

Standard Terms of Engagement

This document is produced as part of the contract between Boston Fieldgate and clients as required under the provisions of the Estate Agents Act 1979.

1.0 Definitions:

In these terms:

- 1.10 "Client" means the person firm or company to whom BF is to provide services in accordance with these terms.
- 1.20 "BF " means Boston Fieldgate whose office is at 45 Fieldgate Lane, Kenilworth Warwickshire CV8 1BT.
- 1.30 "Property" means the property, which is the subject of the client's instructions to advise upon.
- 1.40 "Pre Sale" and "Pre Let" means the sale or grant of a lease over a property [as appropriate] which is to be constructed, completed or refurbished prior to completion of the sale or grant of lease.
- 1.50 "Terms" means the standard terms and conditions set out in this document and [unless the context or otherwise requires] include any other terms and conditions set out in any letter accompanying these Terms or varying these Terms.

2.00 General:

- 2.10 BF undertakes all services on the basis of these Terms only, which shall apply to the exclusion of any other terms and conditions which the Client may seek to impose.
- 2.20 No variation of these Terms shall be binding unless previously agreed in writing by BF.
- 2.30 In the event of any ambiguity or conflict between the letter accompanying these Terms and these Terms the former will take precedence.

3.00 The Property:

3.10 Information

- 3.11 The Client warrants represents and undertakes to BF that [save as specifically notified to BF by the client in writing]:
 - a) all information provided by the Client and/or its professional advisers regarding the Property and its ownership is complete and accurate and is not misleading (either on its face or by inference or omission) and that there are no other material facts known to the Client relating to the Property which may be relevant to BF in carrying out its instructions;
 - b) there are no encumbrances or unduly onerous or unusual easements, restrictions, outgoing or conditions attaching to the Property;
 - c) the Property complies with all relevant statutory requirements; and
 - d) the Property has been constructed and is occupied in accordance with valid planning and building regulations approval.

3.20 Insurance

The Client shall remain responsible for the insurance of the Property and for notifying its insurers should the Property fall vacant. BF shall not be responsible for the management, security or deterioration of the Property or any other like matter or loss howsoever caused. If keys for the Property are held by BF then the Client is deemed to have given authority to BF to supply keys to persons who wish to inspect the property and BF accept no responsibility for the action of such persons. The Client shall effect and maintain full insurance cover against any claim that may be made by BF or any representative or employees of BF or by a third party in respect of any loss, damage or injury howsoever caused.

4.00 Terms of engagement:

4.10 Sales

The terms of BF's appointment are as referred to in the letter accompanying these Terms and the following definitions apply (subject always to the provisions of clauses 4 and 5).

4.11 Sole Selling Rights

The Client will be liable to pay remuneration to BF in addition to any other costs all charges agreed, in each of the following circumstances:

- (a) If unconditional contracts for the sale on the Property are exchanged in the period during which BF has sole selling rights, even if the purchaser was not found by BF but by another agent or by any other person, including the Client; or
- (b) if unconditional contracts for the sale of the Property are exchanged after the expiry of the period during which BF has sole selling rights but to a purchaser who was introduced to the client during that period or with whom BF had negotiations about the Property at any time during that period.

4.12 Sole Agency

The Client will be liable to pay remuneration to BF in addition to any other costs all charges agreed, if at any time unconditional contracts for the sale of the Property are exchanged:

- (a) with a purchaser introduced by BF during that period of its sole agency or with whom BF had negotiations about the Property during that period; or
- (b) with a purchaser introduced by another agent during that period.

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- 4.13 **Joint Sole Agency**
The Client will be liable to pay remuneration to BF in addition to any other costs all charges agreed, if at any time unconditional contracts for the sale of the Property are exchanged:
(a) with a purchaser introduced by BF or its joint agent(s) during that period of BF's joint sole agency or with whom BF or its joint agent(s) had negotiations about the Property during that period;
or
(b) with a purchaser introduced by another agent during that period
- 4.14 **Multiple Agency**
The Client will be liable to pay remuneration to BF in addition to any other costs or charges agreed if at any time unconditional contracts for the sale of the Property are exchanged with a purchaser introduced by BF during that period of BF's multiple agency or with whom BF had negotiations / contact about the Property during that period.
- 4.20 **Acquisitions**
The client will appoint BF as "Sole Agent" and same fee rates will apply as detailed under Sales or lettings. In addition a further fee in relation to undertaking a property search will be payable but will be agreed in relation to each individual instruction in advance of any work being undertaken.
- 4.30 **Lettings**
Where BF is appointed with Sole Lettings Rights or as Sole Agents, Joint Sole Agents or Multiple Agents in respect of the letting of the Property the provisions relating to "Sole Selling Rights", "Sole Agency", "Joint Sole Agency" or "Multiple Agency" (as appropriate) shall apply save that references therein to "sell", "selling" and "purchaser" shall be replaced by "lease", "letting" and "tenant" as appropriate. "Lettings", shall include all other forms of similar disposal including, without limit, assignment, surrender, licence or otherwise.
- 4.40 **Conditional Contracts**
If a conditional contract is exchanged for the disposal or letting of the Property the Client will be liable to pay remuneration to BF on the basis set out above under "Sole Selling Rights", "Sole Agency", "Joint Sole Agency" or "Multiple Agency" (as appropriate) as if the reference to "unconditional contracts" contained in the provisions referred to "conditional contracts" provided always that the liability to pay remuneration to BF shall only arise on the conditional contract becoming unconditional in all respects.
- 4.50 **Rent Reviews, Lease renewals, Lease restructuring, Business Rates reviews & appeals and all other advisory services** provided outside of sales, Acquisitions or lettings the fees will be as agreed in each individual circumstance but otherwise all other terms will be as detailed in this document.

5.00 Fees:

- 5.10 Unless otherwise agreed in writing, fees on a disposal, surrender or acquisition will be calculated on the following basis:
(a) a freehold disposal or the grant, assignment or surrender of a lease at a nominal rent with a premium: 1.5% of the purchase / sale price;
(b) on the grant of a new lease or subletting or the assignment of a lease 10% of the average annual headline rent reserved under the lease up to first rent review or lease expiry whichever is the sooner ignoring any rent-free period, stepped rentals, capital contributions, fitting out packages or other similar incentives and inducements plus 5% of any premium received or payable.
- 5.20 Where the instruction is withdrawn, an abortive fee may be charged calculated on a quantum meruit basis.
- 5.30 Where BF is instructed in connection with a Pre Sale or Pre Let, one half of the estimated final fee will be due and payable on exchange of contracts for the sale or agreement for lease (hereinafter together referred to as the "Contract") and, save as referred to below, the balance of the agreed fee will be due and payable upon completion of the sale or lease (as the case may be) or upon the purchaser or tenant taking occupation of the Property (whichever shall first occur). In the event the Property is not completed in accordance with the terms of the Contract and, in consequence, the purchaser or tenant refuses to complete the Contract, BF shall be entitled to its full fee as if the Contract had been completed in accordance with its terms, and the fee shall be due and payable at the time when the purchaser or tenant terminates or refuses to complete the Contract on the due date for completion of the Contract in accordance with its terms, whichever is the earlier.
- 5.40 BF will not be liable to refund to the Client any part of the fee paid on account in accordance with Clause 5 if the purchaser or tenant fails to complete the Contract for any reason whatsoever.
- 5.50 In the case of a Joint Sole Agency the fees referred to above will be multiplied by 1.5 and split equally between both agents.

6.00 Terms of payment:

- 6.10 BF may invoice the Client for its fees as soon as the Client's liability arises under Clause 4 and / or Clause 5.
- 6.20 Subject to the provisions of Clause 5 fee accounts are due for settlement upon completion or the purchaser, lessee or assignee taking possession whichever shall be the earlier. Where completion does not take place for any reason whatsoever on the due date for completion BF's fee account shall be due for settlement on the date that completion should have taken place in accordance with the terms of the contract.
- 6.30 VAT will be payable where applicable at the prevailing rate on all fees and marketing costs/disbursements.
- 6.40 BF reserves the rights to charge the Client interest (both before and after any judgement) on any unpaid invoice at the rate of 5% per annum above the base lending rate of Lloyds TSB Bank PLC calculated on a daily basis from 20 days after the date of its invoice until the date of settlement in full.

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7.00 Acquisitions:

- 7.10 The Client shall be responsible for determining whether the Property found by BF is suitable and for carrying out or arranging to be carried out such investigations and inspections as the Client deems necessary for the purpose.
- 7.20 Unless otherwise agreed in writing with the Client, BF shall not be responsible for making any local search or other enquiries of local or any other authorities or investigation of title regarding the Property which shall be the sole responsibility of the Client.
- 7.30 BF shall not be responsible for making any structural survey of the Property nor testing any services at the Property.
- 7.40 BF'S appointment will be on the basis of a "Sole Agency" and the Client will be liable to pay remuneration to BF in addition to any other costs or charges agreed, if at any time an unconditional contract[s] for the purchase / lease / acquisition of any interest in the Property is / are exchanged:
[a] on a Property introduced by BF during the period of its "Sole agency" or on which BF had discussions and / or negotiations about during that period;
[b] on a Property introduced by another agent or by any other person, including the Client during that period.

8.00 Marketing costs:

- 8.10 In addition to the fees specified in Clause 5 the Client will be responsible for marketing costs which will include without limitation advertising, brochure production, printing of particulars, photography, mailing, on-site representation, signboards, travelling, messenger delivery, copying of documents / plans or any other items specifically agreed between BF and the Client. Such costs will be passed on to the client at gross cost unless otherwise stated in the accompanying letter. BF shall be entitled to retain any discounts or commissions which are available or paid to BF in order to offset administrative expenses. BF shall be entitled to submit accounts for such costs at the time when incurred by BF and such accounts shall be payable by the Client whether or not the Client completes a disposal or acquisition or withdraws its instructions. Accounts for marketing costs and disbursements are due for settlement on presentation.
- 8.20 Alternatively BF may by agreement with the Client arrange for suppliers to invoice the Client directly for any of the services supplied upon its instructions.

9.00 The Bribery Act 2010:

BF will seek to fully comply with the terms of the Act which became effective on 1st July 2011 and will report any concerns or suspicions to the SFO and other relevant authorities.

10.00 Money Laundering Regulations 2007:

As a condition of accepting any instructions BF will require the client to provide sufficient evidence to comply with the regulations and this will include BF seeing and then retaining a copy of some form of photo ID for the instructing officer at the Client and a current utility bill in their name.

11.00 Property Misdescriptions Act 1991:

- 11.10 The Client shall be responsible for approving, checking and verifying (in so far as it is reasonable for the client to do so) the contents, wording and style of all marketing material relating to the Property and will advise BF without delay in writing if any aspect of the sales/letting particulars is or later becomes false, inaccurate or misleading.

12.00 Indemnity:

- 12.10 The Client shall indemnify and keep indemnified BF from and against all and any liability losses damages penalties fines costs and expenses (including legal costs and expenses) suffered or incurred by BF arising out of or by virtue of:
(a) the breach by the Client of any of its obligations under these Terms;
or
(b) any allegation that any statement made by BF relating to the Property is false or misleading contrary to the provisions of the Property Misdescriptions Act 1991 and any Regulations made pursuant thereto (including any modifications or amendments thereto) where such statement was either approved by the Client or the information contained in such statement was provided by the Client.

13.00 Miscellaneous:

- 13.10 BF's duties shall be limited to those set out in these Terms and in the letter accompanying these Terms.

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- 13.20 BF confirms that it will forward in writing all offers received and will not prefer one applicant to another solely because an applicant has agreed to engage BF in the provision of additional services. If the Client accepts the offer of the applicant (subject to contract) BF will notify the Client in writing if it provides or arranges any services for that applicant before completion. BF may also act in the disposal of the purchaser's property where a fee may be raised or commissions earned from your purchaser.
- 13.30 BF shall be entitled to accept and act on any instruction given to BF by any person who is an employee of or adviser to the Client.
- 13.40 If any provision or term of these Terms shall become or be declared illegal, invalid or unenforceable for any reason such term or provision shall be divisible from these Terms and shall be deemed to be deleted from these Terms.
- 13.50 Except where specifically agreed in writing BF will not provide formal valuations, Red Book valuations or valuations for loan purposes.
- 13.60 All areas and dimensions are provided for guidance purposes only and are to be regarded as approximate.

14.00 Related interests:

- 14.10 The Estate Agents Act 1979 requires BF to disclose to interested parties any connection which the Client (or any relative or business associate of the Client) may have with BF (or any business associate or employee of BF). Please inform BF if you are aware of any such relationship.
- 14.20 BF will inform the Client promptly if BF or any person connected with BF seeks to acquire a beneficial interest in the Property.

15.00 Complaints:

- 15.10 BF aims to perform on instructions from the Client in an efficient manner. BF hopes that the Client will not need to complain but recognises that in isolated circumstances there may be complaints. These should be addressed initially to the person(s) supervising the instruction and he / she will thoroughly investigate any complaints. BF is a member of the Surveyors Ombudsman Scheme and a copy of our Complaints Handling Procedure is available upon application to BF.

16.00 Termination of instruction:

- 16.10 The instruction may be terminated by either the Client or BF giving the other party not less than 28 days written notification.
- 16.20 Any outstanding remuneration and marketing costs due to BF shall be settled in full by the Client on or before the expiry of such notice period. In the event of termination BF will be entitled to receive remuneration calculated on a quantum meruit basis. For the avoidance of doubt, on termination of instruction, whether by BF or the Client, BF shall not be liable to repay the Client any marketing costs previously paid by the Client to BF.

17.00 Law:

- 17.10 These Terms shall be governed by and construed in all respects in accordance with the English Law.