

# **STANDARD TERMS AND CONDITIONS**

## **1. Introduction**

- 1.1 Hemingways Solicitors Limited is a limited liability company registered in England and Wales with number 7432273. It is authorised and regulated by the Solicitors Regulation Authority (“SRA”) under number 552740. Further details of the regulations governing solicitors are available at [www.sra.org.uk](http://www.sra.org.uk).
- 1.2 The expressions “HSL,” “we,” “us,” “our”, and “this firm” mean or refer to Hemingways Solicitors Limited. The expressions “you” and “your” refer to our client.
- 1.3 These terms and conditions of business (“Conditions”) apply to all services provided by us. The specific terms set out in a client care letter (“Client Care Letter”) which identifies you will also apply to the matters to which it relates. These Conditions, together with each applicable Client Care Letter are referred to as the “Agreement”.
- 1.4 If there is any inconsistency between the Conditions and the Client Care Letter, the Client Care Letter will take precedence.
- 1.5 All advice given and/or contracts or other obligations entered into by or in relation to our firm by directors, members, employees, consultants or agents of HSL are made or given by HSL and not by any individual personally.

## **2. Your instructions to us**

- 2.1 We are entitled to assume that:
  - 2.1.1 whoever provides instructions to us has authority to do so; and
  - 2.1.2 the Agreement has been properly authorised by the decision making body of any body corporate or other entity which is our Client.
- 2.2 You must ensure that you provide us with all relevant information. The information you provide to us must, to the best of your knowledge, be complete, accurate and up to date and must be supplied promptly. You should inform us without delay of any changes which affect any information provided. We will not be responsible for errors or delays in our work or advice caused by inaccuracy or incompleteness in the information supplied to us, or by such information being out of date.
- 2.3 If our client consists of more than one person or entity, their liability is joint and several. Each joint client permits us irrevocably to disclose to any other joint client any information which we would otherwise be prevented from disclosing under our duty of confidentiality. If a conflict of interest arises between joint clients, we may terminate or suspend the provision of any or all services wholly or partly to any joint client.

## **3. Charges and expenses**

- 3.1 The basis upon which we will charge for our work will be agreed with you at the outset and set out in the Client Care Letter. If the scope of work detailed in the Client Care Letter is varied, exceeded, or becomes unusually protracted or complex, we may charge for any additional work on the basis of time spent at the hourly rates specified in the Client Care Letter, or if none are so specified, at our then current hourly charging rates.
- 3.2 We charge on the basis of the time spent carrying out our work. Our hourly charge out rates may vary according to the seniority and/or expertise of the relevant staff member. We charge our time in six minute units. Our charges are VAT exclusive. Our hourly rates are normally reviewed annually, but we may alter our rates at other times. We will notify you of any changes to the rates.
- 3.3 Time for which we may charge will include meetings with you and others, legal research, reviewing and working on papers, correspondence, preparing, considering and negotiating documents (including contentious settlements), project management, taking proofs of evidence, instructing agents and experts, telephone conversations, court attendances, preparation of any detailed case management plans, budgets or costs calculations, file opening and compliance procedures, file reviews, preparing attendance notes, travelling, and providing copies of documents for you.
- 3.4 Unless you specifically instruct us otherwise, we are entitled to incur expenses (“disbursements”). Disbursements (together with any applicable VAT) will be payable by you in addition to our fees and may be billed separately. Examples of disbursements include, court fees, expert’s fees, costs draftsman’s fees, barrister’s fees, travel, accommodation, application fees, search fees, Companies House and Land Registry fees, photocopying fees photocopying at 25p per A4 sheet (charges vary for colour copying and larger paper sizes) and bible production fees. Where working outside normal business hours is required (Monday to Friday 9am to 5pm, excluding bank and other holidays), we may charge for costs incurred in providing reasonable sustenance and taxi or other appropriate travel arrangements for our personnel.

- 3.5 Where we use our online ID verification service we will charge a nominal rate of £5 plus VAT per person.
- 3.6 You may set a limit on any fees or disbursements which we may incur without your consent. You must confirm any limit with us in writing.
- 3.7 We may invoice you on an interim basis (monthly or otherwise) and will also provide you (unless we agree otherwise with you in writing) with a costs update at least every six months.
- 3.8 Where we provide you with an estimate of the likely overall cost, this is only intended as a general guide and should not be regarded as a fixed quote unless we specifically agree a fixed fee in writing with you. Note that no fee (fixed or otherwise) is inclusive of disbursements.
- 3.9 If we are dealing with a matter for you pursuant to a conditional fee agreement, all provisions in relation to our costs will be as set out in the relevant agreement.

- 3.10 If the information you provide or assumptions on which we based a fixed fee are found to be incomplete or incorrect, and it is likely that we will spend additional time or incur additional cost to complete a matter, we may charge additional fees for such additional time spent or cost incurred. We will, wherever possible, discuss this with you and agree a revised fixed fee or a variation to the scope of the work before any additional work is undertaken. However, you acknowledge that there may be times when the timetable for our work will be such that it will not be possible for us to speak to you or agree a revised fee before the work is completed.

## **4. Payments on account of costs**

Payments made on account of anticipated fees and disbursements will be used against invoices that we deliver to you from time to time. We may refuse to act or to continue to act for you until we have received any payment on account which we have requested.

## **5. Invoices and payments**

- 5.1 Our invoices are payable upon delivery. We may charge interest on invoices at:
  - 5.1.1 the rate applicable to judgment debts; or
  - 5.1.2 at our discretion, the rate applicable under the Late Payment of Commercial Debts (Interest) Act 1998 (together with compensation under section 5A of that Act),on unpaid invoices from one month after the date of delivery (where the amounts relate to non-contentious matters) or from the date of delivery of our invoice (in relation to contentious matters (in each case whether before or after judgment)).
- 5.2 We are able to accept payment by credit/debit card and we accept most major cards. If you wish to use this facility there will be a small additional charge. Please enquire for further details.
- 5.3 We may refuse to act, or cease acting, for you if you or any person connected with you (within the meaning of section 1122 of the Corporation Tax Act 2010) have not fully discharged any of our invoices when due.

- 5.4 If any of our invoices remain partially or fully outstanding at any time then you authorise us to pay them in any order out of any funds we may hold for you from time to time. We will pay you any balance remaining from such funds once we have discharged our invoices.

- 5.5 If you arrange for a third party to pay our invoices on your behalf, unless we expressly agree otherwise in writing, you will still have to make payment of our invoices if that third party fails for any reason to make payment when due.

## **6. Client account**

- 6.1 Solicitors are required to keep all monies received from or on behalf of clients in bank or building society accounts which are used solely for holding client money and/or controlled trust money.
- 6.2 We do not accept responsibility to you for any failure of or by any financial institution with whom we hold such money to perform any of its obligations with respect to the accounts in which we may from time to time deposit clients’ money.
- 6.3 We will pay interest on money we hold for our clients as required under our policy on client monies. If you would like to see a copy of our policy or have any questions about this, please ask us.

## **7. Legal expenses insurance (“LEI”) and after the event insurance (“ATE”) (contentious work only)**

- 7.1 LEI could be used to help pursue claims in certain circumstances. We recommend that you check any insurance policies you hold, for instance household insurance policies, to ascertain whether you have any such cover.

- 7.2 ATE is insurance in relation to an existing claim, and may cover costs which you have to pay to the other side and your own costs which you pay to us. Such cover may be available, and is generally available only for cases with a good prospect of success. If such insurance is available we will discuss with you whether it is appropriate in your particular case.
- 8. Liability for and recovery of costs (contentious work only)**
- 8.1 If you are successful in your claim, it may be that you will be entitled to payment of your costs by someone else. Any recovery of costs from your opponent or another person is likely to be less than the amount you are liable to pay to us. You may be able to claim interest on any of your costs which a court orders the other party to pay.
- 8.2 Your opponent may not be capable of paying or willing to pay any costs awarded in your favour. You will be responsible for paying our invoices in full, regardless of whether and how much you recover from the other party. You will also be liable for any costs incurred in trying to recover any costs from the other party.
- 8.3 Where you are insured against all or part of our legal costs for which you are liable, you remain primarily responsible to pay those costs. Unless we agree otherwise in writing, we will invoice you for our costs in the normal way, as if you were not insured. It is then your responsibility to make a claim against your insurer. If you are VAT registered you will still be liable to pay the VAT element of our costs in any event.
- 8.4 Once court proceedings are commenced and sent to (or served on) your opponent or received by you, you become potentially liable for their costs if you subsequently discontinue your claim or your action is struck out or is unsuccessful.
- 9. Storage, withholding and retrieval of papers and documents**
- 9.1 We are entitled to withhold all your papers, documents and other property held by us at any time whilst there is money owing to us for our charges and expenses.
- 9.2 We will keep your file of papers in storage for not less than 6 years. If we retain your file of papers after that time, we have the right to destroy them after such period as we consider reasonable, or to charge for storage if we ask you to collect your papers and you fail to do so. We will not destroy any important documents that we agree in writing to hold in safe custody for you.
- 9.3 We will not normally charge you if we need to retrieve papers or documents from storage in relation to any continuing or new instructions to act in connection with your affairs, but we reserve the right to do so. We may make a charge based on time spent for producing stored papers or documents to you, or someone else at your request. We may also charge for any work necessary to comply with your instructions (including work done reading and responding to correspondence).
- 10. Your feedback**
- 10.1 We are committed to providing the highest possible levels of service and the best possible advice. Nevertheless, we recognise that things can sometimes go wrong
- 10.2 Should any matter arise which causes you concern (whether in relation to our services or invoices rendered), please raise the matter with the fee earner responsible for the conduct of the matter, who will endeavour to resolve any concerns quickly. If you remain unsatisfied, please speak with the Head of the Department with responsibility for your matter.
- 10.3 We have a formal complaints procedure to ensure any complaints are resolved quickly and fairly. This is available on request.
- 10.4 The SRA requires solicitors to inform their clients that they may also have the right to object to the invoice by applying to the court for an assessment of it under Part 3 of the Solicitors Act 1974. During any period for which all or part of any invoice remains unpaid whilst a complaint is dealt with, we may charge interest.
- 10.5 If you have a complaint which we are unable to resolve, you may refer the matter to the Legal Ombudsman at PO Box 15870, Birmingham, B30 9EB. Normally any complaint to the Legal Ombudsman must be made within 12 months of you becoming aware of a particular problem, and in any event within 6 months of receiving a final written response from us about your complaint. For further information you should contact the Legal Ombudsman on 0300 555 0333 or by email at enquiries@legalombudsman.org.uk.
- 11. Communications and data protection**
- 11.1 If we communicate with you by email or other electronic means, you accept the risks inherent in that form of communication, including (without limitation) risk of interception or unauthorised access.
- 11.2 We will hold information concerning the Client on computer. You may at any time request a copy of the information held by us. We may, however, charge a fee for this as prescribed by law.
- 11.3 We use the information we hold about you to provide you with services and for related purposes including:
- 11.3.1 updating and enhancing client records;
  - 11.3.2 analysis to help us manage our practice;
  - 11.3.3 statutory returns; and
  - 11.3.4 legal and regulatory compliance.
- 11.4 We may from time to time send you information that we think might be of interest to you. If you do not wish to receive that information please let us know in writing.
- 12. Quality standards and regulation**
- We may from time to time become subject to audits by outside assessors. This could mean that your file is selected for checking. We will assume, unless you tell us otherwise in writing, that we have your consent to such checks being made. If you would prefer to withhold consent, work on your file will not be affected in any way.
- 13. Money laundering prevention**
- 13.1 We are obliged by law to monitor and report any financial transactions which we regard as suspicious and we ask for your understanding.
- 13.2 If we are instructed to move money or other property through us directly, or through another party, we are required by law to be satisfied as to the legitimacy of the source of funds. You must also provide us with evidence of your identification and place of residence.
- 13.3 We may refuse to act, or cease acting for any Client who fails to supply appropriate proof of identity which we need to establish. We may carry out electronic searches to verify your identity. The cost of any search will be charged to you (see Condition 3.5).
- 13.4 We have a legal duty to report known or suspicious circumstances, or the existence of the proceeds of crime in a matter, to the appropriate authorities. We may be required to do so without telling you. The appropriate authorities may require that we do not continue to act on the relevant matter for you. The appropriate authority can pass the information reported to them to any relevant body who may investigate the matter. The obligations which we have can, in certain instances, override the duty of solicitor/client confidentiality.
- 13.5 This could have serious consequences for you. In rare situations you could find that you then become subject to criminal investigations or proceedings.
- 13.6 Circumstances may arise where we have to approach you to seek your permission to report certain matters to the appropriate authorities. If you refuse permission, we may refuse to act, or cease acting. If we do so in these circumstances you will be liable for all our fees and expenses incurred up to the date of termination.
- 13.7 We will not be liable to you for **any** losses arising out of our statutory or reporting obligations (whether under the (Proceeds of Crime Act 2002, the Money Laundering Regulations 2007, or any legislation of similar effect) described in this Condition 13.
- 14. Incidental investment business**
- We are not authorised by the Financial Conduct Authority. This part of our business, including arrangements for complaints or redress if something goes wrong, is regulated by the SRA.
- 15. Our liability to you and others**
- 15.1 You are our client and our advice is to you alone (or, in the case of joint clients, to each joint client), and solely in respect of the matter under which the relevant advice is given. Third parties may not rely on our advice unless we specifically agree in writing that they may do so, and you may not rely on advice given in previous matters as being applicable to other or later matters.
- 15.2 We accept no liability to any third party to whom you provide our advice or who relies on that advice. If any third party brings a claim against us in relation to any of our advice which you have provided to them (directly or indirectly) or instructed us to provide to them, then you agree to indemnify us in relation to such claim.
- 15.3 Where we instruct or liaise with other professional advisors on your behalf, including overseas advisors, we will not be responsible for the appropriateness or accuracy of the advice given by them, or for payment of their costs, fees and expenses.
- 15.4 We do not provide advice which relates to the laws of any jurisdiction outside England and Wales, and you may not rely on any advice we give as being applicable or accurate in relation to any other jurisdiction.
- 15.5 We accept no liability for any failure to provide services or advice in relation to any issue which falls outside the scope of work agreed with you. We accept no responsibility to notify you of, or of the consequence of, any

change in the law (or in its interpretation), or of any other event which occurs outside the scope of our work, or after the date upon which the relevant service or advice is provided.

15.6 We will not be liable for any loss of profit, or any indirect loss or damage suffered (including for the avoidance of doubt any loss of opportunity, income, accruals or production) in relation to the provision of any services or advice by us.

15.7 The extent of our liability to you will be limited to the amount specified in the Client Care Letter or, if no sum is specified, the amount of our professional indemnity insurance limit at the time any claim is notified to us.

15.8 Nothing in the Agreement will restrict or exclude our liability to you for death or personal injury resulting from our negligence or where our liability may not be so limited under any applicable law or regulation (for example, if there is any fraud on our part).

15.9 If you accept any exclusion or limitation of liability from any of your other professional advisors, then our liability to you will not exceed the amount for which we would have been liable after deducting any amount which we would have been entitled to recover pursuant to the Civil Liability (Contribution) Act 1978 or otherwise, but are prevented from doing so because of any such exclusion or limitation.

15.10 HSL alone will provide the services to you. You agree that you will not bring any claim, whether in contract, tort, negligence, or for breach of statutory duty or otherwise against any member, or director of, consultant to, or employee or agent of HSL.

## 16. Professional indemnity cover

We currently have worldwide Professional Indemnity Insurance cover with Travelers, which is in excess of the compulsory level of such insurance required by the SRA (currently £3 million per occurrence). Details of our insurers can be provided on request.

## 17. Equality and diversity

We are committed to promoting equality and diversity in all of our dealings with clients, third parties and employees. Please contact us if you would like a copy of our equality and diversity policy.

## 18. Consumer Contracts (Information and Additional) Charges Regulations 2013

If you are a consumer with a right to cancel the Agreement under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (the "2013 Regulations") we will inform you of your rights and responsibilities under the 2013 Regulations in the Client Care Letter.

## 19. Termination

19.1 Subject to any rights you may have under the 2013 Regulations, if at any time you wish us to cease work or to cease incurring charges and expenses on your behalf, you must tell us this clearly in writing.

19.2 We may suspend our services, or refuse to act or cease acting if:

19.2.1 Conditions 4 or 5.3 applies; or

19.2.2 any circumstances set out in Condition 13, when we may suspend our services, refuse to act, or cease acting, apply; or

19.2.3 you persistently fail to pay invoices in accordance with the Agreement; or

19.2.4 you persistently fail to provide us with instructions in relation to a matter; or

19.2.5 your instructions require us to act in a manner that is unlawful and/or may contravene applicable legislative or regulatory requirements and/or may otherwise give rise to unacceptable professional risk to us; or

19.2.6 the relationship between HSL and you has irretrievably broken down; or

19.2.7 at any other time we believe it is appropriate for us to do so.

19.3 If we decide to stop acting for you we will tell you the reason and give you notice in writing.

19.4 Subject to any rights you may have under the 2013 Regulations, if the Agreement is terminated, you will remain liable for all unbilled work and any outstanding expenses.

## 20. Force majeure

Neither you nor we will be liable for any delay or failure of our respective obligations as a result of causes beyond our control. This will include but will not be limited to fire, flood, acts of God, acts and regulations of any governmental or supranational authority, war, riots, acts of terrorism, epidemic, pandemic, strikes, lockouts, failures by third party utility

providers (including internet or third party server failure), and industrial disputes.

## 21. Third party rights

No person or entity who is not a party to the Agreement will have any rights under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce any rights under it.

## 22. Notices and communications

22.1 We may contact you during the course of the Agreement by any means (whether in writing, by fax or using electronic communications or otherwise). Any notice or communication which we send to you will be treated as being received:

22.1.1 if delivered personally, at the time of delivery; or

22.1.2 if sent by fax or email, at the time of transmission; or

22.1.3 if sent by post or recorded delivery, 48 hours after posting; or

22.1.4 if sent by airmail, 72 hours after posting.

22.2 We do not accept the service of formal notices or communications by fax or email and any formal notice or communication required to be given to us under or in connection with the Agreement must be in writing and be delivered to us personally or sent by prepaid first-class post or recorded delivery to our registered office.

22.3 Any formal notice or communication shall be validly served upon us only when we actually receive it.

22.4 This condition 22 will not apply to the service of any legal proceedings or other documents in any legal proceedings.

## 23. Intellectual property rights

23.1 All copyright and other intellectual property rights in all documents, reports, advice or other materials nature provided by us to you ("**Deliverables**") remain vested in HSL.

23.2 You may distribute copies of Deliverables within your organisation in relation to the matter to which the Deliverables relate.

23.3 Any rights you may have in any documents or materials ("**Materials**") provided to us remains yours. Subject to our rights under Condition 9.1, we will at your request return those Materials to you.

23.4 We may (and you grant us a permanent, irrevocable, royalty free licence to) copy all or any part of the Materials and may make such use of Materials as we may (in our discretion) deem appropriate. You will obtain all third party licenses and/or consents as may be required to enable us to use the Materials and will indemnify us in respect of any claims made by any third party that our use of Materials contravenes any third party's rights in the Materials.

## 24. Entire agreement

The Agreement constitutes the entire agreement between the Client and us and supersedes any previous agreement or understanding between us. No amendment or variation to the Agreement will be effective unless it is made in writing and signed by us.

## 25. Severability

25.1 If any term of the Agreement is found by any court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable:

25.1.1 that will not affect any other term of the Agreement; and

25.1.2 we may substitute effective provisions in a form as similar to the ineffective provisions as is possible without thereby rendering them illegal, invalid or unenforceable.

## 26. Non waiver

Any failure by HSL to insist upon the strict performance of any term of this Agreement, or any failure or delay by HSL to exercise its rights or remedies (whether under this Agreement or at law) shall not be or be deemed to be a waiver of any right which HSL may have to insist upon the strict performance of the terms of this Agreement or of any of its rights or remedies in respect of any default under the terms of this Agreement.

## 27. Your acceptance of these Conditions

Your further instructions in relation to any matter will amount to an acceptance of these Conditions as applying to that matter.

## 28. Law and jurisdiction

The Agreement is deemed to have been negotiated and made in England and is in all respects governed by English Law. The English Courts shall have exclusive jurisdiction over any dispute between HSL and you.