

# FORSTERS



## Terms of Business 2021



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## TERMS OF BUSINESS

Our terms of business are set out below. Please read them carefully, and ask us if there is anything in them which you do not understand. Your continuing instructions will amount to your acceptance of these terms and conditions of business. Unless otherwise agreed, these terms of business apply to any future instructions you give us. We reserve the right to update these terms from time to time and we will notify you if we do so.

### THE SERVICES TO BE PROVIDED

#### 1. SCOPE OF WORK

- 1.1 The scope of our work will be as set out in the relevant engagement letter sent to you by us or as we may otherwise have agreed with you in writing ("Engagement Document").
- 1.2 Unless we expressly agree otherwise in writing, our responsibilities do not include:
- tax advice of any kind
  - monitoring or reminding you of warranty periods or other notice periods
  - verifying the identities or substance of other parties to transactions
  - advising you as to the commercial implications of any matter or transaction with which you are involved.

#### 2. PERSONNEL

- 2.1 The individuals carrying out work on your behalf will include:
- partners
  - consultants
  - solicitors (other than partners or consultants who may also be referred to as a director, senior solicitor, senior associate or associate)
  - legal executives
  - licensed conveyancers
  - trainee solicitors
  - paralegals or apprentice paralegals.



2.2 However, it is the firm of Forsters LLP as a whole ("the Firm"), rather than any specific individual, which is responsible for providing our services to you. We aim to avoid changing the individuals handling your work but if this cannot be avoided we will notify you as soon as possible.

### 3. YOUR RESPONSIBILITIES

3.1 We rely on you to provide us promptly with all the information we need to carry out your instructions and to let us know of any significant changes in your circumstances. You should also provide us with any relevant documents and respond to our requests for further information as fully and quickly as you can.

3.2 When acting for you in relation to transactional matters, it is your responsibility to ensure that where appropriate we receive the full amount required to complete your purchase in cleared funds no later than the day before the scheduled completion. We accept no liability for any loss or damage incurred as a result of banking difficulties or delays.

## CHARGES, INVOICING AND PAYMENT

### 4. CHARGES

4.1 Our charges for professional services consist of our legal and other fees, reimbursable expenses (sometimes known as "disbursements") and (where applicable) Value Added Tax ("VAT") (see 4.8 to 4.10 for further information in relation to VAT).

#### **Legal and other fees**

4.2 Unless otherwise agreed, our charges are based on hourly rates. Our chargeable work will include drafting documents, advising, reporting, dealing with correspondence, telephone calls, preparing for and attending meetings and preparing notes of those meetings, drafting instructions to Counsel, reading papers, researching the law, attending Court and travelling. The applicable hourly rates will depend on the seniority and specialised knowledge of the individuals concerned and will be included in the Engagement Document or provided on request. Our hourly rates will normally increase annually in September.

4.3 Our hourly rates also cover most of our overheads (including routine secretarial services, postage, and telephone calls within the UK). However, we may charge separately for certain support services, including photocopying, printing, scanning, faxing, CD creation/copying, extranet/data site downloading/management services and international telephone calls. Unless otherwise agreed, these fees are charged at our standard rates from time to time, details of which are available on request.

4.4 For certain types of work, we may agree a fixed fee at the outset for the legal element of our charges. Where we are not able to agree a fixed fee, we will aim to provide you with the best information possible about likely costs.



- 4.5 If you wish, you may set an upper limit on our unbilled fees for which you may be liable without further authority. We would not exceed such an agreed limit without first obtaining your consent.
- 4.6 An estimate, quotation or other indication of fees is not intended to be fixed unless otherwise agreed in writing.

#### **Disbursements**

- 4.7 As well as our legal and other charges, our invoices will also seek reimbursement of payments made to third parties on your behalf or for your benefit. The expenses incurred will depend upon the type of work we are carrying out for you but may include Counsel's fees, experts' fees, Court/other tribunal fees, Land Registry fees, local authority and Companies House and other company registry search fees, legal database search fees, translation and transcription fees, contracted out reprographics services fees, courier charges, and the fees of e-document management providers. We will try to obtain your prior approval before incurring liability for substantial expenses but this may not always be practicable. We may also seek money on account (see section 6 for further information).

#### **VAT**

- 4.8 If appropriate, we will add VAT to our charges and to certain disbursements at the applicable rate.
- 4.9 The Firm's VAT number is 125 4258 28.
- 4.10 If you are based outside the UK but within the EU, please provide us with your VAT registration number so that we can include it in our invoices.

### **5. INVOICING AND PAYMENT OF INVOICES**

- 5.1 To enable you to budget we may send our invoices from time to time before the conclusion of your matter. An invoice will either be the only and final invoice for the charges and expenses incurred for the period and/or matter to which the invoice relates or will represent a request for a payment on account of our total fees for the matter in question.
- 5.2 We may deliver our invoices to you electronically. Please let us know if you have any particular requirements for the delivery of our invoices.
- 5.3 In relation to real estate transactions and some other transactions, we may send you an invoice after exchange of contracts and/or immediately before completion. If sufficient funds are available on completion and we have sent you an invoice we will usually deduct our charges from the funds. If for any reason a transaction becomes "abortive" or does not proceed to completion, we will be entitled to charge you for work done and expenses incurred at the applicable hourly rate as set out in our Engagement Document.

- 5.4 Payment is due immediately upon receipt of any invoice and we have the right to charge interest on any invoice after 30 days. Interest will be charged on a daily basis at the rate applicable to judgment debts, until payment of all monies owed. If you have a query about the invoice you should immediately contact the partner handling the matter or the Firm's Head of Finance, who at the date of these terms is Aamir Shaheen.
- 5.5 If you wish a third party to be responsible for paying our invoices on your behalf, please inform us immediately of that party's name and contact details and provide any other information or identification documents required by us. You will remain primarily responsible for paying our invoices and they will still be addressed to you, but we will mark them as payable by your nominated third party. If the third party fails to pay any invoices in accordance with these terms of business, we will be entitled to seek payment of the invoice(s) directly from you.
- 5.6 If you are unhappy with any invoice you receive from us, you may have the right to complain to the Legal Ombudsman Service. Please also see section 20 for further information in relation to complaints.

## **6. PAYMENTS ON ACCOUNT AND RETAINER PAYMENTS**

- 6.1 It is our standard practice to seek payments on account of our legal and other fees and/or disbursements before starting work and, if appropriate, at intervals during the course of the matter. This money will be paid into our client account, and will not be withdrawn until we deliver an invoice to you, or incur disbursements on your behalf, when it will be applied in settlement. A request for a payment on account of our fees does not constitute an estimate, quotation or other indication of likely fees. Note that if we request payments on account and these are not made by the dates required, we shall not be able to continue to act on your behalf.
- 6.2 We may also seek a retainer at the outset of a matter. This is an amount which is held on client account during the life of a matter and is set against our final invoice or repaid on the conclusion of the matter.

## **7. RECOVERY OF COSTS AND FUNDING**

### **Contentious work**

- 7.1 At the conclusion of litigation, the question of who pays the legal costs involved is usually at the discretion of the relevant Court or other tribunal. If you are successful you will normally achieve a costs order in your favour and be able to recover a significant proportion of your costs from your opponent (note this will not be all of your costs because litigation costs are subject to assessment by the Senior Courts Costs Office). However, it is also possible that your opponent will not be ordered to pay your costs or may not be capable of paying the full amount of your costs. If your opponent is legally aided you may not be able to recover costs, even if you are successful.

- 7.2 You will remain liable to pay our charges in full in accordance with these terms even though a Court or other tribunal may order or has ordered that they should be recoverable from a third party.
- 7.3 In the event of unsuccessful litigation, you should be aware that you will be responsible not only for your own costs but, in all probability, for a significant proportion of those of your opponent.
- 7.4 Further information about the treatment of costs will be provided in the Engagement Document if appropriate.

#### **Non-contentious work**

- 7.5 In some non-contentious matters (primarily in property transactions) you may be liable for the payment of the costs of a third party. We will, where appropriate, obtain a fixed figure for or agree a cap in relation to a third party's costs.
- 7.6 We may be instructed on a transaction by the shareholders or directors of a company which has been or will be incorporated or acquired for the purposes of that transaction. If the transaction does not proceed, we shall be entitled to look to the shareholders or directors concerned for our charges.
- 7.7 You should also consider whether your liability for costs (both ours and those of another party) may be covered by another person or body, for example an employer or a trade union.

#### **Legal expenses insurance**

- 7.8 In addition to policies specifically designed to provide this cover, some household insurance policies and motor insurance policies provide limited cover for legal expenses. You should check your insurance policy and inform us immediately if you believe that you may be covered. It is also vital that you notify your insurers promptly if you believe that you will be making a claim.
- 7.9 If insurance cover exists, you will be primarily liable to us for our charges, although we will assist you in obtaining reimbursement from your insurers.
- 7.10 You should also consider whether your liability for another party's costs may be covered by insurance.

#### **Litigation funding/after the event (ATE) insurance**

- 7.11 There may be circumstances where it is possible, depending on the nature and value of the dispute, to obtain third party funding for litigation (either in whole or in part) and also to obtain ATE litigation costs insurance. Please ask us to explain these options in further detail if this is of interest.

## MANAGEMENT AND PROTECTION OF INFORMATION

### 8. CYBER RISK

- 8.1 Cybercrime and email related fraud are on the increase. To protect you, your money and our business, the following security measures apply to the transfer of funds to or from the Firm.
- 8.2 We will only provide you with our bank account details in a branded PDF document which will be sent by mail or as an attachment to email correspondence.
- 8.3 If you receive any communication purporting to come from us which changes those account details please do not rely on this and let us know by telephone immediately.
- 8.4 Prior to transferring funds to our account, we ask that you contact us to verify our account details. Please speak to your normal contact(s) here or, failing that, to someone in our Finance team.
- 8.5 If you are a relatively new client to the Firm or your payment details or instructions have changed, we will contact you via telephone to verify your bank account details prior to sending funds to you.
- 8.6 If you are a long-standing client of the Firm to whom we have previously transferred funds, and your bank account details have not changed, we will rely on our previous transactions rather than contact you via telephone for verification unless circumstances exist which increase the level of risk or we otherwise consider it appropriate to do so.
- 8.7 Verification may cause minor delays to processing payments, but we believe it is necessary to help us protect you and your money from fraud.
- 8.8 We will only send you business-related emails from the @forsters.co.uk domain address. We may, from time to time, send you updates and marketing information from a @forstersllp.com domain address. Our website will only be [www.forsters.co.uk](http://www.forsters.co.uk). If you receive an email from an email address which does not match the above or are directed to a website that does not match the above URL please contact us immediately. Please beware of emails, purporting to be from the Firm, where there is an unexplained change in the language, poor spelling or incorrect grammar.
- 8.9 We accept no liability for any loss occasioned by the use of email.
- 8.10 The Firm can provide secure methods for exchanging large files. However, if you request that we access documents from or upload documents to your account on a file sharing or cloud website, you acknowledge and accept that such service may not be secure and that you bear all risks and responsibilities arising from the use of that service



## 9. DATA PROTECTION

9.1 During the course of carrying out work on your behalf and for as long as is necessary at the end of that matter in accordance with section 10.2, we will need to keep information about you, some of which may be considered sensitive. This information will be processed and kept securely in accordance with prevailing data protection legislation, your instructions to us and our duty of confidentiality. We may also hold copies of your personal data on computer servers hosted by third parties within the EEA.

9.2 We will use the information you provide primarily for the provision of legal services to you and for the following related purposes:

- to comply with legal and regulatory requirements
- to update and enhance client records
- for internal analysis and research
- to send you information by email or post publications, event invitations and marketing communications about our legal services that we think might be of interest to you
- to help detect, prevent or deal with crime.

9.3 Further information about our data processing activities is available on our website.

9.4 You may object to any of these processing activities by emailing [databasegroup@forsters.co.uk](mailto:databasegroup@forsters.co.uk) or your primary contact, although please note that such objection may prevent us from carrying out your instructions.

## 10. FILE STORAGE

10.1 We will keep a file relating to your instructions in either hard copy or electronic format or both. After completing your work, we are entitled to keep the file while there is money owing to us for our charges. We will normally keep the file (except for any of your papers which you ask to be returned to you) for at least fifteen years. We keep the file on the understanding that we have your authority to destroy it fifteen years after the date of the final invoice we send you on the matter in question. We will not destroy wills, deeds or other documents you ask us to keep here in safe custody but we may return these to you. We reserve the right to charge you for storage if we retain files and documents on your behalf.

10.2 If we retrieve files or documents from storage in order to act for you in a new or continuing matter, we will not normally charge for the retrieval. We may, however, make a charge (based on time spent) for producing stored files or documents to you or another at your request, or at the request of other authorised third parties or law enforcement agencies. This will include any disbursements, incidental reading, correspondence or other work. Save to the extent that



the contents belong to us, we will return files to you or to any other solicitors named by you, provided you have paid any relevant invoices in full.

## **11. CLIENT CONFIDENTIALITY AND LEGAL PROFESSIONAL PRIVILEGE**

- 11.1 Our advice to and communication with you is confidential and may be legally privileged in certain circumstances. At any time in the future we may, however, be under a duty to disclose certain facts or information to third parties and to cooperate with any official investigations or enquiries relating wholly or in part to any work we have done for you. We will endeavour, where possible and unless prevented by law, to notify you of any such event and to take all reasonable steps to protect your interests.
- 11.2 We will be entitled to recover our costs and expenses in complying with such enquiries, including charging for our time at our standard hourly rates.
- 11.3 When acting for you as a purchaser of property and also acting for your lender, we have a duty to reveal to your lender all relevant facts known to us about the purchase, the property and the terms of the transaction.
- 11.4 From time to time we may instruct third parties to carry out services on our behalf including expert advice or consultancy, auditing services, photocopying, scanning and other similar work on our files. Any such provider we engage will be required to sign a confidentiality agreement.

## **12. COPYRIGHT**

Copyright in all documentation and materials we produce for you in the course of our work remains our property, but you are licensed non-exclusively in perpetuity to use those materials for the purpose for which they were provided to you by us. This licence is conditional on your having paid our fees in full for the work concerned. You may assign this licence to any successor to the relevant part of your business or activities. The licence may be terminated by us if any unauthorised use of our copyright is made.

## **COMPLIANCE AND REGULATION**

### **13. MONEY LAUNDERING**

- 13.1 All solicitors must comply with UK anti-money laundering legislation. The Firm must establish the identity of all its clients by requesting identity documents. We reserve the right to request additional information from you or associated parties at any time while carrying out your instructions. If you are unable or unwilling to provide adequate evidence or information we will cease to act for you and will accept no responsibility for any delay or loss which may result.
- 13.2 If we receive funds while acting for you we are required to ascertain their source and may require an explanation and supporting documents from you or any third party by whom funds are transferred to us.



- 13.3 In certain circumstances, the Firm may be required to disclose otherwise confidential information about your affairs to other regulated organisations or to the National Crime Agency without informing you. Our duty to report may override the duty of confidentiality that we owe to you. Legal professional privilege may not apply in these circumstances. If we make a disclosure in relation to your matter, we may not be able to tell you that the disclosure has been made. We may have to stop working on your matter for a period of time, or entirely, and may not be able to tell you why. We accept no liability for any delay or loss which may result.
- 13.4 By instructing the Firm, you expressly consent to our complying with our statutory obligations in relation to the prevention and detection of money laundering.

#### 14. **CLIENT FUNDS**

- 14.1 As part of the services we provide to you it may be necessary to hold money on our client account at C Hoare & Co from time to time. You should understand that, in the event of banking failure, C Hoare & Co will be liable to you for any money held on your behalf and that we accept no liability for any consequential loss you may incur.
- 14.2 All client monies are held in strict observance of the Solicitors Regulation Authority ("SRA") Accounts Rules and in line with the Firm's Interest Policy which is available on our website or on request.
- 14.3 Client monies held for extended periods of time will be dealt with in accordance with our Residual Balances Policy which is also available on our website. To enable us to account to you for funds held on your behalf, it is your responsibility to update us on any change of address or contact details.
- 14.4 Unless you request otherwise in writing at the time of instruction, where there is a residual balance of less than £50.00 we will assess any administrative cost involved in returning the funds to you and, where appropriate, pay the funds to a charity.

#### 15. **PROFESSIONAL INDEMNITY INSURANCE (PII)**

- 15.1 The Firm maintains PII in accordance with the rules of the SRA. Details of the insurers and the territorial coverage of the policy are available on request.
- 15.2 We are required under the terms of our PII Policy to notify our insurers immediately of any instance which appears to be or could potentially become a claim against us. If we do, then your rights to confidentiality are automatically waived and full details of the matter will be disclosed to our insurer.

## 16. FINANCIAL SERVICES COMPENSATION SCHEME (FSCS)

- 16.1 Our bank C Hoare & Co is an authorised deposit taker and accepts deposits under this name. In the unlikely event of a banking collapse, certain eligible deposits are protected by the FSCS. Further details on eligibility are available at [www.fscs.org.uk/](http://www.fscs.org.uk/).
- 16.2 In the event of a bank failure you agree to our disclosing financial information to the FSCS in order to make a claim for compensation on your behalf.

## 17. FINANCIAL CONDUCT AUTHORITY (FCA) REQUIREMENTS

- 17.1 We are 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).
- 17.2 If, in the course of our work for you, you need advice on investments, we may have to refer you to someone who is authorised by the FCA, since we are not. However, as we are regulated by the SRA, we may be able to provide certain limited investment services closely linked to the legal work we are doing for you.

## 18. FOREIGN ACCOUNT TAX COMPLIANCE ACT (FATCA) AND THE COMMON REPORTING STANDARD

You may have registration and reporting obligations under the US FACTA legislation (enacted in the UK through the International Tax Compliance (United States of America) Regulations 2014) or the Common Reporting Standard (enacted in the UK through the International Tax Compliance Regulations 2015). Unless expressly included in our retainer, it will be your responsibility to obtain independent legal or expert advice in relation to your reporting status and compliance. The Firm is an Active Non-Financial Foreign Entity for the purposes of FATCA and an Active Non-Financial Entity for the purposes of the Common Reporting Standard.

## 19. DIVERSITY AND INCLUSION

The Firm is committed to the promotion of diversity and inclusion in all aspects of our business. We aim to treat all prospective and existing partners, employees, clients and third parties equally and without regard to age, sex, sexual orientation, disability, gender reassignment, marriage or civil partnership, maternity or pregnancy, race, ethnicity, nationality, religion or beliefs. Please contact us if you would like to see our diversity and inclusion policy.



## MISCELLANEOUS AND GENERAL

### 20. COMPLAINTS AND SUGGESTIONS

20.1 We are confident of providing a service of high quality in all respects. However, if you have any grounds for dissatisfaction with our work, please raise the matter in the first instance with the partner responsible, who will investigate it and respond as soon as practicable (and in any event within six weeks). If that does not resolve the problem to your satisfaction, or you would prefer not to speak to the partner responsible, then please contact the Firm's client care partner, who at the date of these terms is Guy Jordan. If for any reason the problem cannot be resolved between us then, in some cases, you may complain to the Legal Ombudsman who can be contacted by telephone on 0300 555 0333, by email to [enquiries@legalombudsman.org.uk](mailto:enquiries@legalombudsman.org.uk) or by post to PO Box 6806, Wolverhampton WV1 9WJ. Normally you will need to bring a complaint to the Legal Ombudsman within six months of receiving a final response from us about your complaint.

20.2 All solicitors must seek to resolve any problems arising with their services. If you find cause for concern we would very much like to know about it straight away. We value your business and are always aiming to improve our services. If you have any suggestions as to how we could do better, we hope you will let us know.

### 21. LIMITATION OF LIABILITY

21.1 The liability of the Firm (including its partners, members, employees, consultants, subcontractors, affiliated entities or agents) for any claim in respect of our services provided to you shall be limited to the lower of any amount specified in our Engagement Document and £50 million. We do not limit or exclude our liability for death or personal injury caused by our negligence, for fraud, or for wilful disregard of our professional obligations to you as our client.

21.2 Furthermore, we will not be liable (whether in tort, contract or otherwise) for:

- any direct, indirect or consequential loss of profit, loss of business, loss of chance, loss of revenue or loss of an expected saving or benefit, whether suffered by you or by another person as a result of our acting for you; or
- any direct or indirect or consequential loss as a result of a failure or delay in the performance of your instructions if it is due to any event beyond our reasonable control; or
- indirect or consequential loss of any other kind.

21.3 You also agree that the liability of the Firm shall not be increased as a consequence of the contractual limitation of another professional adviser's liability. In circumstances where we are (or would otherwise be) jointly liable with another adviser, you accept that the proportion



of the claim to be met by us shall be unaffected by any limitation of the other adviser's potential liability to which you may have agreed.

21.4 In relation to our liability for any claim in respect of our services, the provisions of this section and of our Engagement Document shall continue to apply notwithstanding the termination of our engagement for any reason.

21.5 No third party has the right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Engagement Document or these terms of business.

## 22. **TERMINATION**

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

22.2 We may decide to stop acting for you only with good reason, for example if you do not pay an interim invoice, comply with a request for payment on account of our costs or there is a conflict of interests. See also section 13 for other circumstances in which we may cease acting for you. In contentious matters we will, if appropriate, also apply to come off the Court record. We must give reasonable notice that we propose to stop acting for you.

22.3 If you or we decide that we should stop acting for you, you will pay our charges up to that point, including the fees incurred in relation to us ceasing to act and/or having to notify and liaise with other parties.

## 23. **VARIATION AND INCONSISTENCY**

23.1 Any variation of these terms of business or the terms of any Engagement Document must be in writing.

23.2 The terms of the Engagement Document override these terms of business to the extent of any inconsistency.

## 24. **JURISDICTION**

Any dispute or legal issue arising from our terms of business will be determined by the law of England and Wales, and considered exclusively by the Courts of England and Wales.

## 25. **THE FIRM'S STATUS**

25.1 Forsters is a limited liability partnership established under English law registered with No. OC306185. Forsters LLP is authorised and regulated by the SRA. Our SRA identification number is 400249.



25.2 References in these terms of business or in any Engagement Document to a "partner" means a member of Forsters LLP, or an employee or consultant who is a lawyer with equivalent standing and qualifications.]



