

Terms of Engagement

Introduction and Application

These terms of engagement ("these terms") set out the standard terms on which Agate Legal Limited ("us", "we", "our", or "firm") provides services to clients.

Agate Legal Limited may operate under the business name or trading name 'Agate Legal' or 'agate legal', or the trading name 'Agate' or 'agate'. All services to clients are provided by Agate Legal Limited.

In these terms, "you" has the meaning given to that expression in our letter of engagement (for the matter), and "your" has the corresponding meaning.

If there is any conflict between these terms and the terms in our letter of engagement, the terms in that letter of engagement take precedence.

Unless we change these terms (in accordance with our entitlement to do so), these terms will apply to all instructions received from you (including future instructions).

1 Services

- 1.1 A summary of the legal services we expect to provide to you will be set out in our letter of engagement.
- 1.2 We are not responsible for:
 - 1.2.1 Advising you on any matter that falls outside the scope of those services, or on any aspect or matter that is excluded (from scope) by our letter of engagement;
 - 1.2.2 Advising you on, or in relation to your position under, any foreign law; or
 - 1.2.3 Updating you on any advice to take account of changes in the law, or other events, that occur after that advice is given.

2 Responsibility for Services

- 2.1 The name(s) and status of the person or persons in our firm who will have the general carriage of, or overall responsibility for, the legal services we provide to you will be set out in our letter of engagement.
- 2.2 Other personnel of the firm may from time to time assist in the services being provided to you, in order that those services be provided in an effective, efficient and timely manner.
- 2.3 We have the customary authority of a lawyer to act on your behalf in connection with instructions received from you, including, where reasonable, your authority to engage other law firms, barristers or experts (in any of those cases, whether in other parts of New Zealand or in foreign jurisdictions), and incur expenses.

3 Duty of Care

- 3.1 Our duty of care is to you only (and not to any other person). No other person may rely on our advice, unless we otherwise expressly agree to that in writing before any such reliance is placed.

- 3.2 If, during the course of our engagement with you, we agree to provide services to any person or persons who is or are related to or associated with you (each a "Related or Associated Person"), those services will be provided on the terms set out in these terms. You will ensure that each Related or Associated Person is aware of and agrees to that. Further, in receiving the benefit of those services, each Related or Associated Person will be deemed to have accepted these terms. In any event, you accept these terms on behalf of, and as agent for, each Related or Associated Person.

4 Trust Account

- 4.1 You acknowledge that if the firm does not have a trust account and has elected under section 317(1) of the Lawyers and Conveyancers Act 2006 ("LC Act") not to receive, in the course of providing regulated services, any money or other valuable property in trust for any other person:
 - 4.1.1 That precludes us, for so long as we do not have a trust account and have not revoked that election, receiving disbursements or expenses (or fees) in advance of an invoice being issued by us; and
 - 4.1.2 There may be circumstances where it is reasonably necessary, in order to enable us to carry out your instructions, for you to, at our request, make payment of disbursements and expenses directly to the third party concerned.
- 4.2 If we maintain a trust account:
 - 4.2.1 We may, in conducting any trust account transaction for you, rely on any instruction purporting to be signed by you or on your behalf or which otherwise appears to us to be given by you or on your behalf;
 - 4.2.2 We will normally place on interest bearing deposit with a bank any significant funds we are holding on your behalf in that trust account, and may charge you an administration fee of 7.5% of the interest earned on that deposit; and
 - 4.2.3 We will provide you with the relevant full statements of account for any payments received into or paid from that trust account.

5 Fees

- 5.1 We will charge you a fee that is fair and reasonable for the services we provide to you, having regard to both your interests and ours, and also having regard to the factors to be taken into account in determining the reasonableness of a fee as are set out in [rule 9.1 of the Lawyers and Conveyancers Act \(Lawyers: Conduct and Client Care\) Rules 2008](#) ("Rules of Conduct and Client Care for Lawyers").



- 5.2 Those factors include the hourly charge out rates of, and the time expended by, the personnel involved in our services being provided to you, and other factors such as the skill, specialist knowledge, responsibility, complexity, urgency and value involved.
- 5.3 Our current hourly charge out rates relevant to the services we provide are available on request.
- 5.4 We adjust from time to time the hourly charge out rates of our personnel.
- 5.5 If requested by you, written estimates of fees will be provided before work commences on the services to be provided to you. Estimates are based on our judgment and provided as a guideline only. They are not fixed fee or maximum quotations. We will inform you promptly if it becomes apparent that an estimate is likely to be exceeded.
- 5.6 In certain circumstances, written quotations for fees will be provided before work commences on the services to be provided to you. Any quotation will be clearly identified as a quotation (rather than an estimate).
- 5.7 All hourly charge out rates, estimates and quotations provided by us are exclusive of goods and services tax ("GST"), unless otherwise stated in writing.

6 Disbursements and Expenses

We may incur disbursements and expenses, where that is reasonably necessary in acting on your behalf in connection with instructions received from you. Examples include disbursements and expenses incurred in engaging other law firms, barristers or experts, filing and registration fees, Court charges, fees, disbursements and expenses of agents (including in conducting customer due diligence, as required by the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 ("AML/CFT Act") and associated regulations, on our behalf), and travel and accommodation costs. Any such disbursements and expenses that have been incurred by us will be charged to you as disbursements in our invoices.

7 Payment

- 7.1 We may send interim invoices for the services we provide to you.
- 7.2 If the services we provide to you attract GST, that GST is payable by you to us in terms of our invoices.
- 7.3 Our invoices are required to be paid within 14 days following the date of the invoice (unless we otherwise agree in writing).
- 7.4 If we maintain a trust account, we may require payment in advance of disbursements and expenses.
- 7.5 If we maintain a trust account and are holding funds on your behalf in that trust account, you authorise us to deduct our fees, disbursements and expenses from those funds (except where we receive those funds for a special purpose (other than as security for our fees)), subject to any requirement of regulation 9 or 10 of the Lawyers and Conveyancers Act (Trust Account) Regulations 2008.
- 7.6 If we have the facility to receive payment of our invoices by credit card and receive payment in that manner, you will pay to us a processing fee equivalent to the amount charged to us by our credit card provider for processing the payment.

- 7.7 If you comprise two or more persons, each of those persons is jointly and severally liable to us for payment of our invoices.

7.8 Despite:

- 7.8.1 Any expectation you may have that you will be reimbursed by a third party for our fees, disbursements and expenses; or
- 7.8.2 Any issue or direction of our invoices to a third party at your request or with your approval,

you remain responsible and liable for payment of our invoices for the services we provide to you, including where the third party to whom we have issued or directed an invoice does not make payment to us by the due date for payment of the invoice.

- 7.9 If you are required by law to make any deduction or withholding for or on account of any tax from any amount payable or paid by you to us, or if we are required by law to make any payment of or incur any tax (other than New Zealand income tax) on or in relation to any amount receivable or received by us from you, the amount payable or paid by you will be increased to the extent necessary to ensure that after the making of that deduction, withholding or payment, or the incurring of that tax, we receive and retain (free of any liability for any such deduction, withholding or payment, or of any loss of tax credits or relief) a net amount equal to the amount that we would have received and retained had no such deduction, withholding or payment been made or tax been incurred. The amount of that increase is payable by you to us on demand.

8 Disputes about Invoices

- 8.1 If you wish to dispute any of our invoices, you must take the following steps:
- 8.1.1 Notify us in writing of the dispute before the due date for payment of the invoice, specifying the grounds for the dispute in reasonable detail and stating the amount you believe is due;
- 8.1.2 Make payment to us, by the due date for payment of the invoice, of that amount you have stated you believe is due; and
- 8.1.3 If we maintain a trust account, pay into that trust account the balance of the amount of that invoice.
- 8.2 If you do not take those steps, you are deemed to have accepted that the invoice is payable in full by the due date.
- 8.3 The balance of the amount of the invoice will (if we maintain a trust account) be held by us in trust and applied in accordance with the outcome of the dispute about the invoice.
- 8.4 Any dispute about any of our invoices will be dealt with by us as a complaint using the procedure described in paragraph 4 of our Information for Clients (provided to you as required by the Rules of Conduct and Client Care for Lawyers).

9 Unpaid Invoices

- 9.1 If any of our invoices are not paid by the due date, we may do either or both of the following:



- 9.1.1 Stop work on any of the services we are providing to you;
- 9.1.2 Without prejudice to our rights to recover any unpaid amounts, require you to pay us interest at a rate of 5% per annum above our main trading bank's usual overdraft lending rate on a daily basis on the overdue amount from that due date until the time at which that amount is paid to us.
- 9.2 You are liable to pay to us any costs we incur (including on a solicitor and own client basis) in seeking to recover from you any unpaid amount. This includes our own fees and any fees of a collection agency.

10 Information Provided by You

You represent and warrant that all information you provide to us is complete, accurate and not misleading. You agree that we may rely on that being the case.

11 Information or Advice Provided by Third Parties

We may, in providing our services, rely on and/or provide to you information or advice we have obtained from third parties, for example public records or registers, government authorities, experts or witnesses. We are not responsible or liable for any loss or damage caused by any errors or omissions in that information or advice.

12 Confidentiality

- 12.1 We will hold in strict confidence all information concerning you, the services we provide to you, and your business and affairs, that we acquire in the course of our professional relationship with you. We will not disclose any of that information, or any information we have about any person who is related to or associated with you, to any other person, except:
- 12.1.1 To the extent necessary or desirable to enable us to carry out your instructions (including where we engage an agent to conduct customer due diligence, as required by the AML/CFT Act and associated regulations, on our behalf);
- 12.1.2 To the extent required by law (including the AML/CFT Act and associated regulations, or the Foreign Account Tax Compliance Act (United States), the intergovernmental agreement between New Zealand and the United States relating to it and the relevant provisions of the Tax Administration Act 1994 (together, "FATCA")), or necessary or desirable to enable any audit (for example, that required under the AML/CFT Act and associated regulations) to be carried out;
- 12.1.3 To the extent otherwise required to meet any compliance requirements of the Inland Revenue Department or any other tax authority, or any financial institution with which we have communications in relation to you (including any bank with which we place, or seek to place, funds through any trust account we maintain);
- 12.1.4 To the extent required or permitted by the Rules of Conduct and Client Care for

Lawyers; or

- 12.1.5 As otherwise permitted by these terms.

- 12.2 You acknowledge that if we are required to make any disclosure about you (or any person who is related to or associated with you), we may be prohibited from disclosing that disclosure (or the fact of that disclosure) to you (or that person).
- 12.3 We are not able to disclose to you any confidential information that we have or obtain in relation to any of our other clients or prospective clients.
- 12.4 If you have instructed us on a transaction, we may make publicly known our role in the transaction, provided that we do not disclose any (other) non-public information about the transaction.

13 Personal Information

- 13.1 In acting for you, we may collect personal information about you or any individual related to or associated with you. If we do not collect that personal information, we may not be able to carry out your instructions. You will ensure that each individual concerned is aware that our acting for you involves collection of that personal information about them, and has authorised you to provide that information to us and is aware of the purpose for which the information is being collected and the use to which it may be put.
- 13.2 Personal information collected by us may be used for any or all of the purposes set out in paragraphs 12.1.1 to 12.1.4 above, and/or to obtain credit or other references, and/or to undertake credit management, and/or to provide information on developments and issues that may be of interest or relevance. You authorise us to obtain from, or release to, any person any information necessary for those purposes, and any person to release to us any information that we require for those purposes.
- 13.3 Any individual has the right (subject to any obligations we have under any other laws that take precedence) to access that individual's personal information held by us, and the right to correct that information.

14 Electronic Services and Communications

We may provide electronic services to you, and communicate with you, and others, by electronic means, unless we otherwise agree with you. As you will be aware, electronic services and communications are not always secure, and may be subject to interception, interference, error, contamination or corruption (including by or due to any virus or other malicious computer code), or delay in or failure of receipt. Although we will take reasonable steps to protect our services and communications from such issues, we cannot and do not represent or warrant (despite any other provision of these terms) that those services and communications will always be accurate, reliable, adequate, complete, confidential, secure, received (by you, us or any other person) or not delayed.

15 Intellectual Property

- 15.1 All copyright and other intellectual property arising or created, or that we provide, in connection with our services, including all intellectual property rights in any advice, document or other thing created by us in the course of providing our services to you, remains



our property. You may not, without our prior written consent, reproduce any of our intellectual property or provide any of it to any third party.

15.2 With regard to any of our services to you in respect of which all of our invoices have been paid, you have a non-exclusive licence to use any advice, document or other thing created by us and provided to you during the course of those services, for the purposes for which we provided it to you. That licence is personal to you and may not be assigned or transferred, without our prior written consent.

15.3 Despite the provisions of paragraph 15.2 above, neither our name nor any of our advice or opinion work are to be used in any offering document, financial statement or other public document or statement, without our prior written consent.

16 Conflicts of Interest

We have policies to identify and respond to conflicts of interest. If a conflict of interest arises, we will advise you of that and follow the requirements and procedures set out in the Rules of Conduct and Client Care for Lawyers.

17 Termination

17.1 Subject to the exception set out immediately below, you may terminate our engagement at any time on any matter or matters.

17.2 Where you have given us any instruction and we rely on that instruction (for example by providing an undertaking, that has not been discharged, to another person), you may not revoke that instruction until that reliance has ended. You acknowledge that this term is reasonable.

17.3 We may terminate our engagement in any of the circumstances set out in, and in accordance with, the Rules of Conduct and Client Care for Lawyers.

17.4 If our engagement is terminated, you must pay to us all fees, disbursements and expenses owing, accrued or incurred (as the case may be) in respect of our services provided to you prior to that termination.

18 Files and Documents

18.1 We may at all times (including after our engagement is terminated or otherwise ends) retain your files and documents in electronic form only, unless in our opinion there is a compelling need to retain a physical, hard copy record. If we have or hold a physical, hard copy record and hold that record in, or have converted it into, electronic form, we may (without further reference to you) destroy that physical, hard copy record.

18.2 You authorise us to retain copies of your documents and records after our engagement is terminated or otherwise ends.

18.3 We are generally entitled to retain all of your files and documents while any money is owing by you to us.

18.4 We may destroy, without further reference to you, all of your files and documents (whether in electronic or physical, hard copy form) for any matter (other than any documents that we have agreed to hold in safe custody for you) 7 years after our engagement on that matter ends.

18.5 If at your request we destroy any files or documents

prior to the end of that period, we will not be liable to you, and you will indemnify us on demand for any liability to any third party, in relation to the matter, files or documents.

18.6 In the event that you at any time uplift any of your files or documents, we may make copies of them before they are uplifted, and retain those copies. We may, in relation to the review of the files and documents, copying of them, and readying of them for your uplifting, charge our time, and any photocopying charges, at our usual rates.

19 Foreign Law

19.1 We are qualified to advise only on New Zealand law. If you instruct us in respect of any matter that is governed by any foreign law, we accept those instructions, and act, only on the basis that we are not responsible for advising you on, or in relation to your position under, that foreign law.

19.2 If, in connection with instructions received from you, it is necessary or desirable for any legal advice to be obtained from a foreign jurisdiction, we may be able to assist by:

19.2.1 On your behalf, engaging a law firm located in that jurisdiction; or

19.2.2 Referring you to a law firm located in that jurisdiction, in which case your relationship will be directly with that firm.

19.3 In no circumstances referred to above (and despite any engagement by us on your behalf of any foreign law firm) are we responsible or liable for any advice or services that the law firm in that jurisdiction provides.

20 Professional Indemnity Insurance

20.1 We currently hold professional indemnity insurance that exceeds the minimum standards currently specified by the New Zealand Law Society ("Law Society"). We can provide you with particulars of the minimum standards upon request.

20.2 In terms of the Rules of Conduct and Client Care for Lawyers and the Law Society's determination of those minimum standards, the meeting or exceeding by us of the minimum standards permits us to make limited (rather than full) disclosure to clients of the professional indemnity insurance arrangements of our practice. Despite our entitlement to make limited disclosure, our current approach is to make somewhat more detailed disclosure of our professional indemnity insurance arrangements.

20.3 We currently hold a professional indemnity insurance policy that has an indemnity limit of NZ\$1,500,000 which applies on an aggregated basis to claims made in the policy period with one automatic reinstatement, and has an excess payable of 1% of that indemnity limit.

21 Limitations of Obligations and Limitations or Exclusions of Liability

21.1 To the maximum extent permitted by law, we are not liable, whether in contract, tort (including negligence), statute, equity or otherwise, for:

21.1.1 Any loss or damage (including as a result of any delay, or of any failure of receipt) arising from or caused by any contamination, corruption or loss of data



- stored electronically (including, in any of those cases, by or due to any virus or other malicious computer code), any intentional or malicious act of any third party, or any failure of any hardware, software or communications equipment or network, including, in any of those cases, arising from or caused by any unauthorised access or denial-of-service attack;
- 21.1.2 Without limiting the provisions of paragraph 21.1.1 above, giving effect to any instruction, including to conduct any trust account transaction, that is given by electronic means, where such means or any electronic system (whether yours, ours or any other person's) have or has been interfered with, accessed on an unauthorised basis, or otherwise compromised;
- 21.1.3 Any loss of any amount deposited with or by us on your behalf, where that loss results from any insolvency, restructuring, act, omission or default of any financial institution;
- 21.1.4 Any loss of revenue or profit, or any indirect or consequential loss or damage, however described or claimed; or
- 21.1.5 Any loss or damage to the extent it is attributable to any conduct by you or any failure on your part to take reasonable care of your own interests.
- 21.2 To the maximum extent permitted by law, our aggregate liability to you (and if you comprise two or more persons, then all of you), together with Related or Associated Persons, in connection with any matter (or series of related matters) is limited to and will not exceed:
- 21.2.1 The amount available to be paid out under our relevant insurance policies in respect of our liability to you or to any Related or Associated Person (plus any excess payable by us under those policies); or
- 21.2.2 Where no amount is available to be paid out, or where for any other reason no amount is actually paid out, under our relevant insurance policies in respect of our liability to you or to any Related or Associated Person, the lesser of NZ\$150,000 (including GST (if applicable)) and an amount equal to five times our fees that have been paid to us that are applicable to the matter (or series of related matters) (excluding our disbursements and expenses, our office services charge (if any) and any GST).
- 21.3 In addition, to the maximum extent permitted by law, our aggregate liability to you (and if you comprise two or more persons, then all of you), together with Related or Associated Persons, in connection with all of the services we provide to you, and to Related or Associated Persons, in any 12 month period (whether or not our services apply to separate or related matters) is limited to and will not exceed the amount available to be paid out (that is actually paid out) under our relevant insurance policies in respect of our liability to you or to any Related or Associated Person (plus any excess payable by us under those policies).
- 21.4 If, in connection with any matter or any of the services we provide to you, we agree that any third party may rely on our advice, that third party will be deemed to be a Related or Associated Person for the purposes of the provisions of paragraphs 21.2 and 21.3 above, and our liability to that third party will be taken into account when our aggregate liability to you, together with Related or Associated Persons, is assessed under those provisions (including in any circumstances where we agree with the third party a limitation of liability that exceeds our aggregate liability limitation to you, together with Related or Associated Persons, under those provisions).
- 21.5 Our directors, consultants and employees provide services on our behalf, and not in a personal capacity. Except to the extent specifically provided in the LC Act, none of our directors, consultants, employees or shareholders, in each of those cases whether current or former, have any liability to you or to any Related or Associated Person, or any liability to any other person, in connection with our services. To the extent that any such current or former director, consultant, employee or shareholder does have any such liability, it will be included and taken into account when our aggregate liability to you, together with Related or Associated Persons, is assessed under the provisions of paragraphs 21.2 and 21.3 above. For that purpose, the references in paragraphs 21.2 to 21.4 above and this paragraph 21.5 to 'our aggregate liability' and 'our liability' will be deemed to include any such liability of any such current or former director, consultant, employee or shareholder. In addition, the reference to 'we' in paragraph 21.1 above and the references to 'us' in paragraph 21.7 below will be deemed to include any such current or former director, consultant, employee or shareholder.
- 21.6 Despite any reference in any of paragraphs 21.2 to 21.5 above to any Related or Associated Person(s), in no circumstances do we have any responsibility or liability to any such Related or Associated Person(s) unless we have agreed to provide services to such Related or Associated Person(s), as contemplated by paragraph 3.2 of these terms.
- 21.7 Any claim, as defined by the Limitation Act 2010, against us, regardless of form, must be filed within 2 years after the date of the act or omission on which the claim is based (whether or not any loss or damage has become apparent or has not been suffered within that period). No claim may be brought, made or filed against us after the end of that period. Further, the provisions of that Act in respect of late knowledge, late knowledge date and late knowledge period (as the case may be) are of no application. That Act is modified so as to give effect to the agreements in this paragraph 21.7 and the enforceability of them.
- 21.8 To the maximum extent permitted by law, each limitation of liability in paragraphs 21.2 to 21.7 above applies to liability and claims of all kinds, whether in contract, tort (including negligence), statute, equity or otherwise, and is a separate and independent limitation.
- 21.9 By and in engaging us, you agree, including as agent on behalf of each Related or Associated Person, that each limitation of liability in paragraphs 21.2 to 21.8



above (and each exclusion of liability in paragraph 21.1 above) is fair and reasonable (having regard to the nature of the legal services to be provided by us and the surrounding circumstances).

- 21.10 The provisions of paragraphs 21.5 and 21.9 above, together with the other provisions of these terms to which those paragraphs refer and all other provisions of these terms necessary to give effect to those paragraphs and to the provisions referred to in those paragraphs, are also for the benefit of, and may be enforced by, any or all of the current or former directors, consultants, employees or shareholders referred to in paragraph 21.5 (including under Subpart 1 of Part 2 of the Contract and Commercial Law Act 2017).
- 21.11 Where you are in trade, as defined by the Consumer Guarantees Act 1993 ("CGA") or the Fair Trading Act 1986 ("FTA") (as the case may be), and acquire our services in trade, you agree, including as agent on behalf of each Related or Associated Person who is in trade, with us that the provisions of the CGA and sections 9, 12A, 13 and 14(1) of the FTA will not apply to the agreement constituted by our letter of engagement and these terms, and that it is fair and reasonable that the parties are bound by the provision in this paragraph 21.11.

22 Legal Aid

For information on your eligibility for legal aid, visit www.justice.govt.nz/courts/going-to-court/legal-aid/get-legal-aid/. We do not work on legally aided matters.

23 General

- 23.1 Where you are a corporate entity, an unincorporated body of persons or a limited partnership, we act only for you. We do not act for your directors, officers, shareholders, members or partners, unless we otherwise expressly agree to that in writing.
- 23.2 There may be circumstances where we require a guarantee for payment of our fees, disbursements and expenses. Any such requirement will be set out in our letter of engagement. If we have that requirement, we will not undertake any substantial work until that letter of engagement, duly signed by the required guarantor(s), has been returned to us.
- 23.3 Our letter of engagement and these terms constitute the entire agreement relating to your engagement of us and our provision of services to you. These terms supersede any previous versions of our standard terms of engagement. You acknowledge and agree that in relation to the services summarised in our letter of engagement, you have not relied on any statement or representation other than those expressly set out in that letter or these terms.
- 23.4 If any provision of these terms is held by any Court, or administrative body, of competent jurisdiction to be illegal, void or unenforceable, that provision will be deemed to be modified to the extent necessary to make it legal, valid and enforceable, and such determination by that Court or body will not affect or impair the legality, validity or enforceability of the remaining provisions of these terms, which will remain in full force and effect.
- 23.5 The enforceability of the provisions of our letter of engagement and these terms, and our contract with you, is not affected or impaired by any termination

of our engagement. Without limitation, the provisions of paragraph 21 of these terms survives such termination.

- 23.6 We may from time to time change these terms, in which case we will either notify you in writing of those updated terms or publish those updated terms on our website. Your continued instructions after those updated terms are notified or published in that manner will be taken to confirm acceptance of the updated terms (and the changes therein), which will then apply to all instructions received from you (and work done for you) after that time (including future instructions).
- 23.7 Our relationship with you, and our letter of engagement and these terms, are governed by New Zealand law. The New Zealand Courts have exclusive jurisdiction, and you submit to that jurisdiction.
- 23.8 In these terms, headings are inserted for convenience only and do not affect interpretation, any reference to a 'person' includes a natural person, a corporate entity, an unincorporated body of persons, a limited partnership or a government body or agency, the singular includes the plural and vice versa, and any reference to 'include' or 'including' (or any similar expression) is deemed to be followed by the words 'without limitation'.