

Terms and Conditions for the Supply of Services by First Scottish Searching Services Limited (the “Company”)

1. Interpretation

1.1 In these Conditions unless the context otherwise requires:-

“**Confidential Information**” means any and all information, data and technology in whatever form the same may exist including written, oral, or electronic, being confidential, scientific, business or financial information including any trade secrets, provided by either party to the other party under or pursuant to the terms of the Contract;

“**Contract**” means the contract between the Company and the Customer for the supply of the Services by the Company to the Customer, incorporating these Conditions and the express terms of any quotation for the Services provided by the Company to the Customer;

“**Customer**” means the solicitor, lawyer or legal firm (howsoever constituted) or other person who commissions the supply of Services from the Company including on its own benefit or (where relevant or applicable) the benefit of its Client(s);

“**Charges**” means the charges payable in respect of the Services as such charges are either: (i) specified in the quotation given by the Company to the Customer in respect of the Services; or (ii) agreed between the parties in writing from time to time in consideration of the provision of Services;

“**Client**” means the person, firm or entity on whose behalf the Customer has procured the Services;

“**Third Party Record**” means any public record or register or register or record maintained and licensed by or service provided by a third party provider which the Company searches or obtains information, data, plans or other materials in relation to the provision of Services including, but not limited to, the Register of Sasines, the Land Register, the Books of Council and Session, the Register of Inhibitions and/or the Register of Insolvencies; and

“**Services**” means any services agreed in the Contract to be supplied to the Customer by the Company;

1.2 Unless the context requires otherwise the words “**include**” or “**including**” or “**in particular**” are to be construed as meaning without limitation.

1.3 The headings are inserted for convenience only and shall not affect the construction of these conditions.

2. Application of Terms

2.1 The Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document or correspondence including e-mail or during any telephone conversation).

2.2 No terms or conditions endorsed on, delivered with or contained in the Customer’s purchase order, confirmation of order, specification or other document or referred to in any e-mail or during any telephone conversation with the Company’s personnel shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 Each order or acceptance of a quotation for Services by the Customer from the Company shall be deemed to be an offer by the Customer to commission Services from the Company subject to these conditions. Without prejudice to the foregoing generality, an order for Services shall be deemed to have been placed by the Customer where the Company has received confirmation (whether verbal or in writing) from a representative of the Customer that it wishes the Company to undertake the Services.

2.4 No order placed by the Customer shall be deemed to be accepted by the Company until the Company commences to provide or undertake the Services.

- 2.5 The Customer shall ensure that the terms of its order and any applicable specification are complete and accurate in all respects.
- 2.6 Any quotation given by the Company is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.

3. The Services

- 3.1 The Company shall use its reasonable endeavours to procure that the Services are provided in terms of these Conditions and by it with reasonable care and skill.
- 3.2 The Company shall use its reasonable endeavours to procure the completion of the Services by such date (if any) as is agreed with the Customer, provided that the Company shall not have any liability in respect of any failure to complete the Services by such date, to the extent that such failure is caused by any circumstance outside of the reasonable control of the Company, including any failure by the Customer or a Client to provide any information, data or other materials relevant to the provision of the Services to the Company.

4. Payment

- 4.1 In consideration of the provision of the Services by the Company the Customer shall pay the Charges to the Company.
- 4.2 The Company shall invoice the Customer in respect of the Charges and the Customer shall pay such invoice within 30 days of receipt by the Customer. Time of payment shall be of the essence.
- 4.3 If any amount due under the Contract by the Customer is not paid in accordance with condition 4.2 the Customer shall be liable for and pay interest on the amount outstanding as at the due date of payment from the due date of payment until payment is made in full at the rate of 4 per centum per annum above the base lending rate of The Royal Bank of Scotland plc from time to time (whether before or after judgement). The Company reserves any rights that it may have (including the right to claim interest) under the Late Payment of Commercial Debts (Interest) Act 1998.
- 4.4 All payments to be made by the Customer under the Contract are stated exclusive of value added tax, which shall be paid by the Customer at the rate and in the manner prescribed by law.
- 4.5 Any and all payments due under the Contract shall be made without any lien, retention, set-off, counterclaim, withholding or deduction whatsoever.

5. Customers Obligations

- 5.1 The Customer will ensure that all data, material or information provided by it to the Company under the Contract is complete, accurate and up to date and not misleading when given to the Company and the Customer will notify the Company in writing as soon as it becomes aware that any data or information is incorrect, incomplete or inaccurate or mis-leading.
- 5.2 If the Customer is ordering the Services online, they will comply with the terms set out in the Company's Website Terms and Conditions which can be viewed at www.firstscottish.com.
- 5.3 The Customer will comply with the terms set out in the Company's Privacy Policy which can be accessed at the Group website www.firstscottish.com - the terms of which shall be deemed to have been incorporated into the Contract.
- 5.4 The Customer will make reasonable inspection of the reports provided and will inform the Company forthwith upon becoming aware of any error, omission or inaccuracy in any report issued by the Company in connection with the provision of the Services. In such circumstances, the Customer (or its clients) should not rely or act (or permit any third party to rely) upon any such report.
- 5.5 The Customer shall use the data, material and information provided to it only a professional manner and in accordance with the normal and customary practice of solicitors or other

professional legal advisers and as may be specified in the Contract or within the reasonable contemplation of the parties.

6. Liability

- 6.1 Nothing contained in the Contract shall exclude or restrict the liability of either party for injury, death, loss or damage caused by the negligence of that party or arising by virtue of fraud or fraudulent misrepresentation.
- 6.2 Whilst the Company will use reasonable endeavours to ensure the accuracy of the information or other material provided to the Customer pursuant to performance of the Contract, no warranty, undertaking or representation, express or implied, is given by the Company to any party of the Client whomsoever as to the completeness or accuracy of the data, information or other material provided pursuant to the Contract. Accordingly, all warranties, conditions, representations, covenants and/or other terms that are implied by law are hereby excluded to the fullest extent permitted by law.
- 6.3 Although the Company will use its reasonable endeavours to perform the Services in accordance with the Contract the Company does not undertake, warrant, or represent to any party whomsoever that the work carried out under or pursuant to the Contract will lead to any particular result or that it will be suitable or fit for any specific purpose (irrespective of whether such purposes were made known to the Company prior to or after the entry into the Contract), nor is the success of such work or services guaranteed.
- 6.4 Subject to clause 6.1:
- 6.4.1 the Company's aggregate liability to the Customer and the Client or any other third party in respect of any and all breaches of the Company's contractual obligations under the Contract and any warranty, representation, statement or delictual act or omission, including negligence, or otherwise arising under or in connection with the Contract shall be limited to £5,000,000 in the event that the liability is covered by the Company's professional indemnity insurance; and
- 6.4.2 neither party shall be liable to the other party (or in the case of the Company, to the Client or Customer) for:-
- 6.4.2.1 any special, indirect or consequential loss or damage;
- 6.4.2.2 loss of profit;
- 6.4.2.3 loss of business, turnover, revenue or income;
- 6.4.2.4 loss or depletion of goodwill and/or reputation;
- 6.4.2.5 loss of anticipated savings; or
- 6.4.2.6 (save where expressly provided otherwise in the Contract) any costs and expenses except for the costs and expenses incurred by a successful party in enforcing or taking action against the other or defending an action by any other party;
- which arise out of or in connection with the Contract or the performance of a party's obligations under the Contract, even if such loss, damage or depletion was in the contemplation of a party (or a Client or Customer) prior to entry into the Contract or was reasonably foreseeable or had been specifically brought to the attention of the other party prior to or after entry into the Contract.
- 6.5 The Customer and the Client acknowledges and agrees that the Company has no liability or responsibility (and any such liability or responsibility is hereby expressly excluded) for any plans, data, information, or other content or the like ("**Data**") kept on or registered or stored on any Third Party Record or for the completeness, accuracy or maintenance (or otherwise) of any of the Data.

- 6.6 The Customer undertakes to indemnify and keep indemnified the Company in full and on demand from and against any loss, liability, damage, cost, expense or proceedings suffered or incurred by the Company which relates to
- 6.6.1 any reliance placed (whether in whole or in part) on an error, omission or inaccuracy or the like of Data on any Third Party Record that the Company has searched in order to provide the Services to the Customer by the Customer or any third party including a client of the Customer. The Customer acknowledges and agrees that it is not reasonable for the Company to be liable in respect of any such error or omission and/or inaccuracy; or
 - 6.6.2 any reliance placed (whether in whole or in part) by a Customer or any third party including a client of the Customer on any report produced by us where the Customer or any third party including a client of the Customer is aware or ought reasonably to have been aware of any error or omission in or inaccuracy in the report.
- 6.7 We shall not be liable for any loss or damage incurred or sustained by the Customer or any Client (or any other third party whomsoever) directly or indirectly whether in contract, delict or otherwise that makes any use of or relies (in whole or in part) on any data, information or materials provided by a Customer or Client or any other third party whomsoever or which arises due to or is connection with (i) any failure to provide any report, information or material by any specified time or not at all; or (ii) any failure by the Customer or the Client to provide the Company with information, data or material which is not complete, accurate, illegible or incorrect or which is misleading or (iii) any error, omission or inaccuracy or the like of any Data on any Third Party Record that the Company has searched in order to provide the Services.
- 6.8 For the avoidance of doubt and without prejudice to the other provisions of the Contract, the Company shall be liable solely on account of its own acts, omissions including negligence but shall not be liable or responsible to the Customer or the Client in respect of the acts, omissions or negligence of the Customer or the Client or any other third party.
- 6.9 The Customer and the Client shall be obliged to seek to mitigate its loss or damage that it may suffer or incur in connection with or arising from a breach of the Contract by the Company.

7. Termination

- 7.1 The Contract may be terminated immediately by notice in writing by the Company if the Customer fails to pay any sum due under the Contract by the due date but without prejudice to any other provisions relating to late payment in these Conditions.
- 7.2 Upon termination of the Contract or completion of the Services all Charges accruing for Services performed up to the date of expiry or termination (as the case may be) shall become immediately due by the Customer and shall be paid to the Company within 30 days of such date of expiry or termination.
- 7.3 Any expiry or termination of the Contract will be without prejudice to any other rights or remedies of either party under the Contract or at law and will not affect any accrued rights or liabilities of either party at the date of expiry or termination (as the case may be). The provisions of clauses 1, 3, 6, 7 and 10 shall survive the expiry or termination of the Contract.

8. Data Protection

- 8.1 By engaging the Company's to perform the Services, the Customer shall share and the Company shall process data or information controlled by the Customer which is personal data within the meaning of data protection legislation within the United Kingdom including the Data Protection Act 2018 and all other applicable national laws, regulations and secondary legislation implementing European Directive 95/46/EC and (to the extent in force) the General Data Protection Regulation (Regulation (EU) 2016/679). The Customer warrants that all information and data provided by it is accurate and complete in all respects and that it has obtained any and all necessary permissions, approvals and consents so as to allow the Company to process and use such data and information in such manner as it may determine as necessary or desirable to provide the Services. The Company will process such personal data only in accordance with the Customer's instructions and will take appropriate technical and organisational measures

against unauthorised or unlawful processing of the personal data. Personal data will be processed in accordance with the Company's privacy policy which can be accessed at www.firstscottish.com. The Company and the Customer each undertake to comply with any and all laws and regulations relating to the processing of personal data and privacy which may be in force in the United Kingdom from time to time.

9. Criminal Finances Act 2017

9.1 The Company is committed to promoting compliance with the Criminal Finances Act 2017. The Company does not tolerate tax evasion, or the facilitation thereof, in any circumstances whether committed by or facilitated by the Customer, any other client, personnel or associated persons.

10. General

10.1 No partnership/agency

Nothing in the Contract is intended to or shall operate to create a partnership or joint venture of any kind between the parties or to authorise either party to act as the agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

10.2 Force Majeure

The Company reserves the right to defer the date of the Services or to cancel the Contract (without liability to the Customer or the Company) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including access to the Third Party Records being denied or delayed (for whatever reason), acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, pandemic, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 21 days, the Customer shall be entitled to give notice in writing to the Company to terminate the Contract, without liability to the Customer or the Company.

10.3 Entire Agreement

The Contract supersedes all prior agreements and arrangements of whatever nature and sets out the entire agreement and understanding between the parties relating to its subject matter.

10.4 Severability

If and in so far as any part or provision of the Contract is or becomes void or unenforceable it shall be deemed not to be or never to have been or formed a part of the Contract and the remaining provisions of the Contract shall continue in full force and effect.

10.5 Third Party Rights

In this clause 10.5, "CRTPA" means the Contracts (Third Party Rights) (Scotland) Act 2017. Save as regards only (i) the Customer's Client(s) and (ii) the other members of the Company's group, the Contract does not confer any rights on any person pursuant to CRTPA and the Contract is made for the benefit of the Company and the Customer and their successors and permitted assigns and is not intended to benefit, or be enforceable by, any other person and except as otherwise expressly stated above nothing in this Agreement confers any rights on any person or party other than the Customer and the Company. The rights of the Customer and the Company to terminate, rescind or agree any variation, waiver or settlement under the Contract are not subject to the consent of any other person.

10.6 Intellectual Property Rights

No intellectual property rights in any information, data or material provided by the Company in carrying out the Services are assigned or transferred to the Customer or the Client.

11. Governing law and Disputes

- 11.1 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by and construed in accordance with the laws of Scotland.
- 11.2 Any dispute arising out of the interpretation, validity or performance of or otherwise in connection with, the Contract shall be submitted to the non-exclusive jurisdiction of the Scottish courts.

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