



CLIENT TERMS AND CONDITIONS

NOVEMBER 2020

## **1. Our Aim**

We aim to offer our clients quality legal advice with a personal service at a fair cost. As a start, we hope it is helpful to you to set out in these terms the basis on which we will provide our professional services.

## **2. EMD Law LLP**

- 2.1 In these terms, 'we' or 'our' or 'us' or 'the firm' refers to EMD Law LLP, a Limited Liability Partnership incorporated in England and Wales with the registered number OC339500, having its registered office at Rose Cottage, 4 Lime Terrace, Staplehurst, Kent, TN12 0AP. The LLP is authorised and regulated by the Solicitors Regulation Authority ("SRA") under Registration number 495066 and is subject to the SRA Code of Conduct. Our VAT number is 347-0537-57.
- 2.2 A list of the Members of the LLP is available at the above address, together with a list of any individuals who are not Members of the LLP but who are designated as Partners. We use the term 'Partner' to refer to a Member of the LLP or an employee or consultant with equivalent standing or qualification.

## **3. Our Hours of Business**

The normal hours of opening at our offices are between 9.00am and 5:00pm on weekdays. Messages can be left on our answer phone outside these hours, which will be returned at the next opportunity during working hours. Appointments can be arranged at times outside our normal office hours when necessary. If your query/matter is urgent and outside of office hours, please send an email to [ld@emdlaw.co.uk](mailto:ld@emdlaw.co.uk). We will endeavor to get back to you as soon as reasonably possible.

## **4. Engagement and Application of Terms**

- 4.1 We will send you written engagement terms in the form of a client care letter specifying information relevant to your individual matter, the scope of work required and basis of our charges. Those engagement terms will specifically incorporate these Terms of Business.
- 4.2 You will be asked to sign and return a copy of the client care letter and a copy of these terms and conditions of business to confirm your agreement to the terms of our instructions. In the event of you instructing us to take any action or give any advice having received our written client care letter but not having signed and returned the copy, you will be deemed by instructing us to have accepted our terms of engagement and will be bound by them.

## **5. Our Service to You**

- 5.1 We will exercise due skill, care and diligence in carrying out legal work in accordance with your instructions. In performing our services, we shall use reasonable care to:
  - Represent your interests and keep your business confidential;
  - Explain to you the legal work which may be required and the prospects of a successful outcome;
  - Explain the likely degree of any financial risk in relation to legal costs which you may be taking;
  - Inform you regularly in writing or by telephone of progress or, if there is none, let you know when you are likely to hear from us;
  - Deal promptly with your queries.
- 5.2 We will provide details of the person responsible for the day-to-day conduct of your matter and the person responsible for its overall supervision.

## **6. Financial Services**

The firm is not regulated by the Financial Conduct Authority but it is included on the Financial Services Register. If, during the course of the matter upon which this firm is advising you, you need advice on investments we may refer you to someone who is authorised by the Financial Conduct Authority.

## **7. Property Issues**

Where we are acting for you in relation to a property transaction, it will not be our responsibility to carry out a physical inspection of the property. It is your responsibility to inform us of any discrepancies between the documents and plans relating to the transaction and the situation on the ground. We shall not advise you on the valuation of the property or the suitability of a mortgage or any other financial arrangement.

## **8. Tax Advice**

Any work that we do for you may involve tax implications or necessitate the consideration of tax planning strategies. The legal personnel responsible for your work may not be qualified to advise you on the tax implications of a transaction or the likelihood of them arising. You may, therefore, wish to seek advice from an Independent Financial Advisor.

## **9. Conflicts of Interests**

Prior to commencing work on any matter, we always check within our systems to avoid any conflict of interests between our clients. This includes taking a view as to the likelihood of a conflict occurring during as the matter progresses. However, from time to time we may come across a situation where a conflict later occurs or there is a conflict of interests either between a client and another client or other clients operating within the same business or related areas. For instance, we cannot act for both parties in a divorce matter. In these circumstances we will discuss this with you and may either continue to act for you, subject to our professional duties relating to conflicts, or decline to act for you, with a full explanation as to why we cannot proceed. We will always act as quickly as possible and try to resolve the matter. Our commitment to confidentiality will remain.

## **10. Your Responsibilities as a Client**

You are responsible for:

- Providing us with clear, timely and accurate instructions;
- Providing all documentation required in a timely manner;
- Safeguarding any documents which are likely to be required for disclosure;
- Paying our fees and expenses in accordance with these terms and the client care letter;
- Providing us with all necessary information to enable us to comply with the Money Laundering Regulations.

## **11. Limitation of Liability**

- 11.1 We shall have no liability to any parties except you and any third parties to whom our advice is expressly addressed
- 11.2 The LLP has put in place Professional Indemnity Insurance, details of which are available on our website under the heading 'Regulation'.
- 11.3 If we are jointly or jointly and severally liable to you with any other party we shall only be liable to pay you the proportion of your losses which is found to be fair and reasonably due to our fault

- 11.4 If there is another advisor or person who is liable (or potentially liable) to you in respect of the same loss as you claim from us then you will at our request join that person in any proceedings brought against us as soon as reasonably practicable following our request.

## **12. Fee Structure**

- 12.1 Unless we agree a fixed fee or other arrangement, our charges will be calculated by reference to all time spent by legal personnel and other staff in respect of any work which they undertake on your behalf. This will include meeting you and, where appropriate, others, considering, preparing and working on papers, correspondence, making and receiving telephone calls, research, internal consultations and travelling. Such time is recorded and charged in six minute units at the hourly rates applicable to the relevant individual conducting the work. Where less than six minutes is taken on a matter, a full unit of six minutes will be charged. You will be notified by letter of the rates chargeable by fee earners and other staff dealing with your matter. These rates are exclusive of VAT. Charging rates will be reviewed from time to time and you will be notified of any changes as soon as reasonably possible. We will also notify you of any change in status of the legal personnel which may affect their hourly rate.
- 12.2 If you have been quoted a fixed fee but your matter does not complete, you will be charged for the work carried out on a timed basis as detailed above.
- 12.3 *Legal Expenses Insurance*
- 12.3.1 Insurance policies, credit cards and other financial and employment related products often provide as part of the product legal expenses insurance cover. The terms of cover will vary but may include cover for part of all of your own legal fees. They will often cover you against your opponent's legal fees in the event that you agree or are ordered to pay them.
- 12.3.2 It is your responsibility to clarify whether or not you have the benefit of legal expenses insurance and, if so, to advise us of this fact. You should check your household and other insurance policies, credit cards and other financial products and employment related schemes to see if they provide cover for our fees. In all such instances where you advise us that you have cover from a third party, we shall consider the terms of the cover.
- 12.3.3 If there is a shortfall between our fees and the amount covered by the insurance, we reserve the right to recover the difference from you, subject to the terms of the insurance policy.

## **13. Expenses and Disbursements**

- 13.1 We shall be entitled to charge a fee for:
- Any telegraphic transfers at £30 plus VAT per transaction;
  - Photocopying (routine as well as exceptional) at the rate of 35p per sheet.
  - Any 'Faster Payment' transaction at £10 plus VAT.
  - Postage over and above the cost of a standard first-class letter.
- 13.2 We will also charge separately for sums incurred or to be incurred by us on your behalf such as company and property search fees, Land Registry and Court fees, the fees of Counsel and experts, travel expenses, courier fees etc.

- 13.3 Unless agreed otherwise, we will expect all disbursements and expenses to be paid in advance. At the outset of a matter we will advise you of the disbursements and expenses that are likely to be incurred and their likely timescale. Should you fail to pay disbursements and expenses when requested, we shall be entitled to consider terminating our contract with you with immediate effect.
- 13.4 You will be responsible for the payment of all stamp duty and other taxes arising in respect of your transaction.

#### **14. VAT**

All fees and expenses are exclusive of VAT, which will be charged where applicable at the appropriate rate.

#### **15. Payment on account of fees, delivery of invoices, payment of fees and interest on unpaid fees**

##### *15.1 Payment on Account of Fees*

- 15.1.1 It is standard practice to request a payment on account of our fees, expenses and disbursements. If a payment is requested, we reserve the right not to act or continue acting for you until payment has been made.
- 15.1.2 All payments on account will be held in client account, pending delivery of an invoice or re-payment of disbursements or expenses made from our office account which you have already been made aware of.

##### *15.2 Delivery of Invoices*

- 15.2.1 Invoices relating to fixed fees will be delivered when they are due for payment.
- 15.2.2 In all other types of work we are entitled to delivery invoices from time to time for all work carried out to the date specified in the bill. Such bills are 'interim bills', upon which we are entitled to bring Court action in default of payment. The interval between bills will in most circumstances be between one and three months. A final invoice will also be sent at the conclusion of all matters.
- 15.2.3 Our invoices are payable within 14 days of delivery. If email is the usual method of communication between us, sending an invoice by email will constitute valid delivery of that invoice.
- 15.2.4 In the event of any invoice not being paid within 14 days of delivery, we shall be entitled not to undertake any further work on your behalf until the invoice is paid in full. We will be entitled to terminate our contract and/or charge interest if payment is not made within 14 days.
- 15.2.5 In some cases and transactions a client may be entitled to payment of costs by another person or entity. It is important that you understand that in such circumstances the other person may not be required to pay all the charges and expenses which you incur with us. You are responsible for payment of our charges and expenses in the first place with any amounts recoverable being a contribution towards them. If the other party is in receipt of legal aid, no costs are likely to be recovered. If you are successful and a court orders another party to pay some or all of your charges and expenses, interest may be claimed on them from the other party from the day payment is due. In practice such interest charges are rarely made unless there is unreasonable delay in payment. In that instance a further application to the Court is likely to be necessary which will incur further charges. These charges may be recoverable. If you do recover any additional interest, we will account to you for such interest to the extent that you have paid our charges or expenses on account but in the event that our charges and expenses have not been paid in advance by you then we will be entitled to that interest

or such balance as remains after we have accounted to you. You will also be responsible for paying our charges and expenses of seeking to recover any costs that the Court orders the other party to pay to you.

15.2.6 A client who is unsuccessful in a Court case may be ordered to pay the other party's legal charges and expenses. That money would be payable in addition to our charges and expenses. In some cases arrangements can be made to take out insurance to cover liability for such legal expenses. Please discuss this with us if you are interested in this possibility.

### 15.3 *Payment of fees*

15.3.1 Payment of our charges may be made by BACS money transfer, credit or debit card (not American Express) or cheque made payable to EMD Law LLP. We are unable to accept payment in cash.

15.3.2 You agree where money is held in our client account on your behalf that when we send you a bill for work that has been done, we are entitled as soon as the bill is delivered to transfer sufficient monies to settle the bill from our client account to the firm's office account. You further agree that we may make such transfers even where the bill is disputed on the basis that we will immediately re-credit the client account with any monies found by our complaints department or the Legal Ombudsman to be in excess of the sums that are properly payable under the bill.

15.3.3 In the event of monies being paid to the credit of your client account when there are outstanding fees or other fees due to us, you agree and authorise us to forthwith transfer funds equivalent to the amount of the debt due to us from your client account to the credit of our office account and thereby discharge your debt. If the funds held are less than the full amount of the debt then you agree to us transferring to our office account the entirety of the funds on your client account in part settlement of the debt.

### 15.4 *Interest Payable on Unpaid Bills*

15.4.1 We will charge interest on any amount remaining overdue by 15 days or more. Failure to pay invoices in accordance with our terms of business is comparable to an unauthorised overdraft. The rate of interest we will charge on overdue rates is 8% per annum, chargeable from the date of the invoice.

15.4.2 All costs incurred in recovering any unpaid sums will be due from you and a late payment administration fee of £50 plus VAT will be payable if payment is not received following an initial reminder letter to you. A further £20 plus VAT will be charged for each chaser letter sent thereafter.

### 15.5 *Objecting to our bill*

If you object to any bill raised, you are entitled to raise your complaint following our complaints procedure which is available from our website and/or upon request. You may also have the right to complain to the Legal Ombudsman or to apply to the Court for an assessment of the bill under Part III (70) of the Solicitors Act 1974.

15.6 If we are conducting litigation for you, we have additional rights over any property recovered or preserved for you during the course of the litigation where it is in our possession or not and in respect of all costs incurred, whether billed or unbilled. We also have a right to ask the Court to make a Charging Order in our favour for any assessed costs. We will only exercise these rights as a last resort and will always submit an invoice to you in the usual way before exercising these rights.

## **16. Lien**

- 16.1 Without prejudice to any other rights or remedies we may have we are entitled to retain any money, papers or other property belonging to you which properly come into our possession pending payment of our costs, whether or not the property is acquired in connection with the matter for which the costs were incurred. This is known as a 'general lien'. We are not entitled to sell property held under a lien.

## **17. Interest on Money we hold on your behalf**

- 17.1 We will hold any money we receive on your behalf in our client account. We will account to you for interest in accordance with Rule 7 of the SRA Standards and Regulations 2019. A copy of our policy relating to the payment of interest can be found on our website at [www.emdlaw.co.uk](http://www.emdlaw.co.uk) at the bottom of the home page, or we can provide a copy on request.

## **18. Email Communication**

- 18.1 We are constantly reviewing and upgrading our email technology to ensure that we can communicate with you as effectively as possible by email with the minimum risk of virus infection. However, email carries some inherent risks, namely potential lack of security and lack of authenticity. Further, where sender and recipient use different internet security providers, there can be no guarantee of prompt transmission. Notwithstanding these potential problems, the vast majority of email communication is secure and prompt. We are, nevertheless required to advise you of these potential risks.
- 18.2 If you ask us to communicate by email or send or send us an email, you will be deemed to have accepted the inherent risks in email communication and we shall have no liability for any losses arising from such risks.

## **19. Avoiding Scams**

- 19.1 We are generally required to monitor the risks to money and assets entrusted to us by our clients and to take steps to address issues identified. Whilst we always attempt to do so, it is important that you also make yourself aware of the risks posed by scammers and IT manipulation used to steal data. In particular, please ensure that you take steps to protect your data, email and bank account details.
- 19.2 Law firms holding client money are a target for scammers. Of particular concern are the attempts made by fraudsters to divert funds either from the law firm or the client intercepting email traffic and impersonating either the client or the law firm. Whilst the chance of this happening are slight, the consequences can be significant. For that reason, it is important that you note that we will only ever provide this firm's client account details in writing and usually only then by letter sent by post. It is also extremely unlikely that we will change our client account details and will never do so at short notice. If you are provided with our client account details by telephone or email or if you receive notification that our account details have changed, you must always call the person with conduct of your matter to confirm the account details before transferring money to us.
- 19.3 We will also request that you provide details of your own account by post or fax and will ask for a bank account statement to prove that you hold that account. If you change the account into which any of your funds are to be paid part way through your matter we will normally ask you to attend the office with a bank account statement for the new account before agreeing to transfer funds to that account. When you provide a copy of your bank statement you are permitted to redact the transactions but your name, address and the account details must be clear.

## **20. Terrorism Act 2000, Proceeds of Crime Act 2002 and Money Laundering Regulations 2020**

### **20.1 *Our Obligations:***

20.1.1 By virtue of the legislation and regulations we are required to:

- Verify your identity on the basis of documents, data or information from a reliable and independent source;
- Identify any person who is classified by the regulations as a 'beneficial owner' and take reasonable measures to verify the identity of any beneficial owners, to include taking reasonable measures to understand the ownership and control structure of any individual, trust, company, foundation, charity or similar;
- Obtain information on the proposed and intended nature of the business relationship and as far as reasonable, satisfy ourselves that the funds which relate to the matter are legitimate;
- Continue to monitor the transaction and keep identity information up to date;
- Report to the relevant authority if we have any knowledge or suspicion that an offence under the above legislation or regulations may be or has been committed.

20.1.2 Failure by us to comply with these obligations may result in a criminal prosecution against us. To enable us to comply with our duties we may ask for evidence of identity and we may ask you detailed questions concerning the source of any relevant funds.

### **20.2 *Electronic Due Diligence***

We will use internet-based searches of databases to help ascertain your identity and any money laundering risks.

### **20.3 *Payments into and out of client account***

20.3.1 In accordance with the Solicitors Accounts Rules we must not accept funds into our client account unless we are acting for you and there is reason to do so.

20.3.2 Our money laundering enquiries may involve asking you to let us know the source of funds and to provide details of the account from which they are being transferred. If there is some urgency to your matter and this information is requested, it is essential that you assist us in completing our enquiries as quickly as possible.

20.3.3 We do not accept cash for any purpose unless specific consent is provided by our Senior Partner. If you try to avoid this policy by depositing cash directly with our bank or transferring funds from a source other than that expected, we reserve the right to charge you for any additional checks we decide are necessary to prove the source of funds. This may in turn delay your matter and could prevent exchange of completion of your (conveyancing) matter.

## **21. Use of Our Advice**

You agree not to make our work available to third parties without our written permission. We will hold no liability for loss or damage where a third party relies upon our advice without our authority.

## **22. Confidentiality**

We will at all times keep your business confidential, subject to:

- Any disclosure obligations which may be imposed on us by law, such as the Money Laundering legislation;
- Regulatory requirements such as audit provision under the Solicitors Accounts Rules;

- Documents and information relevant to any claim or potential claim being supplied to our professional indemnity insurers in the event of our having to inform our insurers of any notifiable circumstances under the terms of the policy.
- Preventing an event which could lead to harm to the client or a third party.

### **23. Equality & 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. If you act or instruct us to act in a way which is contrary to our Equality and Diversity Policy, we may terminate our retainer with you. If you consider yourself to have a disability, or if you have any special requirements in relation to the way in which you would like us to handle your work, please let us know.

### **24. Termination**

- 24.1 You may terminate your instructions in writing to us at any time.
- 24.1.2 We shall be entitled to terminate our contract with you if you instruct us to take a course of action which we advise is inappropriate, you decline to accept our advice, we consider that the potential outcome does not justify the expense being incurred or that it is not in your best interests for us to continue to act, you are in breach of your responsibilities under clause 10 above, you make unwarranted complaints about the firm or the level of service or it is evident to us that the necessary mutual trust and confidence no longer exists. Aggressive or unacceptable conduct towards the firm or a member of staff will also result in termination of our contract.
- 24.1.3 Further, we may terminate our contract in the event of any of our accounts being outstanding for more than 28 days or as provided in clause 14 above. We shall have no liability to undertake any work or actions on your behalf once the period of notice has terminated; such notice shall be no longer than 28 days. We will release papers relating to your matter once all fees for which you have become liable have been paid by means of cleared funds.

### **25. Storage of Papers and Retention of Data**

- 25.1 We will be entitled to keep your papers whilst there is still money owed to us for fees and expenses. Once our bills have been paid and with the exception of those papers that you request to be returned to us, we will retain papers arising from our work for you in storage for a minimum of 6 years from the date on which our file is archived. At the end of that 6 year period those papers may be destroyed by us without reference to you. You should, therefore, make special arrangements with us for any documents that you would like us to retain for a longer period of time.
- 25.2 We will retain all electronic data for at least 7 years, after which we will take all reasonable steps to destroy such data unless we are satisfied that there is good reason for retaining it. This provision may change without reference to you if there are changes to the relevant legislative or regulatory requirement.
- 25.3 We may make a charge for the recovery, production, copying, delivery or reading of any Wills, Deeds or other papers and for dealing with any correspondence in respect of papers held in storage.

### **26. Data Protection**

Please see our Privacy Policy on our website at the foot of the home page. Should you require a copy to be sent to you, please let us know.

## **27. Liability**

- 27.1 We acknowledge that we will be liable to you for losses, damages, costs and expenses including interest (“losses”) caused by our negligence or the negligence of our employees, subject to the following procedures:
- 27.2 We shall have no other liability of any nature, whether in contract, tort or otherwise, for any losses whatsoever and howsoever caused, arising from or in any way connected with this matter.
- 27.3 We shall not be liable if such losses are due to the provision of false, misleading or incomplete information or documentation and to the extent that such losses are due to any act of omission of any person other than us.
- 27.4 We will not be liable for any consequential, special, indirect or exemplary damages, costs or losses or any damages, costs or losses attributable to lost profits of opportunity. Unless otherwise agreed between us in writing, our aggregate liability, whether to you or any third party, of whatever nature whether in contract, tort (including negligence) or otherwise for any losses whatsoever and howsoever connected with the matter shall not exceed £3million. We will not be liable for any consequential, special, indirect or exemplary damages, costs or losses or any damages, costs or losses attributable to lost profits or opportunities.
- 27.5 Nothing in these provisions shall exclude or restrict any liability arising from fraud or dishonesty or death or personal injury or any other liability which by law cannot be excluded or restricted.

## **28. Complaints**

- 28.1 We aim to give you the best possible service at all times. However, if at any point you become unhappy or concerned about the service we have provided or about an invoice you have received, you should inform us immediately so that we can do our best to resolve the problem.
- 28.2 Making a complaint will not affect how we handle your matter.
- 28.3 In the first instance, you should contact the person who is stated to have responsibility for your matter in our client care letter to discuss your concerns and to enable that person to try to resolve any issues for you.
- 28.4 If that person is unable to resolve matters for you, you should write to our Practice Manager at [lcb@emdlaw.co.uk](mailto:lcb@emdlaw.co.uk) who will thereafter respond to your concerns.
- 28.5 A copy of our complaints procedure can be found on our website at the foot of the home page. However, should you require a copy to be sent to you, please let us know. We will address any complaint you decide to pursue in accordance with that procedure and will inform you when we perceive that our internal complaints procedure has been concluded.

## **29. The Legal Ombudsman**

- 29.1 You may be entitled to refer your concerns to the Legal Ombudsman if you are not satisfied with the outcome of our complaints procedure. The Legal Ombudsman is an independent complaints body which deals with legal services complaints and can be contacted at PO Box 6806, Wolverhampton, WV1 9WJ on telephone number 0300 555 0333 or by email at [enquiries@legalombudsman.org.uk](mailto:enquiries@legalombudsman.org.uk). Their website address is [www.legalombudsman.org.uk](http://www.legalombudsman.org.uk).
- 29.2 Before accepting a complaint for investigation, the Legal Ombudsman will check that you have first tried to resolve your complaint with us.
- 29.3 The Legal Ombudsman time limits for accepting a complaint are 6 years from the date of the act/omission or 3 years from when the complainant should have known about

the complaint. Where you have been provided with full information about your right to make a complaint to the Legal Ombudsman, you must make your complaint to them within 6 months from the end of our complaints procedure.

**30. Additional Comments about complaints relating to bills**

If you are dissatisfied with any invoice submitted to you, in addition to the complaints procedure mentioned above, you can apply to the Court for an assessment of the bill under Part III of the Solicitors Act 1974.

**31. Reporting Concerns to the Solicitors Regulation Authority (SRA)**

The SRA can help you if you are concerned about our behavior. If you have any concerns, you may raise them with the SRA at [www.sra.org.uk/consumers/problems/report-solicitor/](http://www.sra.org.uk/consumers/problems/report-solicitor/)

**32. Entire Agreement**

These terms and our client care letter form the entire agreement between us and you as to the terms of our appointment with you. If you have any queries with regard to these terms and conditions, please ensure that you raise them with the person responsible for the conduct of your matter or the firm's Practice Manager.

November 2020