

## TERMS OF ENGAGEMENT - SWEETMAN LAW LIMITED

These Terms of Engagement ("**Terms**") apply in respect of all work carried out by Sweetman Law Limited ("**we**", "**us**" or "**our**") 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 financial, accountancy and/or tax advice and it is important that you take separate financial, accounting and/or tax advice as you consider appropriate.

### **Fees:**

4. We will provide you with an estimate of fees, if you request one. Any estimate we give in the engagement letter will be a guide only (based on our past experience of similar matters) and is not a fixed fee. The actual fee may be less than, or greater than, the estimate. We will give you a revised estimate if it becomes apparent at any point that the actual fee is likely to exceed the estimate significantly. 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 are complete;
  - (b) No unforeseen circumstances arise which require additional work;
  - (c) You respond to our requests for information or instructions in a timely manner;
  - (d) Third parties and other lawyers, accountants, business advisers (and the like) involved in the matter are co-operative and reasonable;
  - (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.
5. Our fees are determined taking into account the hourly rates of the person within our firm who works on the matter (which rates may change from time to time and will be outlined in the engagement letter) as well as other relevant criteria listed in the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, which include:
  - (a) The skill, specialised knowledge and responsibility required to perform the services properly;
  - (b) The importance of the matter to you and the results achieved;
  - (c) The urgency and circumstances in which the matter is undertaken and any time limits imposed (including by you);

- (d) The degree or risk assumed by us in undertaking the services (including the amount or value of any property involved);
  - (e) The complexity of the matter and the difficulty or novelty of the questions involved;
  - (f) The possibility that acceptance of a particular engagement will preclude engagement by other clients; and
  - (g) The reasonable costs of running our practice.
6. Please feel free to inquire at any time as to the current amount of our fees and any other charges.

**Disbursements and expenses:**

7. In providing services we may incur disbursements, or have to make payments to third parties on your behalf. These will be included in our invoice to you when the expense is incurred and will be in addition to any estimate given. We may require an advance payment for the disbursements or expenses which we will be incurring on your behalf or we may require you to pay the relevant third party disbursement directly.
8. We charge for general office services and storage costs for your file. We do not charge separately for photocopying, binding, storage and fax costs, instead a service charge based on our fees is charged. Where there has been significant costs involved in photocopying or binding, we may charge for this separately.
9. We also charge a management fee relating to all Land Information New Zealand instruments and searches. This fee is \$25.00 including GST.

**GST (if any):**

10. GST (if any) is payable by you on our fees and charges and is addition to any estimate given.

**Invoices:**

11. We will send interim invoices to you, 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 disbursement.

**Payment**

12. Invoices are payable within seven (7) days of the date of the invoice unless alternative arrangements have been made with us. We may require interest to be paid on any amount which is more than 30 days overdue. Interest will be calculated at the rate of 12.5% and will include costs payable (including legal costs on a solicitor/client basis) on the recovery or attempting to recover any outstanding amount owed to us.
13. We reserve the right to decline to continue to undertake work for you or to provide any further work, services or representation in the event of non-payment or delay in payment of our account.

**Security:**

14. We may ask you, at any time or from time to time, to pre pay amounts to us as a retainer for costs, or to provide security for our fees and expenses. Where we request that you

pre-pay any amount, we are under no obligation to carry out work until such amount has been received by us in clear funds. You authorise us to:

- (i) debit against amounts pre-paid by you; and
- (ii) deduct our fees, expenses and disbursements for which an invoice has been issued from any funds held on your behalf in our trust account.

**Guarantor:**

- 15. We may require a guarantor for fees. 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.
- 16. 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.

**Credit Check:**

- 17. By instructing us to act for you, you consent to us carrying out a credit check on you.

**Third Parties:**

- 18. Where invoices have been directed to a third party at your request, you will remain responsible for payment to us if the third party fails to pay us. This includes in circumstances where you expect to be reimbursed by a third party for our fees and expenses.

**Confidentiality and Intellectual Property:**

- 19. 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) As authorised by you; or
  - (b) To the extent necessary or desirable to enable us to carry out your instructions; or
  - (c) To the extent required by law or by the Law Society's Rules of Conduct and Client Care for Lawyers.
- 20. You agree that we may use "cloud" based information technology services to store information about you.
- 21. We retain all ownership rights in all intellectual property of any kind created by us for you. 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.

**Termination:**

- 22. You may terminate your retainer with us at any time. Upon termination of the retainer we will render a final account to you and shall hold a lien over your files and documents until payment of the outstanding account is made in full.
- 23. We may terminate our retainer with you in any of the circumstances set out in the Law Society's Rules of Conduct and Client Care for Lawyers. We will give you reasonable notice, verbally or in writing sent to an address you have provided to us.

24. If our retainer is terminated, you must pay to us all fees and expenses due to us up to the date of termination and all expenses incurred up to that date.

**File Retention and Destruction:**

25. We are entitled to retain possession of all files and documents in our possession or control while there is any money owed to us by you on any account.
26. You authorise us (without further reference to you) to destroy all files and documents for any particular matter (other than any documents that we hold in safe custody for you) seven years after our engagement in respect of the particular matter ends. You agree that if you wish to retain all or part of any paper file held by us, you will advise us in writing before the services relating to that matter are completed.

**Conflicts of Interest:**

27. We have procedures in place to identify and respond to 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 Law Society's Rules of Conduct and Client Care for Lawyers.

**Duty of Care:**

28. Our duty of care is to you and not to any other person. Any advice given by us is for the benefit of you alone and will not extend to any other person unless we expressly agree.

**AML/CFT:**

29. New Zealand has passed a law called the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 ("the AML/CFT law"). Under this legislation we are required to assess the risk our firm may face from the actions of money launderers and people who finance terrorism and must identify potentially suspicious activity. We are required as part of our customer due diligence to obtain and verify information from you. This requires our firm to undertake certain background checks before providing services to you.
30. Due to the documentation that is required to be completed and research undertaken in order for my firm to comply with its obligations under the AML/CFT Law there will be additional charges, including those of the firm's agents, for undertaking background checks and verifying information which will be charged at the author's hourly rate and/or agent's fees for the time spent in completing their obligations.
31. We will need to obtain and verify certain information from you to meet our AML/CFT legal requirements. The information we will require includes your full name, date of birth and your address. To confirm these details, documents such as passport, driver's licence or your birth certificate and documents that show your address – such as a current bank statement – will be required. If you are seeking us about company or trust business, we will need information about the company or trust including the people associated with it (such as directors and shareholders, trustees and beneficiaries). We will also need to ask you about the nature and purpose of the proposed work we are asked to do. Information confirming the source of funds for a transaction may also be necessary to meet our legal requirements.
32. If we are not able to obtain the required information from you, it is likely we will not be able to act for you. Because the law applies to everyone, we need to ask for the information even if you have been a client of ours for a long time.

**Trust Account and Credit Balance:**

33. We maintain a trust account for all funds which we receive from clients (except for monies received for payment of our invoices). If we are holding significant funds on your behalf for a period of 3 business days or more we will normally lodge those funds on interest bearing deposit with a bank. In that case we will charge an administrative fee of 5% on the gross amount of interest derived.
34. When acting for you in property or financing matters, we require that our trust account is credited with cleared funds before 11.00 am on the working day prior to settlement date for the correct amount. Failure to do so may result in a delay in settlement proceeding.
35. If after the conclusion of transactions with a client there is a credit balance of less than \$20, Sweetman Law can take this balance as an administration fee as our administration costs to pay this balance out would be more.

**FATCA:**

36. We are required, under the United States Foreign Account Tax Compliance Act (FATCA) and Common Report Standard (CRS), to conduct a due diligence on all account holders that instruct us to hold money in our firm's trust account on an interest bearing deposit. The due diligence is to determine if you are a US citizen or tax resident or have one or more controlling persons who are US citizens or US tax residents. We are required to identify, collect and report information to New Zealand's Inland Revenue on all accounts identified as being US reportable accounts. To meet our obligations under FATCA we may require disclosure of all relevant information to ascertain your FATCA status. You should endeavour to provide any such information to us as promptly as possible.

**Electronic Communication:**

37. We prefer to communicate with you and others in connection with your work by email and will generally do so (unless you instruct us otherwise). Although we will take reasonable precautions, we cannot and do not warrant that these communications will be complete, secure and free from viruses, interference or other defects and will not be delayed or fail to be received.
38. We will not be responsible or liable for any loss, damage of any nature as a result of lack of confidentiality or security or the inaccuracy, unreliability or incompleteness of any such electronic communication.

**Limitation of Liability:**

39. 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.
40. 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.

41. 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 (plus any excess payable by us in relation to the claim under our professional indemnity insurance cover); or
  - (b) In situations where we do not receive indemnification from our professional insurers for the claim, an amount equal to double our paid fees on the matter (excluding GST and disbursements).

### **Residential Land Withholding Tax**

42. If you are instructing us to act on the sale of a residential property and you are classified as an offshore resident land withholding tax person as defined under the Taxation (Residential Land Withholding Tax, GST on Online Services, and Student Loans) Act 2016, we have an obligation to calculate and collect taxation due on any sale of residential land. In employing our services you acknowledge that it is excluded from any liability to you in relation to any residential land withholding tax incorrectly calculated and/or withheld from an amount on your behalf and you agree to indemnify Sweetman Law for any amount which it may be required to pay on your behalf in respect of such tax (including penalties). Further, you agree that we have no liability to you personally for any amount of resident land withholding tax incorrectly withheld (and in relation to any penalties and/or costs which you may incur arising from an incorrect tax calculation as referred to herein).

### **Information and Privacy Act 2020**

43. Subject to certain circumstances and exclusions set out in the Privacy Act 2020, you have the right to access all personal information held about you by us. If any of the information is incorrect, you have the right to have it corrected. Subject to all the above, we and our agents shall keep all of your information confidential except where necessary to give effect to your instructions. If there is a breach of privacy involving your personal information, we will comply with any legal obligations in the Privacy Act 2020. Our full Privacy Statement can be viewed on our website at [www.sweetmanlaw.co.nz](http://www.sweetmanlaw.co.nz).

### **General:**

44. These Terms apply to any current engagement and also to any future engagement, whether or not we send you another copy of them.
45. 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.
46. Our relationship with you is governed by New Zealand law and New Zealand courts have exclusive jurisdiction.
47. 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.
48. Sweetman Law is the trading name of Sweetman Law Limited.

# SweetmanLaw

## INFORMATION FOR CLIENTS

Set out below is the information required by the Rules of Conduct and Client Care for Lawyers of the New Zealand Law Society ("Law Society").

- 1 **Fees:** The basis on which fees will be charged is set out in our Letter of Engagement. When payment of fees is to be made is set out in our Standard Terms of Engagement. 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.
- 2 **Professional Indemnity Insurance:** We hold professional indemnity insurance that meets or exceeds the minimum standards specified by the Law Society. We will provide you with particulars of the minimum standards upon request.
- 3 **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.
- 4 **Complaints:** We maintain a procedure for handling any complaints by clients, designed to ensure that a complaint is dealt with promptly and fairly.  
  
If you have a complaint about our services or charges, you may refer your complaint to the person in our firm who has overall responsibility for your work.  
  
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 the Law Society who operates the Lawyers Complaints Service.  
  
You are able to make a complaint to that service. To do so, phone **0800 261 801** and you will be connected to the nearest Complaints Service Office, which can provide information and advice about making a complaint.
- 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 provide for you are set out in our letter of engagement.
- 6 **Client Care and Service:** The Law Society client care and service information is set out below. 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.lawsociety.org.nz](http://www.lawsociety.org.nz) or call **0800 261 801**.
- 7 **Limitations on extent of our Obligations or Liability** Any limitations on the extent of our obligations to you or any limitation or exclusion of liability are set out in our letter of engagement.

TO: Sweetman Law  
PO Box 305 437  
Triton Plaza  
**NORTH SHORE**

**RE: STANDARD TERMS OF ENGAGEMENT AND INFORMATION FOR CLIENTS**

I/we acknowledge receipt of the Standard Terms of Engagement and Information for Clients for Sweetman Law.

I/we acknowledge that by continuing to instruct you I/we have accepted the terms contained therein.

Yours faithfully

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\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Name)

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\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
Date