

## **TERMS OF BUSINESS**

### **1. INTRODUCTION**

The following Terms of Business apply to all work carried out by us, Gill Jennings & Every LLP, on a person's behalf, except as otherwise expressly agreed in writing signed by one of our partners.

We may ask you to sign and return a copy of an engagement letter confirming your acceptance of these Terms of Business. However, whether or not this is requested or done, your continuing instructions in relation to any matter and any future instructions concerning a new matter shall constitute your acceptance of these Terms of Business.

### **2. GILL JENNINGS & EVERY LLP**

Gill Jennings & Every LLP is a limited liability partnership registered in England and Wales with registered number OC313165. Our registered office is at The Broadgate Tower, 20 Primrose Street, London EC2A 2ES, where a list of the partners' names may be inspected. References in these Terms of Business to "we", "us" or "our" are to Gill Jennings & Every LLP (the "LLP"), and references to "you" and "your" are to the person or entity who has engaged us.

In these Terms of Business we use the term "partner" to mean a Member of the LLP. No reference to a "partner" is to imply that any person is carrying on business with others for the purposes of the Partnership Act 1890, nor does it imply any personal liability on the part of any of the partners.

### **3. OUR CLIENT**

Unless otherwise agreed by us in writing, our client is the entity from whom we take instructions. Thus, where we are instructed by an intermediary, the intermediary is our client.

### **4. OUR WORK**

We will agree with you at the outset the scope of work required on a matter. We are not responsible for matters that are outside the scope of work agreed. Unless otherwise agreed in writing to do so, we do not advise on tax.

### **5. LIABILITY FOR FEES**

Unless otherwise agreed by us in writing, our client is responsible and liable for the payment of all of our fees and disbursements in accordance with our terms of payment.

This applies to all clients including intermediaries. In such a case it is the responsibility of the client to ensure it is in funds in due time. The client cannot transfer responsibility for payment of our fees to another party without our written consent.

## **6. FEES AND EXPENSES**

On request, we will provide an estimate of our fees for carrying out an item of work and thereafter we will advise you in a timely manner if the estimate may be exceeded.

Fee estimates given are not fixed quotations. If a quotation is desired it must be specifically requested and given in writing.

Our fees will be made up of any of a number of elements including fixed service fees and time fees calculated by reference to the hourly rates of the professionals concerned. Our fee rates are typically reviewed annually. Other factors may be taken into account including, for example, the complexity of the issues and the urgency of the matter. Different hourly rates may apply depending on the nature of the work involved.

### **Expenses**

Unless you instruct us to the contrary, we may also incur expenses (for example telephone, facsimile, photocopying, postage and courier costs) and disbursements (for example, Intellectual Property Office fees, foreign attorneys' fees, fees for counsel, search fees, and translation costs) as are necessary, for which we will pass on to you. Where disbursements are incurred in a currency other than sterling, we will apply an additional amount to reflect the cost of dealing in the foreign currency.

### **Travel and accommodation**

Where we need to travel for your work we do so by the most appropriate means. Actual costs are invoiced, apart from travel by car where a standard mileage rate applies. Hotel accommodation is of a suitable business standard.

### **VAT**

We will apply VAT and other taxes as applicable on our fees and on those expenses and disbursements that are liable for VAT.

### **Money on account**

We may require you to deposit funds with us as an advance payment for work to be undertaken or to cover any disbursements to be incurred. Unless agreed otherwise, when we ask for advance payment we will not carry out any instructed work until the payment has cleared into our bank account. Any monies paid to us will be held in accordance with Section 7 below.

## **7. INVOICING AND LIEN**

We will send you invoices from time to time covering our fees and other expenses and disbursements, including anticipated fees, other expenses and disbursements, relating to work carried out, or to be carried out, for you.

You must settle our invoices within 30 days of the date of the invoice, unless otherwise agreed in writing. Our preferred payment method is by bank transfer, although we do take payment by cheque or banker's draft.

Our bank account details are as follows:

NatWest Bank PLC  
Fleet Street Branch  
P O Box 281, 156 Fleet Street  
London EC4A 2DX

Account No. 01997920  
Sort Code: 60 80 08  
IBAN No. GB57NWBK60800801997920  
IBAN BIC No. NWBKGB2L

Where payment of any invoice is outstanding, upon at least two weeks' notice to you we reserve the right to suspend work in relation to the matter to which the invoice relates. At our discretion, we may suspend all other work currently being handled by us for you and retain any documents belonging to you until such payment has been made. If you fail to meet a request for payment on account of fees or disbursements, we may suspend work until such time as you have made the requested payment on account. You will be informed before we take this step.

Please note that if we suspend work we will not take any steps in any matter (including the observance of or compliance with due dates) until such time as your account is settled. This may result in the loss of rights. Any query in respect of one of our invoices must be notified within fourteen days of its receipt. Failure to do so will be deemed acceptance of our fees.

We reserve the right to charge interest at 5.5% above Bank of England base rate on any overdue invoice.

We reserve and have the right to exercise a lien over all your papers, documents, monies or other property of any kind we hold for you where, and for so long as, payment of any invoice or request for money on account is outstanding.

## **8. CLIENT ACCOUNT MONEY**

We may hold money on a client's behalf, including money on account of fees or disbursements. We hold such client money on trust in a designated bank account ('Client Account'). We also operate a separate bank account out of which we pay our own expenses, such as rent, salaries and tax ('Office Account').

We are required to operate our Client Account and Office Account in accordance with the IPReg Code of Conduct, as may be amended from time to time. This is to ensure your money and our money are kept separate.

Details of what amounts are held in our Client Account and Office Account are set out in this Section 7.

### **Client Account**

Our Client Account will hold money paid by you on account of our anticipated fees, where the work has not been completed, and expenses and disbursements in respect of unspecified future work.

We will transfer these amounts to our Office Account once the relevant work has been carried out, or the expenses and/or disbursements have been incurred or once overseas counsel have been instructed.

These are a few circumstances where we may put your money in our Office Account rather than the Client Account. These are set out below.

## **Office Account**

Our Office Account will hold money paid by you relating to:

- our invoices for work that has been completed;
- disbursements (third party fees), where we have already incurred those disbursements;
- our interim or periodic invoices (e.g. monthly invoices) for work done to date, even though not all the work for that matter may have been completed; and
- our invoices for fixed fees and/or future disbursements, where the work has yet to be carried out. This last point is subject to your specific informed consent.

Your specific informed consent is required for our retention in the Office Account of amounts paid for fixed fees and/or future disbursements. By making payment of our invoice for fixed fees and/or future disbursements you are consenting to these amounts being held in our Office Account. We may be required to return these funds if the work is not completed. You acknowledge that, in the unlikely event these amounts are not refunded, it may be more difficult for you to seek the return of these monies compared to if they were in the Client Account.

Our Client Account is held with Natwest Bank plc, but we may also hold accounts with other banks and building societies from time to time and we will provide details on request. We make no representation about the financial position of any such bank or building society and will not be responsible for any losses resulting from any failure or insolvency of any such bank or building society.

In the normal course of events our Client Account will not pay interest. In the event that any interest is paid, we will not account to you for any such interest.

## **9. RENEWAL FEES**

Most registered intellectual property rights and some applications for such rights require the payment of regular renewal fees (sometimes called “maintenance” or “annuity” fees) to keep the rights in force.

We recommend the use of CPA Global Ltd, (“CPA”) of Liberation House, Castle Street, St Helier, Jersey JE1 1BL, United Kingdom to handle these renewal matters for you. We will liaise with CPA over the transfer to, and updating of, CPA’s records with the appropriate data that we hold for you on our records system. CPA will then deal directly with you, including sending reminders to you in connection with the payment of such renewal fees, arranging for the payment of renewal fees in response to your instructions, and invoicing you.

If you wish to use a different organisation to handle renewal fee reminders and payments, please advise us. In that event, you will be responsible for the provision, checking and updating of all data required by that organisation relating to your renewal matters.

## **10. OUR RESPONSIBILITIES**

We will carry out your instructions with reasonable skill and care and in a professional and timely manner. The nature and content of any advice we provide will necessarily reflect the specific scope and

limitations of our instructions, the amount and accuracy of information provided to us and the timescale within which the advice is required. If, at your request, we provide our advice in an abbreviated format or timescale, you acknowledge that you will not receive all the information or detail you would have done had we provided a full written report or had we had more time in which to carry out the work.

Any advice given or view expressed by telephone should be regarded as being only a preliminary opinion. No action should be taken without obtaining a written opinion given after a full consideration of the facts of the relevant issue.

#### **11. YOUR RESPONSIBILITIES**

It is your responsibility to provide us with complete, accurate and timely information where we have requested this and to carry out any other obligations ascribed to you or to others under your control. Please take careful note of any deadlines given in our correspondence. Failure to meet such deadlines may result in loss of rights or increased costs.

We will not be responsible for any consequences which may arise from any delay or failure by you to do so and we reserve the right to issue an invoice for any extra work which such delay or failure may necessitate. We are not responsible for sending you repeat reminders of deadlines given in our correspondence. If we do not receive instructions in good time we shall take the absence of those instructions as an implicit instruction not to take action. You remain responsible for your own commercial decisions and omissions.

You must keep us supplied with your up-to-date contact details at all times. Our duty to you under these Terms of Business shall be satisfied where we contact you at the latest address you give us for the purposes of communication for the matter concerned.

#### **12. MONEY LAUNDERING AND PROCEEDS OF CRIME**

We must comply with the law and professional rules about money laundering, proceeds of crime and terrorist funding. To comply with these obligations, we may require you to provide evidence of identification.

We may be required by law to report any activity that we suspect may involve the proceeds of crime or terrorist funding. The proceeds of crime are defined very widely and include, for example, money gained as a result of unlawful tax avoidance. You should also be aware that in those circumstances we may be precluded from seeking your consent or informing you that we have made a notification or disclosure. Our duty of disclosure to the authorities overrides any duty of confidentiality to you, including your right to refuse disclosure of documents relating to advice given to you.

#### **13. DATA PROTECTION**

We comply with all relevant Data Protection Regulations and in particular the General Data Protection Regulations 2016, and the Privacy and Electronic Communications (EC Directive) Regulations 2003.

We will use your personal data where appropriate to advise on, obtain, maintain and defend your Intellectual Property Rights (“IPR”) and the rights of third parties

On occasion, and solely in connection with your IPR, we may share your personal data with government

and non-governmental bodies and IPR renewal and other service providers, within and outside the EEA.

Where necessary, we will use your data to make credit decisions about you and to prevent fraud we may request a credit reference agency to undertake a credit reference on you. Exceptionally, we may employ debt collection agencies, and in those circumstances will provide your last known contact details.

You may object to any of these processing activities by emailing [dataprotection@gje.co.uk](mailto:dataprotection@gje.co.uk) or your primary contact. Please note that such objection may prevent us from carrying out your instructions. You have a right to be forgotten, although it may be impossible to exercise that right in full where we have a legal obligation to retain those data, or for the establishment, exercise or defence of legal claims, including claims in relation to intellectual property rights.

You have a right of access under data protection legislation to the personal data that we hold about you.

Please see our [Privacy Policy](#) for further details.

#### **14. USE OF WORK PRODUCT**

Our advice and the work that we do for you is provided for the purpose of the instructions to which it relates, and is for you or additionally, where we act for an intermediary, your client's benefit. Our advice may not be relied on by any other person. We do not accept any responsibility for the use of our advice for any purpose other than that for which it was intended, or by any person other than you and your client unless otherwise agreed by us in writing. If advice of general application is provided, its relevance in circumstances other than those for which it was intended will depend on the particular circumstances in which it is to be used by you (of which we might not be aware) and should be assessed accordingly.

#### **15. INVESTMENT AND FINANCIAL SERVICES**

It is important that you note that we are not authorised in the conduct of investment business in the UK under the Financial Services and Markets Act 2000. As a result, our work will necessarily be limited in scope to matters which do not involve us in giving investment advice and our advice and any information is provided to you on the basis that it does not constitute investment advice.

#### **16. FILE RETENTION POLICY**

We retain files in accordance with our current file retention policy and then destroy them. Details of our current policy are available on request.

#### **17. CONFIDENTIALITY**

All confidential information regarding your or your client's business and affairs will be regarded as and kept confidential at all times subject to the performance of the duties you have entrusted to us. We shall take steps as we in good faith think fit to preserve the confidentiality of such information both during and after termination of your instructions. Similarly, our advice and any information provided to you should be regarded as confidential and are provided on the understanding that you undertake not to disclose such information to any third party (being someone other than your professional advisors acting in their professional capacity in connection with the matter to which the information relates)

without our prior written consent on such terms as we may deem appropriate.

In the absence of such consent, we accept no responsibility whatsoever in relation to any third party to whom confidential information or advice provided by us to you has been disclosed.

Nothing in these Terms of Business will prevent you or us from disclosing confidential information:

- which is or becomes public knowledge, other than by a breach of an obligation of confidentiality;
- which is or becomes known from other sources without restriction on disclosure;
- which is required to be disclosed by law or under any professional or regulatory obligation;
- for the purpose of acting for you including, without limitation, disclosures to your other advisers or to third parties involved in the work we are undertaking for you;
- to our auditors or other advisers or for the purposes of our professional indemnity insurance.

## **18. OUR LIABILITY**

Your relationship is solely with the LLP, and the LLP has sole legal liability for our advice and the work done for you and for any act or omission in the course of that advice or work. No partner or agent or employee of the LLP will have any personal legal liability for that advice or work, whether in contract, tort or negligence or otherwise. In particular, the fact that an individual partner or agent or employee signs in his or her own name any letter or other document in the course of giving advice or carrying out that work does not mean he or she is assuming any personal legal liability for that letter or document.

You agree that our liability to you for any neglect, error, omission or breach of contract arising out of or in connection with this appointment shall be limited to £5,000,000, including any liability for the acts or omissions of our partners, employees, agents, consultants and subcontractors.

This overall limit applies whether the mistake affects just one piece of work we do for you or several, so long as it is the same or a similar mistake.

We are only liable for the loss that we directly cause you. We will not be liable for:

- loss of opportunity;
- loss of profits (whether a direct loss or an indirect loss);
- loss of business;
- loss of goodwill and/or similar losses;
- loss or corruption of data or information; or
- any special, indirect, consequential or pure economic loss, costs, damages, changes or expenses.

If others are also responsible for your loss, our liability is limited to that proportion of the loss or damage which is found to be fairly and reasonably due to our fault by a Court of competent jurisdiction. Loss and

damage have the same meanings as provided in the Civil Liability (Contribution) Act 1978. This applies irrespective of whether you are able to recover the rest of your loss from any other parties. We shall not be liable to pay you the proportion which is due to the fault of another party.

We are not liable to the extent where our mistake results from something you do or fail to do (such as giving us the wrong information, or not giving us information at the time we ask for it, or not putting us in funds at the correct time).

We shall not be liable for any loss arising from or connected with our compliance with any statutory obligation which we may have, or reasonably believe we may have, to report matters to the relevant authorities under the provisions of money laundering and related legislation.

Unless specified in this Section 17, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from these Terms of Business.

We strongly advise you to insure against all such potential loss, damage, expense or liability.

These limits apply to the extent they are permitted by law. Nothing in these Terms of Business shall limit or exclude our liability for:

- death or personal injury resulting from our negligence;
- any damage or liability incurred by you as a result of our fraud or fraudulent misrepresentation; or
- any other liability for which exclusion or restriction is prohibited by applicable law.

## **19. INDEMNITY**

You agree to indemnify and keep us, our agents and our employees fully and effectively indemnified against all or any claims, actions proceedings or judgements made, brought or established against us by a third party in any jurisdiction (whether or not successful, compromised, settled or reversed) and all or any liabilities, damages, costs, fees, losses or expenses which we may suffer or incur and which in any case arise directly or indirectly in connection with or out of or result from or are attributable to the performance by us of our obligations or services under or in connection with our appointment on your behalf and/or the neglect or default by you, other than arising as a result of our negligence. Our agents and employees will be entitled to enforce this right pursuant to the Contracts (Rights of Third Parties) Act 1999.

Without prejudice to the foregoing, in particular (without limitation) you agree to indemnify us as aforesaid in respect of any liability or loss we may incur as a result of making threats of infringement of any intellectual property right on your instruction.

## **20. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

Save as expressly provided, the parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

## **21. FORCE MAJEURE**

Neither we nor you shall be liable in any way for failure to perform our respective obligations under this appointment if the failure is due to causes outside the reasonable control of the party which has failed to perform.

## **22. TERMINATION**

You may withdraw your or your client's instructions at any time by written notice to us. Subject to our professional obligations we may terminate our appointment by giving you written notice. In the event of termination, fees and expenses incurred by us or our agents or other third parties to the date of termination are payable by you.

## **23. CODE OF CONDUCT**

The LLP and its professional staff are regulated by the Intellectual Property Regulation Board (IPReg) and bound by its Code of Conduct.

## **24. COMPLAINTS**

If you have a complaint about any aspect of our service, you should first raise it with the person with whom you normally deal. If the result of this is not satisfactory or you are unable to do so, then you may pursue the complaint using our Complaints Procedure which can be found on our web site at [www.gje.com/30-complaints-policy.html](http://www.gje.com/30-complaints-policy.html)

If you are dissatisfied with the way that we are handling your complaint or with the outcome of our Complaints Procedure, the Legal Ombudsman may be able to hear the matter. You should contact him within six months of your last contact with us regarding the complaint. The Ombudsman's contact details are as follows:

Legal Ombudsman  
P.O. Box 15870  
Birmingham  
B30 9EB  
Telephone: 0300 555 0333 / +44 121 245 3050  
Website: [www.legalombudsman.org.uk](http://www.legalombudsman.org.uk)

Please note that the Ombudsman can only deal with certain types of complaint and complainant. Further details can be obtained from the Legal Ombudsman.

If your complaint relates to a breach of the IP Regulation Board's (IPReg) Codes of Conduct you may contact them at any time, irrespective of any other procedure you may follow. Their contact details are:

Intellectual Property Regulation Board (IPReg)  
5th Floor, The Outer Temple  
222-225 Strand  
London  
WC2R 1BA

Telephone: 020 7353 4373

Website: [www.ipreg.org.uk](http://www.ipreg.org.uk)

General Enquiries: [ipreg@ipreg.org.uk](mailto:ipreg@ipreg.org.uk)

**25. SEVERANCE**

In the event that any of these Terms of Business is held to be invalid, the remainder of the terms will continue in full force and effect.

**26. GOVERNING LAW AND JURISDICTION**

These Terms of Business shall be governed by and construed in accordance with the laws of England and Wales and you and we irrevocably submit to the jurisdiction of the courts of England and Wales.

Your and our submission to the jurisdiction of the courts of England and Wales shall be without prejudice to your or our right to seek injunctive or other interim or equitable relief in any jurisdiction to restrain any breach or threatened breach of these Terms of Business by any person or to require the return of any confidential information.

**Version operative from 25 May 2018**