

David & Peter Holt Limited

TERMS OF BUSINESS

David & Peter Holt Limited's standard terms of business are set out below. The accompanying engagement letter (the Letter) may vary these terms. The Letter and the terms of business will together form our terms of Appointment, and, as required, by the Estate Agents Act 1979 also constitute written terms of business, which along with their fees, agents are required to confirm to their clients. When you have read and understood the letter and these terms, you should sign and return the copy of the Letter to us to record your acceptance of them. If you fail to return the copy to us, or fail to acknowledge your acceptance in writing (including by email), but continue to instruct us in relation to the Services, you will be deemed to have accepted these terms and the conditions set out in the Letter.

In the Terms of Appointment, any reference to "we", "our" or "us" is to David & Peter Holt Limited, reference to "you" is to the client to whom the Letter is addressed and references to the "Appointment" is to our appointment as your agent under the Terms of Appointment. Any reference to the singular includes the plural and the masculine includes the feminine.

1.0 Our Responsibilities

- 1.1 Our role and responsibilities as agent are set out in the Letter.
- 1.2 Unless otherwise stated in the Letter, we will act as your agent with sole selling rights, or jointly with another firm also with sole selling rights.
- 1.3 We undertake to comply with the terms of the Estate Agents Act 1979, the Property Misdescriptions Act 1991 and other legislation relevant to our appointment as agent.

2.0 Fees

2.1 Responsibility for Payment of Fees, Costs & Charges

- 2.1.1 The person or company identified in the Letter as the client is responsible for payment of our fees, costs and charges. If more than one party is to be responsible, the Letter should be signed by all relevant parties and their liability will be joint and several.

2.2 Calculation of Fees

- 2.2.1 Unless otherwise stated in the Letter our fees for disposing of the property on your behalf are set out in clauses 2.2.2 – 2.2.10 inclusive below.
- 2.2.2 Where the disposal is of a freehold property or the grant or assignment of a lease at a nominal rent for a premium, our fees will be 1.5% of the sale price or premium (inclusive of fixtures and fittings and other allowances).
- 2.2.3 Where the disposal is via the grant of a new lease, subletting or the surrender or assignment of an existing lease our fees will be:
 - 2.2.3.1 10% of the annual headline rent agreed, ignoring any rent-free or concessionary rental period; plus
 - 2.2.3.2 5% of any premium paid or received.
- 2.2.4 Subject to clause 2.2.6, where the disposal involves the sale or transfer of a controlling interest in a company, or other legal vehicle that indirectly or directly owns the property then our fees will be calculated at a rate of 1.5% of the open market value of the property taking into account any leases or other terms of occupation which may apply, the ownership of which is being sold by you. For the avoidance of doubt, clause 2.4 shall be read as if reference in that clause to the completion of the sale of the property were references instead to the conclusion of a binding contract for the sale of the relevant controlling interest.
- 2.2.5 Where the disposal is in connection with a pre-sale or pre-let, our fees will be calculated by reference to clauses 2.2.2 or 2.2.3 save that 50% of the fees will be payable on exchange of unconditional contracts and the balance will be payable on completion or when the purchaser/tenant takes possession/occupation, whichever is the earlier.
- 2.2.6 Where the disposal is of a business as a going concern, the following shall apply in calculating our fee (and for the avoidance of doubt, clause 2.4 shall be read as if reference in that clause to the disposal of the property were references instead to the conclusion of a binding contract for the disposal of the business as a going concern):
 - 2.2.6.1 For the disposal of the share capital in a company, our fees will be calculated as 2% of the gross consideration rather than the value of the shares transferring. For the avoidance of doubt, gross consideration shall mean the value of the freehold property, goodwill, trade fixtures, fittings, furnishings and equipment and excluding stock in trade, any working capital adjustment, allowance for long-term debts assumed by the buyer or any other adjustment to taxation of any nature.
 - 2.2.6.2 For the disposal of a business as an operational freehold going concern, our fees will be 2% of the price achieved for the business, including the value of the freehold property, goodwill, trade fixtures, fittings, furnishings and equipment. For the avoidance of doubt, stock in trade, any working capital adjustment, allowance for long-term debts assumed by the buyer or any other adjustment relating to taxation of any nature shall not be included in calculating the price.
 - 2.2.6.3 For the disposal of a business as an operational leasehold going concern, our fees will be 5% of the price achieved for the business, including the value of the leasehold property, goodwill, trade fixtures, fittings, furnishings and equipment, plus 10% of the annual rent payable by the tenant at the date of the disposal. For the avoidance of doubt, stock in trade, any working capital adjustment, allowance for long-term debts assumed by the buyer or for any other adjustment relating to the taxation of any nature shall not be included in calculating the price.
- 2.2.7 Where sole selling rights (or joint sole selling rights) are agreed, then you will be liable to pay remuneration to us, in addition to any other costs or charges

agreed, in each of the following circumstances:

- 2.2.7.1 if unconditional contracts for the sale of the property are exchanged in the period during which we have sole selling rights, even if the purchaser was not found by us but by another agent or by another person, including you; or
- 2.2.7.2 if unconditional contracts for the sale of the property are exchanged after the expiry of the period during which we have sole selling rights but to a purchaser who was introduced to you during that period or with whom we had agreed negotiations about the property during that period. You agree to notify us in these circumstances.
- 2.2.8 In the case of a joint sole agency the fees as calculated under clauses 2.2.1 to 2.2.7 inclusive will be multiplied by 1.5 and split equally between both agents.
- 2.2.9 Acting as 'joint sole agent' means that you will be liable to pay remuneration to us, in addition to any other costs or charges agreed, if at any time unconditional contracts for the sale of the property are exchanged.
 - 2.2.9.1 with a purchaser introduced by us or the other joint sole agent during the period or our joint sole agency; or
 - 2.2.9.2 with whom we had negotiations about the property during that period; or
 - 2.2.9.3 with a purchaser introduced by another agent during that period.
- 2.2.10 Sales fees do not include such professional work as formal valuations for third parties, building works, preparation and checking of inventories, work linked with legal, tax and fiscal matters, planning advice, structural surveys, specialist tests and other professional work. Such matters are subject to separate fee arrangements. These Terms of Appointment relate to agency business alone and we will not accept responsibility for any of the aforementioned services under these terms.
- 2.2.11 From time to time we may pay commission to third parties who introduce new clients or new business to us. This may include an introduction made to you or in respect of business that we conclude from you. We pay commission out of revenue earned from the relevant introduction.

2.3 Expenses

- 2.3.1 In addition to the sale fee, you are responsible for all agreed charges for marketing and other costs as set out in the Letter.
- 2.3.2 Until we receive written authority to proceed and payment of the agreed charges and costs, we reserve the right not to proceed with the marketing of the property. Unless otherwise agreed, all marketing charges are payable immediately upon receipt of invoice.
- 2.3.3 In procuring such marketing services we will act as principal not as agent for you and we reserve the right to retain or share the benefits of any marketing or other discounts or commissions. We may make a charge for the preparation of brochures, plans, photography and placing of advertisements etc and this will be included in the price quoted to you.

2.4 Timing of Payment

- 2.4.1 Subject to clauses 2.1 to 2.3 above, our fee and any outstanding expenses are due on the exchange of unconditional contracts and payable on the date of completion of the sale or letting of the property.
- 2.4.2 If completion of the sale is delayed for more than three months after exchange of unconditional contracts, we reserve the right to invoice you for any properly payable sale fee three months after exchange of contracts. Any such fee will become payable on the date stated on the invoice.
- 2.4.3 Acceptance of these Terms of Appointment by you will constitute irrevocable authority to us to deduct (alternatively, to instruct your solicitors to deduct and pay to us) our fees and expenses from the exchange and/or completion funds relating to a disposal.
- 2.4.4 We will be entitled to payment of our fees and other agreed costs if a ready, willing and able purchaser/tenant is introduced to you by us in accordance with your instructions, even if you subsequently withdraw or if exchange of contracts for the sale does not take place, irrespective of your reasons. A purchaser/tenant is 'ready, willing and able' if he is prepared and is able to exchange unconditional contracts for the purchase of your property.

2.5 VAT

- 2.5.1 All our fees, costs and charges are exclusive of Value Added Tax, which (where applicable) will be paid to us by you in addition to the sums due.

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2.6 Interest and Recovery of Fees

- 2.6.1 Interest will be payable at 4% above Barclays Bank's base rate from time to time on any invoice that remains unpaid for 14 days after payment is due.
- 2.6.2 If we find it necessary to use solicitors or other parties to recover fees, costs or charges, you agree to pay any reasonable costs incurred by us.

2.7 General Lien

- 2.7.1 The common law entitles us to retain any money, papers or other property belonging to you which properly come into our possession pending payment of our costs, whether or not the property is acquired in connection with the matter for which the costs were incurred. This is known as a "general lien". We are not entitled to sell property held under a lien but we are entitled to hold property, other than money, even if the value of it greatly exceeds the amount due to us in respect of costs.

3.0 Termination

- 3.1 You or we may at any time terminate the Appointment by giving not less than 28 days' written notice. Notice by either side does not detract from our right to charge fees under clause 2.0 above.
- 3.2 Either party may terminate this Appointment immediately upon giving notice in writing to the other party if (in the reasonable opinion of the terminating party) any one or more of the following events occurs or is likely to occur:
- 3.2.1 a party making any voluntary arrangement with its creditors, entering administration or going into liquidation; or
- 3.2.2 a security holder taking possession, or a receiver or administrative receiver being appointed, over all or any part of the property or assets of a party; or
- 3.2.3 any other similar or analogous event in any jurisdiction; or
- 3.2.4 the other party commits a material breach of the Terms of Appointment.
- 3.3 If this Appointment is terminated or suspended for any reason under clause 3.0 above, you shall pay all fees and expenses due, commensurate with the services performed, including time spent in the notice period in closing down the instruction. Without prejudice to clause 2.4.4 we reserve the right to invoice for all disbursements to date and for the greater of the time-charge for the work carried out or:
- 3.3.1 Lump-sum fixed fees: pro-rata the fee by reference to the stage that work has reached.
- 3.3.2 'Success' fees: a reasonable percentage of the anticipated fee, by reference to the stage in negotiations that has been reached.
- 3.4 We may suspend performance of our obligations under these Terms of Appointment without liability if you fail to pay any sum when due and fail to rectify such breach within seven days of receiving notice of non-payment.

4.0 Limitation of Liability

- 4.1 Neither party will be liable for any loss or profit (other than in respect of our fees, costs or charges), loss of business or goodwill, or for any special, indirect or consequential loss or damage suffered by the other (including as a result of an action brought by a third party), save that nothing in these Terms of Appointment will exclude or restrict any liability which either party may have for (i) death or personal injury arising out of negligence, (ii) fraudulent misrepresentation or (iii) any other liability which cannot be restricted or excluded by law.
- 4.2 We will not be liable for any loss as a result of your receipt of any information, data or communications supplied or sent by us electronically, where through no fault of our own the relevant information, data or communication has been corrupted or otherwise modified as a result of it being supplied or sent electronically. You will be responsible for ensuring that any materials you provide or send us by electronic medium and/or by computer disk are, and remain, virus free.
- 4.3 Subject to clauses 4.1 and 4.2 our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Appointment or otherwise under the Terms of Appointment, unless otherwise agreed in writing, shall be limited to £5.0m.

5.0 Indemnity

- 5.1 Subject to clause 4.0 above you will indemnify and keep us indemnified on an after tax basis against all losses, damages, costs and expenses suffered or incurred by us, arising out of or by virtue of your instructions to us or arising out of any act, omission or default by you, other than any losses, damages, costs and expenses arising by virtue of our default or negligence.
- 5.2 During the term of the Appointment and for a period of 6 years thereafter, we will maintain in force, with a reputable insurance company, professional indemnity insurance in an amount not less than £2.0m and shall, on your request, produce confirmation from our insurance broker giving details of cover and that the current year's premium has been paid.
- 5.3 The provisions of clause 5.2 above shall survive termination of the Appointment, however arising.

6.0 Compliance

6.1 The Property Misdescriptions Act 1991

- 6.1.1 Under the property Misdescriptions Act 1991 it is a criminal offence for an agent to make inaccurate or misleading statements about property whether in sale particulars, adverts, photographs or verbal statement. This includes making statements that might give the wrong impression about a property and includes omitting facts. You will be asked to verify certain information and must assist to the best of your knowledge.

- 6.1.2 You will ensure that you advise us of all material facts relevant to us acting as agent and that all information provided by you and/or your professional advisers is and remains complete, accurate and not misleading, for example:

- 6.1.2.1 you will inform us of any unusual or onerous encumbrances, restrictions, easements or conditions attaching to the property; and
- 6.1.2.2 You will inform us if the property does not comply with all relevant statutory requirements or if the property has not been constructed or is occupied in contravention of or is to be sold or let without valid planning permissions and building regulation and all other approvals required by regulation; and
- 6.1.2.3 you will check all marketing materials and promptly notify us if any part of those materials is or becomes incomplete, inaccurate or misleading. You will be responsible for any additional costs incurred subsequently by us to ensure that the circulation of incomplete, inaccurate or misleading information is rectified, whether by the reissue of amended marketing materials or otherwise.

6.2 Money Laundering Regulations

- 6.2.1 We are obliged to identify our clients in accordance with the requirements of the Money Laundering Regulations 2007. We are likely to request from you, and retain, some information and documentation for these purposes, and/or make searches of appropriate databases electronically. For the avoidance of doubt, searches may also be conducted on directors and "beneficial owners" of the client as is required by the legislation. If satisfactory evidence of your identity is not provided within a reasonable time, there may be circumstances in which we are not able to proceed with the instruction.
- 6.2.2 The provision of our services is a business in the regulated sector under the Proceeds of Crime Act 2002 and, as such, we are required to comply with this legislation which includes disclosure in relation to information we obtain as part of our normal work. It is not our practice to inform you when such a disclosure is made or the reasons for it because of the restrictions imposed by "tipping off" provisions of the legislation.

6.3 Data Protection

- 6.3.1 In the course of providing services to you, we may collect or receive personal information relating to you and (where the client is a company) your employees, officers, and shareholders or (where the client is an individual) members of your family. We will use such personal information for the purpose of providing services to you in accordance with our Appointment. We will also use personal information for related purposes, such as updating our client records, carrying out identity checks in accordance with money laundering requirements (as further set out above in clause 6.2.1) and processors to carry out such activities on our behalf. Data processors may be located in any part of the world. We will ensure that data processors take adequate steps to protect your personal information.
- 6.3.2 Where we use your personal information to carry out credit checks and anti-fraud checks your details will be passed to credit reference or fraud prevention agencies, who may keep a record of your information and the checks carried out.
- 6.3.3 If you provide personal information to us relating to another person, you must ensure that you are permitted to pass such information to us and that the individual concerned is aware that you are passing their personal information to us.
- 6.3.4 We may contact you from time to time by email, post or telephone about products and services that we think may interest you. If you would prefer not to receive such communications please let us know by sending an email to info@holtcommercial.co.uk.
- 6.3.6 If you have any queries about how we use your personal information or if you would like to see a copy of our data protection policy contact the Company Secretary at Holt Court, 16 Warwick Row, Coventry, CV1 1EJ or secretary@holtcommercial.co.uk.

6.4 Equality Act 2010

- 6.4.1 We are committed to promoting equality and diversity in all our dealings with clients, suppliers, third parties and employees and require that you co-operate with this approach. If you would like to see a copy of our equality and diversity policy please contact the Company Secretary at Holt Court, 16 Warwick Row, Coventry, CV1 1EJ or secretary@holtcommercial.co.uk.

6.5 Anti-Corruption

- 6.5.1 You shall comply at all times with all applicable laws, statutes and regulations, relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010.

7.0 Related Services

- 7.1 It is possible that you and/or the buyer of the property you are selling may wish to instruct us with regard to another property related service and that such services may be offered by us to you and/or the purchaser. The services might include amongst others:-

- the sale or purchase of another property;
- the rental of property;
- survey of property;
- management of property

In such circumstances, we or our employees may earn some form of remuneration in relation to the provision of those services.

8.0 Disclosable Interest

8.1 The Estate Agents Act 1979 requires an agent to disclose promptly, both to you and a purchaser, any connection that we or any of our employees or associates may have with either party, whether directly or indirectly, or with any member of their respective families. Should we become aware of any such interests, we will advise you promptly in writing. Should you be aware of any such connection with us you must advise us in writing as it becomes known.

9.0 Health and Safety

9.1 You are responsible for all health and safety, and environmental obligations in accordance with all relevant laws, enactments, orders, codes of practice and regulations in relation to our Appointment.

9.2 You must ensure that we are notified of and provided with all relevant information relating to risks to health and safety, and any documentation and/or measures in place to manage those risks. This includes any relevant information to ensure that any viewings or visits are conducted safely.

10.0 Unoccupied Property

10.1 We are not responsible for the management, maintenance or repair of any property purchased unless we have agreed to be. That agreement must be recorded in writing and an additional fee will be payable. It is your responsibility to ensure that where property is unoccupied the property is adequately secured, mains services are dealt with and insurance cover put in place.

11.0 Confidentiality

11.1 Each party undertakes that it shall not disclose to any person any confidential information concerning the business, affairs, customers, clients or supplies of the other party except as permitted by clauses 11.2 and 11.3 below.

11.2 Each party may disclose the other party's confidential information:

11.2.1 to its employees, officers, representatives, contractors, sub-contractors or advisors who need to know such information for the purposes of carrying out the party's obligations under these Terms of Appointment ("Permitted Recipients"). Each party shall ensure that its Permitted Recipients comply with this clause 11; or

11.2.2 with the other party's prior consent; or

11.2.3 as may be required by law, court order or any governmental or regulatory authority.

11.3 Neither party shall use any other party's confidential information for any purpose other than to perform its obligations under these Terms of Appointment.

11.4 The provisions of this clause shall survive any termination of this Appointment.

12.0 Use of Information

12.1 Subject to our confidentiality obligations under clause 11, information provided to us by you, or relating to our instructions may be published or otherwise used by us for marketing purposes either before or after the expiry or termination of our Appointment.

12.2 All advice and services produced for you ("Work") is to be regarded as confidential to the party to whom it is addressed and is intended for the use of that party only. Consequently, in accordance with current practice, no responsibility is accepted to any third party in respect of the whole or any part of the Work. Before the Work, or any part of it is reproduced, our written approval as to the form and context of such publication must be obtained.

13.0 Intellectual Property Rights

13.1 All Intellectual Property Rights and all other rights in all reports, drawings and accounts and other documentation created, prepared or produced by us in relation to our Appointment shall be owned by us. Subject to 12.2 below, we license all such rights to you free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable you to make reasonable use of such reports, drawings and accounts and other documentation.

13.2 You acknowledge that, where we do not own any pre-existing materials, your use of rights in pre-existing materials is conditional on us obtaining a written license (or sub-license) from the relevant licensor or licensors on such terms as will entitle us to license such rights to you.

14.0 Complaints procedure

14.1 In accordance with the Royal Institution of Chartered Surveyors' Rules of Conduct, we operate a formal procedure to deal with complaints from clients and others. Details of this procedure are available from the Company Secretary, Holt Court, 16 Warwick Row, Coventry, CV1 1EJ or secretary@holtcommercial.co.uk.

14.2 For unresolved business to business complaints there are provisions for matters to be referred to mediation or arbitration as appropriate. We are also members of the 'Ombudsman Services: Property' for the resolution of any consumer complaints that are not satisfactorily resolved between the parties.

14.3 Your right to pursue any dispute through the courts is not affected by the option to resolve a dispute through the complaints procedure or arbitration.

15.0 Assignment

15.1 You shall not be entitled to assign, sub-contract or otherwise dispose of any of your rights or obligations under these Terms of Appointment without our prior written consent.

16.0 Order of Priority

16.1 The Letter and these terms are to be read together as a single document which make up the Terms of Appointment. In the event of any conflict, the terms of the Letter will prevail.

17.0 Force Majeure

17.1 We reserve the right to delay or to cancel performance of the Appointment (without liability to you) and we will not be liable to you for any delay in performing or failure to perform any obligations under the Terms of Appointment if we are prevented from or delayed in the carrying on of our business due to circumstances beyond our reasonable control including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civic commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce) or your default provided that, if the event in question continues for a continuous period in excess of 10 days, you shall be entitled to give notice in writing to us to terminate the Appointment.

18.0 Severability

18.1 If any provision of the Terms of Appointment (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, to be deemed not to form part of the Terms of Appointment, and the validity and enforceability of the other provisions of these Terms (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

19.0 Entire Agreement

19.1 The Terms of Appointment constitute the entire agreement and understanding of the parties as to the subject matter of the Terms of Appointment. They supersede any prior agreement of the Terms of Appointment will be binding unless agreed in writing.

20.0 Applicable Law and Jurisdiction

20.1 These Terms of Appointment and any dispute or claim, including a dispute or claim of a non-contractual nature, arising under or in connection with these Terms of Appointment shall be governed by and construed in accordance with the law of England and Wales.

20.2 The parties to these Terms of Appointment irrevocably agree that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim arising under or in connection with these Terms of Appointment. Nothing in this clause shall limit our right to take proceedings against you in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

21.0 Scotland

21.1 In relation to instructions accepted by us to deal with property situated in Scotland these Terms of Appointment shall have effect subject to the following provisions:

21.1.1 Exchange and unconditional contracts shall include a situation where the parties conclude a legally binding contract or missives free of suspensive conditions or conditions precedent and these Terms of Appointment shall be construed accordingly.

21.1.2 All negotiations conducted by us will be on the basis that no legally binding missives or contract will be concluded unless we are expressly authorized in advance by you in writing to make or accept any contractual offer.

22.0 Provision of Service Regulations

22.1 Under the Provision of Service Regulations 2009, we are required to make certain information available to customers to whom we are providing services. This information can be found on our website, www.holtcommercial.co.uk.

23.0 Storage of Papers and Documents

23.1 After completing the work, we are entitled to keep all your papers and documents while there is money owing to us for our charges and expenses. In addition, we will keep your file of papers for you in storage for not less than 6 years. After that, storage is on the clear understanding that we have the right to destroy it after such period as we consider reasonable or to make a charge for storage if we ask you to collect your papers and you fail to do so. No charge will be made for such storage unless prior notice in writing is given to you of a charge to be made from a future date which may be specified in that notice.

23.2 If we retrieve papers or documents from storage in relation to continuing or new instructions to act in connection with your affairs, we will not normally charge for such retrieval. However, we may make a charge based on time spent for producing stored papers or documents to you or another at your request. We may also charge for reading, correspondence, or other work necessary to comply with your instructions.

23.3 In the event that papers or documents are requested by the client, we reserve the right to charge for copies of the same for our records.

23.4 We reserve the right to only provide hard copies of documents which we store electronically.