



# WESTCOTTS

CHARTERED ACCOUNTANTS  
& BUSINESS ADVISERS

## Terms of Business V7

Last revised: 1 July 2022

Westcotts is a trading name of Westcotts (SW) LLP. The following standard terms of business apply to all engagements accepted by Westcotts (SW) LLP (“us”, “our” or “we”) from you, the client. All work carried out is subject to these terms except where changes are expressly agreed in writing.

### WESTCOTTS (SW) LLP TERMS OF BUSINESS

#### 1. Professional obligations

- 1.1. We are a limited liability partnership and are registered with the Institute of Chartered Accountants in England and Wales as a firm of Chartered Accountants and can be found on the register at [www.icaew.com](http://www.icaew.com).
- 1.2. As a member of the Institute of Chartered Accountants in England and Wales our conduct is subject to its Code of Ethics which can be found at [www.icaew.com/regulation](http://www.icaew.com/regulation). This is available in English.
- 1.3. Where we become aware of errors made by HM Revenue & Customs you give us authority to correct them. We will not be liable for any loss, damage or cost arising from our compliance with statutory or regulatory obligations.
- 1.4. Details of the firm’s professional registrations can be found at [www.westcotts.uk](http://www.westcotts.uk).

#### Professional indemnity insurance

- 1.5. In accordance with the disclosure requirements of the Provision of Services Regulations 2009, our
- 1.6. professional indemnity insurer is RSA Insurance Group plc, 20 Fenchurch

Street, London. EC3M 3AU. The territorial coverage is worldwide excluding professional business

carried out from an office in the United States of America or Canada and excludes any action for a claim brought in any court in the United States of America or Canada.

- 1.7. If for any reason circumstances arise that may result in a claim to our professional indemnity insurers, you give us your permission to notify them.

#### 2. Fees

- 2.1. Our fees are calculated on the basis of time spent on your affairs, the levels of skill and responsibility involved, the importance and value of the advice provided to you, and the level of risk. In addition we may charge disbursements of travel, accommodation and other expenses incurred in dealing with your affairs.
- 2.2. Our fees are subject to VAT. A VAT invoice will be issued either in advance or upon receipt of your payment.
- 2.3. If it is necessary for us to carry out work that is outside the scope of the engagement currently in place with you, we will advise you of this. Any additional work will result in additional fees being charged. We would therefore like to point out that it is in your interests to ensure that the information you provide us with is completed to the agreed stage.
- 2.4. If we give you an estimate of our fees for carrying out any specific work, then that estimate will not be contractually binding unless we have explicitly stated that will be the case.
- 2.5. If we agree a fixed fee with you for providing a specific range of services this will be the subject of a separate agreement. This agreement will set out



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- the period which the fixed fee relates to and the services covered by it.
- 2.6. If you withdraw your instructions from us or a matter otherwise fails to proceed we will be entitled to charge a reasonable amount for the work completed plus any disbursements incurred.
- 2.7. We are entitled to render a payment request on the completion of each separately identifiable and independent component of our annual work, as set out in the engagement letter issued to you, unless we agree otherwise in writing. We shall be entitled to refuse to carry out further work on your behalf if any payment from you is not received when due. We reserve the right at the outset of our instructions or at any other time to ask you to pay a reasonable amount on account of our future fees or disbursements likely to be incurred on your behalf.
- 2.8. Our terms relating to payments of amounts billed (including VAT) and not covered by standing orders or direct debits, where appropriate, are strictly 7 days from the date of receipt of the payment request.
- 2.9. Any queries you have on our payment requests must be notified to us within 7 days of receipt or we shall deem you to have accepted that payment is due.
- 2.10. Where we have agreed that you will pay us on a standing order basis, we will discuss with you separately the amount and frequency of payments. These standing orders will be applied to fees arising from work agreed in our letter of engagement for the current and ensuing years.
- 2.11. Our fees are subject to VAT. A VAT invoice will be issued either in advance or upon receipt of your payment.
- 2.12. If it is necessary for us to carry out work that is outside the scope of the engagement currently in place with you, we will advise you of this. Any additional work will result in additional fees being charged. We would therefore like to point out that it is in your interests to ensure that the information you provide us with is completed to the agreed stage.
- 2.13. If we give you an estimate of our fees for carrying out any specific work, then that estimate will not be contractually binding unless we have explicitly stated that will be the case.
- 2.14. If we agree a fixed fee with you for providing a specific range of services this will be the subject of a separate agreement. This agreement will set out the period which the fixed fee relates to and the services covered by it.
- 2.15. If you withdraw your instructions from us or a matter otherwise fails to proceed we will be entitled to charge a reasonable amount for the work completed plus any disbursements incurred.
- 2.16. We are entitled to render a payment request on the completion of each separately identifiable and independent component of our annual work, as set out in the engagement letter issued to you, unless we agree otherwise in writing. We shall be entitled to refuse to carry out further work on your behalf if any payment from you is not received when due. We reserve the right at the outset of our instructions or at any



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other time to ask you to pay a reasonable amount on account of our future fees or disbursements likely to be incurred on your behalf.

- 2.17. Our terms relating to payments of amounts billed (including VAT) and not covered by standing orders or direct debits, where appropriate, are strictly 7 days from the date of receipt of the payment request.
- 2.18. Any queries you have on our payment requests must be notified to us within 7 days of receipt or we shall deem you to have accepted that payment is due.

Where we have agreed that you will pay us on a standing order basis, we will discuss with you separately the amount and frequency of payments. These standing orders will be applied to fees arising from work agreed in our letter of engagement for the current and ensuing years.

- 2.19. Where a scheduled monthly payment is not made any fees issued to you that are outstanding at that time will immediately become due for payment in entirety.
- 2.20. Where we have agreed that you will pay us on a direct debit basis, we will discuss with you separately the amount and frequency of payments. You will be provided with an invoice confirming the fee for work as agreed in our letter of engagement, and a payment schedule confirming the amount and date of each direct debit to be collected.
- 2.21. You may have an insurance policy or membership of a trade or professional body that entitles you to assistance with payment of our fees in some situations. A particular example would

be assistance with an investigation by HM Revenue & Customs. Unless you arranged the insurance through us then you will need to advise us of any such cover you have. Please note that you remain liable for our fees regardless of whether all or part are liable to be paid by your insurers.

- 2.22. We reserve the right to charge interest on overdue accounts at the current rate under the Late Payment of Commercial Debts (Interest) Act 1998. We also reserve the right to terminate our engagement and cease acting if payment of any fees billed is unduly delayed.

- 2.23. In the event that we cease to act for you then you agree to meet all reasonable costs of providing information to your new advisers.

- ~~2.24.~~ Where tax or other repayments are mandated to us we have the right to deduct the repayment from our fee account. We will not be liable to you for any penalties you incur or any other losses caused by the non-payment of a disbursement by us where you have not put us in funds.

### **3. Help us to give you the right service**

- 3.1. If at any time you would like to discuss with us how our service to you could be improved, or if you are dissatisfied with the service you are receiving, please let us know by contacting Mr Michael Marsh.
- 3.2. We undertake to look into any complaint carefully and promptly and do all we can to explain the position to you. If we do not answer your complaint to your satisfaction you may of course take up the matter with



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- the Institute of Chartered Accountants in England and Wales.
- 3.3. In order for us to provide you with a quality service on an ongoing basis it is essential that you provide us with relevant records and information when requested, reply to correspondence in a timely manner and otherwise follow the terms of the agreement between us as set out in our letter of engagement.
- 3.4. In the unlikely event that we cannot meet our liabilities to you, you may be able to claim compensation under the Chartered Accountants' Compensation Scheme.
- 4. Commissions or other benefits**
- 4.1. In some circumstances, commissions or other benefits may become payable to us or one of our associates in respect of transactions we or such associates arrange for you. If this happens we will notify you in writing of the amount and terms of payment. The fees that would be otherwise payable by you will not be abated by such amounts unless agreed otherwise. You consent to such commission or other benefits being retained by us or, as the case may be, by our associates, without our, or their, being liable to account to you for any such amounts.
- 5. Client monies**
- 5.1. We may at times hold money on your behalf. Any such money will be held on trust in a client bank account, which is held separately to funds that belong to us. The account will be operated, and all funds dealt with, in accordance with the Clients' Money Regulations of the Institute of Chartered Accountants in England and Wales.
- 5.2. To avoid excessive amounts of administration, interest will only be paid to you if the amount earned on the balances held on your behalf in any calendar year exceeds £25.
- 5.3. We will return monies held on your behalf promptly, as soon as there is no longer any reason to retain those funds. If any funds remain in our client account that are unclaimed, and the client to which they relate has remained untraced for five years, or we as a firm cease to practise, we may pay those monies to a registered charity.
- 6. Confidentiality**
- 6.1. Unless we are authorised by you to disclose information on your behalf, we confirm that if you give us confidential information we will, at all times during and after this engagement, keep it confidential, except as required by law, or transfer between Westcotts entities as detailed in our privacy policy, or as provided for in regulatory, ethical or other professional pronouncements applicable to us or our engagement.
- 6.2. You agree that, if we act for other clients who are or who become your competitors, to comply with our duty of confidentiality it will be sufficient for us to take such steps as we think appropriate to preserve the confidentiality of information given to us by you, both during and after this engagement. These may include taking the same or similar steps as we take in respect of the confidentiality of our own information.



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6.3. In addition, if we act for other clients whose interests are or may be adverse to yours, we will manage the conflict by implementing additional safeguards to preserve confidentiality. Safeguards may include measures such as separate teams, physical separation of teams, and separate arrangements for storage of, and access to, information.

6.4. You agree that the effective implementation of such steps or safeguards as described above will provide adequate measures to avoid any real risk of confidentiality being impaired.

6.5. Where we use external or cloud-based systems, we will ensure confidentiality of your information is maintained.

### **7. Retention of and access to records**

7.1. During the course of our work we will collect information from you and others acting on your behalf and will return any original documents to you following the preparation of your accounts and returns. You have a legal responsibility to retain these records. The law requires individuals, trustees and partnerships to keep records in relation to trading or rental income 6 years from the 31 January following the end of the tax year to which they relate. Other records should be kept for 22 months after the end of the tax year they relate to. Companies, Limited Liability Partnerships and other corporate entities are required to keep records for 6 years from the end of the accounting period.

7.2. While certain documents may legally belong to you, unless you tell us not to, 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.

7.3. Notwithstanding the provisions of Clauses 6.1 and 6.2 above, we reserve the right to retain possession of any papers or documents until all our fees and disbursements have been paid (i.e. exercise a lien).

### **8. Conflicts of interest and independence**

8.1. 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. We confirm that we will notify you immediately should we become aware of any conflict of interest involving us and affecting you.

8.2. 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. In resolving the conflict, we would be guided by the Code of Ethics of the Institute of Chartered Accountants in England and Wales which can be viewed at [www.icaew.com/regulation](http://www.icaew.com/regulation).

### **9. Applicable law**

9.1. These terms of business and our engagement letters are governed by, and construed in accordance with, English law. The Courts of England will have exclusive jurisdiction in relation to any claim, dispute or difference concerning these terms of business



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- and our engagement letters and any matter arising therefrom. Each party irrevocably waives any right it may have to object to any action being brought in those courts, to claim that the action has been brought in an inappropriate forum, or to claim that those courts do not have jurisdiction.
- 9.2. If any provision in these terms of business or any associated engagement letter, or its application, are found to be invalid, illegal or otherwise unenforceable in any respect, the validity, legality or enforceability of any other provisions shall not in any way be affected or impaired.
- 10. Electronic and other communication**
- 10.1. Unless you tell us otherwise we will at times use email or other electronic means to communicate with you.
- 10.2. Electronic communications are capable of data corruption and therefore we do not accept any responsibility for changes made to such communications after their despatch. It may therefore be inappropriate to rely on advice contained in an e-mail without obtaining written confirmation of it. We do not accept responsibility for any errors or problems that may arise through the use of electronic communication and all risks connected with sending commercially sensitive information relating to your business are borne by you. If you do not agree to accept this risk, you should notify us in writing that e-mail is not an acceptable means of communication.
- 10.3. It is the responsibility of the recipient to carry out a virus check on any attachments received.
- 10.4. Where we provide software in the Cloud, this will be provided by a third party (the 'Cloud Supplier'). In accepting the terms of our engagement you also agree to the terms of the Cloud Supplier.
- 10.5. In agreeing to the provision of Cloud software you accept that the Cloud Supplier may hold data outside of the EEA. If held outside the EEA you accept and acknowledge your obligations as a data controller within the Data Protection Act.
- 10.6. The service provided by the Cloud Supplier will be a discrete web based hosted facility, and you agree that access will also be provided to us and the Cloud Supplier.
- 10.7. The firm cannot be held liable for any interruption of service provided by the Cloud Supplier. However, we will liaise with them to help ensure that normal service is resumed as soon as possible.
- 10.8. Where we exchange documents via our client portal, this portal will be provided by a third party (the 'Portal Provider'). In accepting the terms and conditions of use of that portal you also agree to the terms of the Portal Provider.
- 10.9. The service provided by the Portal Provider will be a discrete web based hosted facility, and you agree that access will also be provided to us and the Portal Provider. You also accept if a joint email address is used then other users of the email address may have





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- access to documents and data held on the portal.
- 10.10. The firm cannot be held liable for any interruption of service provided by the Portal Provider. However, we will liaise with them to help ensure that normal service is resumed as soon as possible.
- 11. Data Protection and confidentiality**
- 11.1. To enable us to discharge the services agreed under our engagement, comply with related legal and regulatory obligations and for other related purposes including updating and enhancing client records and analysis for management purposes, as a data controller, we may obtain, use, process and disclose personal data about you / your business / company / partnership / its shareholders / members / officers and employees as described in our privacy notice. We confirm when processing data on your behalf that we will comply with the provisions of all relevant data protection legislation and regulation.
- 11.2. You are also an independent controller responsible for complying with data protection legislation and regulation in respect of the personal data you process and, accordingly where you disclose personal data to us you confirm that such disclosure is fair and lawful and otherwise does not contravene relevant requirements. Nothing within our engagement relieves you as a data controller of your own direct responsibilities and liabilities under data protection legislation and regulation.
- 11.3. Data protection legislation and regulation places obligations on you as a data controller where we act as a data processor to undertake the processing of personal data on your behalf, for instance where we operate a payroll service for you. We therefore confirm that we will at all times take appropriate measures to comply with relevant requirements when processing data on your behalf. In particular we confirm that we have adequate security measures in place and that we will comply with any obligations equivalent to those placed on you as a data controller.
- 11.4. Our privacy notice, which can be found on our website at [www.westcotts.uk](http://www.westcotts.uk) explains how we process personal data in respect of the various services that we provide.
- 12. Contracts (Rights of Third Parties) Act 1999**
- 12.1. Persons who are not party to this agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 12.2. The advice we give you is for your sole use and is confidential to you and will not constitute advice for any third party to whom you may communicate it. We will accept no responsibility to third parties for any aspect of our professional services or work that is made available to them.
- 13. The Proceeds of Crime Act 2002 and the Money Laundering Regulations 2019**



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- 13.1. In common with all accountancy and legal practices, the firm is required by the Proceeds of Crime Act 2002 and the Money Laundering Regulations 2019 to:
- Maintain identification procedures for clients and beneficial owners of clients;
  - Maintain records of identification evidence and the work undertaken for the client; and
  - Report, in accordance with the relevant legislation and regulations.
- 13.2. The offence of money laundering includes concealing, converting, using or possessing the benefits of any activity that constitutes a criminal offence in the UK. It also includes involvement in any arrangement that facilitates the acquisition, retention, use or control of such a benefit.
- 13.3. This definition is very wide and would include such crimes as deliberate tax evasion, deliberate failure to inform the tax authorities of known underpayments or excessive repayments, fraudulent claiming of benefits or grants, or obtaining a contract through bribery. Clearly these examples are by no means exhaustive.
- 13.4. We are obliged by law to report any instances of money laundering to NCA without your knowledge or consent. In consequence, neither the firms' members nor staff may enter into any correspondence or discussions with you regarding such matters.
- 13.5. We may use electronic checks as part of our identification procedures. We confirm that these electronic checks are not credit checks.
- 14. General limitation of liability**
- 14.1. Clauses 13.2 to 13.5 shall apply unless the engagement letter contains alternative provisions in which case the provisions contained within the engagement letter shall take precedence.
- 14.2. We will provide 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. However, to the fullest extent permitted by law, we will not be responsible for any losses, penalties, surcharges, interest or additional tax liabilities where you or others supply incorrect or incomplete information, or fail to supply any appropriate information or where you fail to act on our advice or respond promptly to communications from us or the tax authorities. Further, we will not be liable to you for any delay or failure to perform our obligations if the delay or failure is caused by circumstances outside our reasonable control.
- 14.3. You will not hold us, the owners of this firm and any staff employed by the firm, responsible, to the fullest extent permitted by law, for any loss suffered by you arising from any misrepresentation (intentional or unintentional) supplied to us orally or in writing.
- 14.4. You agree that you will not bring any claim in connection with services we provide to you against any of the members or employees personally.
- 14.5. Our work is not, unless there is a legal or regulatory requirement, to be made available to third parties without our





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written permission and we will accept no responsibility to third parties for any aspect of our professional services or work that is made available to them.

### **15. Use of our name in statements or documents issued by you**

15.1. You are not permitted to use our name in any statement or document that you may issue unless our prior written consent has been obtained. The only exception to this restriction would be statements or documents that in accordance with applicable law are to be made public.

### **16. Draft/interim work**

16.1. In the course of our providing services to you we may provide advice or reports or other work products in draft or interim form. However final written work products will always prevail over any draft or interim statements.

### **17. Advice**

17.1. Advice we give you orally should not be relied upon unless we confirm it in writing. We endeavour to record all advice on important matters in writing. However if you particularly wish to rely upon oral advice we give you during a telephone conversation or a meeting, you must ask for the advice to be confirmed in writing.

17.2. Unless specifically instructed and agreed in advance we will not assist with the implementation of our advice.

### **18. Intellectual property rights**

18.1. We will retain all intellectual property rights in any document prepared by us in entirety except where the law specifically states otherwise.

### **19. Interpretation**

19.1. If there is a conflict between the engagement letter and these terms of

business then the engagement letter takes precedence

### **20. Disengagement**

20.1. If we resign or are asked to resign, we will normally issue a disengagement letter to ensure our respective responsibilities are clear.

### **21. Investment services**

21.1. Since we are not authorised by the Financial Conduct Authority, if during the provision of services to you, we identify that you may need advice on investments, pensions, mortgages or other financial services we may refer you to Westcotts Financial Management Limited (a separate organisation wholly owned by this firm). Westcotts Financial Management Limited is authorised and regulated by the Financial Conduct Authority to provide investment business advice. However, as we are licensed by the Institute of Chartered Accountants in England and Wales, we may be able to provide certain investment services that are complementary to, or arise out of, the professional services we are providing to you.

21.2. In the unlikely event that we cannot meet our liabilities to you, you may be able to claim compensation under the Chartered Accountants' Compensation Scheme in respect of exempt regulated activities undertaken.

21.3. In relation to the conduct of insurance distribution activities, we are an ancillary insurance intermediary. We are not authorised by the Financial Conduct Authority. However, we are included on the register maintained by



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the Financial Conduct Authority so that we can carry on insurance distribution activity, which is broadly the advising on, selling, and administration of insurance contracts. This part of our business, including arrangements for complaints or redress if something goes wrong, is regulated by ICAEW. The register can be accessed from the Financial Conduct Authority's website at [www.fca.org.uk](http://www.fca.org.uk).

### **22. Probate-type services**

22.1. As we are licensed by the ICAEW for the reserved legal activity of non-contentious probate from our Exeter office, in the unlikely event we cannot meet our liabilities to you, you may be able to seek a grant from ICAEW's Probate Compensation Scheme. Generally, applications for a grant must be made to ICAEW within 12 months of the time you become aware, or reasonably ought to have been aware of the loss. Further information about the scheme and the circumstances in which grants may be made is available on ICAEW's website: [www.icaew.com/probate](http://www.icaew.com/probate).

22.2. If you would like to talk to us about how we can improve our service to you, or if you are unhappy with the service you are receiving, please let us know by contacting the Head of Legal Practice, Michael Marsh. We will consider carefully any complaint you may make about our probate services as soon as we receive it and will do all we can to resolve the issue. We will acknowledge your complaint within 10 business days of its receipt and endeavour to deal with it within 8

weeks. Any complaint should be submitted to us by letter.

22.3. If we do not deal with it within this timescale or you are unhappy with our response you may of course take the matter up with our professional body and the Legal Ombudsman. Complaints to the Legal Ombudsman should be made within six years of the act or omission or within three years of you becoming aware of the issue, and in either case within six months of our written response to your complaint to us. The contact details for the Legal Ombudsman are: Legal Ombudsman, PO Box 6806, Wolverhampton. WV1 9WJ or [enquiries@legalombudsman.org.uk](mailto:enquiries@legalombudsman.org.uk) or 0300 555 0333.

### **23. Foreign Account Tax Compliance Act (FATCA) and Common Reporting Standards**

23.1. Unless agreed specifically in a separate engagement letter, we are not responsible for your compliance with the International Tax Compliance (United States of America) Regulations 2013, produced as a result of FATCA. In particular, we are not responsible for the categorisation of any UK entity into either a Financial Institution (FI) or an active or passive Non-Financial Foreign Entity (NFFE) nor, if a Financial Institution, for its registration with the US Internal Revenue Service (IRS) and subsequent submission of the required annual returns to HM Revenue & Customs.

23.2. However, if requested to do so we can provide advice on the completion of the forms supplied by Financial Institutions under these Regulations, or



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under Common Reporting Standards, and used by them to determine the status of an entity. We can also provide advice on setting up the appropriate systems to identify and report on your clients or beneficiaries who are foreign citizens affected by FATCA or Common Reporting Standards.

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