

CHANGE OF TRUSTEE for Milk SMSF

**DEED OF REMOVAL & APPOINTMENT
DEATH OF MEMBER**

CHANGE OF TRUSTEE FOR MILK SMSF

THIS DEED IS DATED: the day of 20

PARTIES

1. **Michael Klim** of 5 Milka Ave, Clyde North VIC 3978 (**'the Member'**)
2. **Michael Klim** of 5 Milka Ave, Clyde North VIC 3978 (**'the Continuing Trustee'**)
3. **Tim Klim** of 3 Lollipop Dr Wyndham Vale VIC 3024 (**'the New Trustee'**)

RECITALS

- a) The self-managed super fund that has been continuously known as Milk SMSF ('the Fund') was established by a Deed dated on 05/05/2015 ('the Establishing Deed') and subsequently varied on the dates as outlined within the attached Schedule.
- b) Heide Klim, who was a Member and Trustee of the fund died on 07/08/2020. By Clause 2.5(f) they are removed as a trustee upon death.
- c) The Continuing Trustee is the Fund's Trustee.
- d) Within a period of six months from the date of the member's death, a new Trustee must be appointed for the Fund to remain a Complying SMSF.
- e) The Trustee(s) of the Fund in accordance with Clause 2 may by Deed appoint a new Trustee provided the Fund remains a Complying SMSF. This appointment will act as a Replacement Trustee.
- f) The a Replacement Trustee has agreed to consent to their appointment as a Trustee of the Fund and is not by virtue of the provisions of the Trust Deed or by law precluded from assuming office as Trustee of the Fund.

THIS DEED WITNESSES

The parties confirm the fund's history

1. The parties confirm that:
 - The Fund was established on 05/05/2015 by the Establishing Deed.
 - Heide Klim, who was a Trustee and Member of the fund, died on 07/08/2020.
 - The Continuing Trustee is the fund's trustee.

- The Member is the fund's only Member.

Appointment of New Trustee

2. By Clause 2 of the current Deed the Continuing Trustee appoints the New Trustee as the Fund's Replacement Trustee for the deceased member, Heide Klim from the execution date of this Deed.
3. The New Trustee covenants and agrees that as and from the execution of this Deed it will be bound by, observe and administer the trust powers, discretions and obligations conferred by the Trust Deed as if it were named as Trustee.
4. This Deed shall for all purposes be deemed to have been executed by all parties on the date which it bears.

Obligation of the Continuing Trustee

5. The Continuing Trustee agrees that it will do all things necessary to transfer legal title to the assets of the Fund to include the Continuing Trustee and New Trustee and to sign all documents and do all things reasonably required to enable the New Trustee to assume and carry out its duties as a Trustee of the Fund.

Consents

6. The parties consent to the appointment specified in clause 2 of this Deed. The parties, other than the member, have passed a resolution to this effect.

Acceptance of appointment by New Trustee

7. As and from the execution of this Deed, the New Trustee:
 - Accepts its appointment as a Fund Trustee;
 - Agrees to be bound by the current Deed; and
 - Undertakes all the obligations as a Fund Trustee

Interpretation

8. Unless the context otherwise requires, the words defined in the current Deed have the same meaning wherever they appear in this Deed.
9. A reference in the Deed to the singular includes the plural and vice versa.
10. If a party consists of more than one person, this Deed binds them jointly and each of them severally.
11. In this Deed, unless expressed or implied to the contrary:

Deed means and includes this Trust Deed containing the governing and operating rules of this Fund and any subsequent Trust Deed varying the Deed.

Fund means this Fund established and maintained as a Complying SMSF under the Fund's Rules.

Governing Rules means the Trust Deed containing the governing and operating rules of the applicable Fund.

Establishing Deed means the trust deed that established the Milk SMSF on 05/05/2015.

Trustee Meeting is a meeting of the Trustee as required by the Rules of the Fund and the Superannuation Laws or where matters regarding the Fund are discussed, which may include circular resolutions.

Replacement Trustee is a person who has been appointed as Trustee of the Fund on behalf of a Member or deceased Member according to the Rules of the Fund or pursuant to the Superannuation Laws including the Legal Personal Representative of a deceased Member of the Fund, the Legal Personal Representative of a Member where the Member is under a legal disability because of age, mental incapacity or for some other reason, the Legal Personal Representative of a Member who holds the Member's Enduring Power of Attorney or any other person who may act as a Replacement Trustee under the Superannuation Laws.

Remove includes to remove, retire, resign or any other term that means and gives effect to a Retiring Trustee ceasing their holding of office as the Fund Trustee.

Superannuation Laws means the *Commonwealth of Australia Constitution Act 1900*, *Superannuation Industry (Supervision) Act 1993*, *the Superannuation Industry (Supervision) Regulations 1994*, *the Income Tax Assessment Act 1936*, *the Income Tax Assessment Act 1997*, *the Income Tax Regulations*, *the Corporations Act 2001*, *the Corporations Regulations*, *the Treasury Laws Amendment (Fair and Sustainable) Act 2016*, *the Superannuation (Excess Transfer Balance Tax) Imposition Act 2016*, *the Social Security Act 1991 (C'th)*, *the Social Security Regulations*, *the Veterans Entitlement Act 1986 (C'th)*, *the Veterans Entitlement Regulations*, *the Family Law Act 1975*, *the Family Law Regulations*, *the Bankruptcy Act 1966*, *Superannuation (Departing Australia Superannuation Payments Tax) Act 2006*, *Superannuation (Excess Concessional Contributions Tax) Act 2006*, *Superannuation (Excess Non-concessional Contributions Tax) Act 2006*, *Superannuation (Self-Managed Superannuation Funds) Supervisory Levy Amendment Act 2006* and any other law dealing with an Australian Superannuation Fund as amended from time to time.

Trustee is the Trustee of the Fund and includes a Replacement Trustee appointed for a Member or an Additional Trustee where the Member is the only Member and Trustee of the Fund.

EXECUTED AS A DEED

SIGNED SEALED AND DELIVERED by)

Michael Klim in their capacity as the)

Continuing Trustee in the presence of: _____)

)

.....

Witness

.....

Witness Full Name

SIGNED SEALED AND DELIVERED by)

Tim Klim in their capacity as the New Trustee)

in the presence of: _____)

)

.....

Witness

.....

Witness Full Name

SIGNED SEALED AND DELIVERED by)

Michael Klim in their capacity as the Member)

in the presence of: _____)

)

.....

Witness

.....

Witness Full Name

SCHEDULE

Variation dates of SMSF Deeds for Milk SMSF

Original trust deed establishing the SMSF	05/05/2015
Subsequent trust deed variations, with the most recent date listed being the Current Deed	01/09/2015 01/10/2016 10/09/2019

Minutes of a Meeting of the Trustees for Milk SMSF

Re: Appointment of Replacement Trustee

Date of Meeting:	01/01/1970
Time of Meeting:	
Address of Meeting:	5 Milka Ave, Clyde North VIC 3978
Attendees (and Role):	Michael Klim (Chairperson) Tim Klim

Death & Removal of Member

The Trustee has been previously advised that Heide Klim, who was a Trustee and Member of the Fund, has died. Clause 2.5(f) states that a Trustee is to be removed when a Member dies.

Complying with SMSF definition

Section 17A(4)(b) of the Superannuation Industry (Supervision) Act ('SIS Act') 1993 prescribes that a new Trustee must be appointed for the Fund within a period of six months from the date of the Member's death to remain a Complying SMSF.

Appointment of Replacement Trustee

Clause 2 allows for the Trustee or Members to appoint a New Trustee provided that the Fund remains a Complying SMSF.

The new Trustee, Tim Klim is to be appointed as a Replacement Trustee for the deceased Trustee.

Trustee Resolutions

It is resolved by the Trustees that:

1. they consent to the appointment of Tim Klim as Replacement Trustee within Milk SMSF effective immediately.
2. the parties execute the Change of Trustee Deed whereby the Replacement Trustee is appointed as a Trustee of the Fund.
3. all necessary documentation is completed for the Appointment of the Replacement Trustee, and where relevant, lodged with the Australian Taxation Office (ATO) within the prescribed timeframe.

This trustee minute is to be retained within the records of the Fund for the minimum prescribed period of time.

This concluded the business of the meeting.

Signed by Chairperson

Date:

Milk SMSF

(FUND)

CONSENT TO ACT AS A TRUSTEE

Under section 118 of the Superannuation Industry (Supervision) Act 1993

I, **Tim Klim** of 5 Milka Ave, Clyde North VIC 3978, in my capacity as trustee of the Fund do hereby declare that:

- I am not disqualified* from acting as a director of the Corporate Trustee under the Superannuation Industry (Supervision) Act 1993;
- I will notify the Australian Taxation Office in writing if I am for any reason disqualified from continuing to act as a Trustee; and
- I understand my obligations and responsibilities as Trustee of the Fund.

DATED:

Tim Klim

* The Superannuation Industry (Supervision) Act 1993 provides that the following persons are disqualified from acting as a director of a Corporate Trustee:

1. Persons who have prior convictions involving dishonest conduct, wherever or whenever such conviction may have occurred.
2. Persons who are insolvent, bankrupt or have entered into arrangements, assignments or compositions with creditors under Part X of the *Bankruptcy Act 1966* (Cth) or a similar foreign law.
3. Persons in relation to whom a civil penalty order has been made under the Superannuation Industry (Supervision) Act 1993.
4. Persons expressly declared not to be "fit and proper" persons under sections 126A(3) or 126h(5) of the Superannuation Industry (Supervision) Act 1993.

Trustee declaration

To be completed by new trustees and directors of corporate trustees of self-managed super funds.



We strongly recommend you undertake a free trustee education course before reading and signing this declaration. For more information visit ato.gov.au/smsf and search 'approved education courses'.



Who should complete this declaration?

You must complete this declaration if you become a trustee or director of a corporate trustee (trustee) of:

- a new self-managed super fund (SMSF)
- an existing SMSF.

You must sign this declaration within 21 days of becoming a trustee or director of a corporate trustee of an SMSF.

A separate declaration is required to be completed and signed by each and every new trustee.

You must also complete the declaration if you:

- have undertaken a course of education in compliance with an education direction
- are a legal personal representative who has been appointed as trustee on behalf of a:
 - member who is under a legal disability (usually a member under 18 years old)
 - member for whom you hold an enduring power of attorney
 - deceased member.

Understanding your obligations

We have a range of services available to help you understand your obligations and keep up to date with the latest news for SMSF trustees.

To subscribe to our news and alerts service visit ato.gov.au/smsf and search 'news and alerts'.

For more information on free approved trustee education courses visit ato.gov.au/smsf and search 'approved education courses'.

Before completing this declaration

Before you complete and sign this declaration, make sure you:

- read each section
- understand all the information it contains.

➤ If you have any difficulties completing this declaration or you do not fully understand the information it contains:

- speak to a professional adviser
- visit ato.gov.au/smsf
- phone us on **13 10 20**.

When completing this declaration

When you complete this declaration, remember to:

- insert the full name of the fund at the beginning
- sign and date it
- ensure it is signed and dated by a witness (anyone 18 years old or over).

What should you do with the declaration?

You must keep your completed declaration for at least 10 years and make it available to us if we request it.

⚠ Do not send your completed declaration to us unless we request this from you.



Self-managed super fund trustee declaration

I understand that as an individual trustee or director of the corporate trustee of

Fund name

Milk SMSF

I am responsible for ensuring that the fund is operated in accordance with the *Superannuation Industry (Supervision) Act 1993* (SISA) and other relevant legislation. The Commissioner of Taxation (the Commissioner) has the authority and responsibility for administering the legislation and enforcing trustees' compliance with the law.

I must keep myself informed of changes to the legislation relevant to the operation of my fund and ensure the trust deed is kept up to date in accordance with the law and the needs of the members.

If I do not comply with the legislation, the Commissioner may take the following actions:

- impose administrative penalties on me
- give me a written direction to rectify any contraventions or undertake a course of education
- enter into agreements with me to rectify any contraventions of the legislation
- disqualify me from being a trustee or director of a corporate trustee of any superannuation fund in the future
- remove the fund's complying status, which may result in significant adverse tax consequences for the fund
- prosecute me under the law, which may result in fines or imprisonment.

Sole purpose

I understand it is my responsibility to ensure the fund is maintained for the purpose of providing benefits to the members upon their retirement (or attainment of a certain age) or their beneficiaries if a member dies. I understand that I should regularly evaluate whether the fund continues to be the appropriate vehicle to meet this purpose.

Trustee duties

I understand that by law I must at all times:

- act honestly in all matters concerning the fund
- exercise skill, care and diligence in managing the fund
- act in the best interests of all the members of the fund
- keep records of decisions made about the running of the fund, including the appointment of professional advisers and the retirement of members and payment of benefits
- ensure that my money and other assets are kept separate from the money and other assets of the fund
- take appropriate action to protect the fund's assets (for example, have sufficient evidence of the ownership of fund assets)
- refrain from entering into any contract or do anything that would prevent me from, or hinder me in, properly performing or exercising my functions or powers as a trustee or director of the corporate trustee of the fund
- allow all members of the fund to have access to information and documents as required, including details about
 - the financial situation of the fund
 - the investments of the fund
 - the members' benefit entitlements.

I also understand that by law I must prepare, implement and regularly review an investment strategy having regard to all the circumstances of the fund, which include, but are not limited to:

- the risks associated with the fund's investments
- the likely return from investments, taking into account the fund's objectives and expected cash flow requirements
- investment diversity and the fund's exposure to risk due to inadequate diversification
- the liquidity of the fund's investments having regard to the fund's expected cash flow requirements in discharging its existing
- and prospective liabilities (including benefit payments)
- whether the trustees of the fund should hold insurance cover for one or more members of the fund.

Accepting contributions and paying benefits

I understand that I can only accept contributions and pay benefits (income streams or lump sums) to members or their beneficiaries when the conditions specified in the law and the fund trust deed have been met.

Investment restrictions

I understand that, as a trustee or director of the corporate trustee of the fund, subject to certain limited exceptions specified in the law, I am prohibited from:

- giving financial assistance using the resources of the fund to a member of the fund or a member's relative (financial assistance means any assistance that improves the financial position of a person directly or indirectly, including the provision of credit)
- acquiring assets (other than business real property, listed securities, certain in-house assets and acquisitions made under mergers, allowed by special determinations or acquisitions from the trustee or investment manager of another regulated super fund as a result of a breakdown of a relationship) for the fund from members or other related parties of the fund

- borrowing money (or maintaining an existing borrowing) on behalf of the fund except in certain limited circumstances (while limited recourse borrowing arrangements are permitted, they can be complex and particular conditions must be met to ensure that legal requirements are not breached)
- acquiring an in-house asset if the fund's in-house assets exceed 5% of the market value of the fund's total assets, or the in-house assets will exceed 5% of the market value of the fund's total assets by acquiring the asset (in-house assets are loans to, or investments in, related parties of the fund - including trusts - or assets subject to a lease or lease arrangement between the trustee and a member, relative or other related party)
- entering into investments that are not made or maintained on an arm's length (commercial) basis (this ensures the purchase or sale price of the fund's assets and any earnings from those assets reflects their market value).

Administration

I understand that the trustees of the fund must:

- keep and retain for at least 10 years
 - minutes of all trustee meetings at which matters affecting the fund were considered (this includes investment decisions and decisions to appoint members and trustees, the retirement of members and payment of benefits)
 - records of all changes of trustees, including directors of the corporate trustee
 - each trustee's consent to be appointed as a trustee of the fund or a director of the corporate trustee
 - all trustee declarations
 - copies of all reports given to members
 - documented decisions about storage of collectables and personal use assets
- ensure that the following are prepared and retained for at least five years
 - an annual statement of the financial position of the fund
 - an annual operating statement
 - copies of all annual returns lodged
 - accounts and statements that accurately record and explain the transactions and financial position of the fund including asset market valuation
 - copies of Transfer balance account reports lodged
 - copies of any other statements you are required to lodge with us or provide to other super funds
- appoint an approved SMSF auditor each year, no later than 45 days before the due date for lodgment of the fund's annual return and provide documents to the auditor as requested
- lodge the fund's annual return, completed in its entirety, by the due date
- review the independent audit report received from the approved SMSF auditor and take action as required
- notify the ATO within 28 days of any changes to the
 - membership of the fund, or trustees or directors of the corporate trustee
 - name of the fund
 - contact person and their contact details
 - postal address, registered address or address for service of notices for the fund
- notify the ATO in writing within 21 days if the fund becomes an Australian Prudential Regulation Authority (APRA) regulated fund.

DECLARATION

By signing this declaration I acknowledge that I understand my duties and responsibilities as a trustee or director of the corporate trustee of the self-managed superannuation fund named on this declaration (or if the fund's name changes, that name). I understand that:

- *I must ensure this document is retained for at least 10 years or while I remain a trustee or director of the corporate trustee (whichever is longer) and, if I fail to do this, penalties may apply.*
- *Administrative penalties can be imposed on me for not complying with the legislation*
- *I may have to make this document available for inspection by a member of staff of the ATO and, if I fail to do this, penalties may apply.*
- *I do not have access to the government's financial assistance program that is available to trustees of APRA regulated funds in the case of financial loss due to fraudulent conduct or theft.*

Trustee's or director's name

\$NewMem_FirstName\$ Klim

Trustee's or director's signature

Date

Day Month Year

01/01/1970

Witness' name (witness must be 18 years old or over)

Trustee's or director's signature

Date

Day Month Year