



Terms of Business

This document sets out the terms of business and engagement between James Del Mar Ltd (“the Company”) and you (“the Client”) and shall apply to all work that the Company is instructed to undertake for you.

The Company is Regulated by RICS and its registered address is 15 Whitehall, London SW1A 2DD. The Company Registration Number is 13001305 and its VAT registration Number is 364 1444 08.

The Company agrees to carry out the Services instructed by you.

The following definitions and rules of interpretation apply in this Agreement.

The Fee: The amount agreed between the Client and the Company for the Services, together with VAT at the prevailing rate.

Authorised Expenses and Disbursements: The expenses and disbursements agreed between you and the Company.

Business Day: A day other than a Saturday, Sunday or a statutory bank holiday.

Client Files: Files of documents prepared by the Company in connection with the provision of the Services to the Client stored in any format, including physical or electronic and in or on any medium.

Client Regulations: Any special requirements or regulations of the Client as set out in writing.

Insolvent: A party is insolvent if: (a) being an individual (or any of those comprising the party is an individual) proposes or enters into any composition or arrangement with his creditors generally or any class of his creditors; or is the subject of any judgment or order which is not complied with within seven days, or is the subject of any execution or process delivered on the whole or any part of its assets and such attachment or process is not discharged within 28 Business Days, or is the subject of an application or order or appointment in England and Wales under sections 254, 273 or 286 of the Insolvency Act 1986; or is unable to pay or has no reasonable prospect of being able to pay his debts within the meaning of section 268 of the Insolvency Act 1986; (b) being a company, is the subject of a petition presented or an order made or a resolution passed for appointing an administrator or winding up such company; or a receiver or administrative receiver is appointed of the whole or any part of the undertaking, property, assets or revenue of the company; or agrees to declare a moratorium or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or ceases or threatens to cease to carry on its business.

Required standard: The reasonable skill, care and diligence to be expected of a qualified member of RICS undertaking the services having regard to: (a) all the

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terms of this agreement (b) the information provided by the Client; and (c) the Client’s Regulations.

VAT: Value Added Tax imposed by the Value Added Tax Act 1994, or any similar tax in addition to or replacing it from time to time.

Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.

A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person’s personal representatives, successors and permitted assigns.

A reference to a Company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular and a reference to one gender shall include a reference to the other gender.

A reference to any party shall include that party’s personal representatives, successors and permitted assigns.

A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision.

Any obligation on the party not to do something includes an obligation not to allow that thing to be done.

A reference to writing or written includes fax and email.

References to clauses and schedules are to the clauses and schedules of this Agreement and references to paragraphs are paragraphs of the relevant schedule.

Any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English legal term in that jurisdiction.

A reference to a document in this Agreement is a reference to that document as varied or notated (in each case other than in breach of this Agreement) at any time.

Unless expressly provided otherwise, the obligations and liabilities of the parties or the persons forming the parties under this agreement are joint and several.



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Appointment

The Client appoints the Company to carry out the Services, subject to the terms of this Agreement.

Unless otherwise agreed between the Client and the Company, this Agreement shall serve to define the Company's role.

This Agreement takes effect from the date when the Company begins performing the Services.

The Company's obligations

The Company undertakes that it shall:

- (a) comply with the terms of this Agreement; and
- (b) comply with the rules of RICS.

The Company undertakes that it shall exercise the Required Standard when performing the services.

The Client's obligations

The Client will ensure that the Company is provided with all information reasonably necessary for the Company to initiate and undertake the Service.

The Client will provide adequate access to the Company and its representatives to any land and buildings reasonably necessary for the Company to initiate and undertake the Service.

The Client shall respond promptly to any request by the Company to provide information or instructions which the Company considers necessary for the proper provision of the Service.

If the Client authorises other professional advisers to give instructions, take decisions or provide information to the Company, such instructions, decisions or information shall be treated as if they had been provided by the Client and the Company shall be entitled to report and disclose information to such professional advisers, and liaise as necessary with such other professional advisers.

Upon request by the Client the Company shall promptly allow the Client or anyone authorised by the Client to inspect any document in the possession of the Company relating to the Service and shall provide copies of any such document at the Client's expense.

Any written notice or other communication between the parties may be sent by email and shall be deemed to have been received the second Business Day after it was despatched to the email address shown for that party in the Agreement, or such other address as has subsequently been substituted by agreement.

Records

Unless otherwise agreed in writing between the Client and the Company, ownership of all documents brought into existence by the Company shall belong to the Company notwithstanding payment by the Client of the remuneration due under the terms of this Agreement.

The Client's files will be retained by the Company for a minimum of six years from the date on which the Company's work is effectively completed. After that time, the Client's files may be destroyed subject to prior written agreement between the Client and the Company as to an alternative storage period. The Client agrees that storage of client files by the Company may be provided by third party contractors and the Client agrees to meet all the Company's reasonable costs in accessing the client files in any off-site facility for reasons which do not relate to on-going work.

The clause does not apply to documents which the Company reasonably considers to be of continuing significance.

The Client accepts that the client files may be stored by the Company in several different media and formats, and that there is a risk of damage and/or corruption associated with all systems of file storage.

Remuneration

The Client shall pay:

- (a) the Fee (calculated in accordance with this Agreement) as full remuneration for the Services; and
- (b) any authorised expenses and disbursements as agreed between us; and
- (c) any VAT properly chargeable on the services.

Any amount expressed as payable to the Company under this Agreement is exclusive of VAT unless stated otherwise.

The fees, rate of remuneration and expenses specified in the Agreement may be reviewed at the request of either party at any time, but not earlier than 12 months after a previous review, except in relation to expenses, and any revised rate shall apply after the expiry of one month from the date of such request or from such other date as may be agreed.

Payment

The Company shall submit to the Client invoices in respect of the Fee as is agreed between the parties.

Unless otherwise agreed in writing, all invoices submitted by the Company to the Client are due for payment from the delivery of the invoice.



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If the Client fails to pay an amount due to the Company by the final date for payment then the Client shall pay interest on the overdue amount at the rate of 5% per annum above National Westminster Bank base rate from time to time.

Such interest shall accrue on a daily basis from the final date of payment until actual payment of the overdue amount, whether before or after judgment. The Client shall pay interest together with the overdue amount.

If any fee or other amount due to the Agent is paid in currency other than sterling the payment shall be converted into sterling unless the Client notifies in advance that they are not to be converted.

Any exchange risk or bank charges (including any levied by the Company's bankers) will be the Client's.

Termination

Either party may terminate the Company's engagement under this Agreement at any time by giving to the other three months' notice in writing.

Notwithstanding the provisions of this clause, either party may immediately terminate its engagement under this Agreement by giving written notice to the other if either party is in material breach of its obligations under this Agreement and fails to remedy that breach within five Business Days of receiving written notice requiring it to do so; or

Either party has conducted itself in a manner liable to injure the other party or bring the other party into disrepute.

Consequences of termination

On termination the Client shall pay the Company any amount properly due for payment under this agreement at the date of termination, including inter alia all fees due in relation to the services properly performed up to and including the date of termination, and all expenses and disbursements incurred by the Company under this Agreement up to and including the date of termination.

On termination of this Agreement the Company shall promptly return to the Client all of the documents reasonably required for the continuing performance of the Service.

Termination of the Company's engagement under this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination.

Assignment and Sub-contracting

This Agreement may not be assigned or transferred in whole or in part without the prior written consent of both parties such consent not to be unreasonably withheld, and any such assignment or transfer shall be valid only after written notice of it has been given to the Client or the Company.

The Company may subcontract any incidental part or parts of any services to be supplied to the Client, such as the preparation of plans, photography, advertising or courier services. With the exception of such incidental parts, the Company shall not subcontract the performance of any of the Service without the Client's prior written consent.

The Company shall be responsible for any services it subcontracts to a third party as if it had performed those services itself.

Confidentiality

The Company and the Client undertake that they shall not at any time disclose to any third party any information concerning the Client's or the Company's personal or business affairs (other than that information which enters the public domain) except that the Company may disclose the Client's information:

- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the Company's obligations under this agreement. The Company shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the Client's information comply with this clause.
- (b) to any other professional adviser authorised by the Client to give instructions to, take decisions for, or provide information to the Client
- (c) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority; or
- (d) with the prior authority of the Client.

The Company shall not make any written or verbal statement to the media about the Client without the prior authority of the Client.

The Company shall not be liable to any third party to whom or which the Client may disclose the Company's advice or purport to transfer the benefit of any services supplied by the Client, or to whom or which the Client shows any document, drawing, plan, model or report produced by the Company for the Client.

Where the Client provides the Company with fax or computer network addresses to which material is to be sent, the Client undertakes that its arrangements are



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sufficiently secure and confidential to protect the Client's interests.

Data sent by the Company to the Client by email is not routinely encrypted. The Company shall use email as a form of communication with the Client unless and until the Client notifies the Company in writing that email is not to be used as a form of communication with the Client by the Company.

Copyright

Copyright and any intellectual property rights in any original material (including correspondence), document, drawing, plan, model or report produced by the Company for the Client shall remain vested in the Company, and the Company grants to the Client only a non-exclusive, non-assignable licence to use any such copyright work only for the purposes for which it was prepared. The Company may also provide copies of other material, the copyright and/ or intellectual property rights in which may belong to third parties. The Company does not authorise the Client 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.

Privacy and data protection

The Client's details will be kept on the Company's database for administration and accounting purposes, to enable it to make credit searches and to enable the Company to send to the Client relevant information on its services and on events. In relation to the Client's details, the Company undertakes that it will comply with its obligations under the Data Protection Act 1998.

Money laundering and compliance

The Proceeds of Crime Act 2002, the Terrorism Act 2000 and the regulations made pursuant to such legislation, which are aimed at preventing money laundering, require that the Company obtain proof of identity from the Client if it acts for the Client in connection with relevant financial business. Accordingly, the Client may be requested to supply the Company with the necessary details. In certain circumstances, the Company is required by law to report to the National Criminal Intelligence Service any evidence or suspicion of money laundering. The Company is prohibited from notifying the Client of the fact that a report has been made.

To ensure compliance with the anti-money laundering legislation, the Company reserves the right to decline cash receipts in excess of £1,000.

The Company also reserves the right to refuse to pay to any third-party money due to the Client.

Professional indemnity insurance

The Company shall maintain professional indemnity insurance. The limit on the Company's professional indemnity insurance cover may vary from time to time and will be disclosed to the Client upon request (but will not at any time be less than the minimum level of cover required by RICS Rules of Conduct as amended from time to time). If the Client requires the Company to accept liability in respect of a larger potential loss than that covered by the Company's professional indemnity insurance cover, the Client must notify such requirement to the Company and the Company will ascertain the cost of obtaining (if possible) additional insurance protection, and thereafter notify the Client of the additional fee or charge that will be payable by the Client to enable the Company to accept that higher level of liability.

Liability and indemnification of the Company

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.

The Company's liability to the Client for advice given to the Client by the Company shall be as follows:

(a) the Company shall not be liable 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. The Client agrees that it will not rely on any valuation or survey given orally.

(b) if the Company gives the Client any other advice orally and the Client wishes to rely on it for any purpose, the Client must obtain prior written consent from the Company to do so

(c) the Company shall 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 written form; and

(d) if the Company expresses an opinion or makes a forecast concerning future events, the Company shall only be liable for the loss that was caused by the Company's failure to exercise reasonable skill and care when giving that opinion or making that forecast.

The Company shall not be liable for any loss, damage, or expense sustained by the Client where such loss, damage or expense was sustained by the Client as a result of:

(a) incomplete, inaccurate or erroneous information or instructions provided or made available to the Company by the Client, or by any third party acting on behalf of the Client



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(b) any defect or failure to identify any defect on any property, in any plant, machinery, equipment or materials used upon the Client's property which could not reasonably have been known to the Company; or

(c) any act, omission or insolvency of any person other than the Company.

The extent of the Company's liability to the Client for any loss or damage suffered by the Client as a result of the Company's breach of contract or negligence shall be limited to the lower of the limit of the Agent's professional indemnity insurance cover or an amount equating to 75% of the most recent invoice raised and sent to the Client in respect of the Fee for the Service.

The Client shall indemnify the Company against all claims made against the Company arising out of its appointment, provided that at all times prior to the making of the claim the Company shall have carried out the services to the required standard and that the claim does not arise from any breach of duty owed by the Company to the Client.

The Company shall not be liable to any third party to whom the Client discloses the Company's advice or purports to transfer the benefit of any services supplied by the Company or to whom or which the Client may show any document, drawing, plan, model or report produced by the Company for the Client.

The Client recognises that the appointment of the Company under the terms of this Agreement does not diminish its responsibilities to others and the Company is only liable for its own acts of negligence or breach of contract.

Nothing in this clause shall limit or exclude any liability for fraud.

Asbestos and pollution

The Company is not authorised nor qualified to undertake surveys or inspections required under the Control of Asbestos at Work Regulations 2002 and will not undertake such works.

The Client will notify the Company as soon as reasonably possible if the Client is aware, or becomes aware, of the presence or potential presence of Asbestos or Pollution on their property or in any building or structure thereon.

The Client shall indemnify the Company against:

(a) all costs and actions of all kinds, howsoever arising, incurred or carried out by the Client, or by any tenants, occupiers, management staff, contractor or anyone (other than the Company and its employees), relating to the presence or potential presence of Asbestos or Pollution in or on their property or any building or structure thereon; and

(b) all consequences of actions of the type referred to in paragraph (a) above.

Disputes

Where the Company is a firm which is regulated by RICS, there shall be an internal complaints handling facility within the firm, in accordance with the regulations and by-laws of RICS.

If a dispute between the parties in relation to this Agreement is not resolved internally, the matter may be referred, on the agreement of both parties, to mediation by a member of the RICS accredited mediators panel or, where no agreement is reached as to the mediator to be appointed, to a mediator to be appointed by the President of RICS.

If any dispute between the Company and the Client arising out of this Agreement is not resolved in accordance with the provisions above, then the matter must go for arbitration under the Arbitration Act 1996 or expert determination if the dispute relates to fees only.

Third party rights

A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Agreement.

Entire agreement

This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

Each party agrees that on entering into this Agreement it does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement.

Governing law

This Agreement 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.

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 Agreement or its subject matter or formation (including non-contractual disputes or claims).