

Terms & Conditions

Resides Terms & Conditions October 2018

These Terms and Conditions apply when Resides Swindon (“Agent”) is appointed to market a residential property for sale. The Terms and Conditions form the basis of the Owner’s contract with the Agent so please read them carefully before signing the Appointment Form.

1. Definitions

- 1.1. “Resides Swindon” is a trading name of Alison Burden
- 1.2. “Agency Period” means the period starting on the date this contract comes into force and ending when unconditional contracts are exchanged for the sale of the Property;
- 1.3. “Appointment Form” means the form to be completed and signed by the Owner and the Agent in order to appoint the Agent as agent;
- 1.4. “Final Payment” means the final payment due on completion of sale
- 1.5. “Upfront Cost” means the amount payable upfront before a property can be marketed as set out in the Appointment Form;

- 1.6. “Joint Sole Agency” means an owner is liable to pay remuneration to an agent, in addition to any other costs or charges agreed, if at any time unconditional contracts for the sale of a property are exchanged with a purchaser:
 - 1.6.1. introduced by that agent or the other named joint agent during the period of the agent’s joint sole agency;

 - 1.6.2. with whom that agent or the other named joint agent had negotiations about the property during that period; or

 - 1.6.3. introduced by another agent during that period;

- 1.7. “Owner” means the owner of the Property;
- 1.8. “Property” means the property identified in the Appointment Form;
- 1.9. “Redress Scheme Order” means the Estate Agents (Redress Scheme) Order 2008;
- 1.10. “Sole Agency” means an owner is liable to pay remuneration to an agent, in addition to any other costs or charges agreed, if at any time unconditional contracts for the sale of a property are exchanged with a purchaser:
 - 1.10.1. introduced by that agent during the period of the agent’s sole agency;
 - 1.10.2. with whom that agent had negotiations about the property during that period; or
 - 1.10.3. introduced by another agent during that period;
- 1.11. “Sole Selling Rights” means an owner is liable to pay remuneration to an agent, in addition to any other costs or charges agreed, in each of the following circumstances:
 - 1.11.1. if unconditional contracts for the sale of a property are exchanged in the period during which that agent has sole selling rights, even if the purchaser was not found by that agent but by another agent or by any other person, including the owner; and

- 1.11.2. if unconditional contracts for the sale of a property are exchanged after the expiry of the period during which that agent has sole selling rights but to a purchaser who was introduced to the owner during that period or with whom that agent had negotiations about the property during that period.
- 1.12. Any reference in these Terms and Conditions to “writing”, or cognate expressions, includes a reference to any communication effected by e-mail, telex, cable, facsimile transmission or similar means.
- 1.13. Any reference in these Terms and Conditions to any statute or provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.
- 1.14. The headings in this document are for convenience only and shall not affect its interpretation.

2. Appointment of Agent

- 2.1. The Owner appoints the Agent to act as their agent in relation to the Property with Sole Selling Rights by carrying out the duties referred to in clause 3.
- 2.2. Unless otherwise stated in the Appointment Form, the Owner shall not during the Agency Period appoint any other person as the Owner’s agent for the purposes mentioned in clause 2.1.

3. The Agent’s Duties

- 3.1. The Agent shall market the Property for sale on the open market.
- 3.2. Without prejudice to the generality of clause 3.1, the Agent shall prepare particulars of the Property, including a written description and photographs and, once the particulars have been approved by the Owner, the Agent shall, on cleared receipt of initial payment, add them to Rightmove and Zoopla.
- 3.3. The Agent shall give the Owner advice on the Property’s value.
- 3.4. If requested by the Owner, The Agent can recommend a company who can prepare an Energy Performance Certificate (EPC). The Agent will be unable to market the Property unless a valid EPC is available. This will be at the owners cost and the owner will have sole responsibility for arranging this.
- 3.5. The Agent shall, if requested by the Owner, erect and maintain a “for sale” board outside the Property and shall comply with the Town and Country Planning (Control of Advertisements) Regulations 2007.
- 3.6. The Agent shall deal with enquiries from potential buyers.
- 3.7. The Agent will arrange viewings
- 3.8. The Owner will escort viewings.
- 3.9. The Agent can complete viewings on behalf of the Owner for an additional fee as set out as ‘hosted viewings’ in the Appointment form.
- 3.10. The Agent shall take reasonable steps, in respect of any person who has made an offer to buy the Property, to establish the source and availability of that person’s funds for the purchase, and the Agent shall relay this information to the Owner.
- 3.11. The Agent shall within 5 working days after being notified of the exchange of contracts in relation to the Property submit to the vendor’s solicitor an invoice for the final payment.
- 3.12. The Agent shall make a member of staff available to the Owner at all reasonable times and upon reasonable notice during the Agency Period for the purposes of consultation and advice relating to the Property.

- 3.13. The Agent shall obtain and maintain in force during the Agency Period all licences, permits and approvals which are necessary or advisable for the performance of its duties under these Terms and Conditions and shall comply with all relevant legislation and guidance.
- 3.14. The Agent shall act with all due care and diligence and in accordance with sound commercial principles.
- 3.15. Subject as provided in these Terms and Conditions and to any directions which the Owner may from time to time properly give, the Agent shall be entitled to perform its duties under these Terms and Conditions in such manner as it may think fit.

4. The Owner's Commitments

- 4.1. The Owner confirms that they are the owner(s) of the Property and are entitled to sell it.
- 4.2. The Owner understands that the Agent will be unable to market the Property unless a valid Energy Performance Certificate (EPC) is available, therefore;
 - 4.2.1. The owner should, at their own cost, arrange for an Energy Performance Certificate (EPC) to be prepared for the Property prior to marketing. The Agent will be unable to market the Property unless a valid EPC is available.
- 4.3. The Owner shall check the draft particulars prepared by the Agent and shall confirm their accuracy or notify the Agent of any required changes.
- 4.4. If the Agent has with the consent of the Owner placed a "for sale" board at the Property, the Owner shall not permit any other agent to erect or maintain such a board at the Property during the Agency Period.
- 4.5. The Owner shall inform the Agent of any offers received during the Agency Period from potential buyers who have not been introduced by the Agent.
- 4.6. The Owner shall pay all fees to the Agent in accordance with these Terms and Conditions on receipt of an invoice.
- 4.7. Subject to compliance by the Agent with its obligations under these Terms and Conditions, the Owner shall indemnify the Agent against any liability (including but not limited to all costs and expenses which the Agent may reasonably incur in defending any proceedings) which it may incur by reason only of its being held out as the Owner's agent.

5. Duration and Termination of Agency Contract

- 5.1. The contract between the Owner and the Agent shall continue for the Agency Period unless terminated in accordance with the following provisions.
- 5.2. Either party may terminate the contract by giving to the other not less than 14 days' notice, to expire at or any time after the end of the first 6 weeks of the Agency Period.
- 5.3. Upon the termination of the contract between the Agent and the Owner:
 - 5.3.1. the Agent shall cease to promote, market, advertise or solicit offers for the Property;
 - 5.3.2. the final payment shall be payable if a buyer introduced by the Agent exchanges contracts for the sale of the Property:
 - 5.3.3. through another agent within 6 months of the date of termination of this contract;
 - or
 - 5.3.4. without the involvement of another agent within 2 years of the date of termination of this contract;
 - 5.3.5. the Agent shall have no claim against the Owner for compensation for loss of agency rights, loss of goodwill or any similar loss (except unpaid Commission).

- 5.4. The rights to terminate the contract given by this Clause 5 shall not prejudice any other right or remedy of either party in respect of the breach concerned (if any) or any other breach.
- 5.5. If at any time control (as defined in Section 840 of the Income and Corporation Taxes Act 1988) of the Agent is acquired by any person or group of connected persons (as defined in Section 839 of that Act) not having control of the Agent at the start of the Agency Period, the Agent shall forthwith give written notice to the Owner identifying that person or group of connected persons and the Owner shall be entitled, by giving not less than << >> months written notice to the Agent within << >> days after the notice from the Agent was given, to terminate the contract.

6. Complaints and Redress

- 6.1. In accordance with the Redress Scheme Order the Agent is a member of a redress scheme for dealing with complaints.
- 6.2. The name of the Agent's redress scheme is [The Property Ombudsman] [Ombudsman Services: Property] [The Property Redress Scheme].
- 6.3. A copy of the Agent's complaints handling procedure is available on the agent's website <https://www.residesswindon.co.uk/complaints-procedure>

7. Nature of Agreement

- 7.1. The contract between the Owner and the Agent is personal to the parties and neither party may assign, mortgage or charge (otherwise than by floating charge) or sub-license any of its rights hereunder, or sub-contract or otherwise delegate any of its obligations hereunder, except with the written consent of the other party.
- 7.2. These Terms and Conditions together with the Appointment Form contain the entire agreement between the parties with respect to the Property and may not be modified except by an instrument in writing signed by the duly authorised representatives of the parties.
- 7.3. Each party acknowledges that, in entering into the contract, it does not rely on any representation, warranty or other provision except as expressly provided in these Terms and Conditions or the Appointment Form, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 7.4. No failure or delay by either party in exercising any of its rights under the contract shall be deemed to be a waiver of that right, and no waiver by either party of a breach of any provision of the contract shall be deemed to be a waiver of any subsequent breach of the same or any other provision.
- 7.5. If any provision of these Terms and Conditions is held by any court or other competent authority to be invalid or unenforceable in whole or in part, these Terms and Conditions shall continue to be valid as to the other provisions and the remainder of the affected provision.

8. Notices and Service

- 8.1. Any notice or other information required or authorised by these Terms and Conditions to be given by either party to the other shall be given by:
 - 8.1.1. delivering it by hand;
 - 8.1.2. sending it by pre-paid registered first class post; or
 - 8.1.3. sending it by e-mail, to the other party at the address given in Clause 8.4

- 8.2. Any notice or information given by post in the manner provided by Clause 8.1.2 which is not returned to the sender as undelivered shall be deemed to have been given on the 7th day after the envelope containing it was so posted; and proof that the envelope containing any such notice or information was properly addressed, pre-paid, registered and posted, and that it has not been so returned to the sender, shall be sufficient evidence that the notice or information has been duly given.
 - 8.3. Any notice or information sent by e-mail shall be deemed to have been duly given on the date of transmission, provided that a confirming copy of it is sent as provided in Clause 8.1.2 to the other party at the address given in Clause 8.4 within 24 hours after transmission.
 - 8.4. Service of any document for the purposes of any legal proceedings concerning or arising out of the contract shall be effected by either party by causing it to be delivered to the other party at its registered or principal office, or to such other address as may be notified to it by the other party in writing from time to time.
- 9. Information for the Owner**
- 9.1. [The Agent may recommend a mortgage advisor and solicitors and a range of property-related services to buyers for which the Agent may earn a fee.]
 - 9.2. The Owner may be liable to pay commission to another agent, in addition to the Commission, if either:
 - 9.2.1. the Seller has previously instructed another agent to sell the Property on a Sole Agency, Joint Sole Agency or Sole Selling Rights basis; or
 - 9.2.2. the Seller instructs another agent during or after the Agency Period.
- 10. VAT**
- 10.1. All sums payable under these Terms and Conditions are exclusive of any value added tax or other applicable sales tax, which shall be added to the sum in question or otherwise included in any relevant calculation.
- 11. Relationship of the Parties**
- 11.1. Nothing in these Terms and Conditions shall create, or be deemed to create, a partnership or the relationship of employer and employee between the Owner and the Agent.
- 12. Jurisdiction**
- 12.1. These Terms and Conditions shall be governed and construed in all respects in accordance with the laws of England and Wales, and each party hereby submits to the non-exclusive jurisdiction of the English and Welsh courts.