

## Will Writing Terms & Conditions

The terms of the agreement between You and Us are set out in the following Terms and Conditions. These are important. You should read them carefully to make sure You are happy with them. If there is anything You do not understand, You should seek independent legal advice. These Terms and Conditions apply to users of Our telephone based and online will writing service.

### 1. Definitions and Interpretation

**'Fee'** means the money payable by You to Us for the Service, which will be held on account of our fee until the agreement between You and Us starts. The amount of the Fee will be notified to You by telephone when You provide Your instructions or set out on Our website.

**'Instructions'** means Your instructions on the terms of Your will, whether provided verbally by telephone, online via Our website or in writing.

**'We', 'Us' or 'Our'** means Damsons Estate Administration or Our agent or any third party instructed by Us to act on Our behalf in the provision of the Service (including anyone to whom We transfer, subcontract or assign Our rights and obligations under this agreement in accordance with clause 11.2).

**'Service'** means the will writing service provided by Us and the provision of Your will, as more particularly set out in clause 6.

**'You' or 'Your'** means you, the person who contracts with Us for the provision of a will using the Service.

These Terms and Conditions are governed by and will be construed in accordance with English law. Wills will be drafted in the English language and under and in compliance with English law only (unless we notify You otherwise).

### 2. Agreement

2.1 You have asked Us, and We have agreed to provide You with a will writing service, as described in these Terms and Conditions.

2.2 We will only accept instructions from You if You are over 18 years of age. We cannot provide the Service to You if:

- (a) You would like Your will to be governed by the law of another country (unless we notify You otherwise) or religious laws; or
- (b) You would like Your will drafted in a language other than the English language; or
- (c) You wish to leave specific instructions relating to the continuation of a business.

2.3 We will only draft Your will in relation to assets situated within the United Kingdom, unless We notify You otherwise. If You have any assets situated outside the United Kingdom, You will require advice from a specialist within the relevant jurisdiction.

2.4 For users of Our telephone based will writing service, the agreement between You and Us will start once we receive your completed instructions and Your agreement for Us to provide this service to You. You will receive these Terms and Conditions with our welcome letter. We may cancel this agreement at any time, pursuant to clause 9, by giving You notice in writing if any payment for the Fee is returned unpaid from Our bank, or is not paid by You in full, or for any other reason set out in clause 9

2.5 For users of Our online will writing service the agreement between You and Us will start once We have received Your completed instructions, together with the Fee in full and in cleared funds, or if We have agreed terms upon which the Fee will be paid. When You submit Your instructions to Us, You confirm that You have read and accepted these Terms and Conditions. We may cancel this agreement at any time, pursuant to clause 9, by giving You notice in writing if any payment for the Fee is returned unpaid from Our bank, or is not paid by You in full, or for any other reason set out in clause 9.

2.6 We reserve the right, at Our absolute discretion, to decline to provide the Service to You at any time. Where We do so, We will refund the Fee paid by You.

### **3. Your cancellation rights – *Your attention is specifically drawn to this clause***

Under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, the provision of Your will has been tailored specifically to Your needs based on the instructions You have provided. Therefore due to the bespoke nature of the goods We offer and provide, You shall not have any cancellation rights.

### **4. Restriction and Limitation of Liability – *Your attention is specifically drawn to this clause***

4.1 We do not accept any liability for:

- (a) Any loss arising in any way from acting on Your instructions (unless caused by Our own default, fraud, negligence or breach of this agreement by Us);
- (b) Any loss arising from the invalidity of Your will, whether due to a lack of testamentary capacity or knowledge and approval or in the event of undue influence, fraud or forgery;
- (c) Any loss arising from Your failure to execute the will correctly (or in good time, or at all) or Your failure to comply with Our instructions in any respect;
- (d) Any loss arising as a result of any future change in Your personal circumstances, or the circumstances of anyone named in Your will, or any change in the law (including taxation legislation), which may affect the provisions of Your will;
- (e) Any tax incurred or imposed on Your estate as a result of the interpretation or effect of Your will by HM Revenue & Customs or any other tax authority;
- (f) Any loss arising from any delay on Your part or any third party in providing information or arising from the supply of incorrect or inaccurate information by You or any third party;
- (g) Any loss resulting from matters beyond Our reasonable control, including the loss or delay of Your will in the post; or
- (h) Any loss arising in respect of the content of advice given, or goods or services offered by Our website or any website linked to Our website.

4.2 Should any beneficiary under Your will suffer a loss as a result of any of the matters set out in clauses 4.1(a) - (h) (inclusive), You or Your estate shall indemnify Us and keep Us indemnified in respect of any claim made by that beneficiary.

4.3 Our total liability for all claims of any kind, including liability arising out of Our negligence under this agreement, to You or anyone named in Your will, including any beneficiary under Your will, (except in connection with or arising out of a deliberate breach of contract or wrongdoing, total failure of performance, dishonesty or fraud by Us) shall not exceed a sum equal to ten times the Fee. This clause does not affect Our liability for death or personal injury resulting from Our negligence.

4.4 Nothing in this agreement shall affect Your statutory rights.

## **5. What You pay**

5.1 You will pay the Fee (plus VAT, where applicable) when Your instructions are submitted to Us, by credit card, debit card or via PayPal, or upon payment terms which We agree with You. The Fee will be held on account of our fee until the agreement between You and Us starts.

5.2 The Fee includes one engrossed copy of Your will (or one engrossed copy per testator in the case of mirror wills). If You change Your instructions after the will has been prepared, We shall be entitled to charge an additional fee for producing and issuing a further copy of Your will. The amount of any additional fee will be notified to You before such additional work is carried out.

5.3 If Your instructions are complex or if any ancillary services are carried out in addition to preparing Your will, You may incur additional fees – such additional fees will be notified to You in writing in advance.

5.4 If, for any reason, You decide not to proceed with or sign a will that We have prepared We shall be entitled to retain the Fee which You have paid, in full.

## **6. What We will do**

6.1 After We receive complete instructions from You and payment of the Fee in full, We will prepare Your will in accordance with Your instructions.

6.2 Instructions are only accepted verbally by telephone, online via Our website or in writing. Instructions are not accepted by fax or email, unless specifically agreed by Us. We reserve the right to make further enquiries with You where necessary to enable Us to provide the Service, however We shall not be obliged to ask any supplementary questions in any circumstances.

6.3 We will send Your will and any associated documents (including instructions for execution of Your will), by post or email to the address provided by You. We will usually provide Your will within 15 working days of receiving payment of the Fee in full (provided that Your instructions are complete and We have no outstanding queries). For complex situations or where We are relying on a third party to provide Us with necessary information, We cannot confirm set timescales, however We will keep you updated on the progress of the drafting of your will.

6.4 We will hold and maintain Professional Indemnity Insurance cover of at least £2,500,000.

6.5 We will provide customer support services by telephone on 0800 088 4670.

## **7. What We do not do**

7.1 We do not provide legal, tax or investment advice.

7.2 We are not responsible for the appropriateness of Your will and the Service We provide does not involve the provision of any advice in connection with the terms of Your will or Your personal circumstances, in particular:

(a) How Your assets should be disposed of or the effectiveness of the dispositions that You choose to make; or

(b) The legal or taxation consequences of the dispositions in Your will.

7.3 We are not responsible for verifying any of the information provided in Your instructions, including Your identity, age or testamentary capacity (i.e. that You understand the nature and

effect of making a will, the extent of Your estate and the claims of those who might expect to benefit from Your will). We will prepare Your will relying on the information in Your instructions and We do not have any obligation to ask supplementary questions. By way of example, if You instruct Us that You are happy for a failed specific gift to fall into residue, We are not obliged to enquire about any other specific legatees. Furthermore, where You instruct Us that You hold property jointly, We shall be entitled to assume and proceed on the basis that the property is held legally and beneficially as joint tenants, unless You instruct Us otherwise.

- 7.4 We are not responsible for the supervision (or verification) of the execution of Your will because We will not be present when Your will is executed (see clauses 4.1 and 8.6).
- 7.5 We are not responsible for the future review of Your will. Any changes in Your personal circumstances, or the circumstances of anyone named in Your will, or any change in the law (including taxation legislation) should be considered by You and We are not obliged to contact You in these circumstances.
- 7.6 What We say on Our website about what We do or what We say about Our compliance with any third party code of conduct, is for illustration purposes only and will not bind Us. Our obligations to You are set out in these Terms and Conditions only.

## **8. Your obligations**

- 8.1 You must disclose all relevant information and give complete and accurate answers in Your instructions. If any of the information is not accurate and/or complete then it may affect the validity of Your will and/or the disposal of Your estate under the will may not be correct. It is Your responsibility to check the information submitted to Us for accuracy and completeness.
- 8.2 You will pay the Fee referred to in clause 5.1 when Your instructions are submitted to Us or upon the payment terms which We agree with You.
- 8.3 You will sign any necessary forms of authority or other documents so that We may carry out Our obligations under this agreement, including contacting third parties where necessary.
- 8.4 You will notify Us if You have not received Your will within 3 weeks of making full payment of the Fee.
- 8.5 You must read the will which We prepare for You to confirm that it reflects Your intentions and wishes and to confirm that the names and addresses of the people referred to in the will are correct. Any errors should be notified to Us immediately, and no later than 14 days after receipt of the will. Any spelling or other drafting error on Our part will be rectified promptly by Us on notification of such error, free of charge. You must not make any amendments to the will and You must not copy the will (in any format).
- 8.6 You will strictly follow the instructions which We send to You for the execution of Your will. If the will is not signed and witnessed correctly, it may be invalid.
- 8.7 You are responsible for the cost and safe delivery of any documents to Us, including the executed will. We will not accept any responsibility for loss in transit to Us.
- 8.8 By agreeing to these Terms and Conditions:
  - (a) You authorise Us to provide the Service to You;
  - (b) You agree to provide Us with the necessary information and documentation (if requested) to enable Us to ensure that Our client verification requirements are met;

- (c) You confirm that You are not subject to coercion or undue influence, that You have sufficient mental capacity to make and execute a will, that You are able to read and write and that You understand the nature and purpose of making a will, including that by executing the will We prepare for You, You are revoking all previous wills;
- (d) You understand that, if You are contemplating marriage or entering into a civil partnership, unless You have specifically notified Us of such contemplation, this will not be accommodated in the will We will prepare for You and Your will shall be automatically revoked on marriage or entering into a civil partnership. You will need to draft a new will in those circumstances; and
- (e) When applying for a mirror will, You and Your spouse, partner or civil partner will receive shared information, including sight of each other's will. You give Your consent to such sharing of confidential information.

8.9 If You register for an account with Our website, You will be asked to choose a user ID and password. Your user ID must not be liable to mislead and You must not use Your account or user ID for or in connection with the impersonation of any person. You must keep your password confidential. You must notify us in writing immediately if you become aware of any disclosure of your password.

## 9. How We may end this agreement

We may end this agreement at any time by giving You 14 day's written notice if any of the following happen (and We will tell You the reason for the notice):

- (a) If Your Fee remains unpaid for 7 days after the agreement between You and Us has started;
- (b) If You fail in any important way to do what You agree to do in clause 8 above and do not rectify the problem within 7 days of Us telling You about it;
- (c) If the information You have given Us turns out to be, or We suspect that it is, materially incorrect, incomplete, fraudulent or otherwise misleading;
- (d) If We cannot perform Our obligations under this agreement because of something beyond Our reasonable control. In this case, We will do everything We reasonably can to let You know as soon as possible; or
- (e) You do or fail to do something, which in Our reasonable opinion could damage Our reputation or otherwise bring Us into disrepute.

## 10. Complaints

If at any time You are not happy with the Service that We have given to You, in the first instance, please telephone the business area You usually deal with in order to explain Your concerns. If You want to write to Us, please send Your complaint to: Customer Services Manager PO Box 522, Manchester, M16 6EP. A copy of Our internal complaints procedure is also available upon request from the contact details given above. Should the matter not be resolved to Your satisfaction, You may refer the matter in writing to: Head of Compliance PO Box 522, Manchester, M16 6EP. Following this procedure does not affect Your statutory rights.

## **11. Other information**

- 11.1 Any notices You serve under these Terms and Conditions will be valid if sent by first-class post to the address shown in these Terms and Conditions. We may give any notice to You under these Terms and Conditions by writing to You at Your last address that You have provided to Us. Any such notice shall be deemed to have been given if sent by first class post 48 hours after posting. This shall not affect any rights You or We have to give notice by any other method.
- 11.2 We may assign, subcontract or transfer any or all of Our obligations under this agreement to another person, firm or organisation which provides a similar service to the Service provided by Us, subject to Your prior consent (such consent not to be unreasonably withheld or delayed). If We do this, We will write to You to let You know the details.
- 11.3 To the extent that copyright (or any other intellectual property rights) arise on Our website, in the Service and/or the will which We prepare for You, We shall own such copyright (and any other intellectual property rights) and these shall not transfer to You without Our prior written agreement.
- 11.4 Any advice We may give is confidential to You and We shall not be responsible if You make it available to third parties. No person who is not a party to the agreement embodied in these Terms and Conditions shall, in the absence of express provision to the contrary, have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms, but this does not affect any right or remedy of a third party which exists or is available other than under that Act.
- 11.5 We shall not have any liability for any delay or failure in performance under these Terms and Conditions resulting from acts beyond Our reasonable control, including but not limited to acts of God, acts or regulations of any government or authority, war or national emergency, terrorist activities, industrial action, accident or fire.
- 11.6 Any provision of these Terms and Conditions which is declared void or unenforceable by any competent authority or court shall, to the extent of such invalidity or unenforceability, be deemed severable and the other provisions of these Terms and Conditions shall continue unaffected.
- 11.7 Damsons Estate Administration Limited is registered in England and Wales with company number 08047449. Registered office and principal place of business is Unit 4 Foundry, 325 Ordsall Lane, Salford, M5 3AN

## **12. Data protection statement**

- 12.1 We know how important it is to protect Your Personal Information. Any Personal Information We hold will be subject to the appropriate legal safeguards under the Data Protection Act 1998. When You apply for the Service, You will provide Us with information about Your financial and personal circumstances ("Personal Information"). Please also see our privacy policy at <https://damsonsestateadministration.co.uk/Privacy.pdf> which sets out the type of information We may collect from You via Our website. Any information You give to Us will be confidential. This Personal Information will only be passed on to such third parties as are required to know it for the purposes of performing the obligations under this agreement, including Our professional advisers and the executors of Your will and/or the executors' professional advisers. We will not pass this information to anyone else without Your express permission, except in accordance with Our data protection statement and to third parties You have authorised Us to deal with or their authorised agents, or where We are required to do so by operation of law. We will process Your Personal Information in accordance with the terms and for the purposes of this agreement.

- 12.2 Where You provide Us with personal and financial information relating to others, for example, family members, dependants, joint asset holders, beneficiaries, executors, trustees or other professional advisers, You confirm that You have their consent or are otherwise entitled to provide this information to Us and We can use it in accordance with this agreement.
- 12.3 We may share Your Personal Information within Our company and with any other associated company within Our group in order to fulfill Our obligations under this agreement. We may communicate with You by post, telephone, fax, email or SMS text using the contact details that You have provided. We may also transfer to and store Your data in countries outside of the European Economic Area (“**EEA**”) for the purposes of providing the Service to You. Your data may also be processed by staff operating outside the EEA who work for Us or for one of Our suppliers. Such staff may be engaged in among other things, the fulfillment of Your order and the provision of support services. By providing Your Personal Information, You agree to this transfer, storage or processing. We will take all steps reasonably necessary to ensure that Your data is treated securely and in accordance with this data protection statement.
- 12.4 We may also use Your personal information for marketing purposes to identify and provide You by post or telephone, and where you have provided consent to receive email or SMS text, with details of similar products and services which We deem could be of interest to You.
- 12.5 We will only share your details for marketing purposes with other businesses where you have given your consent. If You do not want to receive any marketing information from Us, an associated company or third party please contact us to update your marketing preferences. We will only disclose Your Personal Information in accordance with relevant laws or regulations (including fraud prevention).
- (a) in the event that We sell or buy any business or assets, in which case We may disclose Your Personal Information to the prospective seller or buyer of such business or assets; or
  - (b) if Damsons Estate Administration Limited or substantially all of its assets are acquired by a third party, in which case Personal Information held by Us about Our customers will be one of the transferred assets.
- 12.6 You may ask Us for a copy of the information We hold about You. Please note that under the Data Protection Act 1998 We may charge You a maximum fee of £10.00 for this request. You may also ask Us to amend Your Personal Information if it is inaccurate. Please send requests in writing to: Data Protection Manager, Damsons Estate Administration Limited PO Box 522, Manchester, M16 6EP.
- 12.7 We may change Our privacy policy from time to time (details of which can be found on Our website <http://damsonsfutureplanning.co.uk/Privacy.pdf>). We may record and monitor calls for service quality.

### **13. Document storage and retrieval**

*For the avoidance of doubt, the provisions in clauses 10 and 11 shall apply to the document storage service to the same extent that such provisions apply to the Service.*

- 13.1 In addition to the Service set out at clause 6, We offer an original document storage service. The annual fee for this service is set out on Our website and/or in the pack of information We will send to You and such annual fee will remain in force until further notice. If You have a will stored with Us, You may request amendments to Your existing will from time to time. Our fees for making such amendments and our fees for the retrieval of Your will from storage shall be charged at the prevailing rate in accordance with our price list at the relevant time, which shall be available on request.
- 13.2 Any outstanding storage or other fees must be paid before We will release Your will. We will return Your will to You at the address on the will on receipt of Your written request and the appropriate fee(s), or Your new address (subject to proof of change of address) where notified by You.
- 13.3 An executor, trustee or other authorised personal representative may retrieve the will on production of a death certificate and proof of their identity and address.
- 13.4 We will not accept any responsibility for any loss of documents beyond Our control, including but not limited to, acts of God, acts or regulations of any government or authority, war or national emergency, terrorist activities, industrial action, accident or fire.