

TERMS OF ENGAGEMENT

1. The purpose of this document

1.1 This document:

- sets out the standard terms on which we do work for our clients;
- explains what you can expect from us and what you agree to when we work for you; and
- applies to any current work and to any future work we do for you (unless we agree in writing to change these terms).

1.2 By asking us to us to do work for you, you are deemed to have accepted these terms.

1.3 Occasionally we may change these terms. If we make changes the updated version of these terms will be put on our website and you will be bound by the updated terms from when they are put on our website.

1.4 Reference in these terms to "we", "us" and "our" is to Keogh McCormack Limited.

2. Our work

2.1 We provide a wide range of accounting, business advisory and information technology services. The particular services that we agree to provide to you will be described in a 'letter of engagement'. We will give that letter to you for each new job that we do for you except for work of a recurring nature.

3. Our responsibilities to you

3.1 When we do work for you, we will:

- protect your privacy and confidentiality;
- act competently, professionally and with due care;
- protect and promote your interests and act with objectivity;
- give you clear information and advice;
- treat you fairly and respectfully; and
- meet the standards of professional conduct established by the New Zealand Institute of Chartered Accountants being a division of the Chartered Accountants Australia + New Zealand (NZICA);

but subject to any overriding duties we have at law.

3.2 Our responsibilities are owed to you, the client named in our letter of engagement. Nobody else (such as family members, shareholders, directors or related companies or other entities) can rely on our work without our written consent.

4. Your privacy and confidentiality

4.1 We will treat all information we hold about you in confidence. We will not use it or share it unless:

- you agree (whether under these terms or otherwise);
- we need to so we can carry out work for you; or

- the law or our professional obligations requires us to. For example as a member of the NZICA we are subject to their review procedures to promote professional standards. In the event of a review you agree we may disclose information we hold about you to the NZICA or its agents on a confidential basis.

4.2 You authorise us to

- link your tax records to our agency listing with IRD giving us full access to all personal information about you that is held by IRD. You authorise IRD to disclose your personal information to us;
- request personal information about you from any third party including your bank or lawyer for the purpose of completing work for you. You authorise those third parties to disclose such personal information to us; and
- disclose personal information about you to the IRD or any third parties for the purpose of completing work for you.

4.3 We may require you to complete an authority to act form to give further effect to the above authorisations.

4.4 You agree that we may provide any information we hold relating to your United States Foreign Account Tax Compliance Act (FATCA) or Common Reporting Standard (CRS) status, or other FATCA or CRS matters, to IRD or to our banks if they request information to be able to meet their FATCA or CRS obligations. Please ask us if you would like more information about FATCA or CRS.

5. How we avoid conflicts of interest

5.1 When we do work for you, we will always protect and promote your interests.

5.2 Before we accept a job from you, we will do our best to find out if any conflict of interest exists.

5.3 If we find a conflict at any time, we will immediately let you know and tell you how we plan to deal with the conflict. That may mean we stop working for you, the other client or both.

6. Financial statements

6.1 If our work involves preparation of financial statements then:

- the financial statements will be prepared in compliance with the NZICA Service Engagement Standard 2 – Compilation of Financial Information (as updated or replaced from time to time);
- the financial statements will be prepared in accordance with Generally Accepted Accounting Practice (GAAP) in New Zealand except that if GAAP does not result in a true and fair view of the financial information then additional explanations will be included in the financial statements;
- the financial statements will be based on information provided by you. That information will not be verified or validated by us. No audit or review will be performed so we give no assurance

about accuracy. We will provide you with final draft financial statements for review and approval before we finalise them;

- the financial statements will include a compilation report covering matters such as the scope, responsibilities, the fact we have not completed an audit or review, independence and our standard disclaimer of liability for any reliance by third parties;
- although independence is not required when preparing financial statements, we will manage any conflicts of interest with you in accordance with clause 5 of these terms; and
- we understand that the intended use and purpose of the financial statements is financial reporting for internal purposes and disclosure to your bank (or prospective bank) and IRD. You will obtain our consent for disclosure to any other third parties.

7. Limitations of our role

7.1 We are not qualified to give:

- legal advice. You should get that advice from a lawyer;
- financial and insurance advice. You should get advice from a registered or qualified financial advisor; or
- tax advice about foreign jurisdictions. We can help you to contact a foreign tax advisor.

7.2 You are responsible for:

- the accuracy and completeness of all records and information you provide to us;
- updating us where there has been a material change to the information you have provided;
- your obligations to IRD including filing of returns and paying correct tax on time. Unless we agree to do so in writing, we will not remind you about due dates. Any penalties due to lateness, errors, wrong estimates or any other reason are payable by you; and
- keeping adequate accounting records, internal control structures and accounting policies.

7.3 We accept no responsibility to any third party who receives a copy of the work we do for you (including any compiled financial information). You will not remove any disclaimer of liability that we include in any work we do for you.

7.4 Our engagement is not to be relied on to reveal any internal control weaknesses, errors, misstatements, non-compliance with laws or other irregularities (e.g. fraud). We will however inform you if we become aware of any such issues so that you can take appropriate steps.

7.5 We will not be responsible for loss, corruption or deletion of files or data and it is your sole responsibility to back-up your files and data.

8. Intellectual property and use of information

8.1 Unless we agree otherwise:

- we retain ownership of all working papers, opinions, documents, and other intellectual property created by us; and
- you must not provide our advice (including any compiled financial information) to any third parties unless already permitted under these terms.

9. Emails

9.1 We may communicate with you by email about the work we do for you.

9.2 We have virus protection software and security protocols in place, however we cannot guarantee that electronic communications will always be free from viruses or other defects, are secure or will be received.

9.3 We may occasionally email you information we feel is relevant and useful to you. If you do not want to receive that information, please let us know.

10. Storing records

10.1 You authorise us to destroy all files and documents about a job seven years after that job has been completed. We may destroy paper files or documents earlier if we have an electronic copy of them. We will not destroy any documents we have agreed to hold in safe custody for you.

11. How you can help us

11.1 You can help us by:

- providing accurate and complete information that we need to complete our work for you within a reasonable time before any due date;
- telling us if you have any important time limits;
- dealing promptly with any questions we have;
- telling us if your contact details change;
- asking if there is anything you are not sure of; and
- keeping in touch. Please ask if you are concerned about anything or do not hear from us when expected.

12. Who we can accept instructions from

12.1 Unless you let us know otherwise:

- if you are a company, we can accept instructions from any of your directors or employees or any other person you have authorised to instruct us;
- if you are a trust, we can accept instructions from any of your trustees or officers;
- if you are a partnership, we can accept instructions from any of your partners or officers; and
- if you are a couple, we can accept instructions from either of you.

13. **Verifying your identity / Credit checks**

13.1 In some circumstances we are required by law to verify your identity.

13.2 We may carry out reasonable credit checks on you. You authorise anyone we contact to provide us with information we request as part of our credit enquiries.

13.3 We may provide information to credit agencies about any account you have failed to pay by the due date.

14. **Our fees and expenses**

14.1 We will always charge you fair and reasonable fees.

14.2 Unless we agree with you otherwise, our fees will be calculated based on the time we spend on a job charged at our hourly rates. We will provide you with our hourly rates on request.

14.3 We will give you an estimate of fees if you ask for one. Special fee arrangements may be available for certain work (e.g. capped fees). Any estimate or special fee arrangement for a job will be outlined in our letter of engagement.

14.4 If you have any questions about our fees please ask.

14.5 Unless we state otherwise, our fees, estimates and hourly rates do not include GST.

14.6 We charge you a fee to cover office expenses (such as photocopying, printing, phone calls, faxing and file storage). This fee may be included within our hourly rate or calculated based on a percentage of the fees charged.

14.7 When we do work for you, we may have to cover some expenses or make other payments on your behalf (such as travel costs and agents' fees). These will be included separately in our account to you. Some disbursements may include a reasonable mark-up.

14.8 Fees, hourly rates, office expenses and disbursements may change from time to time without notice.

15. **Money handling procedures**

15.1 We may establish a trust account for all funds we hold on your behalf (except funds we receive for payment of accounts).

15.2 If we hold funds on your behalf we will deposit them in an interest-bearing deposit with a bank, where reasonable and practicable. We are not responsible for obtaining the best interest rate available or for any loss of interest you suffer as a result of delay in placing your funds in an interest-bearing deposit.

15.3 We may charge a 5% administration fee on the gross interest earned on funds held in an interest-bearing deposit.

15.4 Withholding tax will be deducted on the interest earned and paid to IRD. If we have your IRD number you can elect to have withholding tax deducted at your applicable rate. If we do not have your IRD number we are required to deduct it at the default rate (which may be higher than your actual rate).

15.5 Where you transfer funds to us in a foreign currency, we will convert those funds into New Zealand dollars at the

prevailing exchange rate offered by our bank. We are not responsible for seeking or obtaining a better exchange rate.

16. **Paying your account**

16.1 We issue accounts monthly and on completion of a job or the ending of our engagement. We may also send you an account at any time when we incur a significant expense.

16.2 Our accounts must be paid by the 20th of the month following the date of our account.

16.3 If you have any questions about an account, please contact us straight away.

16.4 Sometimes we may require you to pay fees, office expenses and disbursements in advance. If we do, we will hold your payment in our trust account and only deduct our fees, office expenses and disbursements when we issue you an account.

16.5 If we hold funds in our trust account on your behalf then any fees, office expenses or disbursements we have issued you an account for may be deducted.

16.6 We may charge interest on unpaid accounts at the rate of 1.5% per month calculated on a daily basis and compounded monthly. We may take action to recover unpaid accounts and charge you the cost of that recovery.

16.7 Any failure or delay by us to charge interest on an unpaid account or to exercise any of our other rights will not operate as a waiver of those rights.

16.8 At your request or with your approval, we may send our accounts to a third party to pay on your behalf. If that happens you are still responsible for payment by the due date if the third party does not pay us.

17. **Guarantee**

17.1 If you are a company or other incorporated entity we may require personal guarantees from your directors, shareholders or other officers.

18. **Limiting our liability to you**

18.1 The maximum aggregate liability that we have to you is \$5,000. This limit applies to the extent permitted by law, whatever you are claiming for and however liability arises or might arise if not for this clause whether in contract, tort (including negligence), equity or otherwise. We will not have to pay you more than the maximum amount for anything caused by or resulting from anything we do or do not do, or delay in doing, whether or not it is contemplated or authorised by any agreement with you.

18.2 We will not be liable for any indirect or consequential loss including any loss of profits incurred by you in connection with the work we do for you.

18.3 No claim may be made by you in relation to the work we do for you unless that claim is made within 12 months from the date we have completed that work.

18.4 If you are more than one person (such as a couple or partnership), this maximum is the maximum combined amount that we will have to pay you together.

- 18.5 If you engage us to do work for the purposes of a business, you agree the Consumer Guarantees Act 1993 does not apply. Otherwise nothing in this clause 18 limits any rights you may have under the Consumer Guarantees Act 1993.
- 18.6 Nothing in this clause 18 limits our rights under the Contributory Negligence Act 1947 and Law Reform Act 1936 to the extent that you or any third parties are also responsible to some extent for any loss or liability that you incur in connection with our work.
- 18.7 We will not be liable for any loss or liability caused or contributed to by inaccurate or incomplete information supplied by you or third parties (including public records and expert witnesses) or because you did not receive or read a communication we sent you.
- 18.8 We will not be liable for any loss or liability that any third party incurs as a result of relying on any work we do for you.
- 18.9 You indemnify us and our directors, employees and agents against loss or liability that we incur as a result of you breaching these terms or any claim by any third party against us in connection with any work that we do for you. This clause 18.9 is intended to be enforceable by our directors, employees and agents for the purposes of the Contracts (Privity) Act 1982.
19. **Risk and title**
- 19.1 For any goods that we sell to you (e.g. hardware or software) you agree that:
- risk in the goods will pass to you on delivery;
 - title in the goods will only pass to you once you have paid for the goods in full; and
 - we have a security interest under the Personal Property Security Act 1999 (PPSA) in all goods and their proceeds that we supply to you until you pay for those goods in full and any other amounts that you owe us. You contract out of all provisions of the PPSA as permitted under section 107 of the PPSA to the extent those provisions impose a burden (but not a benefit) on us.
20. **Ending our engagement**
- 20.1 Either of us may end our engagement at any time by giving the other reasonable notice.
- 20.2 Some circumstances in which we may decide to stop working for you include where you:
- provide misleading information;
 - do not provide us with timely responses;
 - are unable to, or do not, pay our fees as agreed; or
 - act in a way we believe is highly imprudent or inconsistent with our fundamental principles as chartered accountants.
- If we decide to stop working for you, we will give you reasonable notice and help you find another accountant.
- 20.3 Before you take your records, you need to pay our fees for the work we have done for you. We may keep a copy of any records you take.
- 20.4 The enforceability of these terms is not affected by the ending of our engagement.
21. **New Zealand law applies**
- 21.1 Our relationship is governed by New Zealand law and the New Zealand courts have exclusive jurisdiction.
22. **Client care and service information**
- 22.1 We are committed to providing services of the highest professional standards.
- 22.2 We will deal with any complaints promptly and fairly. Please contact us straight away if you have a question about an account or if you are unhappy with any other aspect of our work.
- 22.3 The NZICA also has a complaints service. You can call 0800 469 422 for information and advice about making a complaint.
- 22.4 As a member of NZICA we are committed to complying with the NZICA's Code of Ethics including the fundamental principles of:
- integrity;
 - objectivity;
 - professional competence and due care;
 - confidentiality; and
 - professional behaviour.
- If you have any questions, please visit www.nzica.com or call 0800 469 422.