

## **SHOOSMITHS (PROPERTY DIRECT) TERMS & CONDITIONS PDR.2009**

### **CLIENT AGREEMENT**

1. Our services will be provided in accordance with our initial letter to you and these Terms and Conditions, which should be read in conjunction with the letter confirming your instructions. Our agreement with you is subject to English Law and the courts of England & Wales shall have exclusive jurisdiction.
2. A Case Handler will be appointed to handle your transaction who will be supervised by a Conveyancer. These staff are not necessarily solicitors, but they are trained to advise you on the conveyancing process and the governing law for residential property. They will, in turn, be supervised by partners of Shoosmiths, who are Solicitors. We reserve the right to delegate tasks to suitably experienced staff to enable your work to be carried out in a timely and cost effective manner. The partners and staff in Shoosmiths' conveyancing department are specialists qualified to advise you in property law.
3. Our hours of business are 9am to 5.30pm Monday to Friday inclusive. The Case Handler responsible for your transaction will be part of a team, who are collectively responsible to staff their team throughout our hours of business. We do not take calls outside of our hours of business and we do not operate an out of hours answer phone service.
4. If you have instructed us following the referral of an estate agent, broker, house builder or similar introducer, our client relationship is with you and not the referrer. Any financial relationship with the referrer will be set out in our introductory letter. You are free to choose your conveyancing firm. We work to serve your best interests by providing independent and confidential legal advice and you should feel free to raise questions on any aspect.
5. You should consult other suitably qualified professionals for advice on non-legal matters such as the condition of the property, its services and market value, environmental issues, or for specific financial, investment or tax advice (other than Stamp Duty Land Tax). We cannot advise you on the relative merits of your chosen mortgage or insurance products or whether the terms of those products are representative of those currently available in the market. These matters should be discussed with a Financial Advisor if you have any concerns.

### **YOUR RESPONSIBILITIES**

6. Where a property is held jointly or is to be purchased jointly, we may accept and act on instructions from any joint owner or joint purchaser of the property and you agree to be bound by those instructions. Where a property is to be purchased by a company we will accept instructions from an authorised Director or the Company Secretary.
7. You should carry out your responsibilities in accordance with this agreement and as we request of you from time to time. You should bring to our attention immediately information or any discovery which you consider to be inconsistent with our understanding of your transaction, or any change in your circumstances, which may have a bearing on our acting for you or our provision of advice. It is particularly important that you provide us with instructions, information and requested forms and documents in a timely manner and that all information provided by you is true and accurate and not misleading to the best of your knowledge, information and belief. We cannot be held liable for any loss or damage arising from information or for inaccuracy or other defect in any document supplied by you

### **FEES**

8. Wherever possible, our conveyancing work is carried out on the basis of a fixed fee. Within this fixed fee we include all conventional work associated with a typical conveyancing transaction. Occasionally, our clients require other legal services to assist them in their transaction. Wherever possible we will endeavour to provide you with a fixed fee for these additional legal services before undertaking these services on your behalf. Leasehold transactions (which include properties held jointly with Housing Associations) attract a supplemental fee due to the extra work involved which is set out on our fee illustration. A schedule of our typical prescribed additional charges is set out in paragraph 15 of these Terms and Conditions. The schedule is for illustrative purposes only and is not exhaustive.
9. Wherever possible, the first transaction in any related series that we carry out for you is offered on the basis of a 'no sale, no fee' pledge. We reserve the right to charge a reasonable fee according to the time spent for subsequent transactions on which we are instructed, whether or not the subsequent transaction proceeds to completion.
10. Mortgage lenders need specific work carried out before granting or redeeming a mortgage. Whilst this work is carried out for their benefit, they require you to be responsible for the fees for this work. Our fees for undertaking this work will be set out on our fee illustration. We have a duty to fully reveal to your lender all relevant facts about a purchase and mortgage. This may include any differences between your application and information we receive during the transaction and any cashbacks or incentives that the seller is offering to you. In the event that you refuse permission to disclose this information we will no longer be able to act for you as there will be a conflict of interest.
11. Should you require additional legal services which need us to refer you to another department within Shoosmiths then that department will confirm its own terms and conditions and basis for charging you. There will be no allowance for their time within our conveyancing quotation.
12. Value Added Tax (VAT) will be added to our fees at the prevailing rate. The rate is currently 15%.
13. Any fee illustration provided to you by us is based upon available information at the time of provision. It may make reference to payments made to third parties on your behalf in the course of your transaction. These may be significant, including Stamp Duty Land Tax, Land Registration Fees, local authority and other searches. It is not always possible to be aware at the outset of all such payments.

14. Any estimate given for additional work to be carried out is not intended to be fixed unless it is expressly stated as such. In the absence of such a statement it will be our best estimate of likely cost based upon the facts then known.

#### **ADDITIONAL CHARGES**

15. Deed of Covenant; Complex Statutory Declarations; Simple Declaration of Trust; Power of Attorney; or Assignment of life policy between joint holders/surrender = £95 to £199. Dealing with third party lawyers in matrimonial dispute; Additional set of contracts in Contract Race; Transfer of business overdraft; legal aid charge or other secured loan; Deed of Postponement or Deed of Guarantee = £199. Transfer of Superior Freehold title in conjunction with leasehold sale or purchase; or Transfer of Equity or Deed of Gift = £299. Auction Contract package preparation or review = 50% of standard fee in advance of auction, balancing 50% payable following successful exchange of contracts at auction. Additional work to cover formalities of a purchase by a company = to £150

#### **WHEN MONEY IS REQUIRED**

16. We may ask you to make a payment on account of disbursements. If you fail to do so, we may cease to progress your transaction until payment is received.
17. Payments may be made by credit card for initial searches only. A credit card charge of 1.19% will be added to the payment taken. Credit card payments cannot be made for purchase money balances or stamp duty land tax.
18. Money paid to us in advance will be held in a client account separately from the firm's own money, subject to our right to transfer and use the same in payment of our fees and expenses. Whilst we always use reasonable endeavours to ensure client money held by us is invested in appropriate banks or other financial institutions, we do not accept any liability for any losses or associated costs which may arise as a result of any failure, restructuring or insolvency of any financial institution used.
19. You agree to our not paying interest in relation to funds held as part of this transaction, where the level of funds or time held make it uneconomic to calculate or pay. For longer periods and more substantial sums held, a payment in lieu of interest will be paid in accordance with the provisions set out in the Solicitors' Accounts Rules
20. If money is received and needs to be returned, we reserve the right to return the money to the same account from which it came. In no circumstances will we agree to transfer money to you to an overseas account, nor will we agree to transfer funds to a third party. We reserve the right to retain any nominal balance otherwise due to you to cover administration charges in dealing with your transaction where we consider it to be uneconomic to return.
21. We will not accept payments from anyone other than our clients or their lender. It is the firm's policy not to accept cash. In the case of corporate clients, payments must be received from the company bank account. Payments from the personal accounts of Directors or the Company Secretary will not be accepted.
22. Where monies are received through a bank transfer system, we reserve the right not to use such monies until we have sufficient information to identify the source of funds and allocate the payment to a client and a specific matter.
23. Where money is required from you it is essential that this is cleared in our client account the day before we are required to use it. We do not recommend payment of substantial sums by personal cheque because of the uncertainty on clearance.
24. Any mortgage advance will be requested by us for the working day before the anticipated completion date to give us the best opportunity to send out money before a contract deadline. Any interest charged by your lender from the date of release of funds to us will be your responsibility. We cannot be liable for any delay or consequential loss caused by any delay or funds being uncleared on completion.
25. Occasionally the timescale between exchange of contracts and completion can be very tight, even from time to time, on the same day, perhaps due to pressure in a chain of transactions. In such situations, and because your lender will require five working days notice to release funds to us, we may need to request funds speculating on the proposed completion date, in order to achieve your target date. Where we request funds on such a speculative basis for your proposed move, then you alone will be responsible for any resulting administrative and interest costs.
26. On a conventional conveyancing transaction our fees become due from exchange of contracts (or completion if no exchange necessary).
27. Any invoices outstanding at completion will attract interest from the date of delivery at the rate payable on Judgement debts (currently 8% per annum). This will be charged on a daily basis.
28. When we receive instructions from, or on behalf of, more than one person or company to deal with any particular matter, each person or company for whom we are acting will be separately responsible for payment of the full amount of our fees and expenses.
29. Money held by us on your behalf may be taken in payment or part payment of our invoices whether overdue or not. The law also 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 costs are 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.
30. Unless otherwise agreed you remain liable for payment of expenses, whatever the outcome of your transaction.

31. We will in each case deliver a VAT invoice, but this must by law, be addressed to the client for whom we have performed the service. Where a third party is to pay our fees the third party will not usually be able to recover the VAT element.

#### **YOUR AGREEMENT TO INDEMNIFY US**

32. You agree to indemnify us against any liability or expense, which we are legally obliged to pay or incur as a result of acting for you.

#### **FINANCIAL SERVICES AND INSURANCE MEDIATION SERVICES**

33. We are not authorised under the Financial Services and Markets Act 2000 to provide investment advice but we are able in certain circumstances to offer a limited range of investment services to clients because we are members of the Law Society (a designated professional body). We can provide these investment services if they are an incidental part of the professional services we have been engaged to provide. Whilst the Law Society is a designated professional body, responsibility for regulation and complaints handling are handled by The Solicitors Regulation Authority and The Legal Complaints Service.
34. We are not authorised by the Financial Services Authority. However we are included on the register maintained by the Financial Services Authority so that we can carry on insurance mediation activity, which is broadly the advising on, selling and administration of insurance contracts. This part of our business, including arrangements for complaints or redress if something goes wrong, is regulated by The Solicitors Regulation Authority. The register can be accessed via the Financial Services Authority website at [www.fsa.gov.uk/register](http://www.fsa.gov.uk/register)
35. On occasion, where title issues are identified on a property transaction which are capable of remedy with title insurance, and this solution would generally be recognised as acceptable to an institutional lender, then we reserve the right under our 'no sale no fee' and 'fixed fee' proposition to recommend what we believe to be the most expedient and cost effective solution, using title insurance as appropriate, to deal with the identified title defect
36. If we believe it is advisable, during the course of your transaction, for defective title insurance to be put into place, we generally obtain our policies from preferred reputable providers, where they are able to provide suitable cover. We are not contractually obliged to conduct business in this way. We may receive a commission payment or charge a fee for producing the policy, depending on the provider, to cover our administrative costs in obtaining the policy which we will apprise you of as appropriate

#### **CONVEYANCING SEARCHES AND INSURANCE**

37. We have special arrangements with a number of reputable commercial search organisations for the provision of our conveyancing search information. Where you have been introduced to us by an estate agent, that introducer may request that we use their preferred search companies. You are not obliged to use their preferred provider.
38. In the absence of any specific request, we will assume that you are content for us to undertake our search enquiries on your behalf with such organisations that we consider appropriate. In the event that any third party search provider's search results prove to be inaccurate, your recourse would be via their insurance cover, and we will not accept any liability for the information provided.

#### **LIABILITY**

39. All reasonable skill and care will be used in the provision of our services to you. We cannot accept responsibility for changes in the law or its interpretation that occur subsequent to our advice being delivered to you or which could not reasonably be known by us at the time. We will not be liable for any consequential, special, indirect or exemplary damages, costs or losses or any damages, costs or losses attributable to lost profits or opportunities. We only limit our liability to the extent the law allows.
40. Advice given by us in the course of a matter is provided to you and you alone and only in relation to the particular circumstances of your instructions. We do not accept any liability for the use of any such advice by any other person without our express prior written consent. The Contracts (Rights of Third Parties) Act 1999 is excluded from this agreement.
41. Where you instruct other professional advisers in conjunction with your transaction, you agree that our position in the event of a claim will not be adversely prejudiced by any arrangement or limitation agreed with another of your professional advisers in respect of their potential liability.

#### **COPYRIGHT REMAINS WITH US**

42. We retain copyright in documents prepared by us but where documents are prepared for your use, we grant you an irrevocable, royalty free licence to use those documents for the purpose for which they were prepared.

#### **TERMINATION AND SUSPENSION OF SERVICE**

43. You may terminate your instructions to us in writing at any time. We may decide to stop acting for you where we have reasonable grounds to do so. In this event an explanation of the reasons will be provided. We reserve the right to suspend or terminate our service if any of our invoices are unpaid or any sums requested to be paid on account are not paid in accordance with our Terms & Conditions.

44. If our instructions are terminated we are entitled by law to retain your papers and documents if there is any money owing to us or there is any liability outstanding for which we remain without recourse. In the event of termination a final invoice for any outstanding expenses will be delivered which is payable upon receipt.

#### **STORAGE AND DESTRUCTION OF PAPERS & DOCUMENTS**

45. Your file of papers on completed transactions will be retained for a minimum of six years on the understanding that we have your authority to destroy it after this period of time. This does not apply to documents or deeds deposited with us for safe custody. We reserve the right to destroy correspondence files without notice where your transaction aborted prior to exchange of contracts (or completion if no exchange of contracts necessary).
46. We do not normally charge you for retrieving papers or documents from storage if it is in relation to continuing or new instructions. However we reserve the right to make a charge, other than in such circumstances, based upon time spent producing stored papers or documents together with time spent reading, corresponding or other work necessary to comply with your instructions. We also reserve the right to make a reasonable charge for copies of correspondence or documents requested of us once we have closed and stored your file.

#### **BSI QUALITY ASSURANCE**

47. Shoosmiths are certificated to the International Quality Standard BS EN ISO 9001. To maintain this certification, we need to disclose some of our files to outside assessors from the British Standards Institution so that they can check that quality control procedures are being followed. This process is confidential and the assessors are not permitted to take copies of files or disclose the contents. The assessors' role is solely designed to ensure that our procedures are being followed. Please let us know immediately if you would object to your file being disclosed to the assessors as part of this process.

#### **DATA PROTECTION**

48. We will need to store personal information about you in order to provide you with legal services, and may disclose that information to relevant third parties to enable us to fulfil your instructions. Our use of this information is subject to your instructions, the Data Protection Act 1998 and our duty of confidentiality. You have a right of access to the personal data we hold about you. We will also keep some of your personal information so that we can contact you with legal updates and information about our services, which may be of interest to you. This information will not be passed to any third party for marketing purposes. If you do not wish to receive updates and information about our services, then please provide us with written instructions to this effect.

#### **MONEY LAUNDERING PREVENTION**

49. Evidence of a new client's identity will be required in accordance with the Money Laundering Regulations. We will also require evidence of the identity of any third party upon whom we are relying to successfully implement your instructions. In addition we will usually need to make enquiries regarding the purpose of your transaction and the source of any funds being used. We reserve the right to make electronic checks as part of our identity checks and agreement with these terms will be taken as your consent to any such checks being made.
50. If we have a suspicion of money laundering we are required to disclose this to the Serious Organised Crime Agency, overriding our duties of confidentiality to you. In the event of such a disclosure being made we do not accept any liability for consequential damages arising from compliance with the appropriate legislation.

#### **COMMENTS ON OUR SERVICE**

51. We aim to provide you with a high quality service. If you believe that the service could be improved or you are dissatisfied with any aspect then please raise this matter with your supporting Case Handler or Conveyancer in the first instance. If you feel that this is inappropriate or they fail to resolve your concerns then please raise the matter with their supervising Partner. In the event that you wish to take matters further then you should write to David Parton, the Partner with responsibility for the department, at Shoosmiths, The Lakes, Bedford Road, Northampton NN4 7PD.

#### **CONFIDENTIALITY**

52. Information received as a result of your instructions will be treated in confidence in accordance with our professional conduct rules. However we will be entitled to disclose confidential information to our insurers, our auditors, and any other third party to the extent required by law or regulation, or where we consider it appropriate to ensure the successful implementation of your instructions. This term will continue in force beyond the termination or expiry of this agreement.
53. Because of the unregulated nature of the internet, any e-mail received could conceivably be copied, read and tampered with. Though the chance of interception may be small, the risk could be great. By accepting our terms and conditions, with e-mail as a communication method of communication between us, you agree that risk of loss of confidentiality or third party tampering is yours.

#### **FORCE MAJEURE**

54. We will not accept any liability for any delay or failure to fulfil our obligations under this contract as a result of causes beyond our reasonable control. Such causes include but are not limited to fire, floods, acts of God, acts and regulations of any government or authority, war, riot, strike, lockouts and industrial disputes.