

## **TERMS OF BUSINESS**

### **Introduction**

1. In these Terms of Business "we" or "us" means Downs Solicitors LLP and "you" means the client who is instructing us. Please note that any business conducted with us is with Downs Solicitors LLP only and not with any one person individually. Our trading name is "Downs Solicitors & Notaries". LLP's have "members" not "partners". However, it is commonplace for the senior members of law firms to refer to themselves as "partners" and accordingly, this wording has been retained for these Terms of Business, our website and our other marketing material. Our registered office is at 156 High Street, Dorking, Surrey RH4 1BQ and our registered number is OC 321831.
2. When we act for you there is a contract between us, and these Terms of Business are incorporated into that contract, whether or not you have signed and returned a copy to us.
3. These Terms of Business should be read in conjunction with our Engagement Letter applicable to the particular matter upon which we are acting on your behalf. These Terms of Business, as supplemented or amended by any Engagement Letter, will apply to each matter upon which we work for you. Those clients using our litigation services should also refer to that department's Additional Information leaflet.
4. If you have already asked us to start work for you (e.g. by giving you initial advice or by acting in an emergency), we will have been doing so on the understanding that, unless otherwise agreed, the terms here are to apply from the start.

### **Responsibility for your work**

5. We will confirm to you which person is to be responsible for your work. This may not be the person who normally advises you because your work may be assigned to someone with specialist expertise. The person responsible for your work is likely to be assisted by other members of staff on the day-to-day aspects of your work. If they are to perform a continuing role, we will inform you who they are.

### **How we carry out your instructions**

6. Where appropriate, we will agree with you a strategy for your work and keep you abreast of progress so that you are properly informed when decisions by you are required. This, together with interim billing where appropriate, will give you a more accurate idea of what our work for you is costing and enable us to produce more realistic estimates for the rest of our work for you. It will also enable you to weigh up the benefit and risk of undertaking a particular course of action.
7. We are concerned that our work for you should be as cost effective as possible and our advice will usually be given with that in mind. If you wish us to pursue a course contrary to our advice, we will require you to confirm your instructions in writing.

8. We will need to consider the possibility of a conflict of interest in our accepting your instructions. We will discuss this with you if it arises.

### **Intellectual Property**

9. Save where the law provides otherwise or unless we agree otherwise with you in writing, we will retain the copyright and any other intellectual property rights in all of the documents and other material produced by us. You will be licensed to use such documents and material for the purposes for which they were prepared.

### **Confidentiality**

10. Whilst we will maintain strict confidentiality in regard to your work generally, we are subject to a number of regulatory authorities and may be required to disclose some details from time to time to them. For example, the Solicitors Regulation Authority and HM Revenue & Customs have power to inspect our files and records. We also have obligations under law which may in certain circumstances override our duty of confidentiality. See also 64 below.

11. If you are not a personal client or a trustee of a private trust, we shall also be permitted, unless you instruct us to the contrary, to disclose when offering our services to others that we have acted for you.

12. We may communicate with you by post, telephone, fax and e-mail. As to e-mail please read 22 and 23 below.

### **Privacy**

13. We may process your personal data (as defined by the Data Protection Act 1998) for the following purposes:

- the provision of legal, financial, investment and consultancy services;
- the administration of files and records;
- trust administration;
- transfer of data between other professionals and advisers notified to us by you; and
- the marketing and promotion of our services.

14. We may also process your sensitive personal data (defined by the Act) for the purpose of providing legal services to you. If we process your sensitive personal data for any other purpose, we will only do so as permitted by law.

15. Depending upon the nature of the work carried out for you, your personal data may be transferred outside of the European Economic Area where the data protection regulations may not offer the same protection as within Europe.

16. If you do not wish us to process your personal data for marketing purposes, please write to your contact partner or our Project Manager..

17. A more detailed list of the purposes for which we may process personal data can be obtained from the Information Commissioner or from the website [www.dpr.gov.uk](http://www.dpr.gov.uk). Our registration number is Z7109800.

### **Scope and limitation of Liability**

18. (a) Our advice is particular to your individual circumstances and we do not accept liability in regard to any person or organisation to whom our advice is not addressed, except where its very nature raises a legal duty of care in favour of a third party. The provisions of the Contracts (Rights of Third Parties) Act 1999 are to that extent excluded.

(b)(i) In the course of our work we may advise you on Inheritance Tax (in relation to wills and probate matters), on Stamp Duty and Stamp Duty Land Tax.

(ii) Save as above and unless agreed with you in writing, we do not advise on tax and the scope of our retainer specifically excludes tax advice and you will look exclusively to your accountant or tax specialist for tax advice.

(c) We shall not be liable for:

- any advice or document subject to the laws of a jurisdiction outside England and Wales; or
- any advice or opinion given to you by any third party (whether or not nominated or recommended by us)

19. We insure against the risk of being unintentionally negligent with a minimum cover of £3,000,000. If you require more information about this insurance, please ask your contact partner, or refer to the details on our website: [www.downslaw.co.uk](http://www.downslaw.co.uk).

20. (a) We will perform your instructions with reasonable skill and care, subject to 20(c) below, but you agree that any liability on the part of Downs Solicitors LLP, its members, partners, employees and agents for any loss or damage resulting from the provision of the services or other work we carry out for you, however caused and regardless of the cause of action (whether in contract, tort, statute or otherwise), shall not exceed the sum of £3,000,000. No liability shall rest with and no claim for all or part of the said loss may be brought against any member, partner or employee of Downs Solicitors LLP, who might otherwise be liable to you. Our liability shall be limited to the proportion of the total loss or damage after taking into account your contributory negligence (if any) and the negligence of any other party also liable or potentially liable to you in respect of the same loss or damage. The limitation shall not apply where legislation or the regulatory system prohibits limitation of our liability, and is subject to the qualification set out in 20(c) below.

We accept the benefit of this arrangement as agent and trustee for each of our members, employees and agents.

(b) Subject to 20(c) below, we shall not be liable to you (whether in contract, tort, statute or otherwise) whatever the cause thereof (i) for any increased costs or expenses, (ii)

for any loss of use, profit, business, contracts, revenues or anticipated savings, or (iii) for any special, indirect or consequential loss or damage of any nature whatsoever.

- (c) Nothing in these Terms of Business shall have the effect of excluding or limiting our liability for:
- (i) death or personal injury caused by our negligence, or the negligence of our employees acting in the course of their employment:
  - (ii) any fraudulent misrepresentation made by us upon which you can be shown to have relied; or
  - (iii) any other liability that we cannot exclude by law or under the regulatory system.
- (d) If the requirements of our engagement cause us to infringe the rights of any third party, you will indemnify us against all liabilities including reasonable expenses arising therefrom.

## Money Laundering

21. Like all firms of solicitors, we are now required by law to apply procedures to guard against the risk of money laundering. It will help us to avoid any problems with your legal work if you bear in mind the following points:

- **Identification checks:** We may need to obtain formal evidence of your identity. This may be necessary even though we have acted for you before, or even if you are known personally to a member of staff. We will tell you if such evidence is necessary, but it may help us if you are able to bring evidence to our first meeting. Normally the evidence we would ask for is your passport, plus one or more documents to establish your address, such as recent utility bills, council tax statements, or bank statements, which must be no more than 3 months old. We may need to undertake electronic or other searches. If so, we shall notify you of such costs.

For organisations, we need to carry out a search to identify the organisation and in addition we need to identify at least one officer and any person having an ownership of 25% or more, using one of the above two options.

If you are unable to bring the original documents to us, we can accept a photocopy certified by a trustworthy third party i.e as a solicitor, accountant or consular official.

- **Cash:** We are normally only able to accept cash up to a limit of £1,500 in any 28 day period.
- **Source of funds:** At the start of any matter we will normally ask you to tell us the source of any funds you will be using. It is simplest for us if the source is an account, in your name, in a UK bank or building society. If the source is an unusual one, such as an account in another country, or in the name of someone other than yourself, please tell us as early as possible, including the reason.

- **Destination of funds:** Where we are to pay money out to you, we will normally do so by cheque in your favour, or into an account in your name. If instead you want us to pay surplus money into the name of someone other than yourself, please tell us as early as possible, including the reason.

### **Use of e-mail**

22. If you wish us to communicate with you by e-mail, please first take into account the following.

- it is inherently insecure;
- it does not necessarily result in instant transmission;
- in the absence of identical transmission and receiving hardware and software, it may result in indecipherable text or loss of formatting and other detail;
- other methods may be more appropriate;
- there may be a risk of transmitting viruses;
- e-mail to us goes direct to the recipient's PC and may not to be viewed in that person's absence; and
- it provides no guarantee of receipt.

23. Unless you request otherwise, we will not post to you confirmatory hard copies of e-mails.

### **Custody of papers and other items**

24. We will keep all documents and any items which you deposit with us for safekeeping available for inspection upon reasonable notice. They will be returned to you on request unless they are the subject of an undertaking or obligation to a third party or they are being retained pending payment of any outstanding costs. Subject to any restriction imposed by law, we do not accept liability for the loss of, or for damage to, items held in our custody or any further liability which might arise as a consequence of an item being lost or damaged, but for details of the insurance we carry, please apply to us.

25. All correspondence and working papers other than documents specifically deposited with us for safekeeping may be destroyed after a period of 8 years.

26. We do not normally make a charge for retrieving stored papers or deeds in response to continuing or new instructions to act for you. However, we may make a charge based on time spent producing stored papers or documents to you or another at your request. We may also charge for reading, correspondence or other work in connection with previously stored papers necessary to comply with the instructions given by you or on your behalf. We are entitled to keep all papers and documents while there is money owing to us.

### **Holding money for you and receiving commissions**

27. We will hold in our client account any money we receive on your behalf. We will pay interest to you (or whomever may be entitled to it) at the rate payable in accordance with the Solicitors Regulation Authority regulations. Payment of interest is subject to certain minimum amounts and periods of time, as set out in the Solicitors' Accounts Rules 1998. We normally

calculate the period for which interest will be paid from the date on which we receive the funds until the date we issue a cheque from our client account.

28. Unless we inform you otherwise interest on funds deposited with us will be paid gross and will be credited to your account; you will be responsible for any tax payable.

29. We may become entitled to a commission if we are asked to arrange insurance business for you. Subject to charging a handling fee, we will pay this to you unless the administration costs exceed the value or a different arrangement has been made with you.

### **Client monies**

30. Our client account is currently held with National Westminster Bank plc ("Natwest") although we may place client money in a client account with another bank or building society in accordance with the Solicitors' Accounts Rules 1998.

It is unlikely that we will be liable if client money is lost if a bank or building society collapses. Any liability we do incur is limited by 18-20 of these Terms of Business.

31. The Financial Services Compensation Scheme ("FSCS") covers deposits belonging to clients who are individuals or small businesses up to £50,000 per client per "authorised deposit-taking institution". Please note that some deposit-taking institutions have several brands, and in the case of Natwest the following brands are all considered as one deposit-taking institution - Royal Bank of Scotland, Natwest, Coutts & Co and Ulster Bank.

The £50,000 FSCS limit applies to the individual client, and so, if you hold other personal monies in Natwest (or the other banks mentioned above) the limit remains £50,000 in total.

32. In the event of a bank failure you consent to us notifying the FSCS of your name, the amount held in our client account and other details, together with supporting evidence.

33. If we so wish for whatever reason we may move all or part of our client funds to another bank or building society apart from Natwest. Any such change to our banking will be notified on our website ([www.downslaw.co.uk](http://www.downslaw.co.uk)) and such publication will be deemed as sufficient notice to you.

### **Legal Aid**

34. We do not undertake work under the Legal Aid Scheme. If you think you may qualify for Legal Aid we will discuss the matter with you and, if you wish, recommend a firm which could act for you under the Scheme.

### **Fees**

#### **Liability to pay**

35. Whether or not you expect to recover some or all of our fees from a third party, you will be responsible for paying them and any VAT on them. This is so, even though you may have to wait

some time for any reimbursement due to you from a third party and in some cases embark on more legal work to recover what is owing.

36. Some work may not proceed to completion, for example a prospective acquisition. You will, nonetheless, be expected to meet our charges for acting for you.

### **Basis of charge**

37. Our fees are calculated largely on the basis of the time it takes to perform the work during normal office hours. Other factors may, however, come into consideration such as: the need to act rapidly or exclusively or outside the usual hours of business; the monetary value of the matter or its overall importance and complexity; and the amount of documentation involved.

### **Fixed fees, hourly rates and estimates**

38. In some cases it will be possible to agree a fixed fee with you for certain pre-defined work. In other cases a combination of a fixed fee and an hourly rate of charge may be appropriate. This can be agreed with you at the outset or when a switch to this method seems appropriate.

39. In the absence of a different arrangement being agreed with you, when time charges apply without additional factors (see 37 above) you will be charged at our standard hourly rates.

40. The hourly rates of individual fee earners who are acting on your behalf with regard to a particular matter will be notified to you in our Engagement Letter and otherwise are available upon request at any time. Please note that such rates may be increased with effect from 1st July each year to take account of increases in our overheads. They may also be increased when an individual rises in seniority or attains professional qualification. Lower rates may be applied for necessary additional time (e.g. travelling or waiting).

41. Where no fixed fee has been agreed we will, where possible, also try to indicate how much the overall cost of our work might be, but it can only be a rough estimate and it will need periodic revision since factors beyond our control often influence matters to a material degree. For instance, the course and hence cost of litigation or other adversarial proceedings will depend very much on the response of your opponent.

### **Payments on account**

42. We will normally discharge all usual small out-of-pocket expenses for you as they occur (e.g. fares) and recover them from you when we send you a bill. We will, however, need to be put in funds in advance to cover any more substantial expenditure such as the advice of counsel, accountants, actuaries, local authority search fees, court fees, etc.

43. We may ask you to lodge a sum of money with us generally on account of such disbursements or on account of costs generally. We will retain that money as a credit against our bill(s), although we may use it to pay any expenses incurred on your behalf. We do not issue invoices for payments on account.

## **VAT**

44. Our fees, including hourly rates (see 39 and 40 above), are quoted exclusive of VAT. Our registered VAT number is GB 209 9274 42.

## **Billing frequency**

45. Where appropriate, we will submit interim bills as work progresses. Where we have agreed a fixed fee with you, an interim charge may be for as much as the agreed fee if the matter is not reaching a conclusion through no fault of ours.

## **Limit of fees**

46. You may at any time set a limit on the fees you are prepared to incur and we will then not beyond that limit without referring to you. We do, however, require you to confirm this in writing.

## **Payment and interest on late payment**

47. Our bills are payable strictly within one month. If an amount owing to us has remained unpaid for a month or longer we are entitled to charge interest on the outstanding amount at the rate set by the courts in relation to judgment debts.

48. In the event that payment has not been received within one month, we also reserve the right to cease work at that point on that or any other matter for you so as not to incur further costs. In litigious matters we would then need to apply for our name to be removed from the Court record as representing you.

## **Independent assessment of our fees**

49. You have a right under the Solicitors' (Non-Contentious Business) Remuneration Order 2009, and in certain cases under the Civil Procedure Rules, to challenge the amount of a bill. You are also entitled to complain about a bill (see 57 – 59 below). There may also be a right to object to a bill by making a complaint to the Legal Complaints Service (or the Office for Legal Complaints) and/or by applying to the Court for an assessment of the bill under Part III of the Solicitors Act 1974.

## **Limited companies**

50. Limited companies are sometimes unable to make adequate provision for the timely settlement of legal bills. We may, therefore, require directors to guarantee the fees personally unless alternative arrangements have been agreed in writing.

## **Litigation costs**

51. If we are dealing with court work on your behalf, separate information will be given to you to explain the more complicated subject of litigation costs.

## **Insurance mediation**

52. We are not authorised by the Financial Services Authority. However, we are included on the register maintained by the Financial Services Authority so that we can carry on insurance mediation activity, which is broadly the advising on, selling and administration of insurance contracts if they are an incidental part of the professional services we have been engaged to supply. This part of our business, including arrangements for complaints or redress if something goes wrong, is regulated by Solicitors Regulation Authority. The register can be accessed via the Financial Services Authority Web-site at: [www.fsa.gov.uk/register](http://www.fsa.gov.uk/register).

## **Varying these terms and other changes**

53. These Terms of Business may be supplemented or varied at the outset in correspondence with you or subsequently by agreement with you. Other changes to our relationship may occur by law e.g. changes to our rules of professional conduct.

## **Termination**

54. You may terminate your instructions to us in writing at any time. For example, you may decide you cannot give us clear or proper instructions on how to proceed, or your circumstances may change. We will only stop acting for you, if there is good reason for doing so and we will give you reasonable notice and our reasons for doing so.

55. If you or we decide that we will stop acting for you, our charges up to date of ceasing to act will be payable by you. We may be entitled to keep all of your papers and documents until our fees and expenses have been paid.

## **No continuing duty**

56. Unless expressly agreed with you in writing, after conclusion of your particular work we have no continuing retainer to advise you on changes or prospective changes in the law or how the same may apply to your circumstances, and the holding of documents or our having knowledge of your circumstances will not be deemed to constitute a continuing retainer.

## **Complaints and comments**

57. We are confident that we will give you a high quality service in all respects. However, if you feel at any time that there is any way we can improve our service to you, please let us know. We continually review our services to our clients and your suggestions can be very helpful.

58. We hope that you will not have cause for complaint, but if you are dissatisfied with our service, please refer first to the fee earner handling your matter. If this is not appropriate, please refer to the relevant Head of Department listed on our website.

59. The Head of Department will review with matter with you and then take any action necessary. You may, if you wish, also raise any complaint directly with the Senior Partner, Chris Shipley, or if you are dissatisfied with the handling of any complaint. It is important that you immediately raise any concerns with us.

60. Details of our complaints procedure and the body overseeing legal complaints can be obtained from our website.

61. We hope that Downs Solicitors LLP will continue to act for you for many years to come and that you will value our work and services on your behalf.

### **Regulation**

62. We are regulated by the Solicitors Regulation Authority (SRA), Ipsley Court, Berrington Close, Redditch, B98 0TD, telephone 0870 606 2555. The SRA is the independent regulatory body of the Law Society of England and Wales. Details of its role and powers, together with access to the Solicitors' Code of Conduct 2007, can be obtained at [www.sra.org.uk](http://www.sra.org.uk).

### **Governing law**

63. The law of England and Wales will govern our professional and contractual relationship with you notwithstanding that you may be based, or our services provided to you, in Scotland, Northern Ireland or elsewhere.

### **Quality standards**

64. We are working towards the Lexcel quality standard of the Law Society. As a result of this we are or may become subject to periodic checks by outside assessors. This could mean that your file is selected for checking, in which case we would need your consent for inspection to occur. All inspections are, of course, conducted in confidence. If you prefer to withhold consent, work on your file will not be affected in any way. Since very few of our clients do object to this we propose to assume that we do have your consent unless you notify us to the contrary. We will also assume, unless you indicate otherwise, that consent on this occasion will extend to all future matters which we conduct on your behalf. Please do not hesitate to contact us if we can explain this further or if you would like us to mark your file as not to be inspected.