



3 Wrightington Street

Wigan

Lancashire

WN1 2AZ

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TERMS OF ENGAGEMENT

Introduction

We consider that an important part of our relationship with you, our Client, is effective communication. These Terms of Engagement are prepared to ensure that the basic elements of our relationship are clearly set out.

These Terms of Engagement ("Terms") should be read in conjunction with any relevant Letter of Engagement ("Letter") agreed between the parties. T FAZAKERLEY & SON LIMITED provides property services. In these Terms "T FAZAKERLEY AND SON" "us" "we" or "our" means "T FAZAKERLEY AND SON LIMITED" (company registration number 13173418) whose Registered Office is 3 WRIGHTINGTON STREET, WIGAN, WN1 2AZ.

T FAZAKERLEY & SON LIMITED – TERMS AND CONDITIONS OF BUSINESS

1 Interpretation

1.1 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

Our services (“Services”) are detailed in the Letter. If you disagree with any element of the Services, this must be brought to our attention immediately.

Any party may request changes or variations, but this must be agreed in writing by both parties and may be subject to additional fees or other conditions or requirements.

No variation of this Agreement is binding unless agreed in writing between authorised representatives of T Fazakerley and Son Limited and the Client.

2. Fees and payment terms

It is our intention that our fees will be fair and reasonable, in all circumstances, the key elements being;

- The skill, labour, specialist knowledge and responsibility involved in the work;
- The complexity, novelty or difficulty of the matter;
- The time spent;
- The location (in our offices or on site) where the work is undertaken; and
- The amount of money or value involved.

T Fazakerley and Son’s fees (“Fees”) are set out in the Letter.

The fees and expenses due to T Fazakerley and Son under the terms of this Agreement shall be payable by you. In the event of non-payment of our fees, approved expenses and all other payments due to us will become payable personally by the individual officers, partners or directors of the Client organisation. Any holding group, associated or parent companies / firms of the Client organisation will also be liable for the non-payment of all payments due to us as set out in the Agreement.

Where T Fazakerley and Son receive and act upon an implied instruction, either verbally or by email, all Fees and payment terms set out in the Agreement will apply.

Our invoices (whether interim or final) are payable on presentation. Where applicable, fees are due on exchange of contracts. At our discretion, we may agree to the fee being payable on completion; should completion not take place on the planned completion date (or at all) the fee will be due no later than the contractually agreed completion date.

If invoices are not paid within 21 days of presentation, we reserve the right to charge interest on later payments from the date of invoice at 2% per month.

Disputed debt and late payment

A debt is disputed where you believe that the debt in whole or in part is not owed.

Our invoices clearly state that disputed debts must be notified to us within 14 days of receipt of the invoice by email to info@tfazakerleyandson.co.uk or in writing to T Fazakerley & Son, 3 Wrightington Street, Wigan, WN1 2AZ.

T Fazakerley and Son reserves the right to charge you interest both before and after any judgment on any unpaid invoice at the rate of 3% per month over the base rate of The Bank of England from the date payment becomes due until payment is made in accordance with the Agreement. Additionally, under the Late Payment of Commercial Debts (Interest) Act 1998 we reserve the right to claim interest and compensation for debt recovery costs on overdue amounts.

Concerns relating to provision of service by T Fazakerley & Son or other related matters should be raised in accordance with the section of this contract titled "Complaints procedure and dispute resolution".

3. Payments on account

During the course of an instruction we may raise an invoice for payment on account for fees, expenses and other charges incurred up to that point which will be subject to our standard payment terms. Monies paid on account which are not subsequently required for fees, expenses and other charges will be refunded to you within 28 days of the end of the instruction. Our services are detailed in the Letter.

4. Expenses and Third Party Services

There may be expenses that we pay on your behalf. The terms of our retainer are that we might incur necessary expenses without your specific authority. Where expenses are substantial we may ask you for payment on account before we incur them.

Our standard expenses will be charged at the rates shown below:

- Photocopying / Telephone calls / Postage - 5% of total fees;
- Mileage - £0.60 per mile.

Where we instruct third party services on your behalf, including independent advisers, contractors, suppliers and other service providers, they will be advised to raise associated invoices in your name and you will be responsible for settling these amounts directly. Where a service requires payment in advance, such as a planning application, we may request funds from you to cover this cost before proceeding on your behalf.

5. Early termination

In the event the instruction is terminated early, you will be liable for all fees, expenses and other charges incurred up to the point of termination in line with our standard hourly charges or calculated as a pro-rata charge based on the agreed fee, as appropriate, plus VAT as applicable. This does not affect your right to cancel.

6. Conflicts of Interest

T Fazakerley and Son has procedures in place to ensure that appropriate conflicts of interest checks are carried out on every instruction so that any conflicts, or potential conflicts, can be identified and addressed with you as soon as possible.

T Fazakerley and Son and the Client confirm that they are not aware of any personal family or business relationship which exists between the Client, T Fazakerley and Son or any persons/business associated with T Fazakerley and Son that has not otherwise been disclosed. Should you become aware of an actual or potential conflict please bring it to our attention as soon possible.

7. What we expect from you

You warrant that to the best of your knowledge, all information provided by you and/or your advisors is correct.

You must advise T Fazakerley and Son of all material facts relevant to us acting as agent and you must advise us of any unusual or onerous encumbrances, restrictions, including planning restrictions, easements, outgoings, tenure, tenancies, conditions attaching to the property and other relevant matters. We shall, unless otherwise expressly agreed, rely upon all information and data provided to us by you or your legal or other professional advisors.

Our advice is made on the condition that there have been no matters undisclosed which could materially affect our opinion. You also agree to notify T Fazakerley and Son as soon as you become aware of any inaccuracy or change in circumstances during the Agreement which might affect the accuracy of any statement.

Where we are marketing a property for you, under The Consumer Protection from Unfair Trading Regulations (2008) and the Business Protection from Misleading Marketing Regulations Consumer Protection Regulations (2008), we are responsible for any incorrect, incomplete or misleading information distributed in connection with the Property. You warrant that that all information provided directly or you or your professional advisors regarding the Property is complete and correct. Furthermore, you confirm that there are no other material facts known to you relating to the Property which may be relevant to T Fazakerley and Son in carrying out the instructions as agreed. Where appropriate, you undertake to indemnify T Fazakerley and Son and to keep us indemnified against any losses, damage, costs and expenses (including legal fees) arising out of, or by virtue of, your instructions to us. The Client grants to T Fazakerley and Son a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Client to T Fazakerley and Son for the term of the Agreement for the purpose of providing the Services to the Client.

8. Ownership of documents

We follow best practice as set out in the RICS regulation on the ownership of files. Unless otherwise agreed in the Letter, where we are acting as your agent, all documents produced by us or received from third parties during our appointment belong to you. Where we are providing a service and acting as a principal you will be entitled to own all documentation relating to the Services as defined in the Letter. For the avoidance of doubt, unless otherwise agreed in writing, the intellectual property rights contained within all files will remain vested in T Fazakerley & Son as outlined above.

In the event of non-payment of the agreed Fee we reserve the right to retain documents which may otherwise belong to you until such times as settlement is agreed on any outstanding sum due to us.

9. Confidentiality

All work undertaken by us on your behalf and confidential information which comes to us as a result will be maintained in the strictest confidence at all times except where you instruct us to disclose information on your behalf except as provided for in the Proceeds of Crime Act 2002 and corresponding Money Laundering Regulations by which we are bound, by Court Order or where the information is already in the public domain.

10. Storage of Papers and Documents

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 either as a physical or electronic file for not less than six 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.

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 instruction.

11. Health and safety

You are responsible for all health and safety and environmental obligations in accordance with all applicable laws and regulations which may impact directly or indirectly on the appointment of T Fazakerley and Son.

12. Regulation

T Fazakerley and Son is regulated by the Royal Institution of Chartered Surveyors (“RICS”) and is also authorised and regulated by the Financial Conduct Authority (“FCA”) for the purposes of credit broking and insurance mediation activities.

13. Clients’ Money

Clients’ money will be held in the T Fazakerley & Son Clients’ Transfer Account being a non interest bearing account at Nat West Bank plc. This account is operated in accordance with RICS Regulations. We may deduct any charges owing to us from the money held in the clients’ account on your behalf when the balance of the money is released to you in accordance with a statement which will accompany the payment to you.

14. Right to cancel

Business Users

If the Client is a company or is acting in the course of a trade or profession, you shall have no right to cancel this Agreement, except as those expressly prescribed in the Letter. T Fazakerley and Son may, in its sole discretion, enter into good faith discussions with you regarding the cancellation of this Agreement.

Consumers

If you are receiving Services from us as a consumer (i.e. for personal, private reasons) you have a right to cancel within 14 working days (“Cancellation Period”), from the date of this Agreement without giving any reason.

Notice of you exercising your right to cancel must be made before the end of the Cancellation Period either by email to or in writing.

If you cancel this Agreement, you shall pay us an amount representing T Fazakerley and Son expenses as well as the proportion of the Services performed up until the date of cancellation or as otherwise outlined in the Letter.

T Fazakerley & Son’s right to cancel

T Fazakerley & Son may terminate this Agreement by giving you 14 working days' notice without giving any reason.

15. Limitation of liability

T Fazakerley & Son maintains Professional Indemnity Insurance in accordance with the RICS Regulations.

T Fazakerley & Son's total liability to the Client in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Agreement (except for those liabilities which cannot legally be limited) shall not exceed £2 million unless otherwise specified in the Letter.

T Fazakerley & Son shall not be liable for any indirect or consequential loss including: loss of income, loss of revenue, loss of profit, loss of business, loss of anticipated savings or loss of data.

Nothing in this Agreement shall exclude or limit in any way our liability for death or personal injury caused by our negligence, fraud or fraudulent misrepresentation or any other liability which cannot be limited or excluded by law.

16. Anti-corruption

T Fazakerley & Son complies with all relevant UK legislation and regulation relating to anti-bribery and anti-corruption and has procedures in place to ensure compliance with the requirements.

T Fazakerley & Son complies with all applicable anti-slavery and human trafficking laws and regulations

17. Equality and diversity

T Fazakerley & Son is committed to ensuring that it does not discriminate in any way on the grounds of sex, marital status, age, sexual orientation, disability, race, colour, religion, nationality or ethnicity and undertakes to comply with all applicable current UK legislation and regulation in this regard.

18. Money laundering regulations

T Fazakerley & Son complies with all anti money laundering legislation in the UK. Where we are required by law to confirm the identity of our clients, we use a third-party electronic verification system and you may be asked for evidence of your identity to enable these checks to be completed. We will be unable to proceed with the Agreement until this obligation has been met.

19. Assignment

You shall not be entitled to assign, sub-contract or otherwise dispose of your rights or obligations under this Agreement without our prior written consent.

20. Non-waiver

Any failure by us to insist upon the strict performance of any of the terms of this Agreement will not be deemed a waiver of any right of T Fazakerley & Son to insist upon the strict performance of the Terms or exercise any of our rights or remedies.

21. Severability

If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the remainder of the Agreement.

22. Entire agreement

This Agreement constitutes the entire agreement between the parties.

Each party agrees that it 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.

23. Complaints procedure and dispute resolution

T Fazakerley & Son is regulated by the RICS and is registered with relevant ombudsman services. A copy of the T Fazakerley & Son Complaints Procedure is available on the website or can be requested by emailing info@tfazakerleyandson.co.uk. For the avoidance of doubt, all fees raised will remain due unless otherwise confirmed in writing by T Fazakerley & Son.

24. Applicable laws

This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it are subject to English Law. Both parties submit to the exclusive jurisdiction of the English Courts.

25. Data protection

The terms "Controller", "Data Subject", "Processor", "Processing" and "Personal Data" have the meaning set out in the Data Protection Act 2018, or the General Data Protection Regulation (EU) 2016/679 (as applicable) and any other laws relating to the protection of personal data and the privacy of individuals ("Data Protection Legislation") in relation to data that are Processed under this Agreement.

To the extent that either party acts in its capacity as a Controller, the parties shall:

- ensure that they have a legal basis (or a "processing condition" as referred to in Data Protection Legislation) to process any relevant shared Personal Data;
- in respect of the relevant shared Personal Data, ensure that their privacy notices are clear and provide sufficient information to the Data Subjects for them to understand what of their Personal Data the disclosing party is sharing with the receiving party, the circumstances in which it will be shared, the purposes for the data sharing and either the identity of the receiving party or a clear description of the type of organisation that will receive the Personal Data;
- undertake to inform the Data Subjects, in accordance with Data Protection Legislation, of the purposes for which the party will Process Personal Data and provide all of the information necessary to ensure that the Data Subjects understand how their Personal Data will be processed by the receiving party;
- not retain or process the shared Personal Data for longer than is necessary to carry out the relevant purpose ("Purpose") and delete the relevant Personal Data when the Purpose is complete;
- notify the other party as soon as reasonably practicable after becoming aware of a Security Breach (even if such breach has not yet been fully investigated); and (where applicable) handle any Security Breach, in an expeditious and compliant manner.

To the extent that T Fazakerley & Son acts as a Processor, T Fazakerley & Son shall in particular:

- process the Personal Data only to the extent necessary for the purpose of providing the Services and in accordance with any written instructions from the Client and this paragraph;

implement and maintain appropriate technical and organisational measures in accordance with the relevant data protection legislation to ensure a level of security appropriate to the risks that are presented by such Processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data, taking into account the state of the art, the costs of implementation, the nature, scope, context and purposes of Processing and the likelihood and severity of risk in relation to the rights and freedoms of the Data Subjects;

- ensure that any employees or other persons authorised to Process the Personal Data are subject to appropriate obligations of confidentiality;
- not engage any third party to carry out its Processing obligations under this Agreement without letting the Client know and ensuring that such third parties will be subject to Processing obligations equivalent to those set out in this paragraph;
- as soon as reasonably possible and without undue delay notify the Client about any request (including subject access request) or complaint received from Data Subjects without responding to that request (unless authorised to do so by the Client) and assist the Client by technical and organisational measures, insofar as possible, for the fulfilment of the Client's obligations in respect of such requests and complaints;
- notify the Client without undue delay as soon as it becomes aware of any breach in data security;
- maintain appropriate records and information in compliance with Data Protection Legislation and on request by the Client make available such records and information necessary to demonstrate T Fazakerley and Son's compliance with these provisions; and
- on termination or expiry of this Agreement, destroy or return (as the Client directs) all Personal Data in its power, possession or control and delete all existing copies of such data except to the extent T Fazakerley & Son is required to retain a copy the Personal Data by law.

- We will include your details on our client management database and we may use this to send you items of interest from time to time. If you wish to amend or request that we delete the data we hold please email info@tfazakerleyandson.co.uk. You hereby consent to T Fazakerley & Son transferring the relevant Personal Data outside of the European Economic Area, provided that the following conditions are fulfilled:

- o You or T Fazakerley & Son have provided appropriate safeguards in relation to the transfer;
- o the Data Subject has enforceable rights and effective legal remedies;
- o T Fazakerley & Son complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
- o T Fazakerley & Son complies with reasonable instructions notified to it in advance by you with respect to the processing of the Personal Data.

26 General

26.1 Third parties: No one other than a party to the Contract shall have any right to enforce any of its terms.

26.2 Complaints procedure: T Fazakerley & Son Limited is regulated by RICS for the provision of surveying services. This means we agree to uphold the RICS Rules of Conduct for Firms and all other applicable mandatory professional practice requirements of RICS, which can be found at www.rics.org. As a RICS regulated firm we have committed to cooperating with RICS in ensuring compliance with its standards. The firm's nominated RICS Responsible Principal is Jack Sharpe, Director, jack@tfazakerleyandson.co.uk, 01942 242 636

26.3 Time limit for action or proceedings: No action or proceedings whatsoever for any breach of this Contract or arising out of or in connection with this Contract whether in contract, negligence, tort or howsoever shall be commenced against T Fazakerley and Son Limited after the expiry of six (6) years from the date of the last Services performed under the Contract or the date of termination of the Contract, whichever is the earlier.

26.4 Governing law: The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with, the law of England and Wales.

26.5 Jurisdiction: Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter