

## TERMS AND CONDITIONS

### 1 DEFINITIONS

- The following expressions shall have the following meanings:
- 1.1 “Additional Fees” means:
    - 1.1.1 the minimum fee of £1,500 plus VAT where:
      - 1.1.1.1 the Client seeks to cancel the Agreement;
      - 1.1.1.2 the Property has been withdrawn for sale;
      - 1.1.1.3 the Property has been sold to a private buyer who is an Excluded Person;
      - 1.1.1.4 The Property has been sold by way of a sale of the Property agreed with another agent; or
    - 1.1.2 where the property has listed for auction and the auction has been unsuccessful, a fee equating to:
      - 1.1.2.1 0.75% of the Reserve Price at the auction plus VAT; and
      - 1.1.2.2 0.75% of the achieved sale price plus VAT when the property is ultimately sold by way of private treaty.
  - 1.2 “Agreed Expenses” means all additional expenses which are incurred by us pursuant to a pre-agreed schedule which shall include but not be limited to marketing costs, advertising costs, and compliance and ‘know your client’/‘anti money laundering’ costs (plus VAT where appropriate) to be paid in advance unless otherwise agreed.
  - 1.3 “Agreement” means the contract between Chrystals and the Client for the provision of the Services incorporating these Terms and Conditions;
  - 1.4 “Buyer” means the person contracted to purchase the Property from the Client;
  - 1.5 “Client” means any person who purchases Services from Chrystals;
  - 1.6 “Covering Letter” means the Agency Terms sent for signature;
  - 1.7 “Excluded Person(s)” means an individual(s) who the Client identifies in writing to Chrystals as being a potential purchaser of the Property;
  - 1.8 “Fees” means agency commission due to Chrystals from the Client for providing the Services as set out in the Agency Terms;
  - 1.9 “Property” means the property which belongs to the Client and is to be sold by Chrystals;
  - 1.10 “Party” or “Parties” means the Client and Chrystals;
  - 1.11 “Chrystals” means Chrystal Bros. Stott & Kerruish Limited, a company incorporated in the Isle of Man with registration number 034808C having its registered office at 31 Victoria Street, Douglas, Isle of Man, IM1 2SE;
  - 1.12 “Services” means the agency services as described, to find a willing and able buyer and these Terms and Conditions;
  - 1.13 “Terms and Conditions” means the terms and conditions of supply of Services as set out in this document and any subsequent terms and conditions agreed in writing by Chrystals.

### 2 GENERAL

- 2.1 These Terms and Conditions shall apply to the Agreement for the supply of Services by Chrystals to the Client and shall supersede any other documentation or communication between the Parties.
- 2.2 Any variation to these Terms and Conditions must be agreed in writing by Chrystals.
- 2.3 In order to act on your behalf, these Terms and Conditions must be accepted by signing and returning to Chrystals a copy of the Agency Terms.
- 2.4 Nothing in these Terms and Conditions shall prejudice any condition or warrant, express or implied, or any legal remedy to which Chrystals may be entitled in relation to the Services, by virtue of any statute, law or regulation.

**3 TYPE OF AGENCY**

3.1 Where Chrystals are appointed by the Client on either a sole, joint or multiple agency basis to sell the Property the Client shall be liable to pay the advised Fees to Chrystals, as well as any other agreed costs or charges, as follows:

3.1.1 a Buyer is introduced to the Property and an unconditional contract for sale is agreed upon; or

3.1.2 an unconditional contract to purchase the Property by a Buyer introduced to the Property by Chrystals within 6 months of the Agreement being terminated.

3.2 If the agreed sale is aborted by the Client for any reason, not being related to a break in their forward chain, the Client shall be liable to pay the Fees due and owing as if the sale of the Property had proceeded to completion.

3.3 The obligations stated in clauses in 3.1 and 3.2 above apply in respect of:

3.3.1 any Buyer introduced by Chrystals during the period of the Agreement; and

3.3.2 any Buyer introduced by another agent during the period of the Agreement where Chrystals had first introduced the Buyer to the Property.

3.4 If the Client instructs another agent during a sole agency arrangement with Chrystals the Agreement will be deemed to be changed to a multiple agency arrangement and the Client will become liable to pay Chrystals the Fees due for this type of agency agreement if a Buyer is first introduced by Chrystals.

3.5 If the Client finds a Buyer for the Property without the Services of Chrystals they shall still be liable to pay the Fees as if that Buyer

was aware that the Property was being marketed by Chrystals.

3.6 If the Client is aware of any interested party who is a potential purchaser of the Property the individual(s) will only be deemed an Excluded Person(s) if Chrystals are in receipt of notification in writing setting out the full details of the proposed Excluded Person(s). If an Excluded Person purchases the Property during the agency arrangement with Chrystals the Client will only be liable to pay the Additional Fee and any Agreed Expenses. Unless Chrystals are requested by the Client to negotiate the sale or provide advice on the sale to an excluded party Chrystals will charge an agreed commission to the Vendor upon exchange of contracts.

**4 FOR SALE BOARDS**

4.1 The Seller consents to Chrystals erecting a display board at the Property to assist in the marketing of the Property and Chrystals shall adhere to the relevant statutory regulations relating to the display of such boards.

**5 PRICE AND PAYMENT OF FEES**

5.1 The price for Services is as specified in the Agency Terms and is exclusive of VAT and any other charges as outlined;

5.2 The terms for payment of the Fees (or Additional Fees) and any other charges are as specified in the Agency Terms;

5.3 The Fees shall become due on the completion of the contract and the sale of the Property or pursuant to clause 3.2 above;

5.4 The Additional Fees shall become due on the date of the withdrawal for sale, date of completion of the contract and the sale of the Property, date of the auction, date of the unsuccessful auction and/or date of the completion of the sale by private treaty, all as applicable.

5.5 The Client shall be liable for all Agreed Expenses due to Chrystals which shall be due for payment on demand;

5.6 The Client is not entitled to withhold any monies due to Chrystals;

5.7 In the event that the Client seeks to cancel the Agreement the Client shall be responsible to pay to Chrystals any Agreed Expenses incurred up to that date and the Additional Fees.

## **6 CLIENT OBLIGATIONS**

6.1 The Client agrees to co-operate with Chrystals as may be required.

6.2 The Client shall provide Chrystals with keys to the Property if Chrystals are to be responsible for viewings.

6.3 The Client shall permit Chrystals access to the Property for the purpose of preparing marketing materials and accompanied viewings for potential purchasers.

6.4 The Client shall permit Chrystals to advertise the Property For Sale or For Rent through its website, any third party websites and social media platforms.

6.5 The Client remains responsible for the Property throughout the period of this Agreement and should take proper precautions if the Property is unoccupied.

6.6 If access to the Property is required by a person on behalf of a prospective purchaser i.e. surveyor, builder or tradesman, arrangements must be made via the Client unless otherwise agreed.

## **7 CHRYSALS'S OBLIGATIONS**

7.1 Chrystals shall supply the Services.

7.2 Chrystals shall perform the Services with reasonable skill and care and to a reasonable standard and in accordance with recognised codes of practice and statutory obligations.

7.3 Chrystals shall designate an authorised practitioner in accordance with the Estate Agents Act 1975.

7.4 Chrystals shall forward all offers to purchase the Property to the Client or their appointed representative promptly and accurately unless the offer is of a type that the Client has specifically requested Chrystals not to pass on.

7.5 Chrystals shall keep a record of all submitted offers on file and shall make that record available to the Client on request.

7.6 Chrystals shall seek to supervise any visitors to the Property but cannot be held responsible for the actions of any third parties.

## **8 PROPERTY MISDESCRIPTION**

8.1 It is the Client's responsibility to check the descriptions of the Property on the website and on other marketing material and to notify Chrystals of their agreement and if there are any amendments required.

8.2 The Client shall indemnify Chrystals and any other associated parties against any claim arising out of Part 1 of the Estate Agents Act 1999 from any mis-description caused by the Client's failure to adhere to this condition.

## **9 DURATION AND TERMINATION**

9.1 The Agreement shall come into force on the date that the Covering Letter is signed and shall continue for a period of at least 3 months.

9.2 Either Party may terminate the Agreement by giving 7 days' notice in writing.

9.3 In the event of termination, the Client must settle Chrystals's invoice for Additional Fees and any Agreed Expenses up to the date of termination within 14 days.

9.4 Any rights to terminate the Agreement shall be without prejudice to any other accrued

rights and liabilities of the Parties arising in any way out of the Agreement as at the date of termination.

**10 LIMITATION OF LIABILITY**

10.1 Nothing in these Terms and Conditions shall exclude or limit the liability of Chrystals for death or personal injury, however Chrystals shall not be liable for any direct loss or damage suffered by the Client or any third party howsoever caused, as a result of any negligence, breach of contract or otherwise in excess of the sum insured under the professional indemnity insurance policy held by Chrystals in the insurance year in which the Client's claim is first notified.

**11 INDEMNITY**

11.1 The Client shall indemnify Chrystals against all claims, costs and expenses which Chrystals may incur and which arise directly or indirectly from the Client's breach of any of its obligations under these Terms and Conditions.

**12 FORCE MAJEURE**

12.1 Neither Party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and the Party shall be entitled to a reasonable extension of its obligations.

**13 ASSIGNMENT**

13.1 The Client shall not be entitled to assign its rights or obligations or delegate its duties under this Agreement without the prior written consent of Chrystals.

**14 THIRD PARTY RIGHTS**

14.1 Nothing in these Terms and Conditions intend to or confer any rights on a third party by virtue of the Contracts (Rights of Third Parties) Act 2001.

**15 SEVERANCE**

15.1 If any term or provision of these Terms and Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms and Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.

**16 WAIVER**

16.1 The failure by either Party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions.

**17 NOTICES**

17.1 Any notice to be given by either Party to the other may be served by email, fax and personal service or by post to the address of the other Party given in the Agency Terms or such other address as such Party may from time to time have communicated to the other in writing.

17.2 If notice is sent by email it shall unless the contrary is proved be deemed to be received on the day it was sent.

17.3 If sent by fax shall be deemed to have been served on receipt of an error free transmission report.

17.4 If given by letter shall be deemed to have been served at a time at which the letter was delivered personally or if sent by post shall be deemed to have been delivered in the ordinary course of post.

**18 ENTIRE AGREEMENT**

18.1 These Terms and Conditions supersede any previous agreements, arrangements, documents or other undertakings either written or oral.

**19 GOVERNING LAW**

19.1 These Terms and Conditions shall be governed by and construed in accordance

with the law of the Isle of Man and the Parties hereby submit to the exclusive jurisdiction of the courts of the Isle of Man.

## 20 DATA PROTECTION

20.1 Chrystals will collect and process information relating to the Client in accordance with the Privacy Notice which is annexed to these terms of business.

### Annex 1

Privacy Notice

### DEFINITIONS

**Data Protection Legislation:** the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the Isle of Man and then any successor legislation to the GDPR or the Data Protection Act 2018.

**Provider:** Chrystals (as defined in 1.11 of the terms of business.

#### 1. DATA PROTECTION

**1.1** Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 1.1 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

**1.2** The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and the Provider is the data processor (where **Data Controller** and **Data Processor** have the meanings as defined in the Data Protection Legislation). Schedule 1 sets out the scope, nature and purpose of processing by the Provider, the duration of the processing and the types of personal data (as defined in the Data Protection Legislation, **Personal Data**) and categories of Data Subject.

**1.3** Without prejudice to the generality of clause 1.1, the Customer will ensure that it has all

necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Provider for the duration and purposes of this agreement.

**1.4** Without prejudice to the generality of clause 1.1, the Provider shall, in relation to any Personal Data processed in connection with the performance by the Provider of its obligations under this agreement:

**(a)** process that Personal Data only on the written instructions of the Customer unless the Provider is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Provider to process Personal Data (**Applicable Laws**). Where the Provider is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Provider shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Provider from so notifying the Customer;

**(b)** ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

**(c)** ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

**(d)** not transfer any Personal Data outside of the

European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

**(i)** the Customer or the Provider has provided appropriate safeguards in relation to the transfer;

**(ii)** the data subject has enforceable rights and effective legal remedies;

**(iii)** the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

**(iv)** the Provider complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;

**(e)** assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

**(f)** notify the Customer without undue delay on becoming aware of a Personal Data breach;

**(g)** at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the Personal Data; and

**(h)** maintain complete and accurate records and information to demonstrate its compliance with this clause 1.4 (h).

**1.5** The Customer does not consent to the Provider appointing any third party processor of Personal Data under this agreement.

**1.6** Either party may, at any time on not less than 30 days' notice, revise this clause 1.6 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

## **SCHEDULE 1 PROCESSING, PERSONAL DATA AND DATA SUBJECTS**

### **1. PROCESSING BY THE PROVIDER**

#### **1.1 SCOPE**

#### **1.2 NATURE**

#### **1.3 PURPOSE OF PROCESSING**

#### **1.4 DURATION OF THE PROCESSING**

### **2. TYPES OF PERSONAL DATA**

### **3. CATEGORIES OF DATA SUBJECT**