

Hazel Polka

Virtual In-house Lawyer
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Terms of business — 2020

The terms of business (“Terms”) set out in this document are the terms on which I do business with my clients. When you ask me to take on work for you, I will send you an engagement letter describing the work that you have asked me to do and the price for that work (“Engagement Letter”). These Terms will form part of the agreement between me and each client and should be read together with the Engagement Letter. *Please note that, if you engage me as a mediator, a mediation agreement will apply instead of these Terms.*

1. Defined terms

“Agreement” means the Engagement Letter and these Terms, taken together.

“I” or “me” means Hazel Polka, of Rue du Battoir 19, 1269 Bassins, Switzerland.

“You” means the person receiving the Services.

“Services” means the services described in the Engagement Letter and any additional services of a similar nature agreed upon in writing after the date of the Engagement Letter.

2. Scope of services

I agree to provide you with the Services on the terms set out in the Agreement.

Any other services that I may provide are outside the scope of the Agreement and will be subject to a separate agreement.

3. Changes to your objectives

The primary aim of the Agreement is to help you achieve your business objectives. If those objectives change, it could impact the Services. If this happens, you must notify me as soon as possible.

4. Provision and use of Information

To provide the Services, I rely on the information you provide to me. If that information is inaccurate or incomplete, it will affect the Services. You must inform me promptly if any information that you have provided to me is incorrect or incomplete, or if it becomes obsolete.

I undertake to keep your information strictly confidential, and not to disclose it to any third party, except where: (a) disclosure is necessary to perform the Services, (b) I am required by law to disclose that information, or (c) to my professional indemnity insurers. Any information that comes into the public domain other than through breach by me of the Agreement will no longer be covered by this confidentiality requirement.

Any advice that I give you is solely for your benefit and for the purpose you have explained to me. It cannot be relied upon by any other person or for any other purpose.

By agreeing to my provision of the Services, you agree that you will not disclose the content of the Services to any third party without first obtaining my written consent.

5. Standard of Care

I will use all reasonable skill and care in providing the Services. This includes, but is not limited to, responding to your queries within the timeframe committed by me and notifying you promptly if I become unable to provide the Services for any reason.

6. Changes in Law

If there is any change in laws or regulations after I have finished providing the Services or after the Agreement is terminated, I will be under no obligation to advise you on the new laws or regulations.

7. Third parties and subcontractors

I will provide the Services in person unless you have agreed in writing that I may use a named sub-contractor to represent me. Any sub-contractor will be appropriately qualified and will perform the Services in accordance with the Agreement.

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8. Conflicts of Interest

Where you have engaged me to provide legal advice, I will not represent any other client whose interests are adverse to yours.

9. Fees and expenses

My fees will be charged on the basis set out in the Engagement Letter. I reserve the right to alter my fees annually in accordance with the corresponding changes in the Swiss Consumer Price Index (and, to the extent applicable, variations in exchange rates). Any alterations will not affect projects for which I have agreed a fixed fee.

Fee estimates are given in good faith but are not legally binding unless I have agreed a fixed fee. If you have engaged me on a retainer, any hours that I spend in addition to the retainer will be charged at my prevailing hourly rate. I will ask for your agreement before spending additional time.

I charge for travel and accommodation expenses at cost and will, on request, provide evidence of the expenses I have incurred.

10. VAT

All prices quoted or charged are exclusive of VAT. If VAT is payable, it will be shown as a separate item on my invoice.

11. Payment terms

As a small business, I need to be paid promptly. For large projects, specific payment terms may include a requirement for an up front deposit. For ongoing work charged on a time/costs basis, I invoice monthly. My payment terms are 30 days from the date of invoice. I reserve the right to charge interest at the Swiss statutory rate for any payments that are late. If you pay me late on 2 successive occasions, I also reserve the right to increase my fees to cover costs incurred as a result of the late payments. I may, in addition, refuse to perform any further Services until your account is up to date.

12. Communication

I expect most communications to be electronic, by telephone, videoconference or in person. Emails that I send are not encrypted, and I take no responsibility for loss or damage arising from interception, redirection, copying or viruses in electronic communications, unless these are the result of my negligence or my deliberate wrongdoing. If you share files with me via a cloud-based service, the service provider's terms and conditions will apply. If you are concerned about the security of electronic communications, please notify me so that we can discuss alternatives.

13. Documents and Archiving

I do not hold original documents on behalf of my clients. Where possible, I avoid printing, and will retain only electronic copies of documents that you send me. Unless you instruct me to do otherwise, I will retain these electronic copies on a secure server for up to 10 years after the end of the Agreement, depending on the limitation (prescription) periods applicable to the matter in connection with which the documents were produced.

14. Intellectual Property

I retain all intellectual property rights in any documents and other materials that I produce. Where the Services include the creation of documents for general use within your organisation - for example, a presentation or a policy - you are free to disseminate these for use by your organisation only.

15. Liability

Except where my gross negligence or deliberate misconduct have caused death or personal injury, or in the case of fraud on my part, my total liability for loss or damage caused by me will be limited to the greater of the amount payable by you for the Services and the total amount payable by my

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insurers for the relevant liability. I do not accept liability for indirect or consequential losses of any kind.

16. Data Protection

I take reasonable precautions to protect against unauthorised and unlawful processing of personal data and against accidental loss or damage to personal data. I may need to process personal data or to disclose it to third parties for the following purposes: obtaining credit checks, client identification, checking for conflicts of interest and performing the Services. In the unlikely event that I need to transfer personal data outside Switzerland or the European Union for any of these purposes, I will first obtain the consent of the person whose data it is (or your consent on their behalf if the data subject is your employee). By agreeing to my performance of the Services, you agree to my processing of personal data on these terms.

17. Bribery and Money Laundering

The principle on which I do business is that of absolute integrity. I will not advise on any transaction that appears to me, in my reasonable judgment, to be illegal or corrupt. I will not accept any funds that are connected with the payment of a bribe or were otherwise illegally obtained. For the purpose of the Agreement, "bribe" has the meaning given to it by the United Kingdom Bribery Act 2010.

18. Duration and Termination

Our Agreement will begin on the earlier of the date of signature by you and the date on which I begin performing Services at your request and will, unless terminated earlier, end automatically when the Services have been provided and paid for.

Either you or I may terminate the Agreement at any time by giving written notice to the other, subject to provision by me of any Services promised before the date of termination and payment by you of any fees outstanding on the date of termination. If at any time, however, I have reasonable grounds to believe that any matter on which I am advising relates to an illegal, unethical or corrupt transaction, or if I discover a previously undisclosed conflict of interests between you and another client, I may, without incurring any liability, decline to provide any further Services, even if I had previously agreed to provide those Services.

19. Disputes

If any dispute arises between us in relation to the Services, we will use our best efforts to resolve it by negotiation in good faith. If there is no resolution within 30 days of the start of the negotiation, we agree that this clause operates to submit the dispute to mediation. Neither you nor I will start any court proceedings unless the mediation fails to settle the dispute or the other party has refused to participate in a mediation. Notwithstanding the requirement to mediate, either you or I may apply to any court of competent jurisdiction for emergency relief, such as an injunction, to protect our rights and interests.

20. Applicable law and jurisdiction

The Agreement will be governed and interpreted by the laws of the country set out in the Engagement Letter. If the Engagement Letter does not specify a governing law, the Agreement will be governed by English law. Subject to clause 19 above, the English courts will have exclusive jurisdiction to hear any dispute that may arise in connection with the Agreement.

21. Force Majeure

Neither you nor I will have any liability for any delay in or failure to perform our obligations under the Agreement where the delay or the failure results from any event beyond our reasonable control. For the avoidance of doubt, this includes war, riot, civil commotion, fire, flood, storm, armed conflict, terrorist attack, nuclear, chemical or biological contamination.

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22. Whole Agreement

The Agreement, including the Engagement Letter, constitutes the entire agreement between you and me and supersedes any previous agreement between us relating to its subject matter.

You and I agree that in entering into the Agreement neither of us relies on, and will have no remedy in relation to, any statement, representation, warranty or understanding which is not expressly set out in the Agreement.

Nothing in this clause 22 will limit or exclude liability for fraud.

23. Severability

If any part of the Agreement is declared void, illegal, or unenforceable, the remainder of the Agreement shall remain valid and enforceable to the extent permitted by law. If this occurs, you and I will use our best efforts to replace the invalid or unenforceable provision by a provision that, to the extent permitted by law, achieves the purposes originally intended.

24. Variation

No amendment to the Agreement shall be binding unless set out in writing, expressed to amend the Agreement and signed by both you and me or by our authorised representatives.

25. Waiver

The rights of each of us under the Agreement:

- (a) may be exercised as often as necessary;
 - (b) are cumulative and not exclusive of rights or remedies provided by law; and
 - (c) may be waived only in writing and explicitly;
- and delay in exercising or failure to exercise a right is not a waiver of that right.

26. Notices

Notices or other documents to be served under the Agreement may be delivered personally or sent by post, private courier or email to the party to be served at its address set out in the Engagement Letter or any other address which it may have notified to the party sending the notice. All notices and similar communications must be in writing and in English.

Notices and similar communications served in accordance with this clause 26 will be deemed to have been given:

- (a) if delivered personally, on the date and at the time of delivery;
- (b) if sent by courier, when the courier first attempts delivery; and
- (c) if sent by email, on the date and at the time of the delivery notice generated by the recipient's server.

27. Counterparts

The Agreement may be executed in any number of counterparts. This has the same effect as if the signatures on the counterparts were on a single copy of the Agreement.