

ELYSIAN ASSOCIATES
STANDARD TERMS AND CONDITIONS
FOR THE PROVISION OF VAT AND TAX ADVISORY SERVICES

1 Interpretation:

1.1 In these terms and conditions (and unless expressly stated to the contrary in any Proposal) the following expressions shall have the meanings set out beside them:

“Agreement”	means a Proposal/Engagement letter accepted and signed by the Client and the Partners, including the Conditions.
“Client”	means the person who accepts a Proposal.
“Partners”	means Elysian Associates and its successors and assigns.
“Commencement Date”	means the commencement date set out in the Proposal
“Conditions”	means the standard terms and conditions of services set out in this document and any special terms and conditions agreed in writing between the Client and the Partners
“Fixed Fee”	means the fixed fee stated in the Proposal/Engagement letter.
“Proposal ”	means the document to which the Conditions are attached, made by the Partners to the Client setting out the services to be performed by the Partners or any written request from the Client for services which is accepted by the Partners in writing.
“Services”	means the services to be performed by the Partners for the Client as set out in the Proposal.
“VAT”	means Value Added Tax as defined under the Value Added Tax Act 1994
“Tax”	means Tax as defined in the various Taxes Acts

- 1.2 The headings in these Conditions are inserted only for convenience and shall not affect their interpretation.
- 1.3 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended from time to time.
- 1.4 Any reference in these Conditions to the singular shall be deemed to include a reference to the plural and vice versa.
- 1.5 Any reference in these Conditions to a person shall include a body corporate, a corporation, a partnership or an unincorporated association.

2 Provision of Services:

- 2.1 The Partners shall provide to the client, and the Client shall engage the Partners to provide on an exclusive basis all the Services as set out in the Agreement together with all recommendations in accordance with the terms of the Proposal, subject in all cases to the Conditions.
- 2.2 No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Client and the Partners.
- 2.3 No request for Services submitted by the Client shall be deemed to be accepted by the Partners unless and until such request is signed by the Partners authorised representative.
- 2.4 The Client shall be responsible to the Partners for ensuring the accuracy of the terms of any request for Services and for giving the Partners any necessary information relating to the Services within a sufficient time to enable the Partners to provide the Services.
- 2.5 The services shall be provided for 1 year unless otherwise stated in the Proposal / Engagement letter or until it is agreed that the project has come to an end.

3 Liability:

- 3.1 The following provisions of this clause 3 set out the entire liability of the Partners, agents and contractors to the Client in respect of any breach of the Conditions and any representation (other than a fraudulent representation), statement or tortuous act or omission including but not limited to negligence arising under or in connection with the Agreement and the provision by the Partners of the Services.
- 3.2 Except where the Partners have been negligent in the performance of the Services, the Partners:
- 3.2.1 shall not be liable for any loss or damage whatsoever insofar as any calculations or recommendations concerning the Partners’ assessment in respect of VAT reclaimable or VAT reclaimed if such calculations or recommendations subsequently be judged or proved incorrect by the VAT Tribunal or HM Revenues and Customs, excepting that the Partners hereby agrees to reimburse the Client in respect of fees charged by the Partners subject to the terms of the Proposal.
- 3.2.2 excludes any liability in respect of loss of profits, loss of business, loss of revenue, loss of goodwill, loss of anticipated savings, loss of data or information or any indirect or consequential loss, howsoever arising, suffered or incurred by the Client and irrespective of whether (i) the Partners had been advised, knew or should have known of the possibility of such loss or (ii) it was caused by the negligence of the Partners.
- 3.2.3 shall not be responsible for any liability whatsoever that may occur under Section 63 of the Value Added Tax Act 1994, Section 98A Taxes Management Act 1970, Schedule 24 and Section 97 Finance Act 2007.
- 3.3 The Partners undertake and agree to take out adequate professional indemnity insurance cover with an insurance office of repute to cover the liability accepted by it in this Clause 3, currently £5,000,000 and at the Client’s request agrees to produce a copy of the insurance policy or policies and relevant renewal receipts for inspection by the Client.
- 3.4 The Partners fees pursuant to the Agreement are determined on the basis of the exclusions from and limitations of liability contained in the Conditions. The Clients hereby expressly agrees that these exclusions, limitations and liabilities are reasonable because of the likelihood that otherwise the amount of damages that may be awardable to the Client for the Partners negligence or a breach by the Partners of the Conditions may be disproportionately greater than the fee for the Services.
- 3.5 The Services are provided exclusively for the benefit of the Client. The Client undertakes that it will not pass to any third parties the advice given by the Partners. In the event of a third party claim against the Partners as a result of a breach of this clause by the Client, the Client shall indemnify the Partners against all liability, actions, proceedings, costs, claims, damages or demands brought or threatened to be brought against the Partners by any such third party.
- 3.6 The provisions of this clause 3 shall survive the termination of the Agreement howsoever arising.

4 Fees and Payment:

- 4.1 In consideration of the provision of the Services the Client shall pay to the Partners (subject to receipt of an invoice from the Partners) in respect of the provision of Services the charges set out in the Proposal.
- 4.2 All payments to the Partners shall be made against the Partners’ invoice which shall be presented in accordance with clause 4.3 below. All payments shall be made by the Client upon presentation of the Partners invoice to the Client.
- 4.3 In the case of Services in respect of which fees are based on daily or hourly rates where stated in the Proposal, the Partners shall invoice the Client from time to time at the Partners discretion for the provision of Services.
- 4.4 All charges and other sums payable by the Client under the Agreement and/or these Conditions are exclusive of any applicable VAT which shall be payable by the Client in addition to the charge or sum in question.
- 4.5 All payments to be made by the Client to the Partners under the Agreement which are undisputed shall be made in full without any withholding, set-off, restriction or condition and without any deduction for or on account of any counterclaim.
- 4.6 If the Client fails to pay within 28 days any amount which is payable to the Partners pursuant to the Conditions then, without prejudice to clause 4.7 and clause 6 the amount shall bear interest from this date until payment is made to the Partners at an annual rate of four per cent per annum over Bank base rate from time to time.

4.7 If the Client fails to make any payment on the date due then, without prejudice to any other right or remedy available to the Partners the Partners shall be entitled:

4.7.1 Summarily to terminate this Agreement or any other agreement between the Partners and the Client or suspend the provision of any Services:

4.7.2 to appropriate any payment made by the Client to such of the Services (or the services supplied under any other agreement between the Client and the Partners) as the Partners may think fit (notwithstanding any purported appropriation by the Client).

4.7.3 To approach a Small Claims Court or Debt Collection agency as the Partners see fit.

5 Obligations of the Client:

5.1 Whilst the Partners provide the Services to the Client the Client shall afford the Partners such access to the Client's premises and the Client information record and other material relevant to the Services as the Partners may require to provide the Services provided always that the Client shall only be obliged to afford such access during normal business hours. Further the Client shall:

5.1.1 advise the Partners of the rules and regulations which are then in force for the conduct of personnel at its premises;

5.1.2 make available such working space and facilities at its premises as the Partners may reasonably require;

5.1.3 make available appropriate personnel to liaise with the Partners.

5.1.4 secure and otherwise keep safe all and any property of the Partners.

5.1.5 retain all information and data provided in any Report or correspondence as strictly confidential and only to be viewed by the Client's employees, H.M. Revenues and Customs or as required by law.

6 Termination:

6.1 Without prejudice to the Partners right to terminate the Agreement and/or the provision of the Services in accordance with the provisions of clause 6.2 below the Partners and the client shall at any time have the right at its discretion by giving 30 days notice in writing to the other to terminate all or any of its obligations to provide the services.

6.2 In addition either party may terminate the Agreement and/or the provision of the Services forthwith by notice in writing to the other if:-

6.2.1 the other party commits a breach of the Conditions which in the case of a breach capable of remedy shall not have been remedied within 30 days of the receipt by the other of a notice from the innocent party identifying the breach and requiring its remedy; or

6.2.2 has a bankruptcy order made against it or makes an arrangement or composition with its creditors or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal) or enters into liquidation (whether voluntary or compulsory), except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver, manager, administrator or administrative receiver appointed of any of its assets, income or undertaking.

6.2.3 In the event of the client terminating the contract it agrees as part of the termination to reimburse the Partners for all unbilled time spent and costs incurred by the Partners in respect of the engagement up to the date of termination.

7 Force Majeure:

Neither party to this Agreement shall be liable to the other party in any manner whatsoever for any failure or delay or for the consequences of any failure or delay in performing any of its obligations under the conditions if such failure or delay is due to any cause beyond that party's reasonable control and the party so failing or delayed shall be entitled to a reasonable extension of time for performing such obligations provided that lack of funds howsoever arising shall not be a cause beyond a party's reasonable control.

8 General:

8.1 No waiver by the Partners of any breach of any provision of the Conditions by the Client shall be considered as a waiver of any subsequent breach of the same or any other provision.

8.2 If any provision of the Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Conditions and the remainder of the provision in question shall not be affected thereby.

9 Notices:

All notices to be given pursuant to the Conditions shall be in writing and shall be

sent to the respective addresses of the Client and the Partners given in the Proposal or to such other address as may be notified by either party to the other

10 Entire Agreement:

10.1 The Agreement contains the entire agreement between the parties with respect to the Services and supersedes and replaces all prior communications, drafts, agreement, warranties, stipulations, undertakings and agreements of whatsoever nature, whether oral or written, between the parties relating to the Services.

10.2 Each party acknowledges that it has not relied upon any representation, warranty, promise or assurance made or given by the other party, whether or not in writing, at any time prior to being bound by the Conditions which is not expressly set out in the Agreement, provided that this shall not exclude any liability which a party would otherwise have to the other in respect of any statements made fraudulently.

11 Methodologies:

The methodologies which are used by the Partners in carrying out the Services represent know-how belonging to the Partners and are confidential to the Partners and the Client shall not acquire any rights in such methodologies or be entitled to call for detailed explanations of such methodologies. If at the request of the Client the Partners in its absolute discretion agrees to give to the Client such detailed explanations the Client shall keep the same confidential and shall not disclose the same to any third party without the prior written consent of the Partners.

12 Joint and Several:

Where the Client is more than one person the liability of such persons under the Agreement shall be joint and several.

13 Assignment:

The Partners shall be entitled to assign the benefit and/or burden of the agreement.

14 Lien:

Without prejudice to any lien to which the Partners may be entitled by law, the Partners shall have a general lien over any papers in its possession belonging to the Client, or for which the Client is entitled to call, for payment of the Partners charges under the Agreement or any other agreement between the Partners and the Client.

15 Right of Third Parties:

The Contracts (Rights of Third Parties) Act 1999 shall apply to the benefit conferred or purported to be conferred on the employees, agents and sub-contractors of the Partners in respect of the exclusions and limitations set out in clause 3 of the Conditions. Except as stated in this clause 15, the Partners and the Client do not intend that any of the Conditions will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to the Agreement.

16 Law and Jurisdiction:

The Conditions shall be governed by English law. The English courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with the Conditions or the provision of the Services.

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