

# Terms and Conditions of Business

The following standard terms and conditions of business apply to all engagements accepted by Digital and Management Services. All work carried out is subject to these terms except where changes are expressly agreed in writing. Digital and Management Services will be referred to within this document as either “the company, we, our or us”. With reference to “you” the client, this document will refer to “you or the client”. Any outside influence will be referred to as “the third party or a third party”.

## 1 professional rules and practice guidelines

1.1 We will observe and act in accordance with the bye-laws, regulations and code of ethics of the Association of Accounting Technicians (AAT) and accept instructions to act for you on this basis. 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 on our website [dmsconsultancy.org](https://www.dmsconsultancy.org), or via the AAT website at <https://www.aat.org.uk/prod/s3fs-public/assets/AAT-Code-Professional-Ethics.pdf>

The fundamental principles of The AAT are;

- a) **Integrity**  
You must be straightforward and honest in all professional and business relationships.
- b) **Objectivity**  
You must not compromise professional or business judgment because of bias, conflict of interest or the undue influence of others.
- c) **Professional competence and due care**  
You must maintain professional knowledge and skill (in practice, legislation and techniques) to ensure that a client or employer receives competent professional service.
- d) **Confidentiality**  
You must not disclose confidential professional or business information or use it to your personal advantage, unless you have explicit permission to disclose it, or a legal or professional right or duty to disclose it.
- e) **Professional behaviour**  
You must comply with relevant laws and regulations, and avoid any action that may bring disrepute to the profession.

## **2 applicable law**

2.1 Our engagement letter, the schedules of services and our standard terms and conditions of business are governed by, and construed in accordance with, English law. The Courts of England shall have exclusive jurisdiction in relation to any claim, dispute or difference concerning the engagement letter (including the firm's terms of business) and any matter arising from it. Each party irrevocably waives any right it may have to object to an action being brought in those Courts, to claim that the action has been brought in an inconvenient forum, or to claim that those Courts do not have jurisdiction.

## **3 client identification**

3.1 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 engagement.

## **4 provision of information by third parties**

4.1 You agree that we can approach such third parties as may be appropriate for information that we consider necessary to deal with your affairs.

## **5 other services and reliance on advice**

5.1 We will be pleased to assist you generally in tax matters if you advise us in good time of any proposed transactions and request advice. We would, however, warn you that because tax rules change frequently you must ask us to review any advice already given if a transaction is delayed, or if an apparently similar transaction is to be undertaken.

5.2 It is our policy to confirm in writing advice upon which you may wish to rely. 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 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.

## **6 commissions or other benefits**

6.1 In some circumstances we may receive commissions or other benefits for introductions to other professionals or in respect of transactions which we arrange for you. You agree that we can retain the commission or other benefits without being liable to account to you for any such amounts.

## **7 fees and payment terms**

7.1 Our fees may depend not only upon the time spent on your affairs but also on the level of skill and responsibility and the importance and value of the advice that we provide, as well as the level of risk.

7.2 If we provide you with an estimate of our fees for any specific work, then the estimate will not be contractually binding unless we explicitly state that will be the case.

7.3 Where requested we may indicate a fixed fee for the provision of specific services or an indicative range of fees for a particular assignment. It is not our practice to identify fixed fees for more than a year ahead as such fee quotes need to be reviewed in the light of events. If it becomes apparent to us, due to unforeseen circumstances, that a fee quote is inadequate, we reserve the right to notify you of a revised figure or range and to seek your agreement thereto.

7.4 It is our normal practice to request that clients make arrangements to pay their fee on a monthly direct debit/standing order. These regular payments will be applied to fees arising from work agreed in the letter of engagement for the current and ensuing years and to periodically adjust the monthly payment by reference to actual billings.

7.5 Our invoices are payable within 25 days of presentation unless otherwise agreed. Our fees are inclusive of VAT. Any disbursements we incur on your behalf and expenses incurred in the course of carrying out our work for you will be added to our invoices where appropriate.

7.6 Unless otherwise agreed to the contrary our fees do not include the costs of any third party, counsel or other professional fees.

7.7 We reserve the right to charge interest on invoices that are not settled within thirty days. Statutory interest of 8% plus the Bank of England base rate will be charged from the due date to the cumulative balance outstanding to cover administrative costs and interest. We also reserve the right to suspend our services or to cease to act for you on giving written notice if payment of any fees is unduly delayed.

7.8 If you do not accept that an invoiced fee is fair and reasonable you must notify us within 21 days of receipt, failing which you will be deemed to have accepted that payment is due.

7.9 If a client company, trust or other entity is unable or unwilling to settle our fees we reserve the right to seek payment from the individual (or parent company) giving us instructions on behalf of the client and we shall be entitled to enforce any sums due against the Group Company or individual nominated to act for you.

## **8 lien**

8.1 Insofar as we are permitted to do so by law or professional guidelines, we reserve the right to exercise a lien over all funds, documents and records in our possession relating to all engagements for you until outstanding fees and disbursements are paid in full.

## **9 implementation and interpretation**

9.1 We will only assist with implementation of our advice if specifically instructed and agreed in writing.

9.2 If any provision of our engagement letter, schedules of services or terms of business is held to be void, then that provisions will be deemed not to form part of this contract. In the event of any conflict between these terms of business and the engagement letter or schedules, the relevant provision in the engagement letter or schedules will take precedence.

## **10 intellectual property rights**

10.1 We retain all copyright in any document prepared by us during the course of carrying out the engagement save where the law specifically provides otherwise.

## **11 internal disputes within a client**

11.1 If we become aware of a dispute between the parties who own or are in some way involved in the ownership and management of the business, it should be noted that our client is the business and we would not provide information or services to one party without the express knowledge and permission of all parties. Unless otherwise agreed by all parties we will continue to supply information to the registered office or normal place of business for attention of the directors/proprietors. If conflicting advice, information or instructions are received from different directors/principals in the business we will refer the matter back to the board of directors/the partnership or other governing body and take no further action until they have agreed the action to be taken.

## **12 limitation of liability**

12.1 We will provide our services with reasonable care and skill. Our liability to you is limited to losses, damages, costs and expenses caused by our negligence or wilful default.

12.2 We will not be liable if such losses, penalties, surcharges, interest or additional tax liabilities are due to the acts or omissions of any other person or due to the provision to us of incomplete, misleading or false information or if they are due to a failure to act on our advice or a failure to provide us with relevant information.

12.3 We will not be liable to you for any delay or failure to perform our obligations under this engagement letter if the delay or failure is caused by circumstances outside our reasonable control.

12.4 We will not be responsible or liable for any loss, damage or expense incurred or sustained if information material to the service we are providing is withheld or concealed from us or misrepresented to us. This applies equally to fraudulent acts, misrepresentation or wilful default on the part of any party to the transaction and their directors, officers, employees, agents or advisers.

12.5 This exclusion shall not apply where such misrepresentation, withholding or concealment is or should (in carrying out the procedures which we have agreed to perform with reasonable care and skill) have been evident to us without further enquiry beyond that which it would have been reasonable for use to have carried out in the circumstances.

12.6 You agree to indemnify us and our agents in respect of any claim (including any claim for negligence) arising out of any unauthorised disclosure by you or by any person for whom you are responsible of our advice and opinions, whether in writing or otherwise. This indemnity will extend to the cost of defending any such claim, including payment at our usual rates for the time we spend in defending it.

12.7 Where the engagement letter specifies an aggregate limit of liability, then that sum shall be the maximum aggregate liability of this firm, its partners, agents and employees to all persons to whom the engagement letter is addressed and also any other person that we have agreed with you may rely on our work. By signing the engagement letter you agree that you have given proper consideration to this limit and accept that it is reasonable in all the circumstances. If you do not wish to accept it you should contact us to discuss it before signing the engagement letter.

12.8 You have agreed that you will not bring a claim of a kind that is included within the subject of the limit against any of our partners or employees; on a personal basis.

### **13 retention of and access to records**

13.1 You have a legal responsibility to retain documents and records relevant to your financial affairs. During the course of our work we may collect information from you and others acting on your behalf and will return any original documents to you following the preparation and, if applicable audit of your accounts and returns. Documents and records relevant to your tax affairs are required by law to be retained as follows:

Individuals, trustees and partnerships:

- with trading income or rental income – 5 years and 10 months after the end of the tax year; otherwise: 22 months after the end of the tax year;

Companies, Limited liability Partnerships and other corporate entities:

- 6 years from the end of the accounting period;

13.2 Whilst certain documents may legally belong to you, we intend to destroy correspondence and other papers that we store which are more than seven years old, other than documents which we consider to be of continuing significance. If you require retention of any document you must notify us of that fact in writing.

### **14 conflicts of interest**

14.1 We reserve the right during our engagement with you to deliver services to other clients whose interests might compete with yours or are or may be adverse to yours, subject to our confidentiality clause. If a conflict of interest should arise, either between two or more of our clients, or in the provision of multiple services to a single client, we will take such steps as are necessary to deal with the conflict. We have safeguards that can be implemented to protect the interests of different clients if a conflict arises. Where conflicts are identified which cannot be managed in a way that protects your interests then we regret that we will be unable to provide further services.

14.2 If there is a conflict of interest that is capable of being addressed successfully by the adoption of suitable safeguards to protect your interests then we will adopt those safeguards. We reserve the right to provide services for other clients whose interests are not the same as yours or are adverse to yours subject of course to the obligations of confidentiality referred to below.

## **15 confidentiality**

15.1 Where you give us confidential information, we confirm that we shall at all times keep it confidential, other than as required by law, by our insurers, or as provided for in regulatory (including external peer reviews), ethical or other professional statements relevant to our engagement. This will apply during and after this engagement.

15.2 We may subcontract our work to other professionals within the sector. Any subcontractors are also bound by our client confidentiality terms.

15.3 We reserve the right, for the purposes of promotional activity, training or for other business purpose, to mention that you are a client. As stated above we will not disclose any confidential information.

## **16 quality of service**

16.1 We aim to provide you with a fully satisfactory service and your engagement partner appointed to deal with your affairs will seek to ensure that this is so. If, however, you are unable to deal with any difficulty through them or their team please email or telephone (03330 509674)

Dean Litherland-Smith ([dean@dmsconsultancy.org](mailto:dean@dmsconsultancy.org))

or

Deborah Litherland-Smith ([deb@dmsconsultancy.org](mailto:deb@dmsconsultancy.org)).

16.2 We undertake to look into any complaint carefully and promptly and do all we can that is reasonable to explain the position to you.

## **17 limitation of third party rights**

17.1 The advice and information 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.

## **18 the provision of services regulations 2009**

18.1 In accordance with the disclosure requirements of the Provision of Services Regulations 2009, our professional indemnity insurers are Markel (UK) Limited of 2nd Floor, Verity House, 6 Canal Wharf, Leeds. LS11 5AS.

## **19 electronic communication**

19.1 Unless you instruct us otherwise we may, where appropriate, communicate with you and with third parties via email or by other electronic means. The recipient is responsible for virus checking emails and any attachments.

19.2 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 through emails or electronic storage devices. However electronic communication is not totally secure and we cannot be held responsible for damage or loss caused by viruses nor 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 and we will communicate by paper mail, other than where electronic submission is mandatory.

19.3 Any communication by us with you sent through the post is deemed to arrive at your postal address two working days after the day of despatch.

## **20 data protection**

20.1 In this clause, 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 providing our services to you, pursuant to our engagement letter with you;

*'data protection legislation'* means all applicable privacy and data protection legislation and regulations including Privacy and Electronic Communications (EC Directive) Regulations 2003 (PECR), The General Data Protection Regulation (EU) 2016/679 (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;

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

20.3 You shall only disclose client personal data to us where:

(i) 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 at [www.fawcetts.co.uk](http://www.fawcetts.co.uk) for this purpose);

(ii) 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

(iii) you have complied with the necessary requirements under the data protection legislation to enable you to do so.

20.4 Should you require any further details regarding our treatment of personal data, please contact our Privacy Controller.

20.5 We shall only process the client personal data:

(i) in order to provide our services to you and perform any other obligations in accordance with our engagement with you;

(ii) in order to comply with our legal or regulatory obligations; and

(iii) 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 at [dmsconsultancy.org](http://dmsconsultancy.org)) contains further details as to how we may process client personal data.

20.6 For the purpose of providing our services to you, pursuant to our engagement letter, we may disclose the 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). The third parties to whom we disclose such personal data may be located outside of the European Economic Area (EEA). We will only disclose client personal data to a third party (including a third party outside of the EEA) provided that the transfer is undertaken in compliance with the data protection legislation.

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

20.8 In respect of the client personal data, provided that we are legally permitted to do so, we shall promptly notify you in the event that:

(a) we receive a request, complaint or any adverse correspondence from or on behalf of a relevant data subject, to exercise their data subject rights under the data protection legislation or in respect of our processing of their personal data;

(b) we are served with an information, enforcement or assessment notice (or any similar notices), or receive any other material communication in respect of our processing of the client personal data from a supervisory authority as defined in the data protection legislation (for example in the UK, the Information Commissioner's Officer); or

(c) we reasonably believe that there has been any incident which resulted in the accidental or unauthorised access to, or destruction, loss, unauthorised disclosure or alteration of, the client personal data.

20.9 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.

## **21 disengagement**

21.1 Should we resign or be requested to resign we will normally issue a disengagement letter to ensure that our respective responsibilities are clear. Should we have no contact with you for a period of a year or more we may issue to your last known address a disengagement letter and hence cease to act.

## **22 period of engagement and termination**

22.1 Unless otherwise agreed in our engagement letter, our 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 Each of us may terminate our agreement in writing by giving notice in writing to the other party except where you fail to cooperate with us or we have reason to believe that you have provided us or HMRC with misleading information, in which case we may terminate this agreement immediately. Termination will be without prejudice to any rights that you may have accrued to either or us prior to the termination.

22.3 In the event of termination of our 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 shall not be required to carry out further work and shall not be responsible or liable for any consequences arising from termination.

The following schedules should be read in conjunction with the above standard terms and conditions. The purpose of these schedules to our engagement letters is to set out the basis on which we act in more detail and to clarify the respective areas of responsibility that exist on our engagements.