

Terms of Engagement



Important:

These terms of engagement exclude the Online Document Tool services at publictrustonline.co.nz For Online Document Tool services see Online Document Tool Terms of Engagement on our website.

1. Introduction

1.1. These terms of engagement are the agreement between you and Public Trust regarding the products and services we will provide, excluding the Online Document Tool services at publictrustonline.co.nz, but including the additional terms set out in the Service Schedule and Fee Schedule (or any other associated Public Trust service schedule or fee schedule that may apply) and any engagement letter and relevant terms and conditions, including the Free will update terms and conditions (if applicable) and the Website Terms and Conditions ('Agreement').

1.2. The Agreement refers to the website publictrust.co.nz ('Website').

1.3. If there is any conflict between these terms of engagement and an associated service schedule, fee schedule, engagement letter or any relevant terms and conditions, then these terms of engagement will prevail.

1.4. Services

- 1.4.1. We will provide the Services described in this Agreement.
- 1.4.2. You are responsible for determining that the Services sought are appropriate to meet your needs.
- 1.4.3. We may rely on the information that you provide and will not be liable or responsible for any costs or other losses that result from the inaccuracy of that information.

2. Our commitment to you

2.1. We will:

- 2.1.1. discuss with you your objectives and how they should best be achieved.
- 2.1.2. act competently, in a timely way, and in accordance with the information and instructions you provide.
- 2.1.3. provide you with information about the work to be done and the way the Services will be provided.

2.1.4. protect your privacy and ensure appropriate confidentiality.

2.1.5. treat you fairly, respectfully and without discrimination.

2.1.6. give you clear information and advice.

2.1.7. keep you informed about the work being done and advise you when it is completed.

2.1.8. charge you a fee that is fair and reasonable for the Services we provide and let you know how and when you will be billed.

2.1.9. have a clear process for you to raise any concerns you may have which is outlined on our Website.

3. Your obligations to us

3.1 You agree that you will:

3.1.1. provide in a timely way, all information and assistance that we require to enable us to provide you Services.

3.1.2. provide information that is true, accurate and not misleading.

3.1.3. advise us if you become aware that any document or information previously provided is inaccurate or incomplete.

3.2. You will be solely responsible for the accuracy and completeness of all documents and information that you provide to us. We will not be responsible to verify the accuracy or completeness of any information that you provide, and we will be entitled to rely on that information.

3.3. You can help us by:

3.3.1. giving us clear instructions.

3.3.2. asking if there is anything you are not sure of.

3.3.3. Telling us if you have any important time limits.

3.3.4. dealing promptly with any questions we have.

4. Verification of identity

4.1 Prior to being able to commence providing you Services, Public Trust may need to verify your identity. We will inform you what information we require for the purposes of this verification and these can be viewed online at ptnz.nz/identity. If you cannot provide all requested information, we may not be able to commence providing you the Services, and we have the right to terminate this Agreement in accordance with the Termination clause below.

4.2 Public Trust retains the right to not act on the instructions from a third party on your behalf until such time as we have verified the identity of that third party, in the same manner and with the same rights of termination as for your identity.

5. Fees, charges and billing

5.1. Our fees, charges and billing practices vary depending on the Services we provide. All fees and charges are either outlined on our Website or specified in an engagement letter or fee schedule.

5.2. Public Trust may vary our fees and charges at any time without notice, including once Services have commenced. You may terminate this Agreement in accordance with our Termination clause below.

5.3. All fees and charges are payable in New Zealand dollars and are inclusive of GST unless we agree otherwise.

5.4. If any invoice is not paid by the due date, we may charge interest at the rate of 15% per annum.

5.5. Public Trust may engage third-party legal providers or debt collectors to pursue recovery of unpaid invoices. You will be liable for all legal and debt collection costs that we may incur (including solicitor/client costs) in obtaining or attempting to obtain payment of our invoices, together with interest.

5.6. If, at any time, this Agreement is terminated, Public Trust may invoice you for the fees and charges incurred up until the date of termination as well as for any additional costs that Public Trust incurs that are associated with ceasing to provide the Services.

6. Conflicts

6.1. Our primary obligation is to you. In the event that we become aware of any likely conflict between your interests and those of Public Trust, we will disclose the potential

conflict to you and take all steps that we are legally obliged to.

7. Confidentiality

7.1. We will hold in confidence all information concerning you and your business and affairs that we acquire in the course of providing you Services.

7.2. Subject to the Privacy clause below, we will not disclose this information to any person, unless you expressly or impliedly authorise us to do so, except to the extent required to provide you Services as agreed in this Agreement or if the information is already public knowledge.

8. Privacy

8.1. In providing Services to you, Public Trust will need to collect your personal information. This will include for the purposes of undertaking customer due diligence, the ongoing management of your relationship with Public Trust and updating any existing personal information we have about you.

8.2. Public Trust may use your personal information to provide you updates in relation to your Services as well as providing you general, promotional or marketing information regarding Public Trust and our other Services.

8.3. You authorise us to use any email address or phone number that you give us to communicate with you about the work we do for you. We may occasionally email you information we feel is relevant to you. If you do not want to receive that information, please let us know.

8.4. Your personal information will be stored, used and disclosed in accordance with the Privacy Act 2020. Any personal information you provide may be used or disclosed by Public Trust to assist us in complying with our legal obligations. For more information refer to our Privacy Policy online at <https://www.publictrust.co.nz/privacy-policy/>.

8.5. If you do not provide the personal information requested by Public Trust, we may be unable to provide the Services to you.

8.6. You are welcome to ask for, have access to and check the personal information that we hold about you and if you believe that any of it is incorrect, you can ask us to correct it. Ways to contact us:

8.6.1. phone us on 0800 371 471.

8.6.2. email us at privacy@publictrust.co.nz.

8.6.3. visit a Public Trust customer centre.



9. Indemnity

9.1. You indemnify Public Trust and will keep us indemnified from and against any and all loss, damage or liability suffered and legal fees and costs incurred by Public Trust in the course of providing you Services that result from:

- 9.1.1. any action we take on instruction from you;
- 9.1.2. your breach of the Agreement;
- 9.1.3. your negligent acts or omissions;
- 9.1.4. any claim, suit or action brought against Public Trust by a third party for any of the matters above.

9.2. This indemnity will not apply to any liability that has resulted from a breach or default by Public Trust in relation to our obligations and authority under these terms of engagement.

10. Limitation of liability

10.1. Public Trust will have no liability for any errors, deficiencies or invalid products in any work performed as part of the Services arising from the following:

- 10.1.1. Inaccurate or incomplete information provided by You to us.
- 10.1.2. Information provided by us on our Website including through Live Chat, or other generalised information provided in any forum or format including Q&As.

10.2. On behalf of itself and any Third Party Suppliers, other than as expressly set out in this Agreement Public Trust excludes any warranties that may be implied or otherwise apply under any law, to the maximum extent permitted by law.

10.3. Nothing in this Agreement excludes, restricts or modifies any warranties, guarantees or other rights provided by law that cannot be excluded, including under the Consumer Guarantees Act 1993 and the Fair Trading Act 1986.

10.4. The liability of Public Trust under the Agreement is limited to the value of the fees paid to Public Trust for the Services.

10.5. Executors of Estates: Where you have appointed Public Trust in your capacity as executor of an estate, and not your personal capacity, Public Trust agrees that your liability under this Agreement is limited to the value of the assets of the estate. This limitation will not apply however if Public Trust is unable to recover from the assets of the estate because of an act, omission, default or breach of trust by you while acting as executor and trustee of the estate.

10.6. In no event will either party be liable for any indirect damages or for any lost profits arising out of or relating to a breach of the Agreement.

10.7. Public Trust will not have any liability for any failure or delay in performing the Services because of an event beyond our reasonable control.

11. Termination

11.1. Public Trust may terminate this Agreement immediately by written notice to you if:

- 11.1.1. you breach any material term of the Agreement (such as your undertakings) that, in Public Trust's reasonable opinion, is not capable of being remedied or
- 11.1.2. you breach any other term of this Agreement and that breach is not remedied within 5 working days of us notifying you of the breach.

11.2. Either party may terminate the Agreement at any time by giving the other party at least 10 working days, prior written notice.

11.3. If the Agreement is terminated:

- 11.3.1. Any obligation Public Trust has to provide the Services to you will cease on the effective date of termination, unless otherwise agreed in writing.
- 11.3.2. You will be required to pay Public Trust for all work performed up to the termination date.
- 11.3.3. To the extent required, we will transfer all funds and property held for you and all relevant documents and information to you or as directed by you (subject to payment of all amounts due to us by you).
- 11.3.4. Nothing in this clause affects the operation of any other clause in the Agreement that is expressed or implied to have effect after termination of this agreement.

12. How we handle complaints

12.1. We will respond to any concerns promptly and fairly.

12.2. All concerns or complaints may be raised with your Public Trust relationship manager. Alternatively, you can contact us by:

- 12.2.1. phone: 0800 371 471
- 12.2.2. email: feedback@publictrust.co.nz
- 12.2.3. writing to Public Trust Customer Feedback, Private Bag 5902, Wellington 6140



- 12.3. We will review your complaint and work with you to address your concerns as quickly as possible.
- 12.4. Both parties must use their best efforts to resolve any dispute through good-faith negotiation.
- 12.5. If we are unable to resolve matters through our internal process, you may wish to contact our external dispute resolution provider, Financial Services Complaints Limited:
- 12.5.1. Phone: 0800 347 257
- 12.5.2. FSCL website: www.fscl.org.nz
- 12.5.3. Address: Financial Services Complaints Limited, PO Box 5967, Wellington 6145
- 13.6. *Variations*: These terms apply to any current and all future engagements. However, we may vary these terms from time to time, and if we do so, the varied terms will appear on our Website.
- 13.7. *Intellectual property*: We retain copyright (to the extent permitted by law) in all documents prepared for you. This includes our trust deeds, wills and other documentation provided to you. You must not provide our advice or documents to others without our written consent, except for anyone entitled to the documents by law or who you want to have a record of the matters contained in the document. Public Trust will not unreasonably withhold consent to a request by you to disclose the documents to a third party.

13. General

- 13.1. *Documents*: Public Trust may retain copies of any documents that are necessary to comply with our legal and audit obligations.
- 13.2. *Subcontracting*: Public Trust is responsible for the provision of the Services. However, we may, subcontract any third party to provide all or any part of the Services.
- 13.3. *Assignment*: Public Trust may assign our rights and obligations under this agreement. However, you may not assign your rights and obligations under this agreement except with our written consent.
- 13.4. *Waiver*: No failure or delay on the part of any party in exercising any power or right under these terms of engagement will operate as a waiver, nor will any single or partial exercise of such right or power preclude any other or future exercise of any right or power under the Agreement.
- 13.5. *Entire agreement*: This Agreement sets out the entire agreement between the parties in relation to the matters that it deals with and supersedes and invalidates all previous letters, agreements and understandings (oral or written) in relation to those matters.
- 13.8. *Invalidity of terms*: Any illegality, unenforceability or invalidity in the Agreement will not affect the rest of the Agreement, which will remain in full force and effect.
- 13.9. *All things necessary*: The parties will execute and deliver all documents and do all things necessary for the proper and complete performance of their respective obligations under these terms of engagement.
- 13.10. *Jurisdiction*: The Agreement is governed by and construed in accordance with the laws of New Zealand, and the parties submit to the jurisdiction of the New Zealand courts in respect of all matters relating to the Agreement.

