



## TERMS OF ENGAGEMENT

These Terms of Engagement set out the terms and conditions on which we undertake to act for you. We may vary these Terms of Engagement at any time by giving you 7 days prior notice by writing to you. The Terms of Engagement are subject to any letter of engagement issued with them.

### 1. The Law Society of Scotland

Smith & Grant is a member of the Law Society of Scotland and subject to its professional rules. It is authorised to conduct incidental investment business by the Law Society of Scotland.

### 2. Instructions

Our offices in Leven are normally open 9 am to 5 pm Monday to Friday and the Property Shop on Saturday mornings from 9am to 12:30pm. Outwith office hours you may contact us by fax or by telephone on a direct line to the person dealing with your affairs. In emergencies the Court Department may be contacted on **07803 132329**. A voicemail messaging service is available. We are also available to meet with you outwith normal office hours and to undertake home visits by prior appointment.

You may instruct us by any appropriate method. On occasion we may contact you to clarify instructions or ask you to confirm them in writing. We reserve the right to decline to carry out instructions if we have not been provided with relevant information, relevant funds, or which would involve us in breach of any Law Society rules and guidelines.

### 3. Client's Authority

- Where we act for more than one person jointly, such as a body of trustees, partners, or executors, we shall assume that any one has the authority of the others to give us instructions. In these circumstances each person is jointly and severally liable for our fees and outlays, and is responsible for the instructions given.
- Where we act for a company or firm we will when so instructed in writing at the outset agree who is to have authority to give us information on behalf of the company or the firm. In the case of a private limited company, it is a condition of our accepting instructions that the Directors and the individual providing direct instructions are jointly and severally liable along with the company for fees and outlays particularly where the Company is a trading medium of convenience.
- Where you have authorised someone to give instructions on your behalf, such as an attorney or a factor, we will act on the instructions of that person as though the instructions had come direct from you.
- Where we are asked to act for more than one person jointly in the purchase of residential property, we shall, in the absence of prior written instructions to the contrary proceed on the basis that it is intended that each party will contribute equally towards the purchase and that title should be taken equally between the parties. Similarly, where we are instructed in the sale of such property, barring prior written instructions to the contrary, we will disburse the free proceeds to all those parties entitled to share in the free proceeds in accordance with paragraph 13 below. Furthermore, there are Legislative provisions which will in certain circumstances (e.g. cohabitation or marriage) result in substantial property rights being created which may supersede the terms of the Title Deeds. Should you require any further advice in that regard you must raise that with us at the earliest opportunity. Unless instructed to the contrary, we shall assume that no advice is required and shall proceed accordingly.

### 4. Supervision of Client's Business

Every client's affairs are under the overall supervision of a partner or an associate partner. The day to day work will be carried out by a combination of this partner or associate partner and other appropriately qualified staff. We will notify you at the outset who will have responsibility for dealing with your work and who will be your principal point of contact.

### 5. Conflicts of Interest

Where we receive instructions from two or more clients to act in circumstances where their interests conflict, we are prohibited by the professional rules of the Law Society of Scotland from acting for them. Similarly, if a conflict arises between clients in the course of dealing with their affairs, the professional rules prevent us from continuing to act for all of them. In these circumstances we will advise the clients concerned of the conflict and we may be obliged to cease acting for all of them. In some circumstances we can continue to act for only one of the clients. If you feel that a conflict has arisen or may at a later stage arise you should inform us immediately in order that an informed decision on future agency may be taken.

In residential conveyancing transactions the Firm may often be asked to act for both seller and purchaser where both are established clients of the Firm. Each party will be represented by a different solicitor within the Firm. We will not agree to act where we feel that a conflict of interest may exist. Should a potential conflict arise, we may require to cease acting for one or both parties. You are always at liberty to instruct independent agents. In such transactions, we may require you to execute a further copy letter acknowledging (i) that we have advised you of the position; and (ii) that you have authorised us to transfer the purchase price and any other agreed sums at settlement of the transaction.

### 6. Confidentiality

We shall not disclose any information given by you to us which is not in the public domain, except as required by law or with authority.

### 7. Copyright and Third Parties

All copyright in documents we produce is reserved to us. Advice given and documents prepared are for your use only and may not be copied or used by any third party without our express written consent. We reserve the right to retain copies of all papers and other documents for our own use.

### 8. How Long Will it Take

The nature of legal work, particularly court work, often makes it difficult to estimate precisely how long something will take to complete. When we discuss our requirements at the outset we will also discuss time scales. We do attempt to meet these – even to beat them – and always to deal with everything as quickly and efficiently as possible. Please remember that quite often the speed at which work can be completed is affected by the co-operation (or lack of it) we receive from other people outwith our control.

### 9. Resolving Problems

If you are dissatisfied with any aspect of the service you have received you should in the first instance take the matter up with the partner or associate partner supervising your affairs. If this is inappropriate the matter should be referred to Cameron H. MacKenzie, Senior Partner.

In addition to the Firm's internal procedure, you are entitled to refer any complaint to the Scottish Legal Complaints Commission or to any other body assuming the role currently undertaken by that body. In the event that the complaint is not wholly or substantially upheld, we reserve the right to render an additional account in respect of all work undertaken by us, including any outlays howsoever incurred, in dealing with the matter, calculated and payable in accordance with paragraph 12 (below).

### 10. Client's Funds

Any monies we receive from you or for your account, which is not required for fees or outlays, are held separately from our own funds in designated client accounts. We will account to you for the interest in accordance with paragraph 11 (below). We make no charge for the collection of interest on client's deposit. We are entitled to retain interest or commission paid to us by the Royal Bank of Scotland or such other Bank or Building Society as we may from time to time engage.

### 11. Requirement for Cleared Funds

Whenever we require to make any payment on your behalf, we must always have sufficient cleared funds to do so. We will try to provide you with as much notice as possible as to the precise sum that we require from you for any particular matter or purchase. It is imperative that you deal with any such requests for funds promptly since any failure to do so may result in your being in breach of contract with third parties and may also result in our declining further instructions from you. In property purchase transactions in particular (see below), we may also require cleared payment of our Fees, VAT and outlays, including Stamp Duty Land Tax and Registration Dues to allow us to complete the transaction on your behalf.

Where we require to instruct third parties (including Counsel and other experts) to carry out work on your behalf, we will require you to provide us with sufficient cleared funds to meet any anticipated costs prior to such instructions being issued.

If we receive funds from you by personal cheque, we will need that cheque no later than 7 banking days prior to the completion date to ensure that the cheque is cleared in good time to allow payment to be made. Please note that despite recent improvements in self-administered banking systems (e.g. online and telephone banking) each Bank still has its own rules regarding amounts and clearing times. Should you wish to make payment to us by such methods, you should check with your own Bank first to ensure that any such transfer will result in our having cleared funds for any deadline given. Our Client Account Sort Code is 83-24-24. ***(Please also read carefully the provisions regarding Money Laundering at paragraph 18.)***

The only exception to this rule is where the cheque we issue is payable to another firm of Scottish Solicitors ("the Seller's Solicitors") and is in respect of the purchase price for a property which is being funded (either wholly or in part) by way of funds received by us in the form of a cheque drawn on another firm of Scottish Solicitors ("the Buyer's Solicitors") the same day. We also require confirmation from the Buyer's Solicitors that we may present their cheque for encashment before we can advise the Seller's Solicitors that they can do likewise.

This is the exception which allows you to sell and buy property on the same day without the need to wait for cheques to clear.

Some Sellers (usually large developers) require payment of the purchase price to be made by electronic transfer. If so, you may require to make special arrangements for short-term finance.

#### **Property Purchase Transactions**

Missives for the purchase of property almost always provide that payment requires to be made to the Seller by a given time (often 12 noon) on the Date of Entry. Failure to comply will render you in breach of contract and facing a claim for damages. More importantly, however, you are also likely to face a delay (usually a whole weekend) in obtaining the keys for the property with all the consequent time, trouble and expense that such a situation brings. Regrettably, the CHAPS system of inter-bank electronic transfers suffers from inherent delays and, as a result, cannot be relied upon to ensure that funds dispatched (even at 9am) will necessarily arrive in time later in the day to allow us to fulfil your contractual obligations.

Accordingly, where we are to receive the purchase price electronically (either from you direct or from your Mortgage Lender) we require that the whole purchase price is transferred into our account the day before the scheduled Date of Entry. Your new Mortgage will therefore start the day before you receive the keys.

The settlement of such transactions requires careful planning and allocation of work. Where Loan Instructions from your new Lender are received late, we require to expend considerable time and effort re-scheduling other planned work in order to process those late Instructions. Accordingly, where a property purchase is being funded either wholly or in part by way of funds provided by a Mortgage Lender, we must have principal Loan Instructions from your Lender at least 14 days prior to the Date of Entry. In the event that principal Loan Instructions are not received timeously, an additional fee of £150.00 plus VAT will be added to your account. You should therefore ensure that whoever is arranging your Mortgage is made aware of this requirement.

#### **Property Sale Transactions**

In property sale transactions payment is almost always received by way of cheque drawn on the account of the purchaser's Solicitors. Before we send out any free proceeds of sale, the cheque received from the purchaser's solicitors must have cleared in our account. This usually takes three banking days. As soon as funds are cleared in our account we will, unless instructed to the contrary, disburse the balance in accordance with paragraph 13 below.

Similarly your mortgage will usually only be redeemed three banking days after you have parted with the keys. We will redeem any such borrowing in accordance with the instructions provided by the lender concerned and standard administration charges may require to be rendered.

#### **Interest on cleared funds**

It is firm policy that all cleared funds held by the firm for clients should earn interest for clients at the best rate that can reasonably be achieved taking into account the amount of the funds held and the length of time the firm is expected to hold the funds.

Law Society Accounts rules require that we invest sums only where the likely return in interest would exceed a prescribed amount, currently £100.

However, with interest rates at 2.5%, £1,000 invested for 3 months would earn only around £5 net. To cover the bureaucratic costs of opening a new account, depositing funds, uplifting funds and closing the account, the firm's standard administration fee is £50 plus VAT. Thus to invest the money would actually result in your making a significant net loss and involve us spending a good deal of time unproductively. This obviously makes no sense for either of us.

That being so, to ensure that where reasonable amounts of interest are earned, you benefit without the firm having to spend disproportionate amounts of resources opening and closing separate investment accounts, our policy is as follows:-

The firm will pay interest on cleared funds, excluding any sums due in fees or expenses, where (a) the amount of interest earned would have exceeded the standard administration fee and (b) there is more than five days between the funds being cleared and a cheque being paid out.

Funds in excess of this amount will earn interest at the prevailing investment rates paid on the appropriate Investment Account by the Scottish Building Society. In the absence of a written instruction to the contrary the firm will not be required to open separate investment accounts for client's money irrespective of the amount. Where the amount of money and the length of time we are to hold it makes it prudent to invest the funds in a separate account in the name of the client our standard administration fee will, at our discretion, be charged when the account is closed.

## **12. Professional Fees**

Our fee levels, and any anticipated outlays, will be discussed with you when we begin to act for you, or reviewed annually where we act for you on an ongoing basis. Depending upon the nature of the work which you instruct us to carry out, we will endeavour to provide you with a written estimate of the level of fees, VAT and outlays anticipated in respect of the work to be undertaken. That estimate can only ever be an indication of the charges that you are likely to incur and should not be regarded as agreed for the transaction. The very nature of legal work often means that the costs incurred depend on any number of external factors over which neither we nor you have any control. Fee estimates are given on the basis that the proposed transaction does not ultimately involve an unusual amount of work nor more than the normal time to be devoted nor any issue of an unusually complex nature. Should any such circumstances arise then the fee may require to be increased. Where an estimate is likely to be exceeded, we will endeavour to inform you at the earliest possible stage. An updated estimate can be provided at any time upon receipt of a written request. There may be circumstances where we require to take reasonable steps on your behalf in order to protect your interests. In such circumstances, you will be liable for any reasonable costs incurred.

Some Notes of Fee are prepared in house but often an independent firm of Law Accountants will be asked to prepare Notes of Fee. Unless agreed in advance in writing, or as otherwise specified herein, our fee will be calculated based upon the amount of time we spend dealing with your transaction plus, where appropriate, a Risk and Responsibility factor. Our fees are subject to VAT at the prevailing rate. The hourly charge out rate is currently as follows:

Partners	£250.00 plus VAT
Associate Partners	£225.00 plus VAT
Solicitors/Trainee Solicitors	£200.00 plus VAT
Department Managers, Paralegals and Conveyancing Secretaries	£150.00 plus VAT
Other (non-qualified) Staff	£125.00 plus VAT

These hourly rates are reviewed annually and the new rates take effect from the 1<sup>st</sup> of January in each year. We will advise you, in writing, of any changes to these rates.

If someone new takes over the handling of your transaction, unless we advise you to the contrary, their hourly rate will be the same as the person who was handling your transaction previously.

You are liable for expenses normally and properly incurred in a transaction of the type you have instructed. By your acceptance hereof you give your consent to incur and settle these expenses.

Sometimes we may need to employ non-Smith & Grant personnel to do work on your behalf, e.g. surveyors, accountants, other solicitors or anyone who has the necessary skills required to progress matters. If this is required you will be liable to settle their fees and expenses and you hereby authorise us to settle their fees and expenses from any funds we hold on your behalf.

Any estimate given will be for a probable fee based on our experience of the amount of work usually involved in a transaction of this type. Time engaged on any matter will usually be recorded in the form of a note on your file. We generally split an hour into ten units of 6 minutes each and log each "unit" of time spent. Most letters and phone calls are charged at a minimum of 1 unit, but brief letters or calls may be charged at ½ a unit. Letters exceeding one sheet (of around 250 words) are charged at 1 unit per sheet or part sheet. The preparation and completion of Deeds and other contractual or formal documents are charged on the basis of one sheet being equivalent to 5 units. The perusal/revisal of such documents received is charged at 3 units per sheet.

#### **Risk and Responsibility Factor**

The figure arrived at by totalling the time spent may be increased by a "Risk and Responsibility" factor. This reflects the complexity and difficulty of the transaction, the urgency with which you want it carried out, the value of any money or property involved, the skill or specialist knowledge required, the risk and responsibility we are required to shoulder on your behalf and anti-social hours involved in looking after this transaction for you. Usually this will not exceed 100% of the basic fee element nor 2.5% of the value of the money or property involved.



Subject to any special arrangements (which will require to be in writing), our fees will be rendered as follows:

- At the conclusion of services provided or on completion of a particular stage in the business.
- Continuing or ongoing services will be charged quarterly, half yearly or annually or at any pre-determined fee limit which is agreed at the time of instruction.
- Disbursements made on your behalf (including advertising costs) will normally be recharged to you as they are incurred.

Unless otherwise agreed in writing, all bills should be settled within 7 days. We reserve the right to charge interest for late payment of any sums due to us at the rate of 3 per cent per annum over the Royal Bank of Scotland base rate. VAT where applicable will be added to fees and disbursements. Fees will be payable in sterling unless by special arrangements. Fees will be debited against funds held by us on your behalf as soon as a fee note is rendered.

When you are selling property, we will deduct all outstanding costs together with our fees from the sale proceeds as soon as practicable after the date on which the sale is completed. When you are buying property, fees and costs will be payable by you by agreement, but normally no later than the date which you become the owner of the new property.

In particular cases we may require payment in advance. We will credit any such payment to a Client Account and apply it, together with any interest earned, against future bills.

By prior arrangement with the partner supervising your affairs we may be prepared to make arrangements for payment by instalment. Direct Debit payments during the course of any transaction may also be arranged.

Even where there are arrangements for recovering fees in whole or part from a third party, you will be responsible for payment of our fees. We will be entitled to retain commission received by us from third parties in respect of business introduced by us to such parties.

***The policy set out above applies to all transactions but it may be specifically amended if the work to be undertaken falls into one of the following special categories:***

#### ***Executory Estates***

Our fees for dealing with the administration of an executory estate are usually based on the time taken, as detailed above, dealing with the Administration of the executory estate plus a Risk and Responsibility factor of up to 1.5% of the value of the estate for which Confirmation is obtained.

Alternatively, the fees may be based on the time taken, as detailed above, plus a percentage of the value of the estate and of the funds intromitted with. The maximum percentage charges are as follows:- Moveable Estate 1%; Transfer of Heritage by Disposition 1%; Transfer of Heritage by Docquet on Certificate of Confirmation 0.5%; Realising Capital 1.5%; Realising Capital for Re-investment 0.75%; Investing Capital 0.75%; Collection of Income 5%.

Where there is no Will an additional fee of £500 plus VAT will be charged to cover the time involved in obtaining the Bond of Caution and Drawing up the Court Writ. There will also be an insurance premium payable to the Insurance Company who provides the Bond of Caution. In the absence of a Will this policy is essential and the premiums charged are high.

Where any Inheritance Tax is payable an additional *minimum* fee of £2,000 + VAT will be charged in respect of the work involved in dealing with the Inland Revenue.

We will deduct interim fees from funds engathered where possible during the course of the winding-up procedure. Balancing Notes of Fee will be based upon a Final Account prepared by our Law Accountants. The cost of obtaining the Final Account will be charged against the Estate.

If there is a property to be sold or transferred, any Estate Agency or conveyancing work undertaken by this firm will be charged separately and in addition to the fee charged for administering the executory estate. If property is to be transferred to any beneficiary in settlement of his or her entitlement from the estate that beneficiary may require to instruct a separate firm of solicitors to represent his/her interests.

#### ***Administering Powers of Attorney and Trusts***

Our fees for dealing with the administration of a Power of Attorney or a Trust are based on the time taken, as detailed above, plus a Risk and Responsibility factor of up to a maximum of 1.5% of the value of capital realised, re-invested or transferred and 5% of any income collected.

A fee, based on the time spent and the Risk and Responsibility factor, will usually be charged every three months. A final fee and any outstanding outlays will be settled immediately before the conclusion of all work in connection with the Power of Attorney or Trust administration.

If there is a property to be sold or transferred any Estate Agency or conveyancing work undertaken by this firm will be charged separately and in addition to the fee charged for administering the Power of Attorney or Trust estate.

If you disagree with the level of our any of our fees you may require them to be independently assessed by an independent firm of Law Accountants (ILA). The ILA will make a charge for carrying out their independent assessment. If the ILA recommends that a lower fee be charged, you will be charged only that lower amount and we will be responsible for the ILA's costs. If the ILA confirms the fee is correct or indicates that it ought even to have been higher, you will be responsible for the ILA's costs and will require to pay the original fee together with, at our discretion, any increased fee which the ILA has ruled would be appropriate.

If we act on your behalf in connection with a Court Action in which you are partly or wholly successful, it may be possible to recover some expenses from your opponents. In practice only a proportion of your expenses are ever likely to be recoverable and even in the event of full success on the merits of the case there is likely to be a significant shortfall between the costs actually incurred and that which is capable of being recovered from the opponent in terms of the court rules governing Judicial Expenses. You remain liable for all of our fees (and outlays incurred on your behalf) whether or not you are successful in an action, but credit will be given for all expenses recovered from your opponents. All such settlements and expenses will be paid to us at first instance and we will account to you for the balance after deduction of all fees and outlays due to us including, at our discretion, fees and outlays due in respect of other matters.

If we cease to act for you, you will remain responsible for paying us for work done up to the point at which our instructions cease, and for reimbursing outlays incurred on your behalf.

In certain circumstances, a restriction on the gross fee normally chargeable may be offered, usually in return for prompt payment. We reserve the right to amend or withdraw any such restriction at any time prior to payment in full being received. In the event that any such restriction requires to be withdrawn, then we reserve the right to re-assess the gross fees to be charged for any particular transaction and in particular to have a Note of Fee prepared by our Law Accountants. In that event, you will also be responsible for the Law Accountants' costs.

We reserve the right to charge interest on all outstanding fees (or any part thereof outstanding from time to time) at the rate of 3% above the Royal Bank of Scotland Base Lending Rate from the date the fee is rendered until payment in full is received.

#### **13. Disbursing Funds**

Our preferred method of disbursing funds is by electronic transfer and, barring prior written instructions to the contrary, we shall make all payments to you by that means. An administration charge (currently £30 plus VAT) will usually be rendered for each transfer.

Only in exceptional circumstances, and at our sole discretion, will we be in a position to accept instructions to disburse any funds to anyone other than to you. In that event, we will require your specific written authority including a detailed explanation as to the reasons for the disbursement to the third party.

#### **14. Commissions Paid by 3<sup>rd</sup> Parties**

If we arrange finance or certain investments we may be paid a commission. We will disclose this to you and, except in commercial transactions, set the amount of commission received against the fee that we would otherwise have charged for the work done.

Where we arrange or facilitate commercial funding and receive a commission from the lender based on the level of the funding we may accept the commission payment in lieu of a fee for the work done arranging or facilitating the funding.

#### **15. Rebates on Fees Charged by 3<sup>rd</sup> Parties**

Certain Government Departments or Agencies and other organisations that we deal with when servicing your business will offer a discount on their normal level of fees dependent upon the volume of work we ask them to undertake on our behalf or the means by which we send them information. This typically involves us in installing technology and re-engineering our work processes to achieve these discounts, consequently, Smith & Grant will be entitled to retain any discounts so earned.

#### **16. Records**

On completion of the work and after payment of all fees and outlays, we will arrange for storage or return to you as appropriate any relevant documents and papers. We retain correspondence files for 10 years. They are reviewed 10 years after closure and may be destroyed following that review in accordance with Law Society of Scotland's guidelines. We reserve the right to store all client documents, records and papers in any form. We are entitled to retain all files, documents and other papers held on your behalf until all outstanding fees and outlays have been paid in full.

#### **17. Incidental Financial Business**

In certain types of transactions we may require to carry out Incidental Financial Business in the course of dealing with the principal subject matter at hand. Whilst we are not authorised by the Financial Services Authority, we are included on the Register maintained by them ([www.fsa.gov.uk/register](http://www.fsa.gov.uk/register)) so that we can where necessary carry out insurance mediation activities, which covers broadly the advising on, selling and administration of insurance contracts. This part of our business is regulated by the Law Society of Scotland. We do not have any holding, direct or indirect, representing more than 10% of the voting rights of, or capital in, an insurance undertaking nor does any insurance undertaking nor parent of any insurance undertaking have a holding, direct or indirect, representing more than 10% of the voting rights or capital in this firm. Any contract of insurance on which this firm provides advice or arranges will be selected on the basis of a fair analysis of the insurance market.

#### 18. Money Laundering

Smith & Grant is obliged by law, along with all other solicitors, to comply with all civil and criminal legislation currently in force. This includes the Proceeds of Crime Act 2002 and the Money Laundering Regulations 2007. These require us to undertake identity checks on all clients and, notwithstanding any confidentiality issues (subject to "privileged" circumstances), to report to the authorities any transaction or activities we regard as "suspicious". In certain circumstances, the Regulations may require us to disclose information regarding your affairs to relevant bodies without informing you.

One duty we have is to ask you to provide identification evidence. The regulations allow us to start work on your behalf but we must have the necessary documents within 7 days. If we do not receive them from you within 7 days, we may require to stop all work on your transaction until the documents are produced.

We do not under any circumstances accept payments in cash of more than £2500, whether paid in at our offices or directly into our bank account.

Any cheque you give to us should be a personal cheque from you drawn on a UK bank account in your name.

If you make a cash payment of more than £2500 into our bank account, or if the cheque funds come from any other source, it may take a minimum of 8 working days and a maximum of 40 days for us to obtain the necessary clearance from the authorities before we can use that money. Even if such clearance is granted, we may decline to use the funds and instead return the funds to you. Furthermore, and in any case, such clearance is unlikely to be granted in sufficient time to allow the funds to be used for the purpose for which they have been deposited. This will result in additional cost to you and mean that you do not get the keys to your new house on the day you had expected.

The best solution is for you to avoid this possible complication by gathering the funds in an account in your name and then writing a cheque or arranging a CHAPS transfer to us from your own account.

Depending upon the nature of any payments received, we may in any event require to make further enquiries of you to allow us to ascertain the ultimate source of the funds in question. Documentary evidence (including original bank statements) may require to be produced and, depending upon the content, further investigation may be required. Until such investigations are satisfactorily concluded, any funds received cannot be utilised by us on your behalf.

#### 19. Legal Aid

Depending upon your financial circumstances and the nature of the work that you have asked us to undertake, our fees may be covered by Legal Aid. We are happy to assess whether you qualify for Legal Aid or not, and if this has not already been discussed with you, then we suggest that you raise this with us forthwith. For the avoidance of doubt, however, we reserve the right to decline to accept instructions to deal with any matter under Legal Aid if we feel that the Legal Aid Rules provide inadequate recompense for the time, skill and effort required to deal properly with the subject matter. For the avoidance of doubt, Legal Aid cannot be backdated. It is therefore important that if you consider now, or at some time in the future because of a change in your financial circumstances, that you may qualify for Legal Aid, then you should make an appointment as soon as you can.

If the Legal Aid Board requests any information, then they usually stipulate that this is to be provided within a fixed period, usually 14 or 28 days. Further, if there is a change in your financial circumstances, depending upon the type of Legal Aid which you are receiving, there may be a duty to advise the Legal Aid Board. If your circumstances should change, even if it seems only to be a minor change, it is generally advisable that you should let us know. If you fail to do so, you run the risk that your Legal Aid will be terminated or suspended. Any work that we do while your Legal Aid Certificate has been suspended or terminated is not covered by Legal Aid. If your Legal Aid should be suspended or terminated because of a failure on your part, then you agree that we are entitled to seek recovery of our fees for work not covered by Legal Aid in accordance with these Terms of Business.

If you recover or preserve money or property as a result of the work which we undertake on your behalf, which is covered by Legal Aid, then as a general rule, the money or property which you recover or preserve should be used to pay our account, albeit at Legal Aid rates. In some cases, the Legal Aid Board can be asked to waive this rule. This is called a Hardship Application and you should ask about making such an application to the board if you do recover money or property at the conclusion of a case.

Where we are asked to act on your behalf in court proceedings in circumstances of special urgency, an application may be made to the Scottish Legal Aid Board for emergency cover under their rules. In such circumstances, the Board require us to complete with you a pro forma questionnaire regarding your means. The completion of the form should allow us to give you an indication of the sum which you may be asked to contribute later towards your legal costs. In order to obtain the emergency cover available you will require to sign an undertaking agreeing to pay the sum brought out to the Board. Depending upon the sum involved, you may be allowed to pay by instalments usually over a period of months.

#### 20. Limitation of Liability

In common with all other Scottish Law Firms, for the protection of our clients and the Firm, we maintain professional indemnity insurance. The aggregate liability of the firm (including any liability of the partners, employees and/or agents of the firm) in any circumstance whatsoever, whether under contract, delict, statute or otherwise, and howsoever occasioned (including but not limited to negligence or non-performance), for any and all loss or damage arising from or in connection with any services provided shall, in relation to each transaction, be limited to the sum provided by the Master Policy operated by the Law Society of Scotland - currently two million pounds (£2m). If you have any reason to believe that such cover might be insufficient to cover any foreseeable loss, please contact us to allow us to consider whether either extended cover might be sought.

#### 21. Exclusions

Under no circumstances will be liable for:

Any loss, damage, cost or expense arising from any by you of your agreement with us or any act or omission of any other person;

Any advice or opinions given to you by any third party whether recommended or instructed by us or not

Any indirect loss or damage or any loss of profit, income, production or accruals arising in any circumstances whatsoever and howsoever occasioned including, but not limited to, our negligence or non-performance.

Nothing in these terms of engagement shall exempt us from any liability arising from our fraud or reckless disregard of our professional obligations; or from our negligence resulting in death or personal injury or where law or regulation specifically prohibits the exclusion of such liability.

**I/We the undersigned hereby confirm our instruction that Smith & Grant are to act on my/our behalf and agree that the terms of engagement detailed above save as subsequently amended in writing will govern this and any subsequent transaction that commences within the next 12 months and I/We hereby authorise Smith & Grant to obtain any information or documentation held by any third parties on our behalf.**

..... (SIGNED)

..... SIGNED)

..... (FULL NAME)

..... (FULL NAME)

..... (DATE)

..... (DATE)



**Head Office**

Rathellan, High Street, Leven, Fife KY8 4PR

Tel: 01333 423441 Fax: 01333 427342