



Terms and Conditions for the supply of services

The Client's attention is particularly drawn to the provisions of clause 7.

1. INTERPRETATION

1.1 **Definitions.** In these Conditions, the following definitions apply:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Charges: the charges payable by the Client for the supply of the Services in accordance with clause 5.

Conditions: these terms and conditions as amended from time to time in accordance with clause 11.7.

Contract: the contract between MPC and the Client for the supply of Services created by the Engagement Letter and the Conditions.

Client: the person who purchases Services from MPC.

Engagement Letter: the letter from MPC to the Client setting out the services to be provided to the Client by MPC

MPC: My Property Consultant Limited registered in England and Wales with company number 09278513 and whose registered office is at 21 Spencer Hill, London, SW19 4PA.

Property Management Terms: the terms and conditions at Schedule 1

Services: the services set out in the Engagement Letter.

1.2 **Construction.** In these Conditions, the following rules apply:

- (a) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its successors or permitted assigns;

- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms including, include, in particular or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to writing or written includes faxes and e-mails.

2. BASIS OF CONTRACT

- 2.1 The Contract constitutes the entire agreement between the parties. The Client acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of MPC which is not set out in the Contract.
- 2.2 These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3. SUPPLY OF SERVICES

- 3.1 MPC shall supply the Services to the Client and the Client agrees to purchase the Services.
- 3.2 MPC shall use all reasonable endeavours to meet any dates agreed, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 MPC warrants to the Client that the Services will be provided using reasonable care and skill.
- 3.4 MPC will not be obliged to provide, and can accept no liability for, advice or work beyond the scope of the Services.
- 3.5 MPC will be entitled to rely on information that the Client gives to MPC without further verification unless expressly agreed otherwise.

3.6 Where the Services include buy to let property management services the Property Management Terms shall apply in addition to these Conditions.

4. CLIENT'S OBLIGATIONS

4.1 The Client shall:

- (a) co-operate with MPC and act reasonably in all matters relating to the Services;
- (b) provide MPC with such information (including any information required for anti-money laundering purposes) as MPC may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
- (c) provide MPC with such authorities as reasonably required to enable MPC to provide the Services;
- (d) provide MPC with timely, accurate and up to date information relating to the Services and notify MPC promptly of any material change in information or circumstances;
- (e) check all information and documents sent by MPC to the Client where it is apparent from the circumstances, or indicated by MPC, that the Client should do so and to notify MPC promptly of any incorrect statements, assumptions or information of which the Client become aware;
- (f) agree that MPC may rely and act on advice or information provided directly, or through the Client, by other specialist advisers acting on the Client behalf;
- (g) be solely responsible for all personal, commercial, financial or business decisions that the Client makes; and
- (h) indemnify MPC from and against any liability incurred by MPC which arises from or as a result of the provision of the Services other than any liability arising out of MPC's negligence, wilful default or fraud.

4.2 The Client acknowledges that MPC does not engage or instruct any third party (including, but not limited to, any solicitor, mortgage broker, architect, repairer or builder) as MPC's subcontractor and that in engaging or instructing the same MPC acts as the Client's agent. Accordingly any contract with such third party is between the Client and that third party and the Client shall be liable for any fees of that third party.

4.3 If MPC's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (Client Default):

(a) MPC shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from MPC's failure or delay to perform any of its obligations as set out in this clause 4.3; and

(b) the Client shall reimburse MPC on written demand for any costs or losses sustained or incurred by MPC arising directly or indirectly from the Client Default.

5. CHARGES AND PAYMENT

5.1 The Charges for the Services shall be at as set out in the Engagement Letter.

5.2 Unless otherwise stated in the Engagement Letter, expenses and disbursements shall be payable in addition to MPC by the Client. By instructing MPC, the Client is authorising MPC to incur such disbursements or expenses as MPC consider reasonably necessary.

5.3 If stated in the Engagement Letter, the Client shall pay a deposit. MPC shall not commence the Services until the deposit is paid. The deposit is non-refundable and, without prejudice to the generality of the foregoing and to clause 5.7, the deposit shall not be refunded if the Client has chosen to cease to receive Services from MPC before the Services are completed.

5.4 Unless otherwise stated in the Engagement Letter and subject to clauses 5.5, 5.6 and 5.7, MPC shall invoice the Client for the Charges (less any deposit paid) on completion of the relevant Services and the Client shall pay each invoice submitted by MPC on demand following receipt of the invoice. Where the Services comprise finding the Client a property or properties, completion of the Services shall occur on each occasion that the Client completes the purchase of a property.

5.5 Where the Services include property management, MPC shall invoice the Client for such services at the same time as the rent is due from the tenant.

5.6 Where the Services include any property development and the Charges for the same are based on an increase in the value of the Property then, unless otherwise stated in the Engagement Letter, such Charges shall be payable on the earlier of completion of the relevant property development project and two years from the date the Client signs the Engagement Letter and any increase in value of the property shall be ascertained by taking the average of 3 valuations by estate agents appointed by MPC.

5.7 For the avoidance of doubt where the Services include finding the Client a property, the Client will be liable to pay the Charges for such Services on completion of its purchase of the property where MPC has made the Client aware of the

property even if the Client has chosen to cease to receive Services from MPC or have terminated the Contract.

- 5.8 All amounts payable by the Client under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the Contract by MPC to the Client, the Client shall, on receipt of a valid VAT invoice from MPC, pay to MPC such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.9 MPC may, at its discretion, as a condition of acting or continuing to act for the Client, require payment in advance of part or all of its Charges.
- 5.10 The Client shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). MPC may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Client against any amount payable by MPC to the Client.
- 5.11 Interest will be payable in respect of any fees or other amounts remaining unpaid 7 days after the date of the invoice. Interest will be charged at the rate of 4% above the Barclays Bank Base Rate.

6. CONFIDENTIALITY

- 6.1 Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business or affairs of the other party except as permitted by clause 6.2.
- 6.2 Each party may disclose the other party's confidential information:
 - (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 6; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 6.3 No party shall use any other party's confidential information for any purpose other than to perform its obligations under the Contract.

7. EXCLUSION AND LIMITATION OF LIABILITY: THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 7.1 Nothing in these Conditions shall limit or exclude MPC's liability for:
 - (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; or
 - (b) fraud or fraudulent misrepresentation.
- 7.2 MPC shall not be liable for:
 - (a) any loss or damage arising out of any act or omission of any third party (including but not limited to any solicitor, architect, mortgage broker, repairer or builder) engaged or instructed by MPC on the Client's behalf or recommended to the Client by MPC.
 - (b) any loss or damage that the Client may suffer as a result of any change in the law, or in the interpretation of the law, that occurs after MPC have given its advice to the Client;
 - (c) any tax or financial advice, or any failure to give tax or financial advice, unless such tax or financial advice is a clearly specified part of the Services. Tax for this purpose includes all elements of national, international, local governmental or other taxation, imposition of duty, VAT, stamp duty or other levy or charge; or
 - (d) any advice, materials or information provided by MPC which are reproduced in any form or otherwise used or relied on by the Client in breach of, or at variance with, the Contract or for a purpose different from the one for which they were originally provided.
- 7.3 Subject to clause 7.1 and to clause 7.4, MPC's total liability to the Client in respect of all losses or damages arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Charges paid by the Client in respect of the Services provided to which the liability relates.
- 7.4 Subject to clause 7.1 if and to the extent that any liability to the Client is covered by MPC's professional indemnity insurance, MPC shall accept liability to the Client to the extent that its professional indemnity insurers meet that liability but no further.
- 7.5 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

- 7.6 The Client agrees not to bring any claim in respect of loss or damage suffered by the Client arising out of or in connection with the Services (including but not limited to delay or non-performance of the Services) against any of MPC's directors or employee even where MPC's directors or employees have been negligent. This restriction will not operate to exclude any liability that cannot be excluded at law or to exclude the liability of MPC for the acts or omissions of any of MPC's directors or employees. It is agreed that each of MPC's directors and employees will have the right to enforce this clause pursuant to the Contracts (Rights of Third Parties) Act 1999. MPC reserves any right MPC may have to rescind or vary these Conditions without having to seek the consent of MPC's directors and employees.
- 7.7 The Client acknowledges that property values and property returns can go down as well as up and that MPC cannot be liable for any fluctuations in or failure to predict changes in the property market.
- 7.8 This clause 7 shall survive termination of the Contract.

8. TERMINATION

- 8.1 Without limiting its other rights or remedies, MPC may terminate the Contract with immediate effect by giving written notice to the Client if:
- (a) the Client commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
 - (b) the Client fails to pay any amount due under this Contract on the due date for payment and fails to pay all outstanding amounts within 14 days after being notified in writing to do so;
 - (c) any information provided by the Client is incorrect or misleading;
 - (d) MPC considers that the relationship with the Client has broken down;
 - (e) MPC considers that the financial position or credit rating of the Client is such that it reasonably unlikely that the Services are capable of satisfactory completion;
 - (f) the Client is deemed either unable to pay its debts or as having no reasonable prospect of so doing;
 - (g) the Client commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;

- (h) the Client is the subject of a bankruptcy petition or order;
- (i) any event occurs or proceeding is taken with respect to the Client in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.1(f) to clause 8.1(h) (inclusive);
- (j) the Client's financial position deteriorates to such an extent that in MPC's opinion the Client's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- (k) the Client (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

- 8.2 To the extent that the Services comprise property management, the Client may terminate the Services to such extent by giving not less than 2 months written notice to MPC to expire on any date as the tenancy agreement (or any subsequent periodic tenancy after expiry of the tenancy agreement) can be terminated either by the landlord or the tenant in accordance with its terms.

9. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

- (a) the Client shall immediately pay to MPC all of MPC's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, MPC shall submit an invoice, which shall be payable by the Client immediately on receipt;
- (b) set out in clause 8.1, without prejudice to any other right or remedy of MPC, MPC shall be entitled to retain any deposit paid by the Client to MPC;
- (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication survive termination shall continue in full force and effect.

10. FORCE MAJEURE

10.1 For the purposes of this Contract, **Force Majeure**

Event means an event beyond the reasonable control of MPC including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of MPC or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

10.2 MPC shall not be liable to the Client as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

10.3 If the Force Majeure Event prevents MPC from providing any of the Services for more than 4 weeks, MPC shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Client.

11. GENERAL

11.1 Assignment and other dealings.

- (a) MPC may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- (b) The Client shall not, without the prior written consent of MPC, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

11.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if

sent by fax or e-mail, one Business Day after transmission.

- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

11.3 Severance.

- (a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- (b) If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

11.4 Waiver.

A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

11.5 No partnership or agency.

Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

11.6 Third parties.

A person who is not a party to the Contract shall not have any rights to enforce its terms except as otherwise provided.

11.7 Variation.

Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by MPC.

11.8 Conflict:

Where there is any conflict between the Engagement Letter and these Conditions, these Conditions shall prevail.

11.9 **Governing law.** This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

11.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

SCHEDULE 1

1. INTERPRETATION

1.1 **Definitions.** In these terms, the following additional definitions apply:

Property: the property in respect of which management services shall be carried out by MPC for the Client.

2. GENERAL AUTHORITY

The Client confirms that he/she is the sole or joint owner of the Property and has the right to rent out the Property under the terms of the mortgage or head lease. Where necessary, the Client confirms that permission to let has been granted by the mortgagee. The Client authorises MPC to carry out the property management services set out in these terms and to sign any tenancy agreement in respect of the Property on the Client's behalf.

3. MAINTENANCE

The Client agrees to make MPC aware of any ongoing maintenance problems. For tenancies less than 7 years in duration, the Client is responsible for the structure and exterior of the property, heating, hot water, sanitary installations and electrical wiring at the property. Under MPC's management service, unless agreed otherwise, MPC will instruct MPC's contractors to carry out necessary maintenance or repairs.

4. COLLECTION OF FEES

MPC will endeavour to credit the Client's account (less MPC's charges and any sums properly payable to a third party) within 10 working days from the day MPC receives the rent from the tenant. Although the aim is to take every care in managing the property, MPC has no responsibility for non-payment of rent or other default by any tenant or any associated legal costs incurred in their collection. An insurance policy is recommended for this eventuality.