

# Terms & Conditions

## Of

# E.S. Property & Estate Ltd

### Application and Entire Agreement

1. These Terms & Conditions apply to the provision of the services detailed in our Estimate (Services) by E.S. Property & Estate Ltd a Company registered in England & Wales under Company Number 11187108 whose registered office is at: 5 Henderson Road, Newton Aycliffe, County Durham. DL5 5PE (we or us) to the person buying the services (you)
2. You are deemed to have accepted these Terms & Conditions when you accept our Estimate or from the date of any performance of the Services (whichever happens earlier) and these Terms & Conditions and our Estimate (the Contract) are the entire agreement between us.
3. You acknowledge that you have not relied on any statement, promise or representation made or given by or on our behalf. These Conditions apply to the Contract to the exclusion of any other terms that you try to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

### Interpretation

4. A “business day” means any day other than Saturday, Sunday or Bank Holiday in England & Wales
5. The headings in these Terms & Conditions are for convenience only and do not affect their interpretation
6. Words imparting the singular number shall include the plural and vice-versa.

### Services

7. We warrant that we will use reasonable care and skill in our performance of the Services which will comply with the Estimate, including any specification in all material respects. We can make any changes to the Services which are necessary to comply with any law or safety requirement and will notify you if this is necessary.
8. We will use our reasonable endeavours to complete the performance of the Services within the time agreed, or as set out in the Estimate; however, time shall not be of the essence in the performance of our obligations.
9. All of these Terms & Conditions apply to the supply of any goods as well as Services unless we specify otherwise.

### Your Obligations

10. You must obtain any permissions, consents, licences or otherwise, that we may need and must give us access to any or all relevant information, materials, properties and any other matters which we need to provide the Services.
11. If you do not comply with clause 10, we can terminate the Services.
12. We are not Liable for any delay or failure to provide the Services if this is caused by your failure to comply with the provisions of this section (Your Obligations).

## **Fees**

13. The fees (Fees) for the Services are set out in the Estimate and are on a time, costs & materials basis.
14. In addition to the Fees, we can recover from you a) reasonable incidental expenses including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, b) the costs of services provided by third parties and required by us for the performance of the Services and c) the costs of any materials required by the provision of the Services.
15. You must pay us for any additional services provided by us that are not specified in the Estimate in accordance with our then current, applicable hourly rate in effect at the time of performance or such other rate as may be agreed between us. The provisions of clause 14 also apply to these additional services.
16. The fees are inclusive of any applicable VAT and other taxes or levies which are imposed or charged by any competent authority.

## **Cancellation and Amendment**

17. We can withdraw, cancel or amend an Estimate if it has not been accepted by you, or if the Services have not started, within a period of 14 days from the date of the Estimate, (unless the Estimate has been withdrawn).
18. Either we or you can cancel an order for any reason prior to your acceptance (or rejection) of the Estimate.
19. If you want to amend any details of the Services you must tell us in writing or email as soon as possible. We will use reasonable endeavours to make any required changes and additional costs will be included in the Fees and invoiced to you.
20. If, due to circumstances beyond our control, including those set out in the clause below (Circumstances beyond a party's control), if we have to make any changes in the Services or how they are provided, we will notify you immediately. We will use reasonable endeavours to keep any such changes to a minimum.

## **Payment**

21. We will invoice you for payment of the Fees either:
  - a) When we have completed the Services; or
  - b) On the invoice dates set out in the Estimate.
22. You must pay the Fees due within 3 days of the date on the Invoice, or otherwise in accordance with any credit terms agreed by us.
23. Time for Payment shall be the essence of the Contract.
24. Without limiting any other right or remedy we have for statutory interest, if you do not pay within the period set out above, we will charge you interest at the rate of 8% per annum above the base lending rate of the Bank of England from time to time on the amount outstanding until payment is received in full.
25. All payments due under these Terms & Conditions must be made in full without any deduction or withholding except as required by law, and neither of us can assert any credit, set-off or counterclaim against the other in order to justify withholding payment of any such amount in whole or in part.
26. If you do not pay within the period set out above or, stated on the invoice (whichever is later) we can suspend any further provision of the Services and cancel any future services which have been ordered by, or otherwise arranged with you.

27. Receipts for payment will be issued by us only at your request.
28. All payments must be made in British Pounds unless agreed in writing between us.

### **Sub-Contracting and Assignment**

29. We can at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of our rights under these Terms & Conditions and can subcontract or delegate in any manner, any or all of our obligations to any third party.
30. You must not, without our prior written consent, assign, transfer, charge, subcontract or deal in any other manner with all or any of your rights or obligations under these Terms & Conditions.

### **Termination**

31. We can terminate the provision of Services immediately if you:
  - a) Commit a material breach of your obligations under these Terms & Conditions; or
  - b) Fail to make pay any amount due under the Contract on the due date for payment; or
  - c) Are or become or, in our reasonable opinion, are about to become, the subject of a bankruptcy order or take advantage of any other statutory provision for the relief of insolvent debtor; or
  - d) Enter into a voluntary arrangement under Part 1 of the Insolvency Act 1986, or any other scheme or arrangement is made with its creditors; or
  - e) Convene any meeting of your creditors, enter into voluntary or compulsory liquidation, have a receiver, manager, administrator or administrative receiver appointed in respect of your assets or undertakings or any part of them, any documents are filed with the court for appointment of an administrator in respect of you, notice of intention to appoint an administrator is given by you or any of your directors or by a qualifying floating charge order (as defined in para. 14 of Schedule B1 of the Insolvency Act 1986), a resolution is passed, or petition presented to any court for your winding up or for the granting of an administration order in respect of you, or any proceedings are commenced relating to your insolvency or possible insolvency.

### **Intellectual Property**

32. We reserve all copyright and any other intellectual property rights which may subsist in any goods supplied in connection with the provision of the Services. We reserve the right to take any appropriate action to restrain or prevent the infringement of such intellectual property rights.

### **Liability and Indemnity**

33. Our liability under these Terms & Conditions, and in breach of our statutory duty, and in tort or misrepresentation or otherwise, shall be limited as set out in this clause.
34. The total amount of our liability s limited to the total amount of Fees payable by you under the Contract.
35. We are not liable (whether caused by our employees, agents or otherwise) in connection with our provision of the Services or the performance of any of our other obligations under these Terms & Conditions or the Estimate for:
  - a) any indirect, special or consequential loss, damage, costs, or expenses; or
  - b) any loss of profits; loss of anticipated profits; loss of business; loss of data; loss of reputation or goodwill; business interruption; or, other third-party claims; or

- c) any failure to perform any of our obligations if such delay or failure is due to any cause beyond our reasonable control; or
  - d) any losses caused directly or indirectly by any failure or your breach in relation to your obligations; or
  - e) any losses arising directly or indirectly from the choice of Services and how they will meet your requirements or your use of the Services or any goods supplied in connection with the Services
36. You must indemnify us against all damages, costs, claims and expenses suffered by us arising from any loss or damage to any equipment (including that belonging to third-parties) caused by you or your agents or employees.
37. Nothing in these Terms & Conditions shall limit or exclude our liability for death or personal injury by you or your agents or employees

#### **Data Protection**

38. When supplying the Services to the Customer, the Service Provider may gain access to and/or acquire the ability to transfer, store or process personal data of employees of the Customer
39. The parties agree that where such processing of personal data takes place, the Customer shall be the Data Controller and the Service Provider will be the Data Processor as defined in the General Data Protection Regulation (GDPR) as may be amended, extended and/or re-enacted from time to time.
40. For the avoidance of doubt, "Personal Data", "Processing", "Data Controller" and "Data Subject" shall be the same meaning as in the GDPR
41. The Service Provider shall only Process Personal Data to the extent reasonably required to enable it to supply the Services as mentioned in these Terms & Conditions or as requested by and agreed with the Customer, shall not retain any Personal data longer than necessary for the Processing and refrain from Processing and Personal data for its own or for any third party's purposes.
42. The Service Provider shall not disclose Personal Data to any third parties other than employees, directors, agents, sub-contractors or advisors on a strict "need to know" basis and only under the same (or more extensive) conditions as set out in these Terms & Conditions or to the extent required by applicable legislation and/or regulations.
43. The Service Provider shall implement and maintain technical and organisational security measures as are required to protect Personal Data Processed by the Service Provider on behalf of the Customer.
44. Further information about the Service Provider's approach to data protection are specified in its Data Protection Policy, which can be found on our website. For any enquiries or complaints regarding Data Privacy you can contact our Data Protection Officer at the following email address: [ian@esproperty-estate.co.uk](mailto:ian@esproperty-estate.co.uk)

#### **Circumstances beyond a party's Control**

45. Neither of us is liable for any failure or delay in performing our obligations where such failure or delay results from any cause, that is beyond the reasonable control of that party. Such causes include, but are not limited to; power failures, ISP failures, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, government action or any event that is beyond the control of the party in question. If the delay continues for a period of 30 days, either of us may terminate or cancel the Services to be carried out under these Terms & Conditions.

## **Communications**

46. All notices under these Terms & Conditions must be in writing, and signed off, or on behalf of, the party giving notice (or a duly appointed officer of that party).
47. Notices shall be deemed to have been duly given:
  - a) When delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient;
  - b) When sent, if transmitted by email, and a successful transmission report or return receipt is generated;
  - c) On the fifth business day following mailing, by national ordinary mail or,
  - d) On the tenth business day following if mailed by airmail
48. All notices under these Terms & Conditions must be addressed to the most recent address, email address notified to the other party

## **No Waiver**

49. No delay, act or omission by a party in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy nor stop further exercise of any other right, or remedy

## **Severance**

50. If one or more of these Terms & Conditions is found to be unlawful, invalid, or otherwise unenforceable, that/those provisions will be deemed severed from the remainder of these Terms & Conditions (which will remain valid and enforceable).

## **Law and Jurisdiction**

51. This Agreement shall be governed by and interpreted according to the law of England & Wales and all disputes arising under the Agreement (including non-contractual disputes or claims) shall be subject to the exclusive jurisdiction of the English & Welsh Courts.