

# Terms and Conditions

September 2009

## Terms and Conditions of Business

As from 1 January 2009, the following Terms and Conditions will govern the basis on which we provide the Services to you and will be deemed to have been agreed by you by your acceptance of any of the Services, irrespective of whether or not a separate engagement letter has been agreed with you. We contract on the basis of these Terms and Conditions only, and acceptance by us of any instructions from you shall be upon such Terms and Conditions and shall override any other terms and conditions stipulated or incorporated by you in your instructions or any negotiations, unless otherwise expressly agreed in a separate engagement letter with you.

A copy of these Terms and Conditions shall be sent to you by ordinary post or by email. A current copy of these Terms and Conditions will also be made available for inspection at our principal office in Guernsey and at all of our offices in Jersey and London during normal business hours. In addition, a current set of these Terms and Conditions will be made available on our website at [www.collasdayip.com](http://www.collasdayip.com).

We may revise the Terms and Conditions and the Rates from time to time without your prior consent. We will notify you by ordinary post or email of any changes which we consider to be material, as soon as is reasonably practicable after their introduction but shall not be obliged to inform you if any of the Rates increase. You shall be bound by any revision of the Terms and Conditions and the Rates, as and when a copy of the revised document becomes available for inspection at our registered office.

## 1. Definitions and Interpretation

### 1.1 Definitions

In these Terms and Conditions (unless the context otherwise requires) the following words and expressions shall have the following meanings:

Business Day	any day (other than a Saturday, Sunday or bank holiday) on which banks are open in Guernsey for normal banking business
Client, you or yours	any person to whom we provide the Services and, in the case of an individual, includes his/her heirs, personal representatives and assigns and, in the case of a body corporate, includes its successors and assigns
Data Protection Legislation	The Data Protection (Guernsey) Law, 2001
Employees	all directors, officers, employees, consultants and agents of the Company and all directors, officers, employees, consultants or agents of any of its subsidiaries or associated companies
Rates	schedule of fee earners' rates per hour and administrative charges (if any), a copy of which is available on request
Services	the provision of intellectual property registration and management services
The Company, we, our, us	Collas Day IP Management Limited, whose registered office is at Manor Place, St Peter Port, Guernsey GY1 4EW

### 1.2 Interpretation

- 1.2.1 Headings in this Agreement are inserted for convenience only and shall be ignored in construing this Agreement.
- 1.2.2 Unless the context otherwise requires, words (including definitions) denoting the singular number only shall include the plural and vice versa.
- 1.2.3 References to statutes and/or statutory provisions shall be construed as referring to such statutes or statutory provisions as respectively replaced, amended, extended or consolidated.
- 1.2.4 References to the Company or the Client shall include a reference to any successor company and permitted assigns.
- 1.2.5 "Holding Company" and "Subsidiary" shall have the meanings given to such expressions in The Companies (Guernsey) Law, 2008 (as amended).
- 1.2.6 The expression "person" shall be construed to include references to any person, firm, company, partnership, corporation or any agency of it.
- 1.2.7 "£" and "Sterling" denotes the lawful currency of the Bailiwick of Guernsey and the United Kingdom.

## 2. Costs, Fees and Disbursements

### 2.1 Fees

- 2.1.1 We believe that fees for the Services should be fair and reasonable, having regard to all the circumstances of the case. The circumstances which may affect the level of fees include the following, the:
  - 2.1.1.1 time spent on the matter;
  - 2.1.1.2 monetary amount involved;
  - 2.1.1.3 specialist knowledge required;
  - 2.1.1.4 number and length of documents;
  - 2.1.1.5 place and time of day at which the work was carried out;
  - 2.1.1.6 importance and urgency of the matter to you; and
  - 2.1.1.7 complexity of the matter.
- 2.1.2 Time spent on a matter is recorded by all employees of the Company and the total time recorded will be one, but not the only factor taken into account in assessing the level of fees to be charged.
- 2.1.3 The person responsible for your matter will always be willing to discuss the basis for charging a particular matter at the outset.
- 2.1.4 Where an estimate of fees is requested and given, it is only an indication of the amount anticipated as being the likely charge and shall not be regarded as an agreed fee for the work or matter unless specifically confirmed in writing as such by a director.

2.1.5 We reserve the right to request for monies to be paid up front by you to cover future costs and fees.

## 2.2 Interim Billing

Unless we agree to the contrary in writing, we will render regular interim invoices as the matter proceeds, usually on a monthly basis in arrears.

## 2.3 Disbursements

2.3.1 Disbursements, as these are incurred, will be added to the applicable interim or final invoice rendered. Depending upon the matter in question, we may request a payment on account of disbursements to be incurred.

2.3.2 Disbursements may include, but are not limited to, filing fees, registry fees, court fees, registration fees, Greffe fees, document taxes, the cost of expert reports, foreign counsel fees, courier fees and publication costs. As a general policy we do not charge for secretarial support and administrative services such as photocopying. However, in the event that we are required to dedicate a significant amount of administrative resource to an individual matter, or adhere to an accelerated timetable to closing, we reserve the right to charge for such administrative services. We will agree any such costs with you before these are incurred.

2.3.3 The fees of any foreign counsel or other advisers instructed by us on your behalf will be incorporated into our invoice.

## 2.4 Tax on Services

There is no value added tax on the provision of our services in Guernsey.

## 2.5 Payment

2.5.1 All invoices are payable within 14 days of presentation. Interest at a rate of 3% above the base-lending rate of the Royal Bank of Scotland plc may be charged, at our discretion, on unpaid invoices.

2.5.2 Should you have any queries regarding an account once an invoice has been rendered for payment, please contact the fee earner or director responsible for the matter or our Accounts Department on (+44) (0) 1481 723191 quoting the relevant invoice number.

## 3. Client's Monies

3.1 All of your money accepted by us is held in a separate client account.

3.2 We reserve the right to pay our fees and disbursements out of monies held for you in the client account.

3.3 Our clearing bank is Royal Bank of Scotland International Limited. Any funds of yours held on account will be paid into, and held by, Royal Bank of Scotland International, unless the parties otherwise specify. We accept no liability as to the performance of whichever bank holds the funds.

## 4. Concerns about our Service

If you are dissatisfied with the handling of your instructions by the Company, you may raise the concern directly with the director responsible for the matter in question. If the issue is not resolved, you may register the concern with the head of the respective department acting for you, who will cause it to be thoroughly investigated.

## 5. Termination

5.1 You may terminate your instructions to us in writing at any time but we will be entitled to keep your papers and documents while there is money outstanding to us for our fees, charges, expenses and disbursements.

5.2 In some circumstances we may consider that we ought to stop working for you. We will continue to act for you on a particular matter until its conclusion unless and until:

5.2.1 you do not produce requisite due diligence material (see Clause 18);

5.2.2 it is no longer appropriate or in your best interest for us to continue to act;

5.2.3 there are fees which have been billed and which are overdue for payment; and

5.2.4 a conflict arises which is not reasonably foreseeable or possible to detect at the time of taking the instruction.

5.3 If we cease to act for you we will advise you in writing and you will be responsible for all work in progress, fees and disbursements up to the date of termination and for any costs and disbursements reasonably incurred in connection with the transfer of any work to another service provider.

5.4 In the event that you terminate your instructions or for any reason the business does not proceed to completion, we shall be entitled to charge for the time spent in dealing with the business.

## 6. Non Exclusivity

We reserve the right to provide the Service(s) to any other client at our discretion.

## 7. Conflicts

7.1 We provide a wide range of services to a large number of clients and whilst we have procedures in place to try to prevent any conflict, it is possible that a conflict of interest may arise as a result. If we become aware or are notified of a possible conflict of interest, you shall be notified and if possible procedures will be put in place to ensure confidentiality and independence of advice.

7.2 We are not obliged to inform you of the nature of the conflict, if to do so might, in our opinion, compromise our duties to any other client.

## 8. Indemnity

8.1 You undertake at all times to hold us harmless and to indemnify us to the greatest extent permitted by law against all actions, suits, proceedings, claims, demands, costs, expenses and liabilities whatsoever which may arise from the provision of the Services by us.

8.2 For the avoidance of any doubt, 9.1 shall not apply in any claim by you against us.

8.3 The provisions of this Clause are without prejudice to any other limitation of liability or indemnity given in favour of us, and shall remain in full force and effect notwithstanding the termination of the Terms and Conditions.

## 9. Limitation of Liability

Should we breach any of our duties to you and become liable to compensate you, you agree that our liability is limited for any one matter in the following respects:

- 9.1 you agree to make no claim against an individual director or employee;
- 9.2 our maximum liability to you is limited to £200,000 (two hundred thousand);
- 9.3 we are not liable for indirect or consequential loss or loss of anticipated profit or other benefit;
- 9.4 you shall not be able to recover damages twice in respect of the same fact, matter or circumstance;
- 9.5 there shall be disregarded for all purposes any liability in respect of which the amount of the damages to which you would otherwise be entitled is less than £10,000 (excluding for this purpose all legal, accounting and investigation fees incurred by and on behalf of you) where the amount of damages claimed is greater than £10,000 the full amount shall be recoverable and not just the excess;
- 9.6 Save as expressly agreed in writing, we do not accept or assume any duties or liability to any person(s) other than you and we therefore exclude, to the fullest extent permissible by law, any liability to third parties.

## 10. Communication

- 10.1 We will communicate with you by way of letter, fax, email, telephone or any combination of the above at the address or number last given to us by you in communication generally.
- 10.2 We assume that you are willing to receive all general correspondence sent via email. We do not guarantee that messages, documents or files sent by email are virus-free. As such, we accept no liability or responsibility for any loss or damage, however caused, by any virus. We strongly recommend that you use virus checking software and you are deemed to be responsible for virus checking any message, document or file attachment which is sent to us by email.
- 10.3 You will inform us if you have specific confidentiality requirements, such as a requirement for encrypted emails. The cost of setting up any encryption facility on our systems may be added as a disbursement at our discretion.
- 10.4 Should you not wish us to communicate with you via any particular method, you must instruct us accordingly.
- 10.5 We reserve the right to record telephone calls.

## 11. Storage of Client Documents

- 11.1 After the completion of any matter, we are entitled to retain all papers and documents which have come into existence in the course of our acting for you until all fees and disbursements have been settled in full.
- 11.2 Thereafter, we will keep all documents, correspondence, memoranda and notes which have been created in the course of the instruction for such period as we consider appropriate. During this period we reserve the right, but have no obligation, to make electronic copies of any such documents, correspondence, memoranda and notes and, save for original signed documents, we reserve the right to destroy hard copies and store the remainder for filing electronically. After the period of continued retention (whether in electronic form or otherwise) of such documents

correspondence, memoranda and notes (save for original signed documents) we have the right to destroy all such files, unless you have requested in writing to the contrary at or prior to the conclusion of any matter in question. In accepting these Terms and Conditions you consent to the destruction of such files.

- 11.3 Should we need to retrieve files from storage, either in relation to new instructions to act for you (where the archived files are relevant) or where you have asked us to retrieve specific documents or papers, we reserve the right to charge for such services.

## 12. Website and Intellectual Property

- 12.1 All correspondence, files and records (other than statutory corporate records) and all information and data held by us on any computer system is the sole property of the Company for our own use and you acknowledge that you have no right of access or control over such information.
- 12.2 Our website ([www.collasdayip.com](http://www.collasdayip.com)) and all material contained in it, provides general information only. None of its content constitutes legal or professional advice, and it should not be relied upon as such. We do not accept responsibility for any loss which may arise from reliance on information contained in this website.
- 12.3 We do not guarantee that documents or files within this website are virus-free. As such we accept no liability or responsibility for any loss or damage however caused, by any virus. We strongly recommend that you use virus-checking software when using our website. In addition, you are responsible for virus-checking any document or file attachment that you send to us via the website. We are not responsible for the content or privacy policies of any external internet websites linked to this website. We do not endorse any information contained in any external internet sites and the links on this website do not imply any association with the policies of the organisations responsible for such websites.

## 13. Data Protection

- 13.1 We are registered as a holder of personal data in relation to our clients and contacts under the Data Protection Legislation. We shall ensure that any personal data gathered under the Terms and Conditions will be processed in accordance with the requirements of the Data Protection Legislation. We reserve the right to use any data for marketing and promotion of other services offered by us, unless requested in writing by you not to do so. Your personal data is not sold or rented to third parties, although on occasion it may be passed to third parties for marketing purposes or to mailing houses or similar third parties who act on our behalf. You can opt out of receiving these various communications, or update any of its personal data by contacting us using the details below:

Collas Day IP Management Limited  
 PO Box 140  
 Manor Place  
 St Peter Port  
 Guernsey GY1 4EW

Alternatively to email us at [marketing@collasdayip.com](mailto:marketing@collasdayip.com)

Please mark all correspondence in this respect for the attention of the Data Protection Officer.

- 13.2 Your privacy is very important to us. By instructing us, you consent to us using your personal data. You must not send us any personal data if you object to that information being processed by us in the ways described in these Terms and Conditions. No personal or sensitive data will be used other than for the purpose for which it was originally obtained and all personal data shall be processed fairly and lawfully.

13.3 We are the sole owner of all information and personal data obtained through our website and through acting for you. You may request and receive copies of any personal data that we may hold about you. Should you wish at any time to receive a copy of this information, please contact the Data Protection Officer at the above address. Any such request should be in writing and should clearly identify you. You may request that any inaccuracies in the data we hold about you be corrected, and that any personal data that we hold about you which we do not have a legitimate reason to retain, be erased.

13.4 We endeavour to ensure that all data held is accurate, complete and up-to-date. We shall hold no more data than is necessary for the purpose for which we hold it. It is our policy to review from time-to-time this data and delete those, which are no longer necessary.

## 14. Disclosure

14.1 We shall not divulge or use for our own benefit any confidential information which we may obtain in relation to your affairs, except where required in the proper discharge of our duties under these Terms and Conditions or to any person to whom we have properly delegated any of our functions to enable them to perform our duties diligently and properly.

14.2 Notwithstanding the provisions set out in Clause 14.1 above, we may disclose information which would otherwise be confidential if, and to the extent that it is:

14.2.1 required by law;

14.2.2 required or reasonably requested by any securities exchange, listing authority or regulatory or governmental body to which either party is subject or submits, wherever situated whether or not the requirement of the information has the force of law;

14.2.3 disclosed to its professional advisers, auditors and bankers of such party;

14.2.4 information which has come into the public domain through no fault of either party, where such information as was in the party's possession prior to the date it was obtained in connection with the Services or where such information was obtained or independently developed by the party on a non-confidential basis (as long as the party does not know or have reason to know of any breach by such source of any confidentiality obligations with respect to it).

## 15. Requests for quotes or marketing material

15.1 Unless otherwise requested in writing by you, we reserve the right to use the details of the identity of a client and a brief outline of the nature of the matter in its marketing material. We will inform you of our intention to use such information however, where such information is already in the public domain, we will assume that you have given your consent to the use of such information for publicity purposes.

15.2 You agree that from time to time you would be happy to participate in feedback questionnaires to help us continually improve our service to our clients and for use for publicity purposes.

## 16. Client Due Diligence and Anti-Money Laundering

As part of our Client acceptance and customer due diligence procedure and to comply with certain legislation we may need to obtain information and documentation to identify and verify your identity and the identity of certain persons connected to you, unless an exemption is available. You agree that if such information and documentation is not made available to

us when required by and in a form acceptable to us, we may without any liability terminate the engagement with you with immediate effect. The time at which such information and documentation is required, and the form in which it shall be delivered to us, shall be determined by us in our absolute discretion.

## 17. Taxation

We do not advise on any taxation issues relating to you or any matter upon which we have been instructed to advise, under Guernsey law or otherwise. Furthermore, we may request to be provided with a copy of the tax advice received by you in respect of any matter.

## 18. Non-Guernsey or Regulatory Issues

We are directly able to advise on intellectual property registration and management in Guernsey, Jersey, the UK and the EU and indirectly elsewhere through our associated agents.

## 19. Force Majeure

We shall bear no liability for loss, damage or delay howsoever arising caused by circumstances outside its control of whatsoever kind.

## 20. Partial Invalidity

If, at any time, any provision of these Terms and Conditions is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of these Terms and Conditions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired by it.

## 21. Joint and Several Liability

Where the Client is more than one person:

21.1 each such person hereby appoints the other such person(s) to act as his agent to exercise full power and authority in connection with the Services on his behalf;

21.2 the obligations of the Client in connection with the matter shall be joint and several; and

21.3 where we communicate with one of the parties (which comprises the Client), such communication will be deemed to be all of the parties (which comprise the Client) and it shall be assumed that such party is authorised to give instructions to us on behalf of each party.

## 22. Arbitration

22.1 The Company and the Client shall use all reasonable endeavours to negotiate in good faith and settle amicably any dispute arising from or in connection with these Terms and Conditions.

22.2 We may elect to submit any dispute between the parties, arising from or in connection with these Terms and Conditions, and which is not settled by agreement in writing between the parties within thirty days after it arises, to arbitration in accordance with the arbitration rules of the London Court of International Arbitration ("Rules") effective on the date of the Client's instructions. If we so elect to submit any dispute to arbitration, you will be bound by this election.

22.3 Any such arbitration shall be conducted:

22.3.1 in Guernsey in the English language; and

22.3.2 by a single arbitrator to be agreed between the parties or, failing such agreement within thirty days of the election to submit the relevant dispute to arbitration in accordance with this clause, by a single arbitrator appointed by the President for the time being of the London Court of International Arbitration.

The decision of any such arbitrator shall be final and binding upon the parties (save in the case of fraud).

### 23. Jurisdiction

The construction, validity and performance of these Terms and Conditions shall be governed in all respects by the Laws of the Island of Guernsey. The Firm and the Client (except to the extent that a dispute is submitted to arbitration) submit to exclusive jurisdiction of the Courts of the Island of Guernsey.