

## **Kilian and Associates Terms and Conditions of *Engagement***

By visiting our site and/ or purchasing something from us, you engage in our "Service" and agree to be bound by the following terms and conditions.

### **1. Fees**

Kilian and Associates' fees are charged in accordance with the Lawyers and Conveyancers (Lawyers Conduct and Client Care) Rules 2008. All fees will be charged in NZD. In calculating the fee Kilian and Associates is entitled to take account of matters such as:

- The time spent;
- The skill and knowledge and responsibility required;
- The value of property involved;
- The complexity, novelty, importance and urgency of the matter;
- The reasonable cost of running a practice;
- The result.

### **2. Client's Instructions**

Kilian and Associates will act in your best interests to carry out your instructions. Kilian and Associates reserve the right to cease to act where you cannot or will not provide instructions required in addition to those specified in the Agreement.

Kilian and Associates will take reasonable steps to keep you informed of the steps taken to carry out your instructions.

By instructing Kilian and Associates you accept liability to pay the account that Kilian and Associates will render for work done together with all disbursements incurred in respect of such instructions.

### **3. Estimate of Fees**

Where appropriate Kilian and Associates will give you an estimate. The estimate will be Kilian and Associates' "best guess" as to what the fee is likely to be. If, however the work does not proceed as Kilian and Associates has expected due to unexpected complications, or if the work proves more complicated than originally anticipated, Kilian and Associates will charge for all additional work done on an hourly basis.

If it appears that the estimate will be exceeded Kilian and Associates will advise you of the reasons and obtain further instructions from you.

Where Kilian and Associates' fees are calculated on an hourly basis, the hourly rates are set out in our Agreement. The differences in those rates reflect the experience and specialization of our professional staff. Time spent is recorded in 6 minute units, with time rounded up to the next unit of 6 minutes.

### **4. GST:**

Is payable by you on Kilian and Associates' fees and charges.

### **5. Credit Policy**

You may be allocated a credit limit which will be:

- a. Confidential between you and Kilian and Associates (and persons such as barristers and expert witnesses instructed by Kilian and Associates with your consent);
- b. The total amount that Kilian and Associates will allow to be owed or due to Kilian and Associates by you at any time.
- c. Able to be increased or decreased or withdrawn by Kilian and Associates at any time.

Kilian and Associates reserves the right to make reasonable and confidential credit enquiries from an appropriate information provider.

Kilian and Associates may stop doing work (and instruct others to stop doing work) for you if your credit limit is exceeded and payment is not received by Kilian and Associates when invoiced.

### **6. When will you be billed?**

Generally individual or similar transactional matters will be billed at the time of settlement or on completion of the work. Kilian and Associates may however require you to make a payment or payments to Kilian and Associates for those matters referred to in clause 7 prior to final billing of any matter.

For any other matters Kilian and Associates will bill you on an interim basis, as and when an event has been completed. This will help you by spreading the payments over time. It will also enable you to keep track of how much the work is costing.

## **7. Legal Aid**

If you are an individual who is involved in or is about to be involved in litigation, you may be eligible for civil or criminal legal aid depending on your financial circumstances. We only act in limited cases where legal aid is applied for or granted. If we are unable to assist you with your matter, we may be able to assist you in finding a lawyer who is prepared to act however. Please ask.

Legal aid is governed by the Legal Services Act 2011 and the associated regulations. Legal Aid is administered through the Ministry of Justice by the Legal Services Commissioner.

I will submit invoices in relation to your grant of aid to the Legal Services Commissioner and provide you copies. The Legal Services Commissioner will write to you about any conditions or repayment obligations that you may have in relation to the grant of legal aid, and your rights as an applicant or recipient of legal aid. You should be aware at this time that legal aid is not always free. You should read these letters carefully and keep them for later reference.

You must let the Legal Services Commissioner know if there is any change in you and your partner's contact details, employment status, family circumstances or financial details.

## **8. Online Payments**

Payments can be completed online via the Kilian and Associates website.

Payments are processed through the secure DPS Payment Express system. DPS Payment Express secures all your customer and credit-card data with military-grade software and servers, and the highest level of encryption available. Kilian and Associates Ltd will not store or transfer any of your credit card information. All data is transferred using DPS Payment Express secure servers.

## **9. What about payments in advance you have to make?**

Payments may have to be made to other people for work to be done, for example filing fees, search fees, agency fees and similar payments (called disbursements). Kilian and Associates cannot pay these amounts for you unless Kilian and Associates receive payment from you first. Kilian and Associates reserves the right to ask either for these specific amounts or for an appropriate amount to cover these disbursements to be paid to ensure that Kilian and Associates is not out of pocket. Disbursements not charged in advance will be included in Kilian and Associates' invoice to you.

If Kilian and Associates instructs any other person (including Counsel or another practitioner) Kilian and Associates reserves the right to require payment of that person's estimated fees into Kilian and Associates' trust account beforehand. By instructing that person Kilian and Associates undertakes an obligation to pay that person's fees and accordingly requires to be protected for these. Kilian and Associates may require you to enter a payment arrangement directly with that person.

In some circumstances (including during the course of a matter) Kilian and Associates may require payment of estimated fees in advance into Kilian and Associates' trust account before undertaking work (or further work) for you.

## **10. Retainer payable in advance**

You may be asked to pay a sum of money into Kilian and Associates' trust account as a retainer. This will most commonly occur where your instructions relate to litigation or other contentious matters that may lead to litigation and in particular where it is not possible for us to give you an accurate cost estimate before the work commences. This may be because the costs associated with your matter depends upon the outcome of a court case, the way the other side reacts or behaves or other matters that are not within your control or Kilian and Associates' control.

A retainer will be held by us on trust until the matter is completed or until our final account is rendered or until it is necessary to use the retainer to meet an overdue account.

Where a retainer is paid, we will still bill you regularly but not necessarily monthly. You will still be required to pay our regular accounts or you will be required to "top up" the retainer in the event that it is used to meet the costs of an overdue account.

Where a retainer is requested, Kilian and Associates may require the retainer to be paid or topped up before continuing with the next step on your file.

It may be necessary for us to adjust the amount required for the retainer in the event that a significant amount of costs is going to be incurred over a short period of time for example if we are about to embark upon a lengthy hearing or a complex and drafting exercise.

Your retainer will be held on interest bearing deposit. You will be entitled to information as to the amount that is held and as to how it has been applied upon request.

## 11. When do you have to pay?

Kilian and Associates' general practice is to send interim invoices on a regular basis. We also issue an account on completion of each matter. Our invoices are payable on receipt. If Kilian and Associates is holding money for you (for example for the sale of your house) Kilian and Associates may deduct their account from that money and give you a full statement.

You authorise Kilian and Associates to deduct from any funds held on your behalf in our trust account any fees, expenses or disbursements for which we have provided an invoice.

Although you may expect to be reimbursed by a third party for Kilian and Associates' fees and expenses, and although Kilian and Associates' invoices may at your request or with your approval be directed to a third party, nevertheless you remain responsible for payments to us if the third party fails to pay Kilian and Associates.

## 12. What if you can't pay on time?

If you anticipate difficulty in the payment of any account you must contact Kilian and Associates immediately on receipt of the account and discuss arrangements for payment. The provision of clause 5 (Credit Policy) may apply. Interest is payable on any account more than 7 days overdue. Interest shall be calculated at the rate of 5% above Kilian and Associates' bank overdraft rate applying at the date payment becomes due.

## 13. Guarantor

Where the name of the guarantor is completed on the front page of this agreement, then that person personally guarantees full payment of your fees and disbursements in terms of this agreement.

## 14. Lien

Where work has been done by Kilian and Associates but Kilian and Associates has not been paid by you then as a general rule Kilian and Associates has the right to retain original documents and correspondence on your file until such time as all outstanding fees, disbursements and other expenses have been paid. This is known as a lien. This will be particularly important in circumstances where you decide for whatever reason to instruct another Firm. That other Firm may be obliged to give an undertaking to Kilian and Associates to pay all outstanding fees and disbursements before your file is released.

## 15. What customer checks will be done?

We are required to comply with all laws binding on us in all applicable jurisdictions, including:

- a. The Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (**AML/CFT Act**); and
- b. The United States Foreign Account Tax Compliance Act, the intergovernmental agreement between the United States and New Zealand relating to it, and relevant provisions of the Tax Administration Act 1994 (together, **FATCA**)

We will perform customer due diligence and account monitoring, keep records, and report any unusual or suspicious transactions where required by the AML/CFT Act, FATCA, or any other law.

We may also be required to assist any bank or other entity with whom we transact as your agent, or with whom we deposit money on trust for you, to comply with that entity's legal obligations in any jurisdiction.

We will periodically advise you what information and documents are required for these purposes. These may relate to you, any other relevant person (eg any beneficial owner), the source of funds, the transaction, the ownership structure, tax identification details, and any other relevant matter. Please provide the information and documents promptly. We may retain the information and documents, provide them to a bank or other entity (where applicable) to deal with in accordance with their terms, and disclose to them to any law enforcement or regulatory agency or court as required by law.

We or the bank or other entity (as the case may be) may:

- a. Suspend, terminate, or refuse to enter into a business relationship;
- b. Delay, block, or refuse to process a transaction (including by refusing to handle and deposit money in trust for you); and
- c. Report a transaction,

Without notice if:

- a. The required information or documents are not provided; or
- b. It is suspected that the business relationship or transaction is unusual, may breach any applicable law, or may otherwise relate to conduct that is illegal or unlawful in any country.

## 16. Confidentiality

Kilian and Associates will hold in confidence all information concerning you or your affairs that we acquire during the course of acting for you. Kilian and Associates will not disclose any of this information to any other person except:

- (a) To the extent necessary or desirable to enable us to carry out your instructions; or
- (b) To the extent required by law or by the Law Society's Rules of Conduct and Client Care for Lawyers.

Confidential information concerning you will as far as practicable be made available only to those within our firm who are providing legal services for you.

Kilian and Associates will of course, not disclose to you confidential information which we have in relation to any other client.

## 17. Electronic Communication

We will usually communicate with you by email while acting for you. Please let us know if you prefer us not to send you emails.

Our incoming email messages are scanned for content and viruses and are cleared by our email security system. On rare occasions a legitimate email may be deleted before its intended recipient at our firm reads it.

Emails are not always secure or may have defects, such as viruses. We do not accept responsibility (and will not be liable) for any damage or loss caused by an email that is intercepted or that has a defect.

## 18. What happens if we rely on external information and public records?

We often obtain and rely on external information (eg from your accountant) or public records (eg from a government agency or registry) to carry out your instructions.

This information may not always be accurate, complete, or up-to-date. We do not accept responsibility to investigate or verify external information or public records and will not be liable for any damage or loss caused by errors or omissions in them.

## 19. Residential Land Sale Proceeds

If you sell residential land and we receive the sale proceeds on your behalf, we may be required to withhold residential land withholding tax (RLWT) from the proceeds.

This will apply, if under the Income Tax Act 2007:

- a. You are an "offshore RLWT person";
- b. The land is "residential land" in New Zealand; and
- c. You sell the land within the two year "bright-line" period.

In this event, we must remit the RLWT to the Inland Revenue Department (IRD). We will account to you for the net sale proceeds only, after withholding RLWT and any other amounts we are permitted to deduct (including fees).

You must provide us with all the information we need to determine whether you are liable for RLWT and (if so) for how much. This includes both the information the Tax Administration Act 1994 requires you to provide and any other information we reasonably request. If you do not give us all this information, we may assume that RLWT applies and withhold it.

We have no liability to you for or in relation to any amount we withhold and remit to IRD as RLWT.

## 20. Termination and Refunds

You may terminate Kilian and Associates' retainer at any time.

Kilian and Associates may terminate our retainer in any of the circumstances set out in the *Law Society's Rules of Conduct and Client Care for Lawyers*.

If Kilian and Associates' retainer is terminated you must pay Kilian and Associates all fees due up to the date of termination and all expenses incurred up to that date.

No refunds will be issued for the work done and expenses incurred up to that date.

**21. Retention / Destruction of Files and Documents**

You authorize Kilian and Associates (without further reference to you) to destroy all files and documents for this matter (other than any document that Kilian and Associates holds in safe custody for you) seven years after Kilian and Associates engagement ends, or earlier if Kilian and Associates has converted those files and documents to an electronic format.

**22. Conflicts of interest**

Kilian and Associates has procedures in place to identify and respond to conflicts of interest. If a conflict of interest arises Kilian and Associates 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*.

**23. Duty of Care**

Kilian and Associates' duty of care is to you and not to any other person. Before any other person may rely on our advice, Kilian and Associates must expressly agree to this.

**24. Trust Account**

Kilian and Associates maintains a trust account for all funds which we receive from clients (except monies received for payment of our invoices). If Kilian and Associates is holding significant funds on your behalf Kilian and Associates will normally lodge those funds on interest bearing deposit with the bank. In that case Kilian and Associates will charge an administration fee of 5% of the interest derived.

**25. Foreign Law Matters**

We are only qualified to advise on New Zealand law. If we assist you in respect of matters governed by foreign law, we do so on the basis that we do not accept any responsibility (and will not have any liability, whether in contract, tort (including negligence), equity or otherwise) in relation to your legal position under that foreign law.

We will give our advice in English. If we provide a translation into any other language then the English version will prevail in the event of inconsistency.

**26. Acting as Instructing Solicitor for Barrister**

There may occasions where you have instructed a Barrister directly;

Law requires that for the Barrister to complete any work they are required to have an instructing solicitor.

We do on occasions act as instructing solicitor for barristers.

On these occasions, we would usually not be performing any work on behalf of the Barrister for which we act as instructing solicitor, unless they so require.

If the Barrister requires us to perform work to assist him/her they will arrange for the payment of that work.

We will perform all duties of an instructing solicitor and account for any funds held on trust, but the relationship is primarily with the barrister and you will remain liable to that barrister. To that extent all invoices will be provided by the Barrister.

This does not apply to circumstances in which you have instructed Kilian and Associates, and we have instructed a Barrister on your behalf.

**27. Time Limitation to bring a claim against Kilian & Associates**

Any claim you have against us must be filed within two years after the *date of the act or omission on which the claim is based*. *Otherwise*, the claim cannot be filed and we will have no liability for that act or omission or for its consequences (to the extent permitted by law).

In these Terms, "*claim*" and "*the date of the act or omission on which the claim is based*" have the same meanings as that provided in the Limitations Act 2010.

This time limit overrides the time periods under the ACT, and applies regardless of whether any fact relevant to the claim was first discovered or able to be discovered.

**28. Capped Liability**

To the extent permitted by law, our aggregate liability to you (whether in contract, equity, tort, statute, or otherwise) arising out of your engagement of us on a matter (or any series of related matters) is limited to the greater of:

- a. the amount available to be paid out under any relevant insurance held by us, up to a maximum of NZ\$1,000,000; or
- b. five times the amount of our applicable fee (excluding our office services charge, disbursements, and GST)

## **29. General**

These Terms and Conditions of Engagement apply to any current engagement and also to any future engagement, whether or not Kilian and Associates sends you another copy of them.

We are entitled to change these Terms and Conditions of Engagement from time to time, in which case we will send you amended Terms and Conditions of Engagement.

Our relationship with you is governed by New Zealand law and the New Zealand Courts have non-exclusive jurisdiction.

## **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") under the Lawyers and Conveyancers (Lawyers Conduct and Client Care) Rules 2008.*

### **30. Fees:**

The basis on which fees will be charged is set out in the attached Terms and Conditions of Engagement. When payment of fees is to be made is also set out in the attached Terms and Conditions of Engagement.

Kilian and associates may deduct from any funds held on your behalf in our trust account any fees, expenses or disbursements for which Kilian and Associates has provided an invoice.

### **31. Professional Indemnity Insurance:**

Kilian and Associates holds professional indemnity insurance that meets or exceeds the minimum standards specified by the Law Society. Kilian and Associates will provide you with particulars of the minimum standards upon request.

### **32. 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.

### **33. Complaints**

Kilian and Associates maintains a procedure for handling complaints by clients, designed to ensure that a complaint is dealt with promptly and fairly.

If you have a complaint about Kilian and Associates' 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 Shane Kilian at Kilian and Associates.

He may be contacted as follows:

By email: [s.kilian@kilianandassociates.com](mailto:s.kilian@kilianandassociates.com)

By telephone: 021 468 483

The Law Society also maintains a complaint service and you are able to make a complaint to that service. To do so you should contact the Law Society at PO Box 5041, Lambton Quay, Wellington, telephone (04) 472 7837.

### **34. 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 Kilian and Associates provide you are set out in the attached Agreement.

### **35. Client Care and Services:**

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 the justice system.

If you have any questions, please visit: [www.lawyers.org.nz/hmcontact.asp](http://www.lawyers.org.nz/hmcontact.asp) or email: [inquiries@lawyers.org.nz](mailto:inquiries@lawyers.org.nz) or telephone: (04) 472 7837

**36. Limitations on extent of Kilian and Associates' Obligations of Liability:**

Any limitations on the extent of Kilian and Associates' obligations to you or any limitations or exclusion of liability are set out in the attached Agreement.

***Exclusion of Liability for International Tax Advice***

Kilian and Associates provides international tax advice, when such advice is provided it is **the Client's obligation to ensure that independent legal/ accounting tax advice is obtained for the foreign jurisdiction, other than New Zealand is obtained.** Kilian and Associates' obligations or liabilities apply only to tax advice regarding New Zealand tax laws, Kilian and Associates will take no liability for any international tax advice, which could be found to be incorrect.