilful misconduct.

We may deduct any fee, expense or disbursement for which we have provided you with an invoice from any funds held in our trust account on your behalf except where we receive the funds from you for a special purpose (other than as security for our fees) and they remain in our trust account for that special purpose.

If we are holding funds in our trust account for you or on behalf of you (whether alone or jointly with other persons) and a dispute arises as to who is entitled to payment of those funds, then:

- we are not required to pay, or otherwise deal, with those funds unless the dispute is resolved in writing to our satisfaction or unless the payment is in accordance with an order of a court of competent jurisdiction; and
- you will indemnify us for any cost or expense (including legal expenses, and internal attendances at our usual charge out rates) incurred by us in connection with the dispute.

The Lawyer's Fidelity Fund administered by the Law Society provides some protection against client losses arising from theft of money by lawyers. The most that the Lawyer's Fidelity Fund can compensate you is NZ\$100,000. The Lawyer's Fidelity Fund protection **does not** apply where you instruct us to invest your money, except in certain limited circumstances (such as

the application of money at your instruction to give effect to the sale and purchase of land or a business).

Our trust account is not audited.

Our trust account records are not protected by legal privilege.

### 13. Limitations of liability

We may change any of the limitations of liability in this paragraph 13 by written agreement with you.

Our aggregate liability to you, together with your Associates, in connection with any matter (or series of related matters) is limited to and will not exceed:

- the amount available to be paid out under our relevant insurance policies, up to a maximum of NZ\$5 million;
- where no amount is available to be paid out under our relevant insurance policies, the lesser of NZ\$500,000 and five times our fees applicable to the matter (or series of related matters) (excluding our office services charge, disbursements and GST).

In addition, our aggregate liability to you, together with your Associates, in connection with all of the services we provide to you and to your Associates in any 12 month period (whether or not our services apply to separate or related matters) is limited to and will not exceed NZ\$5 million.

Each dollar amount set out above in this paragraph 13 is inclusive of interest and costs and any GST if applicable, and a reference to our fees means the fees actually paid to us.

If in connection with providing services to you we permit reliance on our advice (including a legal opinion or due diligence report) by any person other than you (a **Third Party Beneficiary**), the Third Party Beneficiary will be deemed to be your Associate for the purposes of paragraphs 13 and 14. Without limitation, this means that our liability to any Third Party Beneficiary will be taken into account when assessing our aggregate liability to you under this paragraph 13 (including where we agree a limitation of liability with the Third Party Beneficiary that exceeds our aggregate liability to you under this paragraph 13).

For the purposes of any claim against us, as defined by the Limitation Act 2010, arising directly or indirectly in connection with our engagement or the services that we provide to you or our trust account, that Act is modified so that any claim must be filed within 12 months after the date of the act or omission on which the claim is based. In addition, the “late knowledge” provisions in sections 11(2), 11(3), 14 and 32(2) of that Act do not apply. The 12 month time period applies whether or not loss or damage has become apparent or has been suffered within that time period.

### 14. Harmos Horton Lusk Limited is solely liable for our services

Harmos Horton Lusk Limited is the sole person liable to you, and to your Associates, in connection with our services.

The employees and Directors of Harmos Horton Lusk Limited provide services on behalf of Harmos Horton Lusk Limited, and not in a personal capacity. No current or former Director, employee or shareholder of Harmos Horton Lusk Limited (**our Staff**) will have any liability to you, to any of your Associates, or to any other person in connection with our services.

You will not, and will ensure that your Associates do not, make a claim of any nature, or take any action against, any of our Staff in connection with our services, and you (on your own behalf, and on behalf of your Associates) irrevocably waive, release and discharge each of our Staff from, any claim of that nature.

Without limiting any other provision of these Terms, if a court, or administrative body, of competent jurisdiction determines that any of our Staff is liable to you or to any of your Associates for a claim (or series of related claims) in connection with:

- our services or our trust account; or
- any act or omission of the Staff member undertaken in that person’s capacity as a Director, employee or shareholder of Harmos Horton Lusk Limited,

then the Staff member’s aggregate liability to you, together with your Associates, for that claim (or series of related claims) is limited to and will not exceed NZ\$100.

Nothing in this paragraph 14 prevents you from making a complaint about our Staff to the New Zealand Law Society under the Law Society Rules.

### 15. Scope of limitations

Each limitation of liability in paragraphs 1, 12, 13 and 14 is separate and independent and applies to liability and claims of all kinds, whether in contract, tort (including negligence), statute, equity or otherwise.

By engaging us, you agree (including on behalf of each of your Associates) that each such limitation is fair and reasonable.

### 16. Indemnity

You will indemnify us and our Staff against any liability, loss, damage, cost or expense (including legal expenses) suffered or incurred in connection with a Third Party Claim, except to the extent that the Third Party Claim arises as a consequence of our fraud, or wilful misconduct.

For this purpose, a Third Party Claim is any claim, investigation, inquiry or proceeding against or into us and/or any of our Staff in connection with:

- services we provide to you; or
- any trust account transaction for you or at your request,

which is brought or made by any person other than you.

For the avoidance of doubt, this indemnity does not apply to any claim that you make against us.

#### 17. Our Staff

Paragraphs 14 and 16 (along with all other provisions of these Terms necessary to give effect to those paragraphs) are for the benefit of, and may be enforced by, our Staff (including under subpart 1 of part 2 of the Contract and Commercial Law Act 2017).

#### 18. Termination

You may terminate our engagement at any time and we may terminate it in the circumstances permitted by the Law Society Rules.

Without limitation, paragraphs 13, 14, 15, 16, 17 and 20 survive termination of our engagement.

#### 19. Changes to these Terms

We may change these Terms from time to time. Once you have been notified of any change, we may assume that you agree to the change by your continued instruction of us.

We are required by law to comply with the Law Society Rules. As such, these Terms will be deemed to be modified to the extent necessary to comply with those Rules.

#### 20. Law and Jurisdiction

Paragraphs 13, 14, 15 and 16 each apply to the maximum extent permitted by law.

If any provision of these Terms is held by a court, or administrative body, of competent jurisdiction to be illegal, void, or unenforceable such determination will not impair the enforceability of the remaining parts of these Terms, which will remain in full force, and that provision will be deemed to be modified to the extent necessary to render it legal, valid, and enforceable.

This document is governed by New Zealand law. Except as set out below, you submit to the exclusive jurisdiction of the Courts of New Zealand.

If any claim, dispute or difference arises under or in connection with these Terms, any services we have provided or any transaction conducted through our trust account (including the receipt, holding or payment of funds in or from our trust account) (each, a **Dispute**), then, at our discretion, we may by written notice to you (**Arbitration Notice**) require that the Dispute be finally settled by arbitration in Auckland, New Zealand by one arbitrator under the Arbitration Act 1996.

If we cannot agree with you on the identity of the arbitrator within 14 days after the date of the Arbitration Notice, the arbitrator will be chosen by the president or vice-president of the Arbitrators and Mediators Institute of New Zealand (or his or her nominee).

## INFORMATION FOR CLIENTS

The following information is required by the Rules of Conduct and Client Care for Lawyers issued by the New Zealand Law Society (**Law Society**) to be provided by lawyers to their clients.

### 1. Fees

The basis on which fees will be charged by Harmos Horton Lusk (**we** or **us**) in respect of a matter and when payment of fees is to be made are set out in our standard Terms of Engagement.

### 2. Professional Indemnity Insurance

We hold professional indemnity insurance that exceeds the minimum standards specified by the Law Society. We will provide you with particulars of those minimum standards upon request.

### 3. Lawyers Fidelity Fund

The Law Society administers a Lawyers Fidelity Fund which provides clients with some protection against loss caused by theft by a lawyer of money or other assets entrusted to the lawyer.

### 4. Complaints

If you have a complaint about our services or charges, you may refer your complaint to the Director of Harmos Horton Lusk who has overall responsibility for your work.

However, if you do not wish to refer your complaint to that person, or you are not satisfied with that person's response to your complaint, you may refer your complaint to another Director, whom you may contact by letter, by email at the email address for that Director appearing on our website [www.hhl.co.nz](http://www.hhl.co.nz), by telephoning our office at +64 9 921 4300 and asking to speak to that Director, or by any other means.

The Law Society also maintains a complaints service and you are able to make a complaint to that service by contacting the Law Society, whose contact details are:

Postal Address: PO Box 5041, Lambton Quay,  
Wellington 6145 (DX SP20202)  
Telephone: 0800 261 801  
Fax: +64 4 473 7909  
Email: [complaints@lawsociety.org.nz](mailto:complaints@lawsociety.org.nz)  
Website: [www.lawsociety.org.nz](http://www.lawsociety.org.nz)

### 5. Persons responsible for the work

The names and status of the person or persons who will have the general carriage of, or overall responsibility for, the services we agree to provide for you are set out in our Letter of Engagement.

If at any stage you would prefer a change in the personnel handling a matter, please contact either the Director responsible for the matter or another Director of Harmos Horton Lusk.

### 6. Client Care and Service

Whatever legal services we are providing to 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](http://www.lawsociety.org.nz) or call 0800 261 801.