

FULWELL CAPITAL [“FC”] - TERMS AND CONDITIONS OF BUSINESS [“the Terms”]

1. FORMATION OF CONTRACT

1.1 All quotations, offers and tenders made by FC and all contracts into which it enters are subject to these Terms.

1.2 If there is a conflict between the Terms and any term of the Letter of Engagement [“the Letter”] issued by FC, the term of the Letter will prevail.

1.3 If any statement or representation has been made to the Client by FC [other than in the documents enclosed with FC’s quotation, offer or tender] upon which the Client wishes to rely, it shall only be entitled to do so if the statement or representation is attached to or endorsed upon the Client’s response to the Letter and only then if FC subsequently confirms in writing to the Client that the Client is entitled to rely on the statement or representation.

2. OBLIGATIONS OF FC

2.1 FC shall provide the services as set out in the Letter or as otherwise agreed between the parties in writing.

2.2 FC shall provide those services using all reasonable skill and care and in accordance with the Client’s reasonable instructions so long as the same do not conflict with the Letter.

2.3 FC has no obligation to provide services beyond the scope of the work defined in the Letter or as otherwise agreed by the parties in writing. Specifically, FC shall incur no liability in respect of any of the following matters:-

2.3.1 advice concerning the condition of any property unless the Letter specifically refers to a formal survey of condition, or

2.3.2 advice as to the value of a property unless the Letter refers to a formal valuation.

2.4 FC shall use its reasonable endeavours to meet any performance timetable specified by the Client but shall have no obligation to do so unless specifically agreed between the parties in writing.

3. OBLIGATIONS OF CLIENT

3.1 The Client shall provide FC with such information as it may reasonably require for the performance of the services and shall cooperate with FC in regard to all matters pertaining to the delivery of those services.

4. FEES AND PAYMENT

4.1 Fees and expenses due to FC together with the timing of payments shall be as stipulated in the Letter.

4.2 If the Client fails to pay any invoice submitted by FC by its due date FC shall be entitled to charge interest on any amount outstanding at the rate of 3% per annum above the base rate of Barclays Bank plc from time to time.

4.3 If the contract is terminated prior to the completion of performance of the services then FC shall, without prejudice to any other rights or remedies it may have under the contract or the general law, be entitled to the payment of a fee proportionate to that part of the services performed as at the time of termination.

5. CONFIDENTIALITY

5.1 ‘Confidential Information’ means any and all information, data and material of a technical or business nature or relating in any way to the business, services, customers and personnel of the Client which FC may receive or obtain in connection with the provision of the services and which is expressly identified as confidential or which ought reasonably to be regarded as confidential.

5.2 FC will keep secret and strictly confidential and shall not disclose Confidential Information [as defined above] to any third party without the Client’s prior written consent, provided that :-

5.2.1 FC shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the commencement of performance of the services or was independently developed or acquired otherwise than from the performance of the services;

5.2.2 the provisions of this clause shall not apply to Confidential Information which:-

[a] is in or enters the public domain other than by breach of the contract between FC and the Client; or

[b] is obtained from a third party lawfully authorised to disclose such information; or

[c] is authorised for release by the prior written consent of the Client.

5.2 Nothing in this clause shall prevent FC from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law.

6. LIABILITY

6.1 Save in respect of liability for death or personal injury resulting from its negligence or for fraud or fraudulent misrepresentation, FC shall not be liable to the Client, whether in contract or tort or for breach of statutory duty or otherwise, for any loss of profit, loss of revenue or loss of anticipated savings, or for any indirect, special or consequential loss arising in connection with the provision of the services.

6.2 FC’s total liability to the Client in respect of all losses arising in connection with the provision of the services, whether in contract, tort, breach of statutory duty, or otherwise, shall not exceed £5 million.

6.3 FC shall incur no liability for the consequences of failure to provide the services or for delay in performance in circumstances in which the failure or delay is attributable to failure on the part of the Client to provide information which FC required to be delivered promptly or where the information supplied is inaccurate or incomplete.

6.4 Unless specifically agreed in writing by FC, FC shall owe no duty of care and incur no liability to anyone other than the Client in the performance of the services.

7. INDEMNITY

7.1 The Client shall indemnify and keep indemnified FC against any and all claims, demands, liabilities, losses, damages, proceedings, costs and expenses suffered or incurred as a result of any breach of contract by the Client.

8. FORCE MAJEURE

8.1 FC shall be under no liability for any failure to perform any of its obligations under the contract if and to the extent that the failure is caused by act of God, governmental restriction, condition or control or by reason of any act done or not done pursuant to a trade dispute or any other matter outside the control of FC.

9. TERMINATION

9.1 Either party may terminate the contract forthwith by notice in writing if:-

9.1.1 the other party is in breach of the contract and fails to remedy the breach [if capable of remedy] within 30 days of written notice of the breach; or

9.1.2 the other party becomes insolvent;

9.1.3 a conflict of interest arises which pursuant to any applicable professional code of conduct prevents FC from continuing to perform the services for the Client

9.2 Termination of the contract for any reason shall be without prejudice to any right or remedy of either party which may have accrued prior to such termination.

9.3 Notwithstanding termination of the contract the following provisions of these conditions shall continue in full force and effect: Clause 5 [Confidentiality], Clause 6 [Liability], and Clause 7 [Indemnity].

10. ASSIGNMENT

10.1 FC shall not assign or sub-contract any of its rights or obligations under the contract without the prior written consent of the Client.

11. NOTICES

11.1 Any notice or other communication under or in connection with this contract shall be in writing in the English language and be delivered personally or sent by pre-paid registered or recorded delivery post or by fax or email to the party intended to receive the notice or communication at its address as referred to in the Letter or at such other address as that party may specify by notice in writing to the party giving the notice.

12. SEVERABILITY

12.1 In the event that any provision of the Terms shall be nullified or made void by any statute, regulation or order or by the decision or order of any Court having jurisdiction, the remaining provisions shall remain of full force and effect.

13. THIRD PARTIES

13.1 A person who is not a party to the contract shall not have any right to enforce its terms.

14. PUBLICITY

14.1 Neither FC nor the Client may publicise any information to the media concerning the services to be performed pursuant to the contract without the prior written consent of the other.

15. COMPLAINTS

15.1 FC operates a formal complaints procedure details of which it will supply to the Client on request.

16. MONEY LAUNDERING REGULATIONS

16.1 Legislation obliges FC to follow mandatory reporting, record-keeping and client identification procedures and FC may need the Client to produce identification documents to ensure compliance with the Regulations. If such identification is requested the Client will provide the same promptly to enable FC to commence performance of its services.

17. DATA PROTECTION

17.1 FC will comply with the Data Protection Act 1998 [as amended] in relation to the personal data of the Client.

18. GOVERNING LAW

18.1 Any disputes arising under or in any way connected with the subject matter of the contract [whether of a contractual or tortious nature or otherwise] shall be subject to English law and to the exclusive jurisdiction of the English court.