

Joseph Giret QC

3 Paper Buildings, Temple, London

Engagement terms for Mediation

STANDARD TERMS AND CONDITIONS OF BUSINESS

1. Applicable Law

The engagement letter, the schedule of services and my standard terms and conditions of business are governed by and should be construed in accordance with English law. Each party agrees that the courts of England will have exclusive jurisdiction in relation to any claim, dispute or difference concerning this engagement letter and any matter arising from it. Each party irrevocably waives any right to object to any action being brought in those Courts, to claim that the action has been brought in an inappropriate forum, or to claim that those Courts do not have jurisdiction.

2. Client identification

As with other professional services firms, I am required to identify my clients for the purposes of the UK anti-money laundering legislation. I may request from you, and retain, such information and documentation as I require for these purposes. These will include a certified copy of your Passport or Driving Licence and one utility bill (not a mobile telephone bill) valid at your residential address within the preceding three months.

3. Client Money

I am not able to handle any money on your behalf which is payable to a third party. If any work I undertake requires a cheque or order payable to them, I will ask that the cheque is made payable to them and sent with the appropriate details direct to the payee. It must not be made payable to me in any circumstances and I cannot 'cash the cheque' by substituting one of my own in exchange. There is a facility to use an escrow account and I can provide details of that service but there is a charge by the bank (not me) for such a service. If you do send me a cheque albeit by mistake, I will return it to you at once.

4. Complaints generally

I am committed to providing you with a high-quality service that is both efficient and effective. If you have any complaints or concerns about my work for you, please raise these in the first instance with me in writing. I will investigate your complaint promptly and carefully and do what I reasonably can to resolve the difficulties in accordance with our complaints policy and handling procedure. In any event you are entitled to refer any matter of complaint to the complaints and redress system operated by the Bar Standards Board and the Legal Ombudsman. Any complaint to the Legal Ombudsman needs to be made within six months of your last contact with us. For more information you should contact the Legal Ombudsman on 0300 555 0333 or refer to their website at www.legalombudsman.org.uk. Insofar as the Bar Standards Board is concerned, their details can be found by visiting their website at <https://www.barstandardsboard.org.uk/>

5. Complaints specific to Mediation

The Civil Mediation Council [CMC], which is my regulatory body and with whom I am registered as a Mediation practitioner, operates a final stage complaints procedure, whereby it can consider against mediators who are CMC Members from those people who have exhausted a mediator's own complaints procedures (and where relevant any provider's procedures). The CMC cannot consider complaints against non-members.

If your complaint relates to the service you have received from the CMC, a Board or Committee member or a member of staff please contact the CEO via secretariat@civilmediation.org

If you have a complaint about a mediator or mediation provider in respect of the service they have provided you must first complain to that mediator or the provider. All mediators and providers Registered with the CMC are required to have a complaints handling procedure in place.

If you are not satisfied with the outcome of your complaint at that stage you may refer the matter to the CMC. This must be done within one month of conclusion of consideration of the complaint by the mediator or provider and in any event within 6 months of the events giving rise to the complaint. Complaints received outside these time limits will only be accepted at the discretion of the CMC.

All complaints must be in writing and addressed to the CMC Secretariat at secretariat@civilmediation.org. On receipt of your e-mail the Secretariat will send you a complaint form to be completed and returned.

Complaints can only be considered by the CMC if they concern an individual or organisation which is a member of the CMC. The CMC regrets that it cannot consider complaints against non-members.

All documents relating to the complaint must be submitted with the complaints form or, if any are unavailable, you must give an indication as to when they will be supplied. In submitting a complaint you consent to all information you supply and any accompanying documents being disclosed to the other party to the complaint, to the CMC's Complaints and Discipline Committee, the CMC Board and to other relevant third parties which may include other regulators.

Complaints may be made on the following grounds only:

A complaint may be made against a **Registered Mediator** on the grounds that they no longer meet the requirements for Registration (Rule 1 (i)); and/or they are not a fit and proper person to be Registered (Rule 1 (ii)).

A complaint may be made against a **Registered Provider** on the grounds that it no longer meets the requirements for Registration (Rule 3 (i)); and/or the service provided by the Provider does not meet generally acceptable standards (Rule 3 (ii)).

A complaint may be made against an organisation which offers a **Registered Training Course** on the ground that it no longer meets the requirements for Registration (Rule 5).

A complaint may be made against any **Member of the CMC** on the grounds that they have brought the CMC or the mediation profession or the mediation process into disrepute (Rule 6).

Complaints will be dealt with in accordance with the procedures adopted by the Complaints and Discipline Committee of the CMC from time to time. A copy of the Rules is available on request from the Secretariat.

All communications must be made in writing, but in its absolute discretion the CMC may also accept oral representations from the parties.

The determination of a complaint by the CMC and any disciplinary measures imposed are final and no further appeal will be entertained.

The CMC will progress your complaint with due diligence and in most cases provide a final determination within 6 months of receipt of the complaint.

As a result of a complaint being upheld, the CMC can take disciplinary action against members.

5. Confidentiality

Communication between us is confidential and I shall take all reasonable steps to keep confidential your information except where I am required to disclose it by law, by regulatory bodies, by our insurers or as part of an external peer review. Unless I am authorised by you to disclose information on your behalf. This undertaking will apply during and after this engagement

6. Conflicts of interest

I will inform you if I become aware of any conflict of interest in the relationship with you or in our relationship with you and another client. I have safeguards that can be implemented to protect the interests of different clients if a conflict arises. Where conflicts are identified which cannot be managed in a way that protects your interests then I regret that I will be unable to provide further services. If this arises, I will inform you promptly.

If there is a conflict of interest that is capable of being addressed successfully by the adoption of suitable safeguards to protect your interests, then I will adopt those safeguards. Where possible this will be done based on your informed consent. I reserve the right to act for other clients whose interests are not the same as or are adverse to yours subject of course to the obligations of confidentiality referred to above.

7. Data Protection

I confirm that I will comply with the provisions of the Data Protection Act 1998 when processing personal data about you. In order to carry out the services of this engagement and for related purposes such as updating and enhancing our client records, analysis for management purposes and statutory returns, legal and regulatory compliance and crime prevention I may obtain, process, use and disclose personal data about you.

8. Disengagement

Should I resign or be requested to resign I will normally issue a disengagement letter to ensure that our respective responsibilities are clear. Should I have no contact with you for a period of three months or more I may issue to your last known address a disengagement letter and thereafter cease to act.

9. Electronic and other communication

Unless you instruct me otherwise I may, where appropriate, communicate with you and with third parties via email or by other electronic means. The recipient is responsible for virus checking emails and any attachments.

With electronic communication there is a risk of non-receipt, delayed receipt, inadvertent misdirection or interception by third parties. I use virus-scanning software to reduce the risk of viruses and similar damaging items being transmitted through emails or electronic storage devices. I will use my electronic communication portal, which is totally secure. However, I cannot be held responsible for damage or loss caused by viruses nor for communications, which are corrupted or altered after dispatch. Nor can I accept any liability for problems or accidental errors relating to this means of communication especially in relation to commercially sensitive material. These are risks you must agree to bear in return for greater efficiency and lower costs. If you do not wish to accept these risks please let me know and I will communicate by paper mail, other than where electronic submission is mandatory. Any communication by me with you sent through the post system is deemed to arrive at your postal address two working days after the day that the document was sent. However, we will alert you that we have sent you such communication. If it does not arrive, we will investigate. All mail that leaves here is franked and booked out in the postal register on the date it is sent.

10. Fees and payment terms

The fees may depend not only upon the time spent on your affairs but also on the level of skill and responsibility and the importance and value of the advice that I provide, as well as the level of risk. If I provide you with an estimate of fees for any specific work, then the estimate will not be contractually binding unless I explicitly state that that will be the case. Where requested I may indicate a fixed fee for the provision of specific services or an indicative range of fees for an assignment. If it becomes apparent to me, due to unforeseen circumstances, that a fee quote is inadequate, I reserve the right to notify you of a revised figure or range and to seek your agreement thereto. I am not able to ask for fees on account as this means that I will be holding client money.

Please Note

In some cases, you may be entitled to assistance with your professional fees. Assistance may be provided through insurance policies you hold or via membership of a professional or trade body. Other than where such insurance was arranged through me you will need to advise me of any such insurance cover that you have. The invoices are due for payment in advance unless otherwise stated upon it. The fees quoted are exclusive of VAT, which will be added where it is chargeable. Any disbursements which need to be incurred on your behalf and expenses incurred in the course of carrying out our work for you will be notified to you in advance. They will not appear as a disbursement on the fee invoice as this infringes the 'client money rule' and will not be part of the agreed fee.

Unless otherwise agreed to the contrary the fees do not include the costs of any third party or other professional fees.

I reserve the right to charge interest on late paid invoices, should any arise for any reason under the terms of this agreement, at the prevailing rate, which is currently 8% above bank base rates pursuant to the Late Payment of Commercial Debts (Interest) Act 1998. I also reserve the right to suspend my services or to cease to act for you on giving written notice if payment of any fees is unduly delayed. I intend to exercise these rights only where it is fair and reasonable to do so.

If you do not accept that an invoiced fee is fair and reasonable you must notify me within 7 days of receipt, failing which you will be deemed to have accepted that payment is due.

11. Implementation

I will only assist with implementation of my advice if specifically instructed and agreed in writing and upon signature of the client care letter, which encompasses these provisions.

12. Intellectual property rights

I will retain all copyright in any document prepared by me during the course of carrying out the engagement save where the law specifically provides otherwise.

13. Interpretation

If any provision or part of a provision of this engagement letter or enclosed schedules is held to be void, then that provision or part provision will be deemed not to form part of this contract and the remainder of this agreement shall be interpreted as if such provision or part provision had never been inserted. Any provision that is found void, invalid or unenforceable in whole or in part for any reason shall whenever allowed by the context be deemed replaced by such valid and enforceable clause covenant or provision whose contents are as close as permissible to those of the invalid or unenforceable clause covenant or provision. In the event of any conflict between these terms of business and the engagement letter or appendices, the relevant provision in the engagement letter or schedules will take precedence.

14. Lien

Insofar as I am permitted to do so by law or professional guidelines, I reserve the right to exercise a lien over all funds, documents and records in our possession relating to all engagements for you until all outstanding fees and disbursements are paid in full.

15. Scope of duty

My duty to you shall not extend beyond the scope of your instructions as set out in this agreement and the associated schedules. The scope of my contractual duties and/or any other duties which may arise shall not be varied unless first set out in writing and agreed between us. I shall have no duty in tort or otherwise which exceeds the contractual duty of care arising from this agreement.

By signing the engagement letter, you agree that you have given proper consideration to the scope of our agreement, and accept that it is reasonable in all the circumstances.

16. Limitation of liability

I will provide my services with reasonable care and skill. My liability to you is limited to losses, damages, costs and expenses directly caused by my negligence or wilful default.

Exclusion of liability for loss caused by others

I will not be liable if such losses, penalties, surcharges, interest or additional liabilities are caused by the acts or omissions of any other person or due to the provision to me of incomplete, misleading or false information or if they are caused by a failure to act on our advice or a failure to provide me with relevant information.

Exclusion of liability in relation to circumstances beyond my control

I will not be liable to you for any delay or failure to perform our obligations under this engagement letter if the delay or failure is caused by circumstances outside our reasonable control.

Exclusion of liability relating to the discovery of fraud etc

I will not be responsible or liable for any loss, damage or expense incurred or sustained if information material to the service I am providing is withheld or concealed from me or misrepresented to me. This applies equally to fraudulent acts, misrepresentation or wilful default on the part of any party to the transaction and their directors, officers, employees, agents or advisers.

This exclusion shall not apply where such misrepresentation, withholding or concealment is or should (in carrying out the procedures which I have agreed to perform with reasonable care and skill) have been evident to me without further enquiry beyond that which it would have been reasonable for me to have carried out in the circumstances.

Indemnity for unauthorised disclosure

You agree to indemnify me in respect of any claim (including any claim for negligence) arising out of any unauthorised disclosure by you or by any person for whom you are responsible of my advice and opinions, whether in writing or otherwise. This indemnity will extend to the cost of defending any such claim, including payment at the usual rates for the time that I spend in defending it.

Limitation of aggregate liability

Where the engagement Letter specifies an aggregate limit of liability, then that sum shall be the maximum aggregate liability to be held against me, to all persons to whom the engagement letter is addressed and also any other person that I have agreed with you may rely on our work. By signing the engagement letter you agree that you have given proper consideration to this limit and accept that it is reasonable in all the circumstances. If you do not wish to accept it you should contact me to discuss it before signing the engagement letter. You have agreed that you will not bring any claim of a kind that is included within the subject of the limit against any of our partners or employees; on a personal basis.

17. Limitation of Third-Party rights

The advice and information I provide to you as part of the service is for your sole use and not for any third party to whom you may communicate it unless I have expressly agreed in the engagement letter that a specified third party may rely on my work. I accept no responsibility to third parties, including any group company to whom the engagement letter is not addressed, for any advice, information or material produced as part of our work for you, which you make available to them. A party to this agreement is the only person who has the right to enforce any of its terms and no rights or benefits are conferred on any third party under the Contracts (Rights of Third Parties) Act 1999.

18. Period of engagement and termination

Unless otherwise agreed in the engagement covering letter our work will begin when I receive your acceptance of that letter. Except as stated in that letter I will not be responsible for periods before that date. Each of us may terminate this agreement by giving not less than 7 days' notice in writing to the other party except where you fail to cooperate with me or I have reason to believe that you have

provided me with misleading information, in which case I may terminate this agreement immediately. Termination will be without prejudice to any rights that may have accrued to either of us prior to termination. In the event of termination of this contract, I will endeavour to agree with you the arrangements for the completion of work in progress at that time, unless I am required for legal or regulatory reasons to cease work immediately. In that event, I shall not be required to carry out further work and shall not be responsible or liable for any consequences arising from termination. In any event termination will not trigger any claim, whether on a 'Quantum Meruit' basis or otherwise, for the return of any sum or sums of money paid by you the Client] to me pursuant to this agreement; all and any sums paid by the Client to me are not returnable.

19. Professional rules and statutory obligations

I will observe and act in accordance with the byelaws, regulations and ethical guidelines of the BSB and will accept instructions to act for you on this basis. I will not be liable for any loss, damage or cost arising from my compliance with statutory or regulatory obligations. You can see copies of these requirements on the BSB website at the URL address above.

20. Reliance on advice

I will endeavour to record all advice on important matters in writing on my Case Management System. This is then securely stored and can be accessed at your request. Advice given orally is not intended to be relied upon unless confirmed in writing. Therefore, if I provide oral advice [for example during the course of a meeting or a telephone conversation] and you wish to be able to rely on that advice, you must ask for the advice to be confirmed by me in writing.

21. Retention of papers

You may have a legal responsibility to retain documents and records relevant to your business affairs such as Companies House Documentation or HMRC issues. During the course of my work I may collect information from you and others relevant to your affairs. I will return any original documents to you after receipt and electronic scanning. Documents and records relevant to your affairs are required by law to be retained as follows:

- 7 years from the conclusion of the matter;
- 12 years in the case of any issue concerning land.

All such documentation is scanned and stored electronically. I will send you a termination of service/file closure letter upon completion of my instructions. This will tell you the procedure to be followed should you require your copy file of papers. Originals will be returned, and any paper copies destroyed by electronic shredder or confidential waste or both.

Whilst certain documents may legally belong to you, I may destroy correspondence and other papers that I store, electronically or otherwise, which are more than 7 years old. You must tell me if you require the return or retain of any specific documents for a longer period.

END

21st September 2020

