

**THIS IS OUR TERMS OF BUSINESS AND FORMAL LETTER OF ENGAGEMENT WHICH IS APPLICABLE ONLY ONCE YOU HAVE INSTRUCTED US TO ACT ON YOUR BEHALF.**

Dear **CLIENT**

Thank you for instructing our Company to act on your behalf. We confirm that we are happy to accept your instructions in relation to your transaction.

The purpose of this letter, which we hope will be of assistance, is to let you know who within our Company is responsible for carrying out your work on a day to day basis, the likely level of fees and outlays and who you should contact if you are unhappy about any aspect of the service we provide. The letter explains to a certain extent the way in which your work will be carried out and explains some of the reasons why things have to be done in a particular way.

Throughout our dealings do not hesitate to ask for an explanation on any matters which you do not understand.

Our intention is to ensure that your business is dealt with in as smooth and efficient a way as possible but obviously delays can sometimes occur.

**1. INTRODUCTION**

In these Terms of Business, “we”, “us” or “our” means Fords Daly Legal Limited, a company incorporated under the Companies Act and Registered in Scotland (Company Number SC456427), having their Registered Office at Office 1, Evans Business Centre, 1 Begg Road, John Smith Business Park, Kirkcaldy, Fife, KY2 6HD (“the Company”) and “you” means the client instructing us. Any business conducted with us is with the Company only and not with any one person individually. Our trading names are “FDL” and “Fords Daly Legal”. We use the word “Director” to refer exclusively to a Director of the Company.

When we act on your behalf there is a contract between us for the provision of legal or estate agency services and these Terms of Business together with our client engagement letter and our schedule of charges are incorporated into that contract.

If you have already asked us to start work for you then we may have already commenced work on your matter. In this event, unless you notify us immediately in writing to the contrary, you agree that the Terms and Conditions set out here are to apply retrospectively from the start of our work for you.

**2. RESPONSIBILITY FOR YOUR WORK**

Responsibility for the handling of your work will rest with our Directors but instructions should be addressed either to any of our Directors, Solicitors, Trainee Solicitors or Law Society of Scotland Accredited Paralegals. We will aim to notify you at the start of, and throughout the transaction, of the name of your key contact for dealing with throughout your transaction as well as his or her secretary or assistant.

**3. COMMUNICATION WITH YOU**

Our offices are open from 9am-1pm and 2pm-5pm Monday to Friday. Our office may not be open on local and national holidays and during the Christmas period. Our telephones are answered during office hours and there is an answering machine out of hours. It may not always be possible to respond to either a telephone message on the day it is left or to an e-mail on the day it is sent.

Our contact details are detailed in our Letter of Engagement and this information can also be obtained at [www.fdlegal.co.uk](http://www.fdlegal.co.uk).

As your agents we can only act on information and instructions given to us. You should therefore not assume that we have any knowledge of any factual matters. You can instruct us either verbally or in writing although we may ask you to confirm verbal instructions to us in writing or by e-mail. If there is to be any change in your instructions then you must notify us immediately.

We wish to make you aware that e-mails and mobile telephones are potentially unsecure channels of communication. Information communicated in this way may be intercepted and e-mails may be lost, amended, destroyed, delayed or unsafe to use. We take all reasonable steps to ensure that confidentiality is maintained in all our communications with you and we will check for computer viruses before sending information

electronically. However we shall not be liable for any loss or damage which you may suffer or incur as a result of using such communication channels (and, without prejudice to that generality, it is your responsibility to scan e-mails and attachments received from us for viruses). If you do not wish us to use such channels of communication, please advise us accordingly. It may not always be possible to respond to an e-mail sent on the same day.

We act on behalf of many of our clients over many years and, accordingly, we may communicate with you by mail or other electronic means in the future with information that may affect your personal, family, employment or business affairs and explain the potential impact on you. We may also explain our work, experience and services in various areas of the law and offer our services to you as an existing client on special promotional rates. If you do not wish to receive these communications, please let us know. You can do this by letter, phone, email, fax or in person at any time.

#### **4. OUR AUTHORITY**

By instructing Fords Daly Legal Limited you are authorising us to act with full authority on your behalf in relation to all matters necessary or incidental to our engagement. This includes, in conveyancing transactions, authority to conclude missives (the contract for your sale and/or purchase), on your behalf. **PLEASE NOTE MISSIVES DO NOT REQUIRE TO BE SIGNED BY YOU PERSONALLY AND THESE WILL BE SIGNED BY US ON YOUR BEHALF UNLESS WE HAVE YOUR EXPRESS WRITTEN AUTHORITY TO THE CONTRARY.**

In the absence of specific contrary instructions from you, we shall be entitled to assume that those who hold themselves out as having authority to instruct us do have such authority. In particular, we shall be entitled to assume that: -

- If the client is a company, we may take instructions from any officer;
- If the client is an LLP, we may take instructions from any member of the LLP;
- If the client is a partnership, we may take instructions from any partner;
- If the client is a Charity, we may take instructions from any Board Member/Trustee; and
- If there are joint client (e.g. husband and wife or more than one individual shareholder), we may take instructions from either or any of them.

If we are instructed to act on your behalf then the instructions with which we accept will be binding on the client(s).

#### **5. USE AND PURPOSE OF ANY ADVICE AND REPORTS**

Our advice given or report issued by us is personal and confidential to our clients only. It is provided solely for your use and benefit only in connection with the matter on which we are advising you and for any purpose specified when giving the advice. You shall not provide such report or details of our advice to any third party without our prior written consent. Irrespective of whether we give such consent we shall assume no responsibility and have no liability to any third party to whom any advice or report is disclosed or otherwise made available, unless and to the extent otherwise expressly agreed in writing between us and such third party.

You shall retain such responsibility for deciding on your use of and for implementation of our advice or recommendations and for choosing to what extent (if any) you wish to rely on that advice or those recommendations.

#### **6. PAYMENTS, FEES AND OUTLAYS**

We will enclose an estimate of our Fees and Outlays with our Letter of Engagement. This estimate is an indication only, made in good faith and on the basis of the information we have available to us at the outset. If the work turns out to be more complex than normal and what we originally anticipated when we received your initial instructions to act on your behalf, we may require to increase our estimate to take account of this. We will inform you as soon as possible about any such increase. Where no specific inclusive fee for work is agreed we will charge you on a time basis using our hourly rates. Our hourly rate is as follows: - a charge of £200 per hour broken down into £20 per 6 minute Unit or part thereof. The hourly rate of £200 is exclusive of postages and

incidental expenses. Letters will be charged at 1.4 Units per page of 125 words or part thereof and the drafting of Deeds will be charged at 5 Units per sheet of 250 words or part thereof. Letters will be deemed to include E-Mails. Time spent on your affairs will be charged using the aforementioned hourly rate and will include meetings with you and perhaps others: any time spent travelling; perusing, considering, preparing and working on papers; correspondence and making and receiving telephone calls.

These aforementioned rates are subject to periodic review and any revision will be notified to you in advance of any change.

In addition to fees, Value Added Tax and outlays will be payable. In addition to the time spent, we may take into account a number of factors which include the complexity of issues, the speed at which the action must be taken, the location where the work is undertaken, the expertise of specialist knowledge which the matter requires and, if appropriate, the value of the property or subject matter involved.

For domestic conveyancing matters we may charge an office scale depending on the value of the property. It may be that you have received an estimate of the charges involved in your transaction but you should note that any estimate is based on an expectation that the transaction proceeds without any unusual difficulties or complexities. In the event that any additional work is required, such as any second charges being created or discharged, any Powers of Attorney being required, difficulties obtaining any Local Authority or Specialist documentation or arranging of any bridging finance or any other additional work, then you should note that we do reserve the right to charge an additional amount based on the time and importance of the documents involved.

Please note that in the case of conveyancing matters, the fee estimated or quoted **will not cover the cost of any post settlement matters**, including any disputes or claims. In such an event you will be charged using our usual hourly rates as aforementioned.

Fees, which are not agreed in advance, may be subject to an assessment by an independent Law Accountant instructed by us to act as an Auditor. The fee payable by us to the Auditor will be added to our account to be settled by you unless otherwise agreed with you in advance. In the event that you are unhappy in connection with any element of our fees our file can be sent for an independent assessment by the Auditor of Court. This process is known as "Taxation". You are entitled to require our file to be taxed if you are not happy about the fee charged. In such a case the file is passed to the Auditor who will fix what he considers to be a fair and reasonable fee in all the circumstances including those factors outlined above. The Auditor can fix a fee higher or lower than the fee charged. If it is lower then we will pay the cost of Taxation. If however he prices a higher fee or confirms the fee as charged then you will be responsible for the fee as well as the Auditors costs.

Our fees include any title sheets obtained from Registers Direct, the online preparation of all Land Register and Revenue Scotland forms, any bank charges in connection with your transaction and any advertising costs. As a company we may receive commission from searching companies for utilising their services, which commission shall be our property. Any searches or reports we obtain on your behalf will be shown as outlays and this will be indicated in any Statement of Account or Fee Note issued to you. We may on occasions decide to incorporate searches and reports into our fee and this will be indicated to you and shown in any Statement of Account or Fee Note issued to you. We reserve the right to levy a charge of up to £40 (inclusive of VAT) in respect of any funds transferred directly into or out of our bank accounts in connection with your business to cover any bank charges incurred by us on your behalf.

In the event that you are obtaining a mortgage with any lender with whom we will have requirements from Legal Marketing Services Limited (LMS) then we reserve the right to change a levy of up to £25 plus VAT in connection with these additional requirements that we must adhere to under the rules of the individual lender and/or LMS. For any Lender who utilises the LMS system they will automatically charge an administration fee of £18 (which we will show on your statement of account as an Outlay).

In the event that you are obtaining a mortgage with either a mortgage provider for whom we are not on their approved conveyancing panel then we reserve the right to change an additional administration fee of £150 plus VAT in respect of the work which will require to be undertaken on your behalf in connection with your mortgage and Standard Security.

We offer you the facility to pay your fees and outlays due to us by the following methods: -

1. Cash up to the value of £1,000.

2. Card Payment by way of VISA Credit, Visa Debit, Mastercard or American Express. Payment can be made either in person at our office or over the telephone. It is our policy to accept Mastercard payments up to a limit of £1,000.
3. Pay-by-Link email through a secure site administered by Paymentsense
4. Online or Telephone Bank Transfer to the following account – Fords Daly Legal Limited Client Account, Account Number 10198069, Sort Code 80-16-84.
5. Cheque made payable to “FDL”, “Fords Daly Legal” or “Fords Daly Legal Limited”.

Our card payment provider is Paymentsense in association with Global Payments.

We reserve the right not to accept any payment sought to be made to us.

If we have forwarded bank account details to you we advise that before transferring any funds to our bank account that you contact our office to confirm our bank account details as have been provided to you. You should not accept any notification by way of telephone or e-mail of a change these bank details. In this event please contact our office immediately to advise.

If you choose to send any funds to us by way of bank transfer we shall not be liable for any loss, damages, penalties, interest or charges which you may so suffer or incur as a result of that transfer, in particular but not limited to us not receiving your funds.

VAT is chargeable at the current rate on all fees and on such outlays as are subject to VAT. Our VAT Registration Number is 170 1998 95.

In the event that you are introduced to us by a third party such as Dundas Estates & Development Co Limited (“Dundas”) we will pay (at our cost) Dundas a fee of £100 to be split as follows: 20% to the Sales Director (namely Heather Birrell) and 80% to the Sales Negotiator on the site or development you are purchasing your property at. This is an arrangement directly between us and Dundas and we will pay the fee direct to Dundas from our Firms Account post-completion. In the event that you are introduced to us via First Mortgage (Property Law Centre Ltd) (“First Mortgage”) we will pay (at our cost) First Mortgage a fee of £250 plus VAT (both First Mortgage and Dundas are within this Terms of Business are known as “an Introducer”). This is an arrangement directly between us and any Introducer and we will pay the fee and VAT thereon direct to the Introducer from our own Firms Account. Where your work is introduced to us by an Introducer this fee is for work and services the Introducer does for the Firm. For example, the Introducer may collect and verify certain information, prepare material and send it to us in a designated format to comply with our case management or any other systems, liaise with and make enquiries to third parties for you and us, help with third party problems, and generally help with smooth completion of the work.

## **7. RESPONSIBILITY FOR PAYMENT, FEES & OUTLAYS**

You will be personally liable for the payment of the fees and outlays incurred by us on your behalf. In the event that we are acting on behalf of more than one client on the same matter, each client will be jointly and severally liable for our fees and outlays.

Where you instruct us to act on behalf of a limited company or LLP or other vehicle controlled by you (“the Corporate Vehicle”), you accept that it is appropriate that you personally guarantee payment of our fees and outlays in accordance with these Terms of Engagement, even where for your convenience we may agree to invoice the Corporate Vehicle. Accordingly, if for any reason the Corporate Vehicle fails to meet our fees and outlays, you will be personally liable to make such payments to do so.

If we are acting on behalf of a limited company, the directors of that company will be jointly and severally for our fees and outlays, together with the person specifically instructing us in relation to the matter and the company itself. In the event that this paragraph is applicable, we will require the enclosed copy of these Terms of Engagement to be countersigned by and on behalf of the company, by each director of the company and by the person specifically instructing us.

Payment of invoices for all residential conveyancing work will be required to be made prior to the date of entry. Payment of invoices for all other legal work is required within 14 days of the date of invoice. Where your business is likely to be ongoing for a considerable period of time we may ask you to make payments to account of fees, either (i) prior to the commencement of your legal work, or (ii) during the course of the transaction. This is done on an interim basis where the work instructed by you has not yet been finalised. This is to minimise your final invoice from us and to allow you to make interim payments over the course of the transaction. Where outlays have been incurred we will require payment of these within 7 days of receipt by you of our request,

including but not limited to all costs payable to Registers of Scotland, HMRC and the Scottish Courts and Tribunals Service.

In the event that your invoice has not been settled and remains outstanding after 28 days following the date of invoice we reserve the right to impose a monthly surcharge of 4% over the base lending rate of The Royal Bank of Scotland plc on any outstanding sums.

In the event that any fee remains outstanding by you we reserve the right to refuse to carry out any further work on your behalf until such payment is made. In the event of any fee remaining outstanding for a period of 28 days following the date of invoice we are entitled at our discretion to withdraw from acting on your behalf.

## **8. CONFIDENTIALITY**

In carrying out work on your behalf, our first responsibility will be to you as our client. Save as referred to in the Letter of Engagement, we will not, without your permission, disclose to any person any confidential information relating to you or to any matter handled by us on your behalf, except in the proper course of the work carried out or if we are required to do so by law or any regulatory authority or to our professional indemnity insurers in circumstances where you or anybody on your behalf intimates a claim against the Company or where a potential claim may arise.

We are audited by a number of organisations which monitor standards of performance. We have a duty of confidentiality to you and, therefore, need your permission for your files to be inspected. We will assume that you have given us this permission by your acceptance (whether deemed or actual) of the Letter of Engagement.

## **9. LIABILITY**

We are a Limited Company and as such none of the Directors or any other employees of the Company are personally liable to you for any losses, damages, costs and/or expenses caused by our negligence or inadequate service. The contact is between you and the Company and not the Directors or any other individual.

In accordance with the disclosure requirements of the Provision of Services Regulations 2009, as a Scottish solicitor's practice, we have cover under the Law Society of Scotland's compulsory Master Policy for Professional Indemnity insurance. The cover is provided by Royal and Sun Alliance plc of 200 St Vincent Street, Glasgow G2 5SG and the level of cover is currently is £2 million per claim. Our liability to you will be restricted to the level of that cover and all liability in respect of any claim or claims in excess of that figure is excluded.

We are also covered by the Scottish Solicitors Guarantee Fund which is a fund established by Section 43 of the Solicitors (Scotland) Act 1980 for the purpose of making grants in order to compensate persons who, in the opinion of the Council of the Law Society of Scotland suffer pecuniary loss by reason of dishonesty on the part of a Scottish solicitor in connection with the practice of the solicitor.

We will be reliant upon you for the accuracy and completeness of the information and/or documentation you provide as well as the fact that such information and/or or documentation will be provided in good time. We will not be liable to you for any losses caused wholly or in part by the provision by you of false, misleading or incomplete information or documentation or due to the acts or omissions of any person or persons other than ourselves. Where you have concerns which are particular to you and not of general application it is your responsibility to advise us.

In the event that you are being advised by one of several professionals and a limitation of liability has been agreed in relation to one or more of them you agree that our liability to you will not be increased due to the limitation of liability agreed by you with other advisors. Our liability to you under or in connection with our engagement shall be limited to that proportion of the total losses (after taking into account your contributory negligence, if any) determined to be just and equitable having regard to the extent of our responsibility for the losses in question.

Where our advice involves an assessment of legal or commercial risk we will use reasonable efforts to provide you with as accurate an assessment of risk as possible but you agree to accept any such assessment as an expression of our opinion only and not as a statement of fact. You agree that any decision to rely upon any assessment of risk made by us is wholly your responsibility and that unless our assessment is shown to have been made negligently you agree that we will not be liable to you for any losses which you may incur as a result of any reliance placed by you on such opinions.

For the avoidance of doubt we are unable to advise you on matters relating accountancy or tax and should you

have any doubts as to your own position you should take advice from Specialist Accountants or Tax Advisors.

Nothing contained in the preceding terms will exclude or restrict a liability of the Company to the extent that the same cannot be excluded or restricted by law or the professional rules of the Law Society of Scotland.

#### **10. RETENTION AND DESTRUCTION OF FILES AND STORAGE OF DEEDS**

In terms of Guidelines issued by the Law Society of Scotland we are obliged to retain your file for a specified period of time. We may choose to convert your file to an electronic format for ease of storage and we will be entitled to charge you £18 for this cost. Your file will then be destroyed unless we receive instructions from you to the contrary.

We may also choose to charge you for the storage of any files, deeds or other documents. In the event that we propose to charge for such a service we shall notify you of any charges in advance.

Following the destruction of your file any important documents (such as Title Deeds or Court Decrees) will be retained separately and will be forwarded to you as soon as possible following the destruction of your file.

The Law Society of Scotland has published recommended minimum retention periods in respect of different types of legal work and in the event of your wishing to exercise your right of erasure, we will only delete your data if the minimum retention period has been exceeded. Please let us know if you wish to receive details of the minimum retention periods.

You consent to the destruction without further warning of all physical files and papers on expiry of our minimum data retention period in accordance with relevant guidelines produced from time to time by the Law Society of Scotland or 5 years from completion of the work carried out on your behalf whichever is later.

#### **11. CLIENT CARE**

While we hope and expect that problems will not arise, we would prefer to know about them as soon as possible and to resolve any that there may be. Our aim is to provide an efficient service but if you are concerned about any aspect of our service or have a specific complaint about how the matter may be dealt with please contact the solicitor dealing with your case who if required shall be happy to let either his/her partner consider the complaint.

We are members of the Law Society of Scotland and subject to its professional rules and standards. The Law Society of Scotland can be contacted at Atira One, 144 Morrison Street, Edinburgh, EH3 8EX or at <http://www.lawscot.org.uk/about-us/contact-uk>.

If a matter cannot be resolved then you are always entitled to refer any complaint to The Scottish Legal Complaints (SLCC). Information provided to us will be dealt with in the strictest confidence and will only be disclosed to parties authorised by you or as required by The Scottish Legal Complaints Commission or any other authorised body. The SLCC can be contacted at The Stamp Office, 10-14 Waterloo Place, Edinburgh, EH1 3EG or at <http://www.scottishlegalcomplaints.com>.

We hope that matters proceed without any difficulties and look forward to dealing with you.

#### **12. THE MONEY LAUNDERING REGULATIONS - CLIENT I.D. VERIFICATION**

We are required by anti-money laundering legislation to verify the identity of each client for whom we are instructed to act. These regulations require us to be satisfied as to the identity of each of our clients. In order to comply with these regulations we require from each client up-to-date personal ID and proof of address. We require the following items from both list (a) and list (b). These should be brought into our office for copying and will be returned immediately to you.

##### **(a) Identity Verification**

We require **one** of the undernoted items for **each individual**

- Current full passport
- Armed Forces card
- Police Warrant card
- Current Full UK Driving Licence/Provisional **Photo** Driving Licence

- HM Revenue & Customs Tax Notification (within past 12 months)
- Building Industry sub-contractors certificate (C1S4)
- Firearms Certificate
- EU Member State ID Card

And

**(b) Address Verification**

We require **one** of the undernotes items for **each individual**

- Bank/Building Society/Credit Union Statement or passbook (showing current address/and dated within the last 3 months)
- Current Full UK Driving Licence/Provisional Photo Driving Licence
- Current Year Council Tax Bill
- Local Council or Known Housing Association Rent Card or Tenancy Agreement
- Utility Bill (dated within the past 3 months) or Annual Utility Statement (current year) – Please note that mobile statements are not acceptable)
- HM Revenue & Customs Document (dated within the last 12 months)

**Please note that the same piece of information cannot be used for both identification and address verification purposes.**

We may ask identification to be sent to us electronically by way of Amiquis ID. In this instance an email will be generated to you via their system and you will be required to follow the instructions contained therein including uploading of photo and address ID. If we have chosen to obtain your ID this way then we will only be able to accept photo ID in the form of either a current full passport, Photo Driving Licence (either full or provisional) or EU Member State ID Card. If we chose to obtain ID via Amiquis ID then we also reserve the right to levy an additional fee for each person for which we require to obtain ID from for the specific client transaction of £12.50 plus VAT.

If we are to receive funds on your behalf which said funds are to be received from a third party (e.g. a parental deposit for house purchase), then we will require that party to also provide the necessary ID and proof of address.

This information should be given to us following your initial instructions and failure in doing so may result in a delay in your transaction. In the event that you fail to provide this information we reserve the right to suspend or withdraw from acting on your behalf until such information is provided.

**13. SOURCE OF FUNDS**

Where you will be providing funds for the transaction which we will be handling for you, we are also required to confirm the source of these funds. We only accept the following methods of providing funds to us:-

- (a) Bank transfer directly into our client account; or
- (b) Cheque payable to “FDL”, “Fords Daly Legal” or “Fords Daly Legal Limited”.

When you are providing funds to us using these methods we shall require the following information:-

**A copy of your bank statement for the account from which the funds are transferred to us showing the funds in your account for at least 3 months prior to the transfer. We will also require a copy of your bank statement showing the transfer from your account and funds entering our client account. The statements must have your full names, addresses, account number and clearly show which accounts the funds are leaving and being transferred into.**

**If the funds are not held in your account for at least 3 months prior to the transfer into our client account then you will be required to produce such further documentation showing the location and transfer of those funds, or any part thereof, to comply with the 3 month period requirement.**

**If you are unable to provide such documentation to us you must notify us immediately as failure to do so may result in the delay of transfer of your funds for which we shall not be liable for any loss, damages, penalties, interest or charges which you may so suffer or incur.**

**Any payments made by cheque must be received at least 7 working days before the funds required to be used to allow for clearance through the banking systems. We shall not be liable for any loss, damages, penalties, interest or charges which you may so suffer or incur as a result of any delayed clearance to be attributed to the banking systems.**

**You may be charged by your bank for the transfer of funds into our client account and you should confirm this prior to making any arrangements**

**You should instruct your bank in advance of the transaction date if you require their assistance to deal with the source of funds enquiry which we are obliged to make.**

**Before transferring any funds to our bank account we recommend that you contact our office to confirm our bank account details. DO NOT accept any notification by way of telephone or e-mail of a change these bank details. In this event please contact our office immediately to advise. We shall not be liable for any loss, damages, penalties, interest or charges which you may so suffer or incur as a result of you transferring funds into another bank account which you believed to be held in our name.**

We have reporting obligations imposed on us in terms of the Terrorism Act 2000, the Proceeds of Crime Act 2002, The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, Criminal Finances Act 2017 (Commencement) (Scotland) Regulations 2017 and related Statutory Instruments which, in certain circumstances, require disclosure of confidential information to the relevant authorities. In such circumstances we may be prohibited from notifying our clients of such a report and we may require to cease to continue to do any work on client matter until such time as we received formal authorisation from the relevant authorities to do so. We shall incur no liability to you for any loss, damages, penalties, interest, costs or charges which you may suffer or incur if we are so prohibited from acting or delayed in continuing to act on your behalf.

We reserve the right not to handle any money or other funds on your behalf or on behalf of any third party if we are not satisfied with the source of the money or funds and, in particular, if the money or funds are not being paid to us from an account with a UK clearing bank. You require to advise us without delay if you intend to transfer or arrange the transfer to us of any money or funds otherwise than from an account in your name with a UK clearing bank as we may not be able to complete any transaction or to conclude any proceedings on your behalf, and you may consequently suffer or incur loss, damages, penalties, costs, interest or charges if there is any delay in our accepting money or other funds on your behalf until we are satisfied with the source of the money or funds. We shall not be liable for any loss, damages, penalties, interest or charges which you may so suffer or incur.

If we have forwarded bank account details to you we advise that before transferring any funds to our bank account that you contact our office to confirm our bank account details as have been provided to you. You should not accept any notification by way of telephone or e-mail of a change these bank details. In this event please contact our office immediately to advise.

If you choose to send any funds to us by way of bank transfer we shall not be liable for any loss, damages, penalties, interest or charges which you may so suffer or incur as a result of that transfer, in particular but not limited to us not receiving your funds.

Under the Money Laundering Regulations it is our policy to only accept cash payments up to a limit of £1,000. We reserve the right not to accept any payment sought to be made to us in cash

#### **14. CLIENT FUNDS**

Any of your money or other funds that we agree to hold for you will be held by us in a separate Client Account with our bankers, Bank of Scotland plc, unless you give us specific written instructions in advance that you wish your money or other funds to be deposited in a different bank or banks. You acknowledge that any money or other funds which we do hold on your behalf are held strictly at your risk and we shall not be liable for any loss, damages, penalties, costs, interest or charges which you may suffer or incur as a result of such money or other funds being held by us on your behalf, save where any such loss, damages, penalties, costs, interest or charges arise as a result of any fraud on our part.

We reserve the right to elect not to invest funds held for or on behalf of you in a separate interest-bearing account having regard to the amount of such funds and the length of time for which they are likely to be held, where the amount of interest which could be earned on the funds in such an interest-bearing account would be likely to be less than such amount as the Law Society of Scotland may from time to time prescribe, due to then-current bank



rates of interest. In such situations, no interest will be earned on funds which we agree to hold for you.

Where we receive sums which belong to you, we shall be entitled to deduct from those sums all outstanding fees, outlays and other expenses before remitting the balance to you. This shall also apply to any outstanding balance which is currently held on your client account which may have been incurred from a previous matter or transaction.

All monies belonging to you which are not required for fees, outlays or expenses will be either held by us, in accordance with the provisions of these Terms of Business and the Solicitors (Scotland) Accounts Rules or will, on your direction, be remitted to you.

Where we hold between £10 and less than £50 for you and the address or contact details provided by you to us are found not to be current, then no further efforts need be made by us to find new contact details for you and the sum held by us for you may be paid either to the Crown or a registered charity of our choice.

If we receive any cheque on your behalf for the sum of £50 or more, including all settlement cheques in respect of the sale and purchase of a property, then we shall pay this into our client account on the same day that we receive said cheque. In the event of extenuating circumstances which make the pay-in of the funds not possible we shall pay this into our client account on the next working day. If the amount is under £50 this shall be paid into our client account at our earliest convenience. To ensure that we have cleared funds for any funds which we receive on your behalf by cheque there will be a minimum of a 6 working day clearing period prior to funds being distributed to yourself to ensure all funds have been processed by all respective banks involved.

#### **15. HOME REPORTS**

If we are instructed to arrange a Home Report for you in connection with any house sale then we will instruct this via independent surveyors on your behalf. These instructions to the surveyors will only be on your behalf and any contract relating thereto will therefore be between you and the surveyors concerned and it will be your responsibility to settle all and any fees due to the surveyors.

If we are instructed to act in connection with any purchase then, unless instructed in writing to the contrary, we assume you will have had sight of the Home Report prepared in connection therewith and that this has been provided to you by the seller or the estate agent involved in the sale of the property. Our responsibility will not extend to advising you on the terms of the Home Report unless you specifically ask us to do so in which case there may require to be an increase in the fees as quoted in your Letter of Engagement.

#### **16. OFFERS OF LOAN/MORTGAGE OFFERS**

Where we receive an offer of loan/mortgage offer on your behalf from a lender we will normally also be instructed to act on behalf of your lender. You must notify us as soon as you know who your lender will be so that we may advise you accordingly. Where we are not on your lenders conveyancers' panel or when your lender insists on instructing their own solicitors to act on their behalf we will advise you of this at the earliest possible opportunity and we may ask you to request your lender to forward your offer of loan/mortgage offer to another firm of solicitors who will act on behalf of your lender. In this circumstance we will continue to act on your behalf but may be involved in additional correspondence and communication with the lender's solicitor and our initial estimate of fees and outlays may be subject to revision.

Your offer of loan/mortgage offer should be received by us at least 7 days prior to the completion of your transaction to allow sufficient time to examine the offer of loan/mortgage offer, organise the required documentation and arrange for the receipt of your loan/mortgage funds. In the event that your offer of loan/mortgage offer is not received by us at least 7 days prior to the completion of your transaction we cannot guarantee that your transaction will proceed on the agreed or scheduled date (e.g date of entry in property purchase). In such circumstance we shall not be liable for any loss, damages, penalties, interest or charges which you may so suffer or incur.

In the event that we have to disclose any material information to your lender which, in either our opinion or your lenders' opinion, would affect your lenders' ability to release funds to our client account, then we shall not be liable for any loss, damages, penalties, interest or charges which you may so suffer or incur.

#### **17. PROPERTY PURCHASES – SHARE OF TITLE**

If you have instructed us to purchase a heritable property on your behalf and title to the property is to be taken in more than one name you should be aware that it can be taken in unequal shares if it is the case that either one of you is contributing more to the property than the other.

If you have instructed us to purchase a heritable property on your behalf and title to the property is to be taken in more than one name you should be aware that we will automatically arrange for the title to be taken equally between all parties on an equal basis. In that situation we would also include automatically in your title what is known as a "survivorship destination". This effectively means that the title would be taken on the basis that you would all jointly own the title to the whole property and on the first and subsequent deaths the whole title would automatically revert to the survivors or survivor. **If you do not wish for a survivorship destination to be included in your title then you must let us know at least 14 days prior to the completion of your transaction and we would then complete the title on an equal basis but with a proviso that you would each then have the power of disposal of your own individual share.**

If the title is to be taken in unequal shares then you must let us know at least 14 days prior to the completion of your transaction.

If a party(s) to the title is contributing greater funds to the purchase price than the other party(s) then we shall advise you of the option of entering into a Minute of Agreement. Only by a combination of both factors i.e. unequal shares being referred to in the title deed and a Minute of Agreement, can recoupment be guaranteed by the party who is contributing more to the price than the other(s). Simply by taking the title in unequal shares is not a guarantee that the party(s) who has invested more into the property can guarantee recoupment.

#### **18. INTER CLIENT TRANSACTIONS – POTENTIAL CONFLICT OF INTEREST**

In the event that both parties to your conveyancing transaction are represented by us we will act on behalf of both parties provided that both parties are previous or existing clients (or in the case of inter family transactions one party) i.e. clients for whom we have carried out any legal work or to whom we have provided advice.

In the event any dispute between both parties and what we therefore deem to be conflict of interest arising then we must refer both parties to other solicitors or legal firms for separate independent legal advice. At this point we may decide to terminate our professional relationship and in such circumstance we shall not be liable for any loss, damages, penalties, interest or charges which you may so suffer or incur.

You also authorises us, as a firm, to internally transfer the purchase price which will be held on your client account ledger onto the client account ledger of the seller(s).

#### **19. LAND AND BUILDINGS TRANSACTION TAX**

Unless otherwise advised by you we shall prepare any Land and Buildings Transaction Tax (LBTT) and Additional Dwelling Supplement (ADS) Return in connection with your transaction to Revenue Scotland. By your acceptance of these terms and conditions and unless otherwise expressly agreed we shall submit your LBTT and/or ADS Return on-line to Revenue Scotland and arrange to settle any tax liability you may have directly with Revenue Scotland. If you do not wish for us to submit your LBTT and/or ADS Return you must notify us immediately as any delay which may result in a delayed submission of your Registration Documents to the Land Register of Scotland. We require any LBTT and/or ADS due in respect of your transaction to be transferred to our client account prior to the settlement of your transaction. LBTT and/or ADS must be paid to Revenue Scotland either within 30 days of the date of settlement of your transaction or within 7 days of the date of submission of your return to Revenue Scotland (whichever is earlier). Failure to make payment within these time limits may result in Revenue Scotland issuing an additional charge and any charge issued by Revenue Scotland in respect of any late payment or otherwise will entirely be the property and responsibility of you. We shall not be liable for any loss, damages, penalties, interest or charges which you may so suffer or incur.

For the avoidance of doubt we are unable to advise you on matters relating to LBTT and ADS and should you have any doubts as to your own tax position you should take advice from Specialist Accountants or Tax Advisors.

#### **20. INCIDENTAL FINANCIAL BUSINESS**

There may be instances where we, as part of your transaction, will carry out incidental financial business for you and on your behalf (such as the arranging of a Bond of Caution or the sale of Shares in an Executry matter or a Title Indemnity Policy in the case of a conveyancing transaction). We are required by the Law Society of Scotland to advise you of the following terms of business: -

We are licensed by the Law of Scotland to carry on incidental financial business activities. These activities are limited in scope. For example, any investment advice provided in respect of the buying or selling of shares will be obtained from a firm of Stockbrokers. Our firm will not comment on their advice.

The firm is not authorised by the Financial Conduct Agency under the Financial Services Act 2012.

We are not authorised by the Financial Services Authority. However, we are included on the Register maintained by the Financial Services Authority so that we can carry on insurance mediation activities, 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 Law Society of Scotland. The Register can be accessed via the [Financial Conduct Authority](#) website. The firm of Fords Daly Legal Limited is licensed by the Law Society of Scotland to carry on Incidental Financial Business under the Society's Practice Rule C2: Incidental Financial Business.

The information provided above may be checked on the FCA's Register by visiting the [FCA's](#) website or by contacting the FCA on 0845 606 9966.

We do not have any holding, direct or indirect, representing more than 10% of the voting rights of, or the capital in, an insurance undertaking.

No Financial Services or Insurance company or parent of a Financial Services or Insurance company has a holding, direct or indirect, representing 10% or more of the voting rights or of the capital in this firm.

The contract of insurance on which we may provide will be selected from a single insurance undertaking. This will be Dual Asset Underwriting Limited in the case of Title Indemnity Policies for Conveyancing purposes and Royal and CLS Property Insight Limited in the case of a Bond of Caution for Executry purposes. Please note that we are not contractually obliged to conduct insurance distribution in this way.

As the contract of insurance provided will not be selected on the basis of a fair and personal analysis of the market, you shall be provided with a list of the insurance companies, the firm has selected from, with respect to the selected insurance contract (be that a Title Indemnity Policy for a sale or purchase or a Bond of Caution in the case of an Executry).

In the event of any insurance cover being arranged for you we will have carried out an assessment of your demands and needs in respect of the insurance contract and ensure that insurance cover is required either for your title or the estate for which you are appointed as executor.

In the case of an Executry we will recommend in certain scenarios that you take out an insurance contract known as a Bond of Caution with CLS Property Insight Limited. Your demands and needs respect of this insurance contract are that you wish to obtain a grant of Confirmation in respect of an estate in Scotland. Bonds of Caution are a compulsory requirement of law in certain circumstances e.g. where your deceased relative died intestate without a will. In the case of a Bond of Caution being obtained we will have made this recommendation from a single insurance company of CLS Property Insight Limited due to this being the company we deal with for the provision of Bonds of Caution.

In the case of a property/conveyancing transaction there may be a situation whereby you require to take out an insurance policy known as a Title Indemnity Policy with DUAL Asset Underwriting Limited. Your demands and needs in respect of any Title Indemnity Policy / insurance contract will be that you require to rectify a defect in your title such as lack of planning or building control consent for alterations or a lack of servitude (right off access on foot or vehicular) and that you require to have such insurance policy in place to be able to sell the property due to missing documentation or a lack of access within your legal title. In the case of a Title Indemnity Policy being obtained we will have made this recommendation from a single insurance undertaking, being Dual Asset Underwriting Limited who will provide a quotation for an insurance policy. In the case of a sale the Solicitor acting for the onward purchaser will be given a copy of the quotation of the policy to allow the buyer to approve the policy.

We are not remunerated for any insurance advice/arrangements/sale in any manner.

We will not act as agents for the arranging of any other insurance product other than as stated herein.

We have Professional Indemnity Insurance under the Law Society of Scotland's Master Policy. The current level of indemnity under the Master Policy is £2m per claim. This firm is also covered by the Scottish Solicitors'

Guarantee Fund which is a fund established under Section 43 of the Solicitors (Scotland) Act 1980 for the purposes of making grants in order to compensate persons who, in the opinion of the Council of the Law Society of Scotland have suffered pecuniary loss by reason of dishonesty on the part of a Scottish Solicitor in connection with the practice of the solicitor.

As confirmed at section 11 of this Terms of Business there is a specific complaints procedure which is operated by the us as a licenced business, which confirms your right to complain to Scottish Legal Complaints Commission, The Stamp Office, 10 -14 Waterloo Place, Edinburgh. EH1 3EG. Tel:0131 201 2013.

## **21. TERMINATION OF ENGAGEMENT**

Either you or the Company may terminate the professional relationship at any time by giving the other party written notice to that effect. In the event that you choose to terminate our professional relationship, we will render an account showing all fees, outlays and expenses properly incurred prior to the termination and due to the Company. Should you wish any correspondence file (or a copy) or any other documents sent to another solicitor, an additional charge may be made by us in connection with this request. Delivery of the file and any other documents may, at our option, be subject to payment of this charge and settlement of all outstanding fees, outlays and expenses. We will not terminate our professional relationship without good reason (for example, where a conflict of interest has arisen, if the action you are requesting us to take is contrary to our professional rules of conduct or if a breakdown in our relationship occurs), whether in its entirety or with respect to a particular piece of work.

## **22. ADR/EDR DIRECTIVE 2013/11/EU**

We recognise that Alternative Dispute Resolution Regulations have implemented ADR/EDR Directive 2013/11/EU to promote alternative dispute resolution as a means of redress for consumers in relation to unsatisfactory services. We have however chosen not to adopt an ADR process and if you have any concerns about the services you receive from this firm you should contact the firm's Client Relations Manager.

## **23. EXERCISE OF RIGHT OF ERASURE ("RIGHT TO BE FORGOTTEN")**

In the event that you wish to exercise your right of erasure, we will be pleased to comply with your request provided the last transaction movement or ledger entry of your last transaction or case has exceeded our minimum retention periods. If you wish to exercise your right of erasure you must write to us to advise us of this (we will not accept such instructions verbally or by email or telephone). Your instructions to us must also be signed by all parties involved in a transaction or case.

## **24. PRIVACY STATEMENT**

We have created a Privacy Statement and attach a copy to these Terms of Business. Our Privacy Statement sets out the lawful basis of processing your data (which, in the case of our representing you or acting on your behalf in a legal matter, is the Contract constituted by these Terms of Business/Engagement) and sets out your rights in relation to that data. If you cannot access our website, please ask us to send you a paper or digital copy of our Privacy Statement.

## **25. DISCLOSURE OF DATA TO THIRD PARTIES**

We are bound to protect and keep confidential your data, but inevitably, to enable us to properly represent your interests and conduct business on your behalf, we have to disclose some information to third parties. Some examples of such third parties are other solicitors, the Registers of Scotland, the Courts and Tribunals in Scotland or elsewhere, the Office of the Public Guardian, Insurance Companies, other financial institutions, HMRC and Revenue Scotland. This is not an exhaustive list but merely an indication of the range and extent of third parties to whom your data is disclosed.

We also instruct third parties to process data on our behalf. Where we do so, such third parties are bound by the terms of Article 28 of the GDPR in respect of their data processing contract with us. Our Privacy Statement lists those third parties who will process your personal data on our behalf.

By instructing us, you consent to us disclosing such information as is reasonable and necessary for the purpose of carrying out your instructions.

**26. GOVERNING LAW**

These Terms of Business shall be governed by the Law Society of Scotland and by your acceptance, whether deemed or actual, you agree that in the event of any dispute it shall be dealt with by Kirkcaldy Sheriff Court.

This letter is, inevitably, rather lengthy and formal but it is designed to ensure that you know what service to expect, the cost and the people to contact if you are not satisfied about any matter.

If you have any questions please do not hesitate to contact us by emailing [info@fdlegal.co.uk](mailto:info@fdlegal.co.uk) or calling 01592 640630s.

Yours faithfully

THE DIRECTORS  
FOR AND ON BEHALF OF FORDS DALY LEGAL LIMITED

# Privacy Statement

## **Privacy Statement Wording**

We are the law firm of Fords Daly Legal Limited have our Registered Office at Office 1, Evans Business Centre 1 Begg Road John Smith Business Park Kirkcaldy KY2 6HD. You can contact us at: Office 1, Evans Business Centre 1 Begg Road John Smith Business Park Kirkcaldy KY2 6HD by phone on 01592 640630 or by email at [info@fordsdalylegal.co.uk](mailto:info@fordsdalylegal.co.uk).

## **Our Undertaking to you**

In this Privacy Statement we will tell you how we collect and use your data. We will use it to look after your interests in the best way we can and to ensure that we can properly act on your behalf. We will make sure we collect and store your data securely.

## **If you're a client of the firm:**

We collect your data from you. This is either face to face, over the phone, email, letter or fax.

## **If you're a client of another law firm:**

We will receive your personal data from your solicitor.

## **If you are not a client of our firm but sign up to our Newsletter or fill in an online enquiry form on our website:**

We will receive your personal data from you when you complete an online signup form.

## **Data we receive from third parties**

We will also receive and process personal data of third parties for whom we neither act nor have any connection with. This can belong to the defender or witness in a court case, the beneficiary in a Will or Executry case or the other party in an accident case. These are examples of where we might receive and process personal data which does not belong to our clients. This list is not exhaustive and we will receive and process personal data from a wide range of third parties.

## **The types of personal data we collect**

We collect name and contact details including your postal address, telephone numbers and email addresses. We collect identification information from you. If you are a client, we collect additional personal data as is necessary to properly represent you and carry out your lawful instructions to us. This can include personal and business financial information, health and medical information, information on your family members and their circumstances.

## **What we will do with your personal data?**

Where you are a client, we will use your personal data to act on your behalf in the matter or matters you have instructed us in. These are set out in the Terms of Business we have sent to you.

We will also be in touch with you from time to time to explain other services we can provide that may be relevant to your circumstances and inform you about changes in the law that might impact on you, your family, your business or your employment or which otherwise may affect you. If you do not wish to receive such communications, please let us know and you will be excluded from receiving them.

Where you are not a client, we will process your data for the purpose of carrying out our client's instructions in a transaction or case in which we're acting.

If you are not a client and have signed up to receive our eNewsletter, we will use your personal data to send you our eNewsletter.

If you are not a client and have completed an online enquiry form, we will use your personal data to respond to your enquiry.

**You have the following rights in relation to your personal data:**

- You have the following rights:
- Access to the personal data we hold about you, free of charge in most cases;
- The correction of your personal data when incorrect, out of date or incomplete;
- Object to the processing of your personal data where we have no legitimate overriding interest, or once the purpose for which we hold the data has come to an end;
- That we stop using your personal data for direct marketing;
- That we stop any consent-based processing of your personal data after you withdraw that consent.
- To ask us to delete or erase your personal data (subject to our Terms of Business in the case of clients)

To protect the confidentiality of your information, we will ask you to verify your identity before proceeding with any request you make under this Privacy Notice. If you have authorised a third party to submit a request on your behalf, we will ask them to prove they have your permission to act.

**What is our Complaints Procedure?**

Our complaints procedure in respect of any legal work we carry out on your behalf is stated in our Terms of Business letter to you. If you are not a client of the firm, you should write to us at the contact address shown at the beginning of this Privacy Statement.

If you are unsatisfied with the manner in which we have dealt with any complaint relating to your personal data, you are entitled to ask the Information Commissioner to investigate. You will find information on how to raise a concern with the information Commissioner on their website by clicking this link: <https://ico.org.uk/concerns/> If you do not have Internet Access, you can call the Information Commissioner by telephoning 0303 123 1113.

**On what basis are we processing your personal data?**

**Where you are a client**

Our Lawful Basis for processing your personal data is based on the Contract we have with you as set out in our Terms of Business letter to you.

**Where you are not a client of the firm and have signed up for our Newsletter and other marketing materials**

Our Lawful Basis for Processing your personal data is your Consent which can be withdrawn at any time after which you will receive no further communications of this nature from us.

**Where you are not a client of the firm and have completed an online enquiry form**

Our Lawful Basis for Processing your personal data is your Consent which can be withdrawn at any time after which you will receive no further communications from us.

**If another solicitor or organisation acting for you has provided your personal data in the course of a transaction with us on behalf of a client for whom we act**

Our Lawful Basis for Processing your personal data is the Legitimate Interests of this firm and its clients to properly and lawfully represent our clients' interests. This Lawful Basis for Processing also applies to personal data of individuals who have no connection with our firm where our clients instruct us to carry out such processing. Examples of such individuals are beneficiaries named in a Will, the Defendant who we are instructed to sue, or a witness in a court action. This list is not exhaustive and there are many other instances where we will be required to process personal data as instructed by our clients.

**Measures in place to ensure the protection of any Children's or Special Category of data held**

We ensure any children's or special category of data we hold are properly stored in our access controlled data store on our Network and in our firm's Practice Management systems which, again, can only be accessed through a secure username and password.

Any data of this nature held in paper files, is held in secure filing cabinets within our offices which are secured when unoccupied.

This data is only accessed by solicitors and staff members within our firm and no access is available to third parties in respect of this data.

### **Personal data processed by third parties on our behalf**

Your personal data will be processed by third parties with whom we are required to deal with when acting properly and lawfully for you. Examples of such parties are professional searchers, our IT support company and our practice management system support desk, our external Cashroom service, our file store for closed files, our secure shredding company and our fax to email conversion service. This list is not exhaustive and will change from time to time. If you require specific details, please contact us.

We are regulated by The Law Society of Scotland and they have a right of access to our books and records to carry out regulatory inspections. They may remove personal data from our premises and systems in order to carry out regulatory checks.

Our eNewsletter and other email marketing activities are managed by Client Communications Ltd. You can view their Privacy Statement here: <http://www.clientcommunications.co.uk/privacy-policy/>

Client Communications Ltd. uses The Rocket Science Group LLC, of the State of Georgia, USA, trading as MailChimp to process the data for our eNewsletter and email marketing campaigns. MailChimp has certified its agreement to the EU-US Privacy Shield Framework. You can view its Privacy Policy here: <https://mailchimp.com/legal/privacy/>

### **Our Data Retention Policy**

#### **Where you are a client**

We will retain your data in accordance with our current data retention policy. This is set out in our Terms of Business we sent to you.

#### **Where you are not a client**

If you are not a client and have signed up to our eNewsletter or completed our online enquiry form on our website, you can unsubscribe from our eNewsletter and ask us to delete any data we hold at any time.

#### **If you are a third party**

We will retain your data in accordance with our client's instructions and any data retained within our digital or paper filing system or storage will be subject to our data retention policy.

This Privacy Statement is dated 16<sup>th</sup> December 2019