

Terms and conditions of business

INTRODUCTION

1. These terms of business contain important provisions that govern our relationship with you. They may not be varied unless agreed in writing and signed by a Director of Eclipse HR.
2. All work we do for you is governed by these terms of business and any agreed written variation. This is an important document so please keep it for future reference.

ECLIPSE HR

3. In these terms of business "we" or "our" refers to Eclipse HR Limited, a company registered in England & Wales under company no. 15189307 whose registered office is at 5 Eclipse Park, Sittingbourne Road, Maidstone, Kent, ME14 3EN, trading as 'Eclipse HR' ("the Company").
4. Your relationship is solely with the Company which has sole legal liability for the work done for you and any act or omission in the course of that work. No Director, consultant or employee of the Company will have any personal legal liability for that work whether in contract, tort or negligence. In particular, the fact that a Director, consultant or employee signs any letter, email or other document in their own name in the course of carrying out that work does not mean they are assuming any personal legal liability for that communication.

OUR RELATIONSHIP

5. We value our relationship with you and welcome any suggestions you may have for its improvement.

Who does your work?

6. Work will be done by those able to do it competently and cost-effectively. We will agree who handles your work and not make changes unless it is necessary, e.g. to bring in specialist help or if someone leaves. We will inform you if this happens.

Availability

7. Reception services are available from 8.30am to 5.30pm and our advisers are typically available between 9.00am and 5.00pm on weekdays (excluding bank holidays) but we always try to be available outside these hours where necessary.

YOUR WORK

8. We will agree the scope of the work we will do for you at the outset and confirm this in our letter of engagement. Where possible, we will agree a timetable for the work to be completed, advise you if this needs to be changed as the matter progresses and explain why. We are not responsible for matters that are outside the scope of the agreed work, or for anything that would not normally be considered part of that work.
9. If we agree to do other work not covered by the work agreed at the outset (as detailed in our engagement letter) then we will charge for this extra work in line with the charging structure detailed in our engagement letter.

Our liability & insurance policy

10. Despite our best efforts we may make a mistake, by which we mean a breach of our duties to you. If we do, and are liable to compensate you, **you agree that our liability is limited** in the following respects:
 - it is the Company that is liable, not an individual Director or member of staff;
 - you agree to make no claim against an individual except for fraud. You and we intend that this clause is for the benefit of, and shall be enforceable by, the Directors and staff under the Contracts (Rights of Third Parties) Act 1999;
 - **our maximum liability for any mistake (except for fraud) is £1 million including contractual and statutory interest** (unless we agree a different amount with you in writing);
 - this overall limit applies whether the mistake affects just one piece of work we do for you or several, so long as it is the same or a similar mistake;
 - for the purpose of the overall limit, more than one mistake on a matter or transaction is considered as one error;
 - we are liable for loss that we cause directly and for any indirect or consequential loss or loss of anticipated profit or other benefit, **where that total liability does not exceed £1 million**. Otherwise we have no liability for any indirect or consequential loss or loss of anticipated profit or other benefit;
 - we are not liable to the extent that our mistake results from something you do or fail to do (such as giving us the wrong information, or not giving us information at the time we ask for it);
 - if others are also responsible for your loss, our liability is limited to our fair share of the proportion

which is found to be fairly and reasonably due to our fault, whether or not you are able to recover the rest from the others. We shall not be liable to pay you the proportion which is due to the fault of another party;

- these limits on our liability shall apply to work done under this contract and any future work unless we agree different terms with you;
- we believe the limitations on our liability set out in this section are reasonable having regard to our assessment of:
 - the amount of any likely liability to you if we make a mistake;
 - the availability and cost of professional indemnity insurance; and
 - possible changes in the future availability and cost of insurance;

but we are happy to discuss the limit with you if you consider it insufficient for your purposes, and if appropriate we may then consider whether we are able to provide a higher limit at extra cost.

11. These limits apply to the extent that they are permitted by law. We cannot, for example, avoid full liability if our mistake causes death or personal injury.
12. If any part of this section of our terms which seeks to limit liability is found by a court to be void or ineffective on the grounds that it is unreasonable or does not accord with any professional obligation, the remaining provisions shall continue to be effective.
13. If you think we have made a mistake you agree that we have no liability for any breach of our duties to you unless you let us know in writing about the mistake within 24 months of you becoming aware of it, and start any legal proceedings about it within 12 months of giving us that written notice.
14. We carry professional indemnity insurance to cover these liabilities. Details of our qualifying professional indemnity insurers and a copy of our policy is available on request. This insurance covers our practice carried on from our offices in England and Wales and will extend to acts or omissions wherever in the world they occur.

Our duty to you

15. Our relationship is with you, and we owe a duty of care only to you. No other person may rely on our advice or on these terms without our prior written agreement.
16. If you are giving us instructions to act on behalf of a company, it is your responsibility to advise us of any changes to the company's management or director structure, to ensure that we continue to act on instructions of an authorised person.

CONFIDENTIALITY

17. We will keep all information about you and your business confidential and not disclose it to anyone outside the Company without your consent. You do however consent to that disclosure:
- in the proper handling of your work;
 - on a confidential basis to auditors who make random checks of files;
 - to our bankers to facilitate payments on your behalf;
 - to our professional indemnity insurers;
 - where compelled by professional regulations or by law, such as a court order;
 - on a confidential basis to any external provider of administration services;
 - on a confidential basis to financial advisors where such advice may be appropriate.
18. If we must disclose information, or you ask us to object to disclosure, we will charge for the work involved.

Money laundering activity and proceeds of crime

19. Due to our affiliation with Whitehead Monckton Limited we check the identity of all individual clients and verify their address. This personal data will be held in accordance with the data protection rules outlined in Clause 42.
20. In the case of a company, we will check not only the identity of every executive director and verify their address but also all shareholders who own 25% or more of the company's issued share capital.
21. It will therefore be necessary for you and anyone else we have to identify to produce the original of one document from each of the following two categories:

Proof of Identity – for example (the document MUST include a photograph)

- Current valid passport
- National identity card
- Validated National Insurance number
- Current driving licence
- For companies – incorporation certificate and copy Passport and/or Driving Licence and proof of address from at least one Director.

Proof of Address – for example (no more than 3 months old)

- Utility Bill
- Council Tax bill
- Bank/Credit Card statement

22. If the above provisions are likely to cause any difficulties please let us know as soon as possible so that we can try and agree some other way of you producing evidence of your identity.

Publicity

23. We both agree not to issue any publicity material or information to the media about our relationship and the work we are doing without the other's consent, save where the information is already in the public domain.

Email

24. We routinely use email to communicate, and whilst we have normal levels of security in place, you accept the risk that email communications may not be secure.

CHARGES

25. We will agree the basis of charging in advance and will confirm this in writing to you. This could be based on the amount of time we spend on your work or be for a fixed sum. Our aim is to be entirely open with you. We review our charges annually, usually from 01 April.

Time charges

26. Where we agree to charge on a time basis, our fee is calculated by multiplying the time spent, recorded in six-minute units, by the hourly charging rates of those working for you. The relevant hourly rates are given in our letter of engagement. We will let you know if these rates change (for example through promotion or at the annual review of the rates). Hourly charging rates are based mainly on the level of skill and experience of the person involved in your matter. We also offer clients a discounted day rate and offer fixed fees, where possible.
27. We will always provide you with an estimate of what your costs may amount to and update this estimate as the work proceeds. In doing so we will inform you if any unforeseen additional work becomes necessary (for example due to difficulties or if your requirements or the circumstances change significantly during the course of the matter). We will also inform you of the estimated cost of that additional work in writing before any extra charges and expenses are incurred.
28. **You may set a limit on the charges and expenses to be incurred.** This means that you authorise us to incur costs up to that agreed limit without the need for us to refer back to you. We will inform you as soon as it appears that the limit may be exceeded and will not exceed that limit without first obtaining your consent.
29. If, for any reason, a matter does not proceed to completion, we will charge you for the work done and the expenses incurred up to the point the matter ends.

Time charged

30. **We normally charge for time spent on your work in:**

- meetings, including waiting time;
- travelling (where that time cannot be usefully spent on work for others);
- reading, preparing, negotiating and working on documents;
- research;
- dealing with mail (letters and email);
- making and receiving telephone calls;
- attending court or other formal proceedings, including waiting time;
- preparing notes of meetings, of telephone calls and of proceedings;
- complying with professional and statutory requirements.

31. Routine letters and emails that we write and receive and telephone calls that we make and receive will each be charged at 6 minutes. Other letters, emails and telephone calls will be charged on a time basis.

32. In addition to the time spent, we may take into account a number of other factors such as the complexity of the issue, the speed at which action must be taken, the expertise and specialist knowledge that the work requires. If these additional factors are applied in addition to the hourly rate, these will be mentioned in the accompanying letter.

33. The time charged may also include anticipated time as well as time spent.

Additional charges

34. Whilst routine overheads are included in our agreed charges, we may charge you for non-routine photocopying and for generation of certain other documents. We will let you know in advance if this is necessary and obtain your consent before proceeding.

Expenses (sometimes called Disbursements)

35. You are responsible for paying expenses we incur on your behalf e.g. travel, couriers and printing/binding costs etc. They are added to your invoice at cost. We try to give an estimate of such expenses before they are incurred.

Travel and accommodation

36. Where we need to travel for your work we do so by the most appropriate means. Hotel accommodation is of a suitable business standard. Actual costs are charged, apart from travel by car where a standard mileage charge applies. Details are available on request.

VAT

37. VAT is payable on fees and expenses at the applicable rate.

BILLING ARRANGEMENTS

38. We will send you invoices on a monthly basis so you can monitor how your costs are being incurred then a further invoice when the work has been or is about to be completed. This will apply unless we have agreed in writing a different billing frequency with you or only to invoice you at agreed stages during the work. Such arrangements are set out in our letter of engagement and may only be varied with our agreement in writing.

39. You are responsible for the payment of our costs even if another person has agreed to pay them for you.

Overdue invoices or missed payments

40. **All invoices must be paid within 14 days without exception.** Also, if we have agreed to accept payments by standing order or in stages then they must be made on time in accordance with that agreement. If any of these are missed then we will charge interest on the overdue amount. Interest will be charged on a daily basis at the official rate payable on judgment debts (which is usually close to standard commercial rates) and we may also be entitled to:
- recover any costs we incur in collecting the overdue amount;
 - do no further work for you until we are paid in full (or we may choose not to do any further work for you at all); &
 - retain all papers until we are paid in full.

Queries

41. If you have a query on an invoice, please discuss it with the person who is dealing with your work as soon as possible. If you are not satisfied, please follow the procedure outlined under 'COMPLAINTS' below.

DATA PROTECTION

42. We comply with current data protection legislation. We store and process personal data about our clients to enable us to perform the contract that we are about to enter into or have entered into with you, or where it is necessary for our legitimate interests and your interests and rights do not override these. In most circumstances we are able to supply you with copies of the information we store about you and your business on request, unless the request is manifestly unfounded or excessive.
43. Your rights and our obligations, and the details of who to contact if you have a question, regarding your personal data can be found in our Privacy Notice which can be found here: www.eclipseHR.uk/privacy We strongly recommend that you read this notice.

44. You accept that to enable us to check your identity, to make credit decisions about you and to prevent fraud, we may search the electoral roll and files of credit reference agencies who will record credit searches on your file.

Communication

45. We send out news of services, seminars or items of interest to our clients. We may send these by post or by e-mail. If you would not like to receive such communications from us, please either tick the opt out box at the bottom of the engagement letter supplied with these terms of business or email enquiries@eclipseHR.uk

PAPERS AND DOCUMENTS

Storage

46. We will digitally scan all papers when your final invoice has been paid and after 6 months destroy any hard copy file. The digital scan will be retained by us in accordance with our file retention and data protection policies. Should you wish to have a digital copy of these scanned records you may do so at any time upon giving us reasonable notice at a single charge of £30 plus VAT. Should you wish to receive a hard copy of these scanned records you may do so at any time upon giving us reasonable notice at a printing charge of 25p per sheet of paper plus VAT.
47. On completion of these instructions, we are entitled to hold on to all your papers and documents while money is still owing to us.

Copyright

48. We own the copyright in any work we create which will not be transferred to you although you have our licence to use our work for the purposes for which it was created. We have the right to be identified as the author of the work and to object to any misuse of it.
49. We may wish to store any document created in the course of our work for you in our Know How system. You agree that we may do so unless you have told us in writing that you object. If we store any documents in this way, we will ensure the system is secure, confidentiality is maintained and that any identifying references are removed.

EQUALITY AND DIVERSITY

50. The Company is committed to promoting equality and diversity in all of its dealings with clients, third parties and employees. Please contact us if you would like a copy of our equality and diversity policy.

ANTI-BRIBERY

51. The Company takes its responsibilities to comply with anti-bribery legislation extremely seriously. If you would like to see a copy of our anti-bribery policy, please ask.

COMPLAINTS

52. If you are unhappy about any aspect of the service you have received, please contact your nominated Eclipse HR Consultant, in the first instance. Should you remain unhappy, please contact Antonio Fletcher, Team Head by telephoning 01622 698018 or by email at antoniofletcher@eclipseHR.uk or by post to 5 Eclipse Park, Sittingbourne Road, Maidstone, Kent, ME14 3EN.

ENDING OUR RELATIONSHIP

53. You may ask us to stop acting for you at any time. If so, please confirm that in writing. We may choose to stop acting for you, but only if we have good reason to do so (for example, if you do not give us instructions, or do not make a payment when due, or if a conflict of interest arises) when we will give you as much notice as we can. If we stop acting for you, we are still entitled to be paid for what we have done and may keep your papers until we have been paid.

JURISDICTION

54. These terms and our relationship will be governed by English Law. We each submit to the exclusive jurisdiction of the English courts.

AGREEMENT

55. Unless otherwise agreed these terms of business apply to any future instructions you give us.

56. Your continuing instructions will amount to your acceptance of these terms and conditions of business.

Even so, we ask that you please sign and date the enclosed copy of this document and return it to us immediately. We reserve the right not to do any work until this has been done. We can then be confident that you understand the basis upon which we will act for you

[
Print Name.....

Signature.....

Dated.....

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