

# Terms of engagement: key features

## OUR COMMITMENT TO YOU

Our relationship with you is important. We are committed to serving you professionally and ethically. It is important to us that your expectations of us are clear before we provide any service for you.

## WHAT WE WILL DO FOR YOU

### When providing services to you we will:

- 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.

## WHAT YOU CAN DO FOR US

### When instructing us please:

- Promptly complete and return our Account Application form (if you are a new client), ensuring the information on it is accurate;
- Read our Terms of Engagement as this is one of the documents forming our contractual relationship;
- Provide us with as much information as you can about the matter you are instructing us on so we can do our best to meet your expectations and deliver the service you require;
- Keep up to date with payment of your invoices from us or any agreed payment arrangements so we can continue to act on your behalf;
- Keep us informed of any changes in your circumstances (which change the advice you need) and your contact details;
- Contact us if you are concerned about the service we are providing or the invoices we are sending you – we are more than happy to discuss any issues.

Our full Terms of Engagement are **attached**. Please take time to read these carefully. We are happy to discuss and explain any of our terms if they are unclear. Unless you advise otherwise, you agree to accept our Terms of Engagement if you instruct us to act for you / allow us to continue to act for you after having received this document and/or you return to us your Account Application form.

# Terms of engagement

## OUR COMMITMENT TO YOU

Our relationship with you is important. We are committed to serving you professionally and ethically. We have adopted the policy set out in this document because it is important to us that your expectations of us are clear before we provide any service for you.

### When providing services to you we will:

- 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;
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- Let you know how to make a complaint and deal with any complaint promptly and fairly.

## WHEN YOU ASK US TO WORK FOR YOU

The obligations we owe to our clients for some of the services we provide are also described in the Rules of Conduct and Client Care for Lawyers which can be found [here](#).

These obligations are subject to other overriding duties, including duties to the courts and to the justice system.

The first time we do work for you, you will receive from us:

- A Confirmation of Instructions letter;
- An [Account Application form](#); and
- A copy of these Terms of Engagement.

Collectively these documents form a contract between us.

For every subsequent job we do you will receive a new Confirmation of Instructions.

It is very important that you:

- Promptly return to us your Account Application form; and
- Read these Terms.

### Please note

Unless you advise otherwise, we will proceed with your instructions as described in the Confirmation of Instructions on the understanding that you have accepted these Terms of Engagement.

## SPECIFIC TERMS

### A. YOUR INSTRUCTIONS

#### The basis of our retainer

We accept your instructions to carry out, on your behalf, the work detailed in each Confirmation of Instructions letter sent by us, or written letter of instructions sent by you.

#### Acting on your instructions

We will always try to act promptly and efficiently on your instructions and to report our progress on or before the date specified in our Confirmation of Instructions.

We cannot be held liable for the loss of any rights arising through lack of instructions, or lack of clear instructions, from you or anyone you have nominated to give instructions on your behalf. We also cannot be held liable for the loss of any rights arising because we are unable to act on your instructions as a result of us withholding services because of, for example, overdue accounts.

### B. WHO DOES THE WORK FOR YOU

James & Wells is the trading style of two separate partnerships, James & Wells Patent & Trade Mark Attorneys and James & Wells Lawyers. All of the partners of James & Wells Patent & Trade Mark Attorneys are registered Trans-Tasman (New Zealand & Australia) patent attorneys and subject to the Code of Conduct and disciplinary procedure of the Trans Tasman IP Attorneys Board.

Similarly, all of the partners of James & Wells Lawyers are lawyers and, therefore, subject to the ethical constraints and disciplinary procedures of the New Zealand Law Society.

Some of our partners are both registered patent attorneys and lawyers and are partners in both practices.

A partner or senior member of the firm will oversee and ultimately be responsible for your work and for managing our relationship with you. If required, other partners or staff may also assist with your work, having regard to their level of expertise and the technical specialisation required.

Further information regarding our people and their qualifications can be found on our [website](#).

### C. HOW WE CHARGE

#### Our fees

The factors we may take into account in determining the fees we charge include the following:

- Time and work involved;
- Skill, specialised knowledge, experience and reputation of the person advising you;
- Degree of risk assumed by us in undertaking the services, including the amount or value of any property involved;
- Importance and complexity of the matter and the results we achieve;
- Urgency of the work;
- Possibility that acting for you may stop us from acting for other clients;
- Estimate of fees we gave to you, or our fee agreement;
- Reasonable costs of running a practice; and
- Market rate for similar services.

#### Time we charge for

The time we will charge for includes, but is not limited to, time spent on:

- Personal and telephone attendances with you;
- Email and written correspondence with you;
- Considering the facts and law relating to your matter;
- Reading and considering incoming letters, papers and documents;
- Preparing papers and documents;
- Instructing agents and experts;
- Corresponding with other solicitors / patent attorneys and third parties (such as

the Intellectual Property Office of New Zealand and the Courts); and

- Time spent travelling.

### **Hourly rates**

Where, due to the nature of the work, we cannot predict our costs with any accuracy, our charges will be based on the time spent on the task calculated at our normal hourly rates, plus disbursements and GST (if applicable). Those hourly rates are currently as follows:

*Partners and Consultants*

\$525-700 per hour

*Senior Associates / Senior Solicitors*

\$365-460 per hour

*Associates / Solicitors*

\$275-450 per hour

*Technical Advisers*

\$175-315 per hour

*Law Clerks*

\$100-200 per hour

*Research Clerks / Searchers*

\$150-200 per hour

The names and status of the person(s) who will be responsible for the work you have instructed us to do will be set out in our Confirmation of Instructions letter.

### **Estimates**

The costs you should expect are those stated in our Confirmation of Instructions. As our costs are usually dependent on the amount of time we spend on your work, they are estimates only and do not constitute a "quote".

If we are unable to give you an accurate estimate of the costs, or if the work is ongoing, we will report to you regularly and invoice you monthly so that you are kept informed of the costs involved as the job progresses.

At any time you can tell us in writing to stop. If you do, you will be liable for the fees, disbursements and expenses we (and any overseas Associate or agent we use for your work) have incurred up to that point.

Unless you tell us to stop, we will continue to work on the matter and you will continue to be liable for the ongoing costs.

### **Other costs**

#### **Disbursements**

These are "out-of-pocket" expenses and include such things as Court and Intellectual Property Office filing fees, toll calls, faxes, photocopying, travel and accommodation expenses, couriers and the fees of agents we instruct to do things on your behalf (including overseas Associate firms).

You are responsible for reimbursing us for these disbursements.

They may be included in your account or billed separately. We may require you to pay significant disbursements in advance (see section E below).

#### **Maintaining, storing and handling files**

In addition to these disbursements we may also charge you a fee for maintaining, storing and handling your file while a matter remains current and for monitoring any deadlines that apply to that file.

#### **Costs of applications overseas**

When instructing overseas Associates, we may incur significant charges on your behalf. We do our best to anticipate our Associates' costs prior to instructing them but we can only provide an estimate.

Our invoiced costs will, unless otherwise stated, include a component for bank charges and other costs incurred by us in meeting our Associates' invoices and an additional charge to protect us against foreign exchange fluctuations.

## **D. PAYMENT OF DEPOSIT**

In our Confirmation of Instructions, we may require you pay a deposit towards anticipated costs and disbursements. Depending on the size of the deposit, and type of work we are doing for you, your deposit may be held in our James & Wells Lawyers Trust Account and used on account of any fees / disbursements / costs you incur with us.

Payment of the deposit will be noted in your next statement of account. If you require a receipt for a deposit before your statement issues, please let us know.

We may require further deposits from you as the matter progresses. Any unused portion of a deposit will be refunded to you (along with any interest earned, if applicable) on completion or termination of our services.

## **E. PAYING YOUR ACCOUNT**

### **Payment of account**

Accounts must be paid on the terms set out in the invoice (generally upon receipt) or as otherwise arranged with us.

We accept cash, cheque, direct credit, telegraphic transfer, and most major credit cards. You can pay by credit card online [here](#).

We will apply your payments in satisfaction of any invoice or outstanding balance as we see fit; not necessarily to the most recent invoice.

### **Payment of disbursements**

We may need to pay significant disbursements on your behalf. Often where we can anticipate disbursements we will send you an account in advance. Otherwise these disbursements will be included in a subsequent invoice.

### **Monthly statements**

Statements will be issued monthly. If payment of the account is not received within 20 days of the statement date, our accounts department will contact you.

## **Account queries**

If you have any query or concern about your account or an invoice, please raise it as soon as possible and in the first instance with the attorney handling your file. If necessary, you can also speak to the supervising partner, our practice manager, or our accounts department.

We will do our best to work with you to resolve your query or concern.

## **F. OVERDUE PAYMENT OF ACCOUNTS WHAT HAPPENS**

### **Financial difficulties**

If you have difficulty paying an account, please discuss this with us. In certain circumstances we may be able to set up a reasonable payment programme with you.

### **Overdue accounts**

We reserve the right to charge interest (calculated at the overdraft rate our bankers charge us, plus 2.5%) on all invoices remaining unpaid from the previous statement.

Where any overdue amount includes a disbursement for foreign Associate's fees, we reserve the right to charge you an additional amount. This is to cover any exchange rate fluctuation in the event the New Zealand dollar depreciates after the due date for the unpaid amount.

### **Security Charges**

We reserve the right to register levies or charges ("securities") against your personal property in the event that we carry out significant work for you or where you owe us money. You agree that we may register such securities and that your agreement represents a security interest in your personal property (including without limitation your intellectual property).

### **Debt recovery**

If there is no satisfactory explanation for non-payment of your account, our accounts

department will issue a letter requesting payment within seven days.

If you still do not pay, our accounts department may institute proceedings to recover:

- The amount owed;
- Interest;
- An exchange rate adjustment; and
- Collection fees.

#### **Withholding services on overdue accounts**

After a seven day letter issues the accounts department will instruct the attorney responsible for your work to cease working on your files.

NOTE: this may result in the lapsing of your rights. We do not accept responsibility for the lapsing of any rights while accounts remain overdue.

#### **G. YOUR INFORMATION: PRIVACY**

Over the course of your involvement with us we may collect and hold personal information about you.

If you withhold information from us this may prevent us from providing services to you or limit the quality of the service we provide.

Information about you will only be used by us to provide services to you, to obtain credit (or other) references, to undertake credit management or to inform you of issues and developments that may be of interest to you. Under these terms you authorise us to obtain from any person, or release to any person, any information necessary for those purposes and you also authorise any person to release information to us that we require for those purposes.

Subject to above we will treat all information you supply to us as private and confidential and will not disclose any information we hold on your behalf or about you unless it is publicly available information and/or we are required to do so by law or with your consent.

Information concerning you will be held at our offices.

Under the Privacy Act 1993 you have the right of access to, and correction of, your personal information held by us.

#### **H. YOUR INFORMATION: CONTACT DETAILS AND FILES**

##### **Contact details**

Our ability to contact you for instructions is important. If for any reason your contact details change, it is your responsibility to make sure that we are updated. We cannot be held liable for any loss of rights arising through our inability to contact you because of a change in your contact details which you have not told us about.

##### **Storing files**

We reserve the right to store any file which is no longer current off-premises or solely in electronic format. If you require us to return any file to you which is stored off-premises or in electronic format then we may charge you a fee for retrieving the file.

##### **Retaining files**

We will try to retain the physical file in relation to each matter for at least seven years after the file becomes inactive. After this, unless we hear from you to the contrary, we may destroy it.

##### **Transferring files**

You may uplift your file or ask us to transfer it to another firm at any time, providing all outstanding costs are paid.

We reserve the right to retain a copy of the file for internal purposes and to charge you for making that copy.

#### **I. TERMINATING OUR SERVICES**

At any time you have the right to terminate our services upon giving us reasonable written notice to that effect.

We may also terminate our services if there is good cause, such as you not providing us with instructions in a timely manner, or your inability or failure to pay our fee(s).

If we terminate our services we will give you reasonable written notice so that you can arrange alternative representation. We will help you find another representative if you ask us.

If either we or you terminate our services, you must pay all and any fees, disbursements and expenses incurred up to the date of notice.

## **J. GOVERNING LAW**

As we provide our services in New Zealand, all matters or disputes that arise under this Retainer will be governed by the laws of New Zealand and will be handled by New Zealand courts.

## **K. ACCEPTANCE OF THESE TERMS**

You agree to accept the above terms of engagement if you instruct us to act for you / allow us to continue to act for you after having received this document and/or you return to us your Account Application form.

## **GENERAL INFORMATION FOR CLIENTS**

### **The Lawyers Fidelity Fund**

This Fund exists to provide compensation of up to \$100,000 per claimant for clients of lawyers who suffer pecuniary loss in certain circumstances.

These circumstances are the theft by a lawyer of money or other valuable property entrusted to that lawyer while they are providing legal services to the public or while they are acting as solicitor-trustee.

This is only a brief summary of the Fund. Please contact us if you require further information.

### **Professional indemnity insurance**

We hold current professional indemnity insurance providing cover for the services we provide to you. This exceeds the minimum standards currently prescribed by the New Zealand Law Society.

As with all insurances this cover has limitations and is subject to certain exclusions, terms and conditions.

### **Complaints procedure**

If you have a complaint please raise it with the partner responsible for your matter, or, if you would prefer, any other partner in our firm. You can do this by letter, email or telephone.

If the complaint cannot be resolved to your satisfaction we will appoint another partner who has not been involved with the matter to deal with it promptly and fairly.

If you are still not happy with the outcome you have the right to take the matter up with the New Zealand Law Society, which can be contacted on 0800 261 801, or the Trans Tasman IP Attorneys Board, which can be contacted by email at [mail.ttipab@ipaustralia.gov.au](mailto:mail.ttipab@ipaustralia.gov.au); both run a complaint service. Please contact us for their respective postal addresses.

### **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 will be set out in our Confirmation of Instructions letter.