

# Hoopers – Terms of Business

## The client's attention is particularly drawn to the provisions of clause 9.

### 1. INTERPRETATION

#### 1.1 Definitions:

"Business Day" means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

"Charges" means the charges payable by the Client for the supply of the Services in accordance with clause 6.

"Commencement Date" means has the meaning set out in clause 2.2.

"Conditions" means these terms and conditions as amended from time to time in accordance with clause 12.5.

"Contract" means the contract between the Supplier and the Client for the supply of Services in accordance with these Conditions.

"Client" means the person or firm who purchases Services from the Supplier.

"Client Default" has the meaning set out in clause 5.2.

"Deliverables" means the deliverables (if any) set out in the Specification produced by the Supplier for the Client.

"Document Search Services" has the meaning set out in clause 4.2.

"Genealogical Services" has the meaning set out in clause 4.1.

"Insurance Services" has the meaning set out in clause 4.3.

"Intellectual Property Rights" means patents, rights to inventions, copyright and related rights, trademarks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

"Order Acceptance Form" means the "Hoopers – Order Acceptance Form" or other written acceptance of the Order.

"Order" means the Client's order for or instructions to carry out any Services whether by email, letter, telephone or any other medium, as the case may be.

"Payment Basis" means the basis of payment chosen such as fixed fee, hourly rate or contingency as set out in the Order Acceptance Form or as agreed in writing between the parties.

"Payment Terms" means the terms on which invoices will be submitted such as weekly or monthly in arrears or on completion of the Services as set out in the Order Acceptance Form or as agreed in writing between the parties.

"Services" means the services, including the Deliverables, supplied by the Supplier to the Client as set out in the Order Acceptance Form.

"Specification" means the description or specification of the Services set out in the Order Acceptance Form and clause 4 or as otherwise provided in writing by the Supplier to the Client.

"Supplier" means G.B. Hooper & Son registered in England and Wales with company number 1775525.

#### 1.2 Interpretation:

- (a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (b) Any phrase introduced by the terms including, include, in particular or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (c) A reference to writing or written includes fax and email.

## **2. BASIS OF CONTRACT**

2.1 The Order constitutes an offer by the Client to purchase Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Supplier signs and returns the Order Acceptance Form to the Client at which point and on which date the Contract shall come into existence ("Commencement Date").

2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.5 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

## **3. SUPPLY OF SERVICES**

3.1 The Supplier shall supply the Services to the Client in accordance with the Specification in all material respects.

3.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Order Acceptance Form, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Client in any such event.

3.4 The Supplier warrants to the Client that the Services will be provided using reasonable care and skill.

3.5 The Client warrants that it is a business and not a consumer for the purposes of this Contract.

## **4. SPECIFICATION OF THE SERVICES**

4.1 In respect of any "Genealogical Services" ordered, the Supplier:

- (a) will undertake reasonable levels of research to seek to establish the identity and/or location of those persons who are or may be entitled to an estate, trust, proceeds of an estate or trust or entitled to another asset. Such research may include the tracing of trustees, co-owners of land or shareholders who are missing or otherwise absent;
- (b) will provide the Client with a final report setting out the results of the research undertaken by the Supplier within 14 days of completion of such research;
- (c) will, if certain information required by the Client is available prior to the research being completed, provide the Client with an interim report detailing such information;
- (d) is not able to warrant or guarantee that there are no heirs or beneficiaries other than those detailed in any of the Supplier's reports. For example, illegitimate heirs and other beneficiaries may not be able to be identified through normal genealogical searches.

4.2 In respect of any "Document Search Services" ordered, the Supplier:

- (a) will undertake reasonable levels of research to seek to establish the location of the legal document(s) requested and, if possible, obtain a copy of such legal document(s). Such research may include searching for wills, certificates of birth, marriage and death and other legal documents;
- (b) is not able to warrant or guarantee (a) that it will be able to establish the location of the legal document(s) requested or obtain a copy of such legal document(s) or (b) as to the authenticity of any documents obtained.

4.3 In respect of any "Insurance Services" ordered, the Supplier will assist the Client with the obtaining of various insurance policies. Such assistance may be in relation to missing beneficiary indemnity policies or missing will insurance policies.

4.4 In respect of any "General Research Services" ordered, the Supplier:

- (a) will undertake reasonable levels of research (either genealogical, probate or otherwise as applicable) within the Supplier's capabilities or expertise and, if possible, obtain the information or copies of documents requested;
- (b) is not able to warrant or guarantee (a) that it will be able to obtain the information or copies of documents requested or (b) as to the accuracy or authenticity of any information or documents obtained.

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## 5. CLIENT'S OBLIGATIONS

5.1 The Client shall:

- (a) ensure that the terms of the Order Acceptance Form are complete and accurate;
- (b) cooperate with the Supplier in all matters relating to the Services;
- (c) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
- (d) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
- (e) comply with any additional obligations as set out in the Specification;
- (f) in respect of any Genealogical Services being undertaken on a contingency basis;
  - (i) not instruct or encourage any person to undertake any research the same as or similar to those Genealogical Services; and
  - (ii) use reasonable endeavours to ensure that no research of the same as or similar to those Genealogical Services is carried out by any other person.

5.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation ("Client Default"):

- (a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations to the extent the Client Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 5.2; and
- (c) the Client shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Client Default.

## 6. CHARGES AND PAYMENT

6.1 The Charges for the Services shall be on the Payment Basis set out in the Order Acceptance Form. If no Payment Basis is chosen, the hourly rate basis will apply by default.

6.2 If on a fixed fee basis the Charges will be the fixed fee set out in the Order Acceptance Form or such other sum agreed in writing between the parties. Payment will be due regardless of the outcome of any Services.

6.3 If on an hourly rate basis:

- (a) the Charges shall be calculated in accordance with the Supplier's standard hourly fee rates, as provided by the Supplier to the Client from time to time (available on request). Payment will be due regardless of the outcome of any Services;
- (b) the Supplier's standard hourly fee rates for each individual are calculated on the basis of an eight-hour day from 9.00 am to 5.00 pm worked on Business Days.

6.4 If on a contingency basis in relation to Genealogical Services:

- (a) when the Supplier locates heirs or beneficiaries, it will offer to prove their claim in return for a percentage of their entitlement;
- (b) If unsuccessful the Supplier will not charge the Client for such Genealogical Services, but will still provide the final report of the Supplier's findings.

6.5 Except where acting on a contingency basis, the Supplier shall be entitled to charge the Client for any disbursements and expenses reasonably incurred by the Supplier or the individuals whom the Supplier engages in connection with the Services, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.

6.6 The Supplier shall invoice the Client in accordance with the Payment Terms set out in the Order Acceptance Form. If no Payment Terms are chosen, the Supplier shall invoice the Client monthly in arrears.

6.7 The Client shall pay each invoice submitted by the Supplier:

- (a) within 28 days of the date of the invoice; and
- (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and
- (c) time for payment shall be of the essence of the Contract.

6.8 All amounts payable by the Client under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being ("VAT"). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Client, the Client shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such

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additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

6.9 If the Client fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Client shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank Plc base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount.

6.10 The Client shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Client against any amount payable by the Supplier to the Client.

## 7. INTELLECTUAL PROPERTY RIGHTS

7.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.

7.2 The Client acknowledges that, in respect of any third party Intellectual Property Rights, the Client's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Client.

7.3 All Supplier Materials are the exclusive property of the Supplier.

## 8. DATA PROTECTION

8.1 Definitions in this clause:

- (a) "Data Controller" has the meaning set out in Chapter 1 Article 4 section 7 of the General Data Protection Regulation.
- (b) "Data Subject" is an individual who is the subject of personal data.
- (c) "Personal Data" has the meaning set out in Chapter 1 Article 4 section 1 of the General Data Protection Regulation and relates only to personal data, or any part of such personal data, in respect of which the Client is the Data Controller and in relation to which the Supplier is providing services under this agreement.
- (d) "Processing and process" have the meaning set out in Chapter 1 Article 4 section 2 of the General Data Protection Regulation.

8.2 The Client and the Supplier acknowledge that for the purposes of the General Data Protection Regulation the Client is the Data Controller and the Supplier is the data processor in respect of any personal data provided by the Client to the Supplier.

8.3 The Supplier shall process the personal data only in accordance with the Client's instructions from time to time and shall not process the personal data for any purpose other than those expressly authorised by the Client.

8.4 Each party warrants to the other that it will process the personal data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments.

8.5 The Client acknowledges that the Supplier is reliant on the Client for direction as to the extent to which the Supplier is entitled to use and process the personal data. Consequently, the Supplier will not be liable for any claim brought by a Data Subject arising from any action or omission by the Supplier, to the extent that such action or omission resulted from the Client's instructions.

8.6 The Supplier may authorise a third party (subcontractor) to process the personal data.

## 9. LIMITATION OF LIABILITY: THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

9.1 Nothing in the Contract shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.

9.2 Subject to clause 9.1, the Supplier shall not be liable to the Client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;

- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of damage to goodwill; and
- (g) any indirect or consequential loss.

9.3 Subject to clause 9.1, the Supplier's total liability to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to 100% of the total Charges paid under the Contract.

9.4 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

9.5 This clause 9 shall survive termination of the Contract.

## **10. TERMINATION**

10.1 Without limiting its other rights or remedies, either party may terminate the Contract by giving the other party one week's written notice.

10.2 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of that party being notified in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

10.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment.

10.4 Without limiting its other rights or remedies, the Supplier may suspend provision of the Services under the Contract or any other contract between the Client and the Supplier if the Client becomes subject to any of the events listed in clause 10.2(b) to clause 10.2(d) or the Supplier reasonably believes that the Client is about to become subject to any of them, or if the Client fails to pay any amount due under this Contract on the due date for payment.

## **11. CONSEQUENCES OF TERMINATION**

11.1 On termination of the Contract for any reason:

- (a) the Client shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Client immediately on receipt;
- (b) the Client shall return any Deliverables which have not been fully paid for;
- (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication survive termination shall continue in full force and effect.

## **12. GENERAL**

12.1 Force majeure. Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

12.2 Assignment and other dealings.

- (a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- (b) The Client shall not, without the prior written consent of the Supplier, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

### 12.3 Confidentiality.

- (a) Each party undertakes that it shall not at any time during the Contract, and for a period of three years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 12.3(b).
- (b) Each party may disclose the other party's confidential information:
  - (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 12.3; and
  - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

### 12.4 Entire agreement.

- (a) This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

12.5 Variation. No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

12.6 Waiver. A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

- (a) waive that or any other right or remedy; or
- (b) prevent or restrict the further exercise of that or any other right or remedy.

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

### 12.8 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or email.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.8(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

12.9 Third parties. No one other than a party to the Contract shall have any right to enforce any of its terms.

12.10 Governing law. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

12.11 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.