

# **TERMS OF BUSINESS**

Any reference in these terms to the "firm" or "us" means SGH Martineau LLP and "we" and "our" shall be construed accordingly. "You" or "you" means the person who is our client, or if there is more than one person, those people who together are our client.

## 1. ACCEPTING INSTRUCTIONS

These terms apply to all work we do for you on any matter, unless we confirm any variation in writing. The Terms apply to the exclusion of any others, whether set out on your purchase order or otherwise, subject to any other requirement of the law or the regulation of solicitors' practices.

All instructions are accepted on the basis that we (a limited liability partnership incorporated under the Limited Liability Partnership Act 2000) will undertake the work on your behalf ("the Services"). Members of the firm are sometimes described as "partners"; however, such description does not imply the existence of a partnership.

We will send you an engagement letter setting out the scope of your instructions, who will work on the matter, how we will charge for our work. If there is any conflict between these terms and the engagement letter, the engagement letter will take precedence. We will not advise on issues falling outside the scope of your instructions.

Our role is to act as your legal adviser on English law. We do not advise on the commercial or financial viability of transactions that may be associated with them. Unless specifically agreed otherwise in our engagement letter, we will not advise on tax related issues.

It is our aim to identify and achieve our client's objectives. We will discuss your objectives with you at the start of the matter and as it progresses.

## 2. FEES

- (a) At the outset of a matter we will agree the basis on which we will charge you and the engagement letter will set out arrangements concerning our fees.
- (b) Quoted charge out rates are subject to periodic review and, if the charge out rate in respect of a particular matter will be affected, you will be notified of changes before they come into effect.
- (c) Fixed fee quotations are for the Services specifically described in our engagement letter to you and we are entitled to charge in full for all work undertaken which does not fall within such description.
- (d) Fee estimates or quotations (unless they are expressly stated to be "fixed fee") are bona fide estimates and do not affect our right to charge in full for all work actually undertaken. You will be notified in writing if there is a need to materially vary or update an estimate.
- (e) All fees, are quoted net of VAT which is payable in addition. We are registered for VAT. Our VAT number is GB 318 1465 66.
- (f) If you instruct us to carry out work which is particularly urgent, involves unsocial hours, high risk, high value or which involves specialist knowledge and know-how we may increase the overall charge to reflect those factors.
- (g) We may charge for work on any matter which does not proceed to completion, unless we have agreed otherwise.

## 3. EXPENSES AND OTHER CHARGES

- (a) We may incur expenses or disbursements, such as court fees, counsel's fees, and stamp duty land tax. Depending on their nature, they may or may not be subject to VAT.
- (b) We may make a separate charge for electronic payments, photocopying, scanning, printing, fax, travelling costs and similar expenses. Administrative charges may be added to these costs and expenses, which will appear on your invoice under 'Other Charges' and will be subject to VAT.

- (c) We will consult you before we incur any significant expenses on your behalf. We may require advance payment from you before we incur expenses. If we do not require advance payment, we may invoice you for the expense at any time.

## 4. PAYMENT TERMS

- (a) Our invoices are payable immediately on presentation.
- (b) If payment in full is not received within 28 days of the invoice date we may charge interest thereafter on a daily basis at the rate of 2% per month on the balance outstanding until payment in cleared funds both before and after judgment.
- (c) We reserve the right to invoice at suitable intervals in our discretion for work done to date or for part of a fixed fee notwithstanding that a matter may not yet be completed.
- (d) We reserve the right, as a condition of continuing with an instruction, to require an advance payment on account of fees and/or expenses (together with anticipated VAT).
- (e) We may use money (including accrued interest) held by us on your behalf in or towards payment of our invoices, whether overdue or not.
- (f) When instructions are received from more than one person jointly, each person, company or other entity instructing us is individually and collectively liable for payment of our invoices.
- (g) Where a third party has agreed to reimburse you or pay our charges and expenses for work carried out on your instructions, you remain responsible for payment of our invoices.
- (h) Our invoices will be rendered in pounds sterling. Any disbursements in foreign currency will be converted to sterling at the exchange rate ruling at the invoice date. If the exchange rate changes before you settle our invoice, then you will be credited with any exchange profits or charged with any exchange losses.

## 5. LITIGATION AND ALTERNATIVE METHODS OF FUNDING

- (a) You are ultimately responsible for the payment of our fees, even if a Court orders the other side to pay all or part of your fees, or if any other person has agreed to do so.
- (b) We will discuss with you how, when, and by whom, fees are to be met including, in appropriate cases, alternative funding methods such as 'No win - no fee' or insurance. We do not work under Legal Services Commission funding. If you have not already done so, please discuss with us whether another body (such as your employer or trade union) could be responsible for your costs. It is also possible that you hold a legal expenses insurance policy that covers our costs (sometimes household contents, car or other insurance policies cover legal expenses). This is important because if you do have such an alternative, it may affect the recovery of costs from your opponent. You should tell the lawyer supervising the matter if you think you may have such an alternative. If another body does pay your costs then, with your consent, we may have to tell that body about your dispute.

## 6. CASH

- (a) For reasons of money laundering monitoring and security we do not accept cash payments from clients in excess of £1,000. If you deposit cash direct with our bank then we reserve the right to charge for time and expense in carrying any additional checks and enquiries deemed necessary regarding the source of the funds. We reserve the right, in our absolute discretion, to refuse to accept payments in cash from third parties (including your debtors) on your behalf for security reasons.
- (b) We do not make payments out of our clients account in cash. In respect of money due to you, we reserve the right to refuse to make any payments out of our clients account

to any bank account other than a bank account in your name.

## 7. **THIRD PARTIES**

When we instruct other professionals on your behalf (such as Counsel, overseas lawyers, accountants, surveyors, expert witnesses or costs draftsman) we will do so as your agent. We will not be responsible for any act or omission of such professional. We may request such professionals to send their accounts to you direct.

## 8. **AUDIT ENQUIRIES**

We may make a charge for responding to enquiries from you or your auditors.

## 9. **CLIENT MONIES**

(a) Any money which we hold on your behalf will be held in a client account. You will receive interest in accordance with the firm's policy on interest payments, provided that the amount earned is more than £20.00.

(b) If you want to know the identity of the bank where your funds are held then we will provide you with details following receipt of your request. If when you receive a response you want us to change the bank where your funds are held you are again entitled to make a written request to us to do this. We will endeavour to move your funds in accordance with your wishes. However, depending on the circumstances, we cannot guarantee that your funds will be moved as and when requested.

(c) In the unlikely event of the failure of a bank which holds client monies we will not be liable to you for any monies lost. You may in these circumstances be entitled to compensation under the Financial Services Compensation Scheme. You should check with the Financial Services Authority to find out whether or not you would be entitled to compensation.

## 10. **COMPLAINTS PROCEDURE**

(a) You may request a copy of our written Complaints Handling Procedure at any time.

(b) In the event that you have a complaint regarding the management of your case or the fees incurred, in the first instance you should contact the firm member principally responsible for the matter to discuss the complaint.

(c) If, following discussions with that member, matters are not resolved to your satisfaction you may contact our Client Care Partner who is responsible for dealing with client complaints. The Client Care Partner will review and endeavour to resolve your complaint in line with our Complaints Handling Procedure.

(d) If for any reason we are unable to resolve the problem under the above procedures, then, for some categories of clients, complaints and redress mechanisms are provided through the Legal Ombudsman of PO Box 6806, Wolverhampton WV1 9WJ ([www.legalombudsman.org.uk](http://www.legalombudsman.org.uk)). The Legal Ombudsman only accepts complaints from individuals, very small businesses, charities, clubs and trusts. Complaints to the Legal Ombudsman must be made within 6 months of you receiving our final response to a complaint and must be made no later than 12 months after you first became aware of the problem or should reasonably have been aware of the problem.

(e) You may also have the right to have any bill assessed at court. The procedure is set out in Part III of the Solicitors Act 1974. You should be aware that there are strict time limits applicable to this procedure.

## 11. **QUALITY ASSURANCE**

We are accredited under ISO 9001 and Investors in People. As part of the accreditation process, external auditors inspect a random selection of our client files, to ensure that work is carried out in accordance with proper procedures.

You will be asked at the outset of your relationship with us whether you are prepared to consent to your files being inspected by the external auditor for this purpose. There is no obligation to give consent and, it may be withdrawn at any time.

## 12. **DOCUMENTS AND FILES**

(a) When a matter has been completed and all fees paid, we will return to you, at your request, any documents you have provided in connection with that matter and any other papers to which you are entitled. We cannot promise to retain files for a specific period of time, but will generally keep them for at least six years after completion of the matter, and reserve the right to dispose of them after that time.

(b) We are willing to store your deeds, wills and other documents. We do not charge for this service. However, we reserve the right to charge for the production of copies or the examination of files, deeds or documents held by us, or for sending them to any third party, or in future to start charging for any future storage after first notifying you.

## 13. **INTELLECTUAL PROPERTY RIGHTS**

You acknowledge that you will not acquire any rights (including, without limitation, copyright and all other forms of intellectual property rights) in the documents (including software routines embedded therein), know-how or other advice or information (together "the Service Product") that we provide to you in the course of providing the Services.

## 14. **RELIANCE BY THIRD PARTIES**

The Services and Service Product is provided to you for the purpose indicated by your instructions and must not be relied on or used for any other purpose or disclosed to, relied on or used by any third party (save for purposes indicated by your instructions) without our prior written permission.

## 15. **FINANCIAL SERVICES**

We are not authorised by the Financial Services Authority. If, while we are acting for you, you need advice on investments, we may have to refer you to someone who is authorised to provide the necessary advice. However, we may provide certain limited investment advice services where these are closely linked to the legal work we are doing for you. This is because we are members of the Law Society of England and Wales, which is a designated professional body for the purposes of the Financial Services and Markets Act 2000. The Solicitors Regulation Authority is the independent regulatory arm of the Law Society. The Legal Ombudsman deals with complaints against lawyers. If you are unhappy with any investment advice you receive from us, you should raise your concerns with either of those bodies.

## 16. **EXEMPT INSURANCE MEDIATION**

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 may carry on insurance mediation activity, which is broadly the advising on, selling and administration of insurance contracts. This part of our business, including arrangements for complaints or redress if something goes wrong, is authorised and regulated by the Solicitors Regulation Authority. The register can be accessed via the Financial Services website at [www.fsa.gov.uk/register](http://www.fsa.gov.uk/register). The Law Society of England and Wales is a designated professional body for the purposes of the Financial Services and Markets Act 2000. The Solicitors Regulation Authority is the independent regulatory arm of the Law Society. The Legal Ombudsman deals with complaints against lawyers. If you are unhappy with any insurance advice you receive from us, you should raise your concerns with either of those bodies.

## 17. **INSIDER LIST**

If you are an issuer to whom the Disclosure and Transparency Rules issued by the Financial Services

Authority apply then, unless you notify us to the contrary, we will assume that any matter and any information to which we have access during that matter or otherwise does not constitute inside information (as defined in the those Rules) relating directly or indirectly to you.

If you are such an issuer and notify us in writing that a matter or any information to which we have access, during that matter or otherwise, constitutes inside information relating directly or indirectly to you, then we will take the necessary measures to maintain an Insider List and to ensure that those named in it acknowledge their legal and regulatory duties as a result of being insiders.

## 18. COMMUNICATION

Unless you otherwise request we may, in the course of providing the Services, communicate via e-mail over the Internet with you and other persons. You accept the security and other risks involved in such communications (including, but not limited to, the risk that such communications can fall into the hands of third parties and/or can be delayed or subject to transmission error and/or the spread of viruses). We do not accept any liability for such risks and if you find the risks involved unacceptable then you should advise us, in writing in advance of the provision of the Services, not to use email as a method of communication in connection with the Services.

## 19. TERMINATION

- (a) Once instructed we will normally continue to act for you until its conclusion. If you or we decide that we should no longer act for you, you are responsible for the cost of all work done and all expenses incurred on your behalf, until the notice of termination takes effect. You will also be responsible for any fees and expenses arising from our ceasing to act for you or the transfer of the work to another adviser of your choice. We will be entitled to keep all your papers and documents whilst there is money owing to us.
- (b) This Agreement shall not be terminated for a breach of contract which is capable of rectification unless the party in default has failed to rectify such breach after being given not less than 14 days notice in writing to do so provided always that we shall not be prevented thereby from suspending performance of our obligations during such notice period where the breach by you is non-payment of sums due to us (including fees and/or expenses requested on account).
- (c) If either party hereto, being an individual(s), shall make an offer to make any arrangement or composition with creditors or commit any act of bankruptcy or if any petition or receiving order in bankruptcy shall be presented or made against a party (or any person comprised in a party) or; if in the case of a party, being a company or limited liability partnership, any resolution or petition to wind it up (other than for the purposes of a solvent reconstruction or amalgamation) or for an administration order in respect of it shall be passed or presented, or if a receiver of its property undertaking or assets (or any part thereof) shall be appointed or if any analogous procedure shall be taken in respect of a party in any jurisdiction or if it shall commit any breach of its obligations hereunder (including, without limitation, a failure by you to comply with clause (c)), then, and in any such case, the other party may forthwith (and without prejudice to any accrued rights and any other of its rights or remedies but subject to clause 20.b)) suspend or determine this agreement (in whole or part) or any unfulfilled part thereof.

## 20. LIABILITY OF THE FIRM

### OUR DUTY OF CARE

- (a) The instructions you have given us create a contract for our provision of services to you. We have a duty to work for you with reasonable care and skill.
- (b) There is no contract between you and any member, employee or consultant of the firm notwithstanding any failure by them to specifically mention that they are acting on behalf of the firm at any relevant time. Any advice given to you or any other work done for you, by one of our

members, officers, employees or consultants (our "Associates") is given or done by that person on our behalf and not in his or her individual capacity. No such person assumes any personal responsibility to you for the advice or work.

- (c) You agree that if, as a matter of law, any of our members, officers, employees or consultants would otherwise owe you a duty of care that duty is excluded from our contract with you. You agree that you will not bring any claim against any of our members, employees or consultants for any matter arising in any way out of providing the services to you.
- (d) Accordingly, any claim you wish to make can only be made against the firm and not against a partner, employee or consultant of the firm.

## 21. LIMITATION OF CLAIMS

- (a) No matter how many claims are made and whatever the basis of such claims, our maximum aggregate liability to you whether in connection with the Services or otherwise and whether such claim arises in contract or in tort shall be limited to the sum of £5 million, whether made by you or any third party, inclusive of interest, and legal and other costs. Also excluded is any consequential or indirect loss, whether or not it might have been foreseeable at the start of the matter.
- (b) If we are acting for more than one person, the limit of liability will have to be allocated among you. If the engagement letter does not expressly set out each person's share, that allocation will be a matter entirely for you. If for whatever reason you do not agree on an allocation, then you agree not to dispute the limit of liability on the grounds that no such allocation was agreed.
- (c) Our liability to you will be limited to that proportion of your loss and damage (including interest and costs) which is just and equitable having regard to the extent of your own responsibility for the loss and damage and that of any other party who may also be liable to you in respect of it. For the avoidance of doubt, in considering whether other parties may be liable to you, no account is to be taken of any inability on your part to enforce remedies against another party by reason of causes of action against that party becoming time barred, or that party's lack of means or the party's reliance on exclusions or limitations of liability.
- (d) If you do not claim against such third parties and only claim against us, our liability will be reduced by the amount you would have recovered from them had you claimed against them except to the extent that this reduces our liability below £5 million.
- (e) The limitations and exclusions on liability in this section will not apply to any liability for death or personal injury caused by our negligence or for any other liability that cannot lawfully be excluded or limited.

## 22. CONFLICTS

We are not allowed by rules of professional conduct to act where there is an actual or significant risk of conflict between your interests and those of another client. Should this situation arise we may decline to act for you or decline to continue to act for you (where we become aware of a conflict during the progress of a matter) in relation to those specific instructions.

## 23. PRIVACY AND DATA PROTECTION

We may use your 'personal data' (meaning any data falling within the definition of 'personal data' pursuant to section 1 of the Data Protection Act 1998) to provide the Services, to notify you of other services offered by us or to provide other information or services to you which we believe may be of interest. We may also process personal data for the purpose of complying with laws or regulations of any jurisdiction including (without limitation) those relating to money laundering. You consent to the use of personal data as specified in these terms and will notify us in writing if at any time that consent is withdrawn.

24. **CONFIDENTIALITY AND MONEY LAUNDERING**

- (a) We keep your information passed to us by you in confidence in the course of our providing the services and will not disclose it to third parties except as authorised by you or required by law.
- (b) In particular, recent legislation on money laundering and terrorist financing has placed solicitors under a legal duty in certain circumstances to disclose information to the Serious and Organised Crime Agency ("SOCA"). If we know of or suspect money laundering or terrorist financing in the course of professional work, we may be required to make a disclosure to SOCA. In some circumstances we may be prohibited by law from continuing with a transaction without the consent of SOCA. In such circumstances we shall have no liability to you for any such delay and you will indemnify us against any claims made by third parties as a result thereof. We shall not be required to inform you that a disclosure has been made or the reasons for it or the reasons for any resulting delay in your matters. We shall not be liable for any loss or damage incurred or suffered by you as a direct or indirect result of a disclosure to SOCA made in good faith.
- (c) We may at any time require you to provide information and documents (including any such to verify your identity) to enable us to comply with our obligations relating to money laundering. We may refuse to provide or continue the provision of the Services until such information and/or documents are provided to our satisfaction and in the case of delay on your part in complying with this obligation we may terminate this agreement with you.
- (d) You are asked to note that we may make use of electronic data sources in order to establish your identity or credit status. Such searches may also be made to establish the identity of officers, members and shareholders of corporate entities or partnerships and, in the case of trusts, the trustees and/or beneficiaries.

25. **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.

26. **INDEMNITY INSURANCE**

For the year ending 30 September 2012 our primary layer of professional indemnity insurance is provided by Libra Managers of New City Court, 20 St Thomas Street, London SE1 9RR. Cover is restricted to advice on English law but there is no restriction on where clients receiving the advice may be based.

27. **ANTI-BRIBERY**

You shall and shall procure and ensure that all of your employees, servants, agents and sub contractors will:

- (a) Comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (and any amendments thereto) ("Relevant Requirements");
- (b) Not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2, or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- (c) (If you are a business) have and maintain in place your own policies and procedures to ensure compliance with the Relevant Requirements, and will enforce them where appropriate; and
- (d) Promptly report to us any request or demand for any undue financial or other advantage of any kind received by you in connection with your instructions to us.

Without prejudice to any other rights or remedies we may have we may cease acting for you on written notice if you breach this clause.

28. **GENERAL**

- (a) These terms and any engagement letter from us to you which incorporate these terms together form the whole agreement ("the Agreement") between the parties in relation to the subject matter hereof and replaces any previous agreement or arrangement in respect of the same subject matter. You warrant that in entering into this Agreement you have not relied on any representation made by or on behalf of us except for any such representation which is expressly set out in this Agreement.
- (b) The terms of this Agreement cannot be changed save by a written agreement signed by a member of the firm and by you.
- (c) In construing this Agreement the following provisions shall apply:
  - (i) if "you" consist of more than one person, corporation or entity then their obligations hereunder shall be joint and several;
  - (ii) the parties acknowledge that any person described or held out as either a "member" or "partner" of the firm is a "member" of the firm within the meaning of Section 4 of the Limited Liability Partnerships Act 2000, and
  - (iii) clause headings are for ease of reference only and shall be ignored.
- (d) It is not intended that any term of this Agreement shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to the Agreement save by our Associates.
- (e) All notices given hereunder shall be in writing and given in the case of you to your last known address and in the case of us at our registered offices or at such other address as either party may have notified in writing for that purpose. Notices may be served by personal delivery, first class registered or recorded delivery post or by facsimile transmission. Any notice given by post shall be deemed to be received by the party to whom it was given 48 hours after posting (excluding Saturdays, Sundays and UK bank and public holidays). Notices given by facsimile shall be deemed to have been given 1 hour after successful transmission thereof (excluding hours between 6pm and 9am and Saturdays, Sundays and UK bank and public holidays).
- (f) Rights under this Agreement are not affected if a party does not enforce, or delays enforcing, any of these.
- (g) We may assign our rights under the Agreement in whole or in part at any time and shall notify you in writing of such assignment. Our arrangements for providing the Services may include the use of sub-contractors. You may not assign or otherwise deal with your rights under this Agreement.
- (h) This Agreement is governed by English law and subject to the exclusive jurisdiction of the English Courts. However, we may bring legal proceedings in any other jurisdiction, including the jurisdiction where you are domiciled or based, to recover fees or other sums payable to us.
- (i) SGH Martineau LLP is a limited liability partnership registered in England and Wales (LLP number OC300228) and is authorised and regulated by The Solicitors Regulation Authority. Our registration Number is 347123. A list of members, all of whom are solicitors, may be inspected at our registered office, One America Square, Crosswall, London EC3N 2SG.