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# TERMS & CONDITIONS



# Terms & Conditions

The terms of this agreement between you and us are set out in the following Terms and Conditions. These are important and you should read them carefully to make sure you are happy with them. If there is anything you do not understand, you should seek independent legal advice.

## 1. Definitions and Interpretation

**‘You’** or **‘Your’** means you, the person who contracts with us for the provision of our Services.

**‘We’**, **‘Us’** or **‘Our’** means Wayne Fleming Will Writing & Estate Planning Limited in the provision of the Services.

**‘Services’** means the preparation of your Will, Lasting Power of Attorney, Advance Directive, severance of joint tenancy and trusts established by your Will; together with any other services not aforementioned generally associated with Estate Planning.

**‘Instructions’** means your instructions on the terms of the documents prepared by us; however provided.

**‘Documents’** means Wills, Lasting Power of Attorney, Advance Directive or other documents produced as part of the Services provided

**‘Fee’** means the money payable by you for the Services, which will be held on account of our fee until the agreement between you and us starts.

These Terms and Conditions are governed by and will be construed in accordance with English law. Documents will be drafted in the English language, under and in compliance with English law only.

## 2. Agreement

- 2.1. You have asked us and we have agreed to provide you with Services as described in these Terms and Conditions.
- 2.2. We will only accept instructions from you if you are over 18 years of age. We cannot provide the Services to you if:
  - (a) you would like your documents to be governed by the law of another country or religious laws; or
  - (b) you would like your documents drafted in a language other than the English language; or
  - (c) you wish to leave specific instructions relating to the continuation of a business.
- 2.3. We will only draft your documents in relation to assets within the United Kingdom. If you have any assets situated outside of the United Kingdom, you will require advice from a specialist within the relevant jurisdiction.
- 2.4. The agreement between you and us will start once we receive your completed instructions and your agreement for us to provide the Services to you; together with the fee paid in full. When you submit your instructions to us, you confirm that you have read and accepted these Terms and Conditions. We may cancel this agreement at any time, pursuant to clause 9, by giving you notice if any payment for the fee is returned unpaid from our bank, or it is not paid by you in full, or for any other reason set out in clause 9.
- 2.5. We reserve the right, at our absolute discretion, to decline to provide the Services to you at any time. Where we do so, we will refund the fee paid by you.

## 3. Your Cancellation Rights

Under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, you have the right to cancel this agreement within 14 days. However, please note that we reserve the right to charge for Services provided prior to cancellation.

## **4. Restriction and Limitation of Liability**

- 4.1. We do not accept any liability for:
- (a) Any loss arising in any way from acting on your instructions, unless caused by our own default, fraud, negligence or breach of this agreement by us;
  - (b) Any loss arising for the invalidity of your Will, whether due to a lack of testamentary capacity or knowledge and approval or in the event of undue influence, fraud or forgery;
  - (c) Any loss arising from your failure to execute your Will correctly, or in good time or at all or your failure to comply with our instructions in any respect;
  - (d) Any loss arising because of any future change in your personal circumstances or the circumstances of anyone named in your Will or any changes in the law (including taxation legislation) which may affect the provisions of your Will;
  - (e) Any tax incurred or imposed on your estate as a result of the interpretation or effect of your Will by HM Revenue & Customs or any other tax authority;
  - (f) Any loss arising from any delay on your part or any third party in providing information or arising from the supply of incorrect and/or inaccurate information by you or any third party;
  - (g) Any loss resulting from matters beyond our reasonable control, including loss or delay of your Will in the post; or
  - (h) Any loss arising in respect of the content of advice given or Services offered.
- 4.2. Should any beneficiary under your Will suffer a loss as a result of any of the matters set out in clauses 4.1 (a) – (h) inclusive, you or your estate shall indemnify us and keep us indemnified in respect of any claim made by that beneficiary.
- 4.3. Our total liability for all claims of any kind, including liability arising out of our negligence under this agreement to you or anyone named in your Will, including any beneficiary under your Will, (except in connection with or arising out of a deliberate breach of contract or wrongdoing, total failure of performance, dishonesty or fraud by us) shall not exceed a sum equal to ten times the fee.
- 4.4. Nothing in this agreement shall affect your statutory rights.

## **5. What You pay**

- 5.1. You will pay the fee plus VAT, where applicable, when your instructions are taken by us. The payment will be held on account of our fee until the agreement between you and us starts.
- 5.2. The fee includes one grossed copy of your Will. If you change your instructions after the Will has been prepared, we shall be entitled to charge an additional fee for producing and issuing a revised copy of your Will. The amount of any additional fee will be notified to you before such additional work is carried out.
- 5.3. If your instructions are complex or if any ancillary services are carried out in addition to preparing your Will, you may incur additional fees. Such additional fees will be notified to you before such additional work is carried out.
- 5.4. If, for any reason, you decide not to proceed with or sign a Will that we have prepared, we shall be entitled to retain the fee which you have paid, in full.

## **6. What We Will Do**

- 6.1. After we receive your complete instructions; together with payment of the fee in full, we will prepare the documents in relation to the Services to be provided in accordance with your instructions.

- 6.2. Instructions are only accepted verbally or in writing. Instructions are not accepted by fax or email, unless specifically agreed by us. We reserve the right to make further enquiries with you where necessary to enable us to provide the Services, however we shall not be obliged to ask supplementary questions in any circumstances.
- 6.3. We will send your documents by post to the address provided by you. We will usually provide your documents within 15 working days of receiving your complete instructions; together with the payment of the fee in full, provided that we have no outstanding queries. For complex situations or where we are relying on a third party to provide us with necessary information, we cannot confirm set timescales, however we will keep you updated on the progress of the preparation of the documents.
- 6.4. We hold and maintain Professional Indemnity Insurance cover for £2,000,000.

## **7. What We Do Next**

- 7.1. We do not provide legal, tax or investment advice.
- 7.2. We are not responsible for the appropriateness of your documents and the Services we provide do not involve the provision of any advice in connection with the documents or your personal circumstances, in particular:
- (a) How your assets should be disposed of or the effectiveness of the dispositions that you chose to make; or
  - (b) The legal or taxation consequences of the dispositions within these documents.
- 7.3. We are not responsible for verifying any of the information provided in your instructions. We will prepare your documents replying on the information in your instructions and we do not have any obligation to ask supplementary questions. Where you instruct us that you hold property jointly, we shall be entitled to assume and proceed on the basis that the property is held legally and beneficially as joint tenants, unless you instruct us otherwise.
- 7.4. We are not responsible for the supervision or verification of the execution of your Will unless we are present when your Will is executed (see clauses 4.1 and 8.6).
- 7.5. We are not responsible for the future review of your documents. Any changes in your personal circumstances or the circumstances of anyone named in the documents or any changes in the law (including taxation legislation) should be considered by you and we are not obliged to contact you in these circumstances.
- 7.6. What we say on our website about what we do is for illustration purposes only and will not bind us. Our obligations to you are set out in these Terms and Conditions only.

## **8. Your Obligations**

- 8.1. You must disclose all relevant information and give complete and accurate answers in your instructions. If any of the information is not accurate and/or incomplete, then it might affect the validity of the documents. In addition, the disposal of your estate under the Will may also be affected. It is your responsibility to check the information provided for accuracy and completeness.
- 8.2. You will pay the fee referred to in clause 5.1 when your instructions are submitted to us.
- 8.3. You will sign any necessary forms of authority or other documents so that we may carry out our obligations under this agreement, including contacting third parties where necessary.
- 8.4. You will notify us if you have not received your documents within three weeks of making full payment of the fee.
- 8.5. You must read the documents we prepare for you to confirm that they reflect your intentions and wishes and to confirm the names and addresses of the people referred to in them are correct. Any errors should be notified to us immediately and no later than 14 days after receipt of the documents. Any spelling or other drafting error on our part will be rectified promptly by us upon notification of

such error, free of charge. You must not make any amendments to the documents and you must not copy the documents in any format.

- 8.6. You will strictly follow the instructions with regard to the execution of the documents. If the Will is not signed and witnessed correctly, it may be invalid.
- 8.7. You are responsible for the cost and safe delivery of the documents back to us. We will not accept any responsibility for loss in transit to us.
- 8.8. By agreeing to these Terms and Conditions:
  - (a) You authorise us to provide the Services to you;
  - (b) You agree to provide us with the necessary information and documentation, if requested, to enable us to ensure that our client verification requirements are met;
  - (c) You confirm that you are not subject to any coercion or undue influence, and that you have sufficient mental capacity as may be required to execute the documents;
  - (d) You confirm that you are able to read and write and that you understand the nature and purpose of the documents; in particular in executing the Will we will prepare for you, you are revoking all previous Wills;
  - (e) You understand that, if you are contemplating marriage or entering into a civil partnership, unless you have specifically notified us of such, this will not be accommodated in the Will we will prepare for you. As a result, your Will shall be automatically revoked upon marriage or entering into a civil partnership and you may need to then draft a new Will; and
  - (f) When applying for a mirror Will, you and the other party involved will receive shared information, including sight of each other's Will. You give your consent to such sharing of confidential information.

## **9. How We May End This Agreement**

We may end this agreement at any time by giving you 14 days notice if any of the following happen:

- (a) If your fee remains unpaid for seven days after the agreement between you and us has started;
- (b) If you fail in any important way to do what you agree to do in clause 8 and do not rectify the problem within 7 days of us telling you about it;
- (c) If the information you have provided turns out to be, or we suspect that it is materially incorrect, incomplete, fraudulent or otherwise misleading;
- (d) If we cannot perform our obligations under this agreement because of something beyond our reasonable control. In this case, we will do everything we reasonably can to let you know as soon as possible; or
- (e) You do or fail to do something, which in our opinion could damage our reputation or otherwise bring us into disrepute.

## **10. Complaints**

If at any time you are not happy with the Services provided, please write to us at our registered office address. Following this procedure, does not affect your statutory rights.

## **11. Other Information**

- 11.1. Any notices you serve under these Terms and Conditions will be valid if sent in writing by first class post to our registered office address. We may also serve notice to you, under these Terms and Conditions, sent to your last address provided. Any such notice shall be deemed to have been given if sent by first class post 48 hours after posting. This shall not affect any rights you or we have to give notice by any other method.

- 11.2. To the extent that copyright or any other intellectual property rights arise on our website, in the Services which we will provide for you and/or the document which we will prepare for you, we shall own such copyright and any other intellectual property rights and these shall not transfer to you.
- 11.3. Any advice we may give is confidential to you and we shall not be responsible if you make it available to third parties. No person who is not a party to the agreement embodied in the Terms and Conditions shall, in the absence of express provision to the contrary, have any right under the Contracts (Right of Third Parties) Act 1999 to enforce any of its terms, but this does not affect any right or remedy of a third party which exists or is available other than under that Act.
- 11.4. We shall not have any liability for any delay or failure in performance under these Terms and Conditions resulting from acts beyond our reasonable control, including but not limited to acts of God, acts or regulations of any government or authority, war or national emergency, terrorist activities, industrial action, accident or fire.
- 11.5. Any provision of these Terms and Conditions which is declared void or unenforceable by any competent authority or court shall, to the extent of such invalidity or unenforceability, be deemed severable and the other provisions of these Terms and Conditions shall continue unaffected.

## **12. Date Protection Statement**

- 12.1. We know how important it is to protect your personal information. Any personal information we hold will be subject to the appropriate legal safeguards under the Data Protection Act 1998 and the General Data Protection Regulation 2018. When you apply for the Services, you will provide us with information about your financial and personal circumstances ('Personal Information'). Please see our Privacy Policy at <http://wfwep.com/Privacy> which sets out the type of information that we may collect from you. Any information you provide to us will be confidential. This personal information will only be passed onto such third parties as are required to know it for the purpose of performing the obligations under this agreement. We will not pass this information to anyone else without your express permission, except in accordance with our data protection statement and to third parties you have authorised us to deal with or their authorised agents, or where we are required to do so by operation of law. We will process your personal information in accordance with the terms and for the purpose of this agreement.
- 12.2. Where you provide us with personal and financial information relating to others, for example family members, dependants, joint assets holders, beneficiaries, executors, trustees or other professional advisers, you confirm that you have their consent or are otherwise entitled to provide this information to us and we can use it in accordance with this agreement.
- 12.3. We may share your personal information within our company in order to fulfil our obligation under this agreement. We may communicate with you by post, telephone, email or SMS text using the contact details provided. We will take all steps reasonably necessary to ensure that your data is treated securely and in accordance with this data protection statement.
- 12.4. We may also use your personal information for marketing purposes to identify and provide you by post, telephone, email or SMS Text, with details of similar products and Services which we deem could be of interest to you.
- 12.5. We will only share your details for marketing purposes with other businesses where you have given your consent. If you do not want to receive any marketing information from us, an associated company or third party please contact us to update your marketing preferences. We will only disclose your personal information in accordance with relevant laws or regulations, including fraud prevention.
- 12.6. In the event that we sell or buy any business or assets, in which case we may disclose your personal information to the prospective seller or buyer of such business or assets. If Wayne Fleming Will Writing & Estate Planning Limited or substantially all of its assets are acquired by a third party, in which case personal information held by us about our customers may be one of the transferred assets.

12.7. You may ask us for a copy of the information we hold about you. Please note that under the Data Protection Act 1998, we may charge you a maximum fee of £10.00 for this request. You may also ask us to amend your personal information if it is inaccurate. Please send requests in writing to us at our registered office address.

12.8. We may change our Privacy Policy from time to time.

### **13. Document Storage and Retrieval**

13.1. For the avoidance of doubt, the provisions in clauses 10 and 11 shall apply to document storage to the same extent that such provisions apply to the Services.

13.2. In addition to the Services set out in clause 6, we offer an original document storage service. The annual fee for this will be notified to you at our original meeting and such annual fee will remain in force until further notice. If you have documents stored with us, you may request amendments to these from time to time. Our fees for making such amendments and for the retrieval of the documents from storage shall be charged at the prevailing rate in accordance with our prices at the relevant time.

13.3. Any outstanding storage or other fees must be paid before we release the documents. We will return these documents on receipt of your written request and the appropriate fee(s) to you at the address last provided by you or to your new address that you notified us of, subject to proof of change of address.

13.4. An executor, trustee or other authorised personal representative may retrieve these documents on production of the relevant documentation required; together with proof of their identity and address.

13.5. We will not accept any responsibility for any loss of documents beyond our control, including but not limited to, acts of God or regulations of any government or authority, war or national emergency, terrorist activities, industrial action, accident or fire.

### **14. Validity**

14.1. If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity, legality and enforceability of the rest of the agreement.

14.2. If you give notice to us, or vice versa, of the possibility that any provision or part-provision is invalid, illegal or unenforceable, negotiations shall commence in good faith to amend such provision so that, as amended, it is valid, legal and enforceable and to the greatest extent possible, achieves the intended commercial result of the original provision.