

# **THOMAS FLAVELL & SONS LIMITED**

## **TERMS AND CONDITIONS OF BUSINESS**

### **OUR AIM**

We aim to offer our clients quality legal advice with a personal service at a fair cost. In doing so we will:-

- always act in your best interests (subject to any overriding duty we owe to the Court).
- reply to letters and other communications from you and others promptly.
- arrange appointments with you without undue delay.
- without reporting to you for the sake of doing so, keep you informed if there has been a significant development on your matter.

In return, we ask you to respond promptly to requests for instructions and information and to pay our charges and expenses without delay.

### **OUR HOURS OF BUSINESS**

- Our opening hours are 9.00am to 5.00pm Monday to Friday. Appointments can be arranged at other times when this is essential.

### **CHARGES AND EXPENSES - PEOPLE RESPONSIBLE FOR YOUR WORK**

- The attached letter tells you how much your matter is likely to cost either under a fixed fee or hourly rate and who is responsible for its conduct;
- All clients are asked to make payment on account for an AML check of £10.00 + VAT to help us comply with Anti-Money Laundering regulations.
- We will review and in some cases increase our fees annually.

### **PAYMENT ARRANGEMENTS**

- It is normal practice to ask clients to pay interim bills, usually monthly, and sums of money from time to time on account of the charges and expenses which are expected in the following weeks or months. 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 your matter may result. In the unlikely event of any bill or request for payment not being met, this firm reserves the right to stop acting for you further.
- Payment is due within 7 days of the date of our invoice. Interest will be charged on a daily basis at 4% above the Bank of England base rate from the date payment of our invoice was due.
- In the case of a purchase payment of all outstanding sums due must be paid **and cleared** prior to completion and in the case of a sale on completion. If sufficient funds are already available on completion, and we have sent you our bill, we will deduct our charges and expenses from those funds before accounting to you for any balance.
- The common law entitles us to retain any money, papers or other property belonging to you that properly come into our possession pending payment of our costs, whether or not the property is acquired in connection with the matter for which the costs were incurred. This is known as a "general lien". We are not entitled to sell property held under a lien but we are entitled to hold property, other than money, even if the value of it greatly exceeds the amount due to us in respect of costs.
- In conducting litigation for you, we have additional rights in any property recovered or preserved by you whether it is in our possession or not and in respect of costs incurred, whether billed or unbilled. We also have a right to ask the court to make a charging order in our favour for any assessed costs.
- **Cash payments in excess of £500 will not be accepted.** Monies due to you from us will be paid by cheque or bank transfer, but not in cash, and will not be made payable to a third party. We reserve the right to pass on any charges incurred for establishing the source of funds should you fail to adhere to this rule.
- If you would prefer to send an online payment we will require your bank details before we will release ours. Please note we will not change our bank details during the course of the transaction, if you receive notification of a change in bank details from our firm please call the accounts department immediately on 01455 610747.

### **OTHER PARTIES' CHARGES AND EXPENSES**

- In some cases you may be entitled to payment of costs by some other person. It is important that you understand in such circumstances, the other person may not be required to pay all the charges and expenses which you incur with us. You have to pay our charges and expenses in the first place and any amounts recovered will be a contribution towards them. For example, in some courts our hourly rates may not be recovered in full from the losing party, nor will charges to you for letters and e-mails received be reimbursed fully. If the other party is in receipt of community legal service funding no costs are likely to be recovered. We confirm that we have already discussed with you whether any other form of funding may be available to you including pre-purchased insurance, public funding, or assistance from, for example, a trade union or employer. These terms of business are offered on the basis that no other such funding is available or that you have chosen not to take it up.
- If you are successful and a court orders another party to pay some or all of your charges and expenses, interest can 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 to you.
- 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 be made to take out insurance to cover liability for such legal expenses. Please discuss this with us if you are interested in this possibility.

### **DATA PROTECTION**

- The General Data Protection Regulation (GDPR) and the current Data Protection Act regulate our use of your personal data. It is our responsibility to ensure that the personal data we process in relation to you is done so in accordance with the required principles. Any data held shall be processed fairly and lawfully and in accordance with the rights of data subjects.
- We will process data in line with our privacy notice.
- You have several rights in relation to your data. More information about these rights is available in our "Privacy Policy" which can be found on our website [www.thomasflavell.co.uk](http://www.thomasflavell.co.uk). We commit to ensuring that your rights are upheld in accordance with the law and have appropriate mechanisms for dealing with such.
- We may process certain types of special category data. In these circumstances, you will be fully informed as to the data we wish to process and the reason for the processing.
- In some cases data may be required to be given to professional third parties with which we must comply. These are likely to be audits for Law Society accreditations, mortgage lender Panel memberships and our Regulator.
- We may use your personal data to contact you about changes in the Law which may affect you personally such as requirements for updating your Will. We have a legitimate interest for processing this data in order to protect the interests of you as our client.
- Where we are acting for two or more clients jointly it is on the clear understanding that we are authorized to act on the instructions from either, both or any of them.
- **Retention Periods and Storage**
  - If you instruct us, all correspondence and notes on your matter will be stored for the following periods:
  - Conveyancing, Commercial Property & Corporate work will be stored electronically and in paper format for 12 years

- Family, Probate, and Litigation work will be stored electronically and in paper format for 6 years
- Instructions taken for the writing of your Will be stored for 25 years.
- We will not destroy any document such as Wills, Deeds and other securities that you ask us to hold in safe custody.
- If we retrieve papers or documents from storage in relation to continuing or new instructions, we will not normally charge you. If however you request us to retrieve your file of papers from storage for the purpose of obtaining information previously provided or which involves us reading your file or copying documents from your file then a minimum charge of £30 plus VAT will be payable.

#### **CONFLICTS OF INTEREST**

- We are unable to act for you if there is a conflict of interest (except in the limited circumstances set out below)
  - There is a conflict of interests if:
    - We owe separate duties to act in the best interests of two or more clients in relation to the same or related matters, and those duties conflict, or there is a significant risk that those duties may conflict; or
    - our duty to act in the best interests of any client in relation to a matter conflicts, or there is a significant risk that it may conflict, with our own interests in relation to that or a related matter.
    - For the purpose of exceptions a related matter will always include any other matter which involves the same asset or liability.
- Exceptions to duty not to act
  - We may act for two or more clients in relation to a matter in situations of conflict or possible conflict if:
    - the different clients have a substantially common interest in relation to that matter or a particular aspect of it; and
    - all the clients have given in writing their informed consent to us acting.
- We may act for two or more clients in relation to a matter in situations of conflict or possible conflict if:
  - the clients are competing for the same asset which, if attained by one client, will make that asset unattainable to the other client(s);
  - there is no other conflict, or significant risk of conflict, between the interests of any of the clients in relation to that matter
  - the clients have confirmed in writing that they want our firm to act in the knowledge that our firm acts, or may act, for one or more other clients who are competing for the same asset; and
  - unless the clients specifically agree, no individual acts for, or is responsible for the supervision of, more than one of those clients.

#### **PROFESSIONAL INDEMNITY INSURANCE AND CLIENT MONIES**

- Details of the firm's professional indemnity insurance can be obtained from the firm's Managing Director and is also accessible at any of our offices.
- Whilst all money received on your behalf will be placed in a designated Client Account with a bank or building society in accordance with the Solicitors Accounts Rules, this firm and its Directors will not be liable to repay money belonging to you lost through the failure of the bank or building society in which those monies were deposited.
- Where money is held in our Client Account on your behalf you will receive interest on those monies at the interest rate payable on an instant access account held with HSBC Bank plc, subject to the amount of such interest exceeding £20. A reasonable charge (not exceeding £50) may be made by us for acting as stakeholder, but that charge will be offset against any interest we receive.

#### **TAX ADVICE**

- We will not give advice on any tax or Social Security implications of any proposed settlement or potential court order. If you require such advice, please let us know as otherwise we will assume that you are taking such advice elsewhere. If we find that we are not qualified to advise on the particular aspects applicable to you, we will be happy to introduce you to a tax advisor who can assist you.

#### **FINANCIAL SERVICES AND INSURANCE CONTRACTS**

- If, while we are acting for you, you need advice on investments, we may have to refer you to someone who is authorised by the Financial Conduct Authority (FCA), as we are not. However, as we are regulated by The Solicitors Regulation Authority, we may be able to provide certain limited investment services where these are closely linked to the legal work we are doing for you.
- Although not authorised by the FCA, we are included on the register maintained by them so enabling us to carry on insurance mediation activities, which is broadly the advising on, selling and administration of insurance contracts. Insurance mediation activities and investment services, including arrangements for complaints or redress if something goes wrong, are regulated by The Solicitors Regulation Authority. The register can be accessed via the FCA web site at [www.fca.org.uk/firms](http://www.fca.org.uk/firms).
- The Financial Services Compensation Scheme (FSCS) is the UK's statutory compensation scheme for customers of authorised financial services firms. This means that FSCS can pay compensation if a firm is unable, or likely to be unable, to pay claims against it.

#### **LIMITED COMPANIES**

- When accepting instructions to act on behalf of a limited company, we may require a Director and/or controlling shareholder to sign a form of 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 and expenses.

#### **EQUALITY & DIVERSITY**

- The firm is committed to eliminating discrimination and promoting equality and diversity in its own policies, practices and procedures and in those areas in which it has influence.
- This applies to the firm's professional dealings with clients, staff, Directors, other solicitors, barristers, and third parties.
- The firm intends to treat all clients equally and with same attention, courtesy and respect regardless of their race or racial group (including colour, nationality and ethnic or national origins), sex (including marital status, gender reassignment, pregnancy and paternity), sexual orientation (including civil partnership status), religion or belief, age or disability.
- In developing and implementing its policy, the firm is committed to complying with Solicitors Regulation Authority Code of Conduct and with all current and any future anti-discrimination legislation and associated codes of practice including, but not limited to the Employment Rights Act 1996 and the Equality Act 2010 and any relevant regulations made pursuant to the Acts together with any amendments, re-enactments or updates thereto.

#### **TERMINATION**

- You may terminate your instructions to us in writing at any time but we will be entitled to keep all of your papers and documents while there is money owing to us. If at any stage you do not wish us to continue doing work and/or incurring charges and expenses on your behalf, you must tell us this 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, we will tell you the reason and give you notice in writing.
- Where a decision is made to stop acting for you, you will, unless otherwise notified, be required to pay our charges up until that point either on an hourly basis as set out in the attached letter or, if appropriate, on a pro-rata basis according to the stage reached along with any expenses then incurred.
- Under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, for some non-business instructions, you may have right to withdraw, without charge, within 14 days of the date on which you asked us to act for you. However if we start work with your consent within that period, you lose that right to withdraw. Your acceptance of these terms and conditions amounts to such consent. If you seek to withdraw instructions, you should give notice by telephone e-mail or letter to the person named as being responsible for your work. The Regulations require us to inform you that the work involved is likely to take more than 30 days.

## **IDENTITY, DISCLOSURE AND CONFIDENTIALITY REQUIREMENTS**

- We are entitled to refuse to act for you if you fail to supply appropriate proof of identity for yourself or for any principal whom you may represent. We may arrange to carry out an electronic verification of your identity if we consider that a saving of time and cost will be achieved by doing so. The administrative cost of undertaking each such search will be charged to you but will not exceed £10 plus VAT per individual without your agreement.
- Solicitors are under a professional and legal obligation to keep the affairs of a client confidential. This obligation is however subject to a statutory exception: legislation on money laundering and terrorist financing has placed solicitors under a legal duty in certain circumstances to disclose information to the National Crime Agency. Where a solicitor knows or suspects that a transaction on behalf of a client involves money laundering, the solicitor may be required to make a disclosure. If, while we are acting for you, it becomes necessary to make such a disclosure, we may not be able to inform you that it has been made or the reasons for it. We will not be liable for any loss, damage or delay arising out of the firm's compliance with any statutory or regulatory requirement.
- Our firm may be subject to audit or quality checks by external firms or organisations. We may also outsource work. This might be for example typing or photocopying or costings, or research and preparation to assist with your matter. Information from your file may therefore be made available in such circumstances. We will always aim to obtain a confidentiality agreement with the third party.
- In order to comply with court and tribunal rules, all documentation relevant to any issues in litigation, however potentially damaging to your case, have to be preserved and they may be required to be made available to the other side. This aspect of proceedings is known as "disclosure". Subject to this, we will not reveal confidential information about your case except as provided by these terms of business and where, for example, your opponent is ordered to pay your costs, we have to meet obligations to reveal details of the case to them and to the court.

## **COMMUNICATIONS BETWEEN US AND COMPLAINTS**

- We are committed to providing high quality legal advice and client care at all times. If you are unhappy about any aspect of the service or about your bill, please raise your concern in the first instance with the person responsible for the conduct of your matter. If that does not resolve the problem, or if you would prefer not to speak to person responsible for the conduct of your matter, please contact Lindsey Dewart, our Practice Manager, either by telephone 01455 610747, by post or by e-mail at [lad@thomasflavell.co.uk](mailto:lad@thomasflavell.co.uk). A copy of our Complaints Handling Procedure is available from any of our offices. If you are not satisfied with how we have handled your complaint you can ask the Legal Ombudsman at P O Box 6806 Wolverhampton WV1 9WJ to consider the complaint. Normally, you will need to bring a complaint to the Legal Ombudsman within six months of receiving a final written response from us about your complaint or within six years of the act or omission about which you are complaining occurring (or if outside this period, within three years of when you should reasonably have been aware of it).
- Alternative complaints bodies (such as Small Claims Mediation: <http://www.small-claims-mediation.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, however we do not currently agree to use such a scheme.
- Online Dispute Resolution:
  - The European Commission has established an Online Dispute Resolution Platform (ODR Platform). It is specifically designed to help customers resident in the European Union (EU) who have a complaint about goods or services bought online from traders established in the EU.
  - The ODR Platform can be found here: <http://ec.europa.eu/consumers/odr/>
- We aim to communicate with you by such method as you may reasonably request. We may need to virus check disks or e-mail. Unless you withdraw consent, we will communicate with others where appropriate by e-mail or fax but we cannot be responsible for the security of correspondence and documents sent by fax or e-mail.

## **TERMS AND CONDITION OF BUSINESS**

- Unless otherwise agreed, and subject to the application of the firm's then current hourly rates, these Terms and Conditions of Business shall apply to any future instructions given by you to this firm. You are deemed to have accepted these Terms & Conditions if we do not hear from you within 14 days to cancel your instructions.

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## **\*FOR PROPERTY RELATED MATTERS**

### **\*LAND CONTAMINATION, PLANNING ADVICE AND OTHER PROPERTY DISCLAIMERS**

- If you are acquiring a property, you need to be aware that as the owner/occupier of that property you may have to pay for decontamination of the land even if you were not responsible for the contaminating activity. We will not advise you about any issues relating to the possible contamination of any land which may be relevant to your purchase unless specifically requested to do so. Even then we are not qualified to interpret the contents of the data revealed by an environmental search. In the absence of advice from someone who is suitably qualified you proceed at your own risk.
- We will not advise you on the planning implications on any property that you are acquiring unless specifically requested to do so, other than to report to you any relevant information disclosed by the result of the 'local search'. Please note that the 'local search' will only reveal planning information relating to the specific property searched against. At an extra cost, which we will pass on to you, we can if you ask us in writing arrange for more extensive enquiries to be made.
- It is not our responsibility to carry out a physical inspection of any property, but if you wish us to do so please make a specific request. Any such inspection will involve you in additional costs which we will discuss and agree with you at the time.
- We will not provide any advice on the valuation of the property, the suitability of your mortgage or any other financial arrangements you have made.

### **\*STAMP DUTY LAND TAX ('SDLT')**

- Whilst we will normally prepare any SDLT Return that may be required in connection with your matter and will make every effort to ensure the Return is completed in accordance with the information that has been provided to us, you are by law required to take responsibility for any such Return and pay any tax or penalties due. Before signing the SDLT Return you must therefore check it to ensure that it is complete and correct.
- All SDLT Returns are subject to further enquiry by the Revenue for a period of up to 9 months following submission. Should your Return be the subject of such an investigation whilst we shall be happy to assist you in responding to the Revenue this will involve you in costs additional to those quoted elsewhere. The Revenue requires that all paperwork relating to your transaction must be kept by you for a minimum of **6 years**.

### **\*GREEN DEAL**

- The Green Deal is a Government initiative in force from January 2013 to provide low cost loans to fund energy efficiency improvement works to residential properties. The loans are unsecured and repaid through your energy bill.
- The Green Deal plan and the unsecured loan which forms its basis attaches itself to the property rather than the person who has taken it out. Therefore we will need to determine whether a property is subject to a Green Deal plan.
- Evidence of a Green Deal plan must be set out in the EPC and should show the improvements made and the repayment amounts. If a purchaser has purchased a property and he believes that the existence of a Green Deal plan wasn't properly disclosed then they can dispute the charges but must do so within 90 days of first being notified.

### **\*HELP TO BUY**

- The government has introduced 'Help to Buy' schemes for those looking to purchase their first home. The scheme includes an ISA, Equity Loan, Mortgage Guarantee, Shared ownership and London Help to Buy.
- Help to Buy ISA - The solicitor or conveyancer will make the application for the bonus on behalf of the client, confirm that the client has declared their eligibility to receive the bonus and confirm that the property being purchased meets the eligibility criteria. This involves submitting the relevant documentation, including a payment request, and, once received, applying the bonus funds towards the purchase of the property.
- We are on the approved 'Help to Buy' panel and are therefore authorised to act for you on your Help to Buy transaction.

**YOUR RIGHTS TO CANCEL**

- The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 apply to this Contract. If this Contract was not made on our premises then you have a right to cancel as set out below.
- Your Contract with this Firm starts on the date of the firms terms of business letter enclosed herewith.
- You have the right to cancel this Contract within 14 days of its start, without giving any reason.
- To exercise the right to cancel you must inform us of your decision to cancel this Contract by a clear statement (e.g. a letter sent by post, fax or email).
- You may use the attached model Cancellation Form, but it is not obligatory.
- To meet the cancellation deadline it is sufficient for you to send your communication concerning your exercise of the right to cancel, before the cancellation period has expired.
- If you cancel this Contract we will reimburse you all payments received from you. 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 this Contract.
- We will make the reimbursement using the same means of payment as you used for the initial transaction, unless you have expressly agreed otherwise. In any event, you will not incur any fees as a result of the reimbursement.
- If you requested us to start work for you during the cancellation period, you will pay us in respect of the work done prior to the date on which you cancel this Contract.

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**CANCELLATION FORM**

**To: Thomas Flavell & Sons**

<p><b>Address:</b> Church Walk, HINCKLEY, Leics., LE10 1DN. Fax No: 01455 251006</p>	<p>4 Wood Street, EARL SHILTON, Leics., LE9 7LB. Fax No: 01455 851108</p>	<p>33-35 Smith Street WARWICK Warks. CV34 4JA Fax no. 01926 355660</p>
<p>20 Market Place, MARKET BOSWORTH, Nr. Nuneaton, Warks., CV13 0LF. Fax No: 01455 291223</p>	<p>41-43 Regent Grove LEAMINGTON SPA Warks. CV32 4AP Fax no: 01926 331800 Email: <a href="mailto:law@thosflavell.co.uk">law@thosflavell.co.uk</a></p>	<p>Shire House 4 Long Street STONEY STANTON LE9 4DQ Fax no: 01455 247789</p>

**I/WE HEREBY GIVE NOTICE THAT I/WE CANCEL MY/OUR CONTRACT FOR THE SUPPLY OF LEGAL SERVICES DATED:.....**

**YOUR NAME(S)** .....

**YOUR ADDRESS:** .....

**YOUR SIGNATURE(S)** .....

**DATE:** .....

***IF YOU WISH TO HAVE THESE TERMS OF BUSINESS IN LARGER PRINT OR IF YOU HAVE ANY QUESTIONS ABOUT THEM, PLEASE TELEPHONE US ON 01455-610747***