

# FRANK PORTER CO

## TERMS OF ENGAGEMENT

### 1. INTRODUCTION

Unless agreed otherwise, these Terms of Engagement (**'Terms'**) apply whenever you ask us to act for you on a matter. We may change these Terms from time to time and will publish the latest version on our website [frankporterco.com](https://www.frankporterco.com). If you continue to engage us, then you will be taken to have accepted the latest Terms.

### 2. RELATIONSHIP PERSON

We will nominate an experienced senior lawyer to be responsible for our relationship with you. An experienced senior lawyer will also be responsible for each instruction you give us. They may involve others to assist as appropriate.

### 3. OUR SERVICES

We will represent and advise you on legal matters in accordance with your instructions. We will work with you to ensure there is a clear understanding of the scope and timetable of each instruction.

### 4. CONFIDENTIALITY

Maintaining client confidentiality is fundamental. We will not disclose your confidential information unless required and authorised by you, by law, or by the New Zealand Law Society's Rules of Conduct and Client Care [lawsociety.org.nz/for-lawyers/regulatory-requirements/rules-and-regulations](https://lawsociety.org.nz/for-lawyers/regulatory-requirements/rules-and-regulations) (**'Rules of Conduct'**).

We will sometimes need to collect, use and disclose personal information about people associated with you or with your transaction in order to carry out your instructions. Please make these people aware that this might happen.

We will comply with all applicable laws when we collect, use or disclose personal information about you or people associated with you.

### 5. CONFLICTS OF INTEREST

In the event of a conflict, we may be unable to act for you.

If a conflict arises, we will contact you as soon as possible. This may mean that we cannot act for you further in a particular matter and we may terminate our engagement.

In some circumstances, we may act for other clients whose business interests differ from yours. If that happens, we will take appropriate steps to maintain the confidentiality of any of your information that is relevant to the matter.

## **6. OUR FEES**

Our fee arrangements can be flexible. However, usually we charge for our services based on time spent at our current hourly rates.

Our fees may take into account factors such as complexity, specialised knowledge, the value of the transactions involved, urgency and the overall result. The fees we charge will be in accordance with the Rules of Conduct.

### **Service charge**

We charge a service charge for general office services. This charge is normally 2.5% of the fee for our legal services and covers costs such as routine photocopying, phone calls, postage and couriers.

### **Fees estimates**

We can provide estimates on request and can report to you on progress against such estimates. In some circumstances, it may be possible to provide a fixed quote.

## **7. DISBURSEMENTS**

We will charge you for any external disbursements including travel and accommodation costs, fees for experts and others we engage on your behalf and external charges such as the fees charged by government or other agencies for the work carried out for you by us.

## **8. GOODS & SERVICES TAX (GST)**

We charge GST at the rate required by law. Our hourly rates and any cost estimates exclude GST unless otherwise expressly stated. In some instances services provided to overseas clients may not attract GST.

## **9. OVERSEAS WITHHOLDING TAX**

If you are required by law to make a deduction for any tax, levy, duty or other similar charges outside New Zealand from any amount payable to us, the amount payable to us shall be increased such that the amount received by us is the same as would have been received if no such deduction had been made. You must also provide us (on our request) reasonable documentation to verify the amount of any tax, levy, duty or other similar charges withheld and paid to a tax authority.

## **10. INVOICES AND PAYMENTS**

We will usually send you an invoice each month and when a matter is concluded. Our invoices are payable within 14 days of the date of the invoice.

You are liable to pay our invoices whether or not you expect someone else to reimburse you and whether or not you receive that reimbursement.

If an invoice is not paid, we may elect not to do any further work and retain custody of your file until we are paid in full or alternative arrangements are made. We may also charge interest at a rate of no more than 5% per annum above our banker's usual commercial overdraft rate on any amount outstanding one month after the date of the invoice.

## **11. OUR MONITORING OBLIGATIONS**

We are obliged to comply with all laws applicable to us in all jurisdictions, including (but not limited to):

- anti-money laundering and countering financing of terrorism 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 and other relevant persons such as beneficial owners and controlling persons. We may not be able to begin acting, or to continue acting, for you until this is completed.

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 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 and consent to this. It is important to ensure that all information provided to us is accurate. If the information required is not provided or considered by us to be potentially inaccurate, misleading, or in contravention of any law, we may terminate or refuse to enter into an engagement.

## **12. ELECTRONIC COMMUNICATIONS**

We may communicate with you and others by electronic means, unless you instruct us not to. Electronic communications may be intercepted or corrupted. We do not accept responsibility for the corruption of an electronic communication and will not be liable for any connected damage or loss.

## **13. USE OF EXTERNAL RECORDS**

In providing our services to you, we may rely on information provided to us by third parties (for example, government agencies, public registries or experts). If the information provided by such sources is inaccurate or incomplete, we accept no responsibility for any such errors or omissions and will not be liable for any connected damage or loss.

## **14. FILES AND DOCUMENTS**

### File retention

We will retain your files in electronic format only unless there is a compelling need to retain a physical record.

We have procedures for destroying our files when an appropriate time has elapsed after a matter has concluded. Other arrangements can be made if you prefer.

### Intellectual property

We retain all ownership rights in all intellectual property of any kind created by us for you. You may not reproduce our intellectual property or provide it to a third party without our express consent.

Uplifting of files

If our engagement is terminated, we may retain copies of documents or records that are delivered to you or another lawyer.

## **15. TERMINATION**

You may terminate our engagement at any time. We may terminate the engagement in any of the circumstances set out in the Rules of Conduct.

If our engagement is terminated you must pay all fees for work done and other charges incurred up to the date of termination.

## **16. LIMITATION OF LIABILITY**

To the extent permitted by law, our total liability to you (or any other person) in connection with any matter (or series of related matters) on which you engage us is limited to the greater of:

- the amount available to be paid out under any relevant insurance held by us up to a maximum of NZ\$20,000,000; or
- the greater of:
  - NZ\$2,000,000; and
  - five times the amount of our applicable fee (excluding our service charge, disbursements and GST)

This limitation applies to liability of all kinds, whether in contract, tort (including negligence), equity, statute or otherwise).

## **17. GOVERNING LAW**

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

**4 February 2019**

# FRANK PORTER CO

## INFORMATION FOR CLIENTS

### 1. INTRODUCTION

Set out below is the information required by the Rules of Conduct and Client Care for Lawyers of the New Zealand Law Society ('Rules of Conduct').

### 2. FEES

The basis on which fees will be charged is set out in paragraph 6 of our Terms of Engagement. Please talk to the lawyer responsible for your instructions regarding charge-out rates, fee estimates and other fee-related information.

When payment of fees is to be made is set out in paragraph 10 of our Terms of Engagement. Our Terms of Engagement can be found on our website [frankporterco.com](http://frankporterco.com).

### 3. PROFESSIONAL INDEMNITY INSURANCE

We hold professional indemnity insurance that meets or exceeds the minimum standards specified by the New Zealand Law Society. We can provide you with particulars of the minimum standards on request.

### 4. LAWYERS FIDELITY FUND

The New Zealand Law Society maintains the Lawyers Fidelity Fund for the purposes 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 NZ\$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.

### 5. COMPLAINTS

We maintain a procedure for handling any complaints by clients, designed to ensure that a complaint is dealt with promptly and fairly. If you have a complaint about our services or charges, you may refer your complaint to the partner in our firm who has overall responsibility for your work.

The New Zealand Law Society operates the Lawyers Complaints Service and you are able to make a complaint to that service. Phone 0800 261 801 for information and advice about making a complaint.

## 6. PERSONS RESPONSIBLE FOR THE WORK

The name and status of the person who will have overall responsibility for the services we provide for you has been notified to you in writing.

## 7. CLIENT CARE AND SERVICE

The New Zealand 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. Those obligations are subject to other overriding duties including duties to the courts and to the justice system.

If you have any questions about this Information for Clients, please visit [lawsociety.org.nz](http://lawsociety.org.nz) or call 0800 261 801.

## 8. LIMITATIONS ON EXTENT OF OUR OBLIGATIONS OR LIABILITY

Limitations on the extent of our obligations to you or any limitation or exclusion of liability are set out in our Terms of Engagement. Any other limitations on our obligations or liability will be communicated to you in writing.

4 February 2019