

## **Stuart Smalley & Co LLC**

### **Standard Terms and Conditions of Business from 24 May 2018**

All work carried out by Stuart Smalley & Co LLC for you as our client is subject to these terms and conditions of business, except to the extent that changes are expressly agreed with you in writing.

#### **1. Stuart Smalley & Co LLC**

Stuart Smalley & Co LLC (also referred to as “we” or “us”) is a limited liability company registered under the Limited Liability Company’s Act with registered number 480L and having its registered office at 18 St Georges Street, Douglas, Isle of Man IM1 1PL. The Solicitors at Stuart Smalley & Co LLC are regulated by the Solicitors Regulation Authority.

Reference in these terms and conditions or letter of engagement or otherwise in the course of your dealings with us, to an individual being a manager means a manager of Stuart Smalley & Co LLC or an employee or consultant of Stuart Smalley & Co LLC with equivalent status and should not be construed as indicating that any relationship or partnership (within the meaning of the Partnership Act) exists between all or any of the individuals so designated or between any individual and Stuart Smalley & Co LLC.

#### **2. Scope of Our Services**

When you instruct us on a new matter, we will send you a letter (“Letter of Engagement”) confirming your instructions and setting out the services which we will provide. Unless expressly agreed otherwise, our services will not include advice concerning the tax implications of any course of action or transaction or advice on tax related issues.

#### **3. Authority to Give Instructions**

You should tell us, on the outset of a matter who is properly authorised to give us instructions unless otherwise advised, we will assume that we are authorised to accept

instructions from a person whom we reasonably believe to have your authority to give instructions to us (this will include, in the case of a body corporate, any of the directors, officers and employees) and that we may act on instructions given orally.

#### **4. Fees and Other Charges**

Our fees and charges will be calculated on the basis set out in our Letter of Engagement or as otherwise agreed with you.

Our hourly rates are subject to periodic review, normally on an annual (or sometimes bi-annual) basis. If, as a result of a review, our hourly rates are varied we will notify you of the changes. The revised rates will take effect from the date of the notification or as otherwise agreed with you.

When we incur expenses and disbursements on your behalf you agree to reimburse us. These may include (but are not limited to), for example, court fees, agents fees, stamp duty land tax, search and investigation fees, surveyor fees, document preparation and photocopying expenses, international telephone and external conference call charges, courier, fax and guaranteed delivery expenses, travel, subsistence and accommodation expenses. Additional costs that we incur on your behalf will be clearly identified in our invoices. Substantial or unusual expenses such as significant secretarial overtime or specialist IT services will be discussed and agreed with you in advance.

Any value added tax or other “local taxes” chargeable on amounts invoiced by us are payable in addition to our fees and charges. We will deliver an appropriate VAT invoice to you. If you have arranged with a third party for the payment of our fees, the third party will not normally be entitled to recover any VAT element and you will remain responsible to Stuart Smalley & Co LLC for payment of our fees and charges.

#### **5. Billing and Payment Term**

It is our standard practice to bill all outstanding fees and disbursements/expenses on a regular basis agreed with you. A breakdown of any invoice will be provided on request.

If an invoice remains outstanding from the date of delivery of the invoice, we reserve the right to:

- (a) charge interest at the lower of 2.5% over the base rate of Barclays Bank Plc (as varied from time to time) or the rate then payable on judgment debts on any amount outstanding after 30 days from the date of delivery of the invoice until payment and;
- (b) suspend work on all matters on which we are advising you and/or to terminate our retainer. In addition, all our invoices will become immediately due and payable;
- (c) our invoices must be paid without any deduction or withholding on account of taxes or other charges. If you are required by law to make a deduction or withholding you must pay such additional amount as may be necessary to ensure that we receive payment of the full amount of invoice.

Unless requested otherwise, we may send you our invoices electronically.

## **6. Client Money**

Unless we agree otherwise with you, any money that Stuart Smalley & Co LLC holds for you will be deposited in a client bank account with a clearing bank or a building society deposit account. We will not be responsible for any loss due to any mistake or failure by the relevant institution.

We may apply any money that Stuart Smalley & Co LLC holds for you towards the discharge of our outstanding fees, provided the money is not held for a specific purpose.

## **7. Payment of Interest Policy in relation to monies held on behalf clients**

When we receive money from or on behalf of a client (“Client Money”), it will be paid into a general client account with our bank.

We will account for interest on Client Money to such extent as it is fair and reasonable to do so in all the circumstances in order to achieve a fair outcome for both the client and ourselves. We comply with the Overseas SRA Accounts Rules.

We may not pay the full rate of interest that we earn on general client funds as we may achieve an enhanced rate secured from holding large levels of client funds in aggregate. Under the applicable rules money held in a client account must be immediately available, even at the sacrifice of interest, unless the client otherwise instructs, or the circumstances clearly indicate otherwise. Accordingly we pay the same rate of interest as set by the counterparty bank in relation to its Client Call Account. We believe this enables clients to receive a fair market rate of interest whilst providing us with a return for administering and managing client funds, which have to be audited annually at our expense.

The interest will usually be calculated on the balance of Client Money at the conclusion of the client's matter, but we might in some cases consider it appropriate to account to the client at intervals throughout. We will compound the interest in accordance with the payment terms of the counterparty bank.

In the event that the total calculated interest due to the client on a specific matter is £20.00 or less, then no interest will be payable to the client, as it is considered that such a sum may reasonably be retained by us to cover the administrative cost of managing those funds. If Client Money is held in relation to separate matters for the same client, other person or trust, we will normally treat the money as relating to the different matters separately unless otherwise specifically agreed in writing.

We will generally calculate and pay interest at the conclusion of a matter. The interest will be paid gross of tax and the client has the responsibility of declaring the interest received to the appropriate authorities for taxation purposes.

Clients may request that the funds are held by us in a separate designated client deposit account. In the event of any client undertaking such special arrangements, we reserve the right to make a charge at the fee earner rates applicable to the matter for

any reasonable additional time or third party costs incurred in satisfying the client's request in relation to their funds.

We will review and reserve the right to amend this policy at any time.

## **8. Electronic Communication**

Unless otherwise directed by you, we may respond by means of electronic mail. We each agree to accept the risks of using electronic mail, including but not limited to the risks of viruses, interception and unauthorised access.

We each agree to use commercially responsible procedures to check for commonly known viruses in information sent and received electronically but we recognise that such procedures cannot be a guarantee that transmissions will be virus free.

## **9. Confidentiality and Disclosure**

We will keep confidential information received from you while acting in connection with any matter unless;

- (i) we have your authority to disclose it;
- (ii) we are required to disclose it by law;
- (iii) the information is in or comes in to the public domain without any breach of confidentiality on the part of Stuart Smalley & Co LLC;
- (iv) we are required to disclose it by the regulatory or fiscal authorities, in which case, to the extent that we permitted to do so, we will endeavour to give you as much advance notice as possible of any such required disclosure;
- (v) we refer you to our Letter of Engagement. Any information required by Douglas Trustees Limited to enable it to comply with anti-money

laundering and countering the financing of terrorism laws and if held by us, regulations, will be provided by Stuart Smalley & Co LLC and you consent to this disclosure. From time to time we engage external organisations to audit client files. By instructing us you agree that your files may be audited.

## **10. Conflicts**

We have procedures designed to prevent our acting for one client in a matter where there is or could be a conflict with the interests of another client for whom we are acting. If you are aware or become aware of a possible conflict of this type, please raise it immediately with us. If a conflict of this nature arises, then it will be up to us, taking account of legal constraints, professional rules and your and the other client's interest and wishes to decide whether we should continue to act for both parties for one only or for neither.

## **11. Intellectual Property Rights**

You will have the full right and licence to use copies of materials we create for you for the particular purpose for which they are prepared. However, all copyright and other intellectual property rights in all documents, reports, or other materials provided by us to you remain with us. If you wish to use copies of these materials for purposes other than those for which they were prepared, this will require our permission.

## **12. Storage of Papers and Documents**

You agree that we may store documents and papers electronically.

After completing any matter on your behalf we are entitled to retain all your papers and documents while there is money owing to us for our charges and expenses. Subject to this we will retain our files of papers (except for any of your papers which you ask to be returned to you) for a minimum of 6 years from completion of the matter, after which they may be destroyed. We will not destroy documents you have asked us to deposit in safe custody, but we may make a charge to cover our costs.

We will not charge for retrieving papers or documents from storage in relation to continuing or new instructions for us to act on your behalf. However, in other circumstances we may make a charge based on time spent producing stored papers or documents to you or to another at your request. We may also charge for reviewing papers in order to comply with your instructions on storage.

### **13. Limitations and Exclusions of Liability**

In addition to any other limitation agreed with you (and subject to professional rules), the liability of Stuart Smalley & Co LLC, for any claim in respect of services provided to you, whether in contract, negligence or otherwise) shall be limited to the proportion of the total of all damage, including costs which may be fairly attributed to Stuart Smalley & Co LLC (have regard to any contribution to such loss or damage by any other person).

You acknowledge and agree that no member, manager, consultant or employee of Stuart Smalley & Co LLC shall have liability to you for any loss or damage howsoever arising as a consequence of the acts or omissions of such member, manager, consultant or employee (including but not restricted to negligent acts or omissions) save in the case where loss or damage was caused by fraud, dishonesty, reckless disregard of professional obligations or wilful conduct on the part of such member, manager, consultant or employee. In such circumstances, Stuart Smalley & Co LLC shall be liable to the same extent as it would have been in the absence of this exclusion.

You agree that you will inform us if you agree or are asked to agree, to limit the liability of another of your advisers in connection with any matter in respect of which we are also instructed.

You also agree that the liability of Stuart Smalley & Co LLC shall not be increased by any limitation, exclusion or restriction of liability you have agreed with any other adviser or by your inability to recover from any adviser or your decision not to recover from any adviser.

Any limitation on our liability shall not apply to any liability on our part for death, personal injury or fraud or where such limitation is prohibited by law.

#### **14. Instructions to Other Lawyers and Professionals**

Should we need to instruct other lawyers or professionals (including but not limited to expert witnesses, accountants, surveyors, actuaries and so on), we do so unless otherwise agreed, on your behalf and as your agents. They will be responsible to you for the quality and accuracy of the advice they provide and you will be directly responsible for payment of their fees and expenses. Before making any such appointment on your behalf, we will consult with you and seek your agreement to the appointment.

#### **15. Data Protection**

We are the data controller of personal information (personal data) relating to individuals who are either the named client or through whom we conduct our relationship with you. As part of our service it is necessary for us to process personal data. All personal data is processed in accordance with the Isle of Man's General Data Protection Regulations. Primarily your data will be used to enable us to provide services to you. Your data may also be used for the provision of legal services, internal administration and staff training. We may disclose it to our service providers Douglas Trustees Limited and agents for these purposes.

We also process personal data for purposes required by law (eg. anti-money laundering and countering the financing of terrorism) and for commercial purposes (eg. credit worthiness checks).

We are a data processor acting on your behalf in respect of any other personal data supplied to us by you or on your behalf in the course of our relationship with you. In relation to such personal data:

- a. act only in accordance with your instructions in relation to the processing of those data;



- b. take appropriate organisational and technical measures against unauthorised or unlawful processing of those data and against accidental loss or destruction or loss of those data; and
- c. provide appropriate training to personnel who process those data on our behalf.

To fully understand your rights and our obligations with regard to the processing of personal data you should read our Privacy Policy which is available at [www.law-man.com](http://www.law-man.com)

## **16. Rights of Third Parties**

For the purpose of the Contracts (Rights of Third Parties) Act 2001, it is confirmed that our services are provided solely for the benefit of you as our client and our terms of engagement are enforceable only by you and us, and not by any third party.

Stuart Smalley & Co LLC shall not be under any duty to, or have any responsibility towards, any other person in connection with any matter (unless that person is also a client of Stuart Smalley & Co LLC in relation to it), even if the objective of a client's instructions is to confer a benefit upon such a person.

## **17. Solving Complaints**

Our Letter of Engagement sets out who you should contact to raise a concern or to make a complaint. We shall endeavour to reach a satisfactory solution to your complaint. However, if you are still not satisfied, please ask to have the matter reviewed by another manager of Stuart Smalley & Co LLC. You may also be entitled to raise the matter with the Legal Ombudsman for England and Wales.

## **18. Termination**

You can ask us to stop work on any matter at any time by writing to us. We can also cease work on any matter by writing to you, but we will only do this where there are good reasons for our ceasing to work on the matter. Charges and expenses properly incurred by us up to the date of termination will be payable by you. In the event of receipt of instructions to transfer work to another provider we will charge on a time cost basis for assisting in the transfer of any and all relevant documentation. We reserve the right to charge a file closing and storage fee. This fee will take into account the complexity and duration of the matter and any costs incurred in the file closure process.

#### **19. Severance**

If any provision of our agreement with you is invalid or unenforceable for any reason that shall not affect the remainder of our agreement with you.

#### **20. Application and Prevailing Terms**

These terms and conditions of business supersede any earlier terms of business we may have agreed with you. If there is a conflict between these terms and conditions of business and any specific terms agreed with you in relation to an individual matter (eg. any terms set out in a Letter of Engagement), then the specific terms will prevail.

It may be necessary to amend these terms and conditions of business from time to time. We will notify you of any such proposed changes and unless we hear from you to the contrary within 7 days following such notification, the amendments and/or new terms will come in to effect from the end of that period.

#### **21. Force Majeure**

It is understood and agreed that neither of us will be liable to the other for any delay or failure to fulfil obligations caused by circumstances beyond our reasonable control.

## **22. Governing Law and Disputes**

The contract between you and Stuart Smalley & Co LLC is deemed to be made in the Isle of Man and is governed by Manx Law. Subject to any alternative dispute resolution procedures agreed with you from time to time, any dispute between Stuart Smalley & Co LLC shall be subject to the exclusive jurisdiction of the Manx Courts.

**Stuart Smalley & Co LLC**