



# BDM Commercial Ltd

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## **TERMS OF BUSINESS**

### **Introduction**

These are the standard terms of business which will apply to services provided to you by BDM Commercial Limited.

BDM Commercial Limited is a limited liability company registered in England and Wales with registered number 09511403. Its registered office address is The Wall House, Bucks Alley, Little Berkhamsted, Hertford, United Kingdom SG13 8LR.

### **Our contract**

When you ask us to represent you or your principal, we will send you an email marked "Terms of Engagement" ("Engagement Email") which will apply to each matter and which, amongst other things, will set out the anticipated scope of work and a guide to its cost, the individual responsible for handling the matter and the proposed team together with proposed charging rates. The following general terms and conditions will apply to the services provided unless they are varied in the Engagement Email. These terms and conditions may be revised from time to time, in which case you will be notified of the changes, and the new provisions will apply as from the date on which they are changed or varied.

Sometimes it may be necessary for us, with your agreement, to engage a law firm or expert within our network of correspondents ("the Network") to work alongside us on any matter on their standard terms of engagement, a copy of which will be made available to you on request. If we engage others then we will do so as agent on your behalf and you will be responsible for their fees and charges unless otherwise agreed.

You agree that you will not be a client of any law firm in the Network unless we have engaged such law firm on your behalf as described above, or you have an agreed engagement directly with that law firm.

No variation of these terms shall be effective unless it is in writing and is signed by one of our directors. You will be entitled to terminate the services if the variation is unacceptable to you. If you have any questions you want to raise about these terms and conditions, please speak to a director of BDM Commercial Limited.

### **Due Diligence required by us**

We shall be entitled to assume that those who hold themselves out as having authority to retain us have that authority.

Nevertheless, we might have to ask you to provide us with some proof that you are authorized to retain us such as a board resolution or a letter from a director of your company. Likewise to ensure that we comply with money laundering guidelines we may have to ask you for proof of your identity and, if satisfactory evidence of your identity cannot be obtained within a reasonable time, we may have to respectfully decline to represent you.

### **Disclaimer**

For us to do our job in the most effective and cost efficient way, it is important that we receive as quickly as possible accurate, up to date and complete information and instructions, and are then kept informed of any changes or developments. We shall advise you on the basis of the information supplied by you. We shall not seek verification of that information and cannot be held responsible for advice given on the basis of incorrect and inaccurate information. We will only provide advice on matters referred to us. We also cannot be responsible if your instructions are not given in sufficient time to allow us adequately to protect your interests, although we will do our best to remind you of any time constraints.

### **Conflicts**

If you agree to engage us then this does not mean that we will be prevented in the future from working for clients who may be on the other side of any dispute provided of course that such future work for those clients is not on or related to the matter where we are representing you and provided of course that in the course of our representing you we have not been privy to confidential information that might cause us to have a conflict of interest when representing those other clients. We maintain an internal database to identify conflicting interests but we cannot be certain we will identify all conflicts that exist or may develop. We cannot always anticipate what you might perceive to be a conflict. You are therefore asked to tell us of any such conflicts, and if we believe adopting appropriate procedures can safeguard your interests we will discuss and try to agree arrangements to preserve confidentiality and impartiality.

### **Communicating with you**

Unless you tell us otherwise, we will only report by electronic means which may include sending you documents (including letters and reports) electronically. We will do this by using unencrypted email via the Internet. You acknowledge that email is not always an instantaneous nor secure method of communication and may become delayed, lost, incomplete, corrupted or otherwise altered or intercepted. We will try to ensure that electronic communications that we send are virus-free and you undertake to do likewise for any communication you send us, but neither you nor we shall have any liability whatsoever for any delay, failure to receive, corruption or alteration, interception of any e-mails sent between us or to third parties, nor for any virus that may enter our respective systems.

### **Our team**

In the Engagement Email we will inform you of who will work on your matters. However, there may be times when is necessary or appropriate for those handling your matter to be changed or additional persons deployed to assist. When this happens, we shall discuss it with you. It may be necessary for your matter-handlers to be away from the office. To deal with these absences, we have in place arrangements whereby someone of similar status and experience will stand in and provide cover on a temporary basis. If you then need to talk to someone you should ask to be put in touch with the person covering for that matter-handler. You will be warned in advance of any long absence of a team member, and you will be given details of the covering arrangements.

### **Matters which may lead to arbitration or litigation**

Sometimes the matters that you refer to us might involve the prospect of arbitration. If there is an arbitration then it is important that relevant documents and evidence are preserved. The same is true if the matter that you refer to us might involve the prospect of litigation. We are able to handle arbitrations on your behalf but we will not be able to handle cases that are referred to the Courts in England and Wales. In such circumstances we will recommend a solicitor to handle the matter on your behalf although we may be able to remain involved as Consultants.

For matters that may lead to arbitration or litigation, we will write to you at the outset to tell you about your obligations to preserve documents and evidence and the potential consequences of not disclosing all necessary documents and evidence.

### **Recovering your costs**

If we handle arbitrations on your behalf then we will keep a record of the costs incurred as it may be possible for these to be recovered in the arbitration process if you win the case itself or certain issues that might be referred to the Tribunal. Please note however that the recoverable costs will never include all costs that you incur and it is possible that you may not recover any of your costs from the opponents. Likewise, even if it is possible to obtain an order that your opponents should pay some or all of your costs, there is no guarantee that they will be able to pay any costs order made against them. In all such circumstances you will be primarily responsible for all our costs and disbursements incurred in the case irrespective of any subsequent recovery of costs for which we shall then account to you. If the outcome of the arbitration or any particular issue or issue determined may be unfavourable to you, you may be held responsible for your opponents' costs as well as your own. You may also have to make immediate payment of costs at interim hearings during the arbitration process, and in some cases you may be ordered to put up security for costs. Similar provisions apply for High Court cases but it may not be possible for you to recover our costs in those cases as our role will be limited to advising you on your options and we will not handle any High Court case on your behalf. We will however discuss the best way to proceed in High Court cases to ensure that our costs are limited and insofar as is possible to ensure that the majority of costs are incurred by your appointed solicitors.

### **No Assignment**

In terms of this agreement, neither party may assign any of its rights or obligations to any third party without the prior written consent of the other party.

### **Rights of third parties**

The rights of third parties arising under the provisions of the Contracts (Rights of Third Parties) Act 1999 or otherwise are specifically excluded from the terms upon which we perform any services for you. Unless otherwise expressly agreed by us in writing, any advice or documentation prepared by us resulting from this agreement shall be solely for your use and benefit and you agree it will not be passed to any other person other than to your other professional service providers and bankers or as may be required by law or mandatory regulation. We will not accept any liability or obligation to any person other than you.

You agree that you will not bring any claim whether in contract, tort, equity, under statute or otherwise against any director, employee or consultant of BDM Commercial Limited nor against any of the third parties within the Network nor any service company owned or controlled by BDM Commercial Limited and all directors, employees, consultants and

agents shall be entitled to rely on the terms of this agreement insofar as they limit their liability.

## **Privacy and Confidentiality**

We will keep private and confidential all information we receive regarding your business and affairs unless you instruct us to disclose that information, it is already in the public domain or we are required by law or mandatory regulation to disclose it.

## **Charges**

We will discuss with you the best way to charge for our services, but generally speaking our charges are based on the following approach:

**Hourly rates:** We will tell you the hourly rates of the nominated matter-handlers. These are intended to be fair and reasonable having regard to all the circumstances and are based on the seniority and status of the matter-handlers; our knowledge of the matter as well as its complexity and importance; the urgency of action required; the degree of specialist knowledge or expertise involved; the value and importance of the subject-matter involved. As our matter-handlers become more senior their hourly rates will be revised upwards. Our rates are also reviewed annually and may change. In both cases, we shall advise you.

**Expenses (disbursements):** The hourly rates do not include disbursements. These are internal expenses such as communication expenses (fax, postage, international telephone calls and after hours secretarial and other support services), travelling to attend meetings or hearings outside our office and printing, binding and copying charges to the extent that these are done in-house. External expenses include larger volumes of photocopying and printing, courier charges, filing, registration and search fees, information database searches and other expenses of a similar nature. Where large disbursements are necessary, for example arbitration fees and the anticipated costs of engaging counsel, overseas lawyers and other experts, foreign travel and external printing and copying, we shall obtain your approval before committing to that expenditure and we may need you to provide us with an advance payment. All third party service providers will be retained by us acting as your agent and you will be responsible for their fees as well as our own.

**VAT:** When applicable, Value Added Tax and equivalent taxes will be added to all fees and disbursements at the appropriate rate. We will need details from you at the outset to identify whether our charges will be subject to VAT.

## **Our Invoices**

We will invoice you for our services on a monthly basis. The invoice will relate to the period to which it applies and our payment terms provide for payment within 14 days of delivery of our invoice failing which interest may be charged on all outstanding amounts at 1% above the sterling prime rate of interest then prevailing or the US dollar prime rate if our invoices are rendered in US Dollars. Although we will always try to give you an estimate of the charges that we anticipate may be incurred, such estimates are by their very nature inexact and we will not be bound by them unless expressly agreed in writing.

Should we have to suspend or cease acting for you we shall give you advance notice. We will not be responsible in any way whatsoever for any loss incurred as a result of our suspension or cessation of work. If you expect someone else to settle our bills or requests for payments on account, they must do so promptly and in accordance with these terms. If they do not, then we shall continue to look to you for payment.

Where in relation to a matter we have engaged on your behalf another entity or person in the Network we will include their charges in our bill unless you ask us to arrange for them to bill you directly.

### **Advance payments**

Any money paid in advance will be held by us in a separate interest bearing account until such time as we are permitted to use it to defray third party costs and expenses as per your express instructions.

### **Suspension of Work**

If you fail to pay one of our invoices or fail to send us an advance payment within the time stated for payment, then we reserve the right to suspend work on the matter until payment is made in full and, failing that payment, to cease acting for you altogether in relation both to the matter and to any other matters which we may be handling for you. This will not affect our right to invoice for all work done prior to suspension or cessation of activity.

### **Our policies**

**Money laundering:** Under English money laundering law and regulations we are required to operate certain verification and reporting procedures. In some cases we will need to obtain satisfactory evidence of client identity before work can be carried out.

If there is any suspicion of money laundering, we may have to disclose the circumstances to the appropriate authorities without advising the suspect and suspend work or terminate our instructions. We will not be liable for any loss you may suffer as a result of our disclosure of information, compliance with any instruction given by any appropriate authority or the suspension or termination of our retainer.

**Data protection:** Any personal data you supply to us to carry out work for you is received on the basis that you have complied with all applicable data protection legislation and that its receipt, storage and processing by us will comply with that legislation.

We shall keep any personal data secure on our computer systems, but we may use that data in any way we consider is necessary to carry out the terms of our retainer with you and to carry out our duties as your solicitors as well as to maintain and preserve our records. This may include releasing the data to third parties or transferring it outside the European Union. Our computer systems involve accessing data stored on cloud based third party systems based in the United State. The data is also backed up outside the European Union but all such data service providers are subject to the restrictions imposed by the Global Data Protection Regulation (GDPR) or its equivalent and/or the Privacy Shield scheme.

If we have to disclose personal data to any third party either within or outside the European Union then it shall, in all cases, be for legitimate and explicit purposes and limited to relevant and necessary data. Any personal data supplied to us shall only be held as long as is necessary and in all cases subject to your rights under the applicable data protection legislation. This includes your right to be informed of what personal data we hold, your right to access that data, to rectify it, to have the data erased, to restrict or object to processing and to remove that data from our systems. We confirm that we are registered with the Information Commissioners Office (ICO) and so any complaints about personal data held by us should be addressed to them if the same cannot be resolved by us in the first instance. [Insert link to ICO]. Disclosure of personal data to any third party shall in all cases be done only via our secure systems. To the extent that any personal data is held on terminals or devices accessible by us, those terminals or devices are password protected and subject to remote wiping in the event of any loss.

Unless you specifically ask us to, we shall not use your personal information for any purposes related to marketing. That means that we will not add you to any mailing lists nor will we send you any circulars or marketing information regardless of whether we think this information may be useful or of interest to you. We will also not divulge your personal information to any other party for the purposes of marketing and we shall endeavour to ensure that any third party receiving personal information from us for legitimate and explicit purposes shall not use that information for any marketing purposes.

We may however use your personal information for our internal purposes which includes statistical analysis and client profiling requirements. We may also invite you to follow any bulletins or updates that we post via our website and you have the right to accept or decline that request. In all cases, you have the right to request a copy of any personal information we hold about you and an explanation as to how we use it, as well as to have any inaccuracies corrected. We will ask for confirmation of identity before we disclose that information. Please address all such requests to our Data Protection Officer at our London office.

**Financial Services and Markets Act 2000:** BDM Commercial Limited has not sought authorisation under the Financial Services and Markets Act 2000 and we do not offer investment services or advice.

**Bribery and Corruption:** In accordance with the Bribery Act 2010 we maintain a policy whereby any offer, promise, giving, solicitation or acceptance of any bribe, whether a financial or other advantage, directly or through a third party, to any person or company or public official is prohibited by any director, employee, agent or person who performs services or business on behalf of BDM Commercial Limited. Likewise any of the above is also prohibited if made illegally or unethically to retain business for BDM Commercial Limited or to retain any financial or other advantage for BDM Commercial Limited including any associated or affiliated companies or any individual or person or company connected with that individual person. All persons and companies retained by BDM Commercial Limited in connection with any business required to be undertaken by those persons for BDM Commercial Limited or for its clients are required to adhere to this policy and have similar policies in place.

### **Termination**

You may terminate this agreement by notice in writing at any time. If there is good reason, we may also decide to terminate this agreement by giving you notice in writing. A good reason will include circumstances where you do not pay an interim bill or an advance payment is required and is not made or if you do not give us proper instructions or answer our reasonable questions. The termination of this agreement by either party will not affect your obligation to pay our charges and disbursements incurred up to the time of termination.

### **Custody of your documents**

After completing the matter or should we cease acting for you for any reason before the work is completed, we shall be entitled to keep all your documents (which shall include paper documents and electronic documents) so long as there is any money due to us for our charges and disbursements. Once our bills are paid, we shall keep the documents (except those that you ask to be returned or where you are content for us to destroy the documents immediately) for seven years after which they will be destroyed or deleted. We will not destroy/ delete documents that you ask us in writing to keep in safe custody, but we may charge a separate fee for storage and any retrieval from our vaults or electronic archives that may be requested.

## **Exclusions, Limitation of Liability and Professional Indemnity Insurance**

We owe you a duty of care as legal advisers and claims handlers and we are insured in this respect for any errors and omissions by Zurich. However, we shall not be liable to you for any loss whatsoever arising out of or in connection with our services unless the loss is directly caused by our negligence or other breach of obligation. Where any loss is suffered by you for which we and any other person or persons including yourselves are jointly or in part responsible, the loss recoverable from us shall be limited so as to be in proportion to the respective parties' fault. Where the liability of any other person to you is limited in any way our liability to you shall not exceed the amount that would have been awarded in the absence of that limitation.

Please note that unless we agree otherwise, the overall aggregate liability of BDM Commercial Limited and any service company owned or controlled by or on behalf of BDM Commercial Limited and of all directors, employees, consultants and agents of BDM Commercial Limited and any service company owned or controlled by or on behalf of any of BDM Commercial Limited in any circumstances whatsoever, whether in contract, tort, equity, under statute or otherwise, and howsoever caused (including but not limited to our negligence or non-performance) for loss or damage arising from or in connection with the services provided by us to you shall, in relation to each matter, be limited to the sum of £3 million (Three Million Pounds Sterling).

For the purposes of such a limitation, where we, on your behalf, engage another law firm or other entity within the Network we shall not assume any responsibility for the accuracy of their legal or other advice to you. Notwithstanding this, to the extent that there may be any liability on our part (whether or not you have a separate engagement letter in place with that entity), the aggregate liability of all entities within the Network, including BDM Commercial Limited, all directors, employees, consultants, agents and independent contractors of any entity in the Network and of any service company owned or controlled by or on behalf of any entity in the Network, shall be limited to the sum of £3 million (Three Million Pounds Sterling). The enforceability of this limitation of liability shall be determined in accordance with the law as it stands at the time as the claim is first made against BDM Commercial Limited or the relevant entity within the Network.

## **Complaints**

If at any time you have any concerns about the way in which the matter is being handled by us, or about our bill, you should contact the director handling the matter to raise your concerns or, if you feel unable to speak to that person, then please contact either Bob Deering or David McInnes. If the complaint cannot be resolved within 6 weeks then you agree that the matter may be referred to mediation by a mutually agreed mediator. If for any reasons we cannot agree on a mediator then you agree that the Tribunal may appoint a mediator to seek to resolve any differences on appropriate terms.

## **Governing law and jurisdiction**

Any and all differences and disputes arising out of or in the course of our retainer (whether contractual or non-contractual) shall be exclusively resolved by arbitration in London under English substantive and procedural law. Notwithstanding this, you agree that we may in our sole and unfettered discretion commence legal proceedings against you in any other jurisdiction. Any dispute referred to arbitration shall be finally resolved by a sole arbitrator who shall be a full or aspiring full member of the LMAA (Lloyds Maritime Arbitration Association). A party commencing arbitration proceedings must notify the other party in writing and request them to agree on a sole arbitrator within 14 days of their receipt of the notice. If the parties cannot agree on a sole arbitrator within the said 14 days then, on application by either party, the current President of the LMAA shall have the sole and unfettered discretion to appoint a suitably qualified arbitrator. Any arbitration proceedings

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shall be governed by the LMAA rules in existence on the date of commencement of proceedings and the Arbitration Act 1996.

### **BDM Commercial Limited**

BDM Commercial Limited is registered in England and Wales (with registered number 09511403) and a full list of members is available at our registered office address The Wall House, Bucks Alley, Little Berkhamsted, Hertford, United Kingdom. BDM Commercial Limited trades from its offices at 145 Leadenhall Street, London, EC3V 4QT.