

Bagshaw & Hardy Limited - Terms and conditions of business

The terms and conditions set out below (the “**Conditions**”) govern your relationship with Bagshaw & Hardy Limited (“**we**” or “**us**” or “**our**”).

All orders placed with us via our website and accepted by us will be subject to the Conditions, which will form part of and will govern the contract between you and us. No variation of the Conditions will be accepted unless they are agreed in writing and signed by a person authorised by us. We will not accept the inclusion of any alternative terms by you, which conflict with, alter or add to the Conditions.

1. **Definitions**

1.1. In the Conditions, the following definitions apply:

Definition	Meaning
Booking Confirmation	has the meaning given to it in clause 3.2.
Business Day	a day other than a Saturday, Sunday or bank or public holiday in England
Cancellation Period	has the meaning given to it in clause 9.1
Contract	the agreement between you and us for the supply and purchase of Services and the resulting Deliverables incorporating the Conditions and the Order
Deliverables	the relevant photographs, and/or floor plan(s) and/or EPC and/or video (as applicable) set out on the Order and that we are to upload to our website for you to download as a result of the Services supplied
Download Period	has the meaning giving to it in clause 10.1
EPC	Energy Performance Certificate for a property
Force Majeure	an event or sequence of events beyond our reasonable control preventing or delaying us from performing our obligations under the Contract including an act of God, fire, flood, lightning, earthquake or other natural disaster, war, riot or civil unrest, interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service, or material required for performance of the Contract, strike, lockout or boycott or other industrial action including strikes or other industrial disputes involving us or our suppliers' workforce
Intellectual Property Rights	copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in goodwill, rights in confidential information, rights to sue for passing off, domain names and all similar rights and, in each case: <ul style="list-style-type: none">(a) whether registered or not;(b) including any applications to protect or register such rights;(c) including all renewals and extensions of such rights or

Definition	Meaning
	applications;
	(d) whether vested, contingent or future;
	(e) to which we are or may be entitled, and
	(f) in whichever part of the world existing
Order	the order for the Services and the resulting Deliverables from us placed by you using the booking form on our website
Point of Contact	the person you name as the point of contact on the Order
Services	the services set out on the Order and to be performed by us for you
Storage Period	has the meaning giving to it in clause 10.2
VAT	value added tax under the Value Added Taxes Act 1994 and any other similar sale or fiscal tax applying to the sale of the Services and the resulting Deliverables
you or your	the person who purchases the Services and the resulting Deliverables from us and whose details are set out on the Order

1.2. In these Conditions, unless the context requires otherwise:

- (1) any clause or other headings in these Conditions is included for convenience only and shall have no effect on the interpretation of the Conditions;
- (2) a reference to a 'party' includes that party's personal representatives, successors and permitted assigns;
- (3) a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;
- (4) a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;
- (5) a reference to a gender includes each other gender;
- (6) words in the singular include the plural and vice versa;
- (7) any words that follow 'include', 'includes' 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- (8) a reference to 'writing' or 'written' includes email and messages sent via the notes section within the password protected client area of our website;

- (9) a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time and includes all subordinate legislation made under that legislation.

2. **Name of supplier**

Bagshaw & Hardy Limited, a company incorporated in England and Wales with registered company number 08573088 and whose registered office is at 271 High Street, Berkhamsted, Herts, HP4 1AA, shall be supplying the services to you.

3. **Acceptance of your Order**

- 3.1. Upon receipt of your Order, we will call the Point of Contact to arrange a date and time to visit the location set out in your Order at which the Services are to be performed. If we receive your Order before 5 pm on a Business Day, we will endeavour to make our call on that day. If we receive your Order after 5 pm on a Business Day, or at any time on a day which is not a Business Day, we will endeavour to make the call on the next Business Day following receipt of your Order. We will only make three attempts to call the Point of Contact and if we are unable to make contact with the person, we will be unable to accept your Order.
- 3.2. Your Order will only be accepted by us when we send to you an email confirming that your Order has been booked in by us (the "**Booking Confirmation**"). Until we have sent the Booking Confirmation, there will not be a binding obligation between you and us. Any information on our website, or your filling in details or clicking any button or icon indicating you are making an Order does not, and is not intended to, constitute a binding agreement between you and us. Only on our sending the Booking Confirmation will we be entering into a binding Contract.

4. **What is to be provided to you by us**

- 4.1. We and you have agreed that we will supply the Services and the Deliverables to you.
- 4.2. We warrant to you that:
- (1) the Services will be supplied with reasonable care and skill;
 - (2) subject to clause 4.3, the Deliverables will be of satisfactory quality and will be fit to use in marketing the property set out on the Order for sale or rent; and
 - (3) in the case of floor plans, such floor plans will be drawn and measured in compliance with the RICS Code of Measuring Practice 6th edition published by the Royal Institution of Chartered Surveyors.
- 4.3. Whilst we warrant to you that the Deliverables will be of satisfactory quality and will be fit to use in marketing the property set out on the Order for sale or rent, it is your responsibility to ensure that you comply with all statutory obligations in relation to the sale or renting out of property, including the Property Misdescriptions Act 1991 and the Property Misdescriptions (Specified Matters) Order 1992 and we will not be liable to you in relation to any false or misleading information about specified aspects of land or property that are offered for sale or rent.
- 4.4. We shall, at our option, remedy, re-perform or refund the Services that do not comply with clause 4.2, provided that:
- (1) you give us notice in writing not later than five Business Days from the date

we upload the Deliverables to our website for you to download in the case of defects discoverable on viewing the Deliverables; and

- (2) such notice specifies that some or all of the Services or Deliverables do not comply with clause 4.2 and identifies in sufficient detail the nature and extent of the defects; and
- (3) you give us a reasonable opportunity to examine the claim of the defective Services and/or Deliverables.

4.5. The provisions of these Conditions shall apply to any Services and/or Deliverables that are remedied or re-performed with effect from performance of the remedied or re-performed Services and/or Deliverables.

4.6. Except as set out in this clause 4:

- (1) we give no warranties and make no representations in relation to the Services and/or the Deliverables; and
- (2) we shall have no liability for their failure to comply with the warranty in clause 4.2,

and all warranties and conditions (including the conditions implied by sections 12 -16 of the Supply of Goods and Services Act 1982), whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.

5. **Price**

5.1. The price for the Services is as stated on the price guide in the client area of our website. The price is exclusive of VAT (or equivalent sales tax).

5.2. You shall pay any applicable VAT to us on receipt of a valid VAT invoice.

6. **Payment**

6.1. We shall invoice you for the Services and the Deliverables at the end of each month.

6.2. You shall pay all invoices:

- (1) in full without deduction or set-off, in cleared funds within 30 days of the date of each invoice; and
- (2) to the bank account nominated by us.

6.3. Time of payment is of the essence. Where any sums due under the Contract are not paid in full by the due date:

- (1) we may, without limiting our other rights, charge interest on such sums in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 or, in circumstances where that act does not apply, we may charge interest at 8% a year above the base rate of the Bank of England from time to time in force, and
- (2) interest shall accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.

7. **Credit limit**

We may set and vary credit limits from time to time and withhold all further supplies if you exceed such credit limit.

8. **Performance**

8.1. An Order shall specify where the Services are to be performed and you shall make such location available for us so that we are able to make the Services available to be performed on the date and time specified in the Booking Confirmation.

8.2. The Services shall be deemed performed on completion of the performance of the Services as specified in the Order and when we have uploaded the relevant Deliverables to the client area of our website for you to download (see "**Accessing the Deliverables**" section below for further information).

8.3. Our aim is to perform the Services:

(1) (in the case of the Services and the Deliverables comprising EPCs, photographs and/or floor plans of a property) by 5 pm on the next Business Day after we have visited the property; or

(2) (in the case of the Services and the Deliverables comprising videos of a property) within two Business Days of us having visited the property.

However, whilst we aim to perform the Services on time, it is not always possible to do so, for example where delay is caused by weather conditions or circumstances which are outside of our control and so any timescales are approximate only. If we are unable to perform the Services within the timescales that we aim for, we will complete the work as soon as we reasonably can.

8.4. We shall not be liable for any delay in or failure of performance caused by:

(1) your failure to:

(a) make the location for performance of Services available;

(b) prepare the location in accordance with our instructions; or

(c) provide us with adequate instructions to enable us to perform the Services;

(2) Force Majeure;

(3) the fact that a photograph or video is taken on a day on which the weather is not sunny with clear blue sky.

9. **Cancellation rights**

9.1. You can cancel your Order free of charge by contacting us in writing at any time before 5 pm on the Business Day before we are due to supply the Services (the "**Cancellation Period**").

9.2. If you cancel your Order after the Cancellation Period, we may charge you 50% of the price for the Services as stated on the price guide in the client area of our website plus any VAT.

10. **Accessing the Deliverables**

10.1. We will upload the Deliverables to the password protected client area of our website

and they will be available for you to download for a period of one month following the date that we upload the Deliverables (the "**Download Period**").

- 10.2. If you fail to download the Deliverables within Download Period, do not worry as we will continue to store them for a further 11 months (the "**Storage Period**"). We can retrieve the Deliverables for you on reasonable notice in writing during the Storage Period, provided you pay our retrieval fees.
- 10.3. Whilst we allow you to access the password protected client area of our website, we do not guarantee that it, or any content on it, will always be available or be uninterrupted. Access to our website is permitted on a temporary basis. We may suspend, withdraw or discontinue or change all or any part of our site without notice. We will not be liable to you if for any reason our website is unavailable at any time for any period.
- 10.4. You are responsible for making all arrangements necessary for you to have access to our website. You are also responsible for ensuring that all persons who access our website through your Internet connection are aware of these terms, and that they comply with them.

11. **Your obligations**

- 11.1. You shall:
 - (1) ensure that the terms of the Order and any information you provide is complete and accurate;
 - (2) promptly inform us of any changes to your Order and at least 48 hours before the date that we are due to perform the Services;
 - (3) co-operate with us in all matters relating to the Services;
 - (4) provide for us, our agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the location for performance of the Services as reasonably required by us or any of our agents, subcontractors, consultants or employees;
 - (5) provide, in a timely manner, such information as we may reasonably require, and ensure that it is accurate in all material respects; and
 - (6) ensure that you comply with all statutory obligations in relation to the sale or renting out of land or property, including the Property Misdescriptions Act 1991 and the Property Misdescriptions (Specified Matters) Order 1992 when using the Deliverables.
- 11.2. You shall not, without our prior written consent, at any time from the date of the Booking Confirmation to the expiry of 12 months (such 12 month period shall commence on the day that we upload the last of the Deliverables to our website), solicit or entice away from us or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of us in the provision of the Services.
- 11.3. You agree that:
 - (1) if you breach the terms of clause 11.2, you will pay to us on demand, as liquidated damages, a sum equivalent to:
 - (a) (in the case of an employee) six months of the employee's gross salary; and

- (b) (in the case of a consultant or sub-contractor) six months of the consultant's or subcontractor's gross fees including any VAT.
 - (2) the liquidated damages payment in clause 11.3.(1) represents a genuine pre-estimate of our loss and does not impose a detriment on you which is disproportionate to our legitimate interests in the enforcement of clause 11.2
- 11.4. You agree to indemnify us, and keep us indemnified, from and against any losses, damages, liability, costs, (including legal fees) and expenses incurred by us as a result of or in connection with your breach of any of your obligations under the Contract.

12. **Intellectual Property and your use of the Deliverables**

- 12.1. All Intellectual Property Rights in the Deliverables, or arising out of or in connection with the Services, shall be owned by us.
- 12.2. So far as we are able to, and provided that you have paid our invoice(s) in full, we grant to you, a licence to use all Intellectual Property Rights in the Deliverables, subject to the following conditions:
 - (1) **Exclusivity:** the licence is non-exclusive;
 - (2) **Transferability:** the licence is non-transferable and cannot be sublicensed
 - (3) **Territory:** the licence only relates to the use of the Intellectual Property Rights in the United Kingdom
 - (4) **Purpose:** the Deliverables may only be used for the purpose of marketing the property set out on the Order and subject to other restrictions on use in clause 12.3 below.
- 12.3. Your rights to use the Deliverables and the Intellectual Property Rights in the Deliverables does not permit you to:
 - (1) licence, sell or otherwise deal in or encumber the Deliverables or the Intellectual Property Rights in the Deliverables;
 - (2) translate, adapt, make any modifications, additions or enhancements to the Deliverables or the Intellectual Property Rights in the Deliverables (or any part of them);
 - (3) make the Deliverables or the Intellectual Property Rights in the Deliverables available to any third party or allow or permit a third party to do so.
- 12.4. You acknowledge that, in respect of any third party Intellectual Property Rights contained within the Deliverables, your use of such Intellectual Property Rights is conditional on us obtaining a written licence from the relevant licensor on such terms as will entitle us to licence such rights to you.
- 12.5. We may, without prejudice to any other rights and remedies, by notice in writing to you immediately terminate this licence if you are in material or persistent breach of any of your obligations under the Contract and if that breach is capable of remedy and you have failed to remedy that breach within five days after receiving written notice requiring you to remedy that breach.

13. **Limitation of liability**

- 13.1. Notwithstanding any other provision in the Contract, our liability shall not be limited in

any way in respect of the following:

- (1) death or personal injury caused by negligence;
- (2) fraud or fraudulent misrepresentation;
- (3) any other losses which cannot be excluded or limited by applicable law.

13.2. Subject to clause 13.1, our total liability shall not exceed the sum that you have paid to us under the Contract.

13.3. Subject to clause 13.1, we shall not be liable for any of the following (whether direct or indirect):

- (1) loss of profit;
- (2) loss of use;
- (3) loss of production;
- (4) loss of contract;
- (5) loss of opportunity;
- (6) loss of savings, discount or rebate (whether actual or anticipated);
- (7) harm to reputation or loss of goodwill.

14. **Force Majeure**

14.1. We shall not be liable if delayed or prevented from performing our obligations due to Force Majeure, provided that we:

- (1) promptly notify you of the Force Majeure event and its expected duration;
and
- (2) use our reasonable endeavours to minimise the effects of that event.

14.2. If, due to Force Majeure, we:

- (1) are or shall be unable to perform a material obligation; or
- (2) are delayed in or prevented from performing our obligations for a continuous period exceeding 14 days,

you may, within 30 days, terminate the Contract on immediate notice.

15. **Termination**

15.1. We may terminate the Contract or any other contract which we have with you at any time by giving notice in writing to you if:

- (1) you commit a material breach of the Contract and such breach is not remediable;
- (2) you commit a material breach of the Contract which is not remedied within five days of receiving written notice of such breach;

- (3) you have failed to pay any amount due under the Contract on the due date and such amount remains unpaid within five days after we have given notification that the payment is overdue; or
- (4) any consent, licence or authorisation held by you is revoked or modified such that you are no longer able to comply with your obligations under the Contract or receive any benefit to which you are entitled.

15.2. We may terminate the Contract at any time by giving notice in writing to you if you:

- (1) stop carrying on all or a significant part of your business, or you indicate in any way that you intend to do so;
- (2) are unable to pay your debts either within the meaning of section 123 of the Insolvency Act 1986 or if we reasonably believe that to be the case;
- (3) become the subject of a company voluntary arrangement under the Insolvency Act 1986;
- (4) have a receiver, manager, administrator or administrative receiver appointed over all or any part of your undertaking, assets or income;
- (5) have a resolution passed for your winding up;
- (6) have a petition presented to any court for your winding up or an application is made for an administration order, or any winding-up or administration order is made against you;
- (7) are subject to any procedure for the taking control of its goods that is not withdrawn or discharged within seven days of that procedure being commenced;
- (8) have a freezing order made against you;
- (9) are subject to any events or circumstances analogous to those in clauses 15.2.(1) to 15.2.(8) in any jurisdiction.

15.3. If you become aware that any event has occurred, or circumstances exist, which may entitle us to terminate the Contract under this clause 15, you shall immediately notify us in writing.

15.4. Termination or expiry of the Contract shall not affect any of our accrued rights and liabilities at any time up to the date of termination.

16. **Notices**

16.1. Any notice given by a party under these Conditions shall:

- (1) be in writing and in English;
- (2) be signed by, or on behalf of, the party giving it (except for notices sent by email or via the messaging service within the password protected client area of our website); and
- (3) be sent to:
 - (a) (in the case of a notice sent to you) your address set out on the Order; and
 - (b) (in the case of a notice sent to us) 2 Bell Court, Leapale Lane,

Guildford, Surrey GU1 4LY.

16.2. Notices may be given and are deemed received:

- (1) by hand: on receipt of a signature at the time of delivery;
- (2) by post: at 9.00 am on the second Business day after posting;
- (3) by airmail: at 9.00 am on the fourth Business Day after posting;
- (4) by email: on receipt of a delivery email from the correct address; and
- (5) by message on the password protected client area of our website: at the time it is posted in that area of our website.

16.3. All references to time are to the local time at the place of deemed receipt.

16.4. This clause does not apply to notices given in legal proceedings.

17. **How we use your personal information**

We will only use your personal information in accordance with our privacy policy. Please take the time to read our privacy policy as it includes important terms, which apply to you.

18. **These Conditions are binding**

The Contract is binding on both you and us. Before you submit any Order to us, please read all of the Conditions carefully. Make sure that they contain all the matters that you would like to see and do not contain any matters which you do not agree with. If you would like to see any changes, please let us know in writing. You can find our contact details on our website.

19. **Assignment**

You may not assign, subcontract or encumber any of your rights or obligations under the Contract, in whole or in part, without our prior written consent. We may assign, subcontract or encumber any of our rights or obligations under the Contract, whether in whole or in part.

20. **Equitable relief and cumulative remedies**

20.1. You recognise that any breach or threatened breach of the Conditions may cause us irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies or damages available to us, you acknowledge and agree that we shall be entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

20.2. Our rights and remedies provided in the Contract are cumulative and not exclusive of any rights and remedies provided by law.

21. **Third party rights**

The Contract does not allow any person, other than you and us, to enforce any terms and conditions (for the purposes of the Contracts (Rights of Third Parties) Act 1999).

22. **No partnership or agency**

You and we are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between you and us, other than the contractual relationship expressly provided for in the Contract.

23. **Severance**

23.1. If any provision of the Contract (or any part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.

23.2. If any provisions of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, you and we shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

24. **Waiver**

24.1. No failure, delay or omission by us in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.

24.2. No single or partial exercise of any right, power or remedy provided by law or under the Contract by us shall prevent any future exercise of it or the exercise of any other right, power or remedy by us.

25. **Law and jurisdiction**

The Contract is governed by the laws of England and Wales and you and we agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract.