



## **Standard Terms of Business**

### **General**

These Terms of Business are effective from 25 August 2018 but may be amended from time to time. They replace any previous terms of business and shall apply to any future Services we carry out on your behalf unless varied or replaced.

The following definitions are used in these Terms of Business:

“Client”, “your” or “you” means the person, firm, company or other legal entity to whom our Engagement Letter is addressed and to whom the Services are provided.

“Mackenzie Goldberg Johnson Limited”, “MGJ”, “MGJL”, “the firm”, “we” or “us” means Mackenzie Goldberg Johnson Limited (whose registered office is at Scope House, Weston Road Crewe CW1 6DD), its directors, officers, staff, representatives and agents, and in all cases any successor or assignee, and “our” shall be construed accordingly.

“Engagement” means the agreement between us for the provision of Services in accordance with the Engagement Terms (and/or any written variations agreed between us).

“Engagement Letter” means the letter and appendices, which, taken together with these Terms of Business, set out the basis of our contract with you.

“Engagement Terms” means the terms contained (or referred to) in our Engagement Letter together with these Terms of Business.

“Intellectual Property Rights” means patents, trademarks, design rights (whether registrable or otherwise) applications for any of these, copyrights, database rights, trade or business names and other similar rights or obligations whether registrable or not in any country.

“Loss” means any loss, damage, costs or interest.

“Services” means the reports, advice and/or services delivered or provided to you pursuant to the Engagement Terms.

“Staff Member” means an insolvency practitioner, employee, director, officer, representative, or agent of Mackenzie Goldberg Johnson Limited.

The scope of our work and our liability to you in respect of this Engagement is set out or referred to in our Engagement Letter. Should any of the terms of our Engagement Letter conflict with these Terms of Business, the former shall prevail.

If we have already started work (e.g. by gathering information, project planning or giving initial advice) then you agree that the Engagement Terms apply retrospectively from the commencement of our work. We are not bound by any terms of business you have sent to us prior to acceptance of the Engagement Letter, unless specifically agreed by us in writing. No changes to these Terms of Business will be effective unless documented and agreed in writing between us.

In addition to the work specified in the Engagement Letter, it is recognised that you may from time to time seek our advice on an ad hoc basis on a range of matters, which may be of a technical, commercial, business or non-business nature. Whilst we reserve the right (in appropriate cases) to require you to enter into separate engagement terms in relation to such advice, you agree that the Engagement Terms will apply to that advice as if the advice had been (or formed part of) the subject matter of the Engagement.

## **Our Legal Status**

Mackenzie Goldberg Johnson Limited is a Limited Company registered in England & Wales No 05058424 whose registered office is at Scope House, Weston Road Crewe CW1 6DD.

## **Fees & Disbursements**

Unless otherwise stated in the Engagement Letter, our fees are based on the time required to complete the Services and may include travelling time where this is significant. Time is charged at hourly rates applicable to the staff who provide the Services in question. Hourly rates are modified from time to time in accordance with prevailing market conditions. Any fees or hourly rates quoted or estimated are exclusive of VAT and disbursements which shall be charged as applicable.

Any estimate of the fees for providing the Services will be based upon our assessment of the work involved, taking account of any assumptions set out in the Engagement Letter. Unless we have agreed otherwise in the Engagement Letter, our fees may be adjusted if the Services prove more complex or time consuming than expected. We will let you know when we consider any estimate is likely to be exceeded. A copy of our current fee and disbursement policy is attached to the terms of business.

Our invoices are payable in full within 14 days of the invoice date. We reserve the right to charge interest for delayed payment at a rate of 3% above the base rate from time to time of HSBC Bank plc.

If you disagree with, or have any questions relating to any invoice, you should notify us in writing within 14 days of receipt of the relevant invoice, after which time you will be deemed to have agreed the amount. We will be entitled to receive payment of all charges incurred up to the date of termination of any Service or of the Engagement or for any reason.

Where our appointment is by a parent company on behalf of a group or particular group companies, our invoices may be addressed to either the parent company or the relevant group company or entity. Both parties remain jointly and severally liable for payment of the same until settled in full. Similarly, where our appointment is by one member of a family on behalf of him or herself and other family members, all recipients of our Services are liable for our fees until satisfied in full.

## **Your Responsibilities**

You will promptly provide us with all necessary documentation, information and access to personnel required in order to enable us to perform the Services in accordance with the Engagement Terms.

You agree that we shall be entitled to rely on all information provided to us and on your decisions and approvals in connection with our Services and to assume that all such information provided to us from whatever source is true, complete and not misleading. We shall not be responsible for the consequences of any information provided to us in the course of the Services not being complete, accurate or current.

You agree that you remain solely responsible for managing all aspects of your business or affairs, for taking all decisions and, where applicable, for operating and maintaining all accounting, internal control or management information systems. You are responsible for: deciding whether our recommendations are appropriate in the context of your objectives; deciding whether you wish to rely on, implement or act on them; and for taking the actions necessary to realise any expected benefits.

Our advice will be provided in writing and addressed to you. You may only rely upon our written advice if that advice has been signed off by or otherwise expressly agreed by a Licensed Insolvency Practitioner and for the purposes for which it has been prepared. It may not be reproduced or distributed to any other party without our prior written consent (save that copies of our advice may be provided to your other professional advisers on a need to know basis for purposes associated with the Services only).

Only final versions of our reports, or other written advice, should be acted upon. Accordingly, we cannot accept responsibility for any reliance that may be placed on drafts.

Where it is envisaged that reports, letters, information or advice given by us to you will be provided to, or used by, a third party we reserve the right to agree with your terms regarding such provision or to require the third party to enter into a direct relationship with us. Unless otherwise agreed in writing, we recognise no responsibility whatsoever other than that owed to you as at the date on which our report or other advice is given.

You agree to provide all relevant information to the staff members who are directly involved in the provision of each Service that we undertake for you. Knowledge of information provided to Staff Members in respect of any particular Service shall not be imputed to Staff Members who are involved in the provision of any other Service.

### **Post-date Events**

We have no responsibility to up-date any reports, letters, information or advice given by us for events occurring after the completion of any Service (which, unless provided otherwise in the Engagement Letter, will be the date on which the final report, letter, information or advice is delivered or signed), nor to monitor their continuing relevance or suitability for your purposes. For the avoidance of doubt, such events include (but are not limited to) changes in applicable laws and regulations, or in their interpretation, or in market conditions.

### **Delay and Circumstances Beyond our Control**

We will not be responsible for any delay in or failure to perform all or any part of the Services where such delay or failure to perform is caused by matters beyond our reasonable control (including, but not limited to, your failure to provide, in a timely manner, the information referred to in the Engagement Terms).

### **Staff Members**

We reserve the right to determine which of our Staff Members are allocated to an Engagement. Where named individuals are not available, we will supply substitutes of appropriate quality and experience. With your agreement, we may also use third parties in performing our services. We may at any time replace or reassign any Staff Members assigned by us to the Services.

You agree that in the interest of limiting the personal liability and exposure to litigation of our Staff Members, you will not bring any claim in respect of any Loss against any of our Staff Members personally, but this will not limit or exclude our liability for the acts or omissions of our Staff Members. This exclusion shall not apply to fraud. You agree that our Staff Members may rely upon the Contracts (Rights of Third Parties) Act 1999 should they need to enforce this sub-paragraph.

### **Non-solicitation of Staff Members**

You agree that you will not solicit, or endeavour to solicit, in any way the services of any Staff Members who within 12 months of such action have been involved in the provision of the Services or are otherwise connected to this Engagement (except where an individual respond directly to a general recruitment campaign).

Should you breach the terms of this undertaking and employ or engage a Staff Member (without our prior consent), we reserve the right to charge you a fee of 20% of the Staff Member's annual earnings (including benefits payable) by you or us (whichever is the higher), payable on or before the first day of their employment or engagement by you.

### **Our Liability**

We refer you to the liability provisions set out or referred to in the Engagement Letter and, if applicable, to any cap on our liability that has been agreed between us.

## **Intellectual Property Rights**

We retain all copyright and other Intellectual Property Rights in everything developed by us either before or during the course of the Engagement, including rights in all reports, written advice or other materials provided by us.

## **Confidentiality**

We confirm that except where required by law, regulation, or professional requirements (including quality control), we shall treat as confidential all information which you provide to us for the purposes of the Services (whether provided orally, in writing or in any other form). However, you agree that we may share confidential information with any subcontractors we use to provide the Services (or more generally to support our office administration) on the understanding that they will treat the information as confidential in accordance with the provisions of this Engagement Letter.

Nothing in this Contract will prevent or restrict us from providing services to other clients (including services which are the same or similar to the Services) or using or sharing for any purpose any knowledge, experience, know-how, methodologies or skills used in, gained or arising from performing the Services subject to the obligations of confidentiality even if those other clients' interests are in competition with your own. When offering our Services to others we may disclose to them that we have acted for you unless you instruct us to the contrary.

You will keep confidential any know-how, methodologies or technology used by us to carry out the Services.

## **Conflicts of Interest**

We have in place procedures to identify situations where conflicts of interest may arise. However, we cannot be certain that our procedures will identify all such situations. If you become aware of any potential conflict affecting our provision of the Services, you will notify us promptly. Where a conflict of interest is identified, and we believe that implementing appropriate procedures can properly safeguard your interests, we will promptly notify you (subject to any obligations we may owe to third parties), explain the safeguards we have put in place and obtain your consent to their implementation. However, there may be circumstances where we consider that your position cannot be adequately safeguarded and in such circumstances the Services may be terminated without affecting our entitlement to payment for the work carried out by us to the date of termination.

## **File Retention**

It is our normal practice to retain documents relating to client engagements for six years from the completion of the relevant Service. Thereafter, unless separate arrangements have been made, we will destroy or erase the documents or papers without reference to you in line with our Data Retention and Destruction Policy, a copy of which can be requested by emailing [info@mgjl.co.uk](mailto:info@mgjl.co.uk)

## **Money Laundering**

Under the United Kingdom's money laundering legislation if, during the course of our professional work, we know or have reasonable grounds for knowing or suspecting that an individual or entity is engaged in money laundering, we are obliged to report that suspicion to the relevant authority. If we fail to make a report, we will be committing an offence. The legislation also makes it an offence for us to disclose that we have made a report if to do so might impede an investigation. "Money laundering" is defined in the Proceeds of Crime Act 2002.

## **Data Protection**

This firm is registered under the General Data Protection Regulation (EU) 2016/679 ("GDPA") and which will ultimately become UK law in the Data Protection Act 2018. To enable this firm to provide the Services we will process and control personal and data (including sensitive personal data as defined by the GDPA).

Subject to your rights above, by accepting these Engagement Terms you are giving positive consent for us to obtain, store and process information about you. Relevant privacy notices in relation to GDPR can be requested by emailing [info@mgjl.co.uk](mailto:info@mgjl.co.uk)

## **Notices**

Any notice given hereunder may be delivered in person by letter or be sent by first class post or facsimile to our office.

## **Electronic Communications**

We each agree that where appropriate we may communicate with each other over the internet (including by way of email).

In order for our personnel to operate effectively and efficiently they may need access to your electronic data and also to your internet communications facilities for the purpose of providing the Services. We will only access your internal networks, applications, data or other systems through the terminals, hardware or software you make available to us for the purpose.

We each recognise that the internet is inherently insecure, and that data can become corrupted, communications are not always delivered promptly (or at all) and that other methods of communication may be appropriate. Electronic communications are also prone to contamination by viruses. Each of us will be responsible for protecting our own systems and interests and neither of us will be responsible to the other on any basis for any loss, damage or omission in any way arising from the use of electronic data (including email) as a form of communication or from our personnel's access to your networks, applications, data or other systems.

## **Successor Firm**

If we should merge with another firm or transfer our business to another legal entity including a partnership, limited liability partnership or company (a "Successor Firm") then our Engagement with you shall not automatically terminate by reason of such merger or transfer. You agree that the Successor Firm is automatically appointed by you so that continuity of service can be provided. Both the Successor Firm and you may rely on the Engagement Letter as setting out the continuing terms of the Engagement. If such transfer requires some official action by you then you will take such steps as are necessary to enable continuity of service, this does not in any way limit your termination rights as set out in the paragraph below.

## **Termination**

Either of us may terminate this Engagement forthwith by notice in writing to the other in the event that the other becomes the subject of insolvency proceedings or calls any meeting of its creditors. Alternatively, either of us may terminate this Engagement at any time upon reasonable written notice to the other. Unless otherwise stated in the Engagement Letter, we shall be entitled to charge and be paid for Services rendered pursuant to the Engagement Terms up to the date of termination, including expenses and disbursements reasonably incurred up to that time and the termination of the Engagement shall not operate to affect any provisions which (either expressly or by implication) survive such termination.

We may terminate the Engagement forthwith by notice in writing to you in the event of a professional or ethical issue or disagreement arising that, in our opinion, cannot be readily resolved.

## **Third Party Rights**

Neither our advice nor any of the Services provided pursuant to the Engagement are intended, either expressly or by implication, to confer any benefit on any third party and the liability of Mackenzie Goldberg Johnson Limited to any third party is expressly disclaimed.

No person other than the parties to the Engagement Terms, and their respective successors and assignees, shall have any right to enforce any of the Engagement Terms, or the terms of any reports,

letters, information or advice provided as part of the Services, pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise, except to the extent that the Engagement Terms expressly provide for such Act to apply.

### **Assignment and Sub-contracting**

Except as provided for above, no party shall assign the whole or part of the performance or benefit of the Engagement without the prior written consent of the other. Further, neither of us will directly nor indirectly agree to assign or transfer any claim against the other arising out of this Engagement to any other person. You agree that you will not bring any claim or proceedings of any nature in respect of or in connection with this Engagement against any subcontractor that we may use to provide the Services, unless founded on an allegation of fraud or other liability that cannot be excluded under English law.

### **Severability**

In the event that any part of the Engagement Terms is held to be illegal, void or unenforceable, the remainder will continue in full force and effect.

### **Whole Agreement**

The Engagement Terms, together with any agreed written variations thereto, set out the entire agreement between us and supersede all prior representations, agreements (including any tender documentation or information), negotiations or understandings, whether oral or in writing, other than any misrepresentation which is made fraudulently.

### **Quality of Service – Internal Policy**

Most disputes can be resolved amicably either through the provision of further information or following negotiations. However, in the event that you have exhausted our complaints procedure and you are not satisfied that your complaint has been resolved or dealt with appropriately, you may complain to the regulatory body that licences the insolvency practitioner concerned.

### **Complaints**

Any complaints that cannot be resolved internally should be addressed to The Insolvency Service, IP Complaints, 3rd Floor, 1 City Walk, Leeds, LS11 9DA, and you can make a submission using an on-line form available at [www.gov.uk/complain-about-insolvency-practitioner](http://www.gov.uk/complain-about-insolvency-practitioner) or you can email [insolvency.enquiryline@insolvency.gsi.gov.uk](mailto:insolvency.enquiryline@insolvency.gsi.gov.uk); or you may phone 0300 678 0015. Information on the call charges that apply is available at <https://www.gov.uk/call-charges>.

If complaints in relation to our Consumer Credit Licence cannot be resolved in line with our internal complaints process they can be referred to the Financial Ombudsman Service, South Quay Plaza, 183 Marsh Wall, London, E14 9SR and you may be able to access their Alternative Dispute Resolution (ADR) system. Alternatively, you may contact the Financial Ombudsman Service on 0300 123 9 123 or 0800 023 4567 or [complaint.info@financial-ombudsman.org.uk](mailto:complaint.info@financial-ombudsman.org.uk) More information can be found at: <http://financial-ombudsman.org.uk/consumer/complaints.htm>.

### **Jurisdiction and Governing Law**

The Engagement Terms and the Services provided pursuant to them shall be governed by and interpreted in accordance with English law. A claim may only be brought against us (in contract, tort or otherwise) if it can be brought in English law without reference to the law of any other country.

The parties to these Engagement Terms irrevocably agree that the Courts of England and Wales shall have exclusive jurisdiction to settle any dispute (including claims for set-off and counterclaims).