

## GOVETT QUILLIAM

### TERMS AND CONDITIONS OF ENGAGEMENT

The Terms and Conditions of Engagement ("the Terms"), sent to the client together with any engagement letter and any fee estimate, form the initial Contract between Govett Quilliam and the client.

Unless otherwise agreed in writing, any subsequent services performed by Govett Quilliam will be provided by Govett Quilliam on the basis of the Terms. In such cases, references to the Contract and the Services below will be to the Terms and any orally specified services.

1. **Services:** Govett Quilliam will provide the services specified in any initial engagement letter or, as subsequently agreed and set out, in any replacement or supplementary engagement letter ("the Services"). The Services may include advice and recommendations, but it is understood and agreed that all decisions in connection with the implementation of such advice and recommendations shall be the responsibility of, and made by the client. Unless implementation is specified in the engagement letter, Govett Quilliam shall not be liable in any way in this regard. Either Govett Quilliam or the client may request changes to the Services. Each agrees to work together to enable each party to assess the impact of any requested changes on the cost, timing or any other aspect of the Services.

2. **Information:** The client will provide in a candid, full and timely fashion all information and documents reasonably required to enable Govett Quilliam to provide the Services. Unless otherwise required pursuant to the engagement, Govett Quilliam will have no responsibility to independently verify the accuracy of such information and documents. Govett Quilliam will not be liable for any loss or damage arising from any inaccuracy, incompleteness or other defect in any information or documents supplied by the client.

The client authorises Govett Quilliam to obtain a credit check for the purpose of assessing the client's credit worthiness.

3. **Workpapers:** The workpapers produced by Govett Quilliam in the course of its work in providing the Services are the property of Govett Quilliam. Govett Quilliam shall be entitled to retain its work papers and copies of any documents provided to it in the course of performing its Services. Work papers will also include documents or deeds relevant to your affairs although not necessarily relevant to the Services.

On providing the Services Govett Quilliam will open a file. The file retained by Govett Quilliam will be stored and kept for at least seven years. After that period of time the file may at Govett Quilliam's sole discretion be destroyed. If the client sends to Govett Quilliam any papers which ultimately form part of that file which are to be returned to the client, please be sure to advise Govett Quilliam accordingly at the time these are supplied.

In respect of Deeds or documents Govett Quilliam reserves the right to retain those Deeds and documents until all monies due for costs, office services or disbursements are paid. Govett Quilliam requires this right to retain any such Deeds and documents even if the monies are due for services unrelated to those documents. Govett Quilliam's position in this regard is contrary to the usual common law position which would otherwise exist.

4. **Health and Safety:** The Health and Safety in Employment Act 1992 obliges Govett Quilliam to take all practical steps to ensure the health and safety of its staff engaged on any assignment. Govett Quilliam and the client will be mutually responsible to ensure the safety of Govett Quilliam staff and to see no harm is caused to them in the client workplace. The client shall ensure that the Act is fully complied with when Govett Quilliam personnel visit client sites. Contact with the client's health and safety representative could involve a safety briefing at the beginning of the assignment, regarding work hazards which Govett Quilliam staff may be exposed to on the client site, management of the hazards, provision of any appropriate equipment, awareness of accident reporting procedures and emergency procedures.

5. **Reporting:** Govett Quilliam will report to the client in accordance with the terms set out in the engagement letter.

6. **Fees and Payment:**

(a) Either before or after the commencement of the Services, or on any change in the Services Govett Quilliam may, at its discretion, or will, if so required by the client, provide an estimate and/or agree with the client the total fees for the Services.

(b) All fees charged will be based on the New Zealand Law Society requirement that all professional fees shall be fair and reasonable having regard to the interests of both the client and Govett Quilliam.

(c) The client acknowledges that in determining what constitutes fair and reasonable fees having regard to the interests of both the client and Govett Quilliam, a number of factors will be taken into account including not only the amount of time devoted by partners and staff to the Services, but any urgency involved, the amount or value of the money or property involved, the degree of complexity and resulting skill required, the results achieved and any other criteria that are relevant.

(d) The client will pay all out of pocket expenses reasonably incurred by Govett Quilliam in performing the Services and on occasion, Govett Quilliam may require these to be covered by you before committing to them.

(e) In the case of most property, loan, commercial or other transactions where there is a specific settlement date, all fees and expenses shall be paid not later than the settlement date. All other accounts are to be paid within seven days of receipt of the account.

- (f) The client authorises the deduction of all fees and expenses from the proceeds of any loan advance or sale proceeds or other monies which may be received or held to the client's credit within Govett Quilliam's Trust Account.
  - (g) Regardless of the nature or type of Services being provided to the client, Govett Quilliam reserves the right to render interim accounts.
  - (h) In default of payment when required, the client undertakes to pay late payment fees of 1.5% per month on any amount outstanding and to indemnify Govett Quilliam and pay all costs and expenses if legal action is necessary to recover from you any overdue amount. Govett Quilliam may at its discretion require funds to be paid on account before it incurs out of pocket expenses.
  - (i) Failure to pay fees on time may, at Govett Quilliam's discretion, lead to suspension of the Services (including Govett Quilliam's right to refuse to settle a property, loan, commercial or other transaction), or termination of the engagement. All reasonable fees up to suspension or termination shall be and remain payable, notwithstanding the suspension or termination.
  - (j) If you have any difficulty meeting an account then we invite you to contact our Credit Manager, Margaret McDougall to discuss methods of payment.
7. **Terms and Termination:** The Contract will continue until all the Services have been provided unless sooner termination by material breach of the Contract. Termination will not affect the client's obligations to pay Govett Quilliam's fees for all Services performed up to termination. Any of the terms and conditions of the engagement letter or the Terms that are intended to apply after completion of the Services will continue to apply following termination.
8. **Confidentiality:** Govett Quilliam will not disclose to third parties any confidential information relating to the Services unless either authorised by the client or compelled by law, or as is necessary to provide the Services.
9. **Indemnity:** In the event Govett Quilliam becomes involved in any claim (including actual or threatened litigation of whatever form) in relation to the Services, Govett Quilliam will immediately notify the client. The client agrees, to the extent permitted by law, to indemnify Govett Quilliam, its Partners and employees in all respects including its reasonable costs and expenses involved in defending any such actual or threatened litigation. Where legal counsel is retained for these purposes, those costs, will be met by the client. Govett Quilliam will use its best endeavours to agree the quantum of any such costs recognising the need to respond to such litigation on a prompt and reasonable basis. The client agrees to meet the costs of Govett Quilliam for reasonable time incurred by its Partners and staff and any other reasonable costs and expenses in relation to any inquiry or proceeding initiated by any person.
10. **Restrictions:** Unless Govett Quilliam has agreed in writing, no advice or information provided to the client is to be made available, directly or indirectly to any third party, or shall be used or relied upon by any third party. Govett Quilliam will have no liability to any such third party. The client indemnifies Govett Quilliam against any third party claim arising from its release of any such Govett Quilliam advice or information.
11. **E-mail:** While we use standard virus checking software, we accept no responsibility for viruses or anything similar in any emails or any attachments which come from Govett Quilliam. We also do not accept any responsibility for any changes to, or interception of, any email or any attachment after it leaves our information systems.
12. **No Assignment or Benefit:** The client may not assign the benefit of the Services to any third party without the written consent of Govett Quilliam. For the avoidance of doubt the sole beneficiary of the Services under this Contract is the client. No other party is intended to take a benefit under the Contracts (Privity) Act 1982.
13. **Guarantee:** Instructions from time to time may be taken from companies or other corporate bodies and/or family trusts and/or third party individuals at the client's request. In such instances these Terms will apply to the receipt of such instructions and the client unconditionally guarantees to Govett Quilliam the performance of all obligations expressed or implied in these terms.
14. **Investment:** From time to time Govett Quilliam may receive on behalf of the client various funds and unless otherwise instructed, or the quantum of the funds retained is so minimum as to not warrant investment, all funds will be deposited to the client's credit in an interest bearing deposit account within Govett Quilliam's Trust Account at the best interest that we will be able to obtain. All interest accrued less usual Resident Withholding Tax and Accounts Department handling commission, at a rate of 0.5% of the principal, will be for the credit of the client. Govett Quilliam will at such time as all funds are released to the client provide a statement identifying the sum of all interest received and any deductions made.
15. **Entire Agreement:** The Contract described in these Terms, subject to any qualification, conditions, assumptions and reservations set out in any report, forms the entire agreement between Govett Quilliam and the client. No previous discussions, proposals, correspondence, understandings or other communications, whether written or oral, shall have contractual effect subsequent to the engagement letter. Only written variations signed on behalf of Govett Quilliam shall have effect to vary the Contract.
16. **Governing Law:** Govett Quilliam and the client agree that the Contract and their relationship will be governed by the applicable laws of New Zealand and submit to the exclusive jurisdiction of the New Zealand Courts.