

## **TERMS AND CONDITIONS**

All assurance and non-assurance services provided by NEWTONS to a client in accordance with the engagement letter with that client will be subject to the following standard terms and conditions in addition to what is stated specifically in the engagement letter.

### **Definitions**

Unless the context clearly indicates otherwise:

- reference to any gender shall include the other genders
- the singular shall include the plural

In these standard terms and conditions, the words and phrases set out below have the following meanings:

#### **Client:**

The entity/entities, or the persons or individuals, named in the engagement letter, to which or whom services are to be provided by the firms.

#### **The Firm:**

NEWTONS, is a partnership in the Republic of South Africa; any division of NEWTONS, any entity owned or managed by NEWTONS and shall include the partners, employees, agents and contractors of NEWTONS. The contracting element of NEWTONS will usually be identified by our letterhead or set out in the engagement letter.

#### **Services:**

The assurance and non-assurance services and any other services incidental thereto, to be rendered by the firm as set out in the engagement letter.

### **Headings**

The headings in the engagement letter and in these terms and conditions shall not in any way affect or govern the interpretation or construction of the applicable terms and conditions.

### **General principles**

In providing any audit or non-audit services, the firm will:

- not act in the capacity of management, and even though certain responsibilities may be delegated to the firm, this in no discharge the responsibility or accountability of the directors, owners or management of the client.
- not act as a formal advocate of or representative for **client**,
- not decide on what recommendations/alternatives to accept or implement,

where as the client will be responsible for:

- making all management decisions and performing all management functions including deciding on what recommendations/alternatives to accept and implement.
- designating a competent management member to oversee the services.
- evaluating the adequacy and results of the services.
- establishing and maintaining internal controls and for determining the adequacy of accounting systems.
- monitoring ongoing activities, and
- the maintenance of the accounting records, preparation of the annual financial statements and safeguarding the assets of the company.

The **services, engagement letter** and any related matters are governed by South African law and any claims will be subject to the exclusive jurisdiction of the courts in South Africa.

The engagement letter and these standard terms and conditions, constitute the entire agreement between the firm and the **client** and supplants any prior oral or written representations, if any. They may be varied only by the written agreement of both the firm and the **client**.

In the event that **services** are subcontracted and this has been acknowledged by the **client**, this engagement letter and any related approvals for the provision of services will also apply to such subcontracted **services**.

The firm and the **client** are independent of each other. Neither party shall act or represent itself as an agent of the other and shall not in any manner assume or create an obligation of, or in the name of, the other.

### **Validity**

Where the engagement letter is a proposal, it shall be valid for a period of 60 days from the date of issue, unless otherwise indicated. Where there is a conflict between the terms in the engagement letter and these standard terms and conditions, these standard terms and conditions will apply.

### **Provision of services**

**The firm** will endeavour to deliver the **services** with the requisite level of skill, integrity and professional competence at all times.

**The firm** may subcontract any **services** under this **written agreement** to any member firm which is part of the network or, with the consent of the **client**, to any other party. **Client's** relationship is solely with the firm as the entity contracting to provide the **services**.

Where the delivery of the **services** requires information from, or the co-operation of, officials and employees of the **client**, the **client** undertakes to use its best efforts to ensure that its directors, management, officials and employees are available when required and that they provide the necessary information and co-operation on a timely basis. Reasonable facilities and access to data and information will be provided by the **client**.

### **Electronic communications**

We may choose to communicate with you by electronic mail or internet where an authorised person wishes us to do so, on the basis that in consenting to this method of communication, you accept the inherent risks of such communications (including the security risks of interception of or unauthorised access to such communications, the risks of corruption of such communications, the risk of errors or loss of information and the risks of viruses or other harmful devices) and that you will perform virus checks. We will use commercially reasonable procedures to check for the most commonly known viruses before sending information electronically.

We recognise that systems and procedures cannot be a guarantee that transmissions will be unaffected by such hazards. We confirm that we each accept the risks of and authorise electronic communications between us. We each agree to use commercially reasonable procedures to check for the then most commonly known viruses before sending information electronically and to safeguard the security and confidentiality of the information transmitted, but we cannot guarantee that the transmission will be free of infection nor its security and confidentiality. We shall each be responsible for protecting our own systems and interests in relation to electronic communications and the client and the firm (in each case including our respective partners/directors, employees or agents) shall have no liability to each other on any basis, whether in contract, delict (including negligence) or otherwise, in respect of any error, damage, loss or omission arising from or in connection with the electronic communication of information between us and our reliance on such information.

The exclusion of liability in the previous clause shall not apply to the extent that any liability arises out of acts, omissions or misrepresentations which are in any case criminal, dishonest or fraudulent on the part of our respective partners/directors, employees, or agents.

If our communication relates to a matter of significance on which you wish to rely and you are concerned about the possible effects of electronic transmission, you should request a hard copy of such transmission from us. If you wish us to password protect all or certain documents transmitted, you may request us to do so.

### **Intellectual property**

**The firm** shall retain all intellectual property rights in all materials and working papers, including methodologies, know-how, trade secrets, software and tools used, provided or developed by **the firm** in providing and delivering the **services**.

We may develop software, including spread sheets, documents, databases and other electronic tools to assist us with our assignment. In some cases these aids may be provided to you upon request. As these tools were developed specifically for our purposes and without consideration of any purpose for which you might use them, they are made available on an "as is" basis for your use only and should not be distributed to or shared with any third party. Further, we make no representations or warranties as to the sufficiency or appropriateness of the software tools for any purpose for which you may use them. Any software tools developed specifically for you will be covered under a separate engagement letter.

Except for cases where a licence is expressly granted by **the firm**, the **client** shall acquire no rights or interest in such property.

Any intellectual property and proprietary rights in material provided by **client** for performing the services shall remain the property of **client**.

### **Non-exclusivity**

The **client** acknowledges that **the firm** provides a variety of other services to a large and diverse range of clients. The provision of the **services** to the **client** will not prevent the firm from providing the same or similar **services** to other parties, some of whom could be competitors of the **client** or who may be in conflict with the **client**.

The **client** also acknowledges that the firm may already have provided the same or similar **services** to other parties.

Where we are aware of the same or similar **services** being provided to other parties, safeguards will be implemented to ensure that any conflict of interest will be dealt with and the interests of the **client** are being protected. These safeguards will include the use of different personnel and other barriers to ensure the confidentiality of information.

Whilst the firm will be bound by the confidentiality clauses mentioned below, as well as the confidentiality clauses of the profession's code of conduct, the firm shall have the right to use the name of the **client** and a description of the **services** as a reference in seeking to provide services to other parties, unless the **client** expressly forbids this.

### **Confidentiality**

We will keep confidential all information obtained from the **client** except such information as is in the public domain, or where the **client** agrees to the firm making this information available to other parties.

Notwithstanding the above clause, **client** acknowledges that we may be required to disclose confidential information to our legal advisers, insurers, the Independent Regulatory Board for

Auditors, or to another party under any law requiring such disclosure. Disclosure in any of these instances will be permissible and will not be a breach of confidentiality.

The **client** agrees to keep confidential any methodologies, technology, know how, trade secrets, software and tools used, provided or developed by the firm in providing and delivering the **services**. Similarly, any information provided or developed by the firm will be kept confidential, unless the firm expressly agrees in writing to the **client** making this available to other parties. This confidentiality requirement will not apply to any information that **client** is required by law to disclose to another party.

Where the engagement letter is a proposal for work to be performed and the **client** does not accept the proposal, any original documentation or property specifically identified by the firm and provided by the client will be returned on request. Similarly, any original documentation or property provided to the client will be returned to the firm.

The **client** acknowledges that the firm is required, in terms of professional standards, to retain documentation to support the work done and any deliverables provided. Where this documentation includes confidential information of the **client**, the firm will be entitled to retain such documentation.

### **Personal information**

Under the Protection of Personal Information Act, any and all personal information requested, received and processed by the firm, is purely for the purpose of performing the stated services and in order to protect the firm's legitimate legal interests.

Any and all personal information will not be shared with any third parties, unless it is required under the service being provided, for example providing this personal information to SARS or CIPC.

The client hereby provides consent for the firm to process all personal information received as required to provide the stated service. The firm will implement the necessary safeguards and controls to ensure that personal information is protected at all times. In the event that personal information may be breached, the firm will notify the client of this.

The client has the right to enquire regarding the personal information retained by the entity and to amend this information at any time.

### **Circumstances beyond our or your control**

Neither of us will be in breach of our contractual obligations, nor will either of us incur any liability to the other, if we or you are unable to comply with the services contract as a result of any cause beyond our or your reasonable control. In the event of any such occurrence affecting one of us, that one shall be obliged as soon as reasonably practicable to notify the other, who will have the option of suspending or terminating the operation of the services contract on notice, which notice will take effect immediately on delivery thereof.

### **Professional fees**

The basis of charging professional fees is set out in the engagement letter.

Disbursements and out-of-pocket expenses incurred in providing the **services** will be charged at cost or our predetermined rates. These include all reasonable expenditure necessary for the successful completion of the **services** including but not limited to travelling, subsistence, goods and services purchased on the **client's** behalf, communications, stationery, report and presentation material, secretarial time and computer charges.

Invoices for fees and expenses/disbursements will be presented as agreed or on completion of the **services** whichever is the earlier. Invoices are payable on presentation.

Interest will be accrued on all amounts outstanding, for whatsoever reason, longer than thirty days from the date reflected on our invoice. Such interest will be calculated on a monthly basis and all payments will be allocated first to interest, then to disbursements, and then to the oldest outstanding fee.

The **client** acknowledges that the firm may suspend provision of the **services** until all amounts due are paid in full. Where the services to be suspended will impact on legal compliance deadlines (such as tax submissions) the client will be informed in a timeous matter to ensure that the client can either make payment or make arrangements to ensure the deadline is met.

### **Use of reports and other deliverables**

Any advice, report, certificate, schedule or other deliverable arising from or in connection with the **services** will be for the sole use of the party or parties to whom it is addressed and may be relied upon only by that party or parties and used solely for the purpose/s for which it was prepared. No person other than the party or parties to whom it is addressed shall be entitled to place any reliance thereon for any purpose whatsoever.

Any such advice, report, certificate, schedule or other deliverable is based on the particular facts and circumstances of the **client** at a particular point in time and on any applicable prevailing rules and regulations in force. Consequently, such advice, report, certificate, schedule or other deliverable may well not be relevant to another party or at a different time and under different circumstances. The firm does not warrant or guarantee that there will be no change to relevant facts and circumstances in the future or that future events or outcomes will transpire.

Unless otherwise indicated in the advice, report, certificate, schedule or other deliverable, copies or extracts therefrom may be made available to the addressee's advisors provided that they are to be used by the advisors solely for the purposes stated in such advice, report, certificate, schedule or other deliverable and provided that the advisors are made aware of the terms and conditions.

Copies, in whole or in part of the advice, report, certificate, schedule or other deliverable or extracts therefrom may not be made available to any other party without the prior express written consent of **the firm**, which consent may be given or withheld at our absolute discretion.

The **client** indemnifies the firm against any claim by any third party arising from a copy of any report, certificate, schedule or other deliverable or extract therefrom which the third party received from the **client** or its advisors.

Only the final signed report, certificate, schedule or other deliverable should be relied and acted upon. Oral communications and draft reports/certificates/other documents must be regarded as preliminary and intended only for discussion purposes.

### **Reliance on client information**

The **services** or any portion thereof, is dependent on information supplied by the **client**. The firm shall be entitled to assume that all the data and information provided by **client** is accurate, reliable and complete. **The firm** will not be liable to the **client** or to any third party for any damages suffered as a result of the **client** providing any information that is incorrect or incomplete or where the **client** fails to disclose any relevant information to the firm; and the **client** indemnifies the firm against any claims or expenses relating thereto.

We will observe the professional rules and practice guidelines of our professional Institute and accept instructions to act for you on the basis that we will act in accordance with those guidelines, using information provided by you.

## Limitation of liability

The maximum liability of the firm, its partners, employees, and agents in respect of any and all claims which may arise in respect of the **services** shall be limited to two times the fees charged for these services individually. This maximum liability shall be an aggregate liability for all claims howsoever arising, whether by contract, delict, negligence or otherwise.

You and other beneficiaries may not bring any claim personally against any individual partner, member, employee or agent, as the case may be, of the firm's contracting party or of anybody or entity controlled by us or owned by us or associated with us in respect of loss or damage suffered by you or by other beneficiaries arising out of or in connection with the services. You agree that any claim of any sort whatsoever arising out of or in connection with this engagement shall be brought only against the firm. This restriction shall not operate to limit or exclude the liability of the firm's contracting party for the acts or omissions of its partners, directors, members, employees and agents. Any claim by you or other beneficiaries must be made (for these purposes a claim shall be made when court or other dispute resolution proceedings are commenced) within two years of the date on which you or they became aware, or ought reasonably to have become aware, of circumstances giving rise to a claim or potential claim against us.

Where **services** are rendered otherwise than in terms of an engagement letter, this clause shall apply separately to services relating to each invoice issued.

**The firm**, its partners, employees and agents will not be liable to the **client** or any third party for any consequential, punitive or any other loss or damages beyond the maximum liability specified.

Where the services comprise forensic work or litigation support:

- the **client**, in addition to the limitations indicated above, indemnifies the firm against all liabilities, losses, damages, claims, demands and reasonable expenses including, but not limited to attorneys fees and expenses, in any action brought against the firm by any other party except the client in connection with or arising out of such services. This indemnification shall not apply in respect of wilful misconduct or gross negligence on the part of the firm;
- The firm shall have no responsibility or liability whatsoever in respect of any advice given or work undertaken for the client by persons who are not partners, directors, principals, members of staff or employees of the firm, regardless of whether or not such persons were introduced to the client by the firm.

## Termination

The engagement letter may be terminated forthwith by the **client** or the firm in the event of either party going into liquidation or having a judicial manager appointed over all or part of its activities.

In the event of either the **client** or **the firm** being in breach of any of the terms of the **written agreement**, the other party may, by written notice require the party which is in breach to remedy such breach. If this has not been remedied within 14 days of receipt of such notice, or if the breach is incapable of being remedied, the other party may in writing terminate the engagement letter without prejudice to its right to claim damages.

The firm will be able to terminate the engagement letter in the event of changes to laws, regulations, or the shareholding/group structure that would render such services illegal or in conflict with independence or professional rules.