

GENERAL TERMS AND CONDITIONS FOR THE EXECUTION OF EXPERT-COMPTABLE ASSIGNMENTS IN THE GRAND DUCHY OF LUXEMBOURG

(hereinafter referred to as « **General Terms and Conditions** »)

1. **Qualification and definition of an assignment**

These General Terms and Conditions are applicable to engagement letters signed between an *expert-comptable*, whether a natural or a legal person (hereinafter “**the Expert-Comptable**”) and his client (hereinafter “**the Client**”). It is neither applicable to engagement letters governing domiciliation assignments nor to mandates of director/manager/commissaire of companies governed by Luxembourg law.

For the purpose of these General Terms and Conditions, the Expert-Comptable and the Client shall be referred to hereinafter individually as a “**Party**” and collectively as the “**Parties**”.

The scope of the assignment of the Expert-Comptable vis-à-vis the Client shall be limited to the assignment as defined in the engagement letter signed between the Parties.

These General Terms and Conditions derogate from the provisions of the engagement letter signed between the Expert-Comptable and the Client and of the related appendices solely in the event that a provision of the engagement letter or of the related appendices is contrary to the General Terms and Conditions and only to the extent of that contradiction.

Should any circumstances render any of the provisions of these General Terms and Conditions null and void or illegal, the other provisions shall remain in force and effect to the furthest extent possible.

Assignments carried out by an *expert-comptable* acting in his professional capacity are governed by the professional rules issued by the *Ordre des Experts-Comptables*.

2. **Assignment duration**

The assignments shall be entrusted by the Client to the Expert-Comptable for a period of one year. They will be tacitly renewed each year unless either Party sends a termination notice to the other Party at least three months prior to the anniversary date of the signature of these General Terms and Conditions. This termination notice must be sent to the other Party either by registered mail with acknowledgement of receipt or by letter delivered by hand and countersigned by the other Party.

The Client may interrupt an assignment in progress with at least one month written notice to the Expert-Comptable by using one of the two aforementioned means of communication. In such event, the Client shall pay the Expert-Comptable for all work-in-progress and services already performed until the effective date of termination, plus an indemnity of 25% of the fees as agreed for the relevant year in progress.

In the event that a Party fails to fulfil its obligations under the assignment, the other Party shall have the right to terminate the assignment with immediate effect by registered mail with acknowledgement of receipt if the Party in breach of its obligations has not remedied the failure to fulfil obligations in question or if it cannot be remedied within a period of thirty days as from receipt of the notification of the failure to fulfil obligations. In the event of serious misconduct by the Client, the Expert-Comptable may terminate the assignment with immediate effect without requesting that the situation which led to the decision to terminate the assignment be resolved.

In the event that the Expert-Comptable carries out several assignments for his Client, the suspension, interruption or termination of any of the assignments shall not affect the other assignments.

3. **Obligations of the Expert-Comptable**

The Expert-Comptable shall carry out the assignment he has been entrusted with in accordance with the fundamental principles of the code of practice, ethics and independence defined by the Ordre des Experts-Comptables, relevant regulations and professional standard practices. In carrying out his assignment, the Expert-Comptable shall comply with the relevant statutory obligations, including but not limited to obligations regarding independence, anti-money laundering and the fight against the financing of terrorism. The legal and professional obligations incumbent on the Expert-Comptable and the fundamental principles referred to above may be consulted on the website of the *Ordre des Experts-Comptables* www.oec.lu.

In respect of his assignment, the Expert-Comptable shall be bound by an obligation of means, excluding any obligation of result.

The Expert-Comptable may be assisted by persons he selects at his full discretion. He shall decide how and by whom the services described in the assignment are performed.

On completion of his assignment, the Expert-Comptable shall return the original documents delivered to him by the Client for the purpose of his assignment, except for application of the right of retention provided for in Article 7 of these General Terms and Conditions. Once the assignment has been accomplished, the Expert-Comptable is under no obligation to inform the Client of any change which has occurred in the legislation or regulations in force and concerning the assignment or to inform the Client of the potential consequences of such change for the assignment and its outcomes.

4. Professional confidentiality

The Expert-Comptable is subject to:

- professional confidentiality:
Article 458 of the Criminal Code applies both to Experts-Comptables and any persons working for them. Experts-Comptables are obliged to reply to and cooperate to the fullest extent possible with any relevant competent authority in respect of any lawful request this authority may address to them in the performance of its professional duties. Experts-Comptables must, on their own initiative, inform the “*Cellule de Renseignement Financier du Parquet auprès du Tribunal d’arrondissement de Luxembourg*” of any fact that might be regarded as evidence of money laundering or the financing of terrorism, in the cases stipulated by law.

In such case, Experts-Comptables and their employees may not inform the relevant Client or any third parties that such information has been disclosed to the relevant competent authorities or that an investigation is under way.

- a specific obligation of discretion:
(in addition to the aforementioned confidentiality obligation) in respect of information received and the disclosure of documents the Expert-Comptable has drawn up. These documents are addressed to the Client in person (excluding any direct mailing to any third party) except otherwise requested expressly in writing by the relevant Client and agreed by the Expert-Comptable.

5. Client’s liability

Only a Client who is a natural person or the managers of an undertaking or its Board of Directors or the management of the company, failing which any legal or management representative of a company shall be responsible for the financial information relating to the activity of the natural person, the undertaking or the company as they are presented to its owners or to third parties. Any duly authorised agent of the relevant undertaking or company shall sign the annual accounts (or the consolidated accounts) before their being submitted to the competent body for approval.

The Client shall not be relieved of this responsibility in any circumstances whatsoever by granting the Expert-Comptable a power of attorney either to represent him with the authorities or to sign documents on his behalf.

6. Obligations of the Client

The Client shall refrain from doing anything that may affect the independence of the Expert-Comptable or his employees. This provision applies especially to offers made to employees of the Expert-Comptable either to carry out assignments on their own or to become employees of the Client.

The Client also undertakes to:

- make available to the Expert-Comptable, within the period of time as agreed to by the parties, all the documents and information necessary for both the execution of his assignment and the compliance by the Expert-Comptable with his relevant statutory obligations (including, but not limited to, the obligations regarding anti-money laundering and the fight against the financing of terrorism); the Expert-Comptable does not have to verify the completeness, correctness and accuracy of documents and information transmitted by the Client to the Expert-Comptable for the purposes of the performance of the assignment;
- carry out his tasks duly and properly;
- inform the Expert-Comptable of any important or exceptional events and of any commitment which is liable to have any effect whatsoever on the performance of his assignment or the financial situation of the Client;
- confirm in writing, if the Expert-Comptable requests him to do so, that the documents, information and explanations as provided are complete and accurate;

- take steps in accordance with the relevant applicable legislation in force to store the original documents;
- take all necessary steps to ensure an appropriate back-up storage of computerised data and processing (including, without limitation, data storage and protection from any unauthorised access).

The Client may not disclose assignment reports or professional opinions drawn up by the Expert-Comptable to third parties without the prior written consent of the Expert-Comptable unless the assignment implies per se an authorisation to do so.

7. Professional fees

The Expert-Comptable shall receive from the Client professional fees the amount of which is agreed freely between the Parties. No further remuneration (whether direct or indirect) is due. The Expert-Comptable shall receive a refund of any travel expenses and disbursements he may incur.

The Expert-Comptable may request advance billings from the Client from time to time.

If the fees of the Expert-Comptable are not paid within the deadline indicated in the relevant invoice, the Expert-Comptable may:

- charge late payment interest according to the conditions stated below, and
- claim a right of retention in respect of the documents submitted to him.

Unless agreed otherwise, fees must be paid within 8 days from the receipt of the invoice. Invoices are deemed to have been received on the second working day following their issue date. If the fees are not paid within the deadline, the outstanding amounts will trigger, without any need for formal legal notice, interest in accordance with the Law of 18 April 2004 relating to payment terms and late payment interest, as amended. In any case, any failure to pay the fees of the Expert-Comptable shall entitle the Expert-Comptable to exercise a right of retention on all the files or documents submitted to him by the Client. The Expert-Comptable may also claim compensation for recovery costs in accordance with the legal provisions in force.

8. Liability of the Expert-Comptable

Any event likely to have any consequence on the matter of responsibility of the Expert-Comptable must be immediately brought to the attention of the Expert-Comptable by the Client. The civil liability of the Expert-Comptable towards the Client may only be caused by a wrongful performance of his assignment provided that a causal relationship between the fault of the Expert-Comptable and the damage suffered by the Client is proven in judicial proceedings of last instance. The maximum amount of damages that the Expert-Comptable may be required to pay to the Client as compensation for all the prejudicial consequences suffered by the Client in respect of a relevant assignment shall not exceed twice the amount of professional fees provided for the execution of this assignment, unless the damage suffered by the Client is the immediate and direct consequence of a serious or wilful misconduct committed by the Expert-Comptable upheld in judicial proceedings of last instance. Compensation for indirect loss or damage is excluded.

In the event that, following the performance of several successive assignments of the same nature, the loss sustained and duly established by the Client resulted from the same fault on the part of the Expert-Comptable, the liability of the Expert-Comptable vis-à-vis the Client shall be limited to the same maximum amount (calculated on the basis of the average fees relating to each respective assignment) even where the aggregate losses sustained by the Client by reason of all the assignments of the same nature performed consecutively exceed this amount.

In accordance with Article 3 of the Law of 10 June 1999 on the organisation of the profession of the Expert-Comptable, as amended, actions for civil and professional liability brought against an Expert-Comptable shall be time-barred after five years starting from the date of completion of the provision of his services.

The Client undertakes to indemnify and hold the Expert-Comptable harmless from any action for liability initiated or judgment obtained by a third party for damages, interest and costs (including legal fees) except where the action or judgment is the result of serious or wilful misconduct by the Expert-Comptable upheld in judicial proceedings of last instance. The Client shall indemnify, reimburse and guarantee the Expert-Comptable all losses, damages, expenses or liabilities incurred by the Expert-Comptable which may result from or be connected with a failure or a disregard by the Client or a complaint in this regard relating to any obligation whatsoever of the Client deriving from the assignment.

9. Impossibility to carry out an assignment/Force Majeure

The Expert-Comptable cannot be held liable for delays in, or the non-performance of his assignment for reasons beyond his will or control, including in particular the acts, omissions or lack of cooperation of the Client (including the employees and agents of the Client), the acts, omissions or lack of cooperation of a third party, fire or other destructive events, natural catastrophes, strikes or other labour conflicts, acts of violence or, lastly, any law, order or injunction emanating from a governmental or other authority.

Should an assignment of the Expert-Comptable be suspended for reasons of force majeure, the deadlines to submit the deliverables will be extended for a period of time equal to the period of suspension. During this suspension, the provisions of Articles 6, 7 and 8 of these General Terms and Conditions will remain applicable.

10. Processing of Personal Data

In order to execute his assignment, the Expert-Comptable must ensure that he complies with the current applicable rules and regulations pertaining to the protection of personal data, particularly the EU Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing the Directive 95/46/EC ("GDPR").

Depending on the circumstances, the Expert-Comptable may qualify as a Controller, a Joint Controller or a Processor. The distinct obligations which are deriving from this qualification for the Expert-Comptable and the Client are specified in the appendix to these General Terms and Conditions.

11. IT security during transmission of documents

Within the framework of the assignment signed by the Client, and unless otherwise provided expressly in writing by the Client, documents or information may be transmitted during the assignment not only by mail or by fax, but also in electronic form, by e-mail. Neither the Client nor the Expert-Comptable may be held liable for any technical incidents that may occur during electronic transmission (including infection by a virus, worm, etc.).

12. Applicable law and competent jurisdiction

These General Terms and Conditions together with the specific conditions contained in the letter of assignment and its appendices are governed by the laws of the Grand Duchy of Luxembourg.

Any disputes that may arise between the Expert-Comptable and the Client in respect of the performance of the letter of assignment shall be submitted to the courts of the domicile of the Expert-Comptable.

13. Acceptation of the General Terms and Conditions

The Client acknowledges that it has familiarized itself with the General Terms and Conditions set out above and expressly agrees to them in their entirety and unconditionally.

MADE IN TWO ORIGINAL COPIES

Place, date and signature:

Expert-Comptable

Client

Processing of Personal Data – Processor

Appendix Processor

The purpose of this appendix is to inform you on the processing of personal data that the Expert-Comptable (or “The Office”, “We” or “Us”) shall carry out in the framework of the assignment that you, the Client (or “You”), have entrusted to him.

1. **CONTEXT OF PROCESSING**

As a Client, You authorize Us to process on your behalf the personal data, as defined by the current applicable rules and regulations, which are necessary **to provide the services referred to in the engagement letter**.

We undertake to process the personal data in accordance with the enclosed engagement letter(s) and only on your documented instructions.

As part of the execution of the assignment, the Client and the Expert-Comptable undertake to comply with the current applicable rules and regulations pertaining to the protection of personal data, particularly the EU Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing the Directive 95/46/EC (“**GDPR**”).

2. **ROLES OF THE EXPERT-COMPTABLE AND THE CLIENT**

The Expert-Comptable processes personal data on behalf of the Client and only on his documented instructions. In this capacity, the Expert-Comptable shall be qualified as a “**Processor**”.

The Client defines the purposes and means of the processing as well as the data to be processed, in the engagement letter. In this capacity, the Client shall be qualified as a “**Controller**”.

The Expert-Comptable shall process personal data within the framework of his assignment in accordance with the engagement letter and the GDPR. The engagement letter shall thus include the following:

- the subject-matter and duration of the processing;
- the nature and purposes of the processing;
- the type of personal data;
- the categories of data subjects; and
- the rights and obligations of both the Expert-Comptable and the Client.

3. **OBLIGATIONS OF THE EXPERT-COMPTABLE**

The Expert-Comptable shall undertake to comply with the obligations imposed to the Processor under GDPR and, as part of his engagement letter, he shall:

- process personal data only for the purpose(s) of the subcontracting;
- process data in accordance with the instructions stated by the Client in the engagement letter;
- secure the confidentiality of personal data processed as specified in the engagement letter;
- ensure that the persons authorized to process the personal data as specified in the engagement letter:
 - have committed themselves to confidentiality and are under an appropriate statutory obligation of confidentiality;
 - receive appropriate data protection training;
- with respect to the services, be governed by the principles of data protection by design and by default;
- not hire another processor without prior specific or general written consent of the Client;
- to the furthest extent possible, help the Client to facilitate the exercise of data subjects' rights: right of access, right to rectification, right to erasure ('right to be forgotten') and right to object, right to restriction of processing, right to data portability, right not to be subject to a decision based solely on automated processing (including profiling);
- notify any personal data breach to the Client without undue delay after having become aware of it;
- help the Client to carry out a data protection impact assessment, should a need for such an assessment arise;
- at the choice of the Client, delete or return all the personal data to the Client after the end of the provision of services relating to processing, and delete existing copies, unless otherwise required by law or regulations;
- communicate to the Client the name and contact details of his Data Protection Officer, if he has designated one in accordance with Article 37 of GDPR. This may be done by means of a reference in the engagement letter to the website of the Expert-Comptable where the name and contact details of the Data Protection Officer are published;
- maintain in writing a record of all categories of processing activities carried out on behalf of the Client, in accordance with Article 30 (2) of GDPR;

- make available to the Client all information necessary to demonstrate compliance with all his obligations and allow for and contribute to audits, including inspections, conducted by the Client or another auditor mandated by the Client.

However if the Expert-Comptable is required to determine the purposes and means of processing, he shall be considered as a Controller with respect to this processing and shall be obliged to comply with all the obligations imposed on the Controller under GDPR.

4. OBLIGATIONS OF THE CLIENT

The Client undertakes to comply with all the obligations imposed on the Controller under GDPR.

The Client shall guarantee, in particular, that personal data shall be:

- processed lawfully, fairly and in a transparent manner in relation to the data subject;
- collected for specified, explicit and legitimate purposes;
- adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed;
- accurate and, where necessary, kept up to date;
- kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which they are processed;
- processed in a manner that ensures appropriate security of the personal data, including protection against unauthorized or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organizational measures.

The Client shall guarantee to the Expert-Comptable that he has provided the data subjects with the information provided for in Articles 13 and 14 of GDPR and that he shall respond to the requests of the data subjects to exercise the following rights: right of access, right to rectification, right to erasure ('right to be forgotten') and right to object, right to restriction of processing, right to data portability, right not to be subject to a decision based solely on automated processing (including profiling).

Towards the Expert-Comptable, the Client shall undertake to:

- submit data which is accurate, adequate, relevant and limited to what is necessary to enable the Expert-Comptable to perform the service(s) provided for by the engagement letter;
- document in writing any instructions regarding the processing of data by the Expert-Comptable;
- ensure the compliance with the obligations provided by GDPR prior to and throughout the duration of processing carried out by the Expert-Comptable;
- supervise the processing, including carrying out necessary audits and inspections with the Expert-Comptable.

5. SECURITY MEASURES

Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the Expert-Comptable and the Client shall implement appropriate technical and organizational measures to ensure a level of security appropriate to the risk, including inter alia as appropriate:

- the pseudonymisation and encryption of personal data;
- the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services (such as control at the entrance of the facilities, media, memory, access, transmission, introduction, transport);
- the ability to restore the availability and access to personal data in timely manner in the event of a physical or technical incident (such as, in particular, availability control);
- a process for regularly testing, assessing and evaluating the effectiveness of technical and organizational measures for ensuring the security of the processing.

In assessing the appropriate level of security account shall be taken in particular of the risks that are presented by processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to personal data transmitted, stored or otherwise processed.

The Client and the Expert-Comptable shall take steps to ensure that any natural person acting under the authority of the Client or the Expert-Comptable and who has access to personal data does not process them except on instructions from the Client, unless he or she is required to do so by the European Union or Grand Duchy of Luxembourg law.

The responsibilities of each Party with regard to security measures to be implemented shall be expressly defined in the engagement letter.

6. AUTHORIZED DISCLOSURE

The obligation of confidentiality arising from this article shall not prevent the Expert-Comptable from disclosing information, if such information is required or permitted under the applicable legal or professional rules, particularly in the context of disciplinary, civil, commercial or criminal proceedings, or in the context of anti-money laundering and anti-terrorist financing legislation. In this capacity, the Expert-Comptable shall be considered as a Controller and shall be required to comply with the obligations imposed on the Controller under GDPR within the limits set by prevailing laws and regulations.

Made in _____ in two original copies and each signatory party acknowledges the receipt of one copy.

Expert-Comptable

Client

Processing of personal data - Controller

Appendix Controller

The purpose of this appendix is to inform you on the processing of personal data that the Expert-Comptable (or "The Office", "We" or "Us") shall carry out in the framework of the assignment that you, the Client (or "You"), have entrusted to him.

1. **CONTEXT OF PROCESSING**

In the course of the execution of the assignment that You have entrusted to Us, We are authorized to process the personal data which are necessary in order to perform the services referred to in the engagement letter (« **Services** »).

The Services shall be defined in the engagement letter(s) enclosed herewith.

2. **ROLES OF THE EXPERT-COMPTABLE**

Using his professional expertise, the Expert-Comptable determines the purposes and means of the processing of personal data to put in place for the provision of the Services.

In this capacity, the Expert-Comptable shall act as a **Controller**.

The Expert-Comptable undertakes to comply with the current applicable rules and regulations pertaining to the protection of personal data, particularly the EU Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing the Directive 95/46/EC ("**GDPR**").

3. **OBLIGATIONS OF THE EXPERT-COMPTABLE**

The Expert-Comptable must comply with all the obligations imposed on the Controller under GDPR.

The Expert-Comptable undertakes to take all necessary measures to ensure the security of personal data, including their protection against accidental or unlawful destruction, accidental loss, alteration, unauthorized disclosure or access.

The Expert-Comptable must:

- provide to the Client and, as the case may be, to any other data subjects, the information provided for in Articles 13 and 14 of GDPR. This information may be provided, in particular, through a confidentiality declaration annexed to the engagement letter;
- respond to the requests of the Client and, as the case may be, of any other data subjects, to exercise their rights provided for in Chapter III of GDPR.

4. **OBLIGATIONS OF THE CLIENT**

The Client undertakes to submit to the Expert-Comptable the personal data which he has access to and which are necessary to provide the Services.

The Client shall guarantee to the Expert-Comptable that the communication of such data is lawful and does not contravene the applicable rules and regulations pertaining to the processing of personal data.

Made in _____ in two original copies and each signatory party acknowledges the receipt of one copy.

Expert-Comptable

Client

Processing of personal data - Joint Controllers

Appendix Joint Controllers

The purpose of this appendix is to inform you on the processing of personal data that the Expert-Comptable (or "The Office", "We" or "Us") shall carry out in the framework of the assignment that you, the Client (or "You"), have entrusted to him.

1. CONTEXT OF PROCESSING

In the course of the execution of the assignment that You have entrusted to Us, We are authorized to process the personal data which are necessary in order to perform the services referred to in the engagement letter (« **Services** »).

The Services shall be defined in the engagement letter(s) enclosed herewith.

2. ROLES OF THE EXPERT-COMPTABLE AND THE CLIENT

The Expert-Comptable and the Client shall determine **jointly** the purposes and/or means of the processing of personal data to put in place for the provision of the Services.

In this capacity, the Expert-Comptable and the Client shall act as **Joint Controllers**.

3. JOINT OBLIGATIONS

As Joint Controllers, the Expert-Comptable and the Client are required to comply with the current applicable rules and regulations pertaining to the protection of personal data, particularly the EU Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing the Directive 95/46/EC ("GDPR").

The Expert-Comptable and the Client shall have the obligation to determine in a transparent manner in the engagement letter their respective responsibilities for compliance with the obligations with regard to the protection of personal data.

The engagement letter shall thus include in particular:

- a statement that the Expert-Comptable is authorized to process the personal data which are necessary for the provision of the Services;
- the nature of the processing;
- the type of personal data;
- the categories of data subjects;
- the purpose(s) shared in whole or in part between the Expert-Comptable and the Client;
- the possibility for the Expert-Comptable to subcontract all or part of the Services.

The Expert-Comptable and the Client undertake to take all necessary measures to ensure the security of personal data, including their protection against accidental or unlawful destruction, accidental loss, alteration, unauthorized disclosure or access.

4. OBLIGATIONS OF THE CLIENT

You undertake to communicate to Us the personal data to which You have access and which are necessary to provide the Services.

The Client shall guarantee to the Expert-Comptable that the communication of such data is lawful and does not contravene the applicable rules and regulations pertaining to the processing of personal data.

In particular, You must:

- provide data subjects whose personal data are processed as part of the Services that We perform, the information provided for in Articles 13 and 14 of GDPR;
- ensure that you respond to the requests of the data subjects to exercise their rights provided for in Chapter III of GDPR;
- inform the National Commission for Data Protection and, as the case may be, the relevant data subject(s), of any incident (loss/unauthorized access) or security breaches that We may be led to report to You.

5. OBLIGATIONS OF THE EXPERT-COMPTABLE

It is Our responsibility to communicate to You without undue delay and no later than 72 hours after having become aware of it, the following information:

- the exercise of a right by a data subject;
- any potential claim from a data subject;
- the occurrence of any incident (loss/unauthorized access, security breaches) which We would have become aware of and which may have direct or indirect consequences on the processing in progress.

Made in _____ in two original copies and each signatory party acknowledges the receipt of one copy.

Expert-Comptable

Client