

TERMS AND CONDITIONS – SALES CONTRACT

1. INTERPRETATION:

The following definitions and rules of interpretation apply in these Terms and Conditions:

1.1. Definitions:

Agreement: the Sales Contract and these Terms and Conditions

Commencement Date: as defined in clause 4.1 of these Terms and Conditions.

Commission Fee: the fee specified in section 7 of the Sales Contract.

Completion: the completion of the sale of the Property to a Purchaser.

Information Pack: the pack of information and documents we provide to you in respect of our Services.

Minimum Sole Agency Period: the minimum period, as described in section 6 of the Sales Contract, during which you must engage us to provide the Services on a sole agency basis.

Model Cancellation Form: the form in the Schedule to these Terms and Conditions.

Property: the property described in section 2 of the Sales Contract.

Purchaser: any person, entity or organisation who purchases the Property (whether alone or with another person, entity or organisation) following one (or more) of the trigger events set out in clause 7.2 of these Terms and Conditions.

Sales Contract: the Sales Contract attached to these Terms and Conditions.

Services: the estate agency services we have agreed to provide to you in respect of the Property, as described in the Sales Contract.

1.2. Interpretation:

- a) Any words following the terms including, include, in particular, for example or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- b) Capitalised terms used in these Terms and Conditions (but not defined in these Terms and Conditions) shall, unless specified otherwise, have the meanings set out in the Sales Contract.

2. THESE TERMS

2.1. What these Terms and Conditions cover.

These are the terms and conditions on

which we supply our estate agency services to you.

2.2. **You should read these Terms and Conditions carefully.** Please read these terms carefully before signing the Agreement. These Terms and Conditions tell you who we are, how we will provide our services to you, how you and we may change or end our Agreement, what to do if there is a problem and other important information. If you think there is a mistake in these terms, please contact us to discuss.

2.3. **These Terms and Conditions shall apply to our Agreement to the exclusion of all others.** These Terms and Conditions shall apply to the Agreement to the exclusion of any other terms that the Vendor(s) seek to impose or incorporate or which are implied by trade, custom, practice or course of dealing.

2.4. **Where there is more than one Vendor you shall be jointly and severally responsible for your obligations and responsibilities under this Agreement, including your payment responsibilities.** This means that we can enforce our rights against either or both of you for any breach of this Agreement.

3. INFORMATION ABOUT US AND HOW TO CONTACT US

3.1. **Who we are.** We are the company selected in section 1 of the Sales Contract. We are a limited company registered in England and Wales with our registered office address at 24 Broad Street, Salford, Lancashire, M6 5BY. Our registered VAT number is:

Home Estate Agents (Urmston) Limited:
786523689

Home Estate Agents (Stretford) Limited:
151234154

Home Estate Agents (Monton) Limited:
198793625

3.2. **We are members of The Property Ombudsman scheme.** You have a right to make a complaint in respect of our Services to the Property Ombudsman (www.tpos.co.uk) but we would ask that you contact us first before escalating the complaint.

3.3. **How to make a complaint.** To make a complaint about our Services you should follow the process set out in our office In-House Complaints Procedure, a copy of which is available on request.

3.4. **How to contact us.** You can contact us using the details provided to you in our Information Pack.

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3.5. **How we may contact you.** We may contact you using the contact details provided to us in the Sales Contract.

3.6. **“Writing” includes emails.** When we use the words “writing” or “written” in these Terms and Conditions, this includes emails.

4. OUR SERVICES

4.1. **The Services will start from the date you sign the Agreement.** Subject to your compliance with your responsibilities at clause 11, we will begin providing the Services from the date you sign the Agreement (**Commencement Date**) and we will continue until the Agreement is terminated (please see clause 6).

4.2. **We shall supply the Services on a ‘sole agency’ basis.** We shall supply the Services on a ‘sole agency’ basis unless you convert our appointment to a ‘multiple agency’ basis in accordance with the Sales Contract. Please see sections 5 and 6 of the Sales Contract for further details of the meaning of the terms ‘sole agency’ and ‘multiple agency’.

5. CONSUMER CANCELLATION RIGHTS

5.1. **Where we entered into this Agreement using an ‘off-premises’ or ‘distance’ contracting procedure you have a legal right to change your mind within 14 days of entry into the Agreement.** An ‘off-premises’ contract is one entered into away from our offices but where we are present. A ‘distance’ contract is one entered into away from our offices where we are not present.

5.2. **How to exercise your right to change your mind.** You can exercise your right to change your mind by completing the Model Cancellation Form or contacting us using the contact details specified in the Information Pack within the required timescales.

5.3. **When you do not have a right to change your mind.** You do not have a right to change your mind where we have finished providing our Services to you or where you have waived this right by selecting the relevant option in the Sales Contract.

6. DURATION OF OUR APPOINTMENT

6.1. **We will continue to provide the Services until the Agreement is terminated as set out in this clause.** The Agreement shall be terminated on the earlier of:

- a) us or you providing to the other at least 14 days written notice commencing on the

expiry of the Minimum Sole Agency Period; and

- b) legally binding completion of the sale of the Property; and
- c) either of us terminating the Agreement in accordance with clause 13 of these Terms and Conditions.

6.2. **On termination of this Agreement, some terms may continue in force (including those relating to payment).** Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect.

7. COMMISSION AND DISBURSEMENTS

7.1. **We will be entitled to commission for our provision of the Services to you.** In exchange for us providing the Services to you, you agree to pay to us the Commission Fee and any other costs specifically set out in these Terms and Conditions and Sales Contract, in accordance with these Terms and Conditions.

7.2. **When we are entitled to payment of the Commission Fee.** We will be entitled to payment of the Commission Fee if at any time contracts for the sale of the Property are unconditionally exchanged with:

- a) a purchaser introduced by us (see clause 7.3 below) or with whom we had negotiations about the Property at any time during the term of this Agreement (whether we are engaged on a sole agency basis or multiple agency basis); or
- b) with a purchaser introduced by another agent during the period where we are providing the Services on a sole agency basis,

this will be the case even if you subsequently withdraw and unconditional contracts for sale are not exchanged, irrespective of your reasons.

7.3. **The Commission Fee shall be payable whether the purchase arises through our direct or indirect introduction.** The Commission Fee will be payable whether the introduction is a direct introduction or an indirect introduction (with a person introduced to the Property through it being advertised by the Agent) and whether the person introduced later makes an offer to purchase the Property directly, through any other agent or otherwise.

7.4. **Even if you purport to appoint another agent during the Minimum Sole Agency**

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- Period, we will still be entitled to the Commission Fee as though we were the sole agency.** In these circumstances you may also be responsible for the fees of another agent.
- 7.5. **Termination of this Agreement may not extinguish our right to receive a Commission Fee.** The requirement to pay the Commission Fee to us shall continue whether or not this Agreement has terminated for twelve months following our introduction of a Purchaser in circumstances where we arranged the viewing of the Property by that Purchaser.
- 7.6. **We are entitled to raise an invoice in respect of the Commission Fee on exchange of binding contracts between you and a Purchaser in respect of the Property.** The Commission Fee will become due on the unconditional exchange of contracts of sale of the Property.
- 7.7. **We will still be entitled to payment of the full Commission Fee in the event that the Property is part-exchanged.** Where the Commission Fee is expressed as a percentage, in the event of a part exchange, the Commission Fee due shall be calculated based on the relevant percentage amount of the initial marketing price of the Property (as set out in section 4 of the Sales Contract).
- 7.8. **Payment of our invoice raised by us in accordance with clause 7.6 shall be made on Completion.** Our Commission Fee shall become payable immediately on Completion.
- 7.9. **You authorise your legal representative to make payment of our Commission Fee and any other amounts due to us directly from proceeds received by them on Completion.** By signing this Agreement, you hereby authorise your legal representative to make payment of the Commission Fee and any other amounts due to us in accordance with these terms, directly to us from the monies they are holding on your behalf following Completion of the sale of the Property.
- 7.10. **You remain ultimately responsible for payment of our Commission Fee.** Where our Commission Fee becomes payable in accordance with clause 7.8 of these Terms and Conditions and your legal representative is not holding sufficient funds to make full payment of our Commission Fee plus any other amounts due to us or is unable or unwilling to make payment for any other reason, payment should be made in full and cleared funds to us by you directly using the bank details set out in our invoice.
- 7.11. **There may also be disbursements which you need to pay to us.** Agreed disbursements (being those disbursements set out in the Marketing Options section of the Sales Contract and any other disbursements subsequently agreed in writing with you) and any applicable value added tax will become due and payable (subject to clause 7.12) once incurred by us. Invoices shall be paid within 7 days of the date of the invoice and are not dependant on the sale of the Property.
- 7.12. **We may at any time request that you make payment of any agreed disbursements before they are incurred by us.** Where this is the case we will notify you in writing and send you an invoice in respect of such disbursements, such invoice to be paid in accordance with clause 7.11 (within 7 days of the date of the invoice).
- 7.13. **You will remain responsible for the payment of fees to other agents.** If you have instructed another agent in respect of the Property in addition to instructing us you may remain liable for that agent's charges in addition to ours.
- 7.14. **Where you are late in making any payment to us, we may charge interest to you.** Interest will be payable at a rate of 3% above the base rate of Barclays Bank Plc from time to time and shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. You must pay us interest together with any overdue amount.
- 7.15. **We may be entitled to referral fees from professionals we recommend to you, such as solicitors.** If you choose to instruct JP Goldman Solicitors to deal with the sale of your Property we will receive a referral fee of £100. If you also choose to purchase a property using JP Goldman, we will receive a further referral fee of £100.
- 8. OTHER FEES**
- 8.1. **If your Property is vacant and we let it during the sales process (for example, to a proposed Purchaser), we may be entitled to additional fees.** In the event that we negotiate with, or directly or indirectly introduce, a tenant for the Property during the period of the Agreement, then we will be entitled to an introducer's fee of an amount equal to 10% of the total rent payable during the period of occupation by the tenant, plus VAT ("**Tenant Finder Fee**"). This fee excludes any management service.

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8.2. **We shall be entitled to raise an invoice for the Tenant Finder Fee on the tenant moving into the Property.** Such invoice shall be payable within 14 days of the date of such invoice.

9. SALE PRICE OF THE PROPERTY

9.1. **The marketing price that the Property is advertised for is not a formal valuation of the Property and can be varied upon your instruction.** In determining the marketing price we will not carry out any structural inspection of the Property and the marketing price will not reflect any latent or other defects or any restrictions, covenants or other matters affecting the Property. You acknowledge that the marketing price may not be the best price achievable for the Property but is a price agreed for marketing purposes and you shall have no recourse against us in connection with the agreed marketing price.

10. MARKETING YOUR PROPERTY

10.1. **We may display advertising materials outside your Property in connection with the Services.** By selecting the 'YES' option in the Marketing Options section of the Sales Contract, you authorise us to display upon or attach to your Property a 'for sale' and/or 'sold' board. You shall ensure that we are authorised to display such signage and that you do not grant such a right to any other agency.

10.2. **You remain wholly responsible for your Property.** We are not responsible for any matter relating to the Property (even where we hold a key for viewing purposes) save as specifically set out in this Agreement, including the security, maintenance or repair of the Property. It is your responsibility to ensure that mains services are turned off, water and heating systems professionally drained and the insurers notified in the event that your Property is vacant during the sale process and/or following Completion. You shall also ensure the Property remains fully insured until you are notified otherwise by your legal representative.

10.3. **We shall use our professional discretion to provide the Services in an effective manner.** You acknowledge that due to the nature of the Services and the property market there is no guarantee as to the success of the Services and/or how quickly we may be able to find a Purchaser for your Property.

11. YOUR RESPONSIBILITIES

11.1. **We will require you to provide certain identification documentation to us before we are able to provide the Services to**

you. We are required by law to carry out various anti-money laundering checks in respect of our clients and, by signing this Agreement, you agree to promptly provide such identification and supporting documentation as is reasonably requested by us to satisfy our obligations.

11.2. **You are responsible for ensuring that all the details set out in the Sales Contract are true and correct.** You should update us if you become aware that any details are no longer accurate. To the extent that any details are not true or correct and we (or any company in our group) suffer any loss or damage as a result of this, you will indemnify us in respect of the losses we suffer as a result of this.

11.3. **You will cooperate with us in all matters relating to the Services.** You will provide all reasonable assistance to us in our provision of the Services along with all relevant information, materials and documentations requested by us from time to time, using reasonable endeavours to assist us in arranging viewings (and providing cooperation in anticipation of and during such viewings) and maintaining the Property in a clean and tidy manner.

11.4. **You shall act with a duty of good faith towards us in our provision of the Services.** You should not seek to obstruct or otherwise prevent our provision of the Services.

12. OUR RESPONSIBILITY FOR LOSS OR DAMAGE SUFFERED BY YOU

12.1. **We are responsible to you for foreseeable loss and damage caused by us.** If we fail to comply with this Agreement, we are responsible for loss or damage you suffer that is a foreseeable result of our breaking this Agreement or our failing to use reasonable care and skill, but we are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time the Agreement was made, both we and you knew it might happen, for example, if you discussed it with us during our engagement process.

12.2. **We do not exclude or limit in any way our liability to you where it would be unlawful to do so.** This includes liability for death or personal injury caused by our negligence or the negligence of our employees, agents or subcontractors; for fraud or fraudulent misrepresentation; and/or for breach of your legal rights in relation to the Services.

12.3. **When we are liable for damage to your property.** If we are providing the Services in

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your property, we will make good any damage to your property caused by us while doing so. However, we are not responsible for the cost of repairing any pre-existing faults or damage to your property that we discover while providing the Services.

12.4. **If we recommend or refer you to another professional service provider, we will not be responsible for the services they provide to you.** You should use your own judgment before engaging such parties and be aware that different terms will apply to your relationship with them.

13. TERMINATION OF THE AGREEMENT

13.1. **You may be able to end the Agreement because of something we have done or are going to do.** You may be able to terminate the Agreement on written notice if we have told you about an upcoming change to these terms which you do not agree to.

13.2. **We may terminate the Agreement if you have breached the Agreement.** We may end the Agreement at any time by writing to you if:

- a) you do not make any payment to us when it is due and you still do not make payment within 14 days of us reminding you that payment is due; or
- b) you do not, within a reasonable time of us asking for it, provide us with information that is necessary for us to provide the Services, for example see clause 11.1.

13.3. **Either party may terminate this Agreement for the other party's material breach.** Either of us may be able to terminate the Agreement with immediate effect by giving written notice to the other party if the other party commits a material breach of any term of this Agreement, which is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so.

14. OTHER PROVISIONS

14.1. **We are not responsible for any failure to comply with our obligations under this Agreement and delays to the provision of the Services caused by events outside of our control.** If our ability to comply with the terms of this Agreement and/or to provide the Services is delayed by an event outside of our control we will contact you as soon as possible to let you know and take steps to minimise the effects of such failure/delay. Provided we do this, we will not be liable for any failures or delays caused by the event,

but if there is a substantial delay you may contact us to terminate our Agreement.

14.2. **We may transfer this Agreement to someone else.** We may transfer our rights and obligations under these Terms and Conditions to another organisation. We will always tell you in writing if this happens and we will ensure that the transfer will not affect your rights under the Agreement.

14.3. **You need our consent to transfer your rights to someone else.** You may only transfer your rights or your obligations under this Agreement to another person if we agree to this in writing.

14.4. **Nobody else has any rights under this Agreement.** This Agreement is between you and us. No other person shall have any rights to enforce any of its terms.

14.5. **If a court finds part of this Agreement illegal, the rest will continue in force.** Each of the clauses of this Agreement operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining clauses will remain in full force and effect.

14.6. **Even if we delay in enforcing this Agreement, we can still enforce it later.** If we do not insist immediately that you do anything you are required to do under this Agreement, or if we delay in taking steps against you in respect of your breaking this Agreement, that will not mean that you do not have to do those things and it will not prevent us taking steps against you at a later date. For example, if you miss a payment and we do not chase you but we continue to provide the Services, we can still require you to make the payment at a later date.

14.7. **This Agreement may only be varied by written agreement.**

Any change to the Agreement must be specifically stipulated in writing and signed by the parties.

14.8. **Which laws apply to this Agreement and where you may bring legal proceedings.** This Agreement is governed by English law and you can bring legal proceedings in respect of the Services in the English courts.

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SCHEDULE

MODEL CANCELLATION FORM

To: Home Estate Agents (Urmston) Limited/Home Estate Agents (Stretford) Limited/Home Estate Agents (Monton) Limited [*]

24 Broad Street, Salford, Lancashire, M6 5BY

I/We [*] hereby give notice that I/We [*] cancel my/our [*] contract for the supply of the following service [*],

Ordered on [*/received on [*]

Name of Vendor(s)

Address of Vendor(s)

Signature of Vendor(s) (only if this form is notified on paper),

Date

[*] Delete as appropriate

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