

# TERMS OF BUSINESS

## DEFINITIONS

These definitions apply to these Terms and all the definitions.

“*Contract*”: The agreement between us for the provision of professional accountancy services comprising of the Engagement Letter, these Terms and any revision in writing.

“*Engagement Letter*”: Our engagement letter and any schedules setting out the Work.

“*Terms*”: These Terms of Business.

“*We/Our/Us*”: Mullen Stoker Limited.

“*Work*”: Any services that We agree to carry out for You including the provision of advice.

“*You/Your/Client*”: *[insert client name]*

The following Terms of Business apply to all engagements and Contracts. All Work is carried out under these terms except where changes are expressly agreed in writing.

## 1. APPLICABLE LAW

1.1 The Engagement Letter, these Terms and the Work (together with any associated documents) are governed by and should be construed in accordance with English Law. Each party agrees that the Courts of England will have exclusive jurisdiction in relation to any claim or dispute concerning these Terms, the Engagement Letter, the Work or any other matter arising from any of them on any basis.

## 2. ADVICE IS TIME CRITICAL

2.1 Advice is time critical: You acknowledge that advice We may give You is based on the law and Your circumstances at the time any advice is given. We will not accept responsibility if You act on advice given by Us without first confirming with Us that the advice is still correct in light of any change in the law or in Your circumstances. We will accept no liability for losses arising from changes in the law, or the interpretation thereof, that occur after the date on which the advice is given.

## 3. THIRD PARTY RIGHTS

3.1 Third Party Rights: The advice that We give to You is for Your sole use and does not constitute advice to any third party. We accept no responsibility to third parties for any aspect of our professional services or Work.

3.2 No third parties shall have rights under Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

## 4. RETENTION OF RECORDS

4.1 **Applicable to incorporated entities only** - Our policy upon completion of a company's annual audit (if required) and corporation tax computation is to return all

original documents, books and records belonging to the company if requested, subject to 21.1 below for the company to retain for at least 7 years, and longer if HM Revenue & Customs enquires into Your Returns or the document relates to property.

- 4.2 You have a legal responsibility to retain documents and records relevant to Your financial affairs for at least 7 years
- 4.3 Whilst certain documents may legally belong to You, unless You tell Us not to, We intend to destroy correspondence and other papers that are more than ten years old. You must tell Us if You wish Us to keep any documents for a longer period. We may retain hard or electronic copies at our discretion and You expressly agree that if electronic copies are retained We may dispose of hard copies confidentially at any time, unless agreed otherwise in writing.

## **5. CONFIDENTIALITY**

- 5.1 Unless We are authorised by You to disclose information on Your behalf, We confirm that if You give Us confidential information We will, at all times during and after the Contract, keep it confidential, except as required by law or under regulatory, ethical or other professional obligations applicable to Us or under the Contract.
- 5.2 You agree that, if We act for other clients who are or who become Your competitors, to comply with Our duty of confidentiality it will be sufficient for Us to take such steps as We think reasonable and appropriate to preserve the confidentiality of information given to Us by You, both during and after the Contract.
- 5.3 In addition, if We act for other clients whose interests are or may be adverse to Yours, We may manage the potential conflict by implementing additional safeguards to preserve confidentiality. Safeguards may include measures such as separate teams, physical separation of teams, and separate arrangements for storage of, and access to, information. You agree that the effective implementation of such steps or safeguards as described above shall be a reasonable approach by Us to a potential client conflict and to avoid any real risk of confidentiality being impaired.
- 5.4 We may, on occasions, subcontract Work on Your affairs to other tax or accounting professionals. The subcontractors will be bound by suitable client confidentiality terms.
- 5.5 You agree to the use of e-mail and other electronic communications as well as post. You agree to our use of external and/or cloud based systems in respect of Your data and documents and other matters relating to the Work. You acknowledge that there is a risk with data storage and communication (electronically and by post) that there may be a breach/interception/loss.
- 5.6 You agree that We may, for the purpose of promotional activity, training or for other business purposes, disclose to third parties that You are a client. Any disclosure will not involve the disclosure of confidential information.

## **6. CONFLICTS OF INTEREST**

- 6.1 We will inform You if We become aware of any conflict of interest in Our relationship with You or in Our relationship with You and another client, unless We are unable to do so because of Our confidentiality obligations. We have safeguards that can be implemented to protect the interests of different clients if a conflict arises. If conflicts are identified which cannot be managed in a way that satisfactorily protects Your interests, We may terminate the Contract.

- 6.2 If there is a conflict of interest that is capable of being reasonably addressed by the adoption of suitable safeguards to protect Your interests, We will adopt those safeguards. In resolving the conflict, We would be guided by ICAEW's Code of Ethics, which can be viewed at [icaew.com/en/membership/regulations-standards-and-guidance/ethics](https://www.icaew.com/en/membership/regulations-standards-and-guidance/ethics). During and after the Contract, You agree that We reserve the right to act for other clients whose interests are or may compete with or be adverse to Yours, subject, of course, to Our obligations of confidentiality and the safeguards as set out in the paragraph on confidentiality above.

## 7. DATA PROTECTION – DATA CONTROLLER

- 7.1 In this clause 7, the following definitions shall apply:

'client personal data' means any personal data provided to Us by You, or on Your behalf, for the purpose of the Contract.

'data protection legislation' means all applicable privacy and data protection legislation and regulations including PECR, the GDPR and any applicable national laws, regulations and secondary legislation in the UK relating to the processing of personal data and the privacy of electronic communications, as amended, replaced or updated from time to time;

'controller', 'data subject', 'personal data', and 'process' shall have the meanings given to them in the data protection legislation;

'GDPR' means the General Data Protection Regulation ((EU) 2016/679); and

'PECR' means the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003).

- 7.2 We shall each be considered an independent data controller in relation to Your personal data. Each of Us will comply with all requirements and obligations applicable to Us under the data protection legislation in respect of personal data.

- 7.3 You shall only disclose client personal data to Us where:

- a) You have provided the necessary information to the relevant data subjects regarding its use (and You may use or refer to our privacy notice available, available on request, for this purpose);
- b) You have a lawful basis upon which to do so, which, in the absence of any other lawful basis, shall be with the relevant data subject's consent; and
- c) You have complied with the necessary requirements under the data protection legislation to enable You to do so.

- 7.4 Should You require any further details regarding our treatment of personal data, please contact Our data protection Principal, Gary Stoker.

- 7.5 We shall only process client personal data:

- a) in order to carry out the Work or any matters associated with the Work;
- b) in order to comply with Our legal or regulatory obligations; and
- c) where it is necessary for the purposes of Our legitimate interests and those interests are not overridden by the data subjects' own privacy rights. Our privacy notice (available on request) contains further details as to how We may process client personal data.

7.6 For the purpose of carrying out the Work. We may disclose Client personal data to members of Our firm's network. Our regulatory bodies or other third parties (for example, Our professional advisors or service providers). We will only disclose client personal data to a third party provided that the transfer or disclosure is undertaken in compliance with the data protection legislation

7.7 We may disclose client personal data to other third parties in the context of a possible sale, merger, restructuring or financing of or investment in our business. In this event, We will take appropriate measures to ensure that the security of client personal data continues to be ensured in accordance with data protection legislation. If a change happens to Our business, then the new owners may use Our client personal data in the same way as set out in these terms.

7.8 We shall maintain commercially reasonable and appropriate security measures, including administrative, physical and technical safeguards, to protect against unauthorised or unlawful processing of client personal data and against accidental loss or destruction of, or damage to, client personal data.

7.9 Upon the reasonable request of the other, We shall each co-operate with the other and take such reasonable commercial steps or provide such information as is necessary to enable each of Us to comply with the data protection legislation in respect of the services provided to You in accordance with our Engagement Letter with You in relation to those services.

## **8. ELECTRONIC AND OTHER COMMUNICATION**

8.1 Unless You instruct Us otherwise, We may, communicate with You and with third parties by email or other electronic means in relation to the Work. The recipient is responsible for virus checking emails and any attachments.

8.2 You acknowledge that with electronic communication, there is a risk of non-receipt, delayed receipt, inadvertent misdirection or interception by third parties. We use virus-scanning software to reduce the risk of viruses and similar damaging items being transmitted in emails or by electronic storage devices. Nevertheless, electronic communication is not entirely secure and We do not accept responsibility for damage or loss caused by viruses or for communications which are corrupted or altered after despatch. Nor can We accept any liability for problems or accidental errors relating to this means of communication, especially in relation to commercially sensitive material. These are risks You must bear in return for greater efficiency and lower costs. If You do not wish to accept these risks, please let Us know in writing and We will communicate by paper mail, other than when electronic submission is mandatory.

8.3 Any communication by Us with You sent through the postal system is deemed to arrive at Your postal address two working days after the day the communication was posted.

## **9. FEES**

- 9.1 Our fees are computed on the basis of the time spent on Your affairs by the directors and Our staff, and on the levels of skill, responsibility, importance of value and risk involved. Unless otherwise agreed, Our fees will be charged separately for each of the main classes of Work described in the attached schedules. Our Work will be billed at intervals during the course of the year, at Our discretion, we reserve the right to bill for partially completed Work. All invoices are due on presentation of Our invoice. VAT at the current standard rate will be added to Our fees and where appropriate any disbursements We incur on Your behalf. Expenses incurred in the course of carrying out Our Work for You, will be added to Our invoices where appropriate.
- 9.2 Simple interest shall accrue at the rate of 2.00% per month on the balance of any unpaid invoices 28 days after presentation of the invoice until the sums due are paid in full.
- 9.3 We reserve the right to suspend any Work until all fees outstanding are paid and/or in Our opinion You may not be able to pay for any Work requested to be carried out.
- 9.4 If You terminate Our services, We may exercise a lien over the company's books and records and any other property /funds/documents that We hold until Our fees (and any applicable interest, costs or disbursements) are paid in full.
- 9.5 Should You pay Our fees in advance of Us raising an invoice You agree that such payments will be office money.
- 9.6 We reserve the right to off-set any of Our unpaid fees from credit balances that we hold in relation to any of Your other business interests.
- 9.7 Invoices are payable in full before our report is signed and the accounts are made available for filing.
- 9.8 In the event that We cease to act for You, You agree to meet all reasonable costs of providing information to any third parties (including another service provider), such costs to include but not limited to time spent, postage/courier, copying. In particular, You agree to meet these costs even if We are required by law to provide the information.
- 9.9 You acknowledge that an estimate of Our fees is an estimate only and not a quote, such an estimate will not be contractually binding unless We explicitly state that will be the case.

## **10. CLIENT IDENTIFICATION AND MONEY LAUNDERING**

- 10.1 As with other professional services firms, We are required to identify Our clients for the purposes of the UK anti-money laundering legislation. We may request from You, and retain, such information and documentation as We require for these purposes and/or make searches of appropriate databases. If We are not able to obtain satisfactory evidence of Your identity, We will not be able to proceed with the Contract.
- 10.2 In common with all accountancy and legal practices We are required by the Proceeds of Crime Act 2002 and the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 to: -

- a) Maintain identification procedures for clients and beneficial owners of clients;
- b) Maintain records of identification evidence and the Work undertaken for the clients; and,
- c) Report, in accordance with the relevant legislation and regulations.

10.3 We have a duty under s.330 of the Proceeds of Crime Act 2002 to report to the Serious Organised Crime Agency (SOCA) if We know, or have reasonable cause to suspect, that another person is involved in money laundering. Failure on Our part to make a report where We have knowledge or reasonable grounds for suspicion would constitute a criminal offence.

10.4 The offence of money laundering is defined by s.340(11) of the Proceeds of Crime Act and includes concealing, converting, using or possessing the benefits of any activity that constitutes a criminal offence in the UK. It also includes involvement in any arrangement that facilitates the acquisition, retention, use or control of such a benefit.

This definition is very wide and would include such crimes as:

- a) Deliberate tax evasion;
- b) Deliberate failure to inform the tax authorities of known underpayments or excessive repayments;
- c) Fraudulent claiming of benefits or grants; or,
- d) Obtaining a contract through bribery.

10.5 We are obliged by law to report any instances of money laundering to SOCA without Your knowledge or consent. In consequence, neither the firms' directors nor staff may enter into any correspondence or discussions with You regarding such matters.

10.6 We are not required to undertake work for the sole purpose of identifying suspicions of money laundering. We shall fulfil our obligations under the Proceeds of Crime Act 2002 in accordance with the guidance published by the Consultative Committee of Accountancy Bodies.

## **11. QUALITY CONTROL**

11.1 As part of Our ongoing commitment to provide a quality service, Our files are periodically reviewed by an independent regulatory or quality control body. These reviewers are bound by the same rules of confidentiality as Our principals and staff.

11.2 When dealing with HMRC on Your behalf We are required to be honest and to take reasonable care to ensure that Your returns are correct. To enable Us to do this, You are required to be honest with Us and to provide Us with all necessary information in a timely manner. For more information about 'Your Charter' for Your dealings with HMRC, visit [www.gov.uk/government/publications/your-charter](http://www.gov.uk/government/publications/your-charter). We will reasonably attempt to ensure that HMRC meet their side of the Charter in their dealings with You.

## **12. SPECIALIST ADVICE**

12.1 We reserve the right to utilise the services of consultants and other specialists to assist Us in delivering Our services, each of which will be bound by the same rules for confidentiality and ethics as Our directors and staff.

## **13. COMMISSIONS OR OTHER BENEFITS**

13.1 In some circumstances, We may receive commissions or other benefits for introductions to other professionals, service providers, or in respect of transactions

which we arrange for You. If this happens, We will notify You in writing of the amount and terms of payment and receipt of any such commissions or benefits with the exception of IT related services where commissions or benefits may not be notified along with standard IT company practices. The fees You would otherwise pay will not be reduced by the amount of the commissions or benefits. You agree that We can retain the commission or other benefits without being liable to account to You for any such amounts.

## **14. CLIENT MONEY**

- 14.1 We may, from time to time, hold money on Your behalf. The money will be held in trust in a client bank account, which is segregated from the firm's funds. The account will be operated, and all funds dealt with, in accordance with the Clients' Money Regulations of the Institute of Chartered Accountants in England and Wales (ICAEW).
- 14.2 All client monies will be held in either an interest-bearing account or a non-interest bearing account. In the case of interest-bearing accounts, to avoid excessive administration, interest will only be paid to You if the amount earned on the balances held on Your behalf in any calendar year exceeds £25.00. Any such interest would be calculated using the prevailing rate applied by Lloyds Bank Plc for small deposits subject to the minimum period of notice for withdrawals. Subject to any tax legislation, interest will be paid gross.
- 14.3 We will return monies held on Your behalf promptly, as soon as there is no longer any reason to retain those funds. If any funds remain in Our client account that are unclaimed, and the client to which they relate has remained untraced for five years, or we as a firm cease to practise, We may pay those monies to a registered charity.

## **15. DISENGAGEMENT**

- 15.1 If We resign or are asked to resign, We will normally issue a disengagement letter to ensure that Our respective responsibilities are clear.

## **16. HELP US TO GIVE YOU THE BEST SERVICE**

- 16.1 We are committed to providing You with a high quality service that is both efficient and effective. If, at any point You would like to discuss with Us how Our service to You could be improved, or if You are dissatisfied with the service You are receiving, please let Us know by contacting one of Our Directors who are currently Neil Mullen, Gary Stoker and Stephen Green.
- 16.2 We undertake to look into any complaint carefully and promptly and report to You with Our response. If after such response You remain dissatisfied You may, take up the matter with our professional body, ICAEW.

## **17. INTELLECTUAL PROPERTY RIGHTS AND USE OF OUR NAME**

- 17.1 We will retain all intellectual property rights in any document prepared by Us during the course of carrying out Work except where the law specifically states otherwise.
- 17.2 You are not permitted to use Our name in any statement or document that You may issue unless Our prior written consent has been obtained. The only exception to this restriction would be statements or documents that, in accordance with applicable law, are to be made public.

## **18. INTERPRETATION**

- 18.1 If any provision of the Contract is held to be invalid, illegal or unenforceable, that provision will be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. not to form part of the Contract. 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 these Terms. In the event of any conflict between these Terms the Engagement Letter or appendices or any document comprising as part of the Contract, the relevant provision in the Engagement Letter and schedules (if any) will take precedence.

## **19. INTERNAL DISPUTES WITHIN A CLIENT**

- 19.1 If We become aware of a dispute between the parties who own the Client, or who are in some way involved in its ownership and management (Interested Parties), We would not usually provide information or services relating to the Client without the express knowledge and permission of all of the Interested Parties. You accept that We may contact such persons / entities as We consider are Interested Parties for these purposes. Unless otherwise agreed by all of the Interested Parties, We will continue to supply information concerning the Client to the normal place of business for the attention of the Interested Parties. If conflicting advice, information or instructions are received from the Interested Parties, We reserve the right to take no further action until the Interested Parties have agreed the action to be taken.

## **20. INVESTMENT ADVICE (INCLUDING INSURANCE MEDIATION SERVICES)**

- 20.1 Investment business is regulated by the Financial Services and Markets Act 2000. If, during the provision of professional services to You, You need advice on investments, including insurances, We may have to refer You to someone who is authorised by the Financial Conduct Authority or licensed by a Designated Professional Body, as We are not. However, as We are licensed by ICAEW, We may be able to provide certain investment services that are complementary to, or arise out of, the professional services We are providing to You. In the unlikely event that We cannot meet our liabilities to You, You may be able to claim compensation under the Chartered Accountants' Compensation Scheme in respect of exempt regulated activities undertaken.
- 20.2 We are not authorised by the Financial Conduct Authority. However, We are included on the register maintained by the Financial Conduct Authority so that We can carry on insurance mediation activity, which is broadly the advising on, selling, and administration of insurance contracts. This part of Our business, including arrangements for complaints or redress if something goes wrong, is regulated by ICAEW. The register can be accessed from the Financial Conduct Authority's website at [www.fca.org.uk/register](http://www.fca.org.uk/register).

## **21. LIEN**

- 21.1 Insofar as We are permitted to do so by law or by professional guidelines, We reserve the right to exercise a lien over all funds, documents and records in Our possession or which may come into our possession relating to all engagements for You until all outstanding fees and disbursements due to Us are paid in full.



## 22. PERIOD OF ENGAGEMENT AND TERMINATION

22.1 Unless otherwise agreed in Our Engagement Letter, the Work will begin when We receive implicit or explicit acceptance of that letter. Except as stated in that letter, We will not be responsible for periods before that date.

22.2 The Contract may be terminated by either party by giving not less than 21 days' notice in writing to the other party except if You materially breach the Contract, which may include but is not limited to;

- (i) a failure to cooperate with Us; or
- (ii) a failure to pay Our fees by the due dates; or
- (iii) We have reason to believe that You have provided Us or HMRC with misleading information; or
- (iv) You become insolvent, bankrupt or make an arrangement with Your creditors,

OR

- (a) If an independence/conflict issue arises; or
- (b) a change in law means that We can no longer act;

in which case We may terminate the Contract immediately. Termination will be without prejudice to any rights either party may have accrued before termination.

22.3 In the event of termination the Contract, We will endeavour to agree with You the arrangements for the completion of Work in progress at that time, unless We are required for legal or regulatory reasons to cease Work immediately. In that event, We will not be required to carry out further Work and shall not be responsible or liable for any consequences arising from termination.

## 23. PROFESSIONAL RULES AND STATUTORY OBLIGATIONS

23.1 We will observe and act in accordance with the Bye-laws, regulations and Code of Ethics of ICAEW and will accept instructions to act for You on this basis. In particular You give Us the authority to correct errors made by HMRC if We become aware of them. We will not be liable for any loss, damage or cost arising from Our compliance with statutory or regulatory obligations. You can see copies of these requirements in our offices. The requirements are also available online at [icaew.com/en/membership/regulations-standards-and-guidance](https://www.icaew.com/en/membership/regulations-standards-and-guidance).

23.2 We confirm that We are statutory auditors eligible to conduct audits under the Companies Act 2006. When conducting audit work, We are required to comply with the Ethical and Auditing Standards issued by the FRC, which can be accessed online at [www.frc.org.uk/Our-Work/Codes-Standards/Audit-and-assurance/Standards-and-guidance/Standards-and-guidance-for-auditors.aspx](https://www.frc.org.uk/Our-Work/Codes-Standards/Audit-and-assurance/Standards-and-guidance/Standards-and-guidance-for-auditors.aspx). We are also required to comply with the Audit Regulations and Guidance which can be accessed at [icaew.com/en/technical/audit-and-assurance/working-in-the-regulated-area-of-audit](https://www.icaew.com/en/technical/audit-and-assurance/working-in-the-regulated-area-of-audit).

## 24. RELIANCE ON ADVICE

24.1 We will endeavour to record all advice on important matters in writing. Advice given orally is not intended to be relied upon unless confirmed in writing. Therefore, if We provide oral advice (for example, during the course of a meeting or a telephone conversation) and You wish to be able to rely on that advice, You must ask for the advice to be confirmed by Us in writing.

## **25. TIMING OF OUR SERVICES**

- 25.1 If You provide Us with all information and explanations on a timely basis in accordance with Our requirements, We will plan to undertake the Work within a reasonable period of time to meet any regulatory deadlines. However, failure to complete Our services before any such regulatory deadline would not, of itself, mean that We are liable for any penalty or additional costs arising.

## **26. LIMITATION OF THIRD PARTY RIGHTS**

- 26.1 The advice and information that We provide to You as part of Our service is for Your sole use, and not for any third party to whom You may communicate it, unless We have expressly agreed in the Engagement Letter that a specified third party may rely on Our Work. We accept no responsibility to third parties, including any group company to whom the Engagement Letter is not addressed, for any advice, information or material produced as part of Our Work for You which You make available to them. A party to this agreement is the only person who has the right to enforce any of its terms, and no rights or benefits are conferred on any third party under the Contracts (Rights of Third Parties) Act 1999.