

# GATES & MOLONEY

## Terms and Conditions of Business

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### **1. Introduction**

1.1. When you request us to advise you on a particular matter we will also send you a letter (“the Engagement Letter”) confirming your instructions. In these terms and conditions of business “we” or “us” refers to Gates and Moloney Solicitors (“Gates and Moloney”).

1.2. This Engagement Letter together with our Terms and Conditions of Business which appear below constitute the “Engagement Terms” and form the contract between us under which we will provide services to you. Acceptance of the commencement of the provision of services to you

shall be deemed to be acceptance of our engagement terms.

1.3. Our agreement to provide services may be varied by agreement during the course of the matter. In the event of any inconsistency between our Engagement Letter and these Terms and Conditions of Business the Engagement Letter shall prevail.

### **2. Responsibility for your work**

2.1. Please see the attached letter confirming the identity and qualifications of the fee earner with responsibility for your work and the name of their secretary.

2.2 We try hard to avoid changing the people who are handling your work but if this cannot be avoided, we shall notify you promptly who will be handling your work.

### **3. Instructions and Scope of Engagement**

3.1 We shall be entitled to act on the instructions of any of your apparently authorized agents and to rely on any information provided to us by such agents.

3.2 We shall carry out our engagement as recorded in the Engagement Letter(s). We shall not be responsible for any failure to advise or comment on any matter which falls outside the scope and limitations of our engagement and will have no responsibility to you to update any advice for events or changes in law which take place after the advice has been given.

3.3 Our services will not include tax advice on, or the tax implications of, any instruction or course of action unless this is expressly agreed in writing at the outset, or during the course, of a matter. We do not accept any responsibility if we do not advise you to seek tax advice and will not be liable for losses which arise as a result of any failure to seek tax advice.

3.4 If we are acting for you on a purchase we will ask you for the purposes of SDLT (Stamp Duty Land Tax) whether you own another property and whether you are a first time buyer. We rely on the answer given to us in this respect and you must ensure the accuracy of your answer. If your financial circumstances make the issues of SDLT complex you will need to seek the advice from a tax consultant.

3.5 Advice rendered by us is provided for your benefit and solely for the purpose of the instruction to which it relates. It may not be used or relied on for any other purposes or any person other than you without our prior written agreement. In particular, nothing in these terms and conditions of business confers any right on any person pursuant to the Contracts (Rights of Third Parties) Act 1999 save as provided for in Clause 13.3.

### **4. Our charges and Expenses**

4.1 We will do our best at the outset to give you an estimate of the likely overall cost in relation to a matter. There are, of course, many variables which come into play and therefore we will provide you

with an estimate based upon the information we have at any particular stage. Unless our Engagement Letter states otherwise, any estimate or quotation of costs we give you is only a guide to assist you in budgeting and should not be regarded as a firm quotation or a fixed or capped fee. We shall do our best to notify you if any estimate of our time and/or fees that we have given you needs to be changed as a result of a change in circumstances.

4.2 Our charges are primarily based upon the time we spend dealing with your matter including meetings with you and others; any time spent in travelling (for example, to and from Court or to meetings); considering, preparing and working on papers; correspondence (whether written or electronic); and making and receiving telephone calls. The hourly charging rate which will apply will be confirmed in the Engagement Letter. If there is to be a change in the hourly rates applicable to your matter, you will be notified in writing.

4.3 These rates take into account a number of factors which include the complexity of the issue, the speed at which action was to be taken; the expertise or specialist knowledge which the case requires and, if appropriate, the value of the property or subject matter involved. Accordingly, the rate may be increased if, for example, the matter becomes more complex than expected

4.4 An estimate of our costs will be provided to you at the outset and we will inform you if any unforeseen additional work becomes necessary - for example, due to unexpected difficulties or if your requirements or the circumstances significantly change during the course of the matter. We shall inform you in writing of any changes to our estimate before any extra charges and expenses are incurred. We will attempt to agree an amended charge with you. If we cannot reach agreement, we will do no further work and charge you on an hourly basis for work to date.

4.5 In any conveyancing matter, if this firm does not complete the work, we shall charge you at the fee earners hourly rate for all work which has been carried out.

### **5. Payments on Account**

5.1 It is our firm's normal practice to ask clients to make payments on account from time to time and thereby help and cover our expected charges and expenses, this also avoids delays in progressing the

matter. In cases where payments on account are required it may be helpful for you to set up a Standing Order. Please contact us if you require our bank details to set up a Standing Order.

5.2 We may at any time ask for a payment on account of costs in certain cases and this will be dealt with in the Engagement Letter. Payment on account of disbursements will normally be requested before payment is made on your behalf. If you do not make a payment on account when asked to do so we will be entitled to stop working for you.

5.3 All client money is deposited in our firm's bank account and designated as 'client account'. We bank with NatWest Bank, and therefore, we are subject to the Financial Services Compensation Scheme protection rules. In the event of our bank becoming insolvent, deposits of up to £85000 will be protected. For further information about the operation of the FSCS Rules, please look at their website at [www.fscs.org.uk](http://www.fscs.org.uk)

## **6. Bills**

6.1 Payment is due within 28 days of completion of any sale or purchase in a conveyancing transaction and within 28 days of being sent to you in any other case.

6.2 If you do not pay your bill within 28 days, interest will be charged on a daily basis at the rate of 8% per year on any outstanding balance.

6.3 In any conveyancing purchase, if you have agreed with the lenders to pay their costs, we will send you a copy of their bill if we are instructed to act for your lenders.

6.4 If we are holding any money from you on account of our costs which can be used against our bill, we will do so.

6.5 If you have any queries about your bill, these queries should be raised with the fee earner straight away. Please note that you may have a right to challenge or complain about the bill. You have the right to apply for an assessment of the bill under Part III of the Solicitors Act 1974. We refer you to Clause 11 below for further details.

## **7. Cash & Card Payments**

7.1 We are normally only able to accept cash up to a limit of £500 in any twenty eight day period. If any client circumvents this policy by depositing cash direct with our bank, we reserve the right to charge for any additional checks we deem necessary regarding the source of funds.

7.2 We are unable to accept card payments for amounts over £500.

## **8. Confidentiality**

8.1 We owe a duty of confidentiality to all of our clients. We shall not disclose to you any information given to us in confidence by or on behalf of another client even if it is material to you, without the consent of that client. You agree that we may disclose confidential information relating to your matter to our professional indemnity insurers if you make a claim against us or we discover an act or omission which could give rise to a claim. You agree that we may also disclose any confidential information that we are required to disclose in accordance with legal or regulatory obligations.

8.2 We have always sought to keep our client's affairs confidential. However, legislation on money laundering and terrorist financing has placed Solicitors under a legal duty in certain circumstances to disclose information to the NCA (the National Crime Agency). Where a Solicitor knows or suspects that a transaction on behalf of a client involves money laundering, the Solicitor may be required to make a money laundering disclosure. If, whilst we are acting for you, it becomes necessary to make a money laundering disclosure, we may not be able to inform you that a disclosure has been made or of the reasons for it.

## **9. Storage of Papers and Documents**

9.1 When your matter has completed, we are entitled to keep all your papers and documents whilst money is owing to us. Once all costs have been settled we shall keep and store our file of papers (except for any of your papers which you ask to be returned to you) for no more than six years and on the understanding that we have your authority to destroy the file six years after the date of the final bill we send you for this matter.

9.2 We do not usually make a charge for retrieving stored papers or deeds in response to continuing or new instructions to act for you. However, we reserve the right to make a charge based on the time we spend on reading papers, writing letters or other work necessary to comply with the instructions.

9.3 Property Deeds will be kept indefinitely until we receive instructions to release them from you. Wills will be kept until requested by the Executors or yourself. Lasting Powers of Attorney will be kept until cancelled.

## 10. Termination

10.1 You may terminate your instructions to us in writing at any time. For example, you may decide you cannot give us clear or proper instructions on how to proceed.

10.2 We are entitled to keep your file with all your papers and documents if money is owing to us.

10.3 We will only decide to stop acting for you if there is good reason and we will give you reasonable notice.

10.4 If you or we decide that we will stop acting for you, you will pay our charges on an hourly basis and any other expenses as set out earlier.

## 11. Raising Queries or Concerns With Us

11.1 We are confident of providing a high quality service in all respects. If however, you have any queries or concerns about our work for you, please take these up with the fee earner responsible for your case. If that does not resolve the problem to your satisfaction or you would prefer to discuss the matter with someone else, then please take the matter up with either of the directors, Helen Norton or Gabrielle Wagstaffe. We have a written complaints policy and procedure, please contact us if you require a copy.

11.2 All solicitor's practices must attempt to resolve problems that clients may have with the service provided. It is therefore important that you immediately raise your concerns with us. We value you and would not wish to think that you would have reason to be unhappy with us.

11.3 If you remain dissatisfied, you may refer your complaint to the Legal Ombudsman (LeO) by telephoning 0300 555 0333 or in writing to PO Box 6806 Wolverhampton WV1 9WJ or by email to [enquiries@legalombudsman.org.uk](mailto:enquiries@legalombudsman.org.uk)

The LeO deals with service complaints from members of the public and small businesses, charities, clubs and trusts. Please contact the LeO direct or refer to its website

([www.legalombudsman.org.uk](http://www.legalombudsman.org.uk)) for more information on whether you can use its service. Any complaint must usually be made within six years of the date of the act/omission complained about or three years from the date that you should have known about the complaint.

Please bear in mind that you may not have the right to complain in certain circumstances, for example:

- Most businesses (unless they are defined as micro enterprises)
- Charities or Clubs with an income of more than £1 million
- Trustees or trust asset value of more than £1 million

Please contact the LeO for more information should you require it.

## 12. Client Account Interest

12.1 The Firms policy is to pay to our clients all interest earned, at the rate payable by our bank on instant access deposits, for the period that it was held on that clients behalf in this firms client account unless the amount of interest earned is less than or equal to £50.

12.2 Interest payments are made in accordance with the Solicitors Accounts Rules 2011. The interest payable may be less than the rate at which you could have invested the money yourself.

## 13. Joint Clients

13.1 If we are instructed by joint clients, then all clients are jointly and severally liable for our fees, notwithstanding any agreement between you as to how you will share the cost. This means that we will be able to look to one client only, or to each of our clients to pay the whole of or any balance of unpaid fees.

13.2 Instructions are understood to be for the purposes of all those instructing us. We will act on instructions from any one of those clients unless you instruct us otherwise. Liability to pay our costs is

joint (all of the clients together) and several (each may be liable for the whole amount).

13.3 If instructions are given on behalf of a client, we are entitled to assume that the person giving the instructions has lawful authority to instruct us. If not, then that person will be liable to us as if they were our client.

#### **14. Equality and Diversity**

14.1 This Firm is fully committed to equality and diversity in all of its functions. We believe that everyone has a right to be treated with dignity and respect and we seek to ensure that the principles of fairness and equality of opportunity for all underpin all our policies, plans, procedures, processes and practices. Please contact Gabrielle Wagstaffe if you would like a copy of our equality and diversity policy.

#### **15. E-Mail**

15.1 Unless you tell us otherwise, you agree to us communicating with you, including sending bills and other confidential information from time to time, by normal unencrypted e-mail, using the e-mail address you have given us. You should be aware that there is a risk that e-mails (in particular when unencrypted) may be intercepted, delayed or corrupted, or may fail to be delivered.

15.2 We make reasonable attempts to exclude from our e-mails any virus or other defect that might harm a computer or IT system. You undertake to act likewise with any electronic communications you send to us. Neither you nor we shall have any liability to each other in respect of any claim or loss arising in connection with such a virus or defect in any electronic communication, other than where such a claim or loss arises from bad faith or wilful default.

#### **16. Limitation of Liability**

16.1 In accordance with our legal requirements we have in place a Professional Indemnity Insurance Policy with a limit of £3 million.

#### **17. Alternative Funding**

17.1 This Firm does not offer Legal Aid, if you wish to check eligibility please contact the Legal Aid Agency at [www.justice.gov.uk/legal-aid-agency](http://www.justice.gov.uk/legal-aid-agency). This Firm does not offer 'no win no fee' arrangements and if you require details of solicitors

offering such arrangements please contact The Law Society at [www.lawsociety.org.uk](http://www.lawsociety.org.uk)

#### **18. Third Parties**

18.1 Our advice is for your benefit only. Save as expressly set out, our agreement with you is not intended to confer rights on any third parties whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise.

#### **19. Investment & Insurance Advice**

19.1 We are not authorised by the Financial Conduct Authority (FCA) (formerly the FSA). We are regulated by the Solicitors Regulation Authority (SRA) which is an independent regulator.

19.2 If during a transaction you need advice on investments, we may have to refer you to someone who is authorized by the FCA, as we are not. However, as we are regulated by the Solicitors Regulation Authority, we may be able to provide certain limited investment services where these are closely linked to the legal work we are doing for you.

19.3 If you have any problem with the service we have provided for you then please let us know. We will try to resolve any problem quickly and operate an internal complaints handling system to help us to resolve the problem between ourselves. If for any reason we are unable to resolve the problem between us then we are regulated by the Solicitors Regulation Authority and complaints and redress mechanisms are provided through the Solicitors Regulation Authority and the Legal Ombudsman.

19.4 The Law Society is a designated professional body for the purposes of the Financial Services and Markets Act 2000, but responsibility for regulation and complaints handling has been separated from the Law Society's representative functions. The Solicitors Regulation Authority is the independent regulatory body of the Law Society and the Legal Ombudsman is the independent complaints handling body of the Law Society.

#### **20. Money Laundering Precautions**

20.1 Like all firms of solicitors, we are now required by law to apply procedures to guard against the risk of money laundering. It will help us to avoid any problems with your legal work if you bear in mind the following points:-

20.2 Identification checks - we may need to obtain formal evidence of your identity. This may be necessary even though we have acted for you before, or even if you are known personally to a member of staff. We will tell you if such evidence is necessary, but it may help us if you are able to bring evidence to our first meeting. Normally, the evidence we request is your passport, plus two or more documents to establish your address, such as recent utility bills, council tax statements, or bank statements not being more than three months old as proof of address. In certain circumstances we may carry out searches to verify your identity and proof of address. Please let us know if you are a PEP as defined in the current Money Laundering Regulations.

20.3 Destination of Funds - where we are to pay money out to you, we will normally do so by cheque in your favour, or into an account in your name. If you would prefer us to pay money to someone other than yourself, please tell us as early as possible, including the reason- we reserve the right to refuse any requests to pay money to anyone else other than you our client.

#### **20.4 Financial Sanctions and Frozen Assets**

We have strict obligations in respect of the UK Sanctions Regime. If you are subject to any financial sanctions or asset seizure regime or if you are a designated person on the Office of Financial Sanctions Implementation's consolidated list of financial sanctions targets, you must inform us immediately. By 'you' we mean yourself personally, any legal entity with which you are involved as owner, director, nominee, shareholder, trustee or in any other capacity. This obligation to inform us continues during the entirety of our retainer with you.

#### **21. Force Majeure**

21.1 We shall not be liable to you if we are unable to perform our services as a result of any cause beyond our reasonable control.

#### **22. Changes**

22.1 We may make changes to these Terms and Conditions from time to time. We will give you notification in writing of any changes.

#### **23. Regulation**

We are a Limited Company and are authorised and regulated by the Solicitors Regulation Authority. Our SRA number is 573745.

#### **24. Provision of Service Regulations 2009**

24.1 We comply with the above regulation by displaying the required details of our Professional Indemnity Insurance in our office.

#### **25. Data Protection Act 1998 (the "DPA")**

25.1. We are registered under the Data Protection Legislation. The personal information provided by you will be held by Gates and Moloney for record keeping and general administration in the context of our business. In most circumstances we are able to supply you, upon payment of a fee, with copies of the information we store about you and your business.

25.2 In respect of any personal information which we process during the course of a matter we will comply with our duties under the DPA and we will take reasonable steps to ensure the reliability of our employees who have access to your personal information.

25.3 External firms or organisations may conduct audit or quality checks on our practice. These external firms or organisations are required to maintain confidentiality in relation to your file(s).

#### **26. Application of these terms**

26.1. Each contract between us shall be subject to and governed by the Laws of England and Wales. Any dispute arising from or under our contract with you shall be subject to the exclusive jurisdiction of the English Courts.

#### **27. Agreement**

27.1 These Terms and Conditions apply to any legal work that we undertake on your behalf. Your continuing instructions will amount to acceptance of these Terms and Conditions, but please sign and date one copy of the supporting Letter of Engagement and return it to us immediately. Then we can be confident that you understand the basis upon which we act for you. If you wish to decline to accept our terms you must confirm this to us in writing and we will accept this as a termination of your instructions to us in accordance with Section 10 above.