

The Wood Shop Limited Terms of Engagement

1. Recital of Appointment

The instructing party(s) detailed on the Contract Agreement has appointed The Wood Shop Limited to render advice and services in accordance with these Terms of Engagement.

2. Definitions

Unless the context requires otherwise:

- (a) 'Appointor' means the solicitor(s) or parties(s) instructing the Expert.
- (b) 'Expert' means the person appointed to provide advice and services, which may include the giving of expert evidence.
- (c) 'Client' means the person(s), firm, company or public body on whose behalf the Expert is being instructed.
- (d) 'TWS' means The Wood Shop Limited.
- (e) 'Assignment' means the matter(s) referred to the Expert for advice to which these Terms of Engagement apply.
- (f) 'Fees' mean (in the absence of written agreement to the contrary) the reasonable charges of the Expert based on his or her normal hourly/daily rate for work of the type instructed and including VAT where applicable.
- (g) 'Disbursements' mean all reasonable and appropriate costs and out-of-pocket expenses incurred by the Expert in carrying out the Assignment, including travel, refreshments and, should an overnight stay become necessary, hotel accommodation. VAT will be charged where applicable.

3. The Instructions

The Appointor will:

- (a) provide the Expert with full and timely written instructions which clearly state:
 - (i) whether the Expert is being instructed on the Appointor's own behalf or that of one of the parties to the dispute or as a Single Joint Expert pursuant to Civil Procedure Rule 35.7
 - (ii) the purpose for which the Expert's advice and services are needed, including a description of the matter on which they are being sought
 - (iii) which factual aspects of the matter may be in dispute
 - (iv) whether the advice and services are to be provided in accordance solely with information supplied or will require independent investigation by the Expert
 - (v) the precise kind of expertise called for
 - (vi) the particular questions that are to be addressed
 - (vii) whether the Expert will be expected to confer with experts instructed on behalf of other parties with a view

to reaching agreement on the issues or narrowing those in dispute

(viii) whether the Expert is to prepare a report for the advice of the Appointor and/or his Client or for use in court, and, if the latter, whether a draft version needs to be submitted first of all

(ix) any time constraints for the provision of the advice, the production of the report, etc.

(b) provide the Expert with such basic additional information as names, addresses, telephone numbers and dates of incidents.

(c) supply the Expert with good-quality copies of all relevant documents, specifying which (if any) may not be mentioned in the report the Expert has been asked to prepare.

4. Obligations of the Appointor

The Appointor will:

- (a) inform the Expert by whom his or her fees are to be paid and whether the Appointor needs to obtain authority to incur the estimated fees and disbursements before confirming the Expert's instructions.
- (b) in legal aid cases:
 - (i) notify the Expert that a funding certificate or legal aid order has been applied for, granted or amended
 - (ii) apply to the Area Office of the Legal Services Commission for prior authority to incur the Expert's anticipated fees and disbursements and immediately advise the Expert should this authority be refused
 - (iii) apply to the Area Office for interim payments on account to settle the Expert's invoices within the agreed time scale.
- (c) in privately funded cases ensure that the Expert's fees and disbursements are paid within the agreed time scale, whether or not the Appointor has been placed in funds by the Client.
- (d) respond promptly to any reasonable request from the Expert for, *i.a.*:
 - (i) clarification of instructions already given
 - (ii) further information or documents
 - (iii) permission to incur expense additional to that initially estimated
 - (iv) authority to engage others to undertake part of the assignment.
- (e) not alter, or allow others to alter, the text of the Expert's report(s) in any way without the Expert's permission.
- (f) give prompt written warning of every meeting or hearing that the Expert is, or may be, required to attend and immediate notification should they be cancelled.

Obligations of the Appointor continued...

(g) keep the Expert informed as to the progress of the case and its outcome.

(h) not use, or allow others to use, the Expert's report(s) for any purpose other than litigation in the matter on which the Appointor has sought the Expert's advice and services.

5. Obligations of the Expert

If the Expert is required to provide expert evidence, he becomes subject to the provisions of the Civil Procedure Rules that relate to experts. In such circumstances the Expert's primary duty would be to the Court and his evidence must be seen to be independent, objective and having no bias towards the party responsible for paying his or her fees. Subject to these overriding considerations, the Expert will:

(a) at all times use reasonable skill and care in carrying out the instructions he or she has accepted.

(b) perform only those tasks for which he or she has the requisite qualifications and experience to undertake, and the resources needed to adequately fulfil them within the allotted time span.

(c) keep detailed time-sheets and records of tasks undertaken.

(d) promptly notify the Appointor of:

(i) any conflict of interest that would disqualify the Expert or render it undesirable for the Expert to have continued involvement with the case

(ii) any requirement the Expert perceives for the Appointor to employ additional expertise.

(e) endeavour to make him or herself available for all hearings, meetings or other necessary engagements for which he or she has received adequate notice.

(f) not negotiate with the opposing party or their advisers unless specifically authorised to do so by the Appointor or instructed to do so by order of the Court.

(g) if requested by the Appointor, provide before the hearing full and complete details of his or her costs to trial

(h) not without good cause discharge himself or herself from the appointment as Expert.

(i) at all times, both during and after completion of the Assignment, treat all aspects of it as confidential unless authorised by the Appointor to the contrary.

6. Intellectual Property Rights

Unless otherwise agreed in writing, all rights of ownership in written reports, photographs, recordings, models and other original work created by the Expert shall remain vested in the Expert.

7. Fees and Disbursements

In the absence of written agreement to the contrary:

(a) the Appointor shall be personally responsible for payment of the Expert's fees and disbursements, whether or not the Appointor has been placed in funds by the Client (or, in legal aid cases, by the Legal Services Commission), and the Appointor shall pay them in full, notwithstanding any provisions of the Civil Procedure Rules with regard to their amount, recoverability or otherwise, and whether or not the full amount has been allowed in any assessment of the costs of the case.

(b) where payment is required prior to despatch of the report, the Appointor(s) will be notified of fees once the report is ready. The report will then be despatched following receipt of payment.

(c) alternatively, the Expert may present monthly invoices or at such intervals as he or she considers fit, and payment of each invoice will be due within fourteen days of its presentation, subject to any written waiver granted by the Expert in legal aid cases.

(d) the Expert shall be entitled to invoice and recover interest at the rate of 3% per month (or part thereof) on all overdue invoices and, in addition, the full amount of any legal and other costs incurred in recovering the money owing.

8. Cancellation Fees

The Expert shall be entitled to charge fees whenever:

(a) the Expert's time has been reserved for a specific hearing, meeting or other engagement, or

(b) specific instructions have been given to the Expert for an investigation and report and due to settlement of the matter, or for any other reason not the fault of the Expert, the reservation of time has been cancelled or the instructions withdrawn. These fees will be calculated on the basis of all time expended prior to the cancelled appointment and according to the following sliding scale:

Cancellation/withdrawal of instructions	% of agreed fee
within 7 days of the hearing/date arranged for investigation/date report required, etc	15
within 2 days of the hearing/date arranged for investigation/date report required, etc	30
within 1 day of the hearing/date arranged for investigation/date report required, etc	50

9. Disputed Fees

In the event of a dispute over the amount of the Expert's fees and disbursements, such sums that are not disputed shall be payable when due, irrespective of any counter-claim that may be alleged. That part which is in dispute can then be referred for resolution to a mediator acceptable to both parties.