

Debt Management Plan (DMP) – Terms of Business

Terms of Business – DMP (022010)

Before you sign - *What are the terms of our agreement?*

The terms of this agreement are set out in full below. These are important. You should read them carefully, particularly clause 2 headed 'Agreement' and clause 3 headed 'What you pay', to make sure that you are happy with them. If there is anything you do not understand you should seek advice. When you sign these Terms of Business, you are agreeing to be bound by them.

What do I have to do to get started on the Debt Management Plan?

If you want to go ahead, please sign these Terms of Business, return them to us with your supporting documentation and make the necessary arrangements to pay the **Initial Fee (made payable to Baines & Ernst Ltd)**. You can pay by cheque, debit card, postal order, bankers draft or cash.

What happens after I have returned the signed Terms of Business?

The contract between you and us will be made on the date we receive your signed copy of these Terms of Business. Once we have received your signed Terms of Business, and payment instructions for the **Initial Fee** our services to you will begin at that time.

How much do Baines & Ernst's services cost?

You will pay us an **initial fee** and thereafter a monthly **management fee**. Details of the **initial fee**, the monthly **management fee**, the **total amount**, the **total fees** and the **period** are set out in the welcome letter sent with these Terms of Business, which you should refer to (Also refer to the definition of terms in clause 1 below).

Declaration & Authority to Act:

- | | |
|----|--|
| a. | I/we accept and agree to the terms of business of Baines & Ernst Ltd as printed on this page and continued over the page, which I/we have read. |
| b. | I/we confirm that, to the best of my/our knowledge, the information given to Baines & Ernst Ltd is correct as at today and that I/we will advise you immediately if any of the information I/we have given changes. |
| c. | I/we appoint Baines & Ernst Ltd as my/our representative and give my/our full authority to act on my/our behalf in order to discuss and negotiate how payments are rescheduled in relation to any money I/we owe creditors, as shown in the Baines & Ernst Ltd Debt Management Plan. |
| d. | I/we authorise Baines & Ernst Ltd, including its employees, officers and agents to discuss and provide any details of my/our financial affairs (including income, financial obligations, assets and debts) to my/our creditors, their authorised agents or relevant third parties, if this is necessary. |
| e. | I/we authorise my/our creditors, including their employees, officers and agents to disclose any aspect of my/our financial affairs (including details of my/our accounts) to Baines & Ernst Ltd in order to help resolve my/our financial problems. |
| f. | I/we accept and agree that Baines & Ernst Ltd may communicate with me/us by post, telephone, fax, email or SMS text using the contact details that I/we have provided and that my/our personal information will be used in accordance with the Data Protection Statement below. |
| g. | Baines & Ernst Ltd may send this authority to my/our creditors by post, fax or email. They should accept this as my/our authority as shown above. |

Name:	Signature:	Date
Name:	Signature:	Date

The agreement between you and us is made on the following terms and conditions.

1 Definition of terms

'We, us' means Baines & Ernst Limited (or anyone to whom we transfer or assign our rights and obligations under this agreement).

'You' means the person or people whose names are noted above.

'Cleared funds' means:

- any funds we have received through electronic transfer into our bank account or (as the case may be) our client trust account with our bank (for example, standing order or debit card payments) which we know came from you and which have not been returned unpaid;
- any cash, postal order or banker's draft made payable to us or to our client trust account that we have received from you and which we know came from you; or
- any cheque received and banked by us either into our bank account or our client trust account, but only if we have not received notice from our bank that the cheque has been returned unpaid within 10 days.

'Creditors' means all the organisations or people, or both that you have told us that you owe money to and who are referred to in the **monthly payment plan**.

'Disposable income' means the amount of money you have available to repay to your creditors each month having taken account of your income, your reasonable living expenses and any other necessary financial commitments, including payments to secured creditors. Your disposable income is calculated from the financial information you provide to us.

'Initial fee' means the payment you make to us (made payable to Baines & Ernst Ltd) in order for us to set up your **monthly payment plan** with your creditors. This is calculated from the financial information you provided to us in the application process (please refer to the welcome letter sent with these Terms of Business for further details). The **initial fee** is equivalent to the first two months payment to the plan plus a £70 administration fee. It will be used to cover our initial costs in collecting and reviewing your documentation, for setting up your **monthly payment plan** and for our professional services in liaising with your creditors. The **Initial Fee** is retained by us and will not be distributed to your creditors and can be paid in two separate instalments.

'Management fee' means a charge, rounded to the nearest pound, equal to 17.625% of each monthly payment you make under the **monthly payment plan**. This fee will be

at least £35 and no more than £100. If in any month, **you** pay **us** an amount, which is less, or more than the monthly payment as set out in your **monthly payment plan**, we will adjust our **management fee** for that month as described in clause 3b. We reserve the right to vary the **management fee** at our own discretion upon giving 1 month's written notice to **you**.

'**Monthly payment plan**' means the plan of repayment by which **you** are able to repay your **creditors** through **us** according to your **disposable income**. It includes any changes made to the plan.

'**Period**' means an estimate (based on information **you** have given **us**) of the minimum period, it will take **you** to repay all of your **creditors** in full, through **us**, by using the **monthly payment plan**. We work out this **period** by dividing your total declared debt by your **disposable income** (used to work out your **monthly payment plan**) less our **management fee**. For more information about the **period**, see clause 2e.

'**Service**' means the service we agree to give **you** as set out in clause 4.

'**Total amount**' means an estimate of the total amount **you** will pay to **us** during the **period** to complete your **monthly payment plan**. We work out this total amount by adding the **total fees** to your debts as set out in the **monthly payment plan**. It is important **you** understand that the **total amount** is an estimate. **You** will find details about the **total amount** in the **monthly payment plan**.

'**Total fees**' means an estimate of the total fees **you** will pay to **us** during the **period**. We work out this total fee by multiplying the monthly **management fee** by the number of months in the **period** and adding the **initial fee**. It is important **you** understand that the **total fees** is an estimate. **You** will find details about the **total fees** in the **monthly payment plan**.

2 Agreement - Your attention is specifically drawn to this clause 2

2a By signing these Terms of Business **you** have asked **us**, and **we** will agree to provide **you** with a debt repayment service, together with advisory and administration services, as described in these Terms of Business.

2b This agreement will commence on the date **we** receive your signed Terms of Business. Once we have received your signed copy of these Terms of Business and payment instructions for the **Initial Fee**, our **Service** will begin at that time. **We** do not have to provide the **Service** to **you** unless: **you** have signed and returned a copy of these Terms of Business; returned the required supporting documentation; and paid the necessary fees. However, **we** may cancel this agreement, pursuant to clause 9, by giving **you** notice in writing if any cheque or other payment for our services is returned unpaid from our bank.

What if I change my mind after I have signed?

2c **You** will have a 'cooling-off' period. During the period of seven working days from the date **you** return these signed Terms of Business to **us**, **you** may cancel the agreement by sending written notice by registered post to Baines and Ernst Ltd., Lloyds House, 18/22, Lloyd Street, Manchester M2 5BE or by faxing us on 0871 978 7502. This agreement will then be at an end and **we** will, refund to **you**, in full, all monies, which **you** have paid **us** and which have cleared through our general client bank account (including your **Initial Fee**). Please note **we** are unable to accept verbal cancellation instructions and **we** will only accept signed written notification from **you**.

2d **You** may also end this agreement at any time and for any reason, by giving us two weeks written notice as per the details given in 2c. If **you** provide us with written notice to cancel outside of the 'cooling-off' period this agreement will then be at an end. However, **we** will be entitled to retain in full the **initial fee**, which **you** have paid and which has cleared through our bank account.

2e When **you** first apply for your **monthly payment plan** and pay your **Initial Fee** and prior to your first payment being made to your **monthly payment plan** by **you** for distribution to your **creditors**, **you** may fall behind (or further behind) with your **creditors**. Once your initial fee has been paid and **you** make your next monthly payment, because **we** issue monthly payments to your **creditors** after receiving payment from **you** in **cleared funds**, the date that **we** make payment to your **creditors** may not match the date that your contractual payments to your **creditors** are due. **We** cannot guarantee that your **creditors** will not charge **you** interest, penalties and any other charges as a result of this or take legal action. Whilst **we** will negotiate on your behalf, unless your **Creditors** agree to reduce or freeze interest and any other charges, this will lead to an increase in the total amount of debt **you** will have to repay to your **creditors**. Also, this may affect your credit rating and **you** may find it difficult to get credit until **you** complete your **monthly payment plan**, and even after that time.

2f This agreement will continue for the **period** or until **you** end the agreement as set out in clauses 2c and 8 or **we** end the agreement as set out in clause 9. It is important **you** understand that the **period** is an estimate and will increase if:

- your **disposable income** reduces and **we** have to reduce your monthly payment as a result: or
- your **creditors** charge **you** interest, penalties and any other charges after your **monthly payment plan** has started.

2g Our total liability for all claims of any kind under this agreement shall not exceed an amount equal to the **Initial Payment** **you** make to **us**.

2h In any case, **we** will not be responsible for any delay or other things, which happen for reasons beyond our reasonable control.

2i This clause does not affect our liability for death or personal injury resulting from our negligence. Nothing in this agreement affects your legal rights.

3 What you pay - Your attention is specifically drawn to this clause 3

3a **You** will pay **us** our **initial fee** and then a monthly **management fee**. After **you** have paid our **initial fee** and your plan has commenced, **you** will pay into our client trust account a monthly payment as set out in your **monthly payment plan**. The actual amount of our **monthly management fee** and **initial fee** is shown in the **monthly payment plan**.

3b If in any month **you** pay **us** an amount which is less or more than the monthly payment as set out in your **monthly payment plan**, we will reduce or increase our **management fee** for that month proportionately.

3c Our **management fee** is due to **us** at the time we issue payments to your **creditors**. We collect our **management fee** from the client trust account as set out in clause 7.

3d At any time following expiration of the 7 day 'cooling-off' period and in the event **you** have not, during the cooling-off period, notified **us** in writing of your intention to terminate this agreement with **us**, if for any reason your DMP does not proceed whether by termination of this agreement or otherwise, **we** shall be entitled to retain in full the fees **you** have paid to **us**.

4 What we will do

4a After **we** receive the terms of business, signed by **you**, supporting documentation and payment of the **initial fee**, **we** will liaise with **you** and your **creditors** as necessary so **we** can provide the **Service** to **you**.

4b **We** will send **you** your **monthly payment plan** confirming details of the **initial fee**, the **monthly management fee**, the **total fees**, the **total amount** and the **period**.

4c Having received payments from **you** in **cleared funds** into our client trust account, as described in the **monthly payment plan**, **we** will issue payments to your **creditors**, after taking off our **management fee**. **We** will issue these payments promptly and normally within five working days of receiving **cleared funds** from **you**. If **we** have not issued these funds to your **creditors** within this timescale, **we** will take all reasonable steps to contact **you** and let **you** know what has happened and the reason for the delay.

4d If in any month **you** pay **us** an amount which is less than the monthly payment as set out in your **monthly payment plan**, **we** may not issue payments to your **creditors** as described in clause 4c if these payments would be below the amounts normally accepted by your **creditors**.

4e So that **we** can issue payments for **you** to your **creditors**, **we** will let them know about your financial circumstances and our involvement. **We** will then make revised offers of payment to your **creditors** for the debt, or debts, **you** owe as described in the **monthly payment plan**.

4f **We** will ask your **creditors** to accept the revised payments and to reduce or freeze interest and any other charges and (where appropriate) to suspend or withdraw any enforcement proceedings which are related to your debts with them.

4g **We** will keep **you** regularly updated with our dealings with your **creditors**.

4h 1 Shortly before or at the time **we** issue your first monthly payment to your **creditors**, **we** will send **you** a statement showing the payments **we** will issue or have issued to your **creditors** and (as far as possible from the information **we** have received) any changes to the **monthly management fee**, the **total fees**, the **total amount** and the **period**. This will then be your revised **monthly payment plan**.

2 **We** will confirm in writing all further monthly payments which **we** issue to your **creditors**, giving full details of the amount **we** have issued.

4i Before each anniversary of us issuing your first monthly payment to your **creditors**, we will contact **you** asking for all up-to-date documents that **you** have received from your **creditors**; such as statements and letters. We will review the documents and check whether the information we hold in relation to your circumstances is up to date. Then in light of the payments we are issuing to your **creditors** and any other relevant circumstances, we will send **you** an updated statement showing the details of the revised **monthly payment plan, management fee and period**.

4j If your circumstances change and your request is reasonable and **you** ask us in writing, we will also review your current **monthly payment plan**, on the same basis as set out above in clause 4i.

4k If at any time a change is made to the **monthly payment plan**, we will then send **you** an updated statement showing the details of the revised **monthly payment plan, management fee and period**.

5 *What we do not do*

5a We do not lend **you** money or give **you** any credit facilities.

5b We do not issue payments to your **creditors** without having first received **cleared funds** from **you**.

5c We do not give **you** legal advice.

5d While we will try to make sure that your **creditors** freeze or reduce interest and any other charges, we cannot stop your **creditors** continuing to charge interest and any other charges if they want to do this. If this is the case, then this will result in an increase in the total debt **you** have to repay and an increase in the **period**.

5e While we will try to make sure that your **creditors** suspend or withdraw any enforcement proceedings, we cannot stop your **creditors** sending **you** default notices or taking, or continuing with, any other legal action to recover your debts with them if they want to do this. If your **creditors** take or continue with this action, **you** may have to pay costs which they will add to your debts.

5f We do not issue reduced payments, on your behalf, on secured loans. **You** must make sure that **you** continue to make your usual payments in full towards any mortgage or other secured loans. However, we will take these payments into account when we work out your **disposable income** in the **monthly payment plan**.

5g We do not issue reduced payments, on your behalf, for your utility bills (for example, water, gas, electricity bills, and so on) or for current-year Council Tax payments. **You** must continue to make all your normal payments towards your utility bills and Council Tax payments. However, we will take these payments into account when we work out your **disposable income** in the **monthly payment plan**.

5h We reserve the right to exclude from the **monthly payment plan** unsecured debts that are less than three months old at the time this agreement starts and certain other debts at our discretion. We will take these payments into account when we work out your **disposable income** in the **monthly payment plan**.

5i Unless **you** let us know about a change in your financial position or circumstances, we will only consider whether changing your **monthly payment plan** would be in your interests when we review your **monthly payment plan** as set out in clauses 4i and 4j.

6 *What you will need to do*

If we are to provide the **service**, **you** must co-operate with us, making sure that the **monthly payment plan** reflects your financial position, and **you** must follow the **monthly payment plan**. This means that **you** will do the following.

1 **You** will give us any information we may legitimately request relating to your finances or personal circumstances. This will include, but not be limited to, all details of:

- your income and expenses;
- your dependants;
- your assets;
- your **creditors** and all your agreements **you** have taken out with them;
- any mortgages or secured loans **you** have;
- copies of any judgments made against **you**; and any other enforcement action. Using this information, we will work on **your** behalf.

2 **You** will endeavour to ensure that all information **you** provide to us is, to the best of your knowledge, accurate and not misleading.

3 **You** will make the payments to us in full, promptly each month, as described in the **monthly payment plan**.

4 **You** will continue making payments as described in the **monthly payment plan** until **you** have repaid all of your **creditors** in full by using our **service** (including all interest, charges and penalties your **creditors** may charge after the **monthly payment plan** has started).

5 **You** will sign any necessary forms of authority or other documents so that we may carry out our obligations under this agreement.

6 **You** will promptly supply us with copies of all correspondence **you** receive from your **creditors** and provide us with details of any dealings **you** may have had with any **creditors**, whether we are in contact with them on your behalf or not.

7 **You** will not ignore correspondence or any other communications from your **creditors** or any person acting on behalf of a **creditor**. However, **you** will not enter into direct negotiations with any of your **creditors** (unless requested in writing by us to do so) that could have the effect of preventing us from fulfilling our obligations under this agreement.

8 **You** will not spend any money over and above your reasonable living expenses as described in the **monthly payment plan**.

9 **You** will not continue to use any existing credit facility, including any credit or charge cards, and will not apply for any further credit from any source.

10 **You** must tell us as soon as possible about any changes in your circumstances which might affect your **disposable income** or the viability of your **monthly payment plan**.

11 **You** will consult us whenever we need to review your **monthly payment plan**.

12 **You** will agree to any reasonable and necessary changes to the **monthly payment plan**. If **you** do not agree to the changes we suggest, **you** will tell us why **you** think they are not reasonable and necessary.

13 **You** will accept that the **Initial Fee** and our **management fee** is retained by us and will not be paid to your **creditors**.

14 **You** confirm that none of the debts **you** have instructed us to deal with are secured or as set out in clause 5g.

15 **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.

7 *How we hold your money*

7a We will hold your monthly payments under your **monthly payment plan** (less any **management fees** due to us) on trust, in a client trust account with our bankers, on your behalf, together with money we hold for our other clients, prior to distribution to your creditors. This does not include our **initial fee**. In the event of our insolvency, all of the money in the client trust account (less any **management fees** due to us) would be distributed to our clients in line with the terms of the trust as set out in this clause. We do not pay interest in respect of money held in our client trust account (a non-interest bearing account).

7b The **initial fee** is paid into our own account and will not be paid into the client trust account. However, if the **initial fee** is paid into the client trust account, we will be entitled to pay it out of the client trust account and into our own account.

7c We will pay your **creditors** direct from the money we hold for **you** in the client trust account. We will only take our **management fee** from the client trust account when we make payments to your **creditors**. Money which we pay to **creditors** from the client trust account will not be governed by this trust once the payment is made. Any money held for **you** in the client trust account, which is not due to **creditors** or to us under this agreement, may be paid to **you** or to your order through a UK bank account, in your name or (where **you** hold a joint account) in your name and the name of the other person.

7d If there is any money which we hold for **you** in the client trust account and we are for any reason unable to pay it to **you** in line with these terms, we will write to **you** to ask for your instructions for payment. If after six years from the date of your last monthly payment we have not received your instructions, we may pay that money out of the client trust account and into our own account and treat it as our money. We will have no further obligation to pay this money to **you**.

7e We will keep our client trust account records for at least seven years from the date of your last monthly payment.

8 How you may end this agreement

You have the right to cancel this agreement under clause 2c. You may also end this agreement at any time and for any reason by giving us two weeks written notice as per clause 2d.

9 How we may end this agreement

We may end this agreement by giving you two weeks written notice if any of the following happens (and we will tell you the reason for the notice).

- 1 If you fail (within a reasonable timescale) to pay in full the Initial Fee.
- 2 If you fail to make at least one full monthly payment in any two-month period and at least eight full monthly payments in any 12-month period that you have a monthly payment plan with us.
- 3 If you fail in any important way to do what you agree to do in clause 6 above and do not rectify the problem within seven days of us telling you about it.
- 4 If the information you have given us turns out to be or we suspect that it is materially incorrect, incomplete, fraudulent or otherwise misleading.
- 5 If the information you gave at the time of acquiring credit was materially incorrect or incomplete or was fraudulent.
- 6 If you have or (if 'you' includes more than one person) one of you has a bankruptcy petition issued against you.
- 7 If you enter or (if 'you' includes more than one person) one of you enters into an Individual Voluntary Arrangement.
- 8 If you die or (if 'you' includes more than one person) one of you dies.
- 9 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.
- 10 You do or fail to do something, which in our reasonable opinion could damage our reputation or otherwise bring us into disrepute.

10 The effect of ending this agreement

When this agreement ends, our duties and obligations under this agreement will come to an end. We will return any money that we may be holding for you in our client trust account. You will not have to pay us any more money.

11 Other information

11a We are members of the Debt Managers Standards Association (DEMSA) and follow their OFT approved Code of Conduct, which encourages higher standards for the benefit of our clients.

11b If at any time you are not happy with the service that we have given 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: Compliance Department, Baines and Ernst Limited, Lloyds House, 18 - 22 Lloyd Street, Manchester. M2 5BE. A copy of our Internal Complaints Procedure is also available upon request from the contact details given above. Using our Internal Complaints Procedure will not affect your legal rights. Should the matter not be resolved to your satisfaction, you may refer the matter to DEMSA, provided that the dispute is covered by the Code of Conduct. DEMSA has a laid down procedure for handling such complaints, and this includes the right of referral to the Financial Ombudsman Service (FOS) where appropriate. Should you require a copy of the DEMSA Code of Conduct, please contact us at the address above or the General Secretary, DEMSA, West Point, Westland Square, Leeds, LS11 5SS or visit the website www.demsa.co.uk or email info@demsa.co.uk

11c You should keep copies of all documents that you send to us as we carry out all our work on computer-scanned document images to improve our efficiency. If you ask us at the end of this agreement, we will return to you scanned images of any documents you have sent to us.

11d With the exception of the cancellation notice under clause 2c, which must be sent by registered post (or fax), any notices we or you serve under this agreement will be valid if sent by first-class post to the address shown in this agreement.

11e We may subcontract any or all of our obligations under this agreement to another person or organisation. If we do this, we will still be responsible to you under this agreement.

11f We may transfer any or all of our rights and obligations under this agreement. If we do this, we will write to you to let you know the details.

11g This agreement shall be governed and construed by English law and that the courts of England shall have jurisdiction to hear and determine any suit, action or proceeding, and to settle any disputes, which may arise out of or in connection with this Agreement.

12 Data protection statement

12a 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 our Service, you will provide us with information about your financial and personal circumstances ("Personal Information"). Any information you give to us will be confidential. This Personal Information will only be passed on to your creditors and such third parties as are required to know it for the purposes of performing the obligations under this agreement. We will not pass this information to anyone else without your express permission, except in accordance with our data protection statement and to the creditors you have authorised us to deal with or their authorised agents, or both. We will process your Personal Information in accordance with the terms and for the purposes of this agreement.

12b We may share Personal Information within our company and with any other associated company within our group in order to fulfil our obligations under this agreement. We may communicate with you by the following means (post, telephone, fax, email or SMS text) using the contact details that you have provided.

We may also transfer your data to countries outside of the European Economic Area for the purposes of providing our service to you.

12c We may also use your Personal Information for marketing purposes to identify and provide you (by post, telephone, fax, email or SMS text) with details of other similar products and services which we, our associated companies, or an approved third party deem could be of interest to you.

12d By signing and returning this Form you will be giving consent for your details to be used as stated. You can tell us if you do not want to receive marketing information from us, an associated company or a third party by ticking the appropriate box or writing to the address below. Otherwise, we will only disclose your Personal Information in accordance with relevant laws or regulations (including fraud prevention).

12e 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, Baines and Ernst Limited, Lloyds House 18-22 Lloyd Street Manchester M2 5BE.

12f We may change our privacy policy from time to time (details of which can be found on our website www.bainesandernst.co.uk) We may record and monitor calls for service quality.

I/we do not wish to be contacted by you or your associated companies about any other products or services that may be of interest to me/us. []

I/we do not wish to be contacted by relevant third parties about any other products or services that may be of interest to me/us. []