



## Dispute Resolution Department Terms and Conditions

Cunningtons LLP trading as Cunningtons  
GREAT SQUARE, BRAINTREE, ESSEX, CM7 1UD  
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Cunningtons LLP is a Limited Liability Partnership registered in England and Wales under Registered office number OC395326. Our registered office is situated at Great Square Braintree Essex CM7 1UD. These terms and conditions of business together with our terms of retainer with you will together set out the basis on which our services are provided and the basis upon which our fees are charged. These terms and conditions will also apply to any future business you may have with our firm until updated or informed in writing via our website at [www.cunningtons.co.uk](http://www.cunningtons.co.uk). The members of the LLP are referred to throughout the terms and conditions as "partners". The name Cunningtons is a trading name of Cunningtons LLP.

We are authorised and regulated by the Solicitors Regulation Authority (SRA) of England and Wales ([www.sra.co.uk](http://www.sra.co.uk)). Our SRA ID number 619821. Our professional rules can be read on the SRA website at [www.sra.org.uk/solicitorshandbook/content](http://www.sra.org.uk/solicitorshandbook/content). We are registered for VAT and our VAT number is 102455414.

### **PLACE AND HOURS OF BUSINESS**

Our offices are located in Braintree, Chelmsford, Wickford, Hornchurch, Croydon, Brighton and Solihull. The normal hours of opening are between 9.00am and 5.30pm on weekdays, excluding public holidays and on most Saturday mornings at Braintree between 9.30am and 12.30pm, normally by appointment. Appointments can usually be arranged outside those hours when necessary. Messages can be left on the answerphone outside hours and appointments can be arranged at other times when this is essential. Unless in an emergency, appointments must be made by prior arrangement. All our solicitors are willing to attend the offices and homes of clients if necessary but travel time may be charged.

### **OUR AIM**

We aim to offer our clients quality legal advice with a personal service at a fair cost. We hope it is helpful to you to set out below the basis on which we will provide our professional services.

### **OUR COMMITMENT TO YOU**

We will:-

- REPRESENT your interests and keep your business confidential.
- EXPLAIN to you the legal work which may be required and the prospects of a successful outcome.
- MAKE SURE that you understand the likely degree of financial risk which you will be taking on.
- ADVISE YOU if legal aid might be available to you.
- KEEP YOU regularly informed of progress or when you are next likely to hear from us.
- TRY to avoid using technical legal language when writing to you. Please ask us if you are unsure of anything.
- DEAL with your queries promptly. We will always try to return your telephone calls on the same day.

### **PEOPLE RESPONSIBLE FOR YOUR WORK**

- You will be notified separately of who will undertake your work. The partner and solicitor with overall responsibility for matters in the Disputes Resolution Department is Mark Taylor. If the person with conduct of your matter cannot be contact for any reason, please ask for their PA, who may be able to deal with your queries and who will be pleased to take any message for you.
- We try to avoid changing the people who handle your work or aspects of it, but if this cannot be avoided we will tell you promptly of any change and why it may be necessary. This may be after it has been necessary to change the person handling your work.
- The Litigation Department currently consists of, excluding other administrative staff:-

Mark Taylor:	Partner, Senior Solicitor, Head of Litigation Department
Stella Parker:	Consultant, Senior Solicitor
Jonathan Stock:	Senior Solicitor
Laura Lescott:	Consultant, Senior Solicitor
Kimberley Potter:	Trainee Paralegal/Junior Executive

### **OUR CHARGES**

- Unless otherwise agreed (for example, if you are instructing us on a fixed fee basis), your work will be undertaken on the hourly fee rates set out below.

- Our charges will be calculated mainly by reference to the time actually spent by the solicitors and other staff in respect of any work which they do your behalf.
- This will include meetings with you and others, reading and working on papers, correspondence, drafting, preparing costs calculations and time spent travelling away from the office when this is necessary.
- We charge in 6 minute units, rounded up to the nearest six minute. Routine letters are charged as 6 minute units of time and we charge for the time spent on making and taking telephone calls in 6 minute units and considering incoming letters at units of 3 minutes per page.
- The current hourly rates are set out below. We will add VAT to these at the rate that applies when the work is done. At present, VAT is 20%

Partners	:	£300.00 +VAT
Senior Solicitors and Senior Legal Executives	:	£275.00 +VAT
Intermediate Solicitors and Legal Executives	:	£235.00 +VAT
Junior Solicitors and Legal Executives	:	£200.00 +VAT
Trainee Solicitors and Legal Executives /Paralegals	:	£140.00 +VAT
Executives	:	£120.00 +VAT
Junior Executives	:	£115.00 +VAT

- These hourly rates subject to periodic review. We confirm that our hourly rates will only be varied in accordance with such reviews and we will inform you of any such reviews before they take effect. We will separately provide you with a letter or email of engagement setting out the terms of our retainer and an estimate of fees. Whilst every care is taken to provide an accurate estimate of costs, it must be understood that in many matters, it is not possible to provide an entirely accurate estimate, as the time to be spent on any matter is often influenced by third parties and other factors.
- In addition to the time spent, we may take into account a number of factors including any need to carry out work outside our normal office hours, the complexity of the issues, the speed at which action has to be taken, any particular specialist expertise when the case may demand. It is not always possible to indicate how these aspects may arise but on present information we would expect them to be sufficiently taken into account in the rates which we have quoted. Where a charge reflecting any value element is to be added we will explain this to you.
- Solicitors have to pay various expenses on behalf of clients ranging from fees, court fees, experts' fees, Land Registry fees and others. We have no obligation to make such payments unless you have provided us with the funds for that purpose. VAT is payable on certain expenses. We refer to such payments generally as 'disbursements'.
- You may have the benefit of private legal expenses cover as part of any insurance policy that you have and in particular as part of any buildings and contents or credit card insurance. We advise you to check all of your insurance policies and if you have such cover you should make a claim under the policy. Subject to the terms of your policy, if the claim is successful the insurer may meet your legal fees and in the event that you lose the claim and are ordered to pay the other party's costs, then these costs may also be covered by your policy. If you are not sure whether you do have such cover we will be happy to review the policies and advise you accordingly. You should also be aware that if you do have cover you may be required to instruct a solicitor on their panel rather than a solicitor of your choice.
- If we are acting on joint instructions or a joint retainer for more than one client, this firm is entitled to take instructions from just one of those clients without having to confirm the accuracy or otherwise consult with other clients for whom we act before following those instructions. You are advised to ensure that any arrangements between you with respect to payment of legal costs, receipt of sums we pay to you, the provision of instructions to this firm and any other matter which requires your consensus are agreed between you. If we received conflicting instructions, we reserve the right to cease acting for you and/or to cease work whilst instructions are verified. This firm does not accept any liability for following the instructions of only one client and will accept such instructions as instructions from all of its clients. Any loss arising by a failure to make arrangements between you is expressly excluded.

#### **PROOF OF IDENTIFICATION AND PROOF OF ADDRESS – MONEY LAUNDERING REGULATIONS AND PROCEEDS OF CRIME LEGISLATION**

- Professional rules and Money Laundering Regulations require that before accepting instructions from you, we have to obtain proof of your identity by way of an official photographic identity document, such as a current passport or driver's licence. We also require proof of your residential address by way of a utility bill or bank statement or other official document showing your name and address which is not more than 3 months old. If you are attending for a first appointment then you must bring such original documentation with you. We will take a certified copies of the documents and hand back the originals to you. If you are not attending from such an appointment but live close to one of our offices you can take the documents to that office and they will photocopy and certify those documents and send them to us.
- In common with other financial institutions and professions we have a legal duty to comply with anti-money laundering regulations (money laundering is the process by which the proceeds of crime become legitimised). In order to comply with regulations, we may require you to produce proof of identification, enquire as to your personal circumstances, your employment and your business and to provide proof of the source of any monies that you provide that will pass through our accounts. You should be aware that if we suspect that you are laundering money, we have a duty, without informing you in advance, to report those suspicions to the National Crime Agency. Should we make such a report, we shall not be liable for any loss including consequential loss arising from compliance with our statutory obligations. We also reserve the right to charge you our fees for undertaking client identification and due diligence enquiries and you may be asked for a payment on account of costs for this purpose.

#### **PAYMENT ARRANGEMENTS**

- It is normal practice to ask clients to pay sums of money from time to time on account of the charges and expenses which are expected to be incurred. This helps clients in budgeting for costs as well as keeping them informed of the legal expenses which are being incurred. If such requests are not met with prompt payment, delay in the progress of the case may result. In the unlikely

event of a bill or request for payment not being met, this firm reserves the right to stop acting for you further. We are entitled to render interim bill or bills on account. We will also be entitled to claim a lien on your papers until all outstanding accounts are paid. This will mean that you will not be able to collect your file and papers until such payment has been made.

- Payment of our invoices are due within 28 days of the date or deemed date of delivery the bill. Interest will be charged on a daily basis at the County Court Judgement rate from time to time (currently 8% per annum) from the date of the bill in cases where payment is not made within 28 days of delivery by us of the bill.
- Payments can be made by bank transfer, debit card (on request), cheque made payable to 'Cunningtons LLP' and in some circumstances, cash (up to a certain value). We do not accept payment by credit card.
- For security reasons, before making any electronic payment to you, you accept that we must follow our security procedures in place from time to time. Until such time as our security procedures are complied with, there is no obligation on this firm to remit funds to you. If acting on a joint instruction, we are entitled to follow the instructions of one client as to where the payment should be sent and to whom it should be paid, for example, in the event that the payment is to be made to one client only. In light of the constantly evolving risk of electronic fraud, our security procedures are under continuous review and may change from time to time. Ordinarily you will be required to provide written evidence of your bank account, which will need to be verified with you by telephone. You may also be asked to complete forms and/or provide the written authorisation from other clients where we are acting under a joint instruction. We are unable to make payments to third parties. We are only able to make payments to our clients.

#### **YOUR OWN COST AND OTHER PARTIES' CHARGES AND EXPENSES**

- We are potentially able to offer a range of costs regimes suitable to your case and circumstances upon which we will advise you separately.
- In some cases and transactions a client may be entitled to payment of costs by some other person. It is important that you understand that in such circumstances, the other person may not be required to pay all the charges and expenses which you incur with us and may not have the means to pay such costs. You have to pay our charges and expenses in the first instance and any amounts which can be recovered will be a contribution towards them. If the other party is in receipt of legal aid no costs are likely to be recovered. As a general guidance you should be able to recover from your opponent, subject to the above and below qualifications, between 60% and 80% of your actual costs incurred if you win your claim.
- It is also important to note that unless a formal claim is issued in the Court, which is expected by the Courts to be a last resort, then there is no general right to recover your legal costs; subject to some rare exceptions, only a Court can order one party to pay the other's legal costs.
- You should also be aware that if your claim is dealt with in the Small Claims Case Management Track (colloquially called "The Small Claims Court"), it is unlikely that you will be awarded your legal costs either. The basic position is that neither party are entitled to their legal costs. Some items, such as Court fees and other payments, may however be recoverable. Most cases below a value of £10,000 will be dealt with in the Small Claims Court.
- If you are successful and a court orders another party to pay some or all of your charges and expenses, interest can sometimes be claimed on them from the other party from the date of the Court order. We will account to you for such interest to the extent that you have paid our charges or expenses on account, but we are entitled to the rest of that interest.
- You will also be responsible for paying our charges and expenses of seeking to recover any costs that the court orders the other party to pay you. If this is a joint instruction, all of our clients are jointly and severally liable for our charges and expenses, which means that this firm is entitled to recover the same from one or more of you at its election.
- A client who is unsuccessful in a court case may be ordered to pay the other party's legal charges and expenses. That money would be payable in addition to our charges and expenses. Arrangements can sometimes be made to take out insurance to cover liability for such legal expenses subject to your claim meeting a merits test. Please discuss this with us if you are interested in this possibility.
- Depending on the nature of your case you may also be able to insure your own costs in the event of losing your case.
- This agreement expressly permits the solicitors to charge an amount of costs greater than that which you will recover or could have recovered from the other party to the proceedings and expressly permits payment of such sum. This part of this agreement is made under section 74(3) of the Solicitors Act 1974 and Civil Procedure Rules 46.9(2) and (3), insofar as any costs or disbursements are of an unusual nature or amount these costs might not be recovered from the other party.

#### **STORAGE OF PAPERS AND DOCUMENTS**

- After completing the work, we are entitled to keep all your papers and documents while there is money owing to us for our charges and expenses. In addition, we will keep your physical file of papers for you in storage for 6 years. After that we have the right to confidentially destroy it, retaining only so much data as is required to enable us to comply with our regulatory or legal obligations, including undertaking conflict of interest checks in the future. We will not of course destroy any documents such as Wills, Deeds and other securities, which you ask us to hold in safe custody. No charge will be made to you for such storage unless prior notice in writing is given to you of a charge to be made from a future date which may be specified in that notice.
- If we retrieve papers or documents from storage in relation to continuing or new instructions to act in connection with your affairs, we will charge a fee of £45 plus VAT for its retrieval. We may make a charge based on time spent for producing stored papers or documents to you or another at your request and we may also charge for reading, correspondence or other work necessary to comply with your instructions but will give you an advance estimate of those fees based upon your requirements.
- Our electronic files will be kept for a period of 16 years following completion; thereafter they will be deleted.

## **TERMINATION**

- You may terminate your instructions to us 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. If at any stage you do not want us to continue working and/or incurring charges and expenses on your behalf, you must tell us clearly in writing.
- If we decide to stop acting for you, for example, if you do not pay an interim bill or comply with a request for a payment on account, or fail to provide us with instructions, or in our reasonable opinion we conclude that the standards of conduct and trust that should exist between us have broken down, we will tell you the reason and give you notice in writing.
- If we have to cease to act for you during the course of any proceedings, you contractually agree to file a notice of change with the Court and serve a copy of the same on all other relevant parties, including us, confirming that you are acting in person. If you do not do this, we will need to make an application to the Court to come off of the Court record and you agree to pay our charges, including any applicable Court fee, in accordance with the terms of this retainer on the indemnity basis.

## **LIMITED COMPANIES**

- When accepting instructions to act on behalf of a limited company, we require a Director and/or controlling shareholder to sign this agreement as a personal guarantee in respect of the charges and expenses of this firm. If such a request is refused, we will be entitled to stop acting and to require immediate payment of our charges on an hourly basis and expenses as set out earlier. By providing us with instructions you are also agreeing to provide such a guarantee, irrespective of whether or not a written guarantee is provided.

## **OUR LIABILITY TO YOU**

- The solicitors maintain compulsory professional indemnity insurance and supplementary insurance with Endurance Worldwide Insurance Limited and Axis Speciality Europe SE for a total cover for three million pounds sterling and top up insurance for two million pounds sterling totalling five million pounds per claim. To the extent permitted by the law the solicitors total liability to the client in connection with any matter (or series of related matters) will be limited to three million pounds sterling such sum being the limit of the compulsory layer of the solicitors professional indemnity insurance. Liability for any consequential or indirect loss whether or not it might have been foreseeable at the commencement of the matter is excluded.
- To the extent permitted by law our total liability to you in connection with any matter (or series of related matters) will be limited to three million pounds sterling such sum being the limit of the compulsory layer of our professional indemnity insurance. Liability for any consequential or indirect loss (whether or not it might have been foreseeable at the commencement of the matter) is excluded. We shall not be liable to you in relation to the failure of any bank in which client monies are deposited or in respect of any failure by our bank to remit moneys to a third party in your transaction sent in good time by us to complete a transaction by a particular contractual cut off time.
- Where we are acting for more than one person, the limit of liability will be allocated among you. Our liability to you shall also be limited to that proportion of the loss or damage (including interest and costs) suffered by you and which is ordered against us by a Court of competent jurisdiction after taking into account the contribution to the relevant loss and damage of any other person responsible and/or liable to you for loss or damage.
- In signing our retainer documents you accept that we are limited liability partnership and, as such, we have an interest in limiting the personal liability and exposure to litigation of our members and employees. You therefore also agree that, should you need to make a claim (whether in contract, tort or otherwise) against us in relation to any piece of work we undertake on your behalf, you will not bring any claim personally against any individual employee or member, but will only make any claim against us, the LLP.
- Under the principle of force majeure we shall bear no liability for loss, damage, delay or other matters, howsoever arising, caused by circumstances outside our control.
- Our total liability to you is limited to the maximum amount of our professional indemnity insurance policy unless we expressly state a higher amount in the letter accompanying these terms of business. We will not be liable for any consequential, special, indirect or exemplary damages, costs or losses, or any damages, costs or losses attributable to lost profits or opportunities. We can only limit our liability for death or personal injury caused by our negligence.
- "Service" of any notice, proceedings or otherwise by email is expressly NOT accepted by Cunningtons in any circumstances unless we have explicitly agreed in writing with you (or any third party on your behalf) before any such "service" is attempted and such concession will be at the Solicitors sole discretion.
- If we are acting for you in relation to any matter which involves leasehold or freehold property, the scope of this firm's retainer is expressly limited to dealing with only the dispute and not advising on any other matters in relation to the lease or freehold title, including but not limited to its terms, value, availability of rights such as extensions or enfranchisement or existence of obligations, such as restrictive covenants or other rights creating obligations for the owner or others.
- Please ask if you would like us to explain any of the terms above.

## **COMMUNICATION BETWEEN YOU AND US**

- This firm aims to provide a truly professional service. If, however, you do not feel that we are achieving this objective, or if you consider you have cause to complain about your bill, then you are entitled to let Mark Taylor know and he cannot resolve your concerns, we will refer your queries to our Client Relations Partner, Kate Hunt or if she is not available for any reason, then to our Deputy Client Relations Partner, Aymer Hutton. If we have been unable to settle your complaint using our internal complaints process then you have a right to complain to the Legal Ombudsman, an independent complaints body, established under the Legal Services Act 2007 that deals with legal services complaints. The contact details for the Legal Ombudsman are: [www.legalombudsman.org.uk](http://www.legalombudsman.org.uk) or by telephone at 0300 5550333. Please note that you have six months from our final letter in which to complain to the Legal Ombudsman. Further, currently the Legal Ombudsman is able to investigate complaints made

within three years of discovering any issues or problems. However from 1 April 2023, the time limits for referring a complaint to the Legal Ombudsman will be not later than one year from the date of the act or omission being complained about or one year from the date when the complainant should have realised that there was cause for complaint.

- Alternative complaint bodies such as Ombudsman Services (<https://www.ombudsman-services.org/>) and ProMediate (<http://www.promediate.co.uk/>) exist which are competent to deal with complaints about legal services should both you and our firm wish to use such a scheme.
- If you wish to dispute our invoices, then you have the right to make a complaint as set out above or apply to the Court for an assessment of the invoice under Part III of the Solicitors' Act 1974. Please note, however, that if all or part of a bill remains unpaid we may be entitled to charge interest.
- We will attempt to communicate with you by such a method as you may request. We are unable to accept or receive instructions or accept service of papers on your behalf by e-mail.
- Data protection laws require us to advise you that your particulars are held on our database. We may from time to time, use these details to send you information which we think might be of interest to you but will not do so in breach of any data protection laws.

#### **TERMS AND CONDITIONS OF BUSINESS**

- Unless otherwise agreed, and subject to the application of then current hourly rates, these terms and conditions of business shall apply to any future instructions by you to this firm.

#### **AT HOME OR DISTANCE SELLING REGULATIONS 2014**

- By agreeing to these terms and conditions you are accepting that we provide bespoke (personalised) legal services to clients. However, you have the right to cancel this Agreement before we commence work for you. Your continuing instructions in this matter will amount to an acceptance of these terms and conditions of business. It will not generally be possible for us to start work on your behalf until you have agreed to these terms and conditions and we reserve the right not to commence work. In returning this agreement you are authorising us to commence work immediately. If you decide to cancel this agreement within the notice period, you will be liable to pay for the work done up to the date of our receipt of your notice.
- You should address and sign any cancellation notice to Mark Taylor at Cunningtons, Great Square, Braintree, Essex, CM7 1UD which can also be sent by email to [mark.taylor@cunningtons.co.uk](mailto:mark.taylor@cunningtons.co.uk).

#### **DATA PROTECTION PRIVACY NOTICE**

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

- updating and enhancing client records
- analysis to help us manage our practice
- statutory returns
- legal and regulatory compliance

Our use of that information is subject to your instructions, data protection law and our duty of confidentiality.

Please note that our work for you may require us to pass on such information to third parties such as expert witnesses and other professional advisers, including sometimes advisers appointed by another party to your matter. We may also give such information to others who perform services for us, such as typing or photocopying. Our practice may be audited or checked by our accountants or our regulator, or by other organisations. We do not normally copy such information to anyone outside the European Economic Area, however we may do so when the particular circumstances of your matter so require. All such third parties are required to maintain confidentiality in relation to your files.

You have a right of access under data protection law to the personal data that we hold about you. We seek to keep that personal data correct and up to date. You should let us know if you believe the information we hold about you needs to be corrected or updated. You also have certain other rights in respect of how we use your data and what we are allowed to keep.

Subject to certain circumstances, your main rights are:-

- A right of access to the personal data being processed about you and why;
- A right to rectification of inaccurate personal data;
- A right to erasure of personal data, if it is no longer necessary to retain;
- A right to restrict processing of your personal data;
- A right to ask for your personal data to be transferred to a different data controller;
- A right to object to the processing of your personal data; and
- A right not to be subjected solely to automated decision making or profiling.

You can view our full privacy policy, which includes details of your rights, by visiting our website: [www.cunningtons.co.uk](http://www.cunningtons.co.uk).

We have appointed Mark Taylor as our representative for the purposes of data protection legislation: [mark.taylor@cunningtons.co.uk](mailto:mark.taylor@cunningtons.co.uk). If you require a hard copy of this privacy policy, or require it in any particular format, please contact Mark Taylor on 01376 326868 or write to Mark Taylor at Great Square Braintree Essex CM7 1UD and we will send it to you.

It is important that you understand our full policy, so please take the time to read it before agreeing to it.

#### ***Data Protection in Respect of Money Laundering Checks***

We may receive personal data from you for the purposes of our money laundering checks, such as a copy of your passport. These will be processed only for the purposes of preventing money laundering and terrorist financing, or as otherwise permitted by law or with your express consent.

You consent to us retaining such data for longer than the five year statutory period, unless you tell us otherwise.

***Data Protection – Your Obligations***

If you send us personal data about anyone other than yourself you will ensure you have any appropriate consents and notices in place to enable you to transfer that personal data to us, and so that we may use it for the purposes for which you provide it to us.