



## CHARLES A MARSHALL LAWYERS LIMITED

### TERMS AND CONDITIONS OF BUSINESS – Small Claims Fixed Fee Agreements

For those who have difficulty in reading these Terms of Business, a large print version is available.

These standard Terms of Business contain standard terms which accompany the engagement letter.

#### Who we are

We are a Limited Company registered in England and Wales (Registered Number 11139997) authorised and regulated by CILEx Regulation for litigation and advocacy under Regulation No. 2184203.

Our professional rules can be found online at <http://www.cilexregulation.org.uk/entity-regulation/rules-and-regulations>. We are required under the CILEx Code of Conduct to notify you that CILEx Regulation may seek to access your papers and, in these circumstances, we will grant them access unless you object. Our VAT number is 312135260. Details of our Professional Indemnity Insurance are available from our office on written request. Our Professional Indemnity Insurers are China Re under policy number PI19CRE1013.

#### Business Hours

We are open Monday – Friday, between 9am-5pm. We can arrange meetings outside of those if necessary.

#### Fee Earner Details

The engagement letter will set out which Fee Earner is responsible for your case and their direct contact details are set out therein. We will try to avoid changing your fee earner however, if this is not possible then we will write to you promptly. All supervision is carried out by Julia Rutter, Director and Chartered Legal Executive Advocate & Litigator. We will send a Satisfaction Questionnaire at conclusion of each case. We are confident of providing a high quality service however, we welcome suggestions which you think may help to improve our service.

#### Fees

Small Claims cases are those which are worth less than £10,000 and which do not contain any element of personal injury. We deal with all small claims cases on a fixed fee basis and the following tariff will apply unless alternative fees have been agreed and detailed within the letter of engagement received by you:

Initial interview : £100.00 plus VAT

Drafting Claim Form or Defence : £150.00 plus VAT

Additional meetings : £100.00 plus VAT

Drafting Witness Statements £175.00 plus VAT (per witness)

Instructing Counsel and/or coming on Court record : £200.00 plus VAT

Counsel's fees are in addition to the above and a quote will be obtained for your agreement. Disbursements must also be paid by you.

If you are unhappy with what you have been charged you should let us know and we will immediately investigate the matter in accordance with our complaints procedure and you may be able to apply to the Court for an assessment of the bill under Part III of the Solicitors Act 1974.

#### Reporting

If you have instructed us following a road traffic accident then you will need to check the terms and conditions of your insurance policy as you may be required to report the road traffic accident to your Insurance Company within a specific time period. Whilst we are more than happy to seek to recover all damages from your opponent's Insurers, you may be contractually obliged to report the matter to your Insurance Company. If you do have to report the matter to your Insurance Company, please advise them that you are reporting the matter **for information purposes only**.

#### Instruction of Experts and Barristers

It may be beneficial for us to obtain assistance from others outside of the company. In particular it is usually helpful to obtain the advice of experts who can deal with certain aspects of a case. It may also be necessary to instruct a Barrister to advise or represent you. We have obtained your authority within the engagement letter to disclose information as necessary.

#### 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 to see a copy of our Equality and Diversity Policy.

#### Complaints

We are committed to providing 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 our Client Care Manager, Julia Rutter, on 01995 641067 / by email to [julia.rutter@charlesamarshall.com](mailto:julia.rutter@charlesamarshall.com) / by post to our office. We have a written procedure that sets out how we handle complaints which is available on request. If we have not resolved your complaint within 8 weeks then you may complain to our Regulator, CILEx Regulation or to the Legal Ombudsman.

If you are not happy with the way in which we dealt with your complaint and, if your complaint relates to the conduct of a member of staff then you should direct your complaint towards CILEx Regulation. Further information can be obtained by following this link to their website

<https://cilexregulation.org.uk/complaints/complain-to-us/>

Alternatively, you can ask the Legal Ombudsman at PO Box 6806 Wolverhampton WV1 9WJ to consider the complaint. Normally you will need to bring a complaint to the Legal Ombudsman within 6 months of receiving a final written response from us about your complaint or within 6 years of the act or omission (about which you are complaining) occurring (or if outside this period then within 3 years of when you should reasonably have been aware of it). The Legal Ombudsman only accepts complaints from consumers and small businesses, small charities or small associations. This means some clients may not have the right to complain to the Legal Ombudsman. This does not prevent you from making a complaint directly to us about the service you have received or about the bill.

Generally, the Legal Ombudsman deals with complaints relating to acts or omissions that happened after 5 October 2010.

If we are unable to resolve your complaint, and it relates to a contract we entered into online or by other electronic means, you may also be able to submit your complaint to a certified alternative dispute resolution (ADR) provider in the UK via the EU 'ODR platform'.

The ODR platform is an interactive website offering a single point of entry for disputes between consumers and traders relating to online contracts. The ODR platform is available to consumer clients only, i.e. where you have instructed us for purposes outside your trade, business, craft or profession. The website address for the ODR platform is <http://ec.europa.eu/odr>

#### Termination

You may terminate your instructions in writing at any time, but we will be entitled to keep all your papers and documents while there is money owing to us for charges and expenses "a lien".

We may decide to stop acting for you but only with good reason. Circumstances include but are not limited to:-

- Where you cannot or will not give clear or proper instructions on how to proceed.
- If it is clear that you have lost confidence in how we are carrying out our work
- You do not pay our costs and/or disbursements.

We must give you reasonable notice that we will stop acting for you. If we decide that we should stop acting for you, you will pay our charges up until that point. These will be calculated as per

the fixed fee/tariff agreed. You must also pay any disbursements we have incurred on your behalf.

#### **Exclusions / Limitations to Liability**

You acknowledge that your agreement is with Charles A Marshall Lawyers Limited, the Limited company, and no personal duty is owed to you by any individual Director; any Approved Manager; or any employee of Charles A Marshall Lawyers Limited.

Any advice given to you by any individual Director, Approved Manager or employee is done so for and on behalf of Charles A Marshall Lawyers Limited and not in their individual capacity. Accordingly, you agree that you will not bring any claim in respect of loss of damage against any Director, Approved Manager or employee. You agree that each and every Director, Approved Manager and employee of Charles A Marshall Limited shall be entitled to the benefit of this provision under the Contracts (Rights of Third Parties) Act 1999.

We undertake work only on the basis that our liability, if any, to you for any claim (whether for breach of contract, tort, negligence, misrepresentation, breach of statutory duty or otherwise, for any loss or damage, costs, expenses or any contractual or statutory interest howsoever caused arising out of or in connection with our services) under this retainer or otherwise relating to it shall be limited to the lower of:

- £2 million, for which we hold Professional Indemnity Insurance cover, and
- Any loss caused directly by us.

We exclude to the fullest extent possible by law all indirect or consequential loss, subject always to our liability, if any, not being below the minimum level of Professional Indemnity Insurance cover which we hold.

We will not be liable for:

- losses that were not foreseeable to you and us when this contract was formed;
- losses not caused by any breach on the part of the firm, and
- business losses, including losses sustained by any individual not acting for purposes of their trade, business craft or profession.

We believe that these limitations on our liability are reasonable having regard to the likely level of the loss we would cause to you in the event that we incurred such a liability to you and the availability and cost of Professional Indemnity Insurance, together with possible changes in its availability and the cost of obtaining it in the future. However, should you consider the limitations to be inappropriate please discuss this with us at the start of your case. We will then investigate the options with you, including the option of providing further cover at an additional cost.

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

#### **Identification**

The law requires us to obtain satisfactory evidence of the identity of each of our clients and sometimes people related to them. This is because lawyers who deal with money on behalf of their client can be used by criminals wanting to launder money. To comply with the law we have to obtain formal ID

for each of our clients which we will write to you about if we do not have this from you already on file. ID will consist of one photographic form of ID (such as passport or photocard driving licence) or, if no photographic ID is available then two forms of papers ID containing your full name and address (such as a utility bill or bank statement dated within the last 3 months). As well as this, we will carry out an electronic identification check to verify your details via an IDU Service provided by Lexis Nexis which checks your ID, such as address, mobile telephone number, etc. against credit lender records, including Equifax and Experian. The data is held by Lexis Nexis securely for 6 years and is then deleted. We only use this personal data for the purposes of preventing money laundering or terrorist financing unless our use of this data for other purposes is permitted by law, or we have received your consent to use the data for another purpose.

#### **Consumer Contract**

In accordance with the Consumer Contracts (Information, Cancellation & Additional Charges) Regulations 2013, if we have not met with you; or if this agreement was entered into, at or following a meeting with us, or someone acting on our behalf, other than at our business premises; or following an offer which you made at a meeting with us in a place other than our business premises; or during an excursion organised by us with the aim of promoting our services; or if this agreement is concluded on our business premises or through any means of distance communication (e.g., email, letters, telephone calls, etc.) immediately after meeting with you other than at our business premises, then as long as you are an individual, the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 will generally apply.

This means that you have the right to cancel this agreement within a cancellation period. The cancellation period is prescribed by law as ending at the end of fourteen (14) days after the day on which the agreement is entered into.

#### **Right to Cancel**

You have the right to cancel this contract within 14 days without giving any reason. The cancellation period will expire after 14 days from the day of the commencement of the contract.

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 or fax). You may use the model cancellation form contained at the end of these Terms of Business, but it is not obligatory.

Our contact details are: Charles A Marshall Lawyers Limited, 917 Garstang Road, Barton, Lancashire, PR3 5AB; telephone 01995 641067; fax 01995 643364; We DO NOT accept service by way of email.

To meet the cancellation deadline, it is sufficient for you to send the communication concerning your exercise of the right to cancel before the cancellation period has expired.

#### **Effects of Cancellation**

If you cancel this contract, we will reimburse to you all payments received from you, unless you asked us to start work during the cancellation period (see below "Asking us to start work during the cancellation period"). We will make the reimbursement:

- Without undue delay and not later than 14 days after the day on which we are informed about your decision to cancel the contract; and
- 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.

#### **"Asking us to Start Work during the Cancellation Period"**

We will not start work on your case during the cancellation period unless you expressly ask us to do so which you have confirmed within the forms attached to the initial letter of engagement. If you have asked us to start work during the cancellation period, you have not lost your right to cancel however, if you subsequently cancel during the cancellation period then we can charge you for the work we have done on a pro-rata basis. This will be an amount which is in proportion to what has been performed, until you told us that you wished to cancel, in comparison with the full coverage of the contract. If you have asked us to start work during the cancellation period AND if we complete the contract then you will however lose the right to cancel and will have to pay in full even if this happens within the cancellation period.

#### **Your File and Documents**

We are entitled to keep your file and all your papers and documents (if any) while there is money owing to us for charges and expenses.

We will retain your file of papers for up to six years and on the understanding that we have the authority to destroy the file six years after sending the final bill.

As a company we are working towards reducing our carbon footprint, which means we may store your file electronically only. Where documents/papers are retrieved from archive (paper or electronic versions) by us to (i) act in connection with your affairs; (ii) act in connection with a new case; or (iii) act in relation to an existing case then normally no charge will be made for such retrieval however, we reserve the right to make an administration charge based on the time spent in any perusal, correspondence or other work necessary to comply with the instructions given by or on behalf of a client or a former client for whom papers are stored.

#### **Confidentiality**

Subject to the information contained within the sections of (i) Money Laundering Regulations; (ii) Data Protection Act; or (iii) Confidentiality within these Terms and Conditions of Business, all information regarding your business and affairs will be kept confidential at all times and will not be disclosed by us to any other person without your permission except as required by law or as set out in these Terms and Conditions of Business.

As part of our commitment to providing a quality service to you, external assessors may periodically review our files on a sample basis to check that we are complying with standards and procedures in file management. Files are not made available where the subject matter is of an unusually sensitive nature, or at your specific request. These

external firms or organisations are required to maintain confidentiality in relation to your file.

You have confirmed within the form attached to the letter of engagement whether you are happy for your file to be selected for file auditing and vetting. If you do not provide us with consent to make your file available for checking, your refusal will not affect the way your matter is handled in any way. It is our practice to check, where appropriate, for conflicts of interest before taking on matters. However, an actual or potential conflict between your interests and the interests of another client of the Company may arise during the course of a matter. If this situation arises during our dealings with you we will discuss the position with you and determine the appropriate course of action. In order to protect your interests we may not be permitted to act for you.

Unless we hear from you to the contrary we will proceed on the basis that we have your authority to discuss your claim with other parties directly involved; e.g., other occupants within your vehicle, hirers, repairers, storage companies, insurers, etc. Sometimes we ask other companies or people to do work on our files (for example, an enquiry agent who may contact you to take a statement about your case). We will always seek a confidentiality agreement with these outsourced providers. Please indicate if you are happy for us to do this on the enclosed Form of Acceptance.

#### **Money Laundering**

We must comply with the laws relating to anti-money laundering, including the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ('the Regulations'). Proceeds of crime can include any money or property or assets which have arisen as a result of any crime. This could include for example money (however low in value) saved as a result of tax evasion or benefit fraud, or money acquired from drug-trafficking. If we become aware or suspect the existence of money laundering, the existence of the proceeds of crime (whether from you or from any other person), or terrorism offences, we may have to report the irregularity to the National Crime Agency. The National Crime Agency may withhold permission for us to continue with the case. The National Crime Agency can pass the information received to any relevant body such as HM Revenue & Customs and an investigation may take place at any time in the future. The obligation on us to make a report to the National Crime Agency can override our duty of confidentiality to you. We would be prohibited from confirming or denying that a report has been made. We would have to stop work on your matter until we were authorised by the National Crime Agency to proceed.

There may be circumstances in which we consider that, in order to protect ourselves we must make such a report, and that later turns out not to have been required by law. In instructing us, you agree that such reports can be made. We do not accept any liability for any direct or indirect or consequential loss (including, but not limited to, loss or profits or anticipated profits, damage to reputation or goodwill, loss of business or anticipated business, damages, costs, expenses incurred or payable to any third party) arising from any delay or otherwise as a result of any reports made to the National Crime Agency or as a result

of any necessary steps we have taken to ensure compliance with our obligations under the law.

#### **Cash**

We will only accept cash up to a limit of £250.00 per transaction. If you avoid this by seeking to deposit cash directly with our bank then we may charge you for any additional checks we consider necessary to prove the source of the funds. Where we have to pay money to you, it will be never be paid by cash.

#### **Source of funds**

At the start of any matter we will normally ask you to tell us the source of any funds you will be using. It is simplest for us if the source is an account, in your name, in a UK bank or building society. If the source is an unusual one, such as an account in another country, or in the name of someone other than you, please tell us as early as possible, including the reason for the funds being there.

#### **Destination of funds**

Where we are to pay money out to you, we will normally do so by cheque in your favour, or directly into a UK account which is in your name. Please note it is NOT our policy to make cheques payable to anyone other than yourself as our client, nor to make payment to an account not in your name, regardless of whether you provide written authority instructing us to do so.

#### **Data Protection**

We use the personal data that we hold about you or receive from you or in relation to you primarily for the purpose of providing legal services and for related purposes, including:

- Identifying and communicating with you;
- Updating and enhancing our client records;
- Legal and regulatory compliance and associated analysis;
- Sending you information about our services.

Our use of the personal data we hold is governed by the Data Protection Act 2018 and connected legislation along with other legal and regulatory duties that apply to us.

Our work for you may require us to give personal data to third parties, such as witnesses, experts, courts and tribunals and, in some cases, we are required to make regulatory reports. You will or will not have confirmed your agreement to this within the forms attached to the letter of engagement.

Our Data Protection compliance documents, including our Client Privacy Notice are available on our website or a paper version is available on request.

#### **Interest**

In accordance with the CILEx Accounts Rules ("the Accounts Rules") we are required to account to our clients for interest on client money held by us when it is fair and reasonable to do so.

Client money will usually be held in a general client account, in which amounts for different matters and different clients are pooled. Interest will be paid on money held in a general client account in the following circumstances: (i) Interest will be calculated on the balance held for each individual matter; (ii) Interest will be based on the rate of interest payable by the bank on the relevant amount. As these rates can change from time to time, details of the rates currently payable are available on request; (iii) in normal circumstances, if the total amount of interest calculated over the course of a transaction is less than £20.00, no

interest will be paid; and (iv) interest will be paid gross, and it will be your responsibility to declare to HM Revenue & Customs any interest received. If client money is held in a separate designated deposit account (i.e. a specific bank account, for a specific matter, in your name) all interest earned on that account will be credited to that account and paid to you net of basic rate tax.

We do not pay interest (i) on money we hold to pay professional disbursements; (ii) on money we hold for the Legal Services Commission; or (iii) on money that we are instructed to hold outside a client account in a manner that does not attract interest (e.g. cash held in our safe). Unless we are notified by our bank to the contrary, we will treat monies as cleared funds in relation to cheques, credit card or debit card payments as taking 5 working days to clear after payment into our client account and cash/Direct Bank transfer as being the following working day. Where we hold money on more than one matter for you, interest will be calculated separately for each individual instruction, unless it is fair and reasonable to aggregate the interest.

Interest will generally be paid at the conclusion of the matter. If we hold money jointly with you, the interest earned will belong to you, unless we agree otherwise. If we hold money jointly with another firm of solicitors, we will agree with the other firm how interest will be allocated. Where we pay money to clients by cheque, some clients delay in paying the cheque into their account. We will pay additional interest only where it is reasonable in all the circumstances to do so. Where we do recalculate the interest and/or issue a further cheque, we reserve the right to charge for the additional work involved. A full Interest Policy is available if required. This Policy will be reviewed from time to time, but at least annually, to ensure its overriding objective is met.

#### **Joint Instruction**

Where we act jointly for two or more clients in a matter then (in the absence of any contrary indication in correspondence from us) your liability to us will be joint and several. The Contracts (Rights of Third Parties) Act 1999 shall not apply to these Terms of Business or any accompanying letter except to the extent that these Terms of Business and/or the letter expressly provide otherwise.

We accept instructions from a limited company on the condition that all the directors of that company are personally and jointly and severally liable for any money to us for costs and expenses.

Instructions are accepted from a limited liability partnership on condition that all the members or designated members of that partnership are personally and jointly and severally liable for any money due to us for costs and expenses. With regard to the Contracts (Rights of Third Parties) Act 1999, this agreement does not create any right enforceable by any person not a party to it, other than as expressly set out in these Terms of Business.

#### **Applicable Law**

Any dispute or legal issue arising from these Terms of Business will be determined by the law of England and Wales and considered exclusively by the English and Welsh courts.



**Model Cancellation Form**

To Charles A Marshall Lawyers Limited, 917 Garstang Road, Barton, Preston, Lancashire, PR3 5AB; Telephone 01995 641067; Fax 01995 643364; Email : Charles A Marshall Lawyers Limited does not accept service by email.

I/We [\*] hereby give notice that I/we [\*] cancel my/our [\*] contract of sale of the following goods [\*]/for the supply of the following service [\*],

Ordered on[\*]/received on [\*],

Name of consumer(s),

Address of consumer(s),

Signature of consumer(s) (only if this form is notified on paper),

Date