



# TERMS OF ENGAGEMENT

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## 1. INTRODUCTION

- 1.1 We believe it is helpful for clients to know the terms on which we accept instructions.
- 1.2 These terms of engagement and any instruction letter set out the basis on which we shall provide you with services, and also contain certain information which we are required by the Royal Institution of Chartered Surveyors (RICS) to give to our clients. In the event of any conflict between these terms of engagement and our instruction letter, the terms of the instruction letter shall prevail.
- 1.3 We ask that instructions should be given or confirmed in writing. This will normally be achieved by asking you to sign and return an appropriate letter of engagement. Should you not return this letter, your continuing instructions confirm your acceptance of the terms of engagement.
- 1.4 The instructions you give us will create a contract for our provision of services to you. We have a duty to work for you with reasonable care and skill. Our advice and services are for your benefit only and may not be used or relied upon by anyone else.

## 2. LENGTH OF INSTRUCTIONS

- 2.1 The Firm expects to continue to act until being otherwise advised by you. However, we may bring instructions to an end at any time, but will not normally do so unless:
- a conflict of interest arises.
  - we consider that it is not in your best interest that we should continue to represent you.
  - we become aware that you may be engaged in any improper or illegal activity; or
  - you instruct us to act in a manner contrary to Law.
  - there is a material breach, by the other, of the terms of this agreement (for example you failing to pay any invoice when due or persistently failing to give us proper instructions)
  - you indicate your wish to renege on an agreement (still subject to contract) in respect of milk quota or entitlement trading (gazump or gazunder) for reason of price movement. (As recommended in the RICS Guidance Notes on Conduct of Farm Quota Agents, December, 1993 paragraph 5(a)).
  - you give us instructions which directly or impliedly require us to breach any undertaking which has been given to a third party with your consent.
  - we have reason to believe that you are insolvent or are unable to pay your debts for whatever reason.
- 2.2 If instructions are terminated either by you or by the Firm, you will only be liable for fees and payments to the date of termination of the instructions together with any fees or payments for work necessary to complete work in hand as agreed between us. A lien may be placed on your documents and any monies held on your behalf by us until fees are settled. Please note our file remains our property other than documents you have provided or agreements you have signed with third parties. Analysis of and an-

swering fee queries will be charged at the usual rates with the exception of providing copies of the firm's time sheets. You will also be responsible for any fees and expenses arising from our ceasing to act for you, or the transfer of the work to another advisor of your choice.

### 3. FEES

3.1 The Firm calculates its fees to clients either on a percentage commission or commission per unit basis, or on an hourly rate. The hourly fees will reflect: the complexity and novelty of the work, the expertise, specialised knowledge and responsibility involved, the nature of the transaction, the amount or value of any money or property involved and its importance to you and the degree to which we have to give priority to your work over that for other clients. The ranges of hourly charges, which are reviewable annually on the 1st September and may be revised at other times, are currently:

Partners: £135 to £250 per hour

Associates: £120 to £150 per hour

Assistants: £50 to £110 per hour

3.2 We may require payments in advance for our fees and expenses. If so we will put them in our client account and set them against future bills.

3.3 In addition, disbursements incurred during the course of our work will be added to time charges, where appropriate. These include postage, stationery, telephone, photocopying, internet, e-mail and facsimile costs, travelling at 45p/mile and out of pocket expenses. A minimum of 6.5% of the hourly rate is charged for disbursements.

3.4 For entitlement trading, our standard charge for arranging a Normal or National Reserve transfer is 10% of the sale or leasing proceeds, with a minimum charge of £220 plus VAT for each transfer. Any entitlement transfers arranged in the last month of trading are subject to an increasing minimum charge, rising up to £500 plus VAT in the last week of trading. For dealing with any problems that arise after actioning a transfer online, any additional time spent in resolving the problem will be charged at a minimum rate of £110.00 per hour plus disbursements and VAT, or as set out in 3.1 above.

3.5 For naked acre letting & hosted leasing, unless otherwise stated, our fee is £25 per ha/entitlement (£10 per acre) plus VAT to be deducted from the rental/hosting proceeds, or a minimum fee of £350 plus VAT, whichever is the greater. Any naked acre lettings/hosted leasings arranged in the last month of trading are subject to an increasing minimum charge, rising up to £500 plus VAT in the last week of trading. Following exchange of contracts, if we are involved with any complications, advice or dealing with requests for information from the tenant, such additional work will be charged at £110.00 per hour plus disbursements and VAT.

### 4. VALUE ADDED TAX

VAT at the appropriate prevailing rate will be added to the commissions, fees and disbursements charged.

## 5. ESTIMATES/QUOTES

The Firm will, at your request, estimate its charges where possible. If the amount of work likely to be incurred is uncertain, the estimate of charges is bound to be uncertain. Where an estimate has been given but the amount of work appears likely to involve a substantially higher charge than the estimate, we will inform you. If you want an estimate or quote on which you wish to rely for any purpose, this must be requested by you, and provided to you, in writing. It is at our discretion to provide estimates and quotes. Usually for professional work we do not provide estimates or quotes, unless required by CPR rules.

## 6. EXTERNAL FEES AND OTHER PAYMENTS

Occasionally, it may be necessary for us to take advice on your affairs from specialists not employed by the firm. Where fees for such advice are likely to be substantial, and therefore passed on to you as a specific charge, we will obtain your agreement before incurring this expense on your behalf. You will be responsible for all payments and fees incurred by the Firm on your behalf and may be required to make a payment on account before we incur such costs.

## 7. BILLING FREQUENCY

- 7.1 Our normal practice is to render fee notes at not less than monthly intervals or on the earlier completion of the specific work.
- 7.2 Where work is incomplete due to circumstances beyond our control, a fee note may be rendered on account. In such cases we will send you a VAT invoice. All such payments will be taken into account when the bill is rendered for completed work.
- 7.3 When billing you Pro Forma invoices may be issued which require settlement of the amount specified plus the amount equivalent to the prevailing rate of VAT, on receipt of which a receipted VAT invoice will be issued.

## 8. PAYMENT TERMS

Invoices are payable on presentation. We will be entitled to charge interest at 5% above the Bank of England Base Rate on any accounts outstanding for more than 28 days from the date the invoice is issued. Such interest shall be compounded every six months from the date of delivery of the invoice.

## 9. CLIENTS' MONEY

- 9.1 Clients' money accepted by the Firm is held on a separate interest paying client account called "Townsend Chartered Surveyors—clients" with the Bank of Scotland, 600 Gorgie Road, Edinburgh and will be subject to the strict provisions of the Royal Institution of Chartered Surveyors Members Account Regulations and Accountants Report Regulations 1993. This is on the understanding that we are entitled to place a lien on these monies in respect to outstanding fees owing to us and after giving due prior written notice may use these monies to settle our outstanding fees.
- 9.2 All deposit interest paid by us to UK resident clients will be paid gross (i.e. without deduction of tax). It is your responsibility to declare to the Inland Revenue sums so received.

- 9.3 Cheques issued in respect of clients' money and deposit interest are required to be presented within six months. If they are not, no further cheques will be issued. On advice received from the RICS, the monies will remain on our client account for ten years. If you wish to collect the monies you are free to do so; however, should a further cheque be required a charge of £20.00 plus VAT will be made. If after ten years you do not collect the monies, we are advised to donate them to a charity. Please note there will be an annual charge for retaining the monies; the first charge to be made if the monies are not withdrawn within the first six months, will be £50.00 plus VAT.
- 9.4 If you require payment by BACS or Faster Payment, this can be arranged upon your request, however we will apply a charge for this service of £10 plus VAT per BACS or Faster Payment, which will be deducted from the payment made.
- 9.5 We charge £30 plus VAT to specially present a cheque.
- 9.6 No interest is paid in respect of monies held for entitlement or any other farm quota trading, or "naked acre" letting or hosting.
- 9.7 You should be aware we are obliged to declare to HM Revenue & Customs details of monies paid out in respect of rent collected under Section 19 of the Taxes Management Act 1970.
- 9.8 We are covered by the RICS' Client Money Protection Scheme. You may be entitled to compensation through that scheme if we cannot meet our obligations. This will depend on the type of business and the circumstances of the claim.

## 10. FINANCIAL INTEREST

Under the RICS Laws, we are not able to take a financial interest in any matter in which we act, nor shall we accept or offer to accept instructions on terms which could be construed as taking a financial interest provided:

- that a fee or commission at the rate usually charged by ourselves for similar work; or
- an escalating commission rate, taking into account the value of the work to you, which has been expressly agreed in writing with you shall not be construed as taking a financial interest.

## 11. PROVISION OF SERVICES

- 11.1 We shall use reasonable skill and care in providing services to you and unless a specific timescale is agreed we shall provide services to you in a reasonable time. Unless any specific method of providing services to you has been agreed between you and us, we will provide services to you in such manner as we consider to be appropriate.
- 11.2 We may sub-contract any incidental part or parts of any services to be provided to you, such as the preparation of plans, photography, advertising or courier services. With the exception of such incidental tasks, we will not sub-contract any part of the services to be performed for you without your express prior consent.
- 11.3 We will be entitled to determine the location at which the services to be supplied to you will be supplied and will be entitled to determine that different individuals within our organisation based in different locations should supply different parts of the services for you.

## 12. SCOPE OF SERVICES

- 12.1 In the event you wish to alter your instructions to us after we have commenced work on the supply of specific services for you, we will be entitled to refuse to accept such altered instructions, but if we do refuse to accept such instructions, we will cease to supply the services originally specified and will be entitled to charge our hourly rates for services supplied up until that time.
- 12.2 We will not be responsible to you for the work of any other professional advisor or contractor from whom you might seek to obtain goods or services, whether or not instructed by us on your behalf.

## 13. ADVICE

- 13.1 We will not accept any liability for any valuation given orally and not confirmed in a formal written report which states the basis and purpose of the valuation, the assumptions on which it is based and any limitations as to the matters which it takes into account. You agree that you will not rely on any valuation or survey given orally unless and until it is so confirmed in writing.
- 13.2 If we give you any other advice orally and you wish to rely on it for any purpose, you must first ask for and receive that advice from us in writing before relying on it.
- 13.3 We will not be under any obligation to update any advice, report or valuation to take account of events occurring or information received after the advice, report or valuation has been delivered in final form.
- 13.4 If we express an opinion or make a forecast concerning future events you agree that we shall only be liable for the loss that was caused by our failure to exercise reasonable skill and care when giving that opinion or making that forecast.
- 13.5 Where we have provided advice orally we have the right to record this in writing and also write to you explaining and confirming the oral advice, making our usual hourly charges for doing so.
- 13.6 For commercial or other reasons you may decide not to take our advice and if so we would respect this and cooperate with you accordingly on the understanding that in ignoring our advice you do so at your own risk.

## 14. CLIENT'S COMMITMENTS

- 14.1 You will pay us fees and/or commission as expressly agreed or as specified in these Terms of Engagement.
- 14.2 In addition to fees and/or commission, you will pay us all disbursements and other costs as referred to in clause 3 above and any applicable VAT on fees and/or commission, disbursements and costs at the rate in force from time to time.
- 14.3 If you engage us to perform specific services but subsequently instruct us to perform additional services, you will pay to us a fee and/or commission for such additional services as well as the fee or commission for the original services.
- 14.4 It will be your responsibility to ensure that adequate access for us and our representatives to any land and buildings and to any deeds, plans, drawings, models or information, whether stored in hard copy or in an electronically retrievable form, which we

may require in order to supply services to you.

15. E-MAIL

15.1 Unless you request us not to do so, you agree that we may communicate with you and others in connection with your work by e-mail to any e-mail addresses provided to us for that purpose. In doing so you acknowledge and accept the risks inherent in this form of communication, particularly its unauthorised interception and of it not reaching the intended recipient. Please notify us in writing if you do not consent to the use of e-mail.

15.2 We will use our best endeavours to protect the integrity of our computer systems by screening for viruses on email sent or received. We expect you to do the same for your computer systems.

16. DATA PROTECTION, COPYRIGHT, CONFIDENTIALITY AND THIRD PARTY RIGHTS

16.1 We promise to respect the data we hold on you. We will keep your details on our database for administration and accounting purposes, so that we can make conflict of interest searches and send you relevant information on our services or on events that may interest you. Your personal details will be processed and kept securely in accordance with the Data Protection Act 1998. We will not disclose the data to third parties except for the purposes mentioned above or where you have requested we do so. If you have any questions or concerns about the use of your data, please contact the Office Manager.

16.2 Copyright and other intellectual property rights in any original material (including correspondence), document, drawing, plan, model or report produced by us for you shall remain vested in us, and we grant to you only a non-exclusive, non-assignable licence to use any such copyright work only for the purposes for which it was prepared. We may also provide copies of other material, the copyright and/or intellectual property rights in which may belong to third parties. We do not authorise you to copy or otherwise use any third party material in any manner which might amount to an infringement of the copyright and/or intellectual property rights of any third party.

16.3 We will not disclose to any third party, other than your other professional advisors and consultants with your prior permission, any confidential information we obtain concerning you or your affairs unless we are obliged to disclose such information by law or by the requirement of any regulatory body to which we are subject. This duty of confidentiality shall not apply to any information which enters the public domain or which we wish to disclose to our professional indemnity insurers or advisers, and is subject to the limitation in relation to Money Laundering Regulations 2007 compliance (see below).

16.4 We will accept no liability to any third party to who or which you may disclose our advice or purport to transfer the benefit of any services supplied by us or to whom or which you may show any document, drawing, model or report produced by us for you.

16.5 If you wish to request details of the personal information we hold about you and why, please email the Data Protection Officer (DPO) on of-

office@townsendcharteredurveyors.co.uk and specify it is a Subject Access Request. There will be a charge of £25 plus VAT for providing this information. Similarly if you wish to update any copy information you have provided us previously, please email the DPO or your contact at the Firm.

## 17. SALES AND LEASING OF ENTITLEMENTS & OTHER FARM QUOTA

- 17.1 Once a sale or leasing transaction has been agreed, it is this firm's policy to withdraw the entitlements from the market and not to keep you informed of subsequent changes in price, prior to exchange of contracts, or submission of the transfer form.
- 17.2 Having agreed a transaction we will proceed to exchange contracts unless we receive your written instructions to the contrary. Should such instructions be given to us due to price movement we reserve the right to charge the relevant commission and other abortive fees/costs.
- 17.3 You will be liable to pay commission following an exchange of contracts/or when a binding agreement is entered into with the other party. You also will be liable for documentation and hourly charged work whether or not contracts exchange.
- 17.4 If necessary all cheques from purchasers and lessees in the last two weeks before a trading deadline will be specially presented and you will be charged £30.00 per cheque plus VAT. We will however always request that the purchaser/lessee send the monies by Faster Payment .
- 17.5 Any complications with quota/entitlement transfers attract an additional charge at a minimum rate of £110.00 per hour plus disbursements and VAT or at the rates set out herein in 3.1.

## 18. CONFLICT OF INTEREST

- 18.1 You should be aware that we will only act for one party in any one transaction. However, it maybe considered that there is a conflict of interest if the other party has in the past been a client on another transaction. Subsequently under the RICS rules, we are obliged to suggest that you seek independent professional advice before we accept your instructions.
- 18.2 We will, however, further inform you if we consider there is or could be a direct conflict of interest where we are presently acting for the other party.

## 19. INTRODUCTORY COMMISSION FARM QUOTA & ENTITLEMENT AGENCY

- 19.1 We also act for purchasers and lessees and charge an introductory commission at an escalating rate taking into account the value of the introduction. You will be liable to pay this commission on introduction but this will be refunded if subsequently contracts are not exchanged, or a binding legal agreement is not entered into.
- 19.2 You will be advised as to the likely commission before we accept instructions in writing should you purchase or lease using us.

## 20. INSURANCE COVER

The Firm maintains professional indemnity insurance.



## 21 EXCLUSIONS & LIMITATION OF LIABILITY

- 21.1 Nothing in this clause shall operate so as to exclude or limit either party's liability for death or personal injury resulting from its negligence.
- 21.2 Subject to clauses 21.1, 21.3 and 22, the extent of our liability to you for any loss or damage suffered by you as a direct result of the breach of this contract or our negligence shall be limited to the lower of (i) the limit on our professional indemnity insurance cover; and (ii) the open market value as at the time of our engagement of the property or interest in property in connection with which we have been engaged; PROVIDED THAT we shall only be liable where such loss or damage was a reasonably foreseeable consequence of our breach of this contract or our negligence at the date this contract was made.
- 21.3 We shall not be liable for any damage or loss suffered by you
- 21.3.1 where such damage or loss resulted from incomplete, inaccurate or erroneous information or instructions provided or made available to us by you or by any third party acting on your behalf; or
- 21.3.2 which is indirect or happens as a side-effect to the main loss or damage (including lost profits, lost sales or turnover, loss or damage to reputation, lost contracts or customers or liability in relation to any other contract you may have entered into).
- 21.4 The limit on our professional indemnity insurance cover varies from time to time and will be disclosed to you upon request (but will not at any time be less than the minimum level of cover required by the Royal Institution of Chartered Surveyors (RICS) Rules of Conduct as amended from time to time). If you require us to accept liability in respect of a larger potential loss than for which we have insurance cover, you must notify such requirement to us and we will ascertain the cost of obtaining (if possible) additional insurance protection and thereafter notify you the additional fee or charge that would be payable by you to enable us to accept that higher level of liability.
- 21.5 There is no contract between you and any individual member, employee or consultant of the firm. Any advice given to you, or any other work done for you, by one of our partners, employees or consultants, is given or done by that person on behalf of Townsend Chartered Surveyors and not in his or her individual capacity. No such person assumes any personal responsibility to you for the advice or work.

## 22. ASBESTOS & POLLUTION

- 22.1 For the purposes of these Terms:  
"asbestos" means any type of asbestos and any substance that contains a type of asbestos (in any form and in any quantity) however and wherever occurring and any form of contamination by asbestos, however and wherever occurring.  
"pollution" means pollution or contamination by naturally occurring or man-made substances forces or organisms or any combination of them whether permanent or transitory and however and wherever occurring.
- 22.2 We are not authorised or qualified to undertake surveys or inspections required under

the Control of Asbestos at Work Regulations 2002 and we will not undertake such work. We recommend that you employ an appropriately qualified person to provide such services and that you should ensure you are familiar with the requirements of those Regulations

- 22.3 You agree to tell us as soon as possible if you are aware, or become aware, of the presence or potential presence of asbestos or pollution on the Property or in any building or structure on the Property.
- 22.4 We are not liable for any loss or damage directly or indirectly arising out of or in any way involving asbestos or pollution other than where that loss or damage is caused as a direct and foreseeable result of our negligence or breach of contract. In any event our liability for such loss or damage involving asbestos (including the potential existence of asbestos) or pollution shall be the lower of (i) £500,000 or (ii) the value of the relevant part of the Property or interest in the Property in connection with which we have been engaged by you.
- 22.5 If you should require us to accept liability in respect of a larger potential loss, you must notify such requirement to us and we will ascertain the cost of obtaining (if possible) additional insurance protection and thereafter notify you what additional fee or charge would be payable in order to enable us to accept higher level of liability.

## 23. FORCE MAJEURE

Neither you nor we shall be liable for any loss or damage which may be suffered by the other as a direct result or indirect result of the performance of this agreement being prevented, hindered delayed or rendered uneconomic by circumstances or events beyond our control including but not limited to Act of God, war, riot, strike, lock out, trade dispute or labour disturbance, accident, breakdown of machinery, fire, flood, storm or act of terrorism.

## 24. PAPERS HELD BY US

- 24.1 When a matter has been completed and all fees paid, we will return to you, at your request, any documents you have provided in connection with that matter and any other papers to which you are entitled. It is agreed however that the file will remain our property, other than specific documents you have supplied to us, or original leases, contracts with third parties, plans etc. that you have paid for. Any other parts of the file we can provide copies of at our discretion, subject to your paying our reasonable costs for doing so.
- 24.2 We will comply if for any reason (whether during or after an instruction) we are compelled to disclose documents or to give information orally or in writing about a matter or your affairs, under a court order, notice or demand served by a body or person with the authority to make us do so. You must pay the cost of such compliance at our then hourly rates.

## 25. STORAGE

- 25.1 It is our practice to retain client files for at least six years from the date on which our work was effectively finished. This is the length of time that we are required to do so by

the RICS rules. After this time, client files may be destroyed in accordance with our office archiving procedures. Please let us know in writing if you have any objection to this. This does not apply to documents which we reasonably consider to be of continuing significance, i.e. estate records or title deeds etc., but does include documents that may belong to you.

- 25.2 Storage of client files may be provided by third party contractors and you consent to this arrangement. You agree to meet our reasonable costs in accessing your files in any off-site facility should you require them for reasons which do not relate to on-going work.
- 25.3 For the purpose of this clause, "file" means any file of documents stored in any format, including physical or electronic and in or on any medium. You acknowledge and accept that your client files may be stored in a number of different media and formats and accept that there is a risk of damage and/or corruption associated with all systems of file storage.

## 26. MONEY LAUNDERING COMPLIANCE

- 26.1 Under the Proceeds of Crime Act 2002 or the Money Laundering Regulations 2003 we may be required to make a disclosure to the appropriate government authorities and may then be unable to advise you either immediately or at all that such a disclosure has been made. You agree to our taking such steps should they in our reasonable view become necessary.
- 26.2 To ensure compliance with the anti-money laundering legislation we reserve the right to decline cash receipts in excess of £5,000. We also reserve the right to pay to any third party money due to you.

## 27. COMPLAINTS

Following the recommendations of the Royal Institution of Chartered Surveyors, should there be any aspect of our service with which you are unhappy at any time and which you are unable to resolve, the Firm has a standard complaints procedure, which is as follows:

1. H McC Townsend has been appointed to deal with complaints and you should not hesitate to contact H McC Townsend to deal with complaints in relation to the firm.
2. Where your complaint is initially made orally, you will be requested to send a written summary of your complaint to Mr Townsend by post or email ([htownsend@townsendcharteredsurveyors.co.uk](mailto:htownsend@townsendcharteredurveyors.co.uk)).
3. Once we have received your written summary of the complaint, we will contact you in writing within fourteen days to inform you of our understanding of the circumstances leading to your complaint. You will be invited to make any comments that you may have in relation to this.
4. Within twenty eight days of receipt of your written summary, Mr Townsend will write to you, in order to inform you of the outcome of the investigation into your complaint, and let you know what action has been or will be taken.
5. If you remain dissatisfied with any aspect of our handling of your complaint, then we will attempt to resolve this promptly through negotiations.

6. If the complaint still has not been resolved to your satisfaction and you are acting on behalf of a business, we agree to the referral of your complaint to the Arbitration Procedure for Surveying Disputes operated by the Chartered Institute of Arbitrators, IDRS Ltd, 24 Angel Gate, City Road, London EC1V 2RS from whom details of the Scheme may be obtained. This is a business to business arbitration scheme.
7. If the complaint still has not been resolved to your satisfaction and you are a private client, we agree to the referral of your complaint to the Ombudsman Services: Property (OS: P), the redress scheme to which Townsend Chartered Surveyors belong. The OS: P can be contacted by writing to PO Box 1021 Warrington WA4 9FE or by telephone on 0330 4401634. The OS: P can consider any consumer complaints including estate agency related complaints.

## 28 MISCELLANEOUS

- 28.1 Any notice to be given by us to you shall be deemed properly given if put in writing and sent by personal delivery, first class post, email or facsimile transmission to your address from which instructions were given to us. Any such notice shall be deemed to have been duly given upon the date on which it was given if sent by personal delivery, forty eight hours after posting if sent by post and upon the date of transmission if sent by facsimile transmission.
- 28.2 No delay or omission on our part in exercising any right, power or remedy under our contract with you shall impair such right, power or remedy or operate as a waiver thereof.
- 28.3 Nothing in this agreement shall limit or exclude either party's liability for wilful misrepresentation or fraud.
- 28.4 If at any time any part of the agreement between you and us is or becomes illegal, invalid or unenforceable in any respect, that shall not affect or impair the legality, validity or enforceability of any other parts of the agreement.
- 28.5 No part of our agreement shall be enforceable by a third party under the Contracts (Rights of Third Parties) Act 1999, but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.
- 28.6 This contract between you and us shall be governed by and construed in accordance with English Law.
- 28.7 Townsend Chartered Surveyors is a sole trader and is regulated by RICS.
- 28.8 If we are to be involved in litigious or contentious work, as advisors, expert witnesses, arbitrators or advocates, further special terms of engagement will apply.