

# THOMAS BOYD WHYTE

## TERMS OF ENGAGEMENT

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In these Terms of Engagement (“Terms”) Thomas Boyd Whyte is referred to as “we/our/us/TBW” and the clients of Thomas Boyd Whyte are referred to as “you/your”. Thomas Boyd Whyte is the practising and trading name of Thomas Boyd Whyte.

### 1. Our Terms

1.1 **Parties.** In these terms, Thomas Boyd Whyte is referred to as “we/our/us”. The clients of Thomas Boyd Whyte are referred to as “you/your”.

1.2 **Our Status.** We are an English company trading as Thomas Boyd Whyte.

1.3 **Entire Terms.** These terms are the only terms between us. Save as explained below, they will not change unless we replace them in their entirety.

1.4 **Invalidity.** If any term is invalid, then it shall be deemed changed just insofar as necessary to make the term valid. Where that is not possible, then invalid term shall be deleted. No change or deletion shall affect any other term.

### 2. Our Charges

2.1 **Fees.** The way we charge for our service is set out in our engagement letter and may be varied by us in writing. We may offer a fixed or a capped fee. If so, we will set out the scope of work we will deliver at that price. A fixed or capped fee will be based on assumptions and conditions. Where these do not hold true, for work outside the agreed scope and for all work not subject to a fixed or a capped fee we charge for the time we spend working for you at our hourly rate. We record the time spent on your work to the nearest minute. We may change our hourly rates by giving one month’s written notice.

2.2 **Estimates.** Any estimates we provide are based on conditions and assumptions and our understanding of the work we are to undertake. An estimate is not a cap and we may exceed our estimates.

2.3 **Expenses.** As part of our work, we may incur expenses. If so, we charge these to you at cost. Examples of expenses include court fees, search fees and charges for Counsel,

expert witnesses, accommodation and travel. We will not incur an individual expense over £300.00 without your approval.

**2.4 VAT.** Unless we say otherwise, Value Added Tax is excluded from the prices we provide to you.

### **3. Costs On Account**

We may need to ask you for a payment on account of costs, expenses and VAT. If so, we will send you a costs on account statement requesting payment of an appropriate sum into our client account. From time to time, we may ask for a top-up payment. At the end of our engagement, we will return any balance to you. If we ask for costs on account we are not obliged to do any work until they are received. Unless we specifically say so, we do not cap our fees at the level of costs on account we request.

### **4. Payments**

**4.1 Invoices.** We will invoice you for our services monthly (or at other appropriate times). Our invoice will state the work done, any expenses and the fees due. Expenses only invoices are payable non receipt, regardless of the payment terms we agree. We can only address an invoice to you, even if someone else is to pay it.

**4.2 How to Pay.** You can pay us by bank transfer or card payment. Card payments normally take three working days to reach our account. We accept debit cards and credit cards. The maximum you can pay us by credit card in any 30-day period is £20,000.

**4.3 No Cash.** We do not accept or make cash payments.

**4.4 Currency Conversion.** If you pay us in another currency (not the currency in which payment was requested), we will convert the payment at National Westminster Bank's standard exchange rates and deduct any charges we incur in receiving such funds. You remain liable for any shortfall after conversion and deductions.

**4.5 Interests and Costs.** We will charge interest at 4% above National Westminster Bank's overdue amounts. We trust not, but if we ever need to incur costs in recovering unpaid amounts, you agree to pay our costs in full.

**4.6 Payment from money we hold.** If we hold any money for you, we may use it to settle anything you owe us even if you tell us not to do so.

**4.7 Retention.** Until all payments due to us have been made, we may keep your property and documents. We may also keep your funds up to the amount owed to us plus (if the funds in client account are in a different currency from our invoice) an extra 25% of the amount owed to us, in case the exchange rate moves against us.

**4.8 Each client is liable.** When two or more clients together engage us, each client is jointly and separately liable to pay the full amount of our fees, expenses and VAT.

## **5. Client Account**

**5.1 Payments in.** We may offer to hold funds on your behalf in our client account as part of our acting for you. If so, we will give you our sort code, account number and a reference number, which you must quote with your payment. Sending money without our reference may delay our receipt of your payment. Before sending us funds, you should reconfirm our bank details by telephoning the number on our website and speaking either with the Solicitor who is handling your matter or our cashiers team. We will not change our bank details. If you receive any correspondence suggesting that our details have changed or raising any concerns in this respect, you should take no action save contacting the Solicitor advising you.

**5.2 Payments out.** Money will only be paid from our client account with your instructions, except to pay our fees and expenses or following a Court Order. We may require you to verify the destination account details before making a payment.

**5.3 Interest.** We pay interest on funds held in our client account as per our client account interest policy (available on request).

**5.4 Bank default.** Money paid into our client account is held at our bank on trust for you. If our bank becomes insolvent or does not carry out our instructions, we are not liable for any loss or damage caused to you.

## **6. Liability**

**6.1 Our Liability.** We are only liable for the losses we cause directly. We are not liable for your loss of profit or other indirect loss. We are not liable for matters outside our control.

**6.2 Liability of others.** Where you or others contribute to your loss, then we will be liable only for a fair proportion of your loss, taking into account your or such other's actions.

**6.3 £3 million cap.** Our total liability to you is limited to £3,000,000. This limit applies to all claims against us related in any way with our work for you connected to this

engagement letter. Where we work for more than one client on a matter, this £3,000,000 limit applies to our total liability to all of them.

**6.4 No liability to anyone but you.** The services we provide are only for you. Nobody else can rely on our advice (or see a copy) for any purpose, without our written permission. We owe no duties to anyone but you.

**6.5 No one is liable except us.** If a claim arises, connected to our work, you can only claim against us, not against any of the following (even if they have been negligent):

Our managers, partners, employees, consultants, barristers, solicitors, agents. If anyone signs a document in his own name, that does not mean the signatory accepts any personal legal liability. Each person mentioned in this paragraph can enforce it under the Contracts (Rights of Third Parties) Act 1999.

**6.6 Earlier statements.** We make this agreement on the basis that you have not relied on any statement or promise from us or from any of our staff, consultants or officers. If that is wrong, please write to us straight away to say so.

**6.7 Liability that cannot be limited.** This clause does not limit any liability that cannot legally be limited, such as for fraud on our part, or death or personal injury caused by negligence.

## **7. Our legal advice**

**7.1 Jurisdiction.** We are authorised to practice law in England and Wales. We do not practice in any other jurisdiction. Any advice we may give you in relation to those other jurisdictions is commercial advice only; it is not legal advice and you must not rely on it as such. If you require such legal advice you must instruct Lawyers in that jurisdiction.

**7.2 Relevant information.** You must ensure you tell the Lawyers working on this matter, everything they need to know in order to work for you as soon as you realise they need to know it. This includes anything you have told us in the past if we worked for you before. You must always be truthful with us.

**7.3 Changes in law and your situation.** We will advise you according to your situation as you explain it to us and the law in force when we give our advice. We will not update our advice once we have delivered it to you unless you ask us to do so in writing. If you believe your situation may change after we give our advice, you should tell us how in writing and ask us to factor this in to our advice. Changes in the law and to your situation can be especially relevant to any tax you are required to pay.

## **8. Work done by others**

**8.1 Engaging in others.** Where we believe it is in your interests, we will introduce you to others to work for you. You must decide whether you wish to engage them. If you do, you will engage them directly or through us as your agent. You alone shall be responsible for their fees.

**8.2 Reliance.** We will rely on the work and advice prepared by you and your other advisers (including those you may engage through us).

**8.3 Responsibility.** We are not responsible for any action, omission, error or deficiency of anyone you engage whether directly or through us.

## **9. Recruiting our staff**

**9.1 Introduction fee.** You must pay us an introduction fee, from now until 12 months after this agreement ends, you contract (directly or indirectly) with any of our staff, other than through us without our written consent.

**9.2 Calculating the fee.** The introduction fee for a staff member is 25% of everything you pay or agree to pay (directly or indirectly) in connection with the services that person delivers for you in the 12 months starting the day that person starts providing those services.

**9.3 Existing client.** We will waive the fee at the request of the staff member, if he or she introduced you to us in the first place.

## **10. Your information**

**10.1 Confidential information.** We will keep private all confidential information you disclose to us. We will share your information with others where you allow it, where required by law or regulation, where required by our insurers or where we think it allows us to give you a better service.

**10.2 Personal information.** We comply with the Data Protection Act 1998. We use the personal data you give us to maintain our client records and to comply with the law and regulations. We may share your personal data with our insurers, our regulators, our professional advisors and our colleagues. If we share your personal data, we will require the recipient to keep it confidential and comply with our information security policy. You have the right of access to the personal data we hold about you. We may hold copies

of your personal data and other data on computers outside the European Economic Area and you consent to this transfer and use outside the EEA.

**10.3 Multiple clients.** When two or more clients together engage us, each client irrevocably consents to sharing with the other(s) the information it provides.

**10.4 Mailing list.** We may send you information we think might interest you. If you do not wish to receive this, please tell us in writing.

**10.5 Your files.** We store some files digitally and others in hard copy. In each case, we may use third parties to store your files. We keep files for six to eight years, or longer if required by law, following our document retention policy and information security policy. Both policies are available on request.

**10.6 Destruction.** We may destroy your files at the end of their storage period, or earlier with your consent. Please write and tell us if you object to this.

**10.7 Retrieval.** We will charge you if you want us to retrieve your files after we have completed our work.

## **11. Insurance and regulation**

**11.1 Insurance.** We maintain professional indemnity insurance with an insurer approved by the Solicitors Regulation Authority. Please ask if you would like a summary of this insurance.

**11.2 Legal Services.** We are a law firm authorised and regulated by the Solicitors Regulation Authority, whose rules are at [www.sra.org.uk/rules](http://www.sra.org.uk/rules).

**11.3 Supervision.** The Law Society is a designated professional body for the purposes of the Financial Services and Markets Act 2000, but responsibility for regulation and complaints handling has been separated from the Law Society's representative functions. The Solicitors Regulation Authority is the independent regulatory body of the Law Society and the Legal Ombudsman is the independent complaints-handling body.

**11.4 Investment services.** We may sometimes undertake investment related activities on your behalf in the United Kingdom and elsewhere which are regulated under the U.K. Financial Services and Markets Act 2000. When we do so, we are not authorised by the Financial Conduct Authority under this Act. Instead, we are authorised and regulated by the Solicitors Regulation Authority as an "exempt professional firm" accordingly, we can provide a limited range of investment services if any of the following are true:

a) they are an incidental part of the professional services we have been engaged to provide,

- b) they can reasonably be regarded as a necessary part of our professional services.
- c) we are otherwise permitted to provide them under the Act.

**11.5 Insurance mediation services.** We are not regulated by the Financial Conduct Authority, although we are included on its register to carry on insurance mediation activity. This activity includes advising on, selling and administration of insurance contracts related to the legal services we provide. 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 on the Financial Conduct Authority website at [www.fca.org.uk/register](http://www.fca.org.uk/register) and our registration number is.....

**11.6 No investment advice.** We do not give advice on the merits of investment transactions or act as a broker or an arranger of investment transactions. No communication from this firm should be interpreted as an invitation or inducement to engage in any investment transaction or other investment activity. We are not entitled to communicate invitations or inducements to n engage in investment activity on your behalf.

**11.7 Undertakings.** By engaging us to work for you, you irrevocably authorise us to:

- a) Give any undertaking that is a normal part of our work for you and to
- b) Take the necessary action to fulfil our undertaking.

If a proposed undertaking is particularly important or not a normal part of our work then we may refuse to give it until you give us express written authority in our usual format.

## **12. Proof of identity**

**12.1 Proof of your identity.** Before we can start work, we must of your identity and where relevant, that of your beneficial owner(s). this information may be renewed every three years. We may verify your identity by:

- a) Searching a third-party database. This may leave a footprint on your credit file but it will not affect your credit rating.
- b) Asking you for original documents or for copies certified by another Solicitor or by a regulated professional.

**12.2 Proof of others' identity.** We will rely on you to check that others involved in transaction are who they claim to be. Or, if you ask us in writing, we will be happy to check this for you.

**12.3 Storing identity documents.** We will keep copies of all documents provided to us for proof of identifying for between five and eight years after we finish working for you on any matter. After that, if you ask us in writing, we will destroy them.

**12.4 .Reporting.** We are professionally and legally obliged to keep your affairs confidential. However, we may be required by law to make a disclosure to the National Crime Agency where we know or suspect a transaction may involve money laundering or terrorist financing. If we are required to make a disclosure in relation to your matter, we may need to stop work and may not be able to tell you that a disclosure has been made.

### **13. Complaints**

**13.1 Ombudsman** If you are not satisfied with our handling of a complaint then, subject to eligibility, you can ask the Legal Ombudsman to consider the complaint (see [www.legalombudsman.org.uk](http://www.legalombudsman.org.uk)). 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 and within six years of the relevant act or omissions or no more than three years from when you should have reasonably have known there was cause for concern.

If you are dissatisfied with our service you have the right to refer the matter to the SRA, who regulate solicitors. You can find a link to their website on our “management” page. A complaint to the SRA if a person is unhappy about a firm’s behaviour. This could be for things like dishonesty, taking or losing an individual’s money or treating them unfairly because of their age, a disability or other characteristic. Service concerns are dealt with by the Ombudsman.

### **14. Communications**

**14.1 Communicating with us.** You agree to communicate with us by email. That includes getting our invoices by email. (Our complaints policy makes an exception). We may assume emails sent from your email account (s) are from you and are received as you sent them. You must notify us without delay of any unauthorised use of your email account(s).

**14.2 Accepting Service** Unless expressly agree in writing, we do not accept service of documents by email.

**14.3 Authority** It is your responsibility to tell us any limits on the authority of those who tell us what to do for you. We may accept instructions from any we reasonably believe you have authorised.

### **Termination and Suspension**

15.1 **Your rights.** You may end this agreement at any time by writing to us. You will still have to pay for any work done before we receive your notice of termination.

15.2 **Our rights.** We may suspend or end our services at any time if we have good reason. If so, we will write to you and will explain why and from when we will no longer work for you. Examples of a good reason to end our services would be if:

- a) You have not done as agreed in this letter and terms.
- b) You have not paid an invoice when due.
- c) You have not given us adequate instructions.
- d) You and we no longer have trust and confidence in each other.
- e) Our work for you conflicts with our regulatory duties.

15.3 **If we end or suspend our services we may:**

- a) Invoice all our work in progress and expenses which shall be payable immediately.
- b) Suspend or end any other work for you or anyone you control.

## 16. Law and claims

16.1 **English Law.** English and Welsh law governs this and all future agreements and any dispute or claim arising out of it or in connection with them. Any dispute or claim (including non-contractual disputes or claims) regarding their subject matter or formation shall also be governed by and construed in accordance with the laws of England and Wales.

16.2 **English jurisdiction.** The parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this and all future agreements or their subject matter or information (including non-contractual disputes or claims).