

**General Terms & Conditions Version 1.0****1. Payment Terms**

- 1.1. All sums payable to Focal shall be paid monthly in arrears by direct bank transfer (or such other method as Focal shall reasonably specify) such that Focal receives the funds by no later than the 14<sup>th</sup> day (or if the 14<sup>th</sup> is not a business day the next following business day) of the month following the month in which the Services were delivered. Focal may, without liability, suspend the provision of the Services in the event of late payment.
- 1.2. All sums payable to Focal under this Agreement:
  - (a) are exclusive of VAT, and the Agent shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and
  - (b) shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

**2. Pricing.**

- 2.1 Pricing will be tiered based upon volumes. Focal reserves the right to move the Agent into a different pricing tier if (i) actual volumes significantly differ to projected volumes; and/or (ii) there are significant changes to volumes
- 2.2 Focal reserves the right to increase prices no more than once in any 12 month period provided that it gives the Agent no less than 30 days advance notice of any increase.
- 2.3 Cancellation charges may be applied for cancelled appointments as follows:
  - (a) any appointment cancelled within 24 hours of, but not on the same day as, a site visit appointment will be subject to a cancellation charge of 25% of the order value;
  - (b) any appointment cancelled on the same day, but ahead of the appointment time will be subject to a cancellation charge of 50% of the order value; and
  - (c) any appointment where no notice is given in advance will be subject to a cancellation charge of 75% of the order value.

**3. Focal Obligations**

- 3.1. Focal shall provide the Services in accordance with industry standards and will deliver the Deliverables to the Agent.
- 3.2. Focal shall not be obliged to provide the Services when to do so would risk the health or safety of its employees, agents, sub-contractors or consultants.
- 3.3. Focal may (but shall not be obliged to) provide support services in the form of Live Chat and training as detailed at [www.focalagent.com/training\\_guides](http://www.focalagent.com/training_guides) and updated from time to time.

**4. Agent Obligations**

- 4.1. The Agent shall:
  - (a) provide Focal with all documents and information reasonably required by Focal in order to provide the Services;
  - (b) obtain all necessary consents and permissions from its customers to enable Focal to carry out the Services or anything incidental thereto;
  - (c) check and bear sole responsibility for the accuracy of all Deliverables provided by Focal; and
  - (d) ensure or procure that no Personal Data is visible at a property when Focal or its sub-contractors visit so that it is not captured in the Deliverables.

**5. Mutual Co-operation**

The parties shall at all times co-operate with each other in order to give effect to the terms of this Agreement.

**6. Intellectual Property**

- 6.1. In relation to any materials provided by the Agent to Focal in the course of this Agreement:
  - (a) all Intellectual Property Rights in the materials shall belong to the Agent;
  - (b) for the purposes of providing the Services to the Agent, the Agent grants Focal a non-exclusive, royalty-free and sub-licensable licence to use the materials.
- 6.2. In relation to the Deliverables:



- (a) Focal shall retain ownership of all Intellectual Property Rights in the Deliverables;
- (b) Focal grants the Agent a personal, non-exclusive, revokable, royalty-free and non-transferrable licence to use the Deliverables for up to 12 months from delivery for a single sale or letting of a residential or commercial property. The Agent shall have the right to extend the licence period subject to an additional charge.

**7. Data Protection**

- 7.1. Both parties shall comply with the provisions of the Data Protection Laws and acknowledge that for the purposes of this Agreement each party may act as both a Data Controller and Data Processor.
- 7.2. Without prejudice to the generality of condition 7.1, each party, when acting as Data Controller of Personal Data under this Agreement:
  - (a) will ensure that it has all necessary rights (including the necessary legal authority, permissions and/or consents) to capture, transfer, process, use or make available Personal Data to the other party as envisaged by this Agreement; and
  - (b) will ensure that any Personal Data that it provides is lawfully disclosed or provided;
    - i. will not cause the other party to be in breach of) the Data Protection Laws;
    - ii. will ensure that it has taken all necessary steps to make Data Subjects aware of the nature of processing that will be undertaken; and
    - iii. will ensure that the Personal Data shall not include any Sensitive Personal Data (as defined in the Data Protection Legislation).
- 7.3. The Agent consents to Focal appointing third-party processors of Personal Data under this Agreement. Focal will enter into a written agreement with all third-party processors requiring them to comply with the Data Protection Laws.

- 7.4. The parties agree to comply with the terms of Focal's privacy policy located at: <https://www.focalagent.com/privacy-policy> which shall be deemed incorporated into these terms and conditions.

**8. Confidentiality**

- 8.1. Each party undertakes that it shall not at any time during the Term and for a period of three years after termination, disclose to any person any confidential information concerning the business, affairs, clients or suppliers of the other party.
- 8.2. Each party may disclose the other party's confidential information:
  - (a) to its employees, officers, representatives, contractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives, contractors or advisers to whom it discloses the other party's confidential information comply with this condition 8; and
  - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 8.3. No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

**9. Liability**

- 9.1. Nothing in this agreement shall limit or exclude Focal's liability for:
  - (a) death or personal injury caused by its negligence;
  - (b) fraud or fraudulent misrepresentation; or
  - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.
- 9.2. Subject to condition, Focal shall not be liable to the Agent, whether in contract, tort (including negligence), for breach of



**General Terms & Conditions Version 1.0**

statutory duty, or otherwise, arising under or in connection with this agreement for:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of or damage to goodwill;
- (f) loss of use or corruption of software, data or information; or
- (g) any indirect or consequential loss.

9.3. Subject to condition 9.1, Focal's total liability to the Agent, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement shall be limited to the charges paid by the Agent to Focal in the 6 month period preceding the date of the relevant incident.

9.4. The terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Agreement.

9.5. The following are expressly excluded and shall not apply to this Agreement:

- (a) any Agent terms and conditions; and
- (b) any term implied by law, custom or in the course of trading.

**10. Termination**

10.1. Unless otherwise agreed, this Agreement shall continue from month to month unless and until either party gives no less than one month's written notice to the other party terminating it.

10.2. Either party may terminate this Agreement by giving written notice to the other party if:

- (a) the other party is in material breach which breach, if capable of being remedied is not remedied within 30 days of being requested to do so; or
- (b) the other party becomes insolvent within the meaning of the Insolvency Act 1986.

10.3. Without affecting any other right or remedy available to it, Focal may terminate this Agreement with immediate effect by giving written notice to the Agent if the Agent fails

to pay any amount due under this Agreement on the due date for payment and remains in default for more than 15 days after being notified in writing to make such payment.

10.4. Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

**11. Non-solicitation**

The Agent shall not and shall procure that its Affiliates shall not at any time from the date of this Agreement to the expiry of 6 months after the termination or expiry of this Agreement, solicit or entice away from Focal or any of its Affiliates or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of Focal in the provision of the Services.

**12. Assignment and other dealings**

12.1. Subject to condition 12.2, neither party may assign or transfer or deal in any other manner with any of its rights and obligations under this Agreement without the prior written consent of the other party (not to be unreasonably withheld).

12.2. Focal may sub-contract any of its obligations under this Agreement provided that Focal remains wholly responsible for the performance thereof.

**13. Third party rights**

This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

**14. Compliance**

14.1. Without prejudice to the other provisions of this Agreement, during the Term both parties shall at all times comply with all applicable laws, statutes, codes and regulations in force from time to time, including, without limitation:

- (a) The Bribery Act 2010;
- (b) The Modern Slavery Act 2015;



- (c) The Property Misdescription Act 1991; and
- (d) Data Protection Laws.

**15. Governing law**

This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

**16. Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

**17. Conflict**

In the event of any inconsistency between these terms and conditions and an Order, the Order shall take precedence.

**18. Definitions**

- 18.1. In these terms and conditions the following words shall have the following meanings:

**Agent:** is the Agent specified in the Order.

**Data Protection Laws:** all legislation and regulatory requirements in force from time to time relating to the use of personal data and the privacy of electronic communications, including, (i) any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation, as well as (ii) the GDPR and/or any other applicable law or regulation relating to data protection and privacy.

**Deliverables:** any output of the Services to be provided by Focal under this Agreement and any other documents, products and materials provided by Focal to the Agent in relation to the Services.

**Focal:** means FocalAgent Limited, a company registered in England and Wales with Company Number 07478014 and whose registered office is at 30 City Road, London EC1Y 2AB.

**GDPR:** the General Data Protection Regulations ((EU) 2016/679).

**Intellectual Property Rights:** patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, whether registered or unregistered and all similar or equivalent rights or forms of protection which subsist now or will subsist in the future in any part of the world.

**Order:** either an agreement signed by the parties or an order raised by the Agent for services, both of which incorporate these terms and conditions.

**Services:** the services described in the Order which shall include the provision of the Deliverables.

**Term:** the Initial Term and any continuation thereof.

- 18.2. Words used in these terms and conditions with capitals which are not defined shall have the meaning given to them in the Order.

- 18.3. Words used in condition 7 which are not defined shall have the meaning given to them in the Data Protection Laws.

- 18.4. Any reference to the word include or including shall be deemed to be preceded or followed by the words 'without limitation'.

**19. Variation of Terms**

Focal may from time to time and by giving reasonable prior notice, update these General Terms and Conditions.

