Welcome

Thank you for asking Wain & Naysmith Limited ("WNL", "we", "us") to provide you with legal advice. We have decades of experience and talented staff, and we want to do a great job for you. We look forward to working with you.

Our cover letter and these terms (together "our terms") apply to any current engagement and any future engagement, whether or not we send another copy. You may not vary these terms without our signed agreement. From time to time, we may change our terms and provide you with an update. You do not need to sign to accept our terms - continuing to use our services indicates your acceptance.

It is important to us that we understand your needs and meet your expectations. If there is anything that you do not understand – or if you have special requirements – please talk to us as soon as you can.

Services

The services that we will provide for you are outlined in our letter of engagement along with any further agreed instructions that you provide to us in writing (or that we record in writing to you).

Compliance

We must comply with all laws applicable to us in all jurisdictions and the regulations of the New Zealand Law Society ("NZLS"). We must also adhere to the obligations in the Lawyers and Conveyancers Act 2006 and the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 ("NZLS Rules") at all times.

Before we start work, we have various compliance duties for anti-money laundering (AML) and countering financing of terrorism (CFT) laws; and laws relating to tax and client reporting and withholdings.

We may be required to undertake customer due diligence on you, persons acting on your behalf, beneficial owners and controlling persons. We may not be able to begin acting, or to continue acting, for you until that is completed. We appreciate your assistance to complete this efficiently.

You can visit us with original documents or you can provide certified copies from a suitable witness (such as a solicitor, Notary Public or JP). We also use the APLYID verification service which requires a mobile with a camera and a current passport or driver's licence.

For most land transactions we need the owner's IRD number and any overseas tax numbers, regardless of whether tax is payable on the transaction or whether you are a NZ taxpayer. You are responsible for obtaining and providing this when required.

To ensure our compliance and yours, we may be required to provide information about you, persons acting on your behalf or other relevant persons to third parties (such as government agencies). There may be circumstances where we are not able to tell you or such persons if we do provide information. Please ensure that you and/or any of the persons described previously are aware of this. It is important to ensure that all information provided to us is accurate. If the information required is not provided, or is considered by us to be potentially inaccurate, misleading, or in contravention of any law, we may terminate or refuse to enter into an engagement.

Your Contact Details

We need your contact details including your residential address, email, and phone number so that we can keep you informed. Where practical we like to meet clients in person, but it is also efficient to communicate by phone, video, and email. Please let us know if you have a preferred method and notify us when your details change. You must notify us immediately if your email account is compromised, and you are responsible for any loss incurred as a result of such compromise or failure to notify us.

Communication

We will report to you periodically and you can request updates. We will inform you if material issues arise or if there are unexpected delays, significant changes or complications. If we ask for information, please provide this promptly so that we can provide full advice, carry out your instructions, and meet our obligations. We may refuse to act (or to continue) if you do not give us what we need. Once we have accepted your instructions it is important that you know who can authorise us to act for you. Unless we determine otherwise, the following parties may authorise our work:

a. either party of a couple (married or not);

b. any partner or officer of a partnership;

c. any trustee of a trust; and

d. any director or employee of a company.

We may provide you with information that we think may assist or interest you, such as newsletters. You may opt out on request.

Call Recording

You acknowledge and agree that calls and audio and video meetings with us may be recorded directly or via third party software to enable us to deliver our services, maintain records, improve client service and for staff training. Such recordings will be securely stored and managed in accordance with our privacy policy and applicable laws. Your continued engagement with us constitutes your express consent to this practice.

Client Care & Service Information

Whatever legal services we provide, 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 in which 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 NZLS Rules. Those obligations are subject to other overriding duties, including duties to the courts and to the justice system.

Duty of Care

Our duty of care is to you only. Before any other person may rely on our advice, we must expressly agree to this in writing. We do not accept any responsibility or liability to any third parties who may be affected by our performance of the services or who may rely on any advice we give. Our advice is not to be referred to in any public document without our written consent.

Our advice is opinion only, based on the facts known to us and on our professional judgement, and is subject to any changes in the law after the date on which the advice is given. We are not liable for errors in, or omissions from, any information provided by others.

We are not tax or financial advisors. It is not our responsibility to check financial consequences before completing a transaction or confirming a contract unconditional on your behalf. If you have questions, you must contact a specialist - we can assist with referrals.

We are not building or engineering specialists so again you should seek specialist advice. Although we may discuss building work or Council records with you, you must make your own assessment and seek specialist advice - we can assist with referrals.

Our advice relates to each matter in which you engage us. Once that matter is at an end, we will not owe you any duty or liability unless you specifically engage us.

Preventing Fraud

Fraud is increasing. We take reasonable precautions to protect your information and money via security protocols and staff training. Your data is stored and backed-up online outside of New Zealand with restricted user access, password protection and multi-factor authentication.

Electronic communications are susceptible to interference and may contain viruses, malware or corrupted data. We cannot guarantee that these communications will not be lost or affected for some reason beyond our reasonable control. You agree that WNL is not liable for any damage or loss caused in this regard.

Fees

Our fees are charged in accordance with the NZLS Rules which require that fees are fair and reasonable for the services provided and allow us to consider factors like urgency, specialised knowledge, skills or responsibility required, the amounts involved, the importance of the matter and the results achieved.

We can provide estimates. Any significant assumptions included in our estimate will be stated and you must tell us if those are wrong or change. Estimates are only a guide and are not a fixed quote or a cap. Our final fee may be less or more than our estimate depending on all the circumstances. If we realise that we are likely to significantly exceed our estimate, we will address this with you. Unless specified, an estimate **excludes** GST and disbursements.

Sometimes we may not have sufficient time or information to provide an estimate so we will base our fees on work performed, calculated on an hourly basis. The hourly rates of the staff that we expect to do the work are in our engagement letter. The rates reflect the experience and specialisation of our staff. Time spent is recorded in six-minute units, rounded up to the next unit. Hourly fees may be adjusted (upwards or downwards) to take into account the factors in the NZLS Rules.

If our engagement letter specifies a fixed fee, we will charge this for the agreed services. Work which falls outside that scope will be charged on an hourly basis. We will advise you when reasonably practicable if it is necessary for us to provide services outside of the agreed scope and, if requested, give you an estimate of further costs.

If a director or employee of WNL acts as an executor or trustee, a trustee responsibility fee may be charged in addition to our fee for legal services (if permitted under the terms of the will or deed).

We also charge an office services fee (usually $100/file) to cover our costs to set up, maintain and retain your file which are not recorded as disbursements. If significant administration is required, we may increase this fee.

GST is usually payable on our legal fees and office costs.

We may incur payments to third parties on your behalf. You authorise us to incur these disbursements (such as LINZ fees, court filing fees, registration fees and courier charges) which are reasonably necessary to provide the services. You authorise us to make payments to third parties on your behalf which are reasonably required to undertake the services (such as experts' costs or counsel's fees). These will be included in our invoice, shown as "disbursements" when incurred or in advance.

Invoices

We will send interim invoices to you, usually monthly, and on completion of the matter, or termination of our engagement. We may send invoices more often when we incur a significant expense or undertake a significant amount of work over a shorter period.

Most invoices are sent electronically.

Invoices are payable within 14 days of the date of the invoice, unless alternative arrangements have been made with us.

We may ask you to pay money in advance or to provide security for costs. We may do this, on reasonable notice, at any time. If so, we will hold your payment in our trust account and deduct our fees and expenses when we send our invoice.

If you pay by credit card a surcharge of not less than 2.75% will be added to offset associated costs.

You authorise us to deduct our fees and other expenses from funds held in our trust account on your behalf on provision of an invoice to you, unless those funds are held for a particular purpose.

If you have difficulty in paying any of our accounts, please contact us promptly so that we may discuss payment arrangements.

If your account is overdue we may:

a. require interest to be paid on any amount which is more than 14 days overdue, calculated at the rate of 1.5% above the overdraft rate that our firm's main trading bank charges us for the period that the invoice is outstanding;
b. stop work on any matters in respect of which we are providing services to you;
c. require payment in advance or other security before recommencing work; and
d. recover from you in full any costs we incur (including on a solicitor/client basis) in seeking to recover debts from you, including our own fees and the fees of any collection agency.

Trust Account

We operate a trust account. All money received from you or on your behalf will be held to your credit in our trust account.

Payments out of the trust account will be made to you or to others with your authority. Written authorisation from you (and if we are acting for more than one of you, from all of you) will be required when payment is to a third party. We may require: verification by provision of a deposit slip or bank statement showing the account number, a signed authority including the account details, or a signed letter from the relevant institution.

A full record of our trust account is kept. A statement transactions detailing funds received and payments made on your behalf may be provided to you at any time upon request.

Unless it is not reasonable to do so, when we hold significant funds for you we will place them on call deposit with our bank, subject to your having completed any request for information required by the bank. Interest earned from on call deposits, less withholding tax and an interest administration fee (commission) payable to us of 7.5% of the gross interest earned, will be credited to you. If the net return to you is likely to be less than $100 we will not usually put funds on deposit.

Confidentiality

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 this information to any other person except:

a. to the extent necessary or desirable to enable us to carry out your instructions; or
b. as expressly or impliedly agreed by you; or
c. as necessary to protect our interests in any dispute; or
d. to the extent required or permitted by law.

We cannot disclose to you confidential information that we have in relation to any other client.

Use of Generative AI (Artificial Intelligence)

We may use generative AI technology to assist with research, document review and drafting. This can be more efficient, but we recognise the inherent limitations of it, and we will exercise our judgment in using AI-generated content and ensure its accuracy and appropriateness in each case.

Your Personal Information & Privacy

We will collect and hold personal information about you and use it to carry out the services and to update you on matters of interest. Provision of information is voluntary but if you do not provide full information this may impact on our ability to provide the services.

You authorise us to disclose your personal information to others, in the normal course of providing our services, including to government entities, for credit checks, and to technology providers who assist us in providing services or who perform functions on our behalf, such as providers of generative AI-technologies.

The information we hold about you will be kept at our offices and/ or at secure storage sites (including electronic sites) elsewhere. If you are an individual, you have the right to access and correct this information. If you require access, please contact us.

Our technology providers may use your information to provide services to us, to undertake their business processes, to comply with their legal obligations and to conduct research. Unless we state otherwise, our technology providers will not use your personal information to improve AI training models, conduct user profiling, or to market their products and services to you.

Our technology providers may rely on and make your personal information available to their third party providers (which may be located in countries other than New Zealand) in the course of delivering their services to us, including for hosting, cloud storage, email and web analytics, such as the Azure OpenAI Service operated by Microsoft. They may share your IP address and other information about your device for security reasons. They may also share your personal information with their affiliates, any other entity that they merge with or sell their business or assets to, and other third parties (such as government agencies) if legally required to do so.

Intellectual Property

We retain all ownership rights in intellectual property created by us for you but grant you an exclusive licence to use material provided to you as part of our services. You may not reproduce or disclose our intellectual property without our written consent.

Documents, Records & Information

We will keep a record of all important documents which we receive or create on your behalf on the following basis. We may keep a record electronically and destroy originals (except where the existence of an original is legally important such as wills). At any time, we may dispose of documents which are duplicates, or which are trivial (such as emails which do not contain substantive information), or documents which belong to us.

We are not obliged to retain documents where you have requested that we provide them to you or to another person. We may retain copies for our own records at our option. We will provide to you on request copies or originals (at our option) of all documents to which you are entitled under the Privacy Act 1993 or any other law. We may charge our reasonable costs for this. Where we hold documents that belong to a third party you will need to provide us with that party's written authority to uplift or obtain a copy of that document.

You authorise us and consent to us (without further reference to you) to destroy (or delete in the case of electronic records) all files and documents in respect of the services 7 years after our engagement ends (other than any documents that we hold in safe custody for you or are otherwise obliged by law to retain for longer). We may retain documents for longer at our option.

We may, at our option, return documents (either in hard or electronic form) to you rather than retain them.

Conflicts of Interest

We are obliged to protect and promote your interests to the exclusion of the interests of third parties and ourselves as set out in the NZLS Rules. This may result in a situation arising where we have a conflict of interest.

We have procedures to identify and respond to conflicts of interest. If a conflict arises, we will advise you of this and follow the NZLS Rules. This may mean we cannot act for you and we may terminate our engagement.

Professional Indemnity Insurance & Lawyers' Fidelity Fund

We hold professional indemnity insurance that meets or exceeds the minimum standards expected by the NZLS. Details can be provided on request. The NZLS maintains the Lawyers' Fidelity Fund for the purpose of providing clients of lawyers with protection against financial loss arising from theft by lawyers. The maximum amount payable by this fund as compensation to an individual is limited to $100,000. Except in certain circumstances, the Fidelity Fund does not cover a client for any loss relating to money that a lawyer is instructed to invest on behalf of a client.

Limitation of Liability

To the extent allowed by law, our total liability to you in connection with our services is limited to the amount available (if any) to be paid out to clients for that liability under our professional indemnity insurance policy.

Where we provide legal advice, it is opinion only, based on the facts known to us and our professional judgment. We will not be liable where we reasonably base our advice on such information if it turns out to be wrong, or based on law which subsequently changes.

To the extent that the above limitation is held by a court of competent jurisdiction not to cap our liability (and only in those circumstances) our liability over and above any sum paid out under any insurance shall be limited to a sum that does not exceed an amount equal to three times your paid fees for our services (excluding any office service charge, disbursements and GST) up to a maximum of NZ$50,000.

The above limitations apply to liability of all kinds, whether in contract, tort, equity or otherwise and you release us from all claims arising from your instructions to the extent that our liability would exceed the amount stated.

If, at your request, we provide services to third parties in the course of any matter on which you engage us, those third parties are also subject to the above limitations.

Termination

You may terminate our retainer at any time. We may terminate our retainer in accordance with the NZLS Rules including for a conflict, non-payment of fees, or your failure to provide instructions. If our retainer is terminated (whether by you or us), you must pay us all fees and expenses incurred up to the date of termination.

Feedback

If you would like to comment on any aspect of our services, please contact us: call 03 520 6103 or email enquiries@wainlaw.co.nz.

We maintain a procedure for handling complaints, designed to ensure that any complaint is dealt with promptly and fairly. If you have any concerns about our services, please raise them with the Director named in our engagement letter or our Practice Manager as soon as possible. We will inquire into your complaint and endeavour in good faith to resolve the matter. If you are not satisfied with how we have dealt with your complaint you can contact the NZLS complaints service by calling 0800 261 801 for guidance, to lodge a concern or to make a formal complaint. Matters may be directed to: Lawyers Complaints Service, PO Box 5041, Wellington 6140 or complaints@lawsociety.org.nz.

NZ Law

Our relationship with you is governed by New Zealand law and New Zealand courts have exclusive jurisdiction.