

Andrew Orme Associates

Terms of Business for Agency Instructions

1. Definitions

In these Terms:

“Agreement” will arise when the client receives a copy of the Terms (unless the client forthwith communicates its refusal to accept such terms), or where the client gives instructions to sell, acquire or let as appropriate the property.

“Client” means the person, firm or company to whom Andrew Orme Associates is to provide services in accordance with the Terms

“Andrew Orme Associates” means Andrew Orme Associates who’s office is at Moor House, Drury Lane, Liverpool, L2 7PX

“Property” means the property that is the subject of the client’s instructions

“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, as appropriate, prior to completion of the sale or grant of lease

“Terms” means the terms and conditions set out in this document and (unless the context otherwise requires) includes any other terms and conditions set out in any letter accompanying this document or varying the terms set out in this document, provided that in the event of any ambiguity or conflict the terms of the letter will prevail.

2. General

Andrew Orme Associates undertakes to perform all services on the basis of the Terms only, which shall apply to the exclusion of any other terms and conditions which the Client may seek to impose

No variation of the Terms shall be binding unless previously agreed in writing

3. Services

Andrew Orme Associates will seek to provide a service in a proper professional manner and will perform all its services with all reasonable care and skill and will act in good faith at all times.

4. The Property

Information

The Client warrants, represents and undertakes to Andrew Orme Associates that (save as specifically notified to Andrew Orme Associates by the Client in writing):

All information provided by the Client and/or its professional advisors regarding the Property and its ownership is complete and accurate and is not misleading and that there are no other material facts known to the Client relating to the Property which may be relevant to Andrew Orme Associates in carrying out its instructions

There are no encumbrances or unduly onerous or unusual easements, restrictions or outgoings or conditions attaching to the Property

The Property complies with all relevant statutory requirements

The Property has been constructed and is occupied in accordance with valid planning and building regulations approval; and

In the case of trading entities all appropriate licenses and held and valid and all licensing requirements are met, all valid fire certificates are held.

Insurance

The Client shall remain responsible for the insurance of the Property and for notifying its insurers should the Property fall vacant. Andrew Orme Associates shall not be responsible for the management, security or deterioration of the Property or any other like matter or loss however caused. If the keys for the property are held by Andrew Orme Associates then the Client is deemed to have given authority to Andrew Orme Associates to supply keys to persons

who wish to inspect the Property and Andrew Orme Associates accepts 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 Andrew Orme Associates or any representative or any employee of Andrew Orme Associates or by a third party in respect of any loss, damage or injury arising from any such inspection howsoever caused.

5. Terms of Appointment

A. SALES

The Terms of Andrew Orme Associates appointment are detailed in the letter accompanying this document and the following provisions apply:

(i) Sole Selling Rights.

The Client will be liable forthwith to pay remuneration to Andrew Orme Associates on this basis, in addition to any other costs or charges agreed, in each of the following circumstances:

- (a) if unconditional contracts for the sale of a Property are exchanged or if a conditional contract for the sale of a Property becomes unconditional or if the sale of the Property occurs without a prior contract in any such case in the period during which Andrew Orme Associates has sole selling rights, even if the purchaser is not introduced to the Client by Andrew Orme Associates
- (b) if unconditional contracts for the sale of the Property are exchanged or if a conditional contract for the sale of the Property becomes unconditional or if the sale of the Property occurs without a prior contract in any such case after the expiry of the period during which Andrew Orme Associates had sole selling rights but to a purchaser who was introduced to the Client during that period or with whom Andrew Orme Associates had negotiations about the Property at any time during that period.

(ii) Sole Agency.

The client will be liable forthwith to pay remuneration to Andrew Orme Associates on this basis, in addition to any other costs or charges agreed, if at any time unconditional contracts for the sale of a Property are exchanged or if a conditional contract for the sale of a Property becomes unconditional or if the sale of a Property occurs without a prior contract in any such case:

- (a) with a purchaser introduced to a Client by Andrew Orme Associates during the period during which Andrew Orme Associates has a Sole Agency or with whom Andrew Orme Associates had negotiations about the Property during such period; or
- (b) with a purchaser introduced by another agent during the period which Andrew Orme Associates has sole agency.

(iii) Joint Sole Agency.

The Client will be liable forthwith to pay remuneration to Andrew Orme Associates on this basis, in addition to any other costs or charges agreed, if at any time unconditional contracts for the sale of a Property are exchanged or if a conditional contract for the sale of the Property becomes unconditional or of the sale of the Property occurs without a prior contract in any such case:

- (a) with a purchaser introduced by Andrew Orme Associates or its joint agent(s) during the period during which Andrew Orme Associates has joint sole agency or with whom Andrew Orme Associates or its joint agent(s) had negotiations about the Property during such period; or
- (b) with a purchaser introduced by another agent during the period during which Andrew Orme Associates has joint sole agency.

(iv) Multiple Agency.

The client will be liable forthwith to pay remuneration on this basis to Andrew Orme Associates in addition to any other costs or charges agreed if at any time unconditional contracts for the sale of a Property are exchanged or if a conditional contract for the sale of the Property becomes unconditional or if the sale of the Property occurs without a prior contract in any such case with a purchaser introduced by Andrew Orme Associates during the period of Andrew Orme Associates multiple agency or with whom Andrew Orme Associates had negotiations about the Property during such period.

B. LETTINGS

Where Andrew Orme Associates are appointed with Sole Letting Rights or as Sole Agent, Joint Sole Agent or Multiple Agent in respect of the letting of the Property, the revisions relating to "Sole Selling Rights", "Sole Agency", "Joint Sole Agency" or "Multiple Agency", (as appropriate) shall apply save that references therein to "unconditional contracts for the sale of the Property are exchanged", "selling" and "purchaser" shall be replaced as appropriate by "a lease is granted or assigned, or in the case of an agreement for lease a conditional or unconditional contract for the granting or assignment of a Lease is exchanged Provided for the avoidance of doubt that in the case of such conditional contract

the fee be payable forthwith upon and conditional upon the relevant conditions having been satisfied or waived (the granting or assignment, as appropriate of a lease being deemed to be conclusive evidence of the satisfaction or waiver of such conditions)", "letting" and "tenant". "Lettings" shall include all other forms of similar disposal including, without limit, assignment, surrender, or otherwise.

C. ACQUISITIONS: FREEHOLD AND LEASEHOLD

Where Andrew Orme Associates are appointed with Sole Acquisition Rights or as Sole Agent, Joint Sole Agent, or Multiple Agent in respect of the acquisition of property to the provisions relating to "Sole Selling Rights", "Sole Agency", "joint Sole Agent" or "Multiple Agency" (as appropriate) shall apply save that references therein to "Sale", "Selling" and "Purchaser" shall be replaced by "Purchase", "Purchasing" and "Vendor" as appropriate. Leasehold acquisitions shall include all other forms of similar acquisitions including without limit assignment, sublet, license or otherwise.

D. PRE-SALES AND PRE-LETS

Where Andrew Orme Associates are 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 referred to as the "Contract") and, save as detailed below, the balance of the actual final 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 that 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, Andrew Orme Associates shall be entitled to a fee equal to the full fee which would have been payable had the Contract been completed in accordance with its terms, and such fee shall be due and payable at the time when the purchaser or tenant terminates or refuses to complete the Contract or the due date for completion of the Contract in accordance with its terms, whichever is the earlier. Andrew Orme Associates will not be liable to refund to the Client the fee paid on account in accordance with this Clause 5(D) or any other part thereby in the event of the purchaser or tenant failing to complete the Contract for any reason whatsoever.

6. Fees, Disbursements and Marketing Costs

Fees will be charged at the rate set out in the letter accompanying this document or as otherwise agreed between Andrew Orme Associates and the Client

Where Andrew Orme Associates are initially appointed on a Sole Agency basis and subsequently, with Andrew Orme Associates agreement, another joint sole agent is appointed the fees that have been agreed between Andrew Orme Associates and the Client on a Sole Agency basis will be multiplied by 1.5 and split equally between Andrew Orme Associates and the other joint sole agent, unless otherwise agreed.

Fees calculated by reference to rent will be based on the highest annual rent payable under the relevant lease ignoring any rent free periods, stepped rents, capital contributions, fitting out packages or similar incentives or inducements.

Any disbursements incurred by Andrew Orme Associates with the prior approval of the Client (either in writing or verbally) will be reimbursed to Andrew Orme Associates by the Client as and when incurred.

For the avoidance of doubt, in the event that the resolution of a dispute with a third party (for example in connection with a rent review) is referred to an arbitrator, expert, court or tribunal, all costs in connection with such referral (including fees for Andrew Orme Associates services) will be met by the Client.

In addition to the fees detailed in above the Client will be responsible for the marketing costs which include without limitation advertising, brochure production, printing of particulars, photography, mailing, on site representation sign boards, traveling messenger delivery and copying of documents and plans, unless otherwise is stated in the accompanying letter.

7. Terms of Payment

VAT will be payable where applicable at the prevailing rate on all fees and disbursements.

Andrew Orme Associates reserves the right to charge the Client interest (both before and after any judgement) on any unpaid invoice at the rate of 3% per annum above the base rate of Barclays Bank from time to time in force calculated on a daily basis from 30 days after the date of its invoice until the date of settlement in full.

If any sum due to Andrew Orme Associates from the Client remains unpaid for more than 30 days after the date of the invoice Andrew Orme Associates shall be entitled to suspend all further work for the Client until the outstanding sum

and any interest accrued are paid to Andrew Orme Associates in full. In such circumstances Andrew Orme Associates shall not be liable for any delays, losses or expenses resulting from such suspension.

8. Acquisitions

The Client shall be responsible for determining whether the Property found by Andrew Orme Associates is suitable for its purposes and for carrying out or arranging to be carried out such investigations and inspections as the Client deems necessary for the purpose.

Unless otherwise agreed in writing with the Client, Andrew Orme Associates shall not be responsible for making any local search or other enquiries of local or any other authorities or investigation of the title regarding the Property which shall be the sole responsibility of the Client.

Unless otherwise agreed in writing with the Client, Andrew Orme Associates shall not be responsible for making any building survey of the Property nor testing any services at the property.

9. Property Misdescriptions Act 1991

The Client shall be responsible for approving, checking and verifying (insofar as it is reasonable for him to do so) the contents, wording and style of all marketing material relating to the Property and will advise Andrew Orme Associates without delay in writing in any aspect of the sales or letting particulars are or later become false, inaccurate or misleading.

10. Indemnity

The Client shall indemnify and keep indemnified Andrew Orme Associates from and against all and any liability, losses, damages, penalties, fines, costs and expenses (including legal costs and expenses) suffered or incurred by Andrew Orme Associates arising out of or by virtue of:-

The breach by the Client of any of its obligations under the Terms; or

Any allegation that any statement made by Andrew Orme Associates relating to the Property is false or misleading or 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 or such statement as contained in marketing material previously approved by the Client.

The Agreement other than any losses, damages, costs and expenses arising by virtue of the negligence or willful default of Andrew Orme Associates.

11. Copyright

Copyright in any information, documents or other material provided by the Client to Andrew Orme Associates remains the property of the Client.

The copyright in all reports, forecasts, drawings accounts and other documents originated by Andrew Orme Associates in relation to the agreement remains the property of Andrew Orme Associates.

In each case an appropriate license will be granted to the other to use the copyright for the purposes set out in and duration of the Agreement only.

12. Miscellaneous

Andrew Orme Associates duties shall be limited to those set out in the Terms

Andrew Orme Associates shall be entitled to rely and act on any instruction given to Andrew Orme Associates by any person who is an employee of or advisor to the Client

Any term or condition of these Terms shall be separable from the whole, such as where a term or condition becomes illegal, invalid or unenforceable

Andrew Orme Associates confirms that it will forward to the Client in writing all offers received and will not prefer one applicant to another solely because an applicant has agreed to engage Andrew Orme Associates in the provision of additional services. If the Client accepts the offer of an applicant (subject to contract) Andrew Orme Associates shall notify the Client in writing if it provides any service for that applicant

13. Liability Limitation

Whilst Andrew Orme Associates will make every effort to fulfill the Client's instructions in accordance with the terms, Andrew Orme Associates shall not be liable in any manner whatsoever, other than in the event of death or personal injury arising from its negligence:-

To any third party who, without Andrew Orme Associates prior written consent, seeks to rely on Andrew Orme Associates performance of the Agreement or any advice or information resulting from the Agreement.

Unless Andrew Orme Associates had previously agreed in writing to the particular use being made of Andrew Orme Associates services/advice giving rise to the alleged loss or such use fully within the scope of the Agreement.

In respect of any services outside the scope of the Terms unless Andrew Orme Associates has agreed to perform the services in writing in advance.

14. Complaints

Andrew Orme Associates aim to perform on the instruction from a Client in an efficient and professional manner. We, therefore, hope that the Client will not need to complain but recognize that in an isolated circumstance, there may be complaints. There should be addressed initially to the person in charge of the Andrew Orme Associates office dealing with the instruction. As a company, we adopt the complaints handling procedures that are required of us by the Royal Institute of Chartered Surveyors. A copy of these procedures is available from any office run by the company.

15. Termination of Instructions

The Agreement may be terminated by the Client by giving not less than 40 days notice in writing to Andrew Orme Associates whereupon Andrew Orme Associates shall be entitled to charge a fee on one of the following bases:-

A fair and reasonable proportion of the full fee which would have been payable if the work had been carried through to a conclusion and as if Andrew Orme Associates had become entitled to payment in accordance with the Terms of Appointment above.

On a quantum meruit basis for the work undertaken up to and including the date of termination

The Agreement may be terminated forthwith by Andrew Orme Associates on the following terms by giving notice in writing to the client:-

If, as a result of circumstances outside the control of both parties, it becomes impossible to perform the instruction within a reasonable period. In these circumstances the Client will pay, on termination, to Andrew Orme Associates a fee for all work which has been done up to the date of termination on a quantum meruit basis.

If the Client has made it impossible to complete the instruction within a reasonable period. In these circumstances the Client will pay, on termination, to Andrew Orme Associates a fee for all work which has been done up to the date of termination on a quantum meruit basis.

Where the Client has not made payment by the due date of any sum payable by the Client to Andrew Orme Associates.

If there is a breach of the warranty, set out in The Property – Information section above. In these circumstances the Client will pay, on termination, to Andrew Orme Associates the full fee which would have been charged if the work had been carried through to a conclusion.

16. Law

The Terms and any Agreement of which they form part shall be governed by and construed in all respects in accordance with English Law.