

MBM COMMERCIAL LLP's Terms of Business below explain the terms and conditions which apply when you instruct us to act on your behalf (your "business"). They are subject to any accompanying "Letter of Engagement" (which may be a letter or an email from us further detailing our engagement with you). If there is any conflict between the terms of these Terms of Business and any accompanying Letter of Engagement, then the terms of the Letter of Engagement shall prevail. Prior to changing any aspect of our Terms of Business we will post the proposed new Terms of Business on our website (see the section called "Instructing Us" at [www.mbmcommercial.co.uk](http://www.mbmcommercial.co.uk)) at least 14 days prior to any such change.

### 1. WHO ARE WE? //

MBM Commercial LLP ("MBM", "we" or "us") is a limited liability partnership registered in Scotland, number SO330552 with its registered office at 7 Castle Street, Edinburgh EH2 3AH. We are Scottish lawyers regulated by the Law Society of Scotland. Some of our staff are qualified in other jurisdictions but we are ordinarily able only to provide advice in relation to the law of Scotland. In the event that we are required to obtain advice on legal matters in other jurisdictions we will seek such advice from other qualified legal advisers in the relevant jurisdiction. All legal advice and correspondence given by a partner (being a member of MBM) or member of staff of MBM is given for and on behalf of MBM unless otherwise stated.

For the avoidance of doubt we will not be responsible for advising on the tax or accountancy implications of any work undertaken by us from time to time. We recommend that you seek advice from tax advisers, accountants and other professional advisers (as appropriate). Furthermore we also recommend that for any investment deals that you may be involved in where a particular tax relief (eg Enterprise Investment Scheme or Corporate Venturing Scheme relief) requires to be sought then you ensure that an advance clearance is sought from HMRC with the help of your specialist tax adviser.

### 2. OUR DUTY OF CARE //

We will give your business proper professional skill, care and attention and we will not act for you if it is not in your best interests.

### 3. OUR DUTY OF CONFIDENTIALITY //

Your business will not be disclosed to any other party without your permission, except in a situation when we are legally compelled to do so.

### 4. DELIVERY OF OUR SERVICES //

We believe that effective communication with our clients is fundamental to providing a high quality service. We will correspond with you by telephone, letter, fax and/or by email as appropriate. If you have any preference then please let us know. Please note that it is not our practice to encrypt email messages or email attachments, but it can be arranged for you if you feel that it is required. Unless otherwise expressly agreed with you, the work that we undertake will not include monitoring or reminding you of warranty periods or other notice periods.

### 5. INSTRUCTIONS //

You can help us by giving clear instructions and asking questions about anything you do not understand. We would also ask that you deal promptly with any queries or requests for information and let us know if there are any important time limits which we should be aware of. If we are acting for more than one person (eg partners or husband and wife) we may take instructions from one person on behalf of the

other(s) and all will be fully liable for any actions taken or fees incurred on a joint and several basis. You should also advise us if we are able to take instructions or authorization from anyone other than yourself. If we are selling a property or business for you must tell us about all mortgages, standard securities, charges or inhibitions affecting you or the relevant property or business.

#### **6. CLIENT IDENTIFICATION & SOURCE OF FUNDS CHECKS //**

It is a criminal offence for us to fail to carry out various client identity checks and procedures in the course of our profession. Under the Money Laundering Regulations 2007 and other legislation we are required to ask you for certain information and formally establish your identity and permanent address as well as establish that you are not on certain "black list" databases (eg for politically exposed persons and also for terrorist suspects). As part of this process we will need to undertake a third party data check (such as with CallIML) and if your identity cannot be verified using this service then we reserve the right not to act for you. We reserve the right to request that you provide us with original documents to enable us to perform these mandatory checks as well as background information about you and your business. Please note that we must perform these checks prior to providing any advice to you. We are also legally required to carry out these checks on a regular basis to ensure that the information we hold about you is up to date. Please note that we may also have to carry out checks against any persons who are involved in instructing us who may not be our client. Please note we apply a standard charge of £8.00 (excl. VAT) for each identity check that we are required to undertake (as we have to pay for this service) and this will normally be added to your next invoice.

We also require to verify the source of any funds involved in any transaction so we will normally need to know details of the bank account (including sort code and account number), so please do not be offended should we ask you. Please note that if we cannot verify the source of any funds within 24 hours of receipt we are obliged to return these funds to the relevant bank.

#### **7. OUR OFFICE HOURS //**

Our normal office hours are 9 a.m. to 5.30 p.m. each weekday (excluding bank and public holidays). Arrangements can be made to see you outside these hours if necessary and messages can always be left on our voicemail and answering machine or sent to us by email or fax. We will endeavour to respond to any message as soon as possible. If you instruct us to work outside normal working hours then we reserve the right to charge an appropriate uplift on the standard hourly rate of the relevant fee earner(s) being asked to work depending on the circumstances.

#### **8. PAPERS AND CORRESPONDENCE FILES, STORAGE COSTS & OUR LEGAL RIGHT OF LIEN //**

At the conclusion of a particular item of work, we will normally send you any original signed contracts or documents or other papers (eg share certificates) to you for safe keeping. Please note that due to the unreliability of postal services from time to time it is our normal practice to send out these documents to you and/or other relevant parties by recorded delivery post and we shall be entitled to charge you for these costs. If you instruct us to store original signed contracts or documents or other papers please note that (i) these shall be stored in secure premises but not in fire-proof conditions and (ii) we shall be entitled to charge you for such storage and we shall notify you of any charges to be made (whether before such storage takes place or at any time in the future).

We are required by the Law Society of Scotland to retain correspondence files for 10 years. Please note that due to storage constraints we currently scan most of our hard copy correspondence files (which we shall then destroy) at the conclusion of each relevant item of business and store the scanned electronic files for the 10 year period. We charge our clients for the costs of scanning the hard copy correspondence file, which we require to out-source to third party sub-contractors, who have accepted standard confidentiality provisions. We plan to introduce a paperless office in the future, where all correspondence will be scanned on receipt (possibly also on an out-sourced basis) and by instructing us you agree to this proposal. If you would like more information about this then please let us know.

Please also note that we have the right to retain your papers and documents until our fees, including any due interest, are paid.

#### 9. OUR COPYRIGHT POLICY //

Unless we expressly agree otherwise, the copyright in the original materials which we generate for you belongs to us, and we assert our moral rights. However, the fee you pay for our work permits you to make use of that material for the purposes for which it is created.

#### 10. OUR FEES //

Unless otherwise agreed with you, prior to beginning any specific items of work for you from time to time we shall endeavour to provide your business with an estimate or fixed fee quote (normally in our "Letter of Engagement", which may be a letter or an email from us). Please note that this may be difficult to do at times if the scope of the work is not clear or if the request for the work is urgent. In the absence of any Letter of Engagement or other correspondence from us in writing or by email which details an agreed feeing arrangement, our fees in connection with any work instructed by your business from time to time will be charged on the hourly rates of the relevant fee earner. Copies of the hourly rates applicable at any one time for all fee earners of the firm are available on our website at [www.mbmcommercial.co.uk](http://www.mbmcommercial.co.uk) (see section called "Instructing Us") or can be obtained on request. Unless otherwise expressly agreed with you in a Letter of Engagement, (i) we shall not provide our services on a contingent fee basis, and (ii) if any matter that we are working on does not proceed to completion then we shall then be entitled to invoice you immediately for all work carried out up to that date at our standard charge out rates (provided this does not exceed any fixed fee where we have agreed one with you).

Where we agree a **fixed fee** (as detailed in our Letter of Engagement), this will be based on two assumptions: (1) the structure or complexity of your business will not be changed to any material extent by any revision or renegotiation; and (2) no material work will be required beyond what was anticipated at the time the fixed fee was issued. We reserve the right to revisit any fixed fee quotes in the event that any of these assumptions turns out not to be the case. If this happens we will provide another fixed fee quote. You will be deemed to have accepted the new fee unless you let us know to the contrary within 5 working days of having received notice of this from us. If you inform us within 5 working days that the additional fee is unacceptable to you, we shall then be entitled to invoice you immediately for all work carried out up to that date at our standard charge out rates, notwithstanding that your business has not been completed.

Where we give you an **estimate**, it is an estimate only, not a fixed fee. The fee we will charge you will be the time taken by the fee earner acting on your behalf, multiplied by their hourly charge out rate. However, if we become aware that the work required to complete your business will exceed our estimate, we will let you know as soon as possible and provide you with a further estimate to cover the additional work considered necessary to conclude your business.

Where our fees are based on **hourly rates**, these hourly rates will be increased annually on or around 1st August. If we wish to vary the rates at any other time, this will only be done with effect from the date of notice of these changes being given to you.

#### 11. OUR OUTLAYS //

In addition to professional fees, we will ask you to pay for any outlays, significant photocopying charges, courier charges and other out of pocket expenses incurred on your behalf and also travelling time. We will either ask for a sum on account before any such charges or expenses are incurred, or will invoice you immediately afterwards. Please note that we apply a standard charge of £1.50 for any CD-Rom Completion Bibles that we are asked to produce. As already noted we also apply a standard charge of £8.00 (excl. VAT) for carrying out an identity check (which we are obliged to undertake).

## 12. OUR INVOICES //

Our invoices are payable on receipt. In the event of non payment within 14 days we shall be entitled to charge you interest on the outstanding amount at the rate of 8% above the Royal Bank of Scotland base rate applying at the time, calculated on a daily basis and compounded monthly. We shall be under no obligation to carry out any further work for you until outstanding invoices have been paid in full. We shall also be entitled to set off any fees, expenses and outlays due to us against any credit balance or deposits held on your behalf before sending you the balance. Unless otherwise agreed with you in any Letter of Engagement, (a) we will charge for our work on (i) completion of the relevant matter, (ii) a monthly basis as the work progresses on an interim basis, or (iii) when the relevant work in progress reaches £1,000, whichever is the sooner; and (b) all invoices shall be made out to your business. Any payment you make to us on account of costs or any sum received by us on your behalf which is not received for a specific purpose, may be set off against any invoice (interim or final) issued to you by us.

## 13. INTEREST ON CASH DEPOSITS HELD BY US //

The rate of interest to be paid on cash deposits is dependent on the balance of funds held on deposit and on prevailing bank rates. All rates are gross and will be paid quarterly after deduction of income tax, where appropriate. Special arrangements may be made for substantial deposits. If for what ever reason, we are required to hold money on your behalf for any length of time, we will place that money on deposit in your name. Interest rates vary frequently. We will pay a commercial rate of interest on these deposits. The rate will be typical for deposits on behalf of businesses, giving instant access. Because we have substantial amounts of money on deposit at any one time, the rate we are paid by our bank is slightly higher. We retain the difference. If you do not wish us to deposit funds on your behalf, please let us know. Please let us know if you require further information.

## 14. DATA PROTECTION //

If we process your personal data as defined in the Data Protection Act 1998 (as amended) we will (i) only do so for purposes notified to you; (ii) maintain appropriate technical and organisational measures to prevent unauthorised or unlawful processing of your personal data and against accidental loss or destruction of, or damage to, your personal data; and (iii) comply with your reasonable instructions concerning the processing of your personal data. We will normally hold details of your personal data for as long as you are a client of the firm and thereafter for 10 years.

## 15. UNFORSEEN CIRCUMSTANCES //

If we are unable to perform our obligations to you as a result of circumstances beyond our control (which includes without limitation delays as a result of acts of God, acts of terrorism, civil disturbances, staff absences and governmental regulations and directions) we shall give you prompt notice of such circumstances or delay. Such delay shall not constitute a breach of our Agreement with you, but if such delay continues for a period in excess of 30 days, you shall be entitled to terminate your relationship with us.

## 16. OUR INSURANCE AGAINST CLAIMS & LIABILITY LIMITATION //

Unless another limit is expressly agreed in writing by us, our maximum aggregate liability for any claim or series of related claims directly arising out of, or in connection with services and advice supplied by us to you (whether as a result of breach of contract, negligence or otherwise) shall not exceed (i) the sum of £10,000,000 or (ii) ten times the amount of the fees that you pay us in connection with the relevant claim(s), whichever is the lower amount. Although we may be liable for direct claims, we shall not be liable for any indirect or consequential claims, losses or damages in connection with services and advice supplied by us, including without limitation for loss of business, profits, revenue, goodwill, reputation, interest or

anticipated savings. Nothing in these Terms of Business shall exclude or limit our liability for death or personal injury, which cannot be excluded or limited by law.

In the unlikely event of any claims against us, we have professional indemnity insurance cover in place for any claims up to £10,000,000.

Please note that unless otherwise expressly agreed in writing with you, all services and advice supplied by us is the responsibility of MBM Commercial LLP only and no liability shall attach to any individual whether partner, member, consultant, associate or employee of MBM Commercial LLP who may have supplied or been involved in supplying any services or advice.

#### **17. DISSATISFACTION //**

If you feel you have cause for dissatisfaction about any aspect of our service, you should first take this up with your Client Care Manager (as detailed in our Letter of Engagement). Where possible, we would ask that you put your comments in writing and state what action you would like us to take. If you still feel you have not received a satisfactory answer then you should contact Sandy Finlayson, our Client Relationship Partner. We have a comprehensive complaints policy and if you come to us with a complaint, we will provide you with a copy of the policy, which explains the procedure above in more detail. It is always our intention to deal with any complaints promptly and fairly, but if you are not satisfied with the outcome, you can receive help from the Complaints Department of the Law Society of Scotland (0131 226 7411).

#### **18. TERMINATION //**

If you wish to terminate your business relationship with us, you are entitled to do so by providing written notice to us. Where we have agreed a fixed term engagement with you a notice period may require to be given. You will remain responsible for our fees and outlays until termination, in accordance with these Terms of Business and any Letter of Engagement. If we provide you with any corporate finance services (as detailed in any Letter of Engagement from us), then you shall remain responsible for our corporate finance fee if the completion of the investment or sale takes place within twelve months following termination of your relationship with us.

#### **19. SEVERABILITY OF THESE TERMS OF BUSINESS //**

If any of the terms or other provisions of these Terms of Business and/or any Letter of Engagement are found by an arbiter, court or other competent authority to be void or unenforceable, such provision shall be deemed to be deleted from these Terms of Business and/or any Letter of Engagement (as applicable) but the remaining provisions of these Terms of Business and/or any Letter of Engagement (as applicable) shall continue in full force and effect insofar as they are not affected by any such deletion.

#### **20. NO WAIVERS OF OUR RIGHTS //**

No failure by us to exercise any right or remedy available to us pursuant to these Terms of Business nor any delay to exercise any such right or remedy shall operate as a waiver thereof nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy.

#### **21. COURT ACTIONS //**

In court actions the general rule is that expenses follow success i.e. if you are 100% successful, the losing party pays your expenses. You should be aware, however that only a portion of the legal costs of the successful party will be payable by the unsuccessful party. You will be liable for our fees whether or not you are successful in the proceedings.

## 22. PROCEEDINGS BEFORE THE COURT OF SESSION //

If you instruct us to raise a court action, and that action is brought before the Court of Session (Scotland superior Civil Court, based in Edinburgh), you must be represented by an Advocate or Solicitor Advocate. These individuals are specialists in presenting oral and written arguments before that court. Advocates are members of the Faculty of Advocates and are entirely independent from MBM Commercial LLP, and from you as their client. Solicitor Advocates tend to be experienced solicitors in private practice, who specialise in presenting cases before the Court of Session and other tribunals, and who have undergone specialist training in that area. The decision on whether to instruct an Advocate or a Solicitor Advocate is entirely yours. Please note that we do not always employ Solicitor Advocates in each of our practice areas. Accordingly, if it is necessary to instruct an Advocate or external Solicitor Advocate, we will engage someone to carry out that work on your behalf. In these situations it is our practice to instruct individuals we have instructed in the past, and whom we know are capable and experienced in the area in question. Where that is not possible, we generally instruct individuals who are recommended to us personally. That individual is usually an Advocate. Generally, Advocates have more experience than Solicitor Advocates in appearing in front of a judge or sheriff. Generally, it is possible to instruct an Advocate with an appropriate level of specialisation in any particular field. Generally, an Advocate is cheaper than an equivalently experienced Solicitor Advocate. This is not always the case. If in a particular case we consider it advisable to instruct a Solicitor Advocate (whether internal or external), we will discuss that with you. However, if you wish to instruct a Solicitor Advocate we would be happy to do so.

## 23. PROCEEDS OF CRIME //

The Proceeds of Crime Act 2002 and other legislation ("the Legislation") places certain obligations on us and our fee earners. If any fee earner becomes aware of or suspects the existence of the proceeds of crime (whether in respect of you or a third party) which relates to any matter upon which you have instructed us, we are required by the Legislation to report this to the Serious Organised Crime Agency ("SOCA"). Authority from SOCA is then required before we can continue to act for you. We are prohibited from informing you that a report has been made to SOCA. Even if the SOCA authorises us to continue to act for you SOCA is entitled to pass any information received from us to third party agencies (such as HM Revenue & Customs) who may decide to make further investigations. The obligations upon us and our fee earners under the Legislation can, in certain circumstances, override our duty of confidentiality to you as a client.

## 24. COMMERCIAL PROPERTY & STAMP DUTY LAND TAX //

Stamp Duty Land Tax ("SDLT") is payable by the tenant on most new leases and by the purchaser on most purchases. Unlike stamp duty which it replaced SDLT is payable on transactions not on deeds. The effective date, within 30 days of which the necessary forms and payment must be submitted to the HM Revenue & Customs, may well occur before the lease is prepared for signature and more rarely in purchases before the disposition is prepared for signature. In most cases the effective date will be the date of entry to the property. We may not know when the date of entry occurs until sometime later and it is therefore extremely important that you let us know when the date of entry occurs so that SDLT penalties and interest are avoided. It is your responsibility to let us know the date of entry as soon as you become aware of it.

## 25. ACCEPTANCE OF THESE TERMS OF BUSINESS //

These Terms of Business (subject to the terms of any Letter of Engagement by us) shall govern our solicitor/client relationship with you unless we agree otherwise with you in writing or by email. We shall endeavour to provide you with a Letter of Engagement prior to beginning specific items of work however this may not always be possible. In the absence of (i) any Letter of Engagement or (ii) an acceptance from you in writing or by email of any Letter of Engagement and/or these Terms of Business, it shall be assumed that by providing us with your instructions you accept the terms of these Terms of Business in full and we shall proceed only on this basis.

**26. GOVERNING LAW & JURISDICTION //**

Unless we agree to the contrary in writing or by email, these Terms of Business, any Letter of Engagement and our solicitor/client relationship with you shall be governed by and construed in accordance with Scottish law and the courts of Scotland shall have non-exclusive jurisdiction to settle any questions or disputes which may arise out of or in connection with the same.

Version 6.0

Date: 14 March 2009