

terms of business (Effective from June 2016)

1. INTRODUCTION

- 1.1 Our intention is to provide you with a high quality service, handling your instructions with professional skill, care and attention. These terms set out the basis on which our services are provided and deal with communications between us and other matters relevant to our professional relationship.
- 1.2 References in these terms of business to “we” and “us” are to Ledingham Chalmers LLP, a limited liability partnership registered in Scotland (number SO300843) and having its registered office at Johnstone House, 52-54 Rose Street, Aberdeen AB10 1HA. References to “you” are to the client or the client’s authorised representative to whom our engagement letter(s) is(are) addressed.
- 1.3 Certain sections may not be relevant to your immediate circumstances. However, our objective is to build long term relationships with clients and we take the view that it is appropriate to provide you at the outset with a description of the general terms on which we provide all of our services.
- 1.4 These terms should be read in conjunction with our engagement letter(s) relating to specific items of work or ongoing work on which you instruct us and, except to the extent varied and supplemented by our engagement letter(s), they regulate the relationship you have with us.

2. INSTRUCTIONS AND AUTHORITY TO ACT

- 2.1 It is essential that we are able to identify our client. We shall be entitled to assume, unless you instruct us in writing to the contrary, that the person providing us with the initial instructions in relation to a piece of work is our client, or in the case of a corporate client, the client’s authorised representative. In particular we shall be entitled to assume that:-
 - 2.1.1 if the client is a company, we can take instructions from any director or the company secretary or anyone authorised by them to do so, and such instructions shall be binding on the company.
 - 2.1.2 if the client is a limited liability partnership (“LLP”) or partnership, we can take instructions from any member or partner or anyone authorised by a member or partner to do so, and such instructions shall be binding on the LLP and all of its members or the partnership and all of its partners.
 - 2.1.3 if the client is a corporate or unincorporated body (other than a company or partnership or LLP) we shall be entitled to take instructions from anyone authorised by the body to do so and such instructions shall be binding on the corporate or unincorporated body.
 - 2.1.4 if there are joint clients, we can take instructions from either or any of them, and the instructions of any one of them shall bind all others.
 - 2.1.5 our engagement letter relating to a specific item of work where accepted in writing (whether by letter or email), or verbally, or by implication by the continuation of instructions has been so accepted by the person or persons entitled to do so.
- 2.2 Where we act for more than one person, each person for whom we do work is jointly and severally liable for the instructions given to us and for payment of our fees and outlays in connection with the matter instructed. If your responsibilities under this paragraph are unclear we will be pleased to explain this further.
- 2.3 As solicitors we act as your agents and can act only on information and instructions given to us. We will require from you clear guidance on who is authorised to give us such instructions. You should not assume that we have knowledge of any factual matters. Unless we receive specific instructions from you to the contrary, we will accept instructions from you either verbally, in writing or by email, although we may ask you to confirm verbal instructions in writing or by email.

- 2.4 You will be legally bound by action taken by us on your behalf in accordance with your instructions. We shall not be responsible for any failure to advise or comment on any matter which falls outside the scope of your instructions. Your business will, where possible, be handled by those individuals notified to you from time to time and unless otherwise specified you should normally address all communications to them. We can generally be contacted during core office hours (Monday-Friday 9.00am-5.00pm). If you have any difficulty in making contact, then you are asked to leave a message which will be passed on promptly, or use email.

3. REPORTING

- 3.1 We do not have any universal pattern for reporting on individual matters as the form and frequency of reporting will depend on the nature of the matter and your particular requirements.
- 3.2 We shall be entitled to report to you verbally or by letter or email. Where we report to you by letter or email we shall report to the last address which you have provided to us and we shall be entitled to assume that this address is secure and confidential, unless you advise us in advance to the contrary.

4. MONEY LAUNDERING COMPLIANCE

- 4.1 The Money Laundering Regulations (“Regulations”) and related legislation impose strict obligations on us to be satisfied as to the identity of our client and as to the source of any funds used in transactions in which we are involved even as advisers.
- 4.2 A late change of source of funds may delay completion of a transaction.
- 4.3 We are also required to update our client identification records from time to time and we may request additional verification if you change your contact details (eg email address) while we are undertaking work for you.
- 4.4 In order to comply with the Regulations relating to identity, we may obtain confirmation electronically from an external searching company to verify your identity using personal information which you have provided to us, including, for example your full name, date of birth and address. In addition we may require to obtain at least two forms of verification of identity as follows:-

Individuals - two sources of identification at least one of which must contain an official photograph (eg passport or driving licence which are the usual forms provided). The other must show your current address (eg a recent utility bill or bank statement addressed to you and dated within the last three months).

We need to see the originals and photocopies are insufficient. If we do not have the opportunity of meeting with you face to face we may require further evidence of identification to comply with the Regulations. We retain copies on file to evidence our compliance with the Regulations.

Partnerships and LLPs – a copy of the certificate of incorporation of the LLP, the partnership agreement and two sources of identification as above for, in most cases, each of the partners.

Trusts – the trust deed plus two sources of identification as above for each of the trustees with identification of the ultimate beneficiaries.

Companies – a copy of the certificate of incorporation of the company and any change of name certificates and two sources of identification (as above) for the directors in control of the company and all individuals owning 25% or more of the company, with identification of the ultimate beneficial owners (if different).

Charities – evidence of the registration of the charity with its regulatory authority and the information described above (for trustees or directors depending on the legal form of the charity).

- 4.5 The Regulations direct that we obtain the requisite documentation from you or verify your identity electronically before we carry out any significant amount of work for you and we are required to stop work if this is not provided to us promptly.
- 4.6 We are required to be able to link the sources of identification with the person for whom we are acting. If the documentation cannot be presented to us personally, alternative arrangements such as electronic identification checks must be made which satisfy the regulatory requirements to which we are subject in common with other organisations in the financial and professional services sectors.
- 4.7 In order to comply with the Regulations relating to source of funds where we are handling a transaction on your behalf:-
 - 4.7.1 you are required to disclose to us at the outset the source or sources of funds which you will use to fulfil your obligations in the transaction; and
 - 4.7.2 we are required to verify that the funds used have indeed come from the source or sources you disclosed. This involves identifying the account from which funds are remitted.
- 4.8 We are unable to act for you, and may need to withdraw during the course of a transaction, if you fail to provide us with the information requested.
- 4.9 Aside from the strict requirements of the current legislation we are bound to observe the “know your client” principle which helps us to ensure that we can serve your legal requirements effectively and minimise the risk of delay resulting from compliance issues.
- 4.10 Except in special circumstances which are cleared with us at the outset, where we are acting for you in a residential or commercial property matter, the full amount payable must pass through our account at completion of the transaction.

5. FEES AND CHARGES

5.1 General

- 5.1.1 Unless agreed in advance between us in writing, fees are charged on the basis of time spent on the work (recorded contemporaneously).
- 5.1.2 Our invoices are, except where special arrangements are made, payable on receipt.
- 5.1.3 Where relevant an indication of fee rates for the current calendar year will be provided and any changes will be advised from time to time. In any event rates are generally reviewed annually, and changes will be advised to you from time to time.
- 5.1.4 Only when a change to the rates applicable to the work being carried out on your behalf has been intimated to you, either by letter or by email, will the amended rates apply.

5.2 Estimates

- 5.2.1 We may be able to provide, within the terms of our Letter of Engagement, an estimate of fees and outlays before commencing work but, unless we confirm in writing that our charges are fixed at a specific figure, any estimate will simply be an indication of the likely fees and outlays based on our experience of the amount of work involved in a typical transaction of the kind involved. We will endeavour to contact you for authorisation before incurring charges beyond any estimate. Estimates are subject to revision and are not a commitment by us to carry out the work for the fee stated in the estimate.

5.3 Disputing our Charges

- 5.3.1 Fees which are not agreed in advance may be subject to independent assessment.
- 5.3.2 You and we are entitled to require our file to be assessed by an independent assessor (“Assessor”) if you are not happy about the fee charged.
- 5.3.3 In such a case the file is passed to the Assessor who will determine what he considers to be a fair and reasonable fee in all the circumstances.

- 5.3.4 The Assessor may fix a fee higher or lower than the fee charged. If it is lower, then we shall pay the costs of the assessment. If, however, he determines a higher fee or confirms the fee as charged, then you shall be responsible for the costs of the assessment.
 - 5.3.5 You and we shall be bound by the decision of the Assessor and you shall pay to us the amount as determined by the Assessor, irrespective of whether the assessed amount is higher or lower than the disputed fee.
 - 5.3.6 The Assessor shall be a suitably qualified person experienced in the assessment of legal fees and expenses as mutually agreed between us but failing agreement, as appointed by the President of the Society of Advocates in Aberdeen on the application of either of us.
 - 5.3.7 Any issue or question arising from an invoice sent to you, whether in relation to the method of charging, the amount of the fee, or the outlays incurred on your behalf, must be raised within 21 days of the date of the invoice. You should raise any such matters with your main contact within the firm, or with any of the partners.
- 5.4 Statement of Fees and Outlays and Payments to Account
- 5.4.1 Our invoice will include outlays which have been necessarily incurred such as travelling, accommodation and meeting expenses, property transaction costs, any court fees and counsel's fees and the fees of expert witnesses.
 - 5.4.2 Unless you instruct us otherwise, we have your authority to incur such outlays.
 - 5.4.3 Where outlays have been incurred, you will be responsible for payment of these within seven days of receipt by you of our request.
 - 5.4.4 Along with our invoice we will confirm the amount of any sums paid or received on your behalf.
- 5.5 Payments to Account
- 5.5.1 We may ask you to settle accounts and repay outlays during the course of a transaction. In such cases an interim statement will be issued.
 - 5.5.2 We proceed at all times on the basis that we have implied authority to incur those outlays which are reasonably necessary for transactions of the type being undertaken.
 - 5.5.3 Large outlays will require to be paid to us before we are due to pay them to third parties. If we request payment of outlays and you do not pay us, we shall have no responsibility to advance these monies on your behalf nor for any delay in the progress of your transaction or loss suffered by you as a result of any delay.
- 5.6 Regular Billing
- 5.6.1 We will invoice you for continuing and general work on a regular basis (which may be monthly, quarterly, half-yearly or annually as agreed) and for transactional work generally on completion of the transaction (unless the transaction is protracted in which case we may agree an interim billing arrangement).
 - 5.6.2 All accounts raised will be payable by you on receipt by cheque drawn on a UK bank or by BACS transfer to our nominated account or by credit/debit card. Value Added Tax will be charged in accordance with prevailing regulations.
- 5.7 Unpaid Accounts and Interest - Suspension of Work
- 5.7.1 We reserve the right to charge interest at 4% above the base rate of The Royal Bank of Scotland plc ("RBS") on overdue accounts.
 - 5.7.2 If an account is overdue for payment, we reserve the right to suspend all work whether in respect of the transaction to which the account relates or otherwise and retain documents and papers belonging to you and your associates, irrespective of the matter to which they relate, until all sums outstanding to us are paid.
 - 5.7.3 In addition we are required to suspend work if we request documents or explanation which we need to comply with the Regulations and you fail to provide these.

5.8 Liability to Pay our Fees

5.8.1 Where you have instructed us to set up a new company as part of any transaction you will be jointly and severally responsible with the new company for payment of our fees and outlays in connection with the whole transaction. Where a transaction is not completed for reasons not connected with our performance we are entitled to be paid for the work which we have done.

6. MONEY RECEIVED BY US

- 6.1 We request clients to make payments to us by cheque drawn on their own account or by transfer from that account. If payment is made by bank draft we will request a letter from the bank confirming that funds have come from a client's own account. We do not accept payments in cash in excess of £500 for any purpose.
- 6.2 Whenever we receive funds from a client for any purpose (whether for the settlement of a transaction, to meet outlays or for short or long term investment or otherwise), those funds will be credited to our clients account with RBS unless we receive specific instructions to the contrary in each case.
- 6.3 You will not, except at our discretion, be entitled to interest which would have been earned had the funds deposited with us been held in a separate designated deposit account unless the amount of interest would have been more than £100. All funds shall be held in accordance with the rules and regulations of the Law Society of Scotland prevailing from time to time. While base rates are below 2% it may not be possible for us to pay interest on client balances.
- 6.4 We earn interest on our deposits based on the total funds invested for clients. The rate paid on an individual deposit however depends on the size of that deposit. Illustrative rates are available on request.
- 6.5 Money held by us (and accrued interest) may be taken by us in payment or part payment of our invoices whether overdue or not. This extends to money held for any other companies which you control, or, if you are a company forming part of a group, all companies in that group.
- 6.6 Where we hold any sum between £10 and £50 at credit of your account and after making reasonable enquiry we ascertain that the address or contact details which we hold for you are no longer current, we shall be entitled to pay this sum to a charity of our choice or to the QLTR at our discretion and shall have no liability to refund the sum to you.
- 6.7 If we are asked to deposit funds in other banks we may need to make a charge to cover additional administrative costs and to impose conditions as to the availability of cleared funds as we use our accounts with RBS for all operational purposes. Any payments made by us on your behalf where payment is made through the BACS or CHAPS banking systems shall be subject to a charge to cover the Bank's fee and any additional administrative costs incurred. Such charges shall be advised to you in advance.
- 6.8 We do not accept liability for funds held on your behalf in the event of a bank or building society being unable to return funds which have been deposited with it. Your attention is drawn to the fact that the Financial Conduct Authority operates a compensation scheme for the benefit of individuals but participation, in the event of bank failure, is subject to conditions and an overall cap. Further information can be found at: www.fscs.org.uk. On conclusion of a transaction payments will be made only to our client unless the client has authorised us in writing to make payment to a third party.

7. INCIDENTAL FINANCIAL BUSINESS

- 7.1 Where you have requested us to give instructions to a stockbroker regarding the sale or purchase of shares, securities or other investments, we will not give you investment advice but, as the purchase or sale of investments constitutes a regulated activity under the Financial Services and Markets Act 2000 ("Act") and as our authorisation to carry out such work is through the Law Society of Scotland, we are obliged, under the Solicitors (Scotland) (Incidental Financial Business) Practice Rules 2004, to provide you with the following information:-

- 7.1.1 we do not have an authorisation from the Financial Conduct Authority for mainstream investment business, and are therefore not in a position to give, in relation to any purchase or sale, any advice which might constitute investment advice in terms of the Act;
- 7.1.2 we are licensed by the Law Society of Scotland to carry on incidental financial business under the Solicitors (Scotland) (Incidental Financial Business) Practice Rules 2004; and
- 7.1.3 we maintain professional indemnity insurance under the Law Society of Scotland's Master Policy. The current limit of indemnity on the Master Policy is £2 million per claim. We are also covered by the Scottish Solicitors' Guarantee Fund. This fund was established by Section 43 of the Solicitors (Scotland) Act 1980 for the purpose of making grants to compensate persons who, in the opinion of the Council of the Law Society of Scotland, suffer pecuniary loss by reason of dishonesty on the part of a Scottish solicitor in connection with the practice of that solicitor.

8. CONFLICTS OF INTEREST

- 8.1 In accordance with common standards of professional practice, as a general rule we shall only act on behalf of both parties to a transaction where both parties are existing clients and each has given their consent to us acting for both parties.
- 8.2 If a conflict arises in any case where we are representing you, we will inform you immediately and we may be unable to represent either party thereafter.
- 8.3 Special rules apply to certain exceptional circumstances, such as transactions where we act for a developer and you instruct us in the purchase from the developer of a residential property. In such circumstances we are not permitted to act for you notwithstanding that you may be an existing client. In any situation where a conflict of interest arises or where such special rules apply, we shall advise you at the earliest possible opportunity.

9. FILE OWNERSHIP & STORAGE

- 9.1 Following completion of any transaction we will either retain the file and working papers or store these records digitally.
- 9.2 The file will be destroyed or the records deleted from storage as appropriate, in accordance with the Law Society of Scotland guidelines (details of which vary according to the type of work being carried out and which can be provided to you on request). Unless you advise us, in writing, to the contrary we shall assume that you agree with this arrangement.
- 9.3 We shall be entitled to charge a fee according to the time spent in making available to you copies of any file, including the downloading, checking and collating of any material held digitally on your behalf.

10. COMPLAINTS

- 10.1 Our aim is to provide an efficient service, but if you are unhappy about any aspect, then please discuss your concerns in the first instance with the person dealing with your work. However, if that would cause you difficulty or embarrassment please speak to our Client Relations Partner whose contact details are provided in our engagement letter.

We recognise that Alternative Dispute Resolution Regulations have implemented ADR/EDR Directive 2013/11/EU to promote alternative dispute resolution as a means of redress for consumers in relation to unsatisfactory services. We have however chosen not to adopt an ADR process, and if you have any concerns about the services you receive from this firm you should contact the firm's Client Relations Partner.

10.2 If you do not receive satisfaction in this way, the Scottish Legal Complaints Commission provides a single point of contact for all complaints against legal practitioners in Scotland and does itself investigate allegations of inadequate professional service. It passes any complaints relating to the conduct of solicitors to the Law Society of Scotland. It will not consider a complaint without a complaint form which you can obtain from the SLCC at 10-14 Waterloo Place, Edinburgh EH1 3EG (telephone 0131 528 5111) or from its website: www.scottishlegalcomplaints.org.uk. SLCC guidance states that complaints should be made as soon as possible but there is a general rule that complaints should in any event be made within one year.

11. CONFIDENTIALITY

11.1 Information provided to us will be dealt with in confidence and will only be disclosed to parties authorised by you or as required by the Law Society of Scotland or any other authorised body.

11.2 Under the Regulation of Investigatory Powers Act 2000 our email system and internet is subject to random monitoring and recording.

12. DATA PROTECTION

12.1 We are registered under the Data Protection Act 1998. By instructing us to act on your behalf, you explicitly consent to the lawful storage, processing and retrieval of information about you, including sensitive personal data, on our files and records.

12.2 We know that it is important to protect the information our clients provide. Our policy to protect your privacy pursuant to the Data Protection Act 1998 is available on request.

13. FREEDOM OF INFORMATION

13.1 If you are a public authority (within the terms of the Freedom of Information Act 2000 or the Freedom of Information (Scotland) Act 2002) you must advise us immediately on any occasion where a request for disclosure is received by you relating to either advice given by us or the terms on which services have been provided to you by us. Unless agreed with us in advance, you must utilise all available statutory exemptions to prevent any such disclosure.

14. INFORMATION PROVIDED ELECTRONICALLY

14.1 Where we provide documentation, information or advice to you electronically this has not been individually checked for viruses.

14.2 Although our computers are loaded with virus protection software and we take various measures to reduce the risk of viruses finding their way on to our computers and disks, we cannot guarantee that any file or message sent to you electronically is free from viruses and it is a condition of our supplying the documentation, information or advice electronically that any liability on our part in respect of, or arising directly or indirectly out of, any virus is excluded.

14.3 We recommend that you run virus checking software and check any electronic transmission thoroughly on receipt and before opening or using any file or message sent to you electronically.

15. CRITICAL DATES

15.1 After completion of your work, we cannot accept any further responsibility for reminding you of important future dates that relate to such work. Any reminders which we do issue are given without liability on our part (except where this is specifically agreed to be within the scope of our work).

16. THE CONSUMER CONTRACTS (INFORMATION, CANCELLATION AND ADDITIONAL CHARGES) REGULATIONS 2013

- 16.1 If you are an individual client (rather than a business client) and engage us out of our offices, for example, at home or in hospital, you have the right to a “cooling off” period of 14 days after issuance of these terms. We reserve the right not to start work until the end of that period but if you have instructed us to commence work on your behalf you will be deemed to have waived your right to any cooling off period unless you advise us to the contrary.
- 16.2 If therefore you have instructed us to make a commitment on your behalf, that commitment cannot be cancelled.

17. LIABILITY AND INSURANCE

- 17.1 Although your instructions will be handled by specified individuals, your instructions are accepted by us strictly on the basis that only Ledingham Chalmers LLP will be liable to you for any losses, damages and costs suffered or incurred by you, directly or indirectly, as a result of negligence (however arising), breach of contract, breach of duty (statutory or otherwise) or other acts or omissions in the handling of your work, by whomsoever caused.
- 17.2 Unless otherwise agreed in specific circumstances, our liability in respect of all such losses, damages and costs shall be limited in aggregate to the higher of (a) £2 million and (b) any figure advised by us to you in our engagement letter.
- 17.3 We maintain professional indemnity insurance under the Law Society of Scotland’s Master Policy as well as additional indemnity cover (details of which can be provided on client request). The current limit of indemnity on the Master Policy is £2 million per claim.

18. FORCE MAJEURE

- 18.1 We will have no liability to you for loss, damage, claims or expenses to the extent arising from matters which are beyond our reasonable control in connection with our work for you.

19. JURISDICTION

- 19.1 These terms of business will be governed by and construed in accordance with Scots Law. The Scottish Courts will have exclusive jurisdiction in respect of any dispute arising out of or in connection with these terms.

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