

TERMS OF BUSINESS FOR PROFESSIONAL WORK

EMMERTON LAND LIMITED

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1. PRELIMINARY 1.1 These terms and conditions (the “**Terms of Business**”) shall apply to all forms of professional services, other than agency (to which separate terms will apply), provided by **Emmerton Land Limited**, a private limited company, Regulated by the RICS, and incorporated under the Companies Act 2006 with Company Number 7381535 and having its Registered Office at 3rd Floor, 207 Regent Street, London, W1B 3HH (“**we**” or “**us**”) to the client (“**you**”) to whom a Contract Letter (the “**Fee Letter**”) and Terms of Engagement are sent. They shall apply separately to each service subsequently provided to you.

1.2 The Terms of Business are to be read in conjunction with the relevant Fee Letter and Terms of Engagement.

1.3 In the event of any ambiguity or conflict between the relevant Fee Letter, Terms of Engagement, these Terms of Business, the provisions in the relevant Fee Letter and Terms of Engagement shall prevail.

1.4 These Terms of Business and the relevant Fee Letter and Terms of Engagement may only be varied in writing by agreement between the parties. It is our practice to review and upgrade our Terms of Business frequently and new versions will be sent to you and agreed with you.

2. PERFORMANCE OF THE SERVICES

2.1 We undertake to use all reasonable skill and care in providing the services and advice described in the relevant Fee Letter and Terms of Engagement, based on the instructions given by you (the “Services”) and confirmed in our Terms of Engagement. We will inform you if it becomes apparent that the Services need to be varied or external third party advice is required. Any variation is to be confirmed in writing and agreed between the parties.

2.2 We may need to appoint third party providers to perform all or part of the Services and we shall agree this with you in advance.

3. BASIS OF FEES

3.1 The basis of our fees for our Services is set out in the relevant Fee Letter.

3.2 Provided we are Registered for VAT, you shall pay all applicable VAT in addition to any fees and disbursements at the applicable rate.

3.3 Except as otherwise stated in our Fee Letter and/or Terms of Engagement, you shall pay our fees on completion of our Services (whether or not additional work is still to be carried out by third parties) or, where the fees are in relation to an ongoing instruction or an instruction of a duration of more than three months, at least quarterly in arrears upon submission by us of quarterly invoices. Payment is due within 15 days of the invoice date.

3.4 If you do not dispute with us an invoice or any part thereof within 15 days of the date of such invoice, you shall be deemed to have accepted the invoice in its entirety.

3.5 If we are required by you to undertake any additional work in relation to an instruction, you shall pay additional fees based upon our usual rates. We will notify you of the amount of such additional fees.

3.6 Where an instruction does not fully complete due to you withdrawing for whatever reason you shall pay us an abort fee (on a *quantum meruit* basis) forthwith upon the cessation of the Services.

3.7 We will advise you in advance if it is necessary or convenient to instruct a third party to provide advice or to act as an expert or arbitrator and provide an estimate of the likely cost. If you approve, either verbally or in writing, that the third party be instructed, we will instruct the party as agent on your behalf and request that all the third party's invoices be addressed to you care of us. We will not be liable to pay third party invoices.

3.8 Where we are instructed to provide Services to one of your subsidiaries or associated / related entities or should you subsequently request that another entity be substituted for you at a later stage and we are unable to seek or obtain payment of any outstanding monies for whatever reason, you shall remain primarily liable to pay those outstanding monies if the subsidiary, associated / related or other entity does not meet its liabilities in relation to payment for the Services provided by us.

4. INTEREST

You shall pay interest on the amount of any invoice for fees or other disbursements that remains unpaid for 15 days after the date of the invoice. Interest shall be payable at the rate of 4% above the base rate of NatWest PLC from the date of the invoice until payment is made whether after or before judgement.

5. DISBURSEMENTS

You shall pay all disbursements incurred by us in the provision of the Services at least monthly in arrears from the date they were incurred. Disbursements include, but are not limited to: maps, plans, research, photography, copying of documents or plans, messenger delivery, costs of obtaining external information on companies, properties, demographic or other similar information, any reproduction, copying or other royalties incurred, additional bound copy reports, costs of external information / references obtained and key cutting, travel and subsistence expenses at their actual cost and car mileage at the standard AA scales.

6. INFORMATION RECEIVED FROM THE CLIENT AND ADVICE ASSUMPTIONS

6.1 We will take all reasonable steps to ensure that property information is accurate where we are responsible for its preparation. Where you provide us with any information on a property that is necessary or convenient to enable us to provide the Services properly, you acknowledge that we will rely on the accuracy, completeness and consistency of any information supplied by you or on your behalf and, unless specifically instructed otherwise in writing, we will not carry out any investigation to verify such information. We accept no liability for any inaccuracy or omission contained in information disclosed by you or on your behalf, whether prepared directly by you or by a third party, and whether or not supplied directly to us by that third party and you shall indemnify us should any liability arise.

6.2 Except to the extent that we perform a structural survey that addresses any of the following matters (but subject to any specific limitations contained in such structural survey) or unless otherwise advised by you in writing, we will provide the Services in relation to any property on the following assumptions:

(i) information provided as to the extent of and ownership of the property is complete and correct and that there are no encumbrances or unduly onerous or unusual easements, restrictions, outgoings or conditions attaching to the property save as specifically notified to us;

(ii) there are no environmental matters (including but not limited to actual or potential land, air or water contamination, or by asbestos or any other harmful or hazardous substance) that would affect the property, any development or any existing buildings on the property in respect of which the Services are provided or any adjoining property, and that we shall not be responsible for any investigations into the existence of the same and that you are responsible for making such investigations;

(iii) the property and any existing buildings are free from any defect whatsoever;

(iv) all the building services (such as lifts, electrical, gas, plumbing, heating, drainage and air conditioning installations and security systems) and property services (such as incoming mains, waste, drains, utility supplies, etc.) are in good working order without any defect whatsoever;

- (v) any building, the building services and the property services comply with all applicable current regulations (including fire and health and safety regulations);
- (vi) the property and any existing building comply with all planning and building regulation, have the benefit of appropriate planning consent or other statutory authorisation for the current use and no adverse planning conditions or restrictions apply (which includes, but is not limited to, threat of or actual compulsory purchase order);
- (vii) appropriate insurance cover is, and will continue to be, available on commercially acceptable terms for any building incorporating types of construction or materials which may pose an increased fire or health and safety risk, or where there may be an increased risk of terrorism, flooding or a rising water table; and
- (viii) items of plant and machinery that usually comprise part of the property on an assumed sale are included in the property but items of plant and machinery that are associated with the process being carried on in the property or tenants trade fixtures and fittings are excluded from the property.

7. MEASUREMENTS

7.1 Where we are required to measure a property we will generally do so in accordance with the RICS Code of Measuring Practice, except for Offices and Residential which shall be in accordance with the International Property Measurement Standards. However, you should specifically note that the floor areas contained in any report we may publish are approximate and if measured by us will be within a 3% tolerance either way. In cases where the configuration of the floor plate is unusually irregular or is obstructed, this tolerance may be exceeded.

7.2 We will not be able to measure areas which we are unable to access. In these cases we may estimate floor area from plans or by extrapolation. Where we are required to measure land or site areas, the areas will be approximate and will be measured from plans supplied or from Ordnance Survey plans. They will not be physically checked on site.

8. MANAGEMENT OF THE PROPERTY

Except where we are organising refurbishment works, we shall not be responsible for the management of the property nor have any other responsibility (such as maintenance or repair) in relation to the property. We shall not be liable for any damage that may occur while the property is unoccupied. The property shall be your sole responsibility.

9. CONFLICTS OF INTEREST

9.1 We have conflict management procedures designed to prevent us acting for one client where there is or could be a conflict with the interest of another client for whom we are acting. If you are aware or become aware of a possible conflict of this type, please raise it immediately with us. If a conflict of this nature arises, then we will decide, taking account of legal constraints, relevant regulatory rules and your and the other client's interests and wishes, whether we can continue to act for both parties (e.g. through the use of separate teams with appropriate Chinese Walls), for one only or for neither. Where we do not believe that any potential or actual conflict of interest can be managed appropriately, we will inform you and consult with you as soon as reasonably practicable as to the steps to take.

9.2 You acknowledge that we may earn commissions, referral fees and may charge handling fees connected to the services that we perform and agree that we shall be entitled to retain them without specific disclosure to you. We will not accept any commissions or referral fees in circumstances where we are of the reasonable belief that they would compromise the independence of any advice that we provide to you.

9.3 It is not our policy to provide any services for financial gain either directly or through connected persons, to a prospective purchaser or tenant in respect of a property for which we are instructed as agents by the seller/owner, until unconditional contracts have been exchanged. We will notify you if we consider such a conflict of interest arises.

10. APPRAISAL EXCLUSIONS

10.1 We will not make any allowance in our Services for the existence of any mortgage or other financial encumbrance on or over the property, nor take account of any leases between subsidiaries.

10.2 Any appraisal figures provided will be exclusive of VAT, whether or not the building has been elected.

10.3 We will not make any allowance in any appraisal advice provided for the expenses of realisation, letting, or any taxation liability arising from the sale or development of the property.

11. PLANNING REGULATIONS

11.1 Unless specifically instructed in writing to make formal searches with local planning authorities, we shall rely in the provision of our Services on the information provided informally by the local planning authority or its officers.

11.2 Where we undertake appraisals of value, we may consider the possibility of alternative uses being permitted. Unless otherwise notified by you in writing, we shall assume that the property and any existing buildings comply with all planning and building regulation, existing uses have the benefit of appropriate planning consent or other statutory authorisation, and that no adverse planning conditions or restrictions apply.

11.3 Where we are required to submit a planning application, we shall require advance payment to cover the application fee prior to submission otherwise an additional handling charge of £250 for amounts up to £1,000 and £500 for larger amounts will be charged.

12. TERMINATION BY NOTICE

12.1 Unless a fixed period has been agreed, either party may terminate the instruction by giving 14 days' notice in writing to the other party.

12.2 In the event of termination by notice, you shall be obliged to pay forthwith all the fees accrued in relation to the Services and work performed up to the date of termination (and any abort fee) plus any expenses or disbursements incurred by us or to which we are committed at the date of termination.

13. PROFESSIONAL LIABILITY

13.1 We shall not be liable to you in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Services in respect of:

- (i) any direct loss of profit;
- (ii) any indirect, special or consequential loss whatsoever howsoever caused including without limitation (a) indirect loss of profit; (b) loss of business; (c) loss of goodwill; (d) loss of use of money;
- (e) loss of opportunity, and we agree that the sub-clauses of this clause shall be severable.

13.2 We shall not be liable to you in negligence for pure economic loss arising in connection with the performance or contemplated performance of the Services.

13.3 You acknowledge and agree that the exclusions contained in this clause 13 are reasonable in all the circumstances and that you have had the opportunity to take independent legal advice.

13.4 Where a third party has contributed to the losses, damages, costs, claims or expenses, we shall not be liable to make any contribution in respect of the liability of such third party.

13.5 Save in respect of third parties directly instructed by us and not on your behalf, we shall not be liable for the services or products provided by other third parties, nor shall we be required to inspect or supervise such third parties, irrespective of the third party services or products being incidental to or necessary for the provision of our services to you.

13.6 Our total aggregate liability (including that of our members and employees) to you in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the services shall be limited to an aggregate sum not exceeding half the square of fee paid for each instruction accepted, and may not exceed £1million.

13.7 We shall be released from our obligations to the extent that performance thereof is delayed, hindered or prevented by any circumstances beyond our reasonable control (examples being a strike, act of God or act of terrorism). On becoming aware of any circumstance which gives rise, or which is likely to give rise, to any failure or delay in the performance of our obligations, we will notify you by the most expeditious method then available.

13.8 To cover any liability that might be incurred by us, we confirm that we will maintain professional indemnity insurance, so long as such insurance is available at commercially acceptable rates and terms, with insurers of good standing and repute of not less than £1million on an each and every claim basis.

14. COMPLAINTS

14.1 If you wish to complain about the level of our service to you, in accordance with the requirements of the Royal Institution of Chartered Surveyors, we have a standard complaints procedure, a copy of which is available on request.

15. DATA PROTECTION

15.1 Our ICO Data Registration Number ZA436503. We shall use such personal data and information we obtain from you for providing the Services, for administration and for customers services, for marketing and to analyse your preferences. We may keep such personal data for a reasonable period for these purposes. We may need to share personal data with our service providers and agents for these purposes. We may disclose personal data in order to comply with a legal or regulatory obligation and you may request, in writing and upon payment of a fee, a copy of the details held about you by us.

15.2 To help us to make credit decisions about you, to prevent fraud, to check identity and to prevent money laundering, we may search the files of credit reference agencies and we may also disclose details of how you conduct your account to such agencies.

15.3 We may share personal data with our business partners for marketing purposes, which may be to countries or jurisdictions which do not provide the same level of data protection as the country in which you are based, or we may send you and your employees information about other organisations' goods and services. We or any business partners may contact you and your employees, directly or via our agents, by mail, telephone, fax, email, SMS or other electronic messaging service with offers of goods and services or information that may be of interest. By providing us with your employees' personal data (whether that data is deemed sensitive or not) including fax numbers, telephone numbers or email addresses, you and your employees consent to being contacted by these methods for these purposes.

16. ANTI-MONEY LAUNDERING REGULATIONS

16.1 We are supervised by HMRC for anti-money laundering. We may be required to verify certain of your details and may ask you to assist us in complying with such requirements. Where such information is requested, you will provide such information promptly to enable us to provide our services. We shall not be liable to you or any other parties for any delay in the performance or any failure to perform our services which may be caused by our duty to comply with any such legal and regulatory requirements.

17. FREEDOM OF INFORMATION

17.1 Where you are a public authority for the purposes of the Freedom of Information Act 2000 (the "Act"), you shall notify us within five business days of receiving a request pursuant to the Act requesting information which relates to the business arrangements between us and you and/or any information we have provided to you at any time. In recognition of the fact that we may be providing you with genuinely confidential or commercially sensitive information, you agree to consult us and seek our views on all such requests prior to making a decision on whether any information should be publicly disclosed.

18. ELECTRONIC COMMUNICATIONS

18.1 We may communicate with each other by electronic mail, sometimes attaching electronic data. By consenting to this method of communication, we and you accept the inherent risks (including the security risks of interception of, or unauthorised access to, such communications, the risks of corruption of such communications and the risks of viruses or other harmful devices). In the event of a dispute, neither of us will challenge the legal evidential standing of an electronic document and our system shall be deemed to be the definitive record of electronic communications and documentation.

19. CONFIDENTIALITY

19.1 We owe you a duty of confidentiality. You agree that we may, when required by our insurers or other advisers, provide details to them of any engagement on which we act or have acted for you, and that we may also disclose confidential information relating to your affairs if required to do so for legal, regulatory or insurance purposes only.

19.2 Subject to clause 19.1, we both agree never to disclose sensitive details of transactions or our advice without the other's consent. Unless we are expressly bound by a duty of confidentiality which otherwise overrides this, we both shall be entitled to mention to third parties (e.g. in the course of presentations, speeches or pitches) and/or publish (e.g. in brochures, marketing or other written material) that we provide our services to you.

19.3 We shall provide the Services to you only for your sole use and for the stated purpose. We shall not be liable to any third party in respect of our Services. You shall not mention nor refer to our advice, in whole or in part, to any third party orally or in annual accounts or other document, information we obtain from other sources for providing the services, for administration and customer services, for marketing and to analyse your circular or statement without our prior written approval. The giving of an approval shall be at our sole discretion

19.4 We will not approve any mention of our advice unless it contains sufficient reference to all the special assumptions and/or limitations (if any) to which our advice are subject. Our approval is required whether or not we are referred to by name and whether or not our advice is combined with others.

19.5 We may make the approval of any mention of our advice, or re-address to third parties our advice, subject to the payment of an additional fee to cover additional work and professional liability.

20. INTELLECTUAL PROPERTY

20.1 All intellectual property rights (including copyrights) in the documents, materials, records, data and information in any form developed or provided to you by us or otherwise generated in the provision of our services shall belong to us solely. You are granted an irrevocable, non-exclusive, royalty-free licence to use or copy such intellectual property rights for any purpose connected with the property.

21. ASSIGNMENT

22.1 Neither party shall be entitled to assign this contract or any rights and obligations arising from it without the prior written consent of the other, such consent not to be unreasonably withheld.

22. GENERAL

23.1 If any provision of our Fee Letter, Terms of Engagement, or Terms of Business is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of our Fee Letter, Terms of Engagement, or Terms of Business and the remainder of such provision shall continue in full force and effect.

23.2 Failure or delay by us in enforcing or partially enforcing any provision of these Terms of Business shall not be construed as a waiver of any of our rights under these Terms of Business.

23.3 No term of the relevant Fee Letter, Terms of Engagement, or these Terms of Business is intended to confer a benefit on or to be enforceable by any person who is not a party to the same. The application of the Contracts (Rights of Third Parties) Act 1999 is expressly excluded.

23.4 All Fee Letters and these Terms of Business shall be governed by and be construed in accordance with English law. Any dispute arising out of or in connection with the Services shall be submitted to the exclusive jurisdiction of the courts of England and Wales.

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