



## Terms and Conditions of Business

*This leaflet sets out our terms of business, which apply in all cases unless otherwise agreed in writing. It is an important document; please read and keep it in a safe place for future reference. The terms of engagement letter sent to you by us together with these terms of business constitute the Contract between us (“Contract”) which will also apply retrospectively where the provision of services has commenced before this Contract is made.*

# Terms and Conditions of Business

## How you can help us both

You can help us by telling us what we need to know. In particular, please:

- Provide documents when we ask for them and respond promptly to requests for instructions or information;
- Tell us at the outset what you expect of us so that we can agree with you what it is possible to achieve;
- Tell us if you have personal time limits or objectives which would not be obvious to us;
- Tell us immediately if your expectations change or if you are not sure you understand what we have discussed;
- Tell us if your contact details change and notify us of any other changes that may affect the way we deal with your matter.

## Communicating with you

### Confidentiality

Solicitors are under a professional and legal obligation to keep the affairs of clients confidential. In the event that work is undertaken for you in conjunction with your other advisers, we will assume we have your authority to discuss relevant confidential information with them and to provide them with personal data and relevant documentation unless you tell us otherwise.

We may be obliged to disclose confidential information in relation to you, and any advice or opinions given by us to you or to any third party in connection with your affairs, by law or by other regulatory authority to which we are subject.

Our files are from time to time reviewed on a random basis by an independent assessor, to ensure they comply with the Law Society's Practice Management Standards and by other external assessment organisations. Your file may be selected for review unless you tell us you do not wish it to be inspected by an assessor. These external firms or organisations are required to maintain confidentiality in relation to your files.

### Joint instruction

Where two or more parties jointly instruct us we are only able to accept instructions on the following basis:

- We have each party's authority to discuss relevant confidential information with all of the joint clients.
- We will share any advice given or work undertaken with all or any of the joint clients.
- We may accept, and rely upon, instructions given by any one of the clients unless a client informs us in writing to the contrary.

### Communication by email and mobile phone

We cannot absolutely guarantee the security of information communicated by email. Unless you tell us not to do so, email will be our default method of communication.

We attempt to encrypt all email communication but where the receiving side cannot accept it, we revert to using non-encryption. We take all reasonable steps to safeguard emails and ensure they remain secure but if you would rather we do not correspond with you this way then please inform us. If there are any specific email addresses you would prefer we do not use then please inform us.

We monitor emails to investigate or detect any unauthorised use of our email system, or for any other purpose permitted by law.

While some of our partners and solicitors have social media accounts with Linked In, Facebook, WhatsApp etc. and communication via those means or by text message may be expedient in some circumstances, correspondence between us by those methods will not usually form part of our filed records. All instructions or critical communications should be confirmed in email, by letter or during a telephone conversation, to ensure it is properly recorded.

## Data protection

We adhere to all applicable data protection legislation when processing personal data. Please refer to our Privacy Policy for further information on how we process personal data and details of our Data Protection Officer. You will find our Privacy Policy online at [www.birketts.co.uk/site-information/privacy-policy](http://www.birketts.co.uk/site-information/privacy-policy), or you can request that we send you a copy by emailing us at [data@birketts.co.uk](mailto:data@birketts.co.uk).

If you have any questions regarding the content of our Privacy Policy, or if you wish to make a request to exercise your rights as a data subject (including your right to access copies of the personal data we hold about you or to stop receiving marketing communications from us), please email [data@birketts.co.uk](mailto:data@birketts.co.uk).

## Financial issues

### Our fees

Our fees are based on a number of variables including our hourly rates. Any time we spend in connection with your work is recorded and charged using such rates, including time spent reviewing letters and emails received. In appropriate cases we may in addition take into account factors which might justify a higher or lower overall fee, including the complexity of the job; its value and importance to you; an exceptional degree of urgency perhaps involving weekend working; the degree of specialist knowledge required; and anything else which makes our responsibility unusual. Our hourly rates are subject to review from time to time. We will notify you of any changes.

We reserve the right to ask you to make payments on account from time to time and to submit interim bills.

Unless otherwise agreed, our bills are payable on presentation. If we send a bill to you and we are at that time holding on your behalf (in our client account) money which is not held for another designated purpose, we shall pay (or partially pay) our bill from the money we hold. We also reserve the right to appropriate such money for the payment of a bill rendered on a separate active matter that we are handling for you.

We reserve the right to charge interest on any unpaid bills at judgement debt rate from one month after delivery of the bill. You will be responsible for any costs and expenses we incur in recovering sums due from you.

If we agree that an invoice may be paid by a third party on your behalf and the third party does not pay the invoice within 30 days, you will immediately be liable to discharge the invoice. You will be directly liable for VAT in all cases.

In litigation cases, you are directly liable to us for payment of all charges in full, whether or not it proves possible to obtain an order for costs against or payment from the other party to the litigation. You are likely to become legally responsible for the costs of your opponents if litigation is unsuccessful.

Where we accept instructions from a corporate entity, we reserve the right to request personal guarantees in relation to our fees and disbursements from appropriate persons at any stage in the transaction or proceedings unless the entity concerned has deposited sufficient funds on account. Where a client consists of two or more persons, each of those persons shall be jointly and severally liable to us for the obligations of the client imposed by the Contract.

Expenses incurred on your behalf (disbursements) include VAT if appropriate. Generally, we will only pay a disbursement without having the money first if it does not exceed £150; we will then raise a bill or ask you to reimburse the cost. In the case of larger disbursements we will usually ask you put us in funds before we pay them. Where it is necessary for monies to be transferred electronically, Birketts LLP will charge an administration fee to cover both the time and costs incurred by us. Currently our fee for this service is £30 plus VAT, reviewed annually.

Audit letters are charged at £100 plus VAT per hour with a minimum fee of £100 plus VAT. Routine copying of papers is included in our overall charging structure, however, we reserve the right to charge for photocopying where appropriate, which will be between 10p and £9.00 plus VAT per copy depending on size and colour. We also reserve the right to charge for the cost of sending faxes or for international or lengthy telephone calls.

We will never tell you of changes to important business information, such as bank account details, by email. Please notify us immediately if you receive any email or other communication purporting to be from the firm stating that we have changed our bank details or payment.

### Client funds

Money held by us on your behalf is deposited in a designated client account with one or more banks. Birketts LLP does not accept any liability to you or anyone else if such a bank holding a client account defaults in making a required payment when due, including refunding the money to you. However, if there is such a default, you may be entitled to compensation under such financial services compensation schemes as may be operated by the Financial Conduct Authority at the relevant time.

We pay gross interest to clients quarterly on money held in client account in accordance with our policy and in line with the SRA Account Rules 2019. The rate of interest applied is that considered fair and reasonable for the amount of money held. This will usually be based on an instant access account, enabling us to facilitate the necessary transactions. You are unlikely to receive as much interest as might have been obtained had you held and invested the money yourself. Interest will be calculated on a quarterly basis and accrued sums under £50 will be disregarded, but all other interest will be paid in accordance with our policy, unless some other arrangement has been agreed with you. Where a designated deposit account is held, interest due to you will be paid net of basic rate income tax unless evidence to the contrary is received.

Where we have to pay money to you, it will be paid by cheque or bank transfer. It will not be paid in cash. We reserve the right to refuse to make payment to a third party of any sum due to you.

## Files and documents

### Storage of papers

After completing work for you, we will keep the physical file of papers for a minimum of seven years and any electronic filed papers for a minimum of twenty years (except for any you ask to be returned to you) and on the understanding after that period of time, we have your authority to destroy the file. For full details of our destruction policy please request a copy of our retention and destruction policy.

We will not, however, destroy documents such as Wills or title deeds which you ask us to deposit in safe custody. We will bring closed files out of storage or reopen files to assist with answering your queries but may make a charge for this. Where we only hold a closed file or documents electronically, we can supply paper copies on request, for which we will charge you between 10p and £9.00 plus VAT per copy depending on size and colour.

### Ownership of work

We retain the copyright and all other rights in all documents and other work, whether in writing or not, provided to you. You are granted a non-exclusive licence to use such documents for the purpose for which they are provided but not otherwise. We may from time to time adapt, develop or use such documents or work for other clients and in other engagements. Unless you instruct us otherwise, you agree we may use any counsel or other expert opinions obtained for the purpose of carrying out your instructions for internal training purposes.

### Use of advice given to you

It is important that any advice we give to you is used only by you and only in the context for which it was intended. It is, therefore, a term of our engagement by you that any letters, documents, information or advice given by us to you, will only be used by you in connection with the matter on which we are advising you, and that you will not disclose or make available any details of our advice to any third parties without our prior written consent.

## Exclusion and limitations of liability

Our liability to you is limited in the following ways:

- 1 We shall not be liable for any loss or damage arising as a direct or indirect result of the provision of services being prevented, hindered, delayed or rendered uneconomic by reason of circumstances beyond our control, including but not limited to Act of God, government action, war, riot, acts of terrorism, strike, lock out, trade dispute or labour disturbance, accident, breakdown of machinery, fire, flood, storm or difficulty or increased expense in obtaining information or services of any description.

- 2 Save as stated in the paragraph 4 of this section and unless otherwise agreed with you in writing, our total liability to you in respect of our engagement for any loss, liability or damage howsoever caused, whether in contract (by way of indemnity or otherwise), tort (including negligence), misrepresentation, restitution or otherwise (in each case whether caused by negligence or not) and whether related to any act, omission, services provided to you or failure to act or delay in acting by Birketts LLP will be limited to £3 million (three million pounds sterling) in aggregate.
- 3 Where we are instructed by more than one client on a matter, the maximum amount of liability referred to in paragraph 2 (or such other amount agreed by us in writing in substitution) shall be the maximum aggregate liability that Birketts shall incur for all clients that have instructed it on such matter. The extent of Birketts' liability up to such maximum shall be allocated between relevant clients in proportion to the amount of the liabilities to such clients.
- 4 The extent to which any loss or damage will be recoverable by you from us will be limited so as to be in proportion to our contribution to the overall fault for such loss or damage, taking into account any contributory negligence by you, your other advisers and/or any other third party responsible to you and/or liable in respect of such loss. We shall not be liable to you for any indirect or consequential loss or damage whatsoever.

You agree not to bring any claim in respect of loss or damage suffered by you arising out of or in connection with our engagement (including but not limited to delay or non-performance of our engagement) against any of our partners, employees or agents even where our partners, employees or agents have been negligent. This restriction will not operate to exclude any liability that cannot be excluded at law or to exclude the liability of Birketts LLP for the acts or omissions of any of our partners, employees or agents. It is agreed that each of our partners, employees and agents will have the right to enforce this paragraph pursuant to the Contracts (Rights of Third Parties) Act 1999. We reserve any right we may have to rescind or vary these Terms of Business without having to seek the consent of our partners, employees and agents.

Nothing in these Terms of Business shall affect any liability which we may have to you in respect of any personal injury or death resulting from our negligence or any other situation where the law prohibits us from excluding or limiting our liability to you. The provisions of this Exclusion and Limitations of Liability section shall continue to apply, notwithstanding the termination of our engagement for any reason.

## General

### Termination

You may terminate your instructions to us at any time but please do so in writing. We will be entitled to retain all your papers and documents while there is money owing to us for our fees and any disbursements we have paid on your behalf even in a case where a third party would have been responsible for payment had the matter proceeded to completion.

We may decide to stop acting for you. However, we are only permitted to do so for good reason, such as your failure to pay an interim bill or to comply with our request for a payment on account. We must give you reasonable notice that we intend to stop acting for you.

If you or we decide that we should stop acting for you, you may be asked to pay our charges up to that point. These are calculated on either a time spent basis or as a proportion of the agreed fee as set out in these terms and conditions.

### Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013

This section applies to individual consumers only.

If these Regulations apply to you, you have the right to withdraw, without charge, your instructions to us on any new matter within 14 days unless these have been given or confirmed to us at a meeting, or unless you have in the meantime agreed that we should begin work.

The cancellation period will expire 14 days from the date of our terms of engagement letter sent with this leaflet. To exercise the right to cancel, you must inform us of your decision to cancel this Contract by a clear statement (e.g. a letter sent by post, fax or email). You do not need to give a reason for the cancellation. You may use the cancellation section on the Terms of Business Acceptance Form accompanying this leaflet, but it is not obligatory.

To meet the cancellation deadline, it is sufficient for you to send your communication exercising your right to cancel before the cancellation period has expired. If you cancel this Contract we will reimburse to you all payments received from you.

We will make the reimbursement without undue delay and no later than 14 days after the day on which we are informed of your decision to cancel this Contract. We will make the reimbursement using the same means of payment as you used for the initial transaction, unless you have expressly agreed otherwise; in any event, you will not incur any fees as a result of the reimbursement.

If you requested us to begin the performance of services during the cancellation period and then subsequently exercise your right of cancellation during the cancellation period you shall pay us an amount which is in proportion to what has been supplied until you have communicated to us your cancellation of this Contract, in comparison with the full contracted service.

### Equality and diversity

We are committed to promoting equality and diversity in all of our dealings with clients, third parties and employees. Please contact us if you would like a copy of our equality and diversity policy.

### Anti-corruption and bribery

It is the policy of Birketts LLP to conduct all of its business in an honest and ethical manner. We take a zero-tolerance approach to bribery and corruption and are committed to acting professionally and with integrity in all our business dealings and relationships wherever we operate. Birketts LLP and any person acting on our behalf shall not participate in any form of corrupt behaviour and shall comply with the Bribery Act 2010 and all other laws relevant to countering bribery and corruption in all countries in which we operate.

### Anti-money laundering

In common with all professional practices and financial institutions, we are required to hold verification of your identity and address to comply with this legislation. You will be requested to provide this information before we are able to proceed with your work.

When verifying your identity we may use electronic reference agencies to search sources of information relating to you. An electronic note is left on your credit record to say that a check has taken place, but it does not affect your credit rating, is not used as part of the credit vetting process, and the information is not sold to third parties. Only you and any financially associated parties will be able to view this note. If this is unsuccessful, then we may need to ask for documentary evidence from you, such as a utility bill.

On occasion, information and evidence will be required as to the source of any funding. We reserve the right to refuse cash deposits and are unable to accept cash payments in excess of £200. The anti-money laundering procedures we operate are for the protection of our clients. In certain circumstances, we are required to reveal to the appropriate authorities (without informing you) any suspicions we have of money laundering or other illegal activities.

### Criminal Finances Act 2017

The firm is committed to promoting compliance with the requirements of the Criminal Finances Act 2017 within its practices as well as in those areas in which it has influence.

The firm does not tolerate tax evasion, or the facilitation thereof in any circumstances, whether committed by or facilitated by a client, personnel or associated persons/companies.

### Outsourcing

We may outsource certain business support functions including, but not limited to, document production, IT, archiving and deeds storage and certain legal processes to third party organisations.

Where such services are outsourced we will take all reasonable steps to ensure your information is kept confidential and only processed in accordance with our instructions.

By accepting these terms, you consent to such outsourcing arrangements including the transfer of any personal data to such organisations.

### Contract

Failure or delay by us in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of our rights under the Contract.

Any waiver by us of any breach of or any default under any provision of the Contract by you shall not be deemed to be a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

If any provision of the Contract is held by any court or other competent authority to be void or unenforceable in whole or in part, the Contract shall continue to be valid as to the other provisions thereof and as to the remainder of the affected provision together with whatever modifications as shall be necessary to render the same enforceable.

### Agreement

Your continuing instructions will amount to your acceptance of these Terms of Business, including acceptance of electronic verification procedure, as referred to in the previous anti-money laundering section.

The Contract between us is governed by and construed in all respects in accordance with English Law and is subject to the exclusive jurisdiction of the courts of England.

## What you can expect from us

We want to make sure that our service meets your expectations.

Essential features of our commitment to you are:

We are independent and will only act in your interests.

We will give you clear advice that you can understand and deal with your questions promptly.

We aim to return your telephone calls the same day and answer your letters and emails within two working days.

We will keep you informed at all times about the progress of your work and will if necessary explain the risks involved in following your instructions.

Your work may be done by a partner, a solicitor or another lawyer, or a combination of any of these. We try to ensure that the same person deals with your work throughout, but if a change becomes necessary we will inform you promptly of who will be taking over your file.

The work we do is undertaken in accordance with the requirements of the SRA Standards and Regulations. Information concerning the Standards and Regulations can be found on our website [www.birketts.co.uk/about-us](http://www.birketts.co.uk/about-us) or the Solicitors Regulation Authority (SRA) website [www.sra.org.uk/solicitors/standards-regulations](http://www.sra.org.uk/solicitors/standards-regulations)

Birketts LLP is committed to high quality legal advice and client care. If you are unhappy about any aspect of the service you have received or about the bill, please contact James Austin, the Client Care Partner, by post to our Ipswich office. We have a procedure in place which details how we handle complaints which is available upon request or can be found on our website. You do have the right to object to the bill and apply for an assessment of the bill under Part III of the Solicitor's Act 1974. If you are not satisfied with our handling of your complaint you can ask the Legal Ombudsman at: PO Box 6806, Wolverhampton, WV1 9WJ or [enquiries@legalombudsman.org.uk](mailto:enquiries@legalombudsman.org.uk) to consider the complaint. 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. Information concerning the role of the Legal Ombudsman can be found at [www.birketts.co.uk/about-us](http://www.birketts.co.uk/about-us)

Information concerning our Professional Indemnity Insurance can be accessed on our website at [www.birketts.co.uk/about-us](http://www.birketts.co.uk/about-us)

*Birketts LLP is constituted as a limited liability partnership in accordance with the Limited Liability Partnerships Act 2000 and is registered in England under no. OC317545. Where we refer to a 'partner' of Birketts LLP, whether in these Terms of Business or in any other correspondence or communication with you, the term 'partner' means a member of Birketts LLP, and shall not be construed as indicating that the members of Birketts LLP are carrying on business in partnership within the meaning of the Partnership Act 1890. A list of members is open to inspection at any of our offices.*

*Birketts LLP is not authorised by the Financial Conduct Authority of England. However if, while we are acting for you, you need advice on investments, we may have to refer you to someone who is authorised to provide the necessary advice. In certain circumstances, we may provide certain limited investment advice services where these are closely linked to the legal work we are doing for you. This is because we are members of The Law Society of England and Wales.*

*Birketts LLP is not authorised by the Financial Conduct Authority. However, we are included on the register maintained by the Financial Conduct Authority so that we can carry on insurance distribution 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 the Solicitors Regulation Authority. The register can be accessed via the Financial Conduct Authority website at [www.fca.org.uk/firms/financial-services-register](http://www.fca.org.uk/firms/financial-services-register).*

*The Law Society of England and Wales is a designated professional body for the purposes of the Financial Services and Markets Act 2000. The Solicitors Regulation Authority is the independent regulatory arm of the Law Society. The Legal Ombudsman is the independent complaints handling arm of the Law Society. If you are unhappy with any investment or insurance advice you receive from us, you should raise your concerns with either of those bodies.*

*Authorised and regulated by the Solicitors Regulation Authority, number 441849.*

*VAT Number 102 0243 51*

*April 2020*

## **Registered Office**

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E:[mail@birketts.co.uk](mailto:mail@birketts.co.uk)

## **Hours of Business**

Our offices are usually open Monday to Friday (other than public holidays) between the hours of 9.00am – 5.30pm.

The switchboard is normally open between 8.30am – 5.30pm.

## **Cambridge**

T:+44 (0)1223 326600

## **Chelmsford**

T:+44 (0)1245 211211

## **Ipswich**

T:+44 (0)1473 232300

## **London**

T:+44 (0)203 5534888

## **Norwich**

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For a full list of office and contact details please visit:

[www.birketts.co.uk/contact-us](http://www.birketts.co.uk/contact-us)



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