Henry Holmes

Barrister and Solicitor

Standard Terms of Engagement

1 Application of these Terms

1.1 These Standard Terms of Engagement (Terms) set out the basis on which I, Henry Holmes, barrister and solicitor, provide legal services. They should be read together with my letter of engagement for your matter. In these Terms, "I", "me" and "my" refer to Henry Holmes, Barrister and Solicitor; "you" means the client named in my letter of engagement.

1.2 These Terms apply to my current engagement by you and to any future engagement, whether or not I send you a further copy of them. They are to be read together with my letter of engagement for the relevant matter. If there is any inconsistency, the letter of engagement prevails.

1.3 I may amend these Terms from time to time. If I do, I will send you the amended Terms, which will apply to services provided after the date of the amendment.

1.4 My agreement with you, and these Terms, are governed by New Zealand law, and the New Zealand courts have exclusive jurisdiction.

1.5 My practice is that of a sole practitioner. All work is carried out by me, or under my personal supervision. Where it is appropriate and in your interests, and with your authority, I may instruct or brief other counsel, or engage another practitioner or contractor to assist with your matter. I remain responsible to you for the Services.

2 My services

2.1 The services I am to provide for you (the Services) are set out in my letter of engagement, together with any further instructions you give me in writing (or that I record in writing).

2.2 I will provide the Services with the care, skill and diligence of a competent lawyer, and in accordance with my professional obligations.

2.3 My engagement relates only to the particular matter for which you engage me. Once that matter is concluded, I do not owe you any further duty in respect of it, or any related matter, unless you separately engage me.

2.4 If I am instructed by more than one person (for example, joint clients or the trustees of a trust), I may send all communications to the person to whom my letter of engagement is addressed, and may deal solely with that person, unless you tell me otherwise in writing. My obligations to you cannot be transferred or assigned to any other person.

2.5 I am qualified to practise, and to advise on, New Zealand law only. If my advice touches on the law of another country, it is general comment only and not legal advice on the law of that country, and I accept no responsibility for your legal position under that law. You should obtain advice from a lawyer qualified in that country.

3 My commitment to you (client care and service)

3.1 Whatever legal services I am providing, I will:

(a) act competently, in a timely way, and in accordance with your instructions and any arrangements made with you;

(b) protect and promote your interests and act for you free from compromising influences or loyalties;

(c) discuss with you your objectives and how they should best be achieved;

(d) provide you with information about the work to be done, who will do it, and how and when I will communicate with you;

(e) charge you a fee that is fair and reasonable, and let you know how and when you will be billed;

(f) give you clear information and advice;

(g) protect your privacy and ensure appropriate confidentiality;

(h) treat you fairly, respectfully and without discrimination;

(i) keep you informed about the work being done and advise you when it is completed; and

(j) let you know how to make a complaint, and deal with any complaint promptly and fairly.

3.2 The obligations lawyers owe to their clients are described in the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the Rules). Those obligations are subject to other overriding duties, including duties to the courts and to the justice system. If you have any questions, please ask me.

4 Communications

4.1 I will obtain your contact details, including email address, postal address and telephone number, and may provide documents and communications to you by email or other electronic means. Please tell me if your contact details change.

4.2 I will report to you periodically on the progress of your matter, and will inform you of any material or unexpected delays, significant changes or complications. You may request a progress report at any time.

4.3 From time to time I may send you information I consider may be relevant to you. You may ask me at any time not to send you such information.

5 Fees and expenses

5.1 Fees: the basis on which I charge my fees is set out in my letter of engagement.

(a) If the letter of engagement specifies a fixed fee, I will charge that fee for the agreed scope of the Services. Work outside that scope will be charged on an hourly basis, and I will tell you as soon as reasonably practicable if work outside the agreed scope becomes necessary.

(b) Where my fees are charged on an hourly basis, my hourly rate is set out in my letter of engagement. Time is recorded in six-minute units. I may review my hourly rate from time to time, and will tell you before any change takes effect.

(c) My fee may be adjusted (up or down) to ensure it is fair and reasonable, having regard to the interests of both you and me and to the factors set out in rule 9 of the Rules (including the complexity, urgency, value and importance of the Services).

5.2 Disbursements and third-party expenses: in providing the Services I may incur disbursements, or make payments to third parties on your behalf (for example court filing fees, search and registration fees, courier charges, travel and accommodation costs, experts' costs and counsel's fees). You authorise me to incur these where reasonably necessary to provide the Services. They will be shown in my invoices.

5.3 Office administration: minor office costs (such as printing, postage and telephone charges) are included in my fee. I do not charge a separate office administration fee.

5.4 GST: my fees and charges are stated exclusive of GST. GST is payable by you where applicable.

5.5 Invoicing: I will usually send you invoices monthly, and on completion of your matter or termination of my engagement. I may invoice more frequently where I incur a significant expense, or carry out a significant amount of work over a short period.

5.6 Payment: my invoices are payable within 14 days of the date of the invoice, unless I agree otherwise with you. Payment may be made by direct credit to my office (business) bank account, the details of which are shown on my invoices. I do not operate a trust account (see clause 6).

5.7 If you have difficulty paying an invoice, please contact me promptly so that we can discuss payment arrangements.

5.8 If an invoice is overdue, I may:

(a) charge interest on any amount that is more than 14 days overdue, at 10% above the overdraft rate charged to me by my main trading bank, for the period the invoice remains outstanding;

(b) stop work on any matter for which I am acting for you;

(c) require payment of fees in advance, or other security, before recommencing work;

(d) retain your file until the amount owing is paid, or other satisfactory arrangements are made, subject to my obligations under the Rules; and

(e) recover from you all costs I incur (including on a solicitor and own client basis, and any collection agency costs) in recovering the amounts owing.

5.9 Fees or payments in advance: because I do not operate a trust account, I do not hold fees, disbursements or other money for you in advance. Where payment in advance, or security for my fees and expenses, is appropriate, this will be arranged through a solicitor who operates a trust account, or by another arrangement agreed with you in writing (see clause 6).

5.10 Estimates: you may ask me for an estimate of my fee at any time and, where I can, I will provide one (which may be a range). An estimate is not a quote. I will tell you if I am likely to exceed an estimate by a substantial amount. Unless stated otherwise, an estimate excludes GST, disbursements and expenses.

5.11 Third parties: even if you expect to be reimbursed by a third party, or I address my invoices to a third party at your request, you remain responsible for payment in accordance with these Terms if the third party does not pay.

6 Money held on your behalf (no trust account)

6.1 I do not operate a trust account. I am not able to receive or hold money, or other valuable property, in trust on your behalf.

6.2 Accordingly, I will not ask you to pay money to me to hold, and I will not hold funds for you. Where money is required to be held or paid (for example a settlement sum, a payment to a third party, or funds for disbursements or fees in advance), I will agree arrangements with you in advance. These may include:

(a) you paying the amount directly to the intended recipient, or into court;

(b) the funds being held by an instructing or associated solicitor who operates a trust account; or

(c) another arrangement agreed with you in writing.

6.3 I will confirm any such arrangement with you before funds are provided. Payment of my invoices (for work done and disbursements incurred) is made to my office (business) account and is not money held in trust.

6.4 I intend, in due course, to become entitled to operate a trust account. If that occurs, I will provide you with updated information.

7 Confidentiality and personal information

7.1 I will hold in confidence all information concerning you or your affairs that I acquire while acting for you. I will not disclose it to any other person except:

(a) to the extent necessary or desirable to carry out your instructions;

(b) as agreed by you, expressly or impliedly;

(c) as necessary to protect my interests in respect of any complaint or dispute; or

(d) as required or permitted by law.

7.2 Confidential information concerning you will, so far as practicable, be made available only to me and to any person I properly engage to assist with your matter.

7.3 Personal information and privacy: in acting for you I will collect and hold personal information about you, and will use it to provide the Services and to contact you about your matter. Provision of that information is voluntary, but if you do not provide it this may affect my ability to provide the Services. I handle personal information in accordance with the Privacy Act 2020. If you are an individual, you have the right to access, and to request correction of, the personal information I hold about you; please contact me.

7.4 You authorise me, in the normal course of providing the Services, to disclose personal information to third parties for the purpose of providing the Services and for the other purposes set out in these Terms.

7.5 I may disclose your name and contact details to credit agencies to perform a credit check, or for credit management or debt collection, where it is reasonable to do so.

7.6 Information I hold about you is kept securely, including in secure electronic (cloud-based) storage.

8 Anti-money laundering, identity verification and compliance

8.1 I am obliged to comply with all laws applicable to me, including the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT Act) and laws relating to tax and client reporting.

8.2 To the extent that my Services are captured by the AML/CFT Act, I may be required to undertake customer due diligence on you, any person acting on your behalf, and other relevant persons (such as beneficial owners), and to verify identity. I may ask you to provide documents (such as a passport or driver licence) and information about the source of funds, and may retain copies. I may be unable to begin, or to continue, acting for you until this is completed.

8.3 To meet my and your compliance obligations, I may be required to provide information about you or relevant persons to third parties, including government agencies. In some circumstances I may not be able to tell you that I have done so.

8.4 Please ensure that you and any relevant persons are aware of and consent to this, and that all information provided to me is accurate. If required information is not provided, or I consider information to be inaccurate, misleading or in breach of any law, I may decline to act or terminate my engagement.

9 Conflicts of interest

9.1 I am required to protect and promote your interests, to the exclusion of the interests of third parties and myself, and to avoid acting where I have a conflict of interest, in accordance with the Rules.

9.2 I operate a conflict-checking system to identify actual and potential conflicts of interest. If a conflict arises, I will advise you and follow the requirements and procedures set out in the Rules. This may mean that I am unable to continue acting for you in a particular matter, and I may terminate my engagement.

10 Files, documents and records

10.1 I keep a record of the important documents I receive or create for you. I may keep records electronically and destroy the originals, except where the existence of an original is legally important (such as wills and deeds).

10.2 I may dispose of documents that are duplicates or trivial, or that belong to me.

10.3 I will provide you, on request, with copies or originals (at my option) of documents to which you are entitled under the Privacy Act 2020 or any other law. I may charge my reasonable costs for doing so.

10.4 Where I hold documents belonging to a third party, I will require that party's written authority before providing them to you.

10.5 If my engagement ends and your file is uplifted by you or another lawyer, I may keep copies of the documents and records I hand over.

10.6 Unless you instruct me otherwise in writing, you authorise me to destroy (or delete, in the case of electronic records) all files and documents relating to the Services seven years after my engagement ends, other than documents I hold in safe custody for you or am required by law to retain for longer. I may retain documents for longer at my option.

10.7 I own the copyright in documents I create in providing the Services, but grant you a non-exclusive licence to use and copy them for your own personal or commercial use. You may not permit any third party to copy, adapt or use them without my written permission.

11 Duty of care and liability

11.1 My duty of care is to you alone, and not to any other person. I accept no responsibility or liability to any other person (including any director, shareholder, related company, employee or family member) unless I expressly agree in writing.

11.2 My advice is given solely for the matter for which you engage me, and is not to be used or relied on for any other purpose, or referred to in any prospectus, financial statement or public document, without my written consent.

11.3 My advice is my opinion, based on the facts known to me and on my professional judgement, and is subject to any change in the law after the date on which it is given. I am not liable for errors in, or omissions from, information provided by third parties.

11.4 I may communicate with you and with others by electronic means. I cannot guarantee that these communications will not be lost, delayed or affected by matters beyond my reasonable control, and I am not liable for any loss arising in that way.

11.5 To the full extent permitted by law, my total liability (including interest, costs, GST or other taxes, and other charges) to you and to any other person in respect of any claim or claims arising from or relating to a particular instruction (or any series of related instructions), whether in contract, tort (including negligence), equity, statute or otherwise, will not exceed the greater of the fees (excluding GST) I have received from you for that instruction (or series of related instructions) and the amount paid by my professional indemnity insurers in respect of the relevant claim.

11.6 I accept no liability for any special, indirect or consequential loss or damage.

11.7 If I am required to appear in, or otherwise take part in, any proceeding, investigation or inquiry in relation to an instruction (other than in respect of, and to the extent of, a complaint or claim by you for which I am liable to you), I may charge you reasonable fees and expenses for doing so, including the cost of my own legal representation.

12 Termination

12.1 You may end my engagement at any time.

12.2 I may end my engagement in any of the circumstances set out in the Rules, including the existence of a conflict of interest, non-payment of fees, or your failure to give instructions.

12.3 I may also end my engagement if your conduct towards me, anyone working with me, or any barrister I instruct for you, amounts to bullying, discrimination, harassment (including racial or sexual harassment), threatening behaviour or violence (rule 4.2.1(f) of the Rules). If I do, I will give you reasonable notice of my reasons, and reasonable help to find another lawyer.

12.4 If my engagement ends, you must pay me all fees, disbursements and expenses incurred up to the date on which it ends.

13 Professional indemnity insurance and Lawyers' Fidelity Fund

13.1 Professional indemnity insurance: I hold professional indemnity insurance that meets or exceeds the minimum standards specified by the New Zealand Law Society. I will provide you with particulars of the minimum standards on request.

13.2 Lawyers' Fidelity Fund: the New Zealand Law Society maintains the Lawyers' Fidelity Fund, which provides clients with limited protection against loss arising from theft, by a lawyer, of money or other valuable property held in trust. Because I do not operate a trust account and do not hold money or valuable property in trust for you, I will not be holding your funds in trust, and the Fidelity Fund's protections in respect of trust money will not apply to money held by me.

14 Feedback and complaints

14.1 I aim to provide you with a high standard of service, and I welcome your feedback. If you would like to comment on any aspect of my service, please contact me.

14.2 If you have a concern or complaint about my services or my fees, please raise it with me as soon as possible, by telephone on 021 280 7007, by email to holmes@henryholmes.co.nz, or by post to PO Box 7606, Victoria Street West, Auckland 1145. You may make your complaint verbally or in writing.

14.3 I will acknowledge your complaint within five working days, and will look into it and respond to you as soon as possible, and in any event within ten working days, unless I tell you that I need more time. I will deal with your complaint in good faith and seek to resolve it in a way that is fair to all concerned.

14.4 If I am unable to resolve your complaint to your satisfaction, you may refer it to the New Zealand Law Society's Lawyers Complaints Service. There is no charge for this service. It may be contacted at:

(a) Post: Lawyers Complaints Service, PO Box 5041, Wellington 6140;

(b) Phone: 0800 261 801;

(c) Email: complaints@lawsociety.org.nz; and

(d) Online: www.lawsociety.org.nz (search “Lawyers Complaints Service”).

15 General

15.1 These Terms, together with my letter of engagement, record the entire agreement between you and me about the Services, and supersede any prior discussions or understandings.

15.2 If any provision of these Terms is or becomes unenforceable, the remaining provisions continue to apply.

15.3 These Terms apply to my current engagement and to any further instructions you give me, whether or not I send you a further copy.