

**G.J. MOLONEY**

**PRIVATE AND CONFIDENTIAL**

**TERMS OF ENGAGEMENT**

The following Terms of Engagement (the “Terms”) apply to all work carried out by us. The Terms shall govern our engagement unless specifically updated or substituted (in any respect) by any separate letter of engagement (sent to you with or after these Terms).

**1. You as our client**

You confirm that you are acting as principal and not as agent for anyone else.

Advice rendered by us is provided solely for your benefit and for the purposes of the instructions to which it relates. It may not be used or relied on for any other purpose or by any person other than you without our prior written agreement.

If we agree to provide services on any matters to any associated person, you agree either to accept these Terms for that matter on behalf of the said associated person (on the basis that you have the authority to retain us on their behalf and the associated person would be bound by these Terms) or you agree to procure the associated person to comply with these Terms between you and us for that matter and that you will be liable to us if the associated person does not comply with them.

**2. Cooling off Period**

If our contract for legal services was not made with you at our offices, you have the right to cancel the contract within 14 days, without giving any reasons. The cancellation period will expire 14 days from the date, following your instructions to us, that we agreed to act for you. You must inform us of your decision to cancel within this deadline. To meet this deadline, it is sufficient for you to send us a clear statement in writing by letter or e-mail before the cancellation period has expired.

**3. Conflict of Interest**

If we are aware or we become aware that we already act for a counterparty to you in a matter on which you have instructed us then we will inform you as soon as we are aware of this and seek your further instructions.

You agree that we will not be required to assist you in making any claim or taking any other type of action against another client of G.J. Moloney and that we may not be able to provide services to you on a matter if to do so would give rise to a conflict of interest with another client.

Another client may ask us to act for it in relation to a matter in which you have an interest where we are prevented from acting, or prevented from acting unless certain conditions are satisfied, as a result of applicable laws or regulations relating to conflicts of interest. In such circumstances we will not act for that other client unless we are able to comply with all applicable laws and regulations relating to conflicts of interest. You agree that we will otherwise be free to act on any matter for another client.

If applicable laws and regulations allow us to carry out parallel mandates for one or more clients in relation to the same (or a related) transaction, you agree that we may do so provided we use a separate team for each client and comply with the confidentiality requirements set out in paragraph 18 as well as any applicable laws and regulations.

Except where a partner of G.J. Moloney has agreed otherwise in writing, we may act for other clients who are, or may be considered to be market competitors. We shall have no duty to disclose information to you about them or their activities. Similarly we shall have no duty to disclose information to them about you or your activities.

#### **4. Fees**

You are responsible for all of our proper and reasonable and/or agreed fees and other costs. Unless otherwise agreed between us as a fixed fee or otherwise, our professional fees will be calculated by reference to the following criteria –

- the complexity and urgency of the matter;
- the difficulty of the particular issues raised;
- the skill, knowledge and responsibility involved;
- the value of the transactions involved;
- the efforts required to meet particular deadlines or other requirements imposed by the client or on foot of the issues raised;
- the time expended on the matter;
- the hourly rates of the relevant partners, solicitors or support staff acting in the matter.

#### **5. Fee estimates and quotations**

Any fee estimate given is our indication made in good faith of our possible fee for the work requested. It is subject to revision and does not comprise a contractual commitment on our part to carry out the said work for the estimated fee. We will notify you as soon as possible should it become apparent that our estimated fee is likely to be exceeded.

Separately, any fee quotation is a proposal by us to carry out specified work for that fee. On your acceptance of the proposal it becomes a contractual commitment between us. Should we carry out additional work our fees for such additional work will be charged in accordance with paragraph 4 of the Terms. However, we reserve the right to charge additional fees on the same or similar basis for additional work arising from unforeseen complications, unforeseen circumstances or circumstances known to you when you accepted our quotation, but which were not disclosed to us.

Fee quotes and estimates provided by G.J. Moloney exclude VAT and outlays unless otherwise stated.

## **6. Fees Payable to Third Parties**

You may request us to seek to recover some or all of your fees and costs (including applicable taxes) from a third party. However, you are solely responsible for such fees and costs (including all applicable taxes). This principle applies equally where fees and costs (including all applicable taxes) are to be discharged by insurance.

## **7. Corporate Vehicles**

If you are a corporate vehicle with the sole or main purpose of conducting one or more transactions on which you have instructed us and which does not otherwise have the resources to pay our fees and costs, our services are provided strictly on the basis that your shareholders have confirmed their acceptance that they are jointly and severally liable to us for all fees and costs (including any applicable taxes) referred to in these Terms.

## **8. Outlay and Taxes**

In addition to our fees we will invoice you for any outlays or charges incurred on your behalf. If we anticipate that we may incur significant outlays we may seek a cash advance to cover same.

If we act for you in the sale of a property, and you are not resident in this country, because we handle the proceeds of the sale, we are legally responsible for the filing of a capital gains tax return and/or the payment of such tax. Accordingly you agree to indemnify us in full in respect of any and all such taxes, charges, penalties and/or interest and will immediately reimburse us back in full for such and equally indemnify us for any loss we suffer due to something you do, or omit to do, or some wrong-doing on your part.

If we act for you as a non-resident beneficiary of an estate, we are legally responsible for the filing of a capital acquisitions tax return and payment of any tax. Accordingly you agree to indemnify us in respect of any and all such taxes, charges, penalties and/or interest and will immediately reimburse us back in full for such and equally indemnify us for any loss we suffer due to something you do, or omit to do, or some wrong-doing on your part.

## **9. Invoices**

Unless otherwise agreed in writing interim invoices will issue on a monthly basis.

A final invoice will be issued for the balance of any fees due, together with outlay, on completion of the matter. If we hold a retainer from you on account of fees, we are authorised to set that retainer against fees and related outlays and expenses on the delivery of such final invoice in accordance with these Terms.

We will not, unless otherwise agreed, provide a detailed description of work done in the invoice.

If there is a disagreement about any invoice we send you, we will try to resolve the matter by agreement with you. If the matter cannot be resolved, we may have to stop acting for you. If the matter is not resolved, you then have the right to refer the bill for review by a court official called a Taxing Master, or to make a complaint to the Law Society about the bill.

## **10. Payment**

Invoices are payable within 14 days of issue. If invoices are not paid within 14 days, we will have the right to suspend work and to charge interest on the outstanding sums due at the rate of 8% from issue of the invoice.

If our fees are subject to withholding tax or other deduction, you agree that you will increase the payment made to us in order to discharge the full amount of the invoice issued.

In addition to liens which arise by operation of law, we shall be entitled to exercise a lien over title deeds and any other documents we hold on your behalf in respect of any unpaid fees owed by you or by an entity controlled by you.

## **11. Litigation**

Unless otherwise indicated by us in writing fees shall be charged to you on a monthly basis until the proceedings are concluded.

In litigation cases, there is always a risk that, in addition to paying our fees and expenses, you will also have to pay the fees and expenses of the solicitors and advisers for the other party to the litigation. This might happen if, for instance, you lost the case or it was part of a settlement agreement. It is important that you fully understand this risk.

If you are a party to proceedings before a court, tribunal or arbitrator you may be required to reimburse legal fees incurred by other parties if the court, tribunal or arbitrator make an order to that effect. The amount to be paid will either be agreed between the parties or determined by a Registrar or Taxing Master.

If a party is successful in the entire action after a full hearing or in a particular application before the court, an order for costs is generally made in favour of the successful party, on a party and party basis. The court has discretion to award such costs, having regard to a number of different factors. Party and party costs are often less than the solicitor and own client costs.

Accordingly if the other party to the proceedings succeeds to any extent, then an award of their party and party costs may be made in their favour.

Even if you are successful in winning a case and are awarded your party and party costs, you will remain liable to us for the full costs on a solicitor and own client basis and will be

responsible for paying these costs. Payment of our fees is not dependent upon recovery from any third party.

If any costs awarded in your favour and recovered are more than the fee charged by us, we reserve the right to claim that balance.

At the end of the proceedings we will issue you with a final overall invoice. Such invoice will confirm the sums paid to date together with the balance payable.

## **12. Client Monies**

If we hold client monies for you, the Solicitors Accounts Regulations require that we hold them in a client account with a bank approved by the Central Bank. These are your funds and will be treated as if you had deposited them directly with the relevant bank. We do not accept responsibility for the security and safety of those funds to the extent that they are not repaid to us by the licensed bank with whom they are deposited. We determine the licensed bank with whom the client account is held; this may be changed by us to another licensed bank without notice.

We do not have any additional responsibilities around the protection or investment of your money.

You agree that we are not legally responsible for a loss or reduction in the value of the money because the bank at which the money is held becomes insolvent and does not have the money to pay back the full amount.

By asking us to handle your case or transaction, you agree that if we have given a professional promise or undertaking on your behalf, which, because of the insolvency of the bank at which we had placed the money, we cannot carry out, you will refund us in full any loss we suffer if we are forced to carry out our promise at our own expense.

You agree that we are not legally responsible for a loss or reduction in the value of the money if the government were to legislate, empowering it to take part of deposit funds.

## **13. Document Storage**

We will store deeds and documents for you if you so require subject to space being available. We do not accept responsibility for the loss or damage of any item we hold. We reserve the right to destroy retained files and papers (whether in hard copy or electronic format) relating to work carried out for you, once a reasonable period has elapsed from the earlier of the date the advice is given, the work is carried out or the relevant document is created. If you do not wish this to happen then you must give us written instructions to the contrary so that we can arrange for your property to be returned to you. We reserve the right to charge you for any copying, scheduling or handing over of any deeds or documents which we hold and for the cost of storage.

By asking us to handle your case or transaction, you are agreeing to accept a photocopy only of the correspondence file if you later want it. By law, we are entitled to keep a copy of the file, or the original, if you have agreed that we may have the original. We will charge an administration fee for such photocopying.

When we store files offsite, whether electronic or hard copy, we will take all reasonable steps to make sure that we keep your information confidential. We do not accept responsibility for the loss or damage of any items held offsite.

#### **14. Copyright**

Unless we agree in writing to the contrary, we assert our copyright in respect of all written material produced by us.

#### **15. Third Party Advisers**

If any barrister, search agent or third party adviser is engaged by us on your behalf it will be your responsibility to pay the fees and expenses of such third party. Furthermore we will not be liable for any report or advice rendered by such barrister, search agent or third party.

#### **16. Electronic Communications**

We may communicate with you by e-mail. We shall not be responsible for the unauthorised interception, redirection, copying or reading of e-mails including any attachments, or for the effect on any computer system of any e-mails, attachments or viruses which may be transmitted by this means.

#### **17. Information**

To enable us to perform our services to a high standard, we will need you and any other professional advisers working with you on a matter, to supply us with all the information which we consider necessary as promptly as possible.

We and those acting on our behalf, may use your information and the information provided by you or on your behalf (for which you confirm you have, or will have, obtained any appropriate consents), in connection with the performance of services for you. From time to time, we may provide to you information by post, electronic means or otherwise that you request from us or which we feel may interest you.

If you want to access or amend the data we hold about you or if you do not want us to use your data as set out above, you should confirm same to us in writing.

#### **18. Confidentiality**

Information received as a result of your instructions will be treated in the strictest confidence at all times. If we are working with your advisers we assume, unless you instruct us otherwise in writing, that we may disclose any such information to, and discuss it with such advisers, and

where you are a company with such officers or employees of the company or of any company within your group.

We will not disclose your identity as a client unless authorised to do so, the information is already in the public domain or we are required to do so by applicable laws or regulations or any court or administrative order.

We reserve the right to disclose information to governmental and regulatory bodies, including but not limited to the Law Society of Ireland and to our professional advisers and insurers where they require that information in connection with their services to us.

In respect of confidential information relating to other clients, we will not disclose it to you or use it for your benefit. If in the course of acting for you we receive any confidential information that becomes relevant to a matter relating to another client, we will continue to maintain its confidentiality in accordance with the Terms and will not use it for the other clients benefit. You agree that in such circumstances we may continue to act for that other client without obtaining your consent, except where we are not permitted to do so in accordance with paragraph 3 or any applicable laws or regulations.

#### **19. Legal Professional Privilege**

In general, communications between clients and their lawyer enjoy protection from being disclosed in litigation or other circumstances. Such privilege can be lost if advice given is circulated beyond the original recipient. Accordingly you should treat such communications with us as confidential and avoid circulation of same unless advised to do so.

#### **20. Anti-money laundering**

We are required by law to carry out identity checks on clients. You confirm that you will comply fully with our requests in order that we may comply with such legal obligations. If we are unable to satisfy such legal obligations we may cease or decline to act for you without notice.

If you ask us to deal with any funds or property, you must have obtained them legally. If we become aware or suspect that these assets come from an illegal source, we must notify the Gardaí and the Revenue Commissioners without telling you, except in limited circumstances. We will immediately stop acting for you if we have to report illegal assets.

#### **21. Termination or Transfer**

We may cease to act on your behalf should we decide to do so without assigning any reason therefor. This may include, but will not be limited to, in our exclusive opinion, the delay in or non-payment of costs, unreasonable demands or behaviour on your behalf, incompatibility between us, disagreement on how matters are being handled or should be handled, your failure to take our advice or the advice of counsel or such other reason as we may decide. In such circumstances we shall invoice you for all completed work to the date of such termination, together with any costs incurred by us in concluding or transferring the matter. Our fees must be discharged prior to the release of the file. Fees payable in these circumstances will be at full

rates as described below regardless of the level of fees charged up to that point. Any agreed premiums/bonuses/uplifts which may have been agreed will also be payable at our exclusive discretion.

If you decide for any reason to transfer to another solicitor's firm, you agree to pay us for any work done up to that point, together with any expenses we have incurred on your behalf.

You agree this requirement will also apply to litigation cases where we have agreed to charge a fee only if your case was successful. If you change to another solicitor, such agreement automatically ends and we will require payment for the work we have carried out. Our fees must be discharged prior to the release of the file. It also applies if we have agreed to charge lower fees or discounted fees based on a premiums/bonuses/uplifts in the event of certain outcomes. Fees at full rates will immediately be payable regardless of previously agreed lower fees or discounts. In addition, once we have agreed to act on your behalf the premiums/bonuses/uplifts will be payable to us in due course as if we had continued to act for you up to the outcome of the matter. A credit will be given for fees paid. An administration fee will be charged for the transfer of the file to your new solicitor and same must be paid in full prior to such transfer. An administration fee will be charged for the transfer of the file to your new solicitor and same must be paid in full prior to such transfer.

Prior to such termination or transfer we must first carry out any professional undertakings we have made on your behalf to third parties or secure agreement to the transfer of such obligations to your new solicitor. You agree to take all steps to ensure that we may comply and/or transfer such undertaking and to discharge any fees incurred in same.

## **22. Limitation of Liability**

Subject to the following, our liability for any claim in respect of negligence, breach of contract, breach of duty or in any other manner arising is limited to a sum equivalent to the minimum level of such liability, as specified from time to time in regulations under paragraph (b) of Section 26(4) of the Solicitors (Amendment) Act 1994. At present our liability to you is limited to €1,500,000.00.

All claims arising from one act, error or omission or one series of related acts, errors or omissions will be regarded as one claim.

Nothing in these Terms or any other record of instructions will limit any liability that we may have to you in respect of any loss caused by our fraud, fraudulent misrepresentation or reckless disregard of our professional obligations or in any other situation where the law prohibits us from excluding or limiting our liability to you.

We will not be liable to you or to any third party for any consequential or indirect damages or losses. We will have no liability to you where we have not been paid for our services. You agree not to bring any claim of any kind against any of our employees personally.



In relation to any specific matter where you desire a higher limit on our liability you should advise us of same before we commence to act on the matter. No such increase in liability shall be valid unless agreed to by our Managing Partner in writing.

The extent to which any loss or damage will be recoverable by you from us will be limited so as to be in proportion to our contribution to the overall fault by all parties for such loss or damage. Such apportionment shall be just and equitable, taking account of any contributory negligence by you and any negligence by your other advisers and/or any third party responsible to you and/or liable in respect of such loss or damage and shall disregard any limit on liability applied by other advisers.

Save where we have agreed otherwise in writing, we shall not be liable to you (or any other person) for any damage arising, directly or indirectly, in connection with any services provided by us to the extent that damage arises as a result of you acting on behalf of any other person or relates to damage suffered by that other person.

If a claim has or might be made against you and you are aware that, as a result, you will or might make a claim against us, you agree to inform us promptly of the claim against you and, where reasonably practicable, not admit to any liability or reach an agreement or compromise with any person in relation to that claim without consulting us first.

Except as set out in these Terms or to the extent that may be precluded by law, under no circumstances will we be liable to you, or any other party, for any sum in respect of which we are not indemnified by our Professional Indemnity Insurance.

### **23. Marketing**

Unless you have directed us otherwise, we may disclose to others that you are our client. G.J. Moloney shall not disclose the matter or the nature of the advice save where the existence of our role or the transaction is already in the public domain. In such circumstances, G.J. Moloney may refer to our business relationship and an outline description of the work involved and use your business name and/or logo on our website or otherwise for marketing purposes.

### **24. Complaints**

If you are unhappy with our work, or wish to make a complaint, you should raise the matter with the partner responsible or if your complaint relates to that partner, or remains unresolved after discussion with that partner, you should contact our Managing Partner. If your complaint relates to our Managing Partner, then you should contact our Financial Controller.

### **25. Severability**

If any part of these Terms or any similar terms between us are found by any court or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed and will be ineffective but without affecting any other provisions which will remain in full force and effect.

## **26. Law and Jurisdiction**

The terms of our appointment including these Terms of Engagement are governed by and to be construed in accordance with Irish law.

Any dispute relating to the amount or non-payment of our fees, disbursements or expenses shall be subject to the exclusive jurisdiction of the Irish courts.

If any dispute arises out of these Terms or the provision by us of legal services to you (other than a dispute in relation to the amount or payment of our fees), the parties will attempt to resolve that dispute by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between us, the mediator will be nominated by the President of the Law Society of Ireland. To initiate the mediation a party must give notice in writing to the other party requesting mediation. You agree that you may not commence arbitration in relation to the dispute until you have attempted to settle the dispute by mediation and either the mediation has terminated or we have failed to participate in the mediation.

If mediation is not successful, then you agree that the dispute (excluding any dispute in relation to the amount or payment of our fees) shall be dealt with by way of arbitration under the provisions of the Arbitration Acts 1954 to 2010 by an arbitrator to be mutually agreed between us. Unless otherwise agreed between us within 21 days of either party first suggesting an individual or individuals for appointment, either party can refer the issue of the appointment of an arbitrator to the President of the Law Society of Ireland who shall appoint a suitable person to act as arbitrator and whose decision on such appointment shall be final and binding.

The parties to the claim or arbitration, the Law Society of Ireland and the arbitrator shall keep confidential the existence of a dispute, the materials used and created for the arbitration, the existence and proceedings of the arbitration and the awards and decision of the arbitrator, unless that information is already in the public domain (otherwise than through a breach of this paragraph or any other confidentiality obligation between you and us) or if that information is required to be disclosed – by applicable laws or regulations, by any of the parties to their professional advisers or insurers where they require that information to provide their services to them, or to protect or pursue a legal right or to enforce or challenge an award in legal proceedings.

## **27. Revision**

We may from time to time amend these Terms and the revised Terms (as amended) shall apply to you upon your being notified of them or their appearing on our website.

**February 2018**