

Terms & Conditions

1. Definitions

- 1.1. "Administrator" shall mean the person to whom Letters of Administration have been granted and references to Administrator shall include Executor and vice-versa.
- 1.2. "Asset Search" means the Service carried out in accordance with 5.1 below.
- 1.3. "Beneficiary Contingency basis" means a Service to perform genealogical research carried out in accordance with 5.2.3.1 below.
- 1.4. "The Commencement Date" shall mean the date on which these Terms and Conditions came into force.
- 1.5. "Consumer" means a natural person acting for purposes that are outside his business, trade or profession.
- 1.6. "Contract" means a legally binding contract between you and us.
- 1.7. "the Deceased" means the person whose estate you are dealing with.
- 1.8. "Executor" means the person appointed by a Testator in their will to administer their estate once they have died and references to Executor shall include Administrator and vice-versa.
- 1.9. "Finder's fee contingency basis" means a Service to perform genealogical research carried out in accordance with 5.2.3.2 below.
- 1.10. "Personal Information" shall mean current name and address of any living individual.
- 1.11. "Personal Representative" means the Administrator or Executor of an estate.
- 1.12. "the Services" means the services that we are to supply to you under the Contract.
- 1.13. "Terms and Conditions" means these terms and conditions including any amendments to them made from time to time that form part of a Contract with you.
- 1.14. "Testator" the person writing a will.
- 1.15. "VAT" means Value Added Tax.
- 1.16. "we", "us" and "our" refer to Fraser & Fraser whose head office is at 39 Hatton Garden, London, EC1N 8EH.
- 1.17. "you" and "your" refer to a party with whom we are contracted on the basis of these Terms and Conditions.
- 1.18. Any references to the masculine, feminine, transgender and neuter shall include all of the others and any reference to the singular shall include the plural and vice-versa.

2. Contract

- 2.1. These Terms and Conditions and current pricing structure will be incorporated into any Contract entered into after the Commencement Date and prior to any subsequent Terms and Conditions or pricing structure coming into force to the exclusion of all other terms and conditions except any that are both (a) implied by law and (b) cannot otherwise be excluded by operation of law.
- 2.2. If you enter into a Contract with us then you are deemed to have accepted these Terms and Conditions.
- 2.3. We reserve the right to alter these Terms and Conditions without prior warning. These alterations may not be publicised and you are responsible for regularly reviewing the Terms and Conditions to obtain notice of such changes. We will accept no liability for losses arising from alterations of these Terms and Conditions.
- 2.4. A separate Contract will be deemed to be entered into on each separate occasion that you give us an instruction to carry out any Service.
- 2.5. You warrant to us that you are not a Consumer. Any purported Contract with a Consumer will be void from the beginning.
- 2.6. This Contract constitutes the entire agreement and no representation or warranty or promise shall be taken as having been made by us except as stated in this Contract.

3. Charges

- 3.1. The charges payable by you to us are those as set out in any current price list, or as quoted in writing to you.
- 3.2. Unless otherwise stated VAT shall be paid in addition to the charges and disbursements incurred at the rate prevailing at the date of the invoice except where we have provided a Service on :
 - 3.2.1.1 a beneficiary contingency basis, where VAT will be applied at the rate applicable when we provided details to any unknown or missing beneficiary we have been asked to find, identify or locate of their entitlement and right to inherit from the estate of a person who had died;
 - 3.2.1.2 a finder's fee contingency basis, where the VAT rate shall be set at the rate applicable on the date we provide you with details of any unknown or missing beneficiary we have been asked to find, identify or locate.
- 3.3. We may send you an invoice for our charges and disbursements at any time after the Service has been completed or upon receiving a request from you for an invoice. In addition we may send you an invoice at any time after three months if the Service is still being performed.
- 3.4. If you do not accept that an invoice sent to you is fair or correct you must notify us within 14 days of issue, failing which you will be deemed to have accepted that payment in full is due.
- 3.5. Where the Service you instruct us to perform is to be charged on a beneficiary contingency basis or on a finder's fee contingency basis you agree to pay any charges due to us within 7 days of any payment made to the beneficiaries identified as part of our Service to you irrespective of whether any invoice or pro-forma invoice has been issued by us to you.
- 3.6. Subject to 3.4 and 3.5 above you agree to pay any invoice submitted within 30 days of the date of the invoice unless special arrangements are made in advance in writing and agreed to by us.
- 3.7. If you do not pay the full amount within the above-mentioned periods, you agree that we may charge interest on a daily basis on any late payment at the rate of 3% above the Bank of England base rate in force at the time of late payment under the Late Payment of Commercial Debts (Interest) Act 1998.
- 3.8. We reserve the right to suspend or cease any Service if payment of any fees is unduly delayed.

4. Your Undertakings & Warranties

- 4.1. Except when instructing us on a beneficiary contingency basis, you warrant that you have the authority to instruct us to provide the requested Service and to pay our charges. In the event that you have no such authority, you hereby agree that by instructing us to carry out the requested Service you will nevertheless pay our charges even if you do not receive funds to do so from your client.
- 4.2. When we provide a Service on either a Beneficiary Contingency or on a finder's fee contingency basis in accordance with 5.2 below:
 - 4.2.1.1 you will provide us with all information known by you, the known family, the administering solicitors, any other genealogist, or any other person regarding the family of the deceased, or regarding the beneficiary we are trying to locate,
 - 4.2.1.2 you will provide us with all details of any research previously carried out by you, the known family, the administering solicitors, any other genealogist, or any other person,
 - 4.2.1.3 you will use your best endeavours to ensure that no further research is carried out by you, the known family, the administering solicitors, any other genealogist, or any other person, and
 - 4.2.1.4 you will inform us as soon as any unknown beneficiary contacts you, members of the family that are already known, the executor, or the administering solicitors.
- 4.3. When we provide any other Service you undertake to provide us with all necessary information for us to perform the Service and warrant that the information so provided is correct.

5. Services

5.1. Asset Search Service

- 5.1.1. We shall undertake a Search for assets including the following:
 - 5.1.1.1 A 3 month postal redirection, where possible, (unless otherwise instructed),
 - 5.1.1.2 A search of bank and building society accounts **which have been flagged as dormant**, share holdings, life and pension policies, unit trusts, investment trusts and occupational pension schemes (subject to 5.1.5) owned by the Deceased in Great Britain,
 - 5.1.1.3 Searches of the Deceased's credit files, and
 - 5.1.1.4 Such other searches as we in our absolute discretion deem reasonable.
- 5.1.2. This service does not include recovery or realising the assets.
- 5.1.3. The searches we carry out may result in debts of the Deceased being revealed and may not result in active bank and building society accounts being revealed.
- 5.1.4. In relation to postal redirection:
 - 5.1.4.1 Unless otherwise instructed, we will arrange for all mail addressed to the Deceased at their main residency address in the United Kingdom to be redirected to us for a 3 month period as standard. We will open and date stamp all mail and anything considered to be of importance will be scanned and emailed to you; all post received will be accumulated and forwarded to you when we report to you the outcome of our searches,
 - 5.1.4.2 Where a postal redirection of more than 3 months has been requested, we will arrange for all mail to be re-directed to you for the whole period that mail is redirected,
 - 5.1.4.3 You shall not be entitled to any discount or refund on the cost of our service where you have requested us not to arrange for any postal redirection,
 - 5.1.4.4 Postal redirection is not available for addresses outside the United Kingdom or from multi-occupied addresses such as nursing/care homes, and
 - 5.1.4.5 Where postal redirection is required for more than one name and/or address an additional fee will be payable.
- 5.1.5. If you ask us to search for an occupational pension scheme you must provide us with sufficient information regarding the Deceased's previous employment history to enable us to carry out that search.
- 5.1.6. We will send you a report approximately 5 weeks from the initial date of a signed authority from you to carry out the Service.
- 5.1.7. If further information is discovered within 3 months of our report an addendum to the report will be sent to you free of charge.

5.2. Genealogical Services

- 5.2.1. We will undertake research to establish the whereabouts and/or identity of any person entitled or possibly entitled to any estate or trust, or to the proceeds of any estate or trust, or to any other asset. This includes the tracing of missing or absent shareholders, trustees, or co-owners of land.
- 5.2.2. We will not undertake any research to establish the whereabouts and/or identity of any person who owes money to you or to your client.
- 5.2.3. When undertaking research under 5.2.1 above, we will agree with you from the outset how we will be paid. The options will be:
 - 5.2.3.1 Beneficiary Contingency Basis – where we agree that we will be paid a fee with each of the beneficiaries we find which will be calculated as a percentage of their respective entitlements.
 - 5.2.3.2 Finder's Fee Contingency Basis – where you agree on behalf of the Personal Representative that we will be paid a fee for each beneficiary that we identify which is calculated as a percentage of that beneficiary's entitlement of the estate or any discretionary or other payment payable as a result of the death of the person whose estate you are dealing with;
 - 5.2.3.3 Fixed fee – where we are paid a fee that is fixed at the time that we commence research irrespective of whether the outcome of the research is successful;
 - 5.2.3.4 Hourly Basis – where we are paid for any work undertaken calculated in accordance with our published price list for hourly work in force when the research started, unless we have notified you of an increase in prices.
- 5.2.4. We will provide you with a report with the results of the research carried out within 14 days of the research being completed.
- 5.2.5. Where some of the information you require is available prior to completion of the research being undertaken we will report this to you on an interim basis.

5.3. Insurance Services

- 5.3.1. We will obtain quotes as requested for any of the following policies:
 - 5.3.1.1 Missing Beneficiary Insurance (MBI)
 - 5.3.1.2 Missing Will Insurance (MWI)
 - 5.3.1.3 A combined MBW/MWI
 - 5.3.1.4 Unoccupied/occupied property insurance
- 5.3.2. Quotes obtained for any insurance policy will include insurance premium tax at the rate applicable.
- 5.3.3. We are registered with the Financial Services Authority (FSA) in respect of insurance mediation services.

5.4. Property Services

- 5.4.1. We can provide the following property related services:
 - 5.4.1.1 Valuation of the Deceased's property;
 - 5.4.1.2 Clearance of the Deceased's property, including sale of valuable items and recovery of personal items such as photographs and portraits;
 - 5.4.1.3 Sale of the Deceased's property;
 - 5.4.1.4 Maintenance of the Deceased's property whilst being marketed for sale;
 - 5.4.1.5 Unoccupied and/or occupied property insurance.

5.5. Will Tracing Service

- 5.5.1. We will undertake the following:
 - 5.5.1.1 a full Certainty Will search;
 - 5.5.1.2 a search for wills deposited for safe custody with the Principal Registry of the Family Division;
 - 5.5.1.3 a search for wills held and/or written by local will writers who are members of the Institute of Professional Willwriters and/or The Society of Will Writers.

5.6. Other Services

- 5.6.1. By mutual arrangement we will provide to you any other service not listed above to assist you in the smooth running of the administration of the Deceased's estate.

6. Limitation and Exclusions of Liability

- 6.1. We will provide our Service with reasonable care and skill. Our liability to you is limited to the amount of charges invoiced and paid by you excluding VAT and disbursements.
- 6.2. We will not be liable for any delay or failure in the performance of our obligations under the Contract caused by factors or circumstances outside of our control including, but not limited to, the following: any act of God, war, terrorism, strike, lock-out, industrial action, breakdown of systems or network access, fire, flood, or bad weather.
- 6.3. We will not be liable to you in respect of any business losses, including (without limitation) loss of or damage to profits, income, revenue, use, production, business, contracts or commercial opportunities.
- 6.4. Regarding any genealogical research:
 - 6.4.1.1 We cannot guarantee that there are no additional heirs, such as illegitimate heirs of whom the family has no knowledge and who cannot be identified through the usual genealogical research process
 - 6.4.1.2 The following searches are usually carried out as part of the usual genealogical process:
 - (a) Issue searches are carried out from the date of the marriage until the mother is 45 years old, or for at least 10 years if the marriage was later and in either case for at least 5 years since the birth of the last child.
 - (b) Marriage searches are carried between the ages of 16 and 45.
 - (c) Death searches are carried out until 100 years or if the person could have been 100 after 1985 the search is carried out until December 2006.
 - (d) Probate searches are carried out from the date of death and for the two following calendar years.
 - 6.4.1.3 When carrying out research on a fixed or hourly fee, the outcome of the research may be unsuccessful and we give no guarantees that the desired outcome will be achieved.
- 6.5. Regarding the Asset Search Service:
 - 6.5.1.1 Whilst we endeavour to search for all unknown assets using all reasonable care and skill, we make no representation, express or implied, that the Service will give rise to complete, accurate or positive results, or be conclusive.
 - 6.5.1.2 In the instance of Third Parties being involved in the Asset Search Service, we make no representation to guarantee that all, if any, assets will be located.
 - 6.5.1.3 Unless otherwise stated, our Service is limited to searching in England & Wales for land and Great Britain for all other assets.
 - 6.5.1.4 There is a possibility of debts and creditors being uncovered in the process of looking for assets.
 - 6.5.1.5 Usually only stale and dormant assets can be uncovered hence recent activity (usually within 2-3 years) may affect the tracing process of such assets
 - 6.5.1.6 We can only warrant the Service for deceased individuals.
 - 6.5.1.7 Where separate searches for aliases are required (for example, with the Land Registry), this will incur additional charges.

7. Copyright

- 7.1. We own the copyright in materials produced as part of the Service.
- 7.2. In accordance with our intellectual property rights, you are not permitted to do the following:
 - 7.2.1.1 Re-publish or copy any material from the Service except where the original is sent to the Personal Representative and a copy is taken for your records,
 - 7.2.1.2 Sell material from the Service,
 - 7.2.1.3 Reproduce or show any material from the Service in public,
 - 7.2.1.4 Duplicate, copy or print any material from the Service for a commercial purpose,
 - 7.2.1.5 Edit or modify any material from the Service, or
 - 7.2.1.6 Use the Service for any marketing-related purposes unless you have obtained written consent from us.

8. Acceptable Use

- 8.1. You are entitled to make use of the Service as you think fit; however, should the Service be used in a way that causes or may cause damage to and/or to the availability of the Service or in any way which is illegal, fraudulent or harmful or in connection with any illegal, fraudulent or harmful activities, then we reserve the right to terminate our contract with you.
- 8.2. Unless agreed in advance, the Service is provided for use in the United Kingdom only.

9. Commission

- 9.1. We may receive a commission from a third party as a result of any of the services that are undertaken.
- 9.2. We will not disclose to you the amount of any commission received and we will not reduce the premium or fee payable as a result of this commission.
- 9.3. You will not be entitled to receive any of the commission we receive.

10. Confidentiality

- 10.1. You warrant that any information we send to you will not be disclosed to any third party except in so far as is necessary to the Personal Representative so that the estate may be properly administered.
- 10.2. Where we provide you with Personal Information you **undertake** not to release such information to any beneficiary of the Deceased's estate.

11. Complaints

- 11.1. If you have cause for any complaint about any part of our Service to you, please write to:

The Complaints Partner
Fraser & Fraser
39 Hatton Garden
London
EC1N 8EH

- 11.2. A dispute arising out of our Contract with you will not be treated as a complaint, but as a contractual dispute.

12. Termination

- 12.1. You may terminate your Contract with us by sending a notice to us by post or document exchange (DX) giving us 14 days' notice to terminate.
- 12.2. Where a Contract is terminated in accordance with 12.1 above, we shall be entitled to charge for all work carried out to date.
- 12.3. Where we have been instructed to carry out work on a beneficiary or finder's fee contingency basis, you may terminate the Contract in accordance with 12.1 above, however we will still be entitled to the same fee as if the Service requested had been provided.

13. General

- 13.1. If any part of the Terms and Conditions are unenforceable or void, including an provision by us to limit our liability to you, that part will be deemed not to form part of these Terms and Conditions and will not affect the enforceability of any other part.
- 13.2. We welcome any comments or queries relating to these Terms and Conditions and can be contacted by:

Post: 39 Hatton Garden, London, EC1N 8EH
Tel: +44 (0)20 7832 1400
Fax: +44 (0)20 7832 1450
Email: frasers@fraserandfraser.co.uk
DX: 53304 Clerkenwell

14. Data Protection

- 14.1. Processing of personal data is governed by the Data Protection Act 1998. All personal data provided will be held securely and in accordance with the Data Protection Act 1998.
- 14.2. Personal data will be used for the purpose of fulfilling the requested Service. Where this requires disclosure of personal data to a Third Party, that Party will hold the information securely in accordance with the Data Protection Act 1998.
- 14.3. Personal data acquired during the course of fulfilling the service regarding potential or actual beneficiaries may be shared by us with carefully selected third parties we are associated with. No personal information will be shared without the prior consent of the data subject being obtained.

15. Commencement & Citation

- 15.1. These Terms and Conditions shall take effect from 1st March 2013.
- 15.2. These Terms and Conditions shall be referred to as the Terms and Conditions version 5.