

# **Terms of Business of Branch Austin LLP**

## **January 2021**

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## Branch Austin LLP

### Terms of Business

- General:** Our terms of business are set out below. Please read them carefully and ask us if there is anything which you do not understand. These terms set out the basis on which our services are provided, and are of general application. The Engagement Letter and these terms should be read together. In the event of any inconsistency between the Engagement Letter and these terms, the former shall prevail. Your continuing instructions will amount to your acceptance of these terms and conditions. Branch Austin LLP is a limited liability partnership established under English law registered with number OC434246. We are authorised and regulated by the Solicitors Regulation Authority (SRA). Our SRA identification number is 812138.
- Scope of retainer:** We will advise only on the matters set out in the engagement letter or otherwise confirmed to you in writing. We will not advise on taxation, accountancy, financial, valuation, planning, environmental or any areas other than as set out in writing to you and you should seek advice on all areas that we are not advising on in accordance with your particular requirements. You must provide to us promptly all factual information, materials and documents that we require to carry out the services we have agreed to provide. We shall not be under any obligation to update any advice, report or product of our services to take account of events occurring after the advice, report or product has been issued in final form. We shall not be under any obligation to remind you of any time critical date or of any matter or event occurring after we have submitted our final invoice for the matter. Unless expressly otherwise agreed in writing, our responsibilities do not include verifying the identities or substance of other parties to transactions, or advising you on the commercial implications of any matter or transaction with which you are involved.

When acting for you on a transactional matters, it is your responsibility to ensure that where appropriate we have received the full amount in good time for any scheduled completion date or other deadline. We accept no responsibility or liability for any loss or damage incurred as a result of banking delays or difficulties.

- Fees:** Our time and expertise are the key elements of the services we provide and so our fees are calculated by reference to the time spent by and the hourly rates of the legal personnel who deal with the matter. Hourly rates vary according to seniority and experience of the legal personnel. Other factors may also be taken into account, including the complexity, urgency and value of the matter, and an additional charge may be made.

Time is recorded in units of 1/10<sup>th</sup> of an hour. Time spent on your affairs will include meetings with you and perhaps others, preparing and working on papers, research, correspondence, making and receiving telephone calls and travelling.

Sometimes we may arrange for persons not employed or retained directly by us to do work on our behalf and in such case you will be charged at the rates which would have applied had we done the work ourselves. If you ask that we start work immediately or to take some very urgent action before we have had the chance to open a file and send an engagement letter the terms set out herein will apply from the point of your initial instructions even though they are not sent to you until later.

As assistance may be provided by others in relation to your matter, as it progresses, please note that the current standard hourly rates of our partners, solicitors and consultants are as follows:

Partners	Admitted Staff*	Non-Admitted Staff
£375-£475	£210-£400	£130-£375

\*Admitted Staff includes Solicitors of the Senior Courts of England and Wales; Employed Barristers, Fellows of the Institute of Legal Executives; certain other professionally qualified staff employed in specialist areas. Non-Admitted Staff includes trainee solicitors or paralegals. In certain circumstances, we will advise you of our non-standard hourly rates which will apply to your matter in our engagement letter.

Our rates are reviewed annually to take account of changes in overhead costs, and we will notify you of any changes. We will also notify you of any change in the status of legal personnel which affects their hourly rate.

You will be responsible for payment (or reimbursement to us) of stamp duty and other liabilities to third parties, including Counsel, enquiry agents, process servers, couriers and translators and in respect of land registry or other registrar fees, court and search fees. As we are directly responsible for third party charges incurred in connection with our advice to you, we may require a payment in respect of them in advance.

VAT will be added at the rate which applies when the work is done. All estimates or quotations given by us are exclusive of VAT.

If we have given you a written estimate of the total charges, it is given only as a guide to assist you in budgeting and should not be regarded as a fixed quotation unless otherwise agreed in writing. We will update any such estimate from time to time, and at least once every six months. We will also inform you if any unforeseen but significant additional work becomes necessary (for example, due to unexpected difficulties or if your requirements or the circumstances significantly change during the course of the matter). We will inform you in writing before any significant extra charges or expenses are incurred



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If you wish, you may set an upper limit on our unbilled fees for which you may be liable without further authority. We would not exceed such an agreed limit without your prior consent.

Our fees and expenses are payable even if the matter on which we are working for you is not completed for whatever reason.

4. **Expenses:** By appointing us to act on your behalf you also authorise us to incur such expenses as we consider necessary. These will usually be provided to you at cost. We reserve the right to make a charge for services other than those provided by legal personnel, including but not limited to photocopying which we carry out ourselves (as opposed to copying which is carried out externally by third parties), scanning, faxing, data site downloading, international telephone calls, bank charges, company formations, searches, storage and travel. We reserve the right to add 3.5% of our fees to each invoice as a contribution to the costs of copying, colour copying, postage, telephones, scanning, faxes and petty incidentals. In addition, if it is substantial, we make a specific charge for photocopying and scanning on a usage basis including a profit element. VAT will be added to those expenses which are liable to VAT. We will consult with you before incurring any significant expenses, unless such expenses are essential to the smooth running of your matter.

Examples of expenses which we may have to pay on your behalf include search and registration fees, fees for photocopying, stamp duty, stamp duty land tax, counsel's and other experts' fees. We also charge a file administration fee to cover the set-up costs of each matter, the amount of which is set out in the Engagement Letter.

5. **Invoicing and Payment Terms:** We reserve the right to request payments on account of our charges and expenses at any time during our engagement. We shall be entitled to send you interim invoices for our charges and expenses at not less than monthly intervals, or as otherwise agreed with you, while the work is in progress. We will send a final invoice on completion of the work.

Payment is due to us upon delivery of our invoice, unless otherwise agreed between us in writing. You agree that we may send invoices to you by email to the email address with which we have corresponded with you during the course of the matter.

If you have any query about your invoice, including the basis on which it has been calculated, you should contact the individual with day-to-day responsibility for the matter as soon as possible and in any event within one month of delivery of the invoice.

If any invoice is due for payment and unpaid or a payment is requested on account of charges or expenses and is not made, we reserve the right to deliver an invoice for our charges and expenses on each matter on which we are instructed by you and/or to suspend work on each such matter and/or to retain all documents, papers, money or property belonging to you and in our possession, irrespective of the matter to which they relate, until all sums due to us have been paid. We will not be liable to you for any resulting financial loss or any other consequences you may incur as a result of our terminating any of our retainers in accordance with the provisions of this section.

The firm reserves the right to charge interest on all overdue fees for business and privately paying clients at the rate specified in the Late Payment of Commercial Debts (Interest) Act 1998, or any successor legislation, subject in all cases to a minimum of 8%, from the date of invoice, until settled in full calculated on a daily basis. The firm also reserves the right to transfer from any monies held for you at any time such amount as is required to meet any disbursements incurred on your behalf and to settle our fees. We are obliged under the Solicitors Regulation Authority Accounts Rules (the "Accounts Rules") to transfer our fees, disbursements and VAT from any monies we hold for you in our undesignated client account for you.. We will normally do this automatically as soon as possible after the date of invoice unless the monies are specifically designated at the time they are sent to us as separate funds.

6. **Liability for charges and expenses:** You are primarily responsible for paying our charges and expenses even if a third party is liable to pay or share them with you by agreement or otherwise. If you wish a third party to be responsible for paying our invoices on your behalf, please inform us immediately and provide any other information or identification documents requested by us. If you ask us to do work for any other person, company or entity and to submit an invoice to that person, company or entity, you will be jointly liable for payment. If our instructions in relation to a matter are received from more than one party, each party for whom we are acting will be jointly and severally responsible for payment of the whole of our charges and expenses for that matter, unless otherwise agreed in writing by us.

7. **Conflict of Interest:** Our professional rules prevent us continuing to act where there is, or there is reasonably likely to be, a conflict of interest between two or more clients or where we hold or come into possession of confidential information that may be material to you but which we are under a duty to keep confidential for another client. In such circumstances, we may have to stop acting for you. If this happens we will tell you as soon as reasonably practicable and we will endeavour to minimise any inconvenience to you. We will be under no obligation to disclose any such information to you.

Should we continue to act for you we will take such steps as are necessary to ensure that the information of each party is kept confidential from any other party. This may include special arrangement in relation to IT systems and you to comply with any additional measures which we consider are necessary to ensure confidentiality is maintained.

It is our practice to check for any conflict of interest when taking instructions from you. However, we may not identify all situations where there may be of conflict with your interests or where we hold specific confidential information. If there are any specific circumstances in which you consider we should not act because you consider that for us to do so would be in conflict with your commercial interests, you must notify us promptly so that we can consider our position.



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8. **Interest payments:** Any money received on your behalf (other than for costs) will be held in our client account unless placed on treasury deposit or a designated client account on your behalf. Subject to a de minimis amount of £100, interest will be calculated and paid to you at the rate from time to time payable on designated client accounts with Barclays Bank plc and in accordance with the Accounts Rules in force from time to time.
9. **Money Laundering Regulations:** We, along with all other solicitors, are subject to legislation intended to combat money laundering and terrorism, including the Terrorism Act 2000, the Proceeds of Crime Act 2002 and associated regulations (and any subsequent modification to the legislation or regulations ("Anti-Money Laundering Legislation")). We reserve the right to comply with the Anti-Money Laundering Legislation in all respects as we determine in good faith. In particular, the Anti-Money Laundering Legislation imposes reporting obligations on us which override our duty of confidentiality to you. Where we have notified the relevant authorities you agree that we may provide such further information as they may require.

We are required to verify the identity of all clients and, in certain circumstances, other persons such as directors, trustees or beneficial owners and to keep that information updated. You agree that we may make these checks using online or other databases as we may decide. We reserve the right to request additional information from you or associated parties at any time while carrying out your instructions. If you are unable or unwilling to provide adequate evidence/ information to us, we may cease acting for you and will not be liable for any loss which may result. If we are to receive funds during the course of your retainer, we must ascertain their source to our own satisfaction and in accordance with the Anti-Money Laundering Legislation.

The requirements of the Anti-Money Laundering Legislation may either prevent us from taking particular steps, or from acting further, on your behalf and we may be prohibited by law from informing you of these matters. In these circumstances we reserve the right to cease acting and to charge you for our work done to that date.

You accept that our compliance with the Anti-Money Laundering Legislation or guidance issued by the courts or any regulatory body may prevent us from informing you of all relevant matters either promptly or at all. You agree that we may carry out credit reference checks using online or other databases as we may decide. These agencies may keep a record of that search.

10. **Data Protection:**

- (i) **Professional Rules:** We will keep information and documentation entrusted to us confidential subject to any duties or obligations imposed on us by law or by our professional rules.
- (ii) **Collection of Data:** We may maintain personal information about your name, address (business and residential), telephone number, email address, marital status, bank details, tax reference numbers and profession. The information we collect from you may include sensitive personal information about your race, sex, ethnic origin, sexuality, political opinions, religious beliefs or lack of them, trade union membership, health, criminal offences or proceedings.
- (iii) **Use of Personal Data:** We may obtain, use, process and disclose personal data about you in order that we may discharge the services which we have agreed to under this retainer or where we accept further instructions from you from time to time. We may also use and process this information for other related purposes including updating and enhancing our client records, analysis for management purposes, statutory returns, crime prevention and legal and regulatory compliance.

Subject to paragraph 10(iv) of these Terms of Business, you agree that any personal data provided to us and including any information that you may have previously provided to us may be used by and shared with / and may be disclosed to the following parties for the purpose of the provision of our advice and services:

- a. partners, employees and consultants of Branch Austin LLP and any other company controlled by or on behalf of Branch Austin LLP or is designated members (the "Branch Austin Entities");
- b. successors in title to any of the Branch Austin Entities;
- c. third party consultants, contractors or other service providers who may access the information who are engaged by any of the Branch Austin Entities (including but not limited to, notaries, property search agents, IT support and document storage services);
- d. government bodies, law enforcement agencies, regulatory bodies, legal societies, banks and other financial institutions and in response to other legal and regulatory requests from similar third parties;
- e. legal advisers, auditors or contractors or other advisers auditing, assisting with or advising in on any of my or our personal or commercial business.

Information from your file in these circumstances may therefore be made available to others although we will always seek to obtain obligations of confidentiality from such third parties to whom any work is entrusted.

- (iv) **Disclosure of Data and Information Sharing:** The personal data may be shared with and used by the aforesaid parties insofar as it is necessary for the purposes of the provision of legal services to you and to protect our legitimate business interests. Sharing and use of personal data may include the following activities:
- a. undertaking anti-money laundering, identity and electronic or other credit checks;



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- b. updating Branch Austin LLP's internal records;
  - c. the provision of legal advice and services (including ancillary services, such as photocopying, translation or notarial assistance);
  - d. the provision of corporate administration services;
  - e. the prevention and detection of crime;
  - f. the prosecution of criminal activity and the updating of regulatory or registered information.
- (v) **Email and Other Communications:** We reserve the right to intercept or record any incoming communication. In many instances, it is appropriate and more expedient to communicate with you by email and we will do so unless you specifically advise us to the contrary and provide us with alternative details of how to communicate with you. It is not our practice to check that you have received an email from us. Given the nature of email, we do not accept liability if an email, while apparently having been properly sent, does not reach you or the intended recipient either at all or within normal time frames. We expect you to have checked we have received a time critical email. We do not intend to use encrypted software for the sending of email, although we have taken all reasonable precautions to ensure that our emails, any attachments and our wider IT systems are free from viruses and corruptions. We do not accept any liability for any loss or damage to your systems or the systems you use (including any hardware and software) or any other loss or damage suffered as a result of emails sent from us to you or any other interaction you or the systems you use may have with us or our IT systems.
- (vi) **Transfer of Data:** In order to carry out your instructions, we may also, very occasionally, need to transfer your information to countries outside the European Economic Area ("EEA") which do not provide the same level of data protection as in the UK. By instructing us you consent to us processing your personal information and transferring your personal information outside the EEA to the extent necessary for the purposes set out above.
- (vii) **Access to Personal Data:** You have the right to ask for a copy of your information and to correct any inaccuracies in the information we hold about you. You also have the right to ask us to stop using this information for marketing purposes. You have the right to request that we erase the personal data that we hold about you, or restrict our processing of such data. We will tell you if we are unable to comply with any request to rectify, restrict or erase the use of your personal data. If you wish to exercise these rights or have any questions regarding our use of your personal information please contact our Privacy Officer at [gdpr.co.uk](mailto:gdpr.co.uk). We are registered with the Information Commissioner under number A1103073.
- (viii) **Retention of Personal Data:** We will retain your personal data for a minimum period of six years following the conclusion of your matter or such other longer period as may be required or agreed between us in accordance with our privacy policy, from time to time, a copy of which may be found on our website ([www.branchaustin.com](http://www.branchaustin.com)), or is available from our Privacy Officer.
11. **Cybercrime:** cybercrime and email related fraud are on the increase. To protect you, your money and our business, the following security measures apply to the transfer of funds to or from Branch Austin LLP.
- We will only provide you with our bank account details in a branded PDF document which will be sent by mail or as an attachment to email correspondence. If you receive any communication purporting to come from us which changes those account details please do not rely on this and let us know by telephone immediately.
- Prior to transferring funds to our account, we ask that you contact us to check our account details. Please speak to your normal contact(s) here or, failing that, to our Accounts Manager.
- If you are a relatively new client or your payment details or instructions have changed, we will contact you via telephone to verify your bank account details prior to sending funds to you. If you are a long-standing client of the firm to whom we have previously transferred funds, and your bank account details have not changed, we will rely on our previous transactions rather than contact you via telephone for verification unless circumstances exist which increase the level of risk or we otherwise consider it appropriate to do so.
- Verification may cause minor delays to processing payments, but we believe it is necessary to help us protect you and your money from fraud.
- We will only send you business-related emails from the [@branchaustin.com](mailto:@branchaustin.com) domain address. We may, from time to time, send you updates and marketing information from a [@branchaustin.com](mailto:@branchaustin.com) domain address. Our website will only be [www.branchaustin.com](http://www.branchaustin.com). If you receive an email from an email address which does not match the above or are directed to a website that does not match the above URL please contact us immediately. Please beware of emails, purporting to be from us, where there is an unexplained change in the language or incorrect spelling and grammar.
12. **Limitation of liability:** Unless otherwise agreed between us in writing, our aggregate liability, whether to you or any third party, for any losses incurred by you as a result of or in connection with any breach of contract, breach of trust, breach of fiduciary duty or tort (including negligence) or other liability on the part of Branch Austin LLP or its members, partners, consultants or employees shall not exceed £2million or the minimum required by law, whichever is the greater.



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We are not responsible for the accuracy of information disclosed or omitted from searches undertaken or instructed by us on your behalf or for the advice of Counsel or other third parties, such information and advice being the responsibility of the search provider, Counsel or the third parties involved. The firm, its partners, consultants, and employees will not be responsible for any consequential or other loss. You also agree that any claim may only be brought against the firm and you may not bring a claim against any individual partner, employee or consultant. The firm holds professional indemnity insurance and the name, contact details and the territorial coverage of this is available on request.

13. **Complaints:** Branch Austin LLP is committed to providing an excellent service to its clients and we value your business. If you have any suggestions on how we can improve our service, please let us know. If you are not satisfied with any service, then please raise the concern initially to the fee earner responsible for your matter or to our compliance partner Tania Austin. If you are not satisfied with our handling of your complaint you may ask the Legal Ombudsman (PO Box 6806, Wolverhampton WV1 9WJ website [www.legalombudsman.org.uk](http://www.legalombudsman.org.uk) telephone 0300 555 0333) to consider the complaint. Normally you will need to bring a complaint to the Legal Ombudsman within six months of receiving a final written response from us about your complaint. You may have a right to object to your bill and to apply for an assessment of the bill under Part III of the Solicitors Act 1974. You should be aware that the Legal Ombudsman may not consider a complaint about the bill if you have applied to the court for assessment of the bill. The firm may also be entitled to charge interest on all or part of a bill if it is unpaid. Full details of our complaints policy are available on our website.
14. **Duty of Care and the Contracts (Rights of Third Parties) Act 1999:** Our duty of care is to you as our client alone and to no other party even if involved or assisting directly or indirectly in the matter. Where our client is a corporate or other body or trustees we do not owe any duties in contract, tort or otherwise to any of its directors, shareholders or beneficiaries or others. Any advice given is for your sole use and does not constitute advice to any third party to whom you may communicate it. In addition the Contracts (Rights of Third Parties) Act 1999 does not apply to the terms of this retainer or any subsequent amendment to it unless expressly confirmed in writing that the Act does apply.
15. **Financial Conduct Authority:** We are not authorised by the Financial Conduct Authority. However, we are included on the register maintained by the Financial Conduct Authority so that we may carry on insurance mediation activity, which is broadly the advising on, selling and administration of insurance contracts. This part of our business, including arrangements for complaints or redress if something goes wrong, is regulated by the Solicitors Regulation Authority. Our primary role is as legal advisor and it is not part of our role to advise on the merits of entering into investments (including mortgage and insurance) transactions or exercising investment rights, or to act as broker or arranger of transactions. Any decision to consider, discuss, negotiate or enter into a proposed investment transaction is a decision solely for you on the basis of your own assessment of the transaction and risks, and any advice which you may receive from a person authorised under the Financial Services and Markets Act 2000 to give such advice.
16. **Storage of papers and Deeds:** We will keep our file (except for any documents which you ask to be returned to you) for no more than 6 years. We keep the file on the understanding that we have the authority to destroy it 6 years after the date of the final invoice we send you for the matter to which it relates, unless we have agreed that we will continue to store them. This applies to all files and papers retained by us other than wills, title deeds and documents and similar items. We will not destroy documents you ask us to deposit in safe custody and in all likelihood we will retain the files for 6 years. We may charge you for the costs of storage plus an administrative charge. In addition, at our discretion, you will be responsible for all charges incurred by us retrieving your files from storage plus an administrative charge.

If we retrieve documents from storage in relation to continuing or new instructions for us to act in connection with your affairs, we will not normally charge for such retrieval. We may, however, make a charge (based on time spent at our usual standard rates) for producing stored files or documents to you or another at your request, or at the request of other authorised third parties or law enforcement agencies. We will also be entitled to recover our costs and expenses in complying with enquiries from authorised third parties or law enforcement agencies at our usual standard rates. This will include any time spent on reviewing files, correspondence, collating documents and expenses. Subject to any contents that belong to us, we will return files to you or to any other professional advisers named by you, as long as all of our outstanding invoices have been paid in full.
17. **Electronic file storage and information:** You agree that we may scan and save all files; documents and information in electronic format and that we may outsource this work to a provider who specialises in this. It is a condition of this retainer that we may then store or outsource the storing of any information documents and papers that you give us or that we obtain in the conduct of our work for you electronically as well as in hard copy format indefinitely. We may also make the information available to you through electronic means. We will use all reasonable endeavours to keep the information secure and take appropriate technical and organisational measures against unauthorised or unlawful processing and accidental loss, destruction or damage of any personal data within that information. However, it is impossible to guarantee that your information will be free from every possible virus, malware or other security breach and you acknowledge and accept that risk by instructing us.
18. **Audit of files and confidentiality:** External firms such as our auditors, our compliance auditors or the SRA may conduct an audit or quality checks on the firm. These external firms or organisations are required to maintain confidentiality in relation to your files. We will keep information and documentation entrusted to us confidential subject to any duties or obligations imposed on us by law or by our professional rules



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19. **Termination of the retainer:** You may terminate your instructions at any time but we will be entitled to keep your papers, correspondence, money or property belonging to you and in our possession until outstanding monies due by you in respect of any matter have been settled in full. We may decide to stop acting for you only upon reasonable grounds, including if we consider that the relationship of trust and confidence inherent in a solicitor-client relationship has broken down, notwithstanding that the retainer is an entire retainer and has not been entirely fulfilled, or if there is a conflict of interest. We will give you reasonable notice should we decide to stop acting for you. If you or we decided that we should stop acting for you then you must pay our charges up to that point calculated on the basis as set out in these terms and conditions.
20. **Your authority:** By instructing us you confirm that you have the appropriate power and authority to instruct us in the terms that you have done and that you will obtain and maintain all appropriate power and authority during the course of these instructions.
21. **Terms and conditions of business:** Unless otherwise agreed and subject to our then current rates, these terms of business shall apply to all future instructions given by you unless subsequently superseded by additional terms of business. We reserve the right to update these terms from time to time and will notify you if we do so.
22. **Equality and Diversity:** The firm is committed to promoting equality and diversity in all of its dealings with clients, third parties and employees.
23. **Distance Selling Regulations:** If you are instructing us in your private capacity, in respect of something other than property work and we have not met in a face-to-face meeting when you instruct us:

You may cancel your retainer with us within seven days of instructing us. If when you instruct us on the telephone or by email we did not inform you in our response of this right, you may cancel your retainer with us within a further three months.

If however, you ask us to commence work on your instructions immediately, you waive this right to cancel the retainer. You may require us to complete your instructions within 30 days unless we have indicated in writing that the timescale may exceed 30 days.

24. **Whole Agreement:** These terms and the Engagement Letter together constitute the entire agreement between us. The terms shall not be modified or varied except in writing signed by you and us. The invalidity or unenforceability of any provision of these terms shall not affect the rest of them which shall continue to bind you and us.
25. **Law and Jurisdiction:** The agreement and all dealings between us shall be governed by and construed in accordance with English law. The English courts shall have exclusive jurisdiction to settle any dispute which may arise between us. To this end, you and we irrevocably agree to submit to the jurisdiction of the English courts. Judgment in any action brought in the English courts may be enforced in the courts of any other jurisdiction

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