

# Simmons & Simmons

## Terms of Business

### 1. Simmons & Simmons LLP

Simmons & Simmons is the trading name of our principal partnership Simmons & Simmons LLP, a limited liability partnership registered with the Registrar of Companies for England & Wales with number OC352713 ("Simmons & Simmons LLP") and with its registered office in London, United Kingdom, and its affiliated legal entities and partnerships.

In most countries where we practise, we do so through Simmons & Simmons LLP. In some countries we have to practise through affiliated partnerships or other legal entities ("affiliated entities"), each of which bears the name 'Simmons & Simmons'. A list of all affiliated entities (hereinafter together with Simmons & Simmons LLP referred to as the "Firm") is available on request.

It is Simmons & Simmons LLP which accepts your instructions to provide the legal services as set out in our engagement letter ("Engagement Letter") accompanying these Terms of Business and with which you are contracting for the purposes of the provision of those legal services (the "Engagement"). References to 'we', 'us' and 'our' are to Simmons & Simmons LLP. References to 'you' and 'your' are to the client or clients designated as such in the Engagement Letter.

We use the word "partner" to refer to a member of Simmons & Simmons LLP, or one of its employees or consultants with equivalent standing and qualifications.

### 2. These terms

These Terms of Business, as amended from time to time, should be read together with our Engagement Letter and together they form the terms and conditions concluded between you and us for the purposes of the Engagement. If and to the extent that the Terms of Business conflict with the Engagement Letter, the Engagement Letter shall prevail.

We may amend or replace the Terms of Business from time to time. In such circumstances we shall notify you of the changes. Unless you inform us otherwise within 14 days of such notification, the new or amended Terms of Business will become part of the Engagement.

### 3. Review, Conflicts of Interest and Confidentiality

Before accepting any Engagement, we will determine whether we are able to advise you having regard to any applicable legal or professional regulations. We are not obliged to accept any Engagement.

We will not act for another client in relation to the subject matter of this Engagement, or a related matter, if this would constitute a conflict of interests, unless we are permitted by legal or professional regulations to do so.

You agree that, where permitted by our professional regulations, we may otherwise act for any other client, including commercial competitors, even if the interests of the other client are or may become adverse to your own. If such a situation arises during the Engagement, we will take all measures necessary to ensure that information regarding the Engagement cannot be shared with lawyers working for the other client involved.

Should a conflict of interest arise during the Engagement we may be obliged to terminate the Engagement for that reason. You agree that in such event we will have the right to continue to advise one or more of the clients involved subject to any legal or professional restrictions. We will not be liable to you for any costs or losses arising from a termination of the Engagement on these grounds.

We are required to keep your documents and information acquired during an Engagement confidential (the "Confidential Information") and will not disclose them to any third party without your consent. You agree that we may disclose your Confidential Information to other entities within the Firm, and where we are subject to legal or professional regulations, (including to our professional indemnity insurers), or a court order to do so. These obligations in respect of Confidential Information apply to the Firm when acting through lawyers. In the Netherlands, more limited rules apply to *notarissen* (civil-law notaries), and no such client confidentiality rules apply to *belastingadviseurs* (tax advisors).

### 4. Preventing Money Laundering and Terrorist Financing

The Firm is subject to legislation aimed at preventing money laundering and terrorist financing and similar legislation in different jurisdictions.

In this respect, we require that you provide evidence verifying your identity and your authority to enter into the Engagement before accepting the Engagement. We will be entitled to charge you for any time or costs we incur to comply with such legislation. If we do not receive evidence of your identity and your authority to enter into the Engagement satisfactory to us, we are entitled to refuse or terminate the Engagement.

You should be aware that under such legislation we may be obliged to report to the relevant authorities any knowledge or suspicion of criminal activity, or involvement in money laundering or criminal property or terrorist financing by a client or third party arising during the course of our professional work and in addition we may be obliged to make such reports without reference to you, or without your consent. In certain cases we may also be obliged to terminate or suspend the Engagement, without being allowed to provide an explanation as to the reasons for such termination.

Finally, under such legislation we are obliged to keep our records, including financial records, on each Engagement, and we will keep these records for a period of at least seven years from cessation of any instructions.

## 5. **Our Services**

We will perform the Engagement with reasonable skill and care. The Engagement will not include instructions for advice or for conducting proceedings on tax related issues irrespective of whether such issues arise or may arise out of the Engagement unless expressly requested by you and agreed with you in writing.

Where the Engagement requires legal services in countries other than the one in which we accept your instructions, where possible we shall use the services of our own offices in those countries, except for any instructions or arrangements to the contrary.

During the course of the Engagement it may be necessary for us to instruct one or more expert service providers from outside the Firm on issues beyond our expertise or skill.

We may outsource certain functions such as printing, document production, IT and certain standardised legal services to third parties either locally or abroad. Where this occurs, we will take all reasonable steps to ensure that those third parties recognise and comply with their obligations of confidentiality. You consent to such outsourcing arrangements including the transfer of any personal data to such third parties.

## 6. **Our Advice**

Our advice is prepared and provided solely:

- to you for use by you; and
- for the intended purposes arising from the Engagement.

Our advice should not be disclosed to any third party without our prior written agreement.

## 7. **Instructions and Information**

Save for any arrangements to the contrary, you agree that we may accept instructions in connection with the Engagement from all of your employees, directors and officers and that we may act on the basis of oral instructions. You accept that knowledge of information provided by you to someone in the Firm not involved in the Engagement will not be imputed on any ground whatsoever to those individuals that are involved in the Engagement.

In order to carry out the Engagement effectively we require your full co-operation. You will provide us on a timely basis with any documents and information that we may need to complete the Engagement and ensure that, to the best of your knowledge, those documents and information are complete and accurate. Unless you instruct us otherwise we will assume that the documents and information you provide us in the context of an Engagement are complete and accurate.

Where we believe this to be necessary, you will ensure that we have timely and proper access to your employees and you will procure that they will provide us with such assistance as we require to complete the Engagement.

Where we prepare agreements and other documentation (as drafts or otherwise) and provide advice, we do so as legal advisers, not as specialist advisers or experts in other technical disciplines or professions, and it remains your responsibility to ensure that necessary expertise from other specialists is obtained where appropriate. We are under no obligation to advise you to obtain advice from other experts.

## 8. **Communications**

Unless instructed otherwise in writing, we may correspond with you and third parties by internet, e-mail or other electronic means. You accept that we cannot guarantee that transmissions will be delivered or received in a timely

manner, reliably, securely, error free, virus free or free from interception or spyware. You accept these risks of electronic communications and agree that we will have no liability for any loss or damage caused by the use of electronic means of communication. Where possible, we will use a firewall containing virus protection software. If you have a requirement for a greater level of security in electronic communication, please discuss this with us.

You consent to our intercepting and monitoring communications between you and individuals within the firm, in order to ensure compliance with our internal risk management policies and with applicable legal or professional regulations.

## 9. Fees and payment of our bills

You agree to pay our fees and disbursements as set out in our bills.

Save for any arrangements to the contrary, we will charge fees for all of our time spent on the Engagement including (but not limited to) time spent attending meetings, travelling, reviewing and preparing papers, carrying out legal research, internal consultation, corresponding with you and with third parties, supervising and managing the team deployed on your Engagement and making and receiving telephone calls. Our time spent on the Engagement is recorded and charged in 1/10th hour increments, with a minimum of 1/10th hour.

Disbursements and expenses are recharged to you to cover certain office and administration costs in the manner as set out in the Engagement letter, except where separate agreement has been reached. In addition, we recharge to you any out-of-pocket costs including (but not limited to) fees of experts, external lawyers and similar professionals (locally and abroad), courier costs, taxes, stamp duty, court fees and costs for travel and accommodation, including communications and subsistence costs when travelling in connection with the Engagement.

If in our opinion the costs we will pay on your behalf are substantial, we may request that a corresponding sum is advanced to us before we incur them, or that the costs are paid directly by you.

Any estimate, quote, fee, disbursement or other cost is stated exclusive of VAT or other taxes or duties which we might be obliged to charge. Any VAT, goods and services tax, sales tax or other such taxes or duties we are obliged to charge to you will be calculated on the amount of our fees and disbursements, at the rate from time to time in force. In certain circumstances, EU tax legislation may require us to issue our bills from our office in the country in which you are domiciled, rather than the country from where the matter is being managed. We will advise you at the time of billing if this is required. However, in all other respects, these terms will continue to apply to the fees and billing arrangements.

Save for any arrangements to the contrary, we will send our bills to you by surface mail. Our bills constitute final bills for work done and recorded during the relevant billing period, and are payable within 14 days of issue of the bill. If you wish to query any element of the bill you must do so immediately with the partner responsible for the Engagement. That part of our bill which is not subject to query should be paid within 14 days of issue of the bill.

Our bills are to be paid free of any withholding or deduction in respect of taxes or duties. If you are required by law to withhold or deduct tax, the amount of the bill is to be treated as increased to the extent necessary to ensure that we receive and retain a net sum equivalent to the amount of the bill. If in our opinion we subsequently receive any net value for the amount withheld or deducted we will account for and reimburse such value to you. This paragraph does not apply in Italy in relation to any withholding required under Article 25 of DPR 600/1973.

If payment of any of our bills is subject to exchange or other similar controls, you will use your best endeavours to obtain (or to help us to obtain) any required authorisations or consents as soon as possible after each bill is rendered or on our request you will ensure we receive prompt payment in accordance with such authorisations or consents. If exchange control approval has not been obtained within 6 months from the date of our bill then, if lawfully requested by us, you will pay into a local account designated by us the amount in local currency equivalent to the amount outstanding on our bill (converted at the date of payment).

Our bills are to be paid in the currency stated therein. If you pay our bills in a currency other than the one in which our bill was rendered and as a result of exchange rate fluctuations the amount actually received by us net of bank charges differs from the amount invoiced by less than 0.05% of the invoiced amount, with a maximum of EUR 300, we shall treat the bill as paid (if the amount received was less than the invoiced amount) and you agree that we shall be entitled to keep the excess (if the amount received was more than the invoiced amount).

It is our policy not to accept cash from clients. If you seek to circumvent this policy by depositing cash directly with one of our banks, we reserve the right to charge you for any checks we deem necessary regarding the source of funds and any additional actions undertaken by us or cost incurred in dealing with such cash. In such event, we are also entitled to refuse the cash deposit as payment of our bill and to claim payment of the amount due by means of a transfer by bank or other non-cash or payment institution.

If our bill remains unpaid after 14 days from the billing date we shall be entitled:

- to charge interest to you on overdue amounts at the legal rate for late payments where there is one or 2% above the base rate from time to time of Barclays Bank Plc, London, United Kingdom where there is no legal rate;
- to apply any advance payments, including where permitted advance payments relating to instructions other than the Engagement, towards the payment of any unpaid bills; and
- to terminate the Engagement and any other instructions.

If we or you terminate the Engagement for whatever reason, you will pay all our outstanding fees and incurred disbursements, including those not yet billed as at the date of termination, together with any additional fees and disbursements reasonably incurred arising from the termination of the Engagement.

#### 10. **File Destruction Policy**

We keep files (which includes anything in which information is recorded whether on paper or electronically or otherwise) and property relevant to the Engagement for not less than seven years from the date of completion of the Engagement, having removed and destroyed any documents which in our opinion are superfluous to the archived records of the Engagement. We will have the right to store files and property with a third party whose security arrangements are in our view appropriate.

If we receive a request from you within seven years from the date of completion of the Engagement, we shall return to you any retained documents or property to which you are entitled, subject to any legal obligations which require us to retain those documents. We will be entitled to charge you for retrieving from storage and identifying and selecting any documents and property from your files as requested by you together with the cost and administration of delivering your documents and property to you or a third party.

If we do not receive a request from you for the return of your documents and property within seven years from conclusion of the Engagement, we will have the right to destroy your documents and property without further reference to you.

#### 11. **Rights of action**

You acknowledge and agree that in relation to the Engagement, your relationship with us is solely and exclusively with Simmons & Simmons LLP. Where any individual associated with the Firm acts for you in connection with the Engagement or in any legal or other formal proceedings, they do so only as a representative of Simmons & Simmons LLP.

No member of Simmons & Simmons LLP will be personally liable to you for performing the Engagement or for any loss or damage arising out of or in connection with the Engagement irrespective of whether such claim for breach of contract or compensation arises from any contract or otherwise and you waive any such claim save where such member is individually named in the Engagement Letter to represent you in German court proceedings or where the law otherwise imposes a personal liability.

Further, you agree not to bring any claim of any nature against any of our employees, members of staff or any affiliated entities or their partners, members, employees and members of staff in respect of services provided by them in connection with the Engagement. All our employees, affiliated entities, partners, members, employees and members of staff shall have the right to enforce this clause on their own behalf.

#### 12. **Limitation of liability**

In this clause the term Loss shall mean the total of all losses, damages or costs suffered or incurred, directly or indirectly, in connection with the Engagement, including as a result of breach of contract, negligence, fault or other act or omission by the Firm or one of its partners, employees, members of staff, advisers, or one or more third parties engaged by us.

The total liability of the Firm to you (or any other party who the Firm has agreed may have the benefit of, and rely on, work from the Engagement) for Loss shall be limited to the maximum amount referred to in the Engagement Letter or, if such maximum amount is not included in the Engagement Letter, €55 million, all this excluding any Loss arising from death or personal injury, fraud, wilful misconduct or dishonesty of the Firm or (where the Engagement Letter is issued by an office in Germany, the Netherlands, Italy or Qatar) gross negligence.

#### 13. **Joint and several liability**

Where you suffer any Loss (as defined in clause 12 above) for which we are jointly and severally liable with any third party or third parties, the extent to which such loss shall be recoverable by you from us shall be limited to the extent of our contribution to the overall fault for such Loss, as agreed between all of the parties, or in the absence of agreement as finally determined by the court having jurisdiction pursuant to clause 28 below. Our liability will not be adversely

affected by any limitation of liability you may agree with any other party and we will not be liable to you for any amount in excess of our proper share of a joint or several liability which we are not entitled to recover from any other party by reason of your agreement with that party.

**14. Liability for information relied on by us**

We will not be liable for any Loss (as defined in clause 12 above) that is the result of or due to the provision of false, misleading or incomplete information or documents (save where we should reasonably have discovered the false, misleading or incomplete information or documents) or due to the acts or omissions of any person outside the Firm.

**15. Other parties**

We do not accept any liability for the advice or other services provided by experts, foreign lawyers, or other service providers engaged by us on your behalf, other than our affiliated entities. Unless otherwise agreed in writing, you will be directly responsible for their fees and expenses.

We neither owe nor accept any duty to any person other than you and we do not accept any liability or responsibility for any consequences arising from reliance upon our advice or from the intent to benefit from the Engagement by any person other than you. You will indemnify us against any liabilities, losses, damages, costs and expenses we incur arising out of any claims brought against us by third parties in connection with or arising from the performance of the Engagement.

No person other than the parties to the Engagement Letter and their legal successors, shall have any right to enforce any of the provisions of the Engagement, except for any specific arrangements to the contrary.

**16. Intellectual Property Rights**

We will own copyright in any document prepared by us during the course of carrying out the Engagement. We grant you a non-exclusive royalty-free licence to use any document prepared by us within your organisation solely for the purpose for which it is provided and subject to the confidentiality of such documents.

We apply the benefit of our past experience in acting for our clients. Therefore, subject always to our obligations of confidentiality to you, we may refer to, use or develop documents, ideas, techniques, concepts, methodologies or processes prepared, developed or detailed by us or by other advisers in the context of the Engagement, when advising, preparing documents for, or giving advice to another client, or marketing or know-how. We may keep such documents in a confidential database.

**17. Data Protection Laws**

Unless the context otherwise requires, words and phrases in this paragraph shall have the meaning given to them by European Directive 95/46/EC irrespective of the place of residence of any relevant individuals.

During and after the Engagement we may process on your behalf any personal data you have provided to us. Subject as provided below, any such processing shall be in accordance with, and subject to, your instructions except as described below. We will ensure that all appropriate technical and organisational measures are taken to protect any personal data supplied by you to us against unauthorised or unlawful processing, accidental loss, destruction or damage, including when we sub-contract any processing (for example, in the case of external storage of data). Your instructions are taken to include the use by us, where appropriate, of independent contractors appointed by us for functions such as data and file storage, back-up, destruction, billing, debt collection, legal processing and the like, in accordance with the foregoing. We may share personal data with other legal or professional advisers used by us to provide you with legal services.

We and/or our independent contractors may from time to time process as a data controller and use the contact details you and your representatives have provided to us to send invitations, marketing materials, legal updates or other publications that we feel may be of interest and to organise associated events as well as business meetings. Such contact details may include any information you or your representatives have made available to us to assist us in such purposes, including for example dietary preferences. Should any individuals not wish to receive marketing communications, please notify your contact at Simmons & Simmons LLP.

We may also process as a data controller personal data concerning our clients and contacts in other ways for our own business purposes (for example, but not limited to, billing, client management, archives, conflict checks and know-how).

In connection with any of the purposes described above, and any other legitimate processing of personal data, information may be shared with our offices and/or independent contractors both inside and outside the EEA. Data protection laws may be weaker outside the EEA than inside it.

Our offices may operate under different partnerships to the office to whom you supply personal data. We may also process and transfer personal data as necessary to effect a re-organisation of our business.

By accepting these Terms of Business you give express consent for us to obtain, store and process information about you as described in the preceding paragraphs. You agree that where necessary you will have obtained any appropriate consents from individuals, in connection with the above-described categories of processing, before providing us with personal data.

Any personal data supplied by us to you about our employees and/or any third parties may only be used for the purposes within the framework of the Engagement for which such data were provided to you.

#### 18. **Bribery and Corruption**

The policy of Simmons & Simmons is to conduct all of its business in an honest and ethical manner, and to comply with all applicable anti-corruption legislation, including the UK Bribery Act 2010. Simmons & Simmons has a zero-tolerance approach to bribery and corruption and is committed to acting professionally and with integrity in all its business dealings and relationships wherever it operates.

Where we instruct any third party for or on behalf of you to perform services in relation to any Engagement, we will implement procedures designed to restrict, on a risk-based and proportionate basis, applicable third parties from offering, promising or giving any bribes or being corrupt in relation to those services.

#### 19. **Merger**

If we transfer all or substantially all of our business to another firm ("Successor Entity"), our Engagement with you shall continue. You agree that in such event the Successor Entity is automatically appointed by you as successor contractor so that continuity of service can be provided to you. Between the Successor Entity and you the terms of the Engagement shall apply mutatis mutandis. If such transfer requires some formal action by you then you will take such steps as are necessary to enable continuity of our services.

You will not have the right to transfer your rights arising from the Engagement without our prior written consent.

#### 20. **Termination**

You may terminate the Engagement by giving us notice in writing at any time.

In addition to the circumstances set out above, we may at any time cease acting for you and terminate the Engagement, but only when we have a right to do so under our professional rules and after reasonable notice has been given to you.

Whether the termination of the Engagement is by you or by us, we shall be entitled to retain your documents relating to the Engagement until all our fees and disbursements relating to the Engagement have been paid.

#### 21. **Regulation**

The Firm maintains professional indemnity insurance cover in accordance with applicable regulatory requirements. Where required by relevant regulation, contact details of the insurers and the territorial coverage can be obtained by emailing: [risk.management@simmons-simmons.com](mailto:risk.management@simmons-simmons.com) or by visiting [www.simmons-simmons.com/legalresp](http://www.simmons-simmons.com/legalresp).

Sometimes our work involves investments. We are not authorised by the relevant supervisory authorities and so may refer you to someone who is authorised to provide any necessary advice. However, we can provide certain limited services in relation to investments, provided they are closely linked with the legal services we are providing to you, where we are regulated to do so by the relevant supervisory authorities and professional associations.

#### 22. **Inside information**

To the extent that you are required to maintain an "insider list" under legislation implementing the EU Market Abuse Directive (2003/6/EC) and notify us to do so in relation to the Engagement we will establish procedures designed to enable us to:

- identify and maintain an insider list of our staff who have access to such inside information;
- notify the relevant staff of their legal and regulatory obligations in relation to, and of the sanctions attaching to misuse or improper circulation of, that information;
- make this insider list available to you on request; and

- keep that insider list for at least five years from the date on which it is drawn up or updated.

23. **Force Majeure**

We shall not be liable to you if we are unable to perform our services in relation to the Engagement as a result of any cause beyond our control. In the event of any such occurrence we shall notify you as soon as possible.

24. **Severability**

Each clause and sub-clause of these Terms of Business shall be independently interpreted and enforceable. If any clause or sub-clause of the Terms of Business or provision in the Engagement Letter is declared void, illegal or otherwise unenforceable, the remainder shall survive unaffected.

25. **Waiver**

No delay in enforcing any terms of the Engagement will affect or limit your or our rights under the Engagement. Any waiver by you or us in connection with any breach of the Engagement shall not be deemed a waiver of any other prior or subsequent breach of the Engagement. Any waiver of any claim or legal action arising from the Engagement must be made in writing to be effective.

26. **Governing Law**

The Engagement shall be governed by and interpreted in accordance with the law of the jurisdiction of the office which issued the Engagement Letter in respect of the Engagement and any contractual or non-contractual obligations and rights of action arising from or connected with this Engagement shall be governed by that law.

27. **Resolving problems**

We are confident that we will provide you with a high quality service but should you have any queries or concerns regarding our service please contact the partner identified in the Engagement Letter immediately. In some countries we operate an internal complaints handling process and / or local professional bodies provide a complaints and redress system, reference to which will be in your Engagement Letter, if applicable.

28. **Disputes**

Should any dispute or claim arise out of or in connection with this agreement or the Engagement, we and you will attempt to resolve the dispute or claim in good faith in the first instance by negotiation. If such negotiation is unsuccessful, we and you may agree to seek to resolve the dispute or claim by mediation. If it is not possible to resolve the dispute or claim by negotiation or mediation, then it may be dealt with by legal proceedings or arbitration as provided below.

Subject to clause 29 below, in relation to any legal action or proceedings ("Proceedings") arising out of or in connection with the Engagement (whether contractual or non-contractual obligations), each of the parties irrevocably submits to the exclusive jurisdiction of the courts of the country of the office which issued the Engagement Letter in respect of the Engagement and waives any objection to Proceedings in such courts on the grounds of venue or on the grounds that Proceedings have been brought in an inappropriate forum.

29. **Arbitration**

Unless there are conflicting regulatory requirements, any dispute or claim arising out of or in connection with this agreement or the Engagement may be referred to arbitration on the election of either party. Notice of that election may be given in writing:

- By either party notifying the other prior to the commencement of proceedings, if it has not been possible to resolve the dispute or claim by negotiation or mediation; or
- By us notifying you within 28 days of service of Proceedings on us, if no request to make an election has previously been received from you, in which case you will take no further steps in the Proceedings other than to procure their dismissal or stay.

For the avoidance of doubt, a failure by us to make an election at an earlier point in time if it has not been possible to resolve the dispute or claim by negotiation or mediation will not prevent us from making such an election if you subsequently serve Proceedings on us. Either party shall be entitled to apply to court to enforce the terms of this clause.

If a notice of election is given, the dispute or claim shall be resolved by arbitration in accordance with the rules of the London Court of International Arbitration (details of the LCIA's rules can be found at [www.lcia-arbitration.com](http://www.lcia-arbitration.com)). The language of the arbitration shall be language in which we provided our advice in the office which issued the

Engagement Letter in respect of the Engagement. The place and seat of the arbitration shall be the capital city of the country of the office which issued the Engagement Letter in respect of the Engagement.

30. **Publicity**

The provisions of this clause shall apply only if so stipulated in the Engagement Letter.

Save for those jurisdictions where your specific consent is required, unless you expressly tell us otherwise, you agree that we may make general reference to our representation of you from time to time in marketing and related materials.

You agree that we may also disclose to third parties that we are acting or have acted for you on a certain matter if information about that matter is in the public domain or if you specifically consent to such disclosure. This may include providing information to legal directories, who may wish to contact you for your opinion on our services and, in the absence of objections, we assume this is acceptable to you.