

terms of engagement

1. General

These terms of engagement ("the Terms of Engagement") apply to the delivery of services by summers nigh law llp ('us' or 'we') to the client ('you') in accordance with the letter and/or confirmation of instructions enclosing or referring to the Terms of Engagement ('the Engagement Letter').

The Terms of Engagement and the Engagement Letter may be varied in writing subsequently by agreement between you and us. If there is any conflict between the Terms of Engagement and the Engagement Letter, the Engagement Letter will prevail.

The Engagement letter is open for acceptance for fourteen days from the date of issue, unless otherwise indicated.

The Terms of Engagement together with the Engagement Letter shall form the sole basis of the contract ('the Contract') between you and us notwithstanding anything to the contrary stated in your terms and conditions of business, unless we agree otherwise in writing.

2. Exclusion of Liability for Members and Employees

The Contract is made between you and us. No member or employee of summers nigh law llp will be personally liable to you in the event of a breach of the Contract.

No member or employee of summers nigh law llp accepts and/or assumes personal responsibility to you or to any third party for carrying out any work under the Contract.

No member or employee of summers nigh law llp will be personally liable to you or any third party for any loss or damage suffered by you or by any third party arising from any negligence or breach of fiduciary duty.

3. Limitation of Liability

This clause relates exclusively to all work carried out by us under the Contract that is not carried out under a contentious business agreement as defined by Section 59(1) of the Solicitors Act 1974. Our maximum liability for any loss or damage arising out of any action for a breach of the Contract, our negligence or breach of fiduciary duty including interest and costs shall be limited to the lower of :

- (1) £ 3 million; and
- (2) The amount of any loss caused directly by us.

Subject to the provisions of this paragraph 3 we shall not be liable to you for any consequential, special, indirect or exemplary damages or punitive loss, damage, costs and expenses; loss of profit/opportunities; loss of business; loss of reputation; depletion of goodwill; or loss of, damage to or corruption of data.

We can only limit our liability to the extent the law allows. In particular, we cannot limit our liability for death or personal injury caused by our negligence. Please ask if you would like us to explain any of the terms above.

4. Insurance

In accordance with the disclosure requirements of The Provision of Services Regulations 2009 we have Professional Indemnity Insurance giving cover for claims against the firm. Details of this insurance, including contact details of our insurer and the territorial coverage of the policy, can be inspected at our office or made available on request.

5. Regulated Services

We are authorised and regulated by the Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham, B1 1RN (the SRA). This means we are governed by a code of conduct and other professional rules which you can access on the SRA's website www.sra.org.uk or by calling 0370 606 2555.

6. **Your Instructions to Us**

We may rely upon instructions given to us either orally or in writing by any person in your organisation that we reasonably believe to be authorised by you to communicate with us. In the case of initial instructions given to us orally we will normally write to you confirming our understanding of the services to be provided and you should contact us as soon as possible if there is any change in those instructions.

We may communicate with you by electronic mail. This is a proven method of fast, economic information exchange which will help us to ensure an efficient service to you. Information sent over the internet is not entirely secure or reliable. While we will always seek to contact you by another method of communication, or at another email address, if we receive a notification that email has failed to reach you, we will presume that emails have reached you in the absence of such a notification. If you do not wish us to communicate with you by email please let us know as soon as possible.

7. **Service Standards**

We will update you in writing with progress on your matter regularly and, at a minimum, every six weeks.

We will communicate with you in plain language.

We will explain to you in writing the legal work required as your matter progresses.

We will update you on the cost of your matter regularly and, at a minimum, every three months.

We will update you on whether the likely outcomes still justify the likely costs and risks associated with your matter whenever there is a material change in circumstances.

We will update you on the likely timescales for each stage of the matter and any important changes to those estimates.

We will continue to review whether there are any alternative methods by which your matter can be funded.

8. **Responsibilities**

We will review your matter regularly.

We will advise you of any changes in the law.

We will treat you fairly and with respect.

We will advise you of any circumstances and risks of which we are aware or consider to be reasonably foreseeable that could affect the outcome of your matter.

You will provide us with clear, timely and accurate instructions.

You will provide all documentation required in a timely manner.

You will safeguard any documents which are likely to be required for discovery.

9. **Provision of Services**

The Engagement Letter will identify who will assume overall responsibility in relation to each set of instructions received from you ("the Supervising Principal"). The Supervising Principal will deal with any routine queries if the fee earner dealing with your case ("the Fee Earner") is away from the office and any issues you have in relation to the services being provided to you.

The Fee Earner and Supervising Principal can be contacted by e-mail or on telephone number 0844 880 5372 during working hours (9am to 5.30pm) Monday to Friday. We do not provide any out-of-hours or emergency service.

We will provide services for your benefit and information only and on the basis that advice given (in any format) shall not be disclosed to any third party without our prior written consent. You may however disclose any advice given to your other professional advisers for the purposes of seeking their advice in relation to your affairs. We accept no liability to such third parties in connection with our services.

Any expression on our part concerning the outcome of any matter we are instructed on by you is an expression of our professional opinion and is not a guarantee. These opinions are necessarily limited by our knowledge of the relevant facts and are based on the state of the law at the time they are expressed.

10. Legal Costs

There are three main elements to the legal costs of any matter:

- (1) our charges
- (2) expenses we must pay out on your behalf (disbursements)
- (3) costs that you may have to pay another party

We will add VAT to our charges at the prevailing rate.

Short outgoing letters and routine phone calls are charged at 1/10 of an hour. All other work is timed in six minute units and charged at the relevant hourly rate.

11. Confidentiality

We will hold confidential information about you and your affairs in the strictest confidence. We will only disclose such information to a third party if required to do so by law or if you have given your prior written consent to such disclosure.

However, solicitors may be required by statute to make disclosure to the Serious Organised Crime Agency where they know or suspect that a transaction may involve money laundering or terrorist financing. If we make a disclosure in relation to your matter we may not be able to tell you that a disclosure has been made. We may have to stop working on your matter for a period of time and may not be able to tell you why.

We may refer to work undertaken on your behalf in proposals, marketing literature and other publications unless you expressly prohibit such disclosure or such disclosure is prohibited by any agreement or court order.

12. External Auditing

External firms or organisations may conduct audit or quality checks on our practice (eg. the SRA). These external firms or organisations are required to maintain confidentiality in relation to your files. Please contact us if you do not wish your files to be disclosed to external auditors.

13. Data Protection

We use the information you provide primarily for the provision of legal services to you and for related purposes including, but not limited to, updating and enhancing client records, analysis to help us manage our practice statutory returns and legal and regulatory compliance.

Our use of that information is subject to your instructions, the Data Protection Act 1998 and our duty of confidentiality. Please note that our work for you may require us to give information to third parties such as expert witnesses and other professional advisers. You have a right of access under data protection legislation to the personal data that we hold about you. You may request details of any personal information that we hold about you at any time. We may charge a fee in relation to the provision of our records in response to such a request. If you believe that any of the information that we hold in relation to you is incorrect please notify us as soon as possible and we will correct any such errors as soon as possible.

We cannot absolutely guarantee the security of information communicated by email or mobile phone. Unless we hear from you to the contrary, we will assume that you consent for us to use these methods of communication.

14. Ownership of Books And Papers

Documents including: working papers, letters, emails, memoranda, draft documents and copies of original documents, Counsel's advice and opinions and medical and witness reports which are prepared by us or by third parties for your benefit and which have been paid for by you, either directly or indirectly, belong to you.

After completing your work we will be entitled to keep all your papers and documents whilst there is still money owed to us for fees and expenses.

15. Storage of Books And Papers

After a matter has completed, and except those papers that you ask to be returned to you, we will keep our file of your papers for up to 7 years. We keep files on the understanding that we can destroy them after 7 years after the date of the final bill.

We will not destroy documents you ask us to deposit in safe custody. We will apply a storage charge of between £10 to £50 plus VAT for storage of all files and papers in the meantime. The charge will depend upon the volume of files and papers held in storage.

If we take papers or documents out of storage in relation to continuing or new instructions to act for you, we will not normally charge for such retrieval. However, we may charge you for:

1. time spent producing stored papers that are requested and the costs of retrieval;
2. reading, correspondence or other work necessary to comply with your instructions in relation to the retrieved papers together

16. Email Opt In

We may from time to time email you with information that we think may be of interest to you. By accepting the Terms of Engagement you have opted in to receiving such electronic communications. If you do not wish to receive such information please notify us so that we may remove your name from our mailing list as soon as reasonably possible.

17. Payment Terms

Our fees may take into account a number of factors including the time spent by us in providing services to you, the complexity of the matter, the specialist knowledge involved, the value of the transaction and the speed within which the services are to be performed.

Our charge-out rates are reviewed annually on 1 May. Prior to commencing any new matter on your behalf we will let you know of any changes to the hourly rates. If we are undertaking a matter on your behalf that carries over from April into May of any year our hourly rates may increase and we will inform you of this at the time.

To allow you to assess the cost of our services we may invoice you on an interim basis, normally at thirty day intervals, throughout the provision of the services to you.

Invoices are payable within thirty days of their date. If any invoice that we issue to you becomes overdue then all invoices that we have issued to you shall immediately become due and payable and we reserve the right to commence proceedings against you in respect of all such unpaid invoices. We do not accept cash as a means of payment of our invoices.

We reserve the right to charge interest on overdue amounts at the rate specified in The Late Payment of Commercial Debt (Interest) Act 1998 from the date payment is due and to seek statutory compensation for the late payment pursuant to The Late Payment of Commercial Debt Regulations 2002.

For travel, our standard policy is First Class rail and Business Class air travel within the UK and Club Class or equivalent for overseas travel. Travel by car is currently charged at 0.90p plus VAT per mile but may be reviewed from time to time.

In addition to our costs you will have to pay for any disbursements properly incurred by us on your behalf, including but not limited to: Court fees, telegraphic transfer fees, travel and subsistence costs, Counsel's fees, trade mark agent's fees, company search fees, courier fees, stamp duty, local search fees, environmental search fees and Land Registry Fees.

If any of our invoices remain unpaid for sixty days we reserve the right not to carry out any further work on your behalf, or on behalf of anyone connected with you, until such invoices are settled in full.

All fees and (where applicable) disbursements charged to you will be subject to VAT in accordance with VAT regulations.

18. Payment of Interest

Any money received on your behalf will be held in our client account. You are entitled to be paid interest if it is fair and reasonable in all the circumstances to do so and subject to the terms set out below. Interest will be calculated and paid to you at the rate set by the bank at which this firm's client account is held from time to time ("the Bank") on that account. That interest rate may change and may not be as high as the rate obtainable by you and may be nil and is subject to the amount and length of time cleared funds are held, the need for instant access to these funds and the Bank's policy on compounding interest. If interest is payable, it will be calculated from the date the funds were received by us until the date(s) on the cheque(s) issued to you or the date of any bank transfer to you.

Interest will not be paid on the monies in client account if:

- (1) the amount calculated is £20 or less or no interest is paid by the Bank on our client account; or
- (2) we hold the money not exceeding the amount shown in the left hand column below for a time not exceeding the period indicated in the right hand column:

<u>Amount</u>	<u>Period</u>
£ 1,000	8 weeks
£ 2,000	4 weeks
£10,000	2 weeks
£20,000	1 week

- (3) we hold a sum of money exceeding £20,000 for one week or less, unless it is fair and reasonable for interest to be paid having regard to all the circumstances; or
- (4) the money is held for payment of counsel's fees and counsel has requested a delay in settlement.

We reserve our right to charge a reasonable fee for the handling of your money if the service provided is out of the ordinary.

We will normally account to you for any interest due at the conclusion of your matter but will account to you at regular intervals throughout a matter if considered appropriate.

19. Distance selling

If we have not met with you the Consumer Protection (Distance Selling) Regulations 2000 apply. This means you have the right to cancel your instructions to us within seven working days of receiving the Engagement Letter. You can cancel your instructions by contacting us by post or by fax to this office.

Once we have started work on your file you may be charged if you cancel your instructions. If you would like us to commence work on your file within the next seven working days please sign the Engagement Letter and return it to this office, by post and fax, and request that we commence work immediately.

20. Undertakings

We are commonly required to provide undertakings on behalf of our clients. These are commitments that are binding on us to undertake certain actions to assist with transacting business on your behalf (for example to send money or documents to a third party). Where we give an undertaking on your behalf we will be entitled to ignore any instructions that you give to us after the giving of the undertaking which, if we complied with those instructions, would cause us to be in breach of that undertaking.

21. **Financial Services**

We are not authorised by the Financial Services Authority. If, while we are acting for you, you need advice on investments we will have to refer you to someone who is authorised to provide the necessary advice.

22. **Complaints**

We are committed to providing high quality legal advice and client care. If at any time you would like to discuss with us how our service to you could be improved, or if you are dissatisfied with any aspect of the service you are receiving or any bill rendered to you, please let us know by speaking to the Supervising Principal as confirmed in the Engagement Letter. We will look into any complaint carefully and promptly and will do all we can to explain the position to you. If we have given you a less than satisfactory service we will do everything reasonable to put it right.

We have a written complaints procedure which is available on request. We aim to handle all complaints properly, fairly and effectively in accordance with that procedure.

If we are unable to settle your complaint using our internal complaints process, you have a right to complain to the Legal Ombudsman, an independent complaints body, established under the Legal Services Act 2007, that deals with legal services complaints. The Legal Ombudsman can be contacted at PO Box 6806, Wolverhampton, WV1 9WJ, telephone number 0300 555 0333, e-mail: enquiries@legalombudsman.org.uk, website: www.legalombudsman.org.uk. Normally, you will need to bring a complaint to the Legal Ombudsman within six months of receiving a final written response from us about your complaint or within six years of the act or omission about which you are complaining occurring (or if outside of this period, within three years of when you should reasonably have been aware of it). Generally, the Legal Ombudsman deals with complaints relating to acts or omissions that happened after 5 October 2010.

The Legal Ombudsman deals with complaints by consumers and very small businesses. This means some clients may not have the right to complain to the Legal Ombudsman, eg charities or clubs with an annual income of more than £1 million, trustees or trust which asset value of more than £1 million and most businesses (unless they are defined as micro-enterprises). This does not prevent you from making a complaint directly to us about the service you have received or about the bill.

You have the right to challenge our bill by applying to the Court to assess the bill under Part III of the Solicitors Act 1974. The usual time limit for making such an application is one month from the date of delivery of the bill. If the application is made after one month but before twelve months from delivery of the bill, the Court's permission is required for the bill to be assessed.

Unless there are special circumstances, the Court will not usually order a bill to be assessed after:

- twelve months from delivery of the bill
- a judgment has been obtained for the recovery of the costs covered by the bill
- the bill has been paid, even if this is within 12 months.

Alternative complaints bodies such as the Centre for Effective Dispute Resolution ("CEDR"), incorporating IDRS (website: www.cedr.com/idrs) exist which are competent to deal with complaints about legal services should both you and our firm wish to use such a scheme. We agree to use such a scheme as CEDR.

23. **Duties to the Court**

Your matter may involve Court proceedings. All solicitors have a professional duty to uphold the rule of law and the proper administration of justice. We must comply with our duties to the Court even where this conflicts with our obligations to you. This means that we must not:

- (1) attempt to deceive or knowingly or recklessly mislead the Court
- (2) be complicit in another person deceiving or misleading the Court
- (3) place ourselves in contempt of Court

We must also comply with Court Orders that place obligations on us and ensure that evidence relating to sensitive issues is not misused.

24. Equality and Diversity Policy

We are committed to eliminating discrimination and promoting equality and diversity in all of our dealings with clients, third parties and employees. A copy of our Equality and Diversity Policy is available on request.

25. Terminating the Retainer

You may end your instructions to us in writing at any time but we can keep all your papers and documents while there is still money owed to us for fees and expenses.

We may decide to stop acting for you only with good reason, eg if you do not pay an interim bill or there is a conflict of interest. We must give you reasonable notice that we will stop acting for you.

If you or we decide that we should stop acting for you, you will pay our charges up until that point in full. These are calculated as set out in the Engagement Letter.

26. Severability

In the event that any clause (or part thereof) of the Contract is held to be unlawful, unenforceable or invalid by any Court of law or other competent body, the remainder of the provisions of the Contract shall continue in full force and effect.

27. Governing Law And Submission To Jurisdiction

The Engagement Letter and the Terms of Engagement shall be governed by and construed in accordance with the law of England and Wales. We and you irrevocably submit to the exclusive jurisdiction of the English courts in connection with any matter arising from the contract between us.

28. Future Instructions

Unless otherwise agreed, these Terms of Business will apply to all further instructions you give to us on this or any other matter.