

# Terms of Business

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### 1. Audley Clarke Solicitors Limited

1.1 AUDLEY CLARKE SOLICITORS LIMITED ('the Firm') is constituted as a Limited Company, registered in England and Wales as under Company Number 09730853:

- (a) Registered Office: Dalton House, Dane Road, Sale, Cheshire, M33 7AR
- (b) Telephone: 0333 057 667
- (c) Email: [info@audleyclarke.com](mailto:info@audleyclarke.com)
- (d) Web Site: [www.audleyclarke.com](http://www.audleyclarke.com)
- (e) VAT Registration Number: 247960571
- (f) Authorised and Regulated by the Solicitors Regulation Authority ('SRA') under number: 628965

1.2 In these Terms of Business all first person terms such as 'we', 'us' and 'our' refer to the Firm and not to any Director, Consultant or Employee personally or to any combination of Directors, Consultants or Employees collectively. By this Agreement, you are entering into a contract with the Firm and not with any Director, Consultant or Employee personally or with any combination of them. The fact that an individual Director, Consultant or Employee signs in his or her own name any letter or other document in the course of carrying out his or her work does not mean he or she is assuming any personal legal liability for that letter or document. No reference to a 'partner' is to imply that any person is carrying on business with others in partnership for the purposes of the Partnership Act 1890.

1.3 We are governed by professional rules of conduct made by our regulatory body, Solicitors Regulation Authority ('SRA') which can be accessed at [www.sra.org.uk](http://www.sra.org.uk). The SRA is located at The Cube, 199 Wharfside Street, Birmingham, B1 1RN and can be reached at its contact centre on 0370 606 2555

1.4 The SRA Indemnity Insurance Rules, in force from time to time, require us to take out and maintain Professional Indemnity

Insurance with Participating Insurers. Information about the compulsory layer of Professional Indemnity Insurance we carry, including the contact details of our insurers and the territorial coverage of our insurance, are available in hard copy at our registered office.

### 2. Terms of Business

2.1 These Terms of Business may not be varied unless agreed in writing and signed by a Director. They should be read in conjunction with our Client Care Letter which sets out the basis on which we act for you and any documents referred to in that letter. Together these form the 'Agreement' between us relating to each matter on which we advise you.

2.2 These terms, including the limits on our liability in clause 12, shall apply to all work done by us for you (and any work to be done in the future) unless we otherwise notify you in writing.

### 3. Excluded Advice

3.1 We do not advise on the laws and regulations of jurisdictions other than England & Wales (which for these purposes includes the law of the European Union as applied in England & Wales).

3.2 We are not qualified to give any taxation advice in any form and you should take the professional advice of a taxation accountant or your own accountant. If you authorise us to proceed with a transaction, we will proceed on the basis you have sought appropriate professional advice. If you wish us to help you appoint an appropriate accountant, please ask.

3.3 We do not advise on competition law, nor do we provide financial advice generally, or comment upon the commercial viability of any transactions upon which we advise.

### 4. Your Obligations

4.1 These are detailed within the Client Care Letter and Conditional Fee Agreement that accompany these Terms of Business.

4.2 If you are in breach of these or other obligations, we reserve the right to suspend or cease work altogether on this and/or your other matters. If we do so we will send notice to you, but we will not be under any obligation to attend to your affairs or to look after your interests during that period. We reserve the right not to carry out work until you have signed or otherwise accepted these terms and/or any specific engagement letter.

### 5. Your Duty to Look after Documents

5.1 If now, or at any time in the future, any matter on which we act for you becomes the subject of court proceedings (tribunal or otherwise), you will need to be able to disclose documents (including electronic ones) relating to the matter. You should therefore ensure that you are able to produce such documents to ensure that your position in such proceedings is not compromised.

### 6. Our Obligations

6.1 These are detailed within the Client Care Letter and Conditional Fee Agreement that accompany these Terms of Business.

### 7. Copyright

7.1 Unless we agree otherwise, all copyright which exists in the documents and other materials that we create whilst carrying

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out work for you shall remain our property. You have the right to use such documents and materials for the purposes for which they are created, but not otherwise.

- 7.2 Should you use such documents for any purpose other than that for which they were created we are not responsible to you for any losses that you may suffer as a result.
- 7.3 Unless otherwise required by law or court order, you agree not to make our work, documents or materials available to third parties without our prior written permission. Our work is undertaken for your benefit alone and we are not responsible to third parties for any aspect of our professional services or work that you make available to them.
- 8. Funding**
- 8.1 We have agreed to fund your matter by way of a conditional fee agreement. Full details are contained within the agreement itself. Any additional services provided (unless otherwise agreed in writing) will be charged at our standard hourly rates as set out in our Client Care letter plus any expenses.
- 8.2 Late Payment of bills
- (a) Unless we otherwise agree, where bills are paid later than 28 days after the of delivery of the bill, we will be entitled to charge interest on a daily basis on the unpaid element of the bill at a rate equivalent to the rate payable on judgment debts at the date of this agreement.
- (b) We may refuse to carry out any further work for you relating to the matter billed or for any other matter for which we are instructed until that bill is paid and/or we may stop acting for you; and
- (c) We may exercise our lien and retain any papers, or documents belonging to you.
- 8.3 Where you make a payment by cheque or credit card and that payment is not subsequently honoured, we will notify you so that you can facilitate the payment being made. We reserve the right to charge you a fee for administration and any charge imposed by the bank for re-presenting your payment. Until such time as the payment is cleared into our accounts the provisions of clause 8.2 will apply.
- (a) If we extend credit to you e.g. by allowing you to pay our fees in instalments, it will be for less than 12 months, without any interest or charges and not involve more than 12 instalments.
- 8.4 It is your responsibility to tell us when first instructing us if you have any form of insurance cover (such as legal expenses insurance) that you think will pay our fees. You agree that we shall not be liable to you for any losses you sustain as a result of your failure to provide us with such details. You must also tell us when first instructing us if there is a third party who may pay our fees. If a third party agrees to pay all or part of our bills, you will remain responsible to us for payment until those bills have been paid in full.
- 8.5 Where you are instructing us jointly in relation to any matter it is your responsibility to tell us at the outset of this Agreement if you require more than one person to give us instructions in relation to that matter. Otherwise, we will accept instructions

from any one person and will not be responsible to any other person for any losses they may suffer as a result.

**9. VAT**

- 9.1 Any reference to fees will be net of VAT which will be charged at the appropriate rate on all fees and any expenses that are liable for VAT.

**10. Financial Services**

- 10.1 The Law Society of England and Wales is a designated professional body under Part XX of the Financial Services and Markets Act 2000 (as amended) ('FSMA') which means that we may carry on certain regulated activities without being regulated by the Financial Conduct Authority. This means that we may be able to provide limited financial services to you where such services arise out of, or are complementary to, the provision of legal services.
- 10.2 The Law Society is the designated professional body for the purposes of the FSMA, but responsibility for regulation has been delegated to the Solicitors Regulation Authority (the independent regulatory body of the Law Society), and responsibility for handling complaints has been delegated to the Legal Ombudsman. The contact details for the Solicitors Regulation Authority can be found at clause 1.3 and the contact details for the Legal Ombudsman can be found within the Client Care Letter.
- 10.3 The limited regulated activities that we carry out are issuing certain insurance policies, such as after the event legal expenses insurance.
- 10.4 We are not authorised by the Financial Conduct Authority ('FCA'). However, we are included on the register maintained by the FCA so that we can 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 regulated by Solicitors Regulation Authority. The register can be accessed via the FCA's website at [www.fca.org.uk/register](http://www.fca.org.uk/register).
- 10.5 Any insurance policy arranged by us on your behalf, shall, in our opinion, be adequate to meet your needs, but you are hereby informed that we do not recommend any policy over and above any other and that it is your responsibility to check that you are satisfied with the excess levels, exclusions, limitations and other policy terms. We do not conduct a fair analysis of the insurance market prior to arranging insurance policies. You can request details of the insurance undertakings with which we conduct business at any time.
- 11. Consumer Credit**
- 11.1 We are not authorised by the FCA to carry on consumer credit activities. However, Part XX of FSMA permits us to carry on limited regulated consumer credit activity ('exempt') provided certain conditions are met. This is broadly where we provide services such as credit brokerage, debt collecting, debt advice and debt administration which relate to consumer credit agreements and the provision of these services are complementary or incidental to your matter.
- 11.2 You acknowledge, therefore, that we can only act for you in relation to any regulated consumer credit activity that is

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‘exempt’ according to the provisions of Part XX of the FSMA. We shall notify you if we are unable to act for you.

- 11.3 Part XX of FSMA also affects the extent to which we can offer credit terms and arrangements for the discharge of our fees by instalments. The relevant limits are set out in clause 8.3.

### 12. Limitation of Liability

- 12.1 You agree that the limitations on our liability as set out in our Agreement are reasonable having regard to the nature of your instructions and the work involved and the availability and cost of professional indemnity insurance. We are, however, happy to consider options to increase these limitations, should you require (which may result in an increase to our fees).
- 12.2 We will undertake the work relating to your matter with reasonable skill and care.
- 12.3 We accept liability without limit for the consequences of fraud by us or any of our Directors or Employees which is affected in their capacity as Directors, Consultants or Employees and for any other liability which we are not permitted by law or rules of professional conduct to limit or exclude.
- 12.4 We will not be liable under this agreement or laws of negligence for any deficiencies in the work we have undertaken if and to the extent that deficiencies are due to any false, misleading or incomplete information or documentation which has been provided to us (whether by you or any third party) or due to the acts or omissions of you or any third party.
- 12.5 Despite anything else contained in this Agreement, we are not under any obligation to act for you (or to continue to act for you) if to do so would breach any laws or professional rules and we will not be liable for any resulting loss which you or any other party may suffer through our refusal to proceed with your matter in those circumstances.
- 12.6 Except as stated in clauses 12.3 and 12.12, our total aggregate liability to you under or in connection with this Agreement (including any addition or variation to it), whether for breach of contract, negligence, breach of statutory duty, or otherwise, shall not exceed £3,000,000.00 (three million pounds).
- 12.7 Where we are instructed jointly by more than one party, the limit on our liability applies, in total, to all of you collectively (including anyone claiming through you or on your behalf).
- 12.8 You agree that you will not bring any claims or proceedings in connection with this agreement against our Directors, Consultants or Employees personally, unless (and to the extent that) you are otherwise permitted to do so by law or our professional rules. Our Employees may enforce this clause even though they are not parties to this agreement (but despite having such rights, this agreement may be varied or ended without their consent).
- 12.9 Proceedings in respect of any claim against us must be commenced within six years after you first had (or ought reasonably to have had) both the knowledge for bringing an action for damages and the knowledge that you had the right to bring such an action and in any event no later than six years after any alleged breach of contract, negligence or other cause of action. This provision expressly overrides any statutory provision which would

otherwise apply; it will not increase the time within which proceedings may be commenced and may reduce it.

- 12.10 If we and any other party or parties are liable to you together in respect of the same claim, then we shall only be liable to pay you the portion which is found to be fair and reasonable having regard to the level of our default. Therefore, we shall not be liable to pay you the portion which is due to the fault of such other party, even if you do not recover all or any money from them for any reason.
- 12.11 If we are liable to you and any other party or parties would have been found liable to you together with us in respect of the same claim if either:
- You had also brought proceedings or made a claim against them; or
  - We had brought proceedings or made a claim against them for a contribution towards our liability then any sum due from us to you shall be reduced by the proportion for which such other party or parties would have been found liable had those proceedings been brought or those claims been made.
- 12.12 Nothing in this agreement excludes or limits our liability for:
- Death or personal injury caused by negligence.
  - Fraud or fraudulent misrepresentation; or
  - Any liability if and to the extent that it is not permissible in law for such liability to be limited or excluded.

### 13. Client Money

- 13.1 Any sums received to hold on your behalf (whether received directly from you or from a third party) will be deposited into an account or accounts with any bank or financial institution (a “deposit provider” which expression shall include bank, financial institution or clearing house through which transfers are made) of our choosing. We confirm that we comply with any applicable laws and any applicable rules of a regulatory authority in respect of the making of any such deposits.
- 13.2 The rate of interest available on client accounts is significantly lower than the rate of interest which can be obtained on other bank or building society accounts due to the fact that immediate access is required to client accounts in order to comply with the accounts rules. Interest rates payable on client accounts are extremely low – around 0.1% and the Bank of England base rate is 0.5%. This means that the sums of money involved are negligible.
- 13.3 Our policy on interest reflects these factors. We will keep this policy, which may be affected by any increase or decrease in the Bank of England base rate, under review.
- 13.4 Interest will be paid at the rate payable upon our client account from time to time, unless there are specific circumstances which lead you to contract out of the right to receive interest payments (for example where you agree that we may keep interest payments to remunerate us for acting as stakeholder in the transaction or where your religious beliefs prohibit the receipt of interest).

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- 13.5 For cleared funds paid into general client accounts, we shall account to you for interest unless the amount of interest calculated on the balance held is £20 or less.
- 13.6 All interest arising from cleared funds held on behalf of a trust will be credited to the trust whether those funds are held in a general client account or a separate designated client account.
- 13.7 In certain circumstances a separate designated client account will be opened on your behalf. All interest arising from such funds held in separate designated client accounts will be credited to you.
- 13.8 Where sums of money are held in relation to separate matters for you, the money relating to the different matters shall be treated separately unless it is fair and reasonable in the circumstances to consider the sums together.
- 13.9 Interest will not accrue on any advances from us to you under rule 14(2)(b) of the SRA Accounts Rules 2011 to fund a payment on your behalf or on behalf of a trust in excess of funds held for you or the trust.
- 13.10 If you fail to present a cheque to your bank for payment we will not recalculate any amount due to you unless it is fair and reasonable to do so, for example if the cheque has been sent to an incorrect address.
- 13.11 We will usually account to you for interest arising under our policy at the conclusion of your matter, but might, in some cases, consider it appropriate to account to you at intervals throughout.
- 13.12 We shall not be liable for any loss which you or any third party may suffer in connection with an Insolvency Event occurring in relation to any deposit provider with whom we have deposited funds or through whom transfers are made, save if and to the extent that any such loss was caused by or contributed to by any breach by us of clause 13.1.
- 13.13 In clause 13.12 an "Insolvency Event" means:
- (a) Any deposit provider is unable or admits inability to pay its debts as they fall due (or is deemed to be unable to pay its debts under applicable law), suspends or threatens to suspend making payments on any of its debts or, by reason of actual or anticipated financial difficulties or commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.
  - (b) The value of the assets of any deposit provider is less than its liabilities (taking into account contingent or prospective liabilities);
  - (c) A moratorium is declared in respect of any indebtedness of any deposit provider;
  - (d) Any corporate or government action, legal proceedings or other procedure or steps taken in relation to:
    - (i) The suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any deposit provider;
    - (ii) A composition, compromise, assignment or arrangement with any creditor of any deposit provider;
    - (iii) The appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of any deposit provider or any of its assets;
    - (iv) Enforcement of any security interest (however so described) over any assets of any deposit provider; or
    - (v) The prevention or restriction (whether by way of freezing order or otherwise) of a deposit provider's ability to dispose of, deal with or diminish the value of its assets or any of them.
  - (e) Any event analogous to those set out in clause 13.13(d) occurs in any jurisdiction in respect of any deposit provider.
- 13.14 If an Insolvency Event occurs in relation to any deposit provider which holds money that we have deposited on your behalf, you agree that we may, where applicable, disclose to the Financial Services Compensation Scheme ("FSCS") all relevant details in our possession about you and the money that we hold on your behalf with such a deposit provider. However, if you do not wish us to make any such disclosure, please notify us by writing at our registered office. Please note that by withholding consent to our disclosure of your details to the FSCS in such circumstances, you may forfeit any right you may have to receive compensation from the FSCS where an Insolvency Event occurs in relation to a deposit provider holding money which we have deposited on your behalf. Compensation for deposits is limited to £75,000 for any individual's total deposit with that service provider, including any personal finances. Further information regarding the FSCS can be found at [www.fscs.org.uk](http://www.fscs.org.uk), telephone number 0800 678 1100 or 020 741 4100.
- 14. Confidentiality and Data Protection**
- 14.1 We shall keep information passed to us confidential and will not disclose it to third parties except as authorised by you or required by law. In certain circumstances the law requires us to disclose information relating to you (for example, payments of interest earned on a clients' account may have to be disclosed under the EU Savings Directive).
- 14.2 We may in some cases consult credit reference agencies in order to assess your creditworthiness or to trace you in the event that you do not pay our fees. If you are an individual, we require your consent before we do this. Details of the credit agency we use are available on request. We have procedures designed to ensure that personal data is used only by appropriately authorised and trained personnel and to safeguard such information against accidental loss or unauthorised disclosure. We will keep that information strictly confidential unless otherwise required by law or court order.

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- 14.3 During the course of our work it may be necessary to discuss your case with cost specialists, experts or counsel to progress your case.
- 14.4 We promise to respect the data we hold on you. By this Agreement, you authorise us to keep your details on our database so that we can provide you with legal services and for administration and accounting purposes, so that we can make credit searches. All information that we hold concerning you as an individual will be held and processed by us strictly in accordance with the provisions of all relevant Data Protection Legislation, including the Data Protection Act 2018, the Data Protection Directive (95/46/EC), the General Data Protection Regulations (EU)2016/679 and applicable law which implements such Regulations within the United Kingdom.
- 14.5 We will not, without your consent, supply your name and address to any third party except where:
- It is necessary as part of the legal services that we undertake; or
  - We are required to do so by law or our professional rules; or
  - We have your express consent to do so.
- 14.6 External firms, organisations or Consultants may conduct audit or quality checks on us. This could mean that your file is selected for checking, in which case we would need your consent for the checking to occur. All such checks are conducted by individuals who have provided us with a Confidentiality Agreement. If you do not want us to make your file available for checking you must notify us immediately and we will mark your file accordingly. If you refuse to give us consent to checks, your refusal will not affect the way your case is handled in any way.
- 14.7 To improve our quality of service and risk management, we may monitor the content of any email and/or telephone conversation between you and any person at the Firm.
- 14.8 Sometimes we ask other companies or people to do typing or processing work on our files to ensure this is done promptly. We will always seek a confidentiality agreement with these outsourced providers. If you do not want your file to be outsourced please tell us as soon as possible.
- 15. Communication**
- 15.1 We will aim to communicate with you by such method as you request. More often than not this will be in writing (by letter or email) but may be by telephone, if it is appropriate.
- 15.2 Where you provide us with email addresses, we will assume, unless you tell us otherwise in writing, that we may send material to you using this method. We shall assume that your arrangements are sufficiently secure and confidential to protect your interests and you accept that there are risks involved in sending sensitive information in this manner as the internet is not secure.
- 15.3 We will assume that the purported sender of an email is the actual sender and that any express or implied approval or authority referred to in an email has been validly given.
- 15.4 We will take reasonable steps to protect the integrity of our computer systems by screening for viruses on emails sent or received to you or others. We expect you to do the same for your computer systems.
- 15.5 Data we send by email is not routinely encrypted, so please tell us if you do not want us to use email as a form of communication with you or if you require data to be encrypted.
- 15.6 We may communicate with others when appropriate by e-mail but we cannot be responsible for the security of correspondence and documents sent by e-mail.
- 16. Referrals to Third Parties**
- 16.1 If we recommend that you use a particular firm, agency or business, we shall do so in good faith and because we believe it to be in your best interests. If we recommend that you use a particular firm, agency or business that can only offer products from one source, we shall notify you in writing of this limitation.
- 16.2 If we recommend that you use a particular firm, agency or business, we shall not be liable to you for any advice you may be given by that firm, agency or business and you are advised that if that firm, agency or business is not another firm of solicitors you will not be afforded the regulatory protection of the Solicitors Regulation Authority (SRA) or of the SRA's Code of Conduct and SRA Indemnity Insurance Rules, nor shall you be entitled to the benefit of the SRA Compensation Fund.
- 17. Hours of Business**
- 17.1 Our offices are open between 9.00am and 5.00pm, Monday to Friday, excepting bank holidays. We do not provide an out of office or emergency service to clients. The person responsible for your matter may, at his or her absolute discretion, provide you with a mobile telephone number, and may endeavour to take your telephone calls outside of office hours, but this must not be interpreted as an agreement to routinely deal with your matter or to take your telephone calls outside of office hours.
- 18. Anti-Money Laundering**
- 18.1 Identity Checks
- All solicitors are obliged to carry out customer due diligence ("CDD") in accordance with the UK anti-money laundering and counter-terrorist financing regime. This includes us obtaining and keeping documentary evidence of the identity of clients and gaining an understanding of their financial status and normal business affairs.
  - In order to satisfy ourselves of your identity and address, and the identity and authority of your representatives before starting or continuing work on your behalf, we may refer to external sources, including on line sources and reserve the right to charge a fee for this service.
  - For all companies we shall carry out a search of Companies House (or similar registry in foreign jurisdictions) and may ask for further information.
  - For non-listed companies and other organisations, we shall also require the evidence for individuals for one or more Directors, Company Secretaries, Shareholders, Partners or other persons authorised to represent the organisation.

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- (e) For other legal entities we shall inform you of the evidence required to confirm identity.

### 18.2 Disclosure to Authorities etc.

- (a) We are in certain circumstances obliged under Anti Money Laundering legislation to make a report to the National Crime Agency ('NCA') where we are suspicious that any matter or transaction in which we are instructed involves the proceeds of criminal conduct. We may be prohibited by law from informing you or anyone else when such a report has been made, and it is possible that we may not be allowed to proceed with the transaction or matter concerned until NCA gives us permission to do so. We may not be permitted to tell you anything about any of these circumstances should they occur.
- (b) If any term or provision of these terms of business or our Client Care Letter is inconsistent with complying with our legal obligations under Anti-Money Laundering legislation, our legal obligations will override the inconsistent term which shall be deemed modified accordingly.
- (c) We shall not accept any liability for any loss caused to you or any other party as a result of our refusal to proceed with a matter or transaction or otherwise complying with our legal obligations.

### 18.3 Cash Payments

- (a) As our policy is only to accept payment by cheque, card or bank transfer, we cannot accept any cash payments.

### 19. Equality and Diversity

- 19.1 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.
- 19.2 If you have any special requirements in relation to the way in which you would like us to handle your work, (for example, if you consider yourself to have a disability) please let us know.

### 20. Rights of Third Parties

- 20.1 Except as stated otherwise in clause 12.8, a person who is not a party to this agreement shall not be entitled to enforce any of its terms.

### 21. Applicable Law.

- 21.1 These terms and our Client Care Letter and Conditional Fee Agreement shall be governed by, and interpreted in

accordance with English law. Any disputes or claims concerning this agreement and any matters arising from it shall be dealt with only by the courts of England and Wales.

- 21.2 If we or you do not enforce our respective rights under this agreement at any time it shall not prevent either us or you from doing so later.
- 21.3 If any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect.

**A copy of these Terms of Business is available in larger print. Please contact us if you require a copy.**

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