

STANDARD TERMS OF BUSINESS

1. Definitions

In these Standard Terms of Business:

“Acceptance of Instructions Letter” means the document setting out the services to be provided by the Firm to which these Standard Terms of Business are attached;

“Agreement” means the agreement between the Parties for the supply of the Services which agreement consists of these Standard Terms of Business and the Acceptance of Instructions Letter and any other special terms agreed in writing between the Parties;

“Client” means the person, organisation, firm or company instructing the Firm as set out in the Acceptance of Instructions Letter;

“Firm” means Cooper Property Services (UK) Limited;

“Parties” means the Client and the Firm;

“Materials” means valuations, reports or other material provided by the Firm under the Agreement;

“Services” means the services to be provided by the Firm under the Agreement as set out in the Acceptance of Instructions Letter;

“Intellectual Property Rights” means the copyright, database rights, patents, trade or service marks (whether registered or unregistered), business names or domain names (whether or not any of the same are registered and including the goodwill attaching to them and any applications for registration of any of them), and confidential information, know-how and all other intellectual Property rights or forms of protection of a similar nature or having equivalent or similar effect to any of the same which may subsist anywhere in the world;

“Terms means these Standard Terms of Business.

2. General Points

The Services shall be as set out in the Acceptance of Instructions Letter and/or Report and will be completed in full unless the Firm is instructed otherwise by the Client in writing.

No instructions placed by the Client shall be accepted by the Firm other than by the issue of an Acceptance of Instructions Letter by the Firm or (if earlier) by the Firm beginning to provide the Services.

Returning the signed copy of the Acceptance of Instructions Letter signifies the Client’s acceptance of the Services to be provided by the Firm. Where the signed copy has been requested but not returned to the Firm within seven days from the date of receipt by the Client, the Client will be deemed to have accepted the terms of both the Acceptance of Instructions letter and these Terms regardless of whether work in providing the Services has commenced or not.

The Firm shall be entitled to rely and act on any instruction given to the Firm by any person who is an employee of or advisor to the Client.

The Client shall make available to the Firm (free of charge) all information which is reasonably required by the Firm to deliver the Services. It is acknowledged and agreed that the Firm shall, in providing the Services, be able to rely on, and accept as being correct, the information, documentation and any other materials provided to it by the Client.

Subject to any variation agreed in writing by both Parties and signed by a Director of the Firm, the Agreement between the Firm and the Client shall be on these terms to the exclusion of all other terms and conditions.

Unless otherwise stated, the Services will be delivered in accordance with the Royal Institution of Chartered Surveyors (RICS) Valuation – Professional Standards or such other authority as appropriate.

Reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

Words in the singular include the plural and vice versa.

In the event of any inconsistency between an Acceptance of Instructions Letter and these Terms, the Acceptance of Instructions Letter shall take precedence.

3. Fees and Expenses

Fees for the Services will be as set out in the Acceptance of Instructions Letter or as otherwise agreed in writing between the Firm and the Client. If no such fees are set out or agreed, they shall be based on the Firm's relevant scale of fees/time costs. Fees are quoted exclusive of Value Added Tax (VAT) and will be subject to VAT in accordance with current VAT regulations.

The Firm shall be entitled, for certain categories of work, to request payment of fees, and/or disbursements and/or VAT (either in full or in part) in advance of any of the Services being undertaken. Where applicable, this will be explained to the Client either verbally or in writing and ordinarily set out in the Acceptance of Instructions Letter.

Unless otherwise stated in the Acceptance of Instructions Letter, fees are exclusive of all reasonably incurred disbursements which will be payable in addition by the Client together with VAT where applicable.

In the event of a change in the scope of the Services or the Firm being required to carry out any additional Services, the Firm reserves the right to charge an additional fee agreed in writing between the Firm and the Client. In the absence of such an agreement, the Firm will charge a reasonable fee based on the additional work undertaken.

The Firm shall be entitled to raise interim invoices during the course of the Agreement in respect of disbursements incurred and/or Services already carried out.

Payment of accounts for fees and/or disbursements shall be the responsibility of the Client (unless otherwise agreed in writing by the Parties). Payment is to be made within 14 days of the invoice date. Time for payment shall be of the essence. The only exception to the 14 day payment rule is where payment of fees, and/or disbursements and/or VAT (either in full or in part) is requested in advance of any of the Services being undertaken or before any Materials are released. No payment shall be deemed to be received until the Firm has received cleared funds. Unless otherwise agreed in writing by the Parties, payment must be made without any deduction by way of set-off, counterclaim, discount or otherwise.

The Firm shall be entitled to charge reasonable interest on all disbursements incurred on behalf of the Client whether invoiced or not at the same commercial lending rate as the Firm's bankers.

Without prejudice to any other right or remedy that it may have, in the event of non-payment of the Firm's invoice in full by the due date, the Client shall not be entitled to rely on, or use, any Materials provided to it by the Firm under the Agreement. In such circumstances, if instructed to do so by an authorised representative of the Firm, the Client shall return or destroy the Materials within seven days of receipt of such instructions, and shall certify to the Firm that such instructions have been complied with and that it has not used, or relied on, the Materials. Without prejudice to the foregoing, the Firm reserves the right to charge interest in respect of late payment of its invoice from the date upon which payment was due at the rate of 2% per month on the total account (including VAT) calculated on a daily basis).

The Firm also reserves the right to recover interest and compensation under the Late Payment of Commercial Debts (Interest_ Act 1998 (as amended)).

The Firm may suspend all Services until payment has been made in full. In such circumstances, the Firm shall not be liable for any delays, losses or expenses, howsoever resulting from such suspension.

Where instructions include the sale of Property or other assets, it is agreed that any fees, commissions and disbursements due may be deducted from realisations. The appropriate authority will be given by the Client to the Solicitors for payment of the Firm's fees, commissions and disbursements directly to the Firm upon completion of the sale.

If the Client disputes that payment of any item in the invoice is due, the Client must give notice in writing within fourteen days of the date of the invoice stating the reason for such dispute. The Firm will make every effort to resolve the dispute promptly. If no such notice is given within 14 days of the date of the invoice then the invoice will be deemed to have been accepted by the Client in full.

4. Termination

Termination of the Agreement shall be without prejudice to any other rights or remedies which the Parties may have. The accrued rights of the Parties as at termination and the continuation of any condition expressly stated to survive, or implicitly surviving termination, shall not be affected.

The Client, unless provided otherwise in the Acceptance of Instructions Letter, may terminate the Agreement at any time by giving the Firm reasonable notice (at least ten working days) in writing.

Without prejudice to any other rights which the Firm may have under the Agreement or at law, if instructions to the firm are terminated or varied for whatever reason, the Client's liability to make payment of fees earned and disbursements incurred by the Firm in respect of Services up to the date of termination or variation shall remain. The Client will also be liable to compensate the Firm for all reasonable expenses and disbursements subsequently incurred as a direct result of the termination.

In respect of the instructions for the sale of Property or other assets on the basis that the firm's charge will be based upon a commission, the Firm reserves the right to charge a marketing fee based on the time spent up until the time that instructions were terminated or varied, together with all disbursements reasonably and properly incurred.

The Firm may terminate the Agreement immediately on giving written notice to the Client:

- in the event that any invoiced and undisputed fees and/or disbursements remain unpaid following the 14 day payment period; or
- if the Firm reasonably anticipates that invoiced fees and/or disbursements will remain unpaid following the 14 day payment period; or
- if the Firm reasonably considers that it is not in either its or the Client's best interest to continue to act on the Client's behalf; or
- If the Client fails to provide the information reasonably required by the Firm to deliver the Services or if such information is subsequently found to be incorrect; or
- If the Client fails to provide clear instructions or gives instructions that conflict with the rules of professional conduct which apply to Chartered Surveyors; or
- If performance of the Services has been suspended for reasons beyond the reasonable control of either Party for more than 28 days.

If the Firm terminates the Agreement under any of the circumstances above, the Client's liability to make payment of fees earned and disbursements incurred by the Firm in respect of the Services up to the date of termination shall remain.

Either Party, unless provided otherwise in the Acceptance of Instructions Letter, may terminate the Agreement (without liability to the other) immediately on giving written notice to the other if;

- a) the other party commits a material breach of the terms of the Agreement and (if such a breach is remediable) fails to remedy that breach within 14 days of that Party being notified in writing of the breach; or
- b) the other Party ceases, or threatens to cease to trade; or
- c) an order is made or a resolution is passed for the winding up of the other Party, or circumstances arise which entitle a court of competent jurisdiction to make a winding up order of the other Party; or
- d) an order is made for the appointment of an administrator to manage the affairs, business and Property of the other Party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other Party or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of schedule B1 of the Insolvency Act 1988); or
- e) a receiver is appointed of any of the other Party's assets or undertaking, or circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other Party, or if any person takes possession of or sells the other Party's assets; or
- f) the other Party makes any arrangement or composition with its creditors or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or
- g) the other Party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

The Firm shall be entitled to terminate the Agreement (without liability to the Client) immediately on giving written notice to the Client if it has reasonable grounds to think that the Client will, or is likely to be, the subject of any of the situations set out above ((b) to (g) inclusive) within the next six months.

Notice given under the Agreement shall be in writing, and sent for the attention of the person, and to the address or fax number given, in the Acceptance of Instructions Letter (or such other address, fax number or person as the relevant Party may notify to the other Party in writing). Notices shall be delivered personally, sent by fax, (pre-paid) first-class post or special/recorded delivery. Notice is deemed to have been received as follows: If delivered personally – at the time of delivery, in the case of fax – at the time of transmission, in the case of)pre-paid_ first class post or special/recorded delivery – 48 hours from the date of posting and, if deemed receipt under this condition is not within business hours (meaning 9:00am to 5:30am Monday to Friday on a day that is a business day), at 9:00 am on the first business day following delivery. To prove service of the Notice, it is sufficient to prove that the Notice was transmitted by fax to the fax number of the Party, or in the case of post, that the envelop containing the Notice was properly addressed and posted.

5. Liability

The Firm shall have and keep in effect Professional Indemnity Insurance as required by the Royal Institution of Chartered Surveyors in respect of the performance of the Services. The Firm will, on written request by the Client provide evidence by way of a Verification of Insurance Certificate that professional indemnity insurance has been effected and remains in effect. The Certificate will reflect the current Limit of Indemnity under the policy.

The Firm will provide the Services with all reasonable skill, care and diligence, and in accordance with the terms set out in the Acceptance of Instructions Letter and/or the Firm's Report.

This section 5 sets out the entire financial liability of the Firm (including any liability for the acts or omissions of its employees, agents and/or sub-contractors) to the Client in respect of: any breach of the Agreement; any use made by the Client of any Materials provided by the Firm under the Agreement; and any representation, statement or tortuous act or omission (including negligence) arising under, or in connection with these Terms and/ or the Agreement.

Nothing in these Terms limits or excludes (or is intended to limit or exclude) the liability of the Firm for death or personal injury resulting from negligence; or for any damage or liability incurred by the Client as a result of fraud or fraudulent misrepresentation by the Firm; or for any other liability which cannot be lawfully excluded or limited.⁽¹⁾

Subject to the paragraph marked ⁽¹⁾ above, the Firm shall not be liable for any indirect or consequential losses (such as loss of profits). ⁽²⁾

Subject to the paragraphs marked ⁽¹⁾ and ⁽²⁾ above, the Firm's total liability to the Client in contract, tort (including negligence or breach of any statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Services shall be strictly limited to five hundred thousand pounds (including interest and legal fees) or such other sum specified in the Acceptance of Instructions Letter (where issued).

The Firm will not be liable for any losses attributable to the provision of false, incomplete or misleading information by the Client or any other party acting on the Client's behalf or losses due to acts or omissions by the Client or any other party acting on the Client's behalf.

The Firm shall have no liability to the Client under the Agreement if it is prevented from, or delayed in, performing its obligations under the Agreement or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including (without limitation) strikes, lock-outs, or other industrial disputes (whether involving the workforce of the Firm or any other party).

The Client acknowledges that it has not relied on any statement, promise or representation made or given by, or on behalf of, the Firm which is not set out in these terms or the Acceptance of Instructions Letter, save that nothing in these terms shall exclude or limit the Firm's liability for fraudulent misrepresentation.

The Services provided by the Firm under the Agreement are provided solely for the Client. NO third party may rely upon the advice or Services provided under the Agreement without the prior written consent of the Firm.

The Firm shall not be liable in respect of any services performed outside the scope of the Terms unless the Firm has agreed to perform the services in writing in advance.

The Client agrees not to bring any claim arising out of or in connection with this Agreement against any member, employee, Director or consultant of the Firm. Those individuals will not have a personal duty of care to the Client and any claim therefore must be brought against JBH Property Consulting Ltd.

6. Confidentiality & Conflict of Interest

Both Parties shall keep in strict confidence all technical or commercial know-how, business and financial information, specifications, processes or initiatives which are of a confidential nature (whether or not expressly marked as such) and have been disclosed to the Party by the other Party, its employees, agents or sub-contractors. The Parties shall restrict disclosure of such confidential information to such of their employees, agents or sub-contractors as need to know the same for the purposes of the Agreement or as is required to be disclosed by law or any body or authority of competent jurisdiction, or which is public knowledge or subsequently becomes public knowledge other than by breach of this condition. This condition shall survive termination of the Agreement howsoever arising.

The Firm checks for Conflicts of Interest before accepting instructions. The Client accepts however that as the Firm offers a wide range of services to clients, there can be no certainty that all situations where a conflict of interest may arise will be identified. The Client therefore undertakes to notify the Firm promptly of any conflict or potential conflict of interest they are, or become, aware of in relation to the provision of the Services.

7. Money Laundering

The Firm complies with the Proceeds of Crime Act 2002 and has procedures and controls in place designed to prevent money laundering. If the Firm suspects that any money laundering offences are being, or have been, committed, in accordance with its legal responsibilities, the Firm will disclose its suspicions to the appropriate authorities. The Client accepts that the Firm's legal obligations will take precedence over instructions received from the Client where such instructions, if carried out, would result in a breach of the Firm's duties under the law.

In certain circumstances the Firm will require proof of identity from the client before accepting or acting on instructions.

The Firm will not accept either single cash payments exceeding £9,000 (or the Euro equivalent) or linked payments/transactions where the total will exceed the £9,000 limit.

8. Ownership and Retention of Documents

The Firm retains client files without charge (and without liability) for at least six years after which it will confidentially dispose of them.

As between the Firm and the Client, all Intellectual Property Rights and other rights in any Materials provided to the Client by the Firm shall be owned by the Firm. Subject to payment of all sums properly due to it under the Agreement, the Firm hereby licences all such rights to the Client free of charge and on a non-exclusive, royalty free basis to such extent as is necessary to enable the client to make reasonable and proper use of the Services. The Firm shall not be liable for any use by the Client of any Materials provided by the Firm for a purpose other than that for which it was prepared. If the Firm terminates the Agreement, this licence will automatically terminate.

9. Complaints Procedure

The Firm is committed to ensure that quality is applied and managed in every aspect of the administration of the Firm and the Services undertaken on behalf of Clients.

Should the Services provided by the firm not fully comply with the anticipated standard of quality, the Firm operates a Complaints Handling Procedure (including alternative dispute resolution mechanisms which have been approved by the RICS Regulatory Board) in accordance with the Royal Institution of Chartered Surveyors (RICS) requirements copies of which are available on request.

10. Other Matters

On receipt of Client's monies, it is intended that cleared funds will be remitted within 28 days or such other time as is appropriate. The Firm is not obliged to place monies on interest bearing accounts but interest accrued will be retained by the Firm unless otherwise agreed.

The Firm complies with the requirements of the Data Protection Act 1998.

The Firm is committed to carrying out business fairly, honestly and openly. We operate a zero tolerance approach to bribery and corruption and comply fully with all applicable anti-bribery and corruption laws including, without limitation, The Bribery Act 2010.

Unless otherwise stated, in the Acceptance of Instructions Letter, dates/times for performance of the Services will not ordinarily be specified and time shall not be of the essence although the Firm will always strive to meet Client deadlines where set.

If any provision (or part of a provision) of these terms is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, that provision will apply with whatever modification is necessary to make it valid, enforceable and legal.

The Agreement is made for the benefit of the Parties and (where applicable) their successors and permitted assigns and it is not intended to benefit or be enforceable by anyone else, whether under The Contracts (Rights of Third Parties) Act 1999, or otherwise.

The Agreement and these Terms and any dispute or claim arising out of, or in connection with, them or their subject matter, shall be governed by, and construed in accordance with, the laws of England and Wales and the Parties irrevocably submit to the exclusive jurisdiction of the courts in England and Wales.