

1. The purpose of this document

1.1 This document:

- sets out the terms on which we do work for our clients to recover debts owing under the Construction Contracts Act 2002 (the **CCA**). It explains what you can expect from us and what you agree to when we work for you
- includes information regarding the costs involved
- applies to any current debt enforcement work under the CCA and to any future debt enforcement work that we do for you, unless we agree in writing to change these terms.

1.2 Occasionally we may change these terms. If we make changes, we will send to you the amended document.

1.3 We value our relationship with our clients. If you have any questions, please contact Finn Collins on 04 916 6428.

2. Payment of our legal fees

2.1 Our fee for issuing a letter of demand based on an expired payment claim under the CCA is \$250 (plus GST). This fee is payable regardless of whether the debtor pays the full amount of your debt or a smaller amount.

2.2 You will not be liable for any fees we incur in taking any court action to recover a debt under the CCA.

2.3 You will be liable to pay any disbursements and filing fees that we incur on your behalf if court action is required. We will invoice you prior to incurring these expenses or at the time they are incurred. The likely disbursements/filing fees are:

- filing fee for summary judgment (\$450);
- court appearance fee if the claim is outside of Wellington (\$300);
- document service fee (\$180);
- office expenses (\$40);

We will claim these expenses from the debtor. If a claim is defended then we will advise of the likely further expenses that may be involved and advise on whether the claim should continue or be discontinued.

3. What is not covered by these terms

3.1 Any counterclaim that may be brought against you after the debt has been paid pursuant to the CCA.

3.2 Any adjudication to resolve a dispute under the CCA.

3.3 Any advice or work undertaken on your behalf which is not directly related to enforcement of a debt under the CCA.

- 3.4 Any adverse costs that may be awarded if we are unsuccessful on defended enforcement proceedings. If a claim is defended we will discuss this risk with you and obtain your informed agreement to proceed with or discontinue the claim.

4. Responsibilities

- 4.1 Your responsibilities include giving us full, honest and timely instructions, not asking us to work in an improper or unreasonable way, co-operating fully with us in the preparation of any claim and if you receive payment directly from the debtor, accounting to us for any proportion that may relate to our fees.
- 4.2 Our responsibilities include always acting in your best interests, subject to our overriding duty to the court, and explaining to you the risks and benefits of taking legal action.

5. Change in retainer arrangements

- 5.1 We can end this fee arrangement on any work we do for you if you reject our advice to accept a reasonable offer from the debtor to settle. In those circumstances, you must pay us our fees for any work that we carry out based on our applicable charge out rates from the date that we end this fee arrangement.

6. Our legal costs

- 6.1 We will always charge a fair and reasonable fee. The CCA only allows for recovery of actual and reasonable legal costs.
- 6.2 Unless we agree with you otherwise, we will calculate our fee based on the time we spend on a job. The calculation will be based on our hourly rates, adjusted where appropriate for other factors permitted by the Rules of Conduct and Client Care for Lawyers. Such factors include the complexity, urgency, importance, specialised knowledge, responsibility and risks involved, and the results achieved.
- 6.3 Our hourly charge out rates for enforcement of debts owing under the CCA are \$450 per hour plus GST for a partner and \$285 per hour plus GST for a solicitor. Our fees will not be payable by you unless:
- the work is outside the scope of these terms and conditions; or
 - you settle directly with the debtor without allowing for payment of our fees.
- 6.4 Please note that if a debtor pays over a time period our fees will be paid first.
- 6.5 You acknowledge and agree that we will have to charge you for GST on our legal fees, which we cannot recover from the debtor if you are GST registered.

7. Our intellectual property

- 7.1 Unless we agree otherwise:
- we retain ownership of all opinions, documents, and other intellectual property created by us;
 - you must not provide our advice to others (such as using our opinions in any public document or statement).

8. Professional Indemnity Insurance and the Lawyers' Fidelity Fund

- 8.1 We hold professional indemnity insurance that exceeds the New Zealand Law Society's minimum standards. If you would like further information about our insurance, please ask.
- 8.2 The New Zealand Law Society operates a Lawyers' Fidelity Fund to compensate clients who suffer theft of money or property entrusted to lawyers. The Fund covers losses of up to \$100,000 per individual claimant. It does not cover loss where you have instructed us to invest money on your behalf (subject to limited exceptions set out in the Lawyers and Conveyancers Act).

9. The limits of our liability to you

- 9.1 If you engage us to do work for the purposes of a business, you agree the Consumer Guarantees Act does not apply. Otherwise, nothing in this paragraph 9 limits any rights you may have under that Act.
- 9.2 We are not liable for any loss or liability because:
- we relied on information provided by you or a third party (including public records and expert witnesses)
 - you did not provide us with all information required for your instructions or the scope of our work
 - you did not receive or read a communication we sent you.

10. How we handle complaints

- 10.1 We will respond to any complaints promptly and fairly.
- 10.2 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. You may contact:
- the partner responsible for your work, or
 - our General Manager by phone, post, or email to complaints@gibsonsheat.com
- 10.3 The New Zealand Law Society also has a complaints service. Please telephone 0800 261 801 for information and advice about making a complaint.

11. Destroying files

- 11.1 You authorise us to destroy all files and documents about a piece of work seven years after that work 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.