

## 1. Definitions and Interpretation

- 1.1 In these Conditions the following words shall have the meanings set opposite them:

**“Charges”** mean our financial charges for providing the Services, which will be notified to You when You submit Your Order.

**“Client”** shall include (i) The individual(s) or business entity of whom You act on whose behalf You are using the Services (ii) The individual(s) or business entity who has or are considering acquiring an interest in or charge over the Property to which the Services relate. (iii) The individual(s) or business entity who acts in a professional or advisory capacity for any person using the Services.

**“Confirmation of Order”** means our written acceptance of the Order.

**“Contract”** means the legally-binding agreement between Us and You for the supply by Us of the Services and which incorporates these Conditions.

**“Data Provider”** means a third-party provider of data used in a Report

**“Intellectual Property Rights”** means any intellectual property right, including, without limitation, copyright, database rights, trademarks, patents, trade secrets or design rights.

**“Invoice”** means an invoice in respect of the Services issued by Us to You.

**“Order”** means Your request for Us to provide the Services which You place by communicating or sending it to Us by electronic or other pre-agreed means.

**“Property”** means the property address or location of the buildings, land, fixtures and all chattels for which You require a Report.

**“Index”** means the party with whom You place an Order for the Services which may be Index Property Information Limited, Index Insure Limited or any one or a combination of affiliated businesses.

**“Report”** means any report/document that You have asked Us to deliver to You as detailed in the Order.

**“Required Information”** means all information required to submit an Order to Us which shall enable Us to provide the Services to You and which shall be included in the Order.

**“Search Code”** means the ‘Council of Property Search Organisations’ search code.

**“Third Party Report”** means any Report that We procure from a third party on Your behalf for the purpose of providing the Services to You.

**“Services”** mean the provision of Reports to You.

**“Us”** or **“We”** or Our means Index.

**“You”** or **“Your”** means the conveyancer and/or the conveyancer’s firm acting on behalf of the Client.

- 1.2 Headings used in these Conditions are for convenience only and shall not affect the interpretation of the main provisions.

## 2. Your Privacy and Security

- 2.1 Your personal details and any details identifying the Client are held on a secure database in accordance with relevant data protection legislation and those details are used solely for the provision of the Services. We shall not pass confidential customer information to other organisations unless You specifically authorise Index to do so.
- 2.2 Your Order will be retained by Us in an electronic format and will be available for inspection upon reasonable notice for a period of 6 years from the date of the Order.
- 2.3 Index will use personal information which We hold about You and/or the Client to provide the Services to You, for credit control and market research purposes and to inform You about Our Services and products and legal developments and training sessions or events which We believe may be of interest to You.
- 2.4 Except in the situations listed above or as required or allowed by other regulations, We will not pass, disclose, rent or sell Your personal information or the Client’s personal information (other than any personal information which is already publicly available and which is incorporated into Our search products) to any third party without Your prior consent.

## 3. The Services

- 3.1 An Order will be deemed to be an offer to purchase Services from Us on these Conditions.
- 3.2 We will not be obliged to accept any Order. No Contract for Services will come into force until Confirmation of Order has been provided to You by Us.
- 3.3 These Conditions alone will apply to (and will form part of) the Contract. They supersede any previously issued terms and conditions of supply.
- 3.4 No terms or conditions endorsed on, delivered with, or contained in the Client’s purchase Order, Confirmation of Order, specification or other document will form part of the Contract and in the event of any conflict these conditions shall prevail.
- 3.5 No variation of the Conditions or to an Order will be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of Index.
- 3.6 Each Order, if accepted by Us, will constitute a separate and severable Contract.
- 3.7 Upon receiving and accepting Your Order We shall provide a Confirmation of Order. Once this is issued We shall commence work on Your Order.
- 3.8 Any indication that We may give as to the time in which We will perform the Services will be a good faith estimate only. We will use all reasonable endeavours to deliver the Report within the timescale that We have estimated. Due to variations in availability of the information You agree that time of delivery of Reports is not of the essence and that delivery may take place as soon as is reasonably possible after Confirmation of Order has been provided.

## 4. Charges

- 4.1 Unless expressly indicated otherwise, the Charges will include VAT at the applicable rate.
- 4.2 Unless indicated otherwise the Charges also include all delivery and communication costs.
- 4.3 You shall pay the Invoice in full and in cleared funds within 30 days of delivery of the Report. Time of payment is of the essence.
- 4.4 If You fail to make any payment due to Us under these Conditions by the due date for payment (Due Date), then We shall charge interest at a rate of 1.75% per month. Such interest shall accrue on a daily basis from the Due Date until the date of actual payment of the overdue amount.
- 4.5 You shall pay all amounts due under these Conditions in full and Index reserve the right to suspend or discontinue the Service without notice to You in the event of repeated non-payment of the Services by You.

## 5. Warranties

- 5.1 We will:
- Recommend relevant Reports which may be carried out against the Property Should You ask Us to;
  - Pass Orders onto the relevant Data Provider;
  - Forward the Report to You electronically or otherwise as You may request in the Order;
  - Ensure that Reports are accessible by You at [www.indexlive.co.uk](http://www.indexlive.co.uk) by using Your unique login and password;
  - Comply with the Search Code which is regulated by the Property Codes Compliance Board.
  - We are authorised to provide all the Services contained in this Agreement.
  - Use our expertise and skill to provide the Services to You and will keep You updated with any new Third Party Reports and Reports.
- 5.2 You will provide Us with the Required Information in Your Order. You warrant that the information supplied by You is complete, correct and up to date.
- 5.3 You will notify Us immediately on You becoming aware of any inaccuracy contained within the Order. If We receive Your notification before the Confirmation of Order is sent, We will change the Order accordingly. If We receive Your notification after the Confirmation of Order is sent, We will attempt to alter the Services to reflect the new

information but You will be responsible for our reasonable costs in changing the Services. Whether or not it is possible to alter the Services will depend on the progress of the Services at the time of notification to Us of the inaccurate information and the nature of the changes to the information and You acknowledge that it may not be possible to alter the Services at that time and You will therefore be required to submit a new Order and you will be responsible for the abortive costs.

5.4 If ordering online, You will provide an electronic mailing address. If ordering by other means or if email communication (or electronic communication) is not available, You shall communicate by first class post or via a facsimile machine. In all communication You will provide a return address. In providing this address You agree that communications between Us and You will be through these means.

## 6. Cancellation

If You cancel Your Order after We have provided the Confirmation of Order any refund of monies already paid will be at Our discretion and You will remain liable to pay any Charges that have been reasonably incurred by Us.

## 7. Intellectual Property Rights and Proprietorship

7.1 Any and all Intellectual Property Rights arising from performance of the Services shall vest in Us and remain our property. We disclaim all proprietary rights including, without limitation, Intellectual Property Rights in Third Party Reports.

7.2 You will not acquire, nor will You attempt to register any Intellectual Property Rights in any Reports whether on Your own behalf or on behalf of the Client. You further agree not to use the Reports in whole or part other than as is expressly permitted by these Conditions.

7.3 Title to the Index products and Services which are the subject of Your Order shall remain the property of Index and shall not pass to You or any third party until the Charges notified to You have been paid to Us in full.

## 8. Limitation of Liability

8.1 We will use Our reasonable endeavours to ensure that the information contained within any Report is accurate at the date of its publication. You accept that the information on which any Report is based may be subject to change from the date of its publication and We will not be liable for failing to include in or omit from the Report, any information which becomes available after the date of publication or provision of the Services.

8.2 We have in place Professional Indemnity Insurance of £10 million in respect of each and every claim in respect of our work in preparing collating and providing a Report and providing Third Party Reports as part of the Services to you.

8.3 Where the value of the Property exceeds the amount set out in clause 8.2 it is Your responsibility to inform Us upon submission of the Order so that We may arrange additional or alternative insurance cover to take into account the increased value. If no such notification is received by Us with the Order, any claim against Us will be limited to the amount set out in clause 8.2.

8.4 We cannot accept liability for any negligent or incorrect entry in the registers which We search.

8.5 We shall not accept any responsibility or liability for any inaccuracy or error in the Report that is based on incomplete or inaccurate information supplied by You.

8.6 A Report may contain information supplied by a Data Provider. We may also supply (as intermediary) a Report that has been wholly created by a Data Provider. These Data Providers are required by their regulatory bodies to have appropriate Professional Indemnity Insurance or to be covered by statutory compensation arrangements. We shall not accept liability for any loss or consequence of the act or omission of a Data Provider except that We shall, at Your request and expense, provide reasonable assistance in any claim brought by You or a Client against a Data Provider concerning the supply by that Data Provider of an incorrect or incomplete Report and shall, where

possible, assign to You (or a Client at Your direction) at Your cost the benefit of any warranty, guarantee or indemnity given to Us by such Data Provider or of which We have the benefit .

8.7 We shall not be liable to You for any loss caused by a failure by You or Your Client to have in place all necessary means of receiving the Services the maintenance of internet access, email facilities and security measures.

8.8 We acknowledge that You may make Reports available to Clients in the normal course of Your business and agree that where You do so then any such Client shall have the benefit of enforcing Your rights under these Conditions as if the Client were a party to the Contract, including where Reports are placed in a data room or other file sharing environment as part of a wider transaction.

8.9 Nothing in these Conditions shall limit or exclude Our liability for any matter in respect of which it would be unlawful for Us to exclude or restrict liability.

8.10 Subject to clause 8.9:

The Company shall not be liable to You or any third party for any loss of profits or Contracts (whether direct or indirect) or for any indirect or consequential loss whether arising from negligence, breach of Contract or howsoever.

8.11 We will not be liable in Contract, tort, negligence and statutory duty or otherwise, for any loss or damage whatsoever caused by any act or omission of a Data Provider or inaccuracies in or omissions from any responses provided by a Data Provider.

8.12 The information and data used to generate search alerts is derived from publicly available records and other third-party sources and We do not warrant the accuracy or completeness of such information or data. We do not claim that these sources represent an exhaustive or comprehensive list of all sources that might be consulted.

## 9. Force Majeure

We will not be liable for any failure to perform the Services due to any event beyond Our reasonable control. However, if our performance of the Services is delayed due to any event beyond our reasonable control, We will notify You promptly.

## 10. Assignment

You acknowledge that Index may use one or more Data Provider to fulfil provision of the Services on the terms set out in this Agreement. Subject to the other terms of this Agreement, Index will remain responsible for, and liable to You, in respect of the provision of the Services by such Data Provider.

## 11. General

11.1 You acknowledge that in instructing Us to provide the Services You do not do so on the basis of any representation, warranty or provision not expressly contained within these Conditions.

11.2 If at any time, any one or more of these Conditions are held to be unenforceable, illegal or otherwise invalid in any respect; such enforceability, illegality or invalidity shall not affect the remaining Conditions, which shall remain in full force and effect.

11.3 Any failure by Us to enforce a breach of these Conditions by You will not be deemed to be a waiver of any subsequent breach of these Conditions that You may make.

11.4 Nothing in these Conditions shall create or be deemed to create a partnership or joint venture between Us or You or the relationship of principal and agent or employer and employee.

11.5 These Conditions will be governed by English law.

## 12. Independent Dispute Resolution

If You make a complaint and We are unable to resolve it to your satisfaction, you may refer the complaint to the Property Ombudsman Scheme (web site: [www.tpos.co.uk](http://www.tpos.co.uk), email: [admin@tpos.co.uk](mailto:admin@tpos.co.uk)). We will co-operate fully with the Ombudsman during an investigation and comply with the Ombudsman's final decision.

