

# NORTH EAST & YORKSHIRE COMMERCIAL (NEY Commercial)

## AGENCY TERMS AND CONDITIONS OF APPOINTMENT

### 1. THE PARTIES

- 1.1 The client is .....
- 1.2 \*The Agent is NEY Commercial/The Agent is NEY Commercial who shall act jointly with .....

### 2. THE PROPERTY/BUSINESS

- 2.1 The property/business address is .....
- 2.2 You (The Client) have advised us (The Agent) that your interest in the property/business is .....

### 3. BASIS OF APPOINTMENT

You hereby appoint us (The Agent) to act \*solely/on a joint agency basis \*with sole disposal rights/with sole agency rights/with sub agency rights as defined in 3.1\*/3.1\* and 3.2\* below, on your behalf to market your property/business and to seek to arrange a disposal, subject to formal contract, by way of a \*sale/letting/subletting/assignment/surrender, subject to the Agency Terms and Conditions detailed below

#### 3.1 \* SOLE DISPOSAL RIGHTS

You will be liable to pay remuneration to us in addition to any other costs or charges agreed in each of the following circumstances:-

If unconditional contracts for the sale/letting/subletting/assignment/surrender of the property/business are exchanged in the period during which we have sole disposal rights, even if the purchaser/tenant/subtenant/assignee/landlord was not found by us but by another agent or by any other person, including yourself.

If unconditional contracts for the sale/letting/subletting/assignment/surrender of the property/business are exchanged after the expiry of the period during which we have sole disposal rights but to a purchaser/tenant/subtenant/assignee/landlord who was introduced to you during that period or with whom we had negotiations about the property/business during that period.

#### 3.1 \* SOLE AGENCY RIGHTS

You will be liable to pay remuneration to us in addition to any other costs or charges agreed, if at any time unconditional contracts for the disposal of the property/business are exchanged:-

With a purchaser/tenant/subtenant/assignee/landlord introduced by us during the period of our sole agency or with whom we had negotiations about the property/business during that period; or

With a purchaser/tenant/subtenant/assignee/landlord introduced by another agent during that period.

#### 3.1 \* SUB-AGENCY RIGHTS

You will be liable to pay remuneration to us if at any time unconditional contracts for the sale/letting/subletting/assignment of the property/business are

exchanged with a purchaser/tenant/subtenant/assignee introduced by us during the period of our sub-agency.

#### 3.2 \* JOINT AGENCY

You will be liable to pay remuneration to us irrespective of any liability you may have to any joint or other agent(s) in addition to any other costs or charges agreed in each of the circumstances set out above, regardless of who handles the negotiations and arranges the disposal.

In the case of a joint agency we shall not, under any circumstances, bear any responsibility or liability to you or third parties for the acts and defaults of any joint agents appointed by you.

3.3 In the event of a conditional contract for the sale/letting/subletting/assignment/surrender of the property/business, your liability to pay commission to us as detailed above arises when the conditions attached to the contract have been satisfied or waived.

### 4. REMUNERATION

All charges made by us to you are subject to the Agency Terms and Conditions detailed below.

4.1 Remuneration is calculated on a commission basis and is payable by you to us as follows:-

4.1.1 \* on a sale ..... percent of the sale price plus ..... percent of the annual ground rent where applicable; or a set fee of £ .....

4.1.2 \* on a \*letting/subletting ..... percent of any premium plus either ..... percent of the first full years rent payable or in the event of a stepped or rising rental ..... percent of the average annual rental calculated until the first rent review whichever is the higher; or a set fee of £ .....

4.1.3 \* on an assignment/surrender of a lease ..... percent of any premium plus either ..... percent of one years rent or in the event of a stepped or rising rental ..... percent of the average annual rental calculated until the next rent review whichever is the higher; or a set fee of £ .....

4.1.4 \* in the event of a turnover rent ..... percent of the full annual rental value assessed upon the most recent figures available.

4.2 Rent free periods, reverse premiums and other inducements shall be ignored for the purposes of calculating commission as above.

4.3 Occupation for a term of 12 months or more constitutes a letting/subletting for the purposes of calculating commission as above.

4.4 Where it is agreed that property/business or other items such as alteration works, project management services or provision of other goods or services shall be taken or provided in lieu of proceeds or rent then the value of such items shall be taken into account in calculating commission as above.

4.5 \* Commission as calculated above shall be subject to a minimum of £ .....

4.6 We shall invoice you for our commission when it becomes due UPON EXCHANGE OF UNCONDITIONAL CONTRACTS.

In the event of a conditional contract, we shall invoice you for 50% of our commission upon exchange of contracts and again for the balance when the conditions are satisfied. We may elect for commission to be payable by your solicitor out of completion monies or rent as appropriate and by authorising us to act for you on these Terms and Conditions, you undertake to authorise your solicitor accordingly.

In the event of an agreement to lease or agreement to sell prior to completion of a development, we shall invoice you for 50% of our commission upon exchange of the agreement to lease or agreement to sell and again for the balance upon practical completion of the development itself.

4.7 If, after a disposal has been arranged on terms approved by both parties, the property/business is then withdrawn from the market by you for any reason prior to exchange of contracts, then we shall be entitled to an Abortive Fee equivalent to half the commission stated above, based on the terms approved.

4.8 For the avoidance of doubt in the event of a Joint Agency basis of appointment then commission and any Abortive Fee or Advisory Fee as detailed above shall be the amount payable by you to NEY Commercial only. Any commission or fee payable by you to the joint agent shall be a matter for separate agreement between you and the joint agent.

4.9 Any other advice required of us by you not directly concerning the disposal of the property/business will be subject to a separate fee to be agreed between the parties, (eg., investment advice).

## 5. AUTHORISED MARKETING EXPENDITURE

5.1 An addition to any commission you will be liable to pay to us in full the charges (plus VAT) for any agreed marketing expenditure to be incurred on your behalf in accordance with a detailed marketing schedule to be supplied by us and agreed with you. The estimated marketing budget is £.....

The total budget estimate will not be exceeded without your prior written authority except due to increased rates or charges levied upon us by the media or our suppliers during the campaign.

5.2 \* We will require advance payment of ..... percent of the agreed marketing budget plus VAT prior to commencement of the marketing campaign. We will require payment in respect of the balance of the agreed marketing expenditure when the advance payment has been fully expended.

5.3 \* Where appropriate and by agreement with you we shall arrange for our suppliers to invoice you directly in respect of marketing expenditure as detailed in the marketing schedule. In this event any advance payment shall be reduced accordingly.

## 6. DISBURSEMENTS

In addition to commission and authorised marketing expenditure referred to above you will be liable for disbursements incurred by us on your behalf in carrying out your instructions. For example travel costs in attending meetings or viewings and reproduction of documents or plans required by applicants interested in your property/business.

These costs are recharged to you as follows:-

Annual Hire Charge	
For Sale/To Let Sign	.....
Floor Plans	.....
Travel Expenditure By Car	..... per mile
Travel Expenditure By Public Transport	at cost
Colour Photocopying	..... per copy
Black & White Photocopying	..... per copy
Messenger Deliveries	at cost
Postage	at cost

The reproduction of Ordnance Survey, A-Z or other maps will be charged according to the Copyright Licence arrangements dictated by the respective publishers.

## 7. VALUE ADDED TAX

All costs and charges including commission, fee, agreed marketing expenditure and disbursements are quoted strictly net and are subject to VAT at the prevailing rate.

## 8. PAYMENT TERMS

8.1 We shall submit interim invoices to you in respect of marketing expenditure and disbursements incurred on your behalf, subject to any advance payment as detailed above. All invoices relating to marketing expenditure and disbursements are due for payment immediately upon presentation.

8.2 We shall invoice you for any Advisory Fee or Abortive Fee as detailed above where appropriate. Such invoices are due for payment immediately upon presentation.

8.3 Invoices relating to commission are due for payment immediately upon presentation.

8.4 If any invoice or account remains unpaid for more than 14 days after the due date interest will be payable thereon to us calculated at the rate of 3% above the Barclays Bank Base Rate on a daily basis from the date upon which interest becomes payable for so long as the account remains unpaid.

8.5 In the event of a joint agency basis of appointment we and our joint agents shall invoice you separately for commission, fees, authorised marketing expenditure and disbursements as they become due and calculated as above.

## 9. AGENCY ASSUMPTIONS

Our instructions shall be carried out and any advice shall be provided by us to you on the basis as set out below.

9.1 Any information supplied by you, your staff and/or professional advisers, local authorities and other statutory bodies and investigation agencies is accepted as being complete and correct unless otherwise specified.

9.2 The Property Misdescriptions Act 1991 makes it a criminal offence for agents and in certain circumstances a client, to make any representations which are misleading or false to a material degree. It is assumed that any information provided to us by you or your staff or professional advisers can be relied upon by us and by our joint agent if applicable and that you will advise us immediately you become aware of any inaccuracies, (eg., to sales/letting particulars).

9.3 Title deeds and leases will not be inspected (unless specifically stated). Unless otherwise agreed it is assumed that the property/business is free from any encumbrances or unduly onerous covenants, easements, other restrictions

or liabilities which may affect the marketability of the property/business. We recommend close liaison between yourselves, any other professional advisers and ourselves to ensure that any special features are clearly defined and accounted for at any early stage.

9.4 It is assumed that the property/business has been constructed and is or is capable of being occupied in accordance with valid Planning and Building Regulation Approvals. Furthermore that the property/business complies with all relevant statutory requirements including (but not limited to) Bylaws and Fire and Health and Safety as Work Regulations.

9.5 We may, as appropriate, pass comment upon the apparent existence of contamination or pollution at or in the area of the property/business, the impact of past, existing or proposed uses of the property/business on its immediate environment or other environmental issues, such as the energy efficiency of any plant or building(s) on the property/business. Such written or verbal advice, howsoever provided, does not, however, constitute an environmental audit or survey and nothing contained in it should be treated as a statement that there are no contamination or pollution problems relating to the property/business or confirmation that the property/business, or any process carried on therein, complies with existing or proposed legislation on environmental matters. In providing you with disposal advice we will not have considered whether there is any current liability to carry out work needed to comply with environmental legislation or any liability which may arise in the future as a result of proposed legislation.

9.6 A Marketing Report is not a Valuation and should not be construed as such. It is not suitable for any purpose other than in the provision of estate agency by NEY Commercial. For the avoidance of doubt, Marketing Reports are not prepared in accordance with the Appraisal and Valuation Manual published by the Royal Institution of Chartered Surveyors. A formal Valuation can be supplied if required by separate arrangement.

9.7 All plant and machinery of a non-property nature shall be removed from the property/business and any damage done to the property/business as a result made good by you at your expense. Fixtures and fittings of a property/business nature to remain unless otherwise stated.

9.8 The property/business, if unoccupied, shall have been left in a clean and tidy state.

9.9 Any Marketing Report is provided for your private use only and may not be disclosed to third parties or published in any way either in part or as a whole without prior written approval by us.

9.10 We accept no liability or responsibility for the management, maintenance or repair of the property/business or for any damage done to the property/business during marketing. You are strongly recommended to take all necessary action to protect your property/business from such risks and to ensure that adequate arrangements are made for insurance cover, security and protection and termination of services.

**10. PERSONAL INTERESTS**

We are not aware of any personal or family relationship which exists between us but we undertake to advise you immediately if we become aware of any such relationship. Furthermore we will notify you immediately of any such relationship arising between ourselves and an offer for the property/business.

We will rely upon you to notify us of any personal or family relationship which exists or arises between us or between ourselves and an offeror for the property/business. We assume that no such relationship exists to the best of your knowledge and

that you will inform us immediately that you become aware of any such relationship arising.

**11. TERMS AND CONDITIONS OF APPOINTMENT**

11.1 These Terms and Conditions supersede all prior agreements, arrangements or understandings between the parties and no addition or modification to these Terms and Conditions of Appointment shall be binding upon either party unless agreed in writing by each of the parties.

11.2 All headings contained within this document are for ease of reference only and shall not affect the interpretation or construction of the Terms and Conditions of Appointment.

**12. TERMINATION**

12.1 Our appointment under Clause 3 shall continue for a minimum period of ..... months from the date hereof and shall continue thereafter until terminated by service of four weeks written notice by either party upon the other or such shorter period as shall be agreed between the parties.

12.2 For the avoidance of doubt termination of our appointment under Clause 3 shall not prejudice or affect the calculation or liability for payment of any commission, fee, agreed marketing expenses or disbursements due as detailed above.

12.3 In the event of a terminated agreement, we would charge £ ..... plus VAT to contribute towards our administrative expenses, any disbursements and marketing expenses not allowed for under Section 5 and 6 above.

**13. INSTRUCTIONS**

Your instructions to us to act as your agent in connection with the disposal of the property/business are (in whatever manner they may be given and whether or not these Terms and Conditions are signed) given by you on the Terms and Conditions set out herein. Your instructions will, if accepted by us, be accepted on the same basis. You may instruct us to act on your behalf and confirm your agreement to these Terms and Conditions by any of the following methods:-

13.1 Signing and dating one copy of these Terms and Conditions and returning it to us in the prepaid envelope attached;

Signed by:

(Name) .....

(Position) .....

Duly Authorised For & On Behalf Of:-

(Client) .....

Date .....