



## Terms of Engagement

This document sets out the terms under which **Alchemy Law**, the trading name of Alchemy Law Africa (Pty) Limited and, where relevant, **Alchemy Dispute Resolution**, the trading name of Dingswayo Du Plessis Van Der Merwe Inc. (**we, us or our**) are engaged as your South African advisors and must be read together with the separate engagement letter (**Engagement Letter**) that will be sent to you each time that we agree to represent you on an individual matter. For purposes hereof, **you** refer to the specific person named as our client in the relevant Engagement Letter and does not include any affiliates or related persons. If the services that are to be rendered to you in respect of any individual matter entail litigation or other legal services that may only be performed by a South African attorney in private practice, such services will be rendered by Alchemy Dispute Resolution, who will act as your attorney, but all other services will be rendered by Alchemy Law. The commercial implications of advice and opinions that we may give remain for you to assess and must not be seen as any recommendation as to whether or not you should proceed with any transaction or any corporate or other action.

**Scope and fees:** You will instruct us in respect of individual matters, rather than on a permanent basis. The scope of any individual matter that we are engaged on, and the fees that we will charge you in that regard, will be as set out in the relevant Engagement Letter dealing with that matter. To the extent relevant for purposes of section 35(3) of the Legal Practice Act, 2014, you confirm that you have agreed, on your own initiative, for us to charge our fees on the basis set out in the relevant Engagement Letter rather than in accordance with any tariff that may be determined or published under that Act. All rates and amounts set out in an Engagement Letter dealing with our fees exclude value added and other taxes, disbursements and expenses. In addition to our fees, we will recover, at cost or such other rate as may be set out in the relevant Engagement Letter, all out-of-pocket disbursements and expenses. Our rates and charges are subject to change and are generally reviewed and adjusted in March of each year. Payment of all amounts invoiced is due on presentation of our invoice, free of the cost of transfer of funds, withholding, set-off or deduction whatsoever and we reserve the right to charge interest (at the publicly quoted prime rate of our bankers from time to time) on late payments. If, in respect of any payment to us, there is any withholding (whether on account of tax or otherwise) or deduction required by law, the amount of the payment must be increased to an amount which (after making any such withholding or deduction) leaves an amount equal to the payment that would have been due if no such withholding or deduction had been required. If any amount due to us is not paid in full on due date, we may charge interest on the amount not paid from the due date to date of payment in full at a rate 5% above our banker's ruling prime rate from time to time (calculated daily and compounded monthly in arrears) or at such other rate as we may agree with you. We may also reverse any discount that we might have given and may charge a monthly late payment fee up to 10% of the amount overdue.

**Liability:** Every Engagement Letter will be a separate contract between us and you for the particular matter referred to therein. Our liability under or in connection with any such contract and the services rendered by us thereunder or in connection therewith (whether in contract, delict or otherwise) shall only be to you and shall be limited to the amount of fees (excluding value added and other taxes, disbursements and expenses) that were actually paid and received by us thereunder. Our directors, members, employees and consultants (however designated or called), and those of our affiliates, shall not be liable in their personal capacity for any claim whatsoever arising directly or indirectly in connection with any engagement and all such claims shall be enforceable only by you against us and may be satisfied only from our assets (and not from the personal estates of any of those persons referred to above).

**Third parties:** Where we liaise with, or engage on your behalf, any third party to provide you with advice or other services (or to provide us with same to enable us to prove that to you), you will be liable for all fees, costs, taxes and other amounts payable to such third party or payable in connection with the advice or other services provided by them unless the terms of the relevant Engagement Letter expressly provides otherwise. Further, we and the persons referred to in "Liability" above shall not be liable in any capacity whatsoever for any act or omission of any such third party. In addition, we may utilise cloud services in the execution of our mandate and the provision of services to you. We will use all reasonable endeavours to ensure that our arrangements with these cloud services providers are consistent with our legal and ethical obligations to you, but we do not however

assume any responsibility or liability for the security of any data or the security standards of any such cloud services provider.

**Funds:** If we agree to hold any funds on your behalf (whether in Alchemy Dispute Resolution's trust account or otherwise), note that those funds do not accrue interest and we are not liable for any loss of such funds if the bank or other institution at which the funds are held become unable to repay them (whether as a result of curatorship, insolvency, liquidity issues or otherwise). We may use such funds at any time to settle amounts that are due to us and may require you to top them up to a required level.

**Conflicts:** You agree that, as long as we do so in accordance with our professional requirements as South African attorneys, we may act for other persons whose interests are adverse to yours, whether in transactional, contentious or other matters. However, we do have a duty of confidentiality to you as our client, and we will not share any of your confidential information with any other client (unless ordered by a court or required under law to do so). You confirm that we may similarly not share with you any confidential information of any of our other clients.

**Documents and email:** We retain copyright in and ownership of all documents and other work product produced by us. Where we are in possession of actual documents containing your confidential information, we will use all reasonable endeavours to ensure that we retain same in a manner that is consistent with our legal and professional obligations to you, but we do not however assume any responsibility or liability for the security thereof. We may destroy any documents that you have provided to us if no longer required by us or if our engagement and representation for the particular matter have been terminated. We are not liable for any loss or destruction of or damage to any original documents of yours that might be in our possession. We will as a rule not encrypt any email message to you or any documents sent by email (whether containing confidential or sensitive information or not). We will use all reasonable endeavours to exclude from our emails any attachments thereto any virus or other similar defect that might affect you, but it is your responsibility to put in place adequate measures to protect yourself (and your computer and related systems) against same. We do not assume any responsibility or liability for any loss or damage that may arise as a result thereof.

**Use of information:** In the course and scope of executing our mandate and providing services to you, we will obtain personal and other data about you and various other persons. Unless the relevant Engagement Letter expressly provides otherwise, where we are the owner or controller of such data we will use all reasonable endeavours to adhere to the relevant South African data protection laws as they may apply to us in that regard. We may use third party service providers with respect to the administration of our relationship with you (such as invoicing, archiving etc), the hosting of data (such as contact, time recording etc), the provision of services to you (such as emails, client files etc) and otherwise. You acknowledge that we may do so and authorise us to process (collect, use, store, update, make available to third parties and otherwise deal in) personal and other data relating to you, to share such data with third parties to enable or assist us to render services to you and/or in connection with our relationship with you, and generally to use same for the purpose of rendering services to you and fulfil our legal and professional duties and responsibilities. You also acknowledge and consent that we may communicate with you for the purposes of marketing and/or business development, whether on email or otherwise.

**Termination:** You may terminate our engagement and representation of you at any time. We may terminate our engagement and representation of you at any time. You acknowledge that our professional duties and responsibilities may require us in certain circumstances to terminate our engagement and representation of you. Once we have completed the services required from us under any Engagement Letter, our engagement and representation of you thereunder will automatically terminate. If our engagement and representation of you have been terminated, you will be required to pay all amounts still due to us in order to obtain any documents or data that you may be entitled to.

**General:** The terms of this document will be deemed to be incorporated into each Engagement Letter, and the contract constituted thereby shall be governed by and interpreted under the laws of South Africa and all disputes between us will be resolved by way of arbitration under AFSA rules in Johannesburg before an independent arbitrator appointed by us. The terms hereof and of such Engagement Letter shall be the whole agreement between us and you regarding our engagement set out in that Engagement Letter and shall only be capable of being amended or varied if done in writing and signed by or on behalf of us and you. All references to any of our employees or directors as being a partner are references to a person with a particular seniority and experience rather than as a partner in any partnership and are references to that person acting as our employee or director.