

## Terms & Conditions

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## 1. Introduction and definitions

### DEFINITIONS

**“Additional Fees”** means any fees that the Company may charge to the Client(s) in addition to the agreed fee(s) as stipulated in the Letter of Engagement with the Client.

**“Letter of Engagement”** means the engagement letter that was agreed and signed between the Client and the Company in addition to these Terms and Conditions.

**“Mandate”** means any instruction from the Client to the Company and/or agreed Services(s) between the Client and the Company.

**“Terms and Conditions”** – means this document and any appendices hereto.

**“the Company”**, means Finance & Payroll Executive (Pty) Ltd (F&PE), registration number 2017/043570/07, a private company with limited liability duly registered under the laws of the Republic of South Africa and having its registered address at 93 Mackay Avenue, Blairgowrie, Randburg, Johannesburg, South Africa, 2194. All references to ‘us’ or ‘we’ or ‘our’ will have a corresponding meaning.

**“the Client(s)”** means any client(s) of the Company that is provided with any service offering of the Company. Reference to ‘you’ and ‘your’ will have a corresponding meaning.

**“F&PE”** means the Company.

**“Parties”** means the Company and the Client(s) and ‘Party’ means either the Company or the Client(s), as the context dictates.

**“Scope”** means the specific Service(s) and/or extend of Service(s) provided by the Company to the Client.

**“Service(s)”** means the service(s) that the Company has agreed to provide to the Client as stipulated in the Letter of Engagement and these Terms and Conditions.

### INTRODUCTION

1.1. This document contains the Terms & Conditions which:

1.1.1. sets out the basis on which F&PE accepts instructions from and conducts business with its Client(s); and

1.1.2. regulates the relationship between F&PE and the Client in respect of the Scope.

1.2. These Terms & Conditions are an integral part of F&PE’s appointment. All work carried out by F&PE is subject to these Terms & Conditions, except to the extent that changes are expressly agreed in writing between F&PE and the Client.

1.3. Acceptance of these Terms & Conditions will be assumed from the Client continuing to engage F&PE.

1.4. Please review these Terms & Conditions carefully and contact F&PE promptly if you have any questions.

## 2. Working Together

- 2.1. To achieve the Client's objectives, it is important that F&PE understands the Client's objectives, instructions and expectations at the outset.
- 2.2. It is important that the Client and F&PE work together as a team, and that any changes in the Client's objectives are communicated promptly and clearly to F&PE.
- 2.3. It is the Client's responsibility to decide the use of, and the extent to which it relies on and implements, the advice or recommendations of F&PE.
- 2.4. The Client agrees that F&PE may disclose its role as provider of payroll, accounting and/or tax Service(s) in any matter on which it is instructed following its completion, unless instructed otherwise in writing. The Client also agrees that, unless instructed otherwise in writing, F&PE may publicise the fact that it has a relationship with the Client.

## 3. Client

- 3.1. F&PE only owes a duty to the Client on the Scope on which it is instructed.
- 3.2. F&PE does not accept obligations to any other person or company unless we expressly agree to do so in writing. In those circumstances, these Terms & Conditions will also apply to F&PE's work for that person or company.
- 3.3. F&PE's advice is provided to the Client and may not, without our prior written consent, be disclosed to any other Party.
- 3.4. The Client will not refer to F&PE, or advice received from F&PE in any public document or communication without F&PE's prior written consent.
- 3.5. It is the Client's responsibility to provide F&PE with all documentation by uploading/emailing all supplier invoices, purchase receipts (not the card payment slip) or any other relevant documents required directly to Hubdoc. F&PE is not responsible for downloading, searching or requesting documents from the Client's suppliers. If a Client does not have a Hubdoc account, F&PE will create a shared folder where the client can upload the documents.
- 3.6. Where a Client is registered as a vendor in terms of payment of value added tax ('VAT') vendor with the South African Revenue Services ('SARS'), F&PE will only claim VAT on purchases where valid VAT invoices have been uploaded to Hubdoc/shared folder. Please see SARS VAT checklist (Appendix A).
- 3.7. Clients must respond within reasonable timeframes when requested to supply information or documentation by F&PE.

## 4. Communication and Instructions

- 4.1. F&PE will communicate with the Client face-to-face, by e-mail, post, telephonically, SMS or via WhatsApp. The Client chooses the physical, postal and email address recorded under the Client's name in the engagement letter for receipt of all documents and written notices.

- 4.2. Preference will be given to non-encrypted email communication unless the Client instructs F&PE otherwise in writing. F&PE will assume that the Client consents to communication by this method unless advised otherwise in writing. The Client may change its address by delivering written notice of the new address to F&PE within 7 days of the change taking place.
- 4.3. Although convenient and effective, non-encrypted emails are not secure. F&PE cannot guarantee that emails will not be intercepted, interfered with, or free of defects such as viruses. F&PE does not accept responsibility, and will not be liable, for any damage or loss caused by an email that is intercepted, interfered with or defective. For important communications, please request an acknowledgement of receipt.
- 4.4. F&PE does not accept liability for non-receipt or late receipt by the Client of any communication by email, post or fax, nor for corruption in information communicated to the Client or disclosure to other Parties resulting from interception of such communication.
- 4.5. The Client is responsible for ensuring that communications sent to the email address provided by the Client to F&PE are secure.
- 4.6. F&PE may distribute a periodic newsletter or blog by email. Please let F&PE know if the Client would like to be removed from those mailing lists.
- 4.7. Delays caused by the Client, or delays out of the Companies reasonable control, may result in:
  - 4.7.1. Delayed submissions beyond our control may result in penalties from providers and/or governmental authorities, as the case may be, which will be added to the Client's account and will remain the responsibility of the Client.
  - 4.7.2. Additional Fees may be added to the Client's account should additional resources be required to submit documents or for urgent submissions or at short notice.
5. Conflict of Interest
  - 5.1. Conflicts between clients' interests may arise, from time to time, and F&PE might have to cease acting for the Client by providing the Client with written notice of termination of its Service(s)
  - 5.2. Before accepting any Mandate, F&PE will make reasonable verifications that there is no commercial conflict of interest that prevents F&PE from acting for the Client.
  - 5.3. If a conflict arises while F&PE acts for the Client, the Client will be contacted to mitigate the issue and reserves the right to terminate its Mandate with the Client, with immediate effect, by written notice.
6. Scope of the Service(s)
  - 6.1. F&PE is only working and advising on the Scope.
  - 6.2. F&PE is not working and advising on and does not accept responsibility for -

- 6.2.1. any legal matters;
- 6.2.2. any post completion works not expressly agreed to be undertaken;
- 6.2.3. any other matter not expressly referred to in the Scope of Service(s);
- 6.2.4. any work, responsibilities, omissions, or errors of previous accountants/advisers; and
- 6.2.5. any pre-engagement or remedial work will be quoted separately and agreed in writing. It is specifically recorded that these Terms and Conditions will apply, *mutatis mutandis*, to any additional work agreed between the Client and the F&PE as stipulated in this clause 6.2.5

## 7. Instructions

- 7.1. F&PE relies on the Client to give F&PE timely written instructions.
- 7.2. F&PE does not accept any liability if the Client does not provide clear and complete instructions early enough for F&PE to act within the time limits set by the Client and/or any administrative or judicial authority whatsoever.
- 7.3. All oral instructions and/or instructions given via WhatsApp to F&PE must be confirmed in writing via email by the Client. F&PE does not accept any liability for any misunderstanding or misinterpretation of oral instructions, or for the absence of any written confirmation thereof, F&PE being authorised to ignore any instruction being contrary to South African law.
- 7.4. The Client undertakes promptly to provide F&PE with all information, assistance and materials that F&PE may request from time to time to facilitate the proper and timely performance of the Service(s). The Client warrants the accuracy, completeness and reliability of the information, data and documents provided to F&PE, even if they have come from third Parties.
- 7.5. The Client authorises F&PE to complete and sign in the name of the Client such documentation as is necessary or desirable to carry out the Client's lawful instructions and/or the Service(s), and will on first request, provide in a timely manner, any requisite signed form(s) of authorisation.
- 7.6. The Client agrees to indemnify F&PE in respect of all costs, claims, demands and expenses that may result from exercising of the authority given by clause 7.5 directly above.
- 7.7. F&PE acts as an independent contractor and does not assume responsibility for the Client's internal management decisions, business decisions or day-to-day operations. The Client remains responsible for deciding whether, and how, to act on any advice, recommendations or information provided by F&PE.

## 8. Fees and Expenses

- 8.1. F&PE will provide a formal quotation setting out the Service(s) to be provided. Changes and amendments will be confirmed in writing.

- 8.2. F&PE is entitled to implement an annual price increase on written notice to the Client, which increase will ordinarily take effect once every 12 (twelve) months.
  - 8.3. F&PE may also implement an ad hoc price increase, on reasonable written notice to the Client, where this is necessary due to changes in the Scope of the Service(s), increased complexity, increased transaction volumes, additional work required, changes in law or regulatory requirements, increases imposed by third-Party service providers, or any material increase in the cost of providing the Service(s).
9. Billing
- 9.1. Prepayments
    - 9.1.1. As security for the payment of F&PE's fees and disbursements incurred on behalf of the Client, F&PE reserves the right to require the payment of a deposit, and in rare cases prepayment of F&PE's disbursements. F&PE shall not be obliged to act nor to take any steps in furtherance of the commencement or completion of the Mandate until such deposit or prepayment is received.
    - 9.1.2. Any money paid to F&PE as a deposit will be available to F&PE to use in payment of F&PE's invoiced fees and expenses.
  - 9.2. Disbursements and expenses
    - 9.2.1. It may be necessary for F&PE to incur disbursements and other expenses, on behalf of the Client, from time to time, in connection with the Scope of Service(s)
    - 9.2.2. These may include costs of company secretarial service providers, CIPC searches/reports, experts, courier charges and the like.
    - 9.2.3. F&PE will discuss any such need with the Client prior to incurring the expense and/or disbursement
    - 9.2.4. All such expenses and/or disbursements will be charged to the Client and F&PE may ask the Client to put F&PE in funds to pay them before they are incurred.
  - 9.3. Payment

F&PE will ordinarily invoice the Client monthly, or periodically as may be appropriate and agreed with the Client, in writing.

    - 9.3.1. F&PE invoices are, unless otherwise agreed in writing, due and payable on the last calendar day of the month of issuance, and in the currency in which they are submitted to the Client into the bank account appearing on the invoice.
    - 9.3.2. Any query on an invoice must be raised within 5 calendar days of the date that the invoice is dispatched.
    - 9.3.3. Amounts that remain unpaid after 30 calendar days after the date of issue will bear interest at 2% (two per centum) per month

9.3.4. The Client is the person responsible for the payment of the invoices issued by F&PE unless F&PE and the Client have agreed otherwise in writing.

9.3.5. F&PE reserves the right and will not be obliged to act nor take any steps in furtherance of the completion of any F&PE Mandate until any interim account is settled. F&PE may exercise its right as stipulated in this clause 9.3.5 without the need of notice to the Client.

9.4. Any work outside the agreed Scope will:

Any work outside the agreed Scope will be quoted separately and will only commence once the Client has accepted the quotation, provided written approval and paid a 50% deposit for that work.

## 10. Record Retention

10.1. Retention Period: F&PE shall retain Client data and records for a period of five (5) to seven (7) years, or such other period as may be required by applicable law in the Republic of South Africa, after termination or completion of the Service(s).

10.2. Data destruction: Upon expiry of the applicable retention period, F&PE may securely destroy or permanently delete the retained data and records in accordance with its data destruction policies. F&PE shall have no obligation to notify the Client prior to such destruction or deletion.

10.3. Client backups: The Client is solely responsible for maintaining its own backups of any data, records, or information provided to or generated through the Service(s). F&PE shall not be liable for any loss of data resulting from the Client's failure to maintain adequate backups.

## 11. Limitation of Liability

11.1. F&PE will provide the Service(s) with reasonable care and skill. To the fullest extent allowed by law, F&PE will not be liable for indirect or consequential loss, including loss of profit, income, business opportunity, savings, goodwill or data.

11.2. F&PE is not responsible for loss, penalties, interest, delays or damage caused by information, records, explanations or instructions given late or given incorrectly, incompletely or misleadingly by the Client or by someone acting for the Client.

11.3. Unless F&PE has agreed in writing to take responsibility for a specific task, the Client remains responsible for management decisions, filings, payments, deadlines and deciding whether to act on F&PE's advice.

11.4. F&PE is not responsible for losses caused by failures or delays in third-Party software, banking platforms, SARS or CIPC systems, internet services, electricity supply, courier services or other matters outside F&PE's reasonable control.

11.5. The Client indemnifies F&PE against third-Party claims arising from the Client's unlawful conduct, inaccurate records, failure to meet legal duties, or unauthorised use or disclosure of F&PE's work, except where a court finally decides that the loss was caused by F&PE's fraud or wilful misconduct.

- 11.6. F&PE may suspend the Service(s), stop acting, or end the appointment on written notice if the Client does not pay an amount when due, does not provide information or cooperation needed for the Service(s), creates a conflict of interest, asks F&PE to act unlawfully or unethically, or if F&PE must stop acting because of law, professional duties or risk requirements.
- 11.7. If Service(s) are suspended or the Mandate terminates and any amount that is due for payment by the Client remains outstanding, then F&PE reserves the right to institute legal proceedings against the Client in a court of jurisdiction and claim a cost order against the Client on an attorney and own client scale.

## 12. Transferring Your Files upon Request

- 12.1. If the Client asks F&PE in writing to transfer the Client's files, records or information to the Client or to another accountant, tax practitioner, payroll provider, adviser or other authorised third Party, F&PE will, subject to this clause and applicable law, take reasonable steps to facilitate the transfer within a reasonable time.
- 12.2. The Client acknowledges that the Client is entitled to documents and records belonging to the Client, but that F&PE's working papers, internal notes, templates, internal correspondence, know-how, methodologies, compliance records and other documents created by F&PE for its own internal purposes shall remain the property of F&PE, unless otherwise required by law.
- 12.3. Including but not limited to; all tools, templates, working papers, internal processes, methodologies, know-how, automation files, spreadsheets, checklists and other materials created, developed or used by F&PE remain the property of F&PE.
- 12.4. The Client receives limited use rights only and may use any materials provided by F&PE solely for the purposes of the Service(s) and not for resale, distribution, copying, modification or use by any third Party without F&PE's prior written consent.
- 12.5. F&PE may require the Client to provide written instructions, proof of identity, proof of authority and sufficient details of the person or firm to whom the files must be transferred before taking any transfer steps. F&PE may rely on any instruction or authority which appears to have been validly given by the Client or by a person authorised to act on the Client's behalf.
- 12.6. Any transfer will be carried out in such format and by such method as F&PE reasonably considers appropriate in the circumstances, including by email, secure electronic transmission or release of copies of records, and F&PE shall not be obliged to recreate documents, convert records into a different software format, reconstruct missing information, or provide records in any format other than the format in which they are ordinarily kept.
- 12.7. F&PE may retain copies of any documents, records, correspondence and information transferred, to the extent reasonably required for legal, regulatory, insurance, risk management, quality control, record-keeping or internal administrative purposes.
- 12.8. F&PE shall not be liable for any delay, loss, corruption, interception or unauthorised access arising during or after the transfer of files where such event is caused by the Client, the receiving Party, third-Party systems, service providers or factors outside

F&PE's reasonable control. Once the files have been transferred in accordance with the Client's instructions, F&PE shall have no further responsibility for the storage, maintenance, use or safekeeping of those transferred files, except to the extent required by law.

13. Suspension of Service(s) / Termination of appointment

- 13.1. The Client may terminate F&PE's Mandate to deliver Service(s) at any time by giving one (1) calendar month's written notice. Ending the Mandate does not affect the Client's duty to pay all fees, costs and expenses incurred up to the date the Mandate terminates.
- 13.2. If the Client asks F&PE to transfer files to another accountant, tax practitioner, payroll provider or firm, F&PE may review the file to identify which documents belong to F&PE, the Client or third Parties. F&PE may charge a reasonable fee for this work and for any delivery costs.
- 13.3. F&PE holds a lawful lien over documents, money and other items held for the Client until F&PE's fees and disbursements have been paid in full. The Client acknowledges that F&PE holds a lien over all documents of the Client held by F&PE until all outstanding fees and disbursements have been paid in full.

14. Confidentiality and Protection of Personal Information

- 14.1. F&PE will process the Client's personal and confidential information in line with South African law, including the Protection of Personal Information Act, 4 of 2013 (POPIA), and in line with F&PE's professional duties. The Client expressly gives permission that F&PE may process its personal and confidential information to attain the purposes as set out in these Terms and Conditions.
- 14.2. F&PE will keep the Client's information confidential unless the Client agrees to the disclosure, the law allows or requires it, or the disclosure is reasonably needed to provide the Service(s).
- 14.3. By giving F&PE personal information and continuing with the Service(s), the Client confirms and hereby provides express permission that F&PE may collect, record, store, update, use and share that information as reasonably necessary to provide the Service(s), meet legal and professional obligations, communicate with the Client, invoice for work done and keep proper records. Where the Client gives F&PE information about employees, directors, shareholders, beneficial owners or any other person, the Client confirms that it is allowed to do so and has obtained any consent or authority required by law.
- 14.4. F&PE may share information with its employees, contractors, software providers, cloud providers and other service providers who need it for work connected to the Service(s), provided reasonable steps are taken to ensure that they are bound by confidentiality and data protection duties.
- 14.5. F&PE will take reasonable technical and organisational steps to protect personal and confidential information. However, no system of storage, transmission or electronic processing is completely secure.

- 14.6. The Client must tell F&PE promptly if any information already given to F&PE becomes inaccurate, incomplete or out of date. F&PE may rely on information given by the Client and is not responsible for losses caused by incorrect, incomplete or outdated information.
- 14.7. F&PE may keep records, working papers and copies of Client information for as long as required by law, professional standards, insurers or reasonable business record-keeping needs. After that, F&PE may archive, anonymise or destroy the records in the normal course of business.
- 14.8. If the Client shares information with a third Party that is not appointed or controlled by F&PE, F&PE is not responsible for any loss or damage caused by that third Party's use, disclosure or processing of the information.

## 15. Compliance

- 15.1. F&PE is required to be registered with the Financial Intelligence Centre (FIC) and, in order to comply with its legal and regulatory obligations, is obliged to obtain such identification documents and other information relating to the Client and any related persons or entities as may be required by the Financial Intelligence Centre of South Africa('FIC') to enable F&PE to establish and maintain an engagement with the Client. F&PE has entered into an agreement with ElevateX, which shall collect such documents and information on behalf of F&PE.
- 15.2. F&PE may have legal duties to report certain matters to government or regulatory authorities and may not always be allowed to discuss those reports with the Client. If this happens, F&PE will not be responsible for any loss caused by complying with those legal duties.
- 15.3. If F&PE becomes aware of any unlawful conduct, suspected unlawful conduct or unlawful operations in connection with the Client or the Service(s), F&PE may immediately suspend or terminate the Service(s) and/or the appointment without notice, subject to applicable law. F&PE may also be required, in terms of applicable law, including the Financial Intelligence Centre Act, 38 of 2001, to report such conduct or operations to the Financial Intelligence Centre or any other competent authority, and may be prohibited from notifying the Client of such report.

## 16. Breach

- 16.1. If either Party breaks a material term of these Terms & Conditions and does not rectify the breach within 14 (fourteen) calendar days after receiving written notice to do so, the other Party may, without losing any other rights, claim specific performance, suspend performance where it is allowed by law, or terminate the agreement by written notice.
- 16.2. Ending the agreement after a breach does not affect rights that have already accrued, the duty to pay fees and expenses, confidentiality duties, or any term that is meant to continue after the agreement terminates.

## 17. Notices

- 17.1. Each Party chooses the physical, postal and email addresses in the Letter of Engagement, or any later written update, for notices and other communications about the Services(s).

17.2. Either Party may change its notice details by giving written notice to the other Party. Unless the sender receives a delivery failure message, an email will be treated as received on the date it is sent.

17.3. The Client must tell F&PE promptly if contact details change and must ensure that its email systems can receive communications from F&PE.

#### 18. Maximum Liability Claim

F&PE's liability, notwithstanding clause 11 above, (which for the purpose hereof, will exclude liability for death or personal injury, or resulting from fraud, or any other liability for which restriction or exclusion is prohibited by law) for the aggregate of all claims arising as a result of the relationship between F&PE and the Client established by the Letter of Engagement and these Terms and Conditions, resulting out of or in negligence or otherwise (collectively referred to herein as "fault"), will be limited to the lower of the two figures produced by the operation of the following two sub-paragraphs:

18.1. Subject to the terms hereof, F&PE's liability in respect of fault arising out of or in connection with the Letter of Engagement and/or these Terms and Conditions will be limited to the total actual fees charged by F&PE in relation to the specific instruction in which negligence is claimed;

OR

18.2. Subject to the terms hereof, F&PE's liability to the Client in respect of fault arising out of or in connection with the Letter of Engagement and/or these Terms and Conditions, will be limited to that proportion of the loss or damage (including interest and costs) suffered by the Client, which is ascribed to F&PE by a court of competent jurisdiction or arbitrator allocating a proportionate responsibility to F&PE, having regard to the contribution to the loss or damage in question by the Client or any other person based upon relative degrees of fault. It is a term of the Letter of Engagement and/or these Terms and Conditions that the provisions of Section 1 of the Apportionment of Damages Act, 1956 as amended will apply to all claims between F&PE and the Client and "fault" and "loss or damage" as used herein will respectively be deemed to fall within the meanings of "fault" and "loss or damage" as contained in Section 1 of Apportionment of Damages Act, 1956 as amended.

In the event of any engagement between F&PE and the Client being renewed or amended or replaced or a new engagement is agreed upon, then in the absence of any specific provision to the contrary, the terms of this paragraph 18 will apply to such engagement *mutatis mutandis*.

#### 19. Indirect And Consequential Damages

Notwithstanding clause 11, under no circumstances whatsoever (to the maximum extent as is permitted under applicable law) will F&PE be liable for any incidental and/or special and/or indirect and/or consequential damages whatsoever, including without limitation, damages for loss of profit or loss of data or business interruption whatsoever caused and even if F&PE has been advised of the possibility of such damages. However, nothing in the Letter of Engagement and/or these Terms and Conditions is intended to limit liability for death or personal injury or fraud.

## 20. Force Majeure

Neither F&PE nor the Client will be liable in any way for failure to perform their respective obligations, but excludes any obligation to make a payment, under any engagement if the failure is due to causes outside the reasonable control of the Party which has failed to perform.

## 21. General

- 21.1. These Terms & Conditions, together with the engagement letter and any written Scope confirmation issued by F&PE, form the full agreement between F&PE and the Client for the Service(s).
- 21.2. Any change to these Terms & Conditions must be in writing and accepted by F&PE and, where needed, by the Client.
- 21.3. If any part of these Terms & Conditions is found to be invalid or unenforceable, the rest will remain in full force.
- 21.4. If either Party delays or fails to enforce a right, that does not mean the right has been waived.
- 21.5. These Terms & Conditions are governed by the laws of the Republic of South Africa, and the Parties submit to the jurisdiction of the South African courts, unless the engagement letter says otherwise.

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On behalf of the Company who  
confirms that he/she is duly authorised

Name: \_\_\_\_\_

Date: \_\_\_\_\_

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On behalf of the Client, who confirms that  
he/she is duly authorised

Name: \_\_\_\_\_

Date: \_\_\_\_\_

## 22. Appendix A - Checklist Value-Added Tax (Vat) Invoices

### 22.1. Full Tax Invoice

This is required where the supply (including VAT) exceeds R5,000.

- ✓ Contains the words "Tax Invoice", "VAT Invoice" or "Invoice"
- ✓ Name, address and VAT registration number of the supplier
- ✓ Name, address and where the recipient is a vendor, the recipient's VAT registration number
- ✓ Serial number and date of issue of invoice
- ✓ Accurate description of goods and /or Services (indicating where applicable that the goods are second hand goods)
- ✓ Quantity or volume of goods or Services supplied
- ✓ Value of the supply, the amount of tax charged and the consideration of the supply (value and the tax)

Note: all seven criteria must be met for the invoice to meet the requirements of a Tax Invoice

### 22.2. Abridged Tax Invoice

Where the supply (including VAT) is greater than R50 and less than R5,000.

- ✓ Contains the words "Tax Invoice", "VAT Invoice" or "Invoice"
- ✓ Name, address and VAT registration number of the supplier
- ✓ Serial number and date of issue of invoice
- ✓ Accurate description of goods and /or Services
- ✓ Value of the supply, the amount of tax charged and the consideration of the supply (value and the tax)

Note: all five criteria must be met for the invoice to meet the requirements of an abridged Tax Invoice.