



## TERMS OF BUSINESS

### 1.0 INTERPRETATION

The following definitions and rules of interpretation apply to these Terms, our Sales Agreement and our Management Agreement:

#### 1.1 Definitions:

**Agreement:** the Sales Agreement or the Management Agreement

**Agent:** means any Castledene Group Company or any authorised representative working on our behalf

**Agent of Necessity:** in cases of emergency, where we are marketing the Property via the Sales Agreement or managing the Property via the Management Agreement, we may be required to arrange immediate access to the Property where there is a risk of danger, damage to property or immediate safety concerns. In all instances, the Landlord or Seller is responsible for any costs incurred under Agent of Necessity in the first instance.

**Castledene Group:** (referred to throughout as “Castledene Group” “we” or “us”) is the trading style of:

Castledene Holdings Limited, Registered in England and Wales under company number 10520033 whose registered office is at 2 Lighthouse View, Spectrum Business Park, Seaham, SR7 7TT; and

Holbrook Property Consultants Limited, Registered in England and Wales under company number 06570389 whose registered office is at 2 Lighthouse View, Spectrum Business Park, Seaham, SR7 7TT; and

Holbrook Estate Agents Seaham Limited, Registered in England and Wales under company number 03879463 whose registered office is at 2 Lighthouse View, Spectrum Business Park, Seaham, SR7 7TT; and

Holbrook Estate Agents Bishop Auckland Limited, Registered in England and Wales under company number 06478514 whose registered office is at 2 Lighthouse View, Spectrum Business Park, Seaham, SR7 7TT; and

Castledene Lettings Limited, Registered in England and Wales under company number 06570322 whose registered office is at 2 Lighthouse View, Spectrum Business Park, Seaham, SR7 7TT; and

Holbrook Estate Agents Hartlepool Limited, Registered in England and Wales under company number 09399716 whose registered office is at 2 Lighthouse View, Spectrum Business Park, Seaham, SR7 7TT; and

Gordon Lamb Washington Limited, Registered in England and Wales under company number 02574067 whose registered office is at 2 Lighthouse View, Spectrum Business Park, Seaham, SR7 7TT; and

Hegartys Estate Agents Ltd, Registered in England and Wales under company number 08158134 whose registered office is at 2 Lighthouse View, Spectrum Business Park, Seaham, SR7 7TT; and

Red Hot Property Group Limited, Registered in England and Wales under company number 12111534 whose registered office is at 2 Lighthouse View, Spectrum Business Park, Seaham, SR7 7TT; and

James Winn Limited, Registered in England and Wales under company number 05357823 whose registered office is at 2 Lighthouse View, Spectrum Business Park, Seaham, SR7 7TT

The above Companies may also be denoted as "Castledene Companies" "Castledene Entities" or "Castledene Group Companies" but at all times references to the same shall be a reference to Castledene Group.

**Confidential Information:** information that is by its nature confidential and/or is designated by us to be confidential

**Client:** (referred to throughout as 'you') the person, company, firm or other legal entity that instructs Castledene Group. Where the context provides, this includes, but is not limited to Landlords, Sellers and Buyers. We will not accept instructions to act for any other legal entity nor will these Terms apply unless we have agreed in writing to act for that alternative entity. We reserve the right to refuse to act for such an alternative entity (if at all) until we have undertaken our internal procedures, money laundering and any other risk obligations.

**Fees:** the sales commission, management commission or any other charge(s) agreed due to us for services carried out under the Agreement subject to our Standard Fees

**Furnished / Unfurnished:** a Property will be considered Furnished if the Buyer or Tenant need only bring personal possessions upon moving in. A Property complete with light fittings, carpets and curtains but no physical furniture will be considered Unfurnished.

**Introduced:** in relation to the Sales Agreement the buyer became aware that the Property was for sale as a result of any literature, advertisement, sale board, email or internet communication or any other communication whatsoever by us

**Joint and Several:** in the context of an Agreement signed by two or more parties, both of those parties are equally liable for payment of the fees and ultimately we may choose which party we pursue for payment of the fees

**Landlord:** in relation to lettings, means the person, corporate entity or any other legal owner of the Property which is subject to the Management Agreement.

**Management Agreement:** the Agreement between you and us for the letting and management of your Property

**Month:** means that any reference to a Month in the Management Agreement will constitute a calendar month of not less than 28 days

**Multiple Agency:** if we are amongst a number of agents instructed to market your Property, you will only be required to pay our fees incurred in connection with the sale if contracts are exchanged between you and a buyer introduced by us or exchange takes place between you and a buyer with whom we had conducted sales negotiations during the period of Sole Agency.

**Period:** the minimum contract term either in relation to the Sales Agreement or the Management Agreement

**Property:** your property either listed for sale via the Sales Agreement or which you instruct us to manage under the Management Agreement

**Sales Agreement:** the agreement between you and us for the sale of your Property

**Service Option:** in relation to lettings means the bundle of services offered by us under the Management Agreement

**Standard Fees:** the Management Agreement and the Sales Agreement are subject to standard minimum fees, further information can be obtained on request

**Sole Agency:** by instructing us as Sole Agents to sell your Property you grant us Sole Agency rights which means that you will be liable to pay fees to us, in addition to any other costs or charges agreed, if:

(a) unconditional contracts are exchanged with a buyer even if the buyer was not found by us but by another agent or by any other person, including you; and

(b) if unconditional contracts for the sale of the Property are exchanged after the expiry of the period during which we have Sole Agency but to a buyer who was introduced to you during that period or with whom we had negotiations about the Property during that period

Our period of Sole Agency shall last for an initial period of 6 months and then until otherwise agreed.

**Tenancy:** an assured shorthold tenancy agreement between you and your tenant in connection with the Property.

**Tenant:** in relation to lettings means each and every occupier of the Property which is subject to the Management Agreement

**Terms:** the terms of business set out in this document and includes any other terms and conditions set out or referred to in the Management Agreement and/or Sales Agreement.

**Terms of Business:** these terms and conditions of the Castledene Group of companies which can be found at <https://thecastledenegroup.com/terms> a hard copy of which is available on request. These Terms apply to all services that you instruct us to provide and cannot be varied or amended except in writing and signed by you and us. In the absence of your express agreement to these Terms, the Management Agreement or the Sales Agreement, your continuing instructions to Castledene Group will constitute acceptance of these terms and you shall be bound by them accordingly

**Termination:** the ability to terminate either these Terms, the Management Agreement or the Sales Agreement, subject to clause 14 below

**Working Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business

**Withdrawal Fee:** If you chose to de-list your property prior to expiry of the initial Agreement Term you may be charged a Withdrawal Fee

1.2 In the case of any inconsistent or incompatible provisions between the Management Agreement, the Sale Agreement and the Terms, these Terms take precedence.

## **2.0 FEES**

2.1 Our fees are as stated in the Management Agreement and/or Sales Agreement.

2.2 Where we agree to act jointly with another agent, we will be acting with Multiple Selling Rights.

2.3 Additional Work: Where we are required to undertake additional work outside the agreed scope of the services outlined in the Management Agreement or the Sales Agreement additional charges will apply.

2.4 Estimates: Any estimates of fees or other costs are provided on the basis of the information you provide to us. Such estimates are not therefore binding upon us if the information provided to us is in any way incomplete, misleading or wrong.

## **3.0 INTEREST**

Unless otherwise agreed in writing, in default of payment by you within the time limits set out in the Management Agreement and/or Sales Agreement, interest will be chargeable upon outstanding invoices at the rate of 5% above the Bank of England minimum lending rate per annum from time to time from the due date of payment until payment is received.

## **4.0 SCOPE OF SERVICES**

4.1 We accept no liability for the content or interpretation of title, regulatory documents (such as Energy Performance Certificates) or tenancy documents and unless specifically instructed to report on them we do not warrant that properties on which we advise are in satisfactory structural order; that any land is free from contamination; or that any land or property is compliant with regulations, or that any land or premises has planning permission or is capable of being developed for the purposes for which it may be required.

4.2 It may be necessary as part of our work to instruct contractors on your behalf. We will not do so before obtaining your authority, unless in cases of emergency where we deem the Property requires immediate urgent access in the interests of safety. In such instances Castledene Group accepts no responsibility for costs or damage incurred whilst such access is obtained.

4.3 Once you have authorised us to instruct contractors on your behalf you will ultimately be responsible for payment of their fees, in the absence of any contrary terms in the Management Agreement and any other matters relating to their performance.

4.4 When authorised to instruct contractors on your behalf we do not warrant their competence nor shall we be liable for any loss or damage suffered from such lack of competence.

4.5 Any property market projections incorporated within our services to you including but not limited to, income, expenditure, associated growth rates, interest rates, incentives, potential investment yields, potential investment returns and associated costs are projections only and may prove to be inaccurate. Accordingly, such property market projections should be interpreted as an indicative assessment of potentialities only, as opposed to certainties or likelihoods.

4.6 Our services do not include:

- a) providing advice beyond the scope reasonably expected of a sales and letting agent,
- b) commencing or conducting litigation on your behalf

## **5.0 OUR OBLIGATIONS**

We agree to undertake our services under the Agreement with reasonable skill and care whilst ensuring that at all times we comply with the Estate Agents Act 1979.

## **6.0 YOUR OBLIGATIONS**

You hereby agree that for the duration of the Management Agreement or the Sales Agreement whichever the case shall be:

6.1 to be liable to pay the fees and any other costs or charges agreed and incurred by us on your behalf under the Agreement in relation to the Property

6.2 that you may also be liable to fees to another Agent if you have previously instructed another Agent to sell the same property on a sole agency multiple agency or sole selling right basis and you instruct another agent during or after the period of this Agreement.

6.3 We are entitled the fees if you terminate the Agreement and, within six months of the date of termination, exchange of contracts takes place with a Buyer introduced by us, however we will forego our right to the fees if a buyer first introduced by us goes on to buy the property through another agent in circumstances where the buyer was introduced by the other agent more than six months after the date that our agreement is terminated. If no other estate agent is involved this time limit will not apply

6.4 That in relation to the Sales Agreement the final account for the fees and other costs or charges owed to us will be paid from the net sale proceeds of the Property by your solicitor/conveyancer at the date of contractual completion ("the due date")

6.5 That by signing the Sales Agreement you will instruct your solicitor/conveyancer (a) to make payment on the account from the net sale proceeds at the due date (the amount due under this Agreement to be established by the production of the appropriate account issued by Castledene Group to your solicitor/conveyancer) (b) to notify Castledene Group within two (2) days should you become aware that there will be insufficient net sale proceeds to settle the account and (c) to advise Castledene Group of your new address

6.6 If our fees under the Sales Agreement are not received within 7 days of the due date, the account continues to be due and payable by you and we will charge Interest on all sums outstanding from the due date at the rate of 5% above the Bank of England minimum lending rate per annum until payment is received. We will also charge a handling fee of £30.00 and any costs we incur in recovering you're the debt

6.7 That all cheques/payments will be banked upon receipt, although part payment will not be deemed to be accepted as 'full and final settlement' without our written Agreement

6.8 That we have the right to issue interim invoices, as and when we consider appropriate, in respect of all Fees and costs or other charges agreed and incurred by us on your behalf and that such sums will be paid within 7 days of invoice.

6.9 You are liable for the duration of the Agreement to reimburse us for all reasonable losses, costs, expenses, claims, commissions, settlements, fines, damages or other liabilities incurred buy us which result from any wilful or negligent breach by you of your obligations in the Agreement

## **7.0 AGREEMENT TERM**

7.1 Where we are appointed to sell the Property with Sole Selling Rights the Agreement shall be subject to a minimum term of 6 months and shall continue on a month by month basis until otherwise agreed or terminated by either party.

7.2 The Management Agreement is subject to a minimum term of 6 months or, if longer, the length of the Tenancy. After the initial term, the Management Agreement will continue to run on a month by month basis until terminated by either party.

## **8.0 CONVEYANCING AND MORTGAGE REFERRAL**

We promote a panel of law firms and mortgage brokers (which includes law firms and licenced conveyancers) that have been carefully selected to provide conveyancing services and from whom we may receive a referral fee. Details of any fee we may receive and a list of preferred firms is available on request.

We comply with the Solicitors Introduction and Referral Code published by the Law Society and the law firm or licenced conveyancing firm to whom we may refer you is an independent professional firm from whom you will receive impartial and confidential advice. You are free to choose another law firm if you so wish. Any legal advice or conveyancing services provided to you are provided by a third party and we shall not be liable for any actions or losses arising from such advice.

By signing the Agreement you authorise us to pass on your details to those panel firms.

## **8.0 CONFLICTS OF INTEREST**

To avoid conflicts of interest the Estate Agents Act 1979 requires that we are transparent with our customers about you and any person related to or connected to you who works for or has a business relationship with us. We do our utmost to ensure that such requirements are complied with and further information is required upon request.

## **9.0 INFORMATION PROVIDED**

9.1 Unless you inform us in writing to the contrary we shall not be required to check or approve the accuracy of information provided to us by you or others.

9.2 Unless you inform us in writing to the contrary you hereby warrant the accuracy of all information provided to us by you or on your behalf on the basis that you expect us and others third parties to rely upon it.

9.3 You undertake to indemnify us against all costs, claims, charges and expenses of whatever nature which may arise as a result of any such information proving to be inaccurate (whether wholly or in part) or incomplete.

9.4 Subject only to Clause 11 below any information which we acquire from you in the course of performing instructions may be used by us for any other purpose unless you instruct us in writing at any time prior to such use by us.

## **10.0 E-MAIL**

10.1 We shall treat receipt of an e-mail from you as a request for us to communicate with you by e-mail.

10.2 If you intend to communicate with us by e-mail, by accepting these Terms you confirm that you understand the risks of doing so and you authorise us to act upon electronic instructions which have been transmitted (or appear to have been transmitted) by you.

## **11.0 DATA PROTECTION**

11.1 We will not disclose to any third party any personal data without your express authority to do so.

11.2 All personal information that we may collect (including, but not limited to, your name and contact details) will be collected, used and held in accordance with the provisions of the Data Protection Act 1998 and your rights and our obligations under that Act.

11.3 You agree that we may receive and retain documentary proof required by the Money Laundering Regulations 2007 and can disclose it to any Government authority that is legally entitled to request it. You further agree and consent to identity checks being carried out electronically for anti-money laundering purposes. For the purposes of this clause only, you release us from our obligations under Clause 11.1 above.

11.4 We may occasionally use your contact details and share those details between associated Castledene Group companies to inform you of property updates, client seminars, and similar notifications. By accepting these terms you consent to our sending you such information. If you do not wish to receive such information, please advise us, by writing to our registered office.

11.4 Calls to and from Castledene Group may be recorded for training and monitoring purposes. If you require any further information, please do not hesitate to contact us.

## **12.0 LIMITATION OF LIABILITY**

12.1 In relation to any services provided by us to you the following limitations apply:

12.2 You agree not to bring any claim for any losses against any member, officer, director, employee or consultant of Castledene Group or any Castledene Group Entity (each a

"Castledene Group Person"). You hereby agree that a Castledene Group Person does not have a personal duty of care to you and any claim for losses must be brought against Castledene Group. It is agreed that any Castledene Group Person may enforce this clause under the Contracts (Rights of Third Parties) Act 1999 but that these terms may be varied at any time without the need for them to consent.

12.3 We will not be liable in respect of any of the following:

(a) for any services outside the scope of the Management Agreement and/or Sales Agreement agreed to be performed by us;

(b) to any third party;

(c) in respect of any losses incurred by you as a result of a tenant's actions where we have otherwise complied with these Terms and the terms of the Management Agreement.

(d) for any losses, costs, penalties or damages arising from the Energy Performance of Buildings Regulations 2011.

12.4 Where any loss is suffered by you for which we and any other person are jointly and severally liable to you the loss recoverable by you from us shall be limited so as to be in proportion to our relative contribution to the overall fault.

12.5. Our liability for loss and damage attributable to our negligence, breach of contract, misrepresentation or otherwise (but not in respect of fraud, fraudulent misrepresentation, death or personal injury) shall not exceed £500,000 per single originating cause. This limit applies to each and every transaction and retainer and any subsequent work we undertake for you.

12.6 The exclusions and limitations in this paragraph will not exclude or limit any liability for fraud or dishonesty or for liabilities which cannot lawfully be limited or excluded.

12.7 Where the Management Agreement and/or Sales Agreement refers to more than one client, the above limit of liability applies to the aggregate of all claims by all such clients and not separately to each client.

12.8 On receipt of instructions from a Seller or Landlord, Castledene Group will prepare sales/ lettings particulars of the property which will be forwarded to the Seller/ Landlord for checking and signing off. The Seller/ Landlord is required to ensure that these particulars are accurate and in no way misleading. Castledene Group accepts no liability on the Seller/Landlord's behalf for errors within the particulars or losses arising from errors in the particulars.

### **13. AGENCY**

All acts of the Castledene Group are strictly carried out as agent rather than principal. At no point will liability of tenants, landlords, vendors or purchasers transfer to the Castledene Group. Castledene will at all times operate strictly as agent and at no point will Castledene Group operate as principal. Where Castledene Group are instructed to arrange works or contractors on behalf of tenants, landlords, vendors or purchasers, at all times those instructions will be carried out on an agency only basis, and the respective tenants, landlords, vendors or purchasers will remain liable for any works arranged by the Castledene Group on the parties' behalf.

### **14.0 ASSIGNMENT**

Neither these Terms, the Management Agreement, the Sales Agreement nor any terms within those documents may be assigned by you to any third party unless agreed by us in writing.

## **15.0 TERMINATION OF INSTRUCTIONS**

15.1 We may terminate any agreement governed by these Terms immediately by notice in writing:

- (a) Where as a result of circumstances outside the control of both of us our services become impossible of performance or;
- (b) Where you have rendered our services impossible of performance or;
- (c) You have provided incorrect information to us contrary to Clause 9 above upon which we have relied or;
- (d) If you have not made payment by the due date of any sum payable to us or;
- (e) At any time in the event that you are in material breach of your obligations to us or;
- (f) Without assigning any reason and on the basis that you are under no obligation to pay any fees in respect of the matter and that we are under no obligation to perform any further services.

15.2 You may terminate any agreement governed by these Terms by giving not less than 1 months' notice in writing. However, if the Management Agreement and/or Sales Agreement states a minimum period for our instruction, notice to terminate may not be given so as to expire before the end of that period.

15.3 On termination of our instructions you will be liable to pay to us any outstanding costs, fees and expenses and you will remain liable for any fees arising under these Terms, the Management Agreement and/or the Sales Agreement.

15.4 Notwithstanding termination of our agreement with you the provisions of Clauses 1 to 4, 8 to 11, 19, 22, and 23 shall remain in full force and effect.

## **16.0 SET-OFF**

We may at any time, without notice to you, set off any liability of yours owed to Castledene Group against any liability of Castledene Group owed to you, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this agreement. Any exercise by Castledene Group of its rights under this clause shall not limit or affect any other rights or remedies available to it under this agreement or otherwise

## **17.0 MONEY LAUNDERING COMPLIANCE**

We are required by law to operate procedures pursuant to the Money Laundering Regulations 2007, which may include requesting that you provide us with documentary proof of identity, proof of address and/or proof of funding in relation to a particular transaction or instruction. You agree to comply with any such requests promptly. Failure to provide us with the requested documents within a reasonable timescale will result in our immediate termination of these Terms and any other agreement between us.

## **18.0 COMPLAINTS**

Castledene Group operates a procedure for complaints handling as required by The Property Ombudsman. A copy is available on request.

## **19.0 STATUTORY OBLIGATIONS**

Castledene Group complies strictly with the provisions of the Estate Agents Act 1979, the Consumer Protection Act 2008, the Codes of Practice of the National Association of Estate Agents and The Property Ombudsman ([www.tpos.co.uk](http://www.tpos.co.uk)).

## **20.0 INTELLECTUAL PROPERTY**

Castledene Group owns all copyright, trademarks and any other intellectual property rights in all material and content on its website and any company documents, which you may use, download, copy, publish, transmit or otherwise make available by any other means only for your own personal, non-commercial use. Any other use of reproduction of the material or content is strictly prohibited.

We retain copyright in all advertising material used to market the property and reserve the right to use these for marketing initiatives following the sale of the Property.

## **21.0 WEBSITE DISCLAIMER**

Whilst we use all reasonable efforts to ensure that the information published on our website is accurate, current, and complete at the date of publication, no representations or warranties are made (express or implied) as to the accuracy, currency or completeness of such information. We cannot accept any responsibility (to the extent permitted by law) for any loss arising directly or indirectly from the use of, or any action taken in reliance on, any information appearing on this website or any other website to which it may be linked.

We make no warranty that the website will meet your requirements or will be uninterrupted, timely or error-free, that defects will be corrected, or that the site or the server that makes it available are free of viruses or bugs or represents the full functionality, accuracy and reliability of the website.

## **22.0 LAW AND JURISDICTION**

22.1 These terms of business are subject to the laws of England and Wales.

22.2 Any dispute shall be subject to the exclusive jurisdiction of the English Courts.

22.3 If a court rules that any provision of these Terms is invalid or unenforceable this will not affect the validity of the rest of the Terms which will remain in force.

## **23.0 RIGHTS OF THIRD PARTIES**

Except as set out in clause 8 none of the Terms shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party. No third party will be entitled to rely on any Report or advice except as agreed in writing by us.