

## **Buyers Terms and Conditions (Buyers Terms) (v.11)**

### **1. Information About Us**

- 1.1. <http://www.hammerpricehomes.co.uk> is a website (**Our Site**) operated by Hammer Price Homes Limited (**We** or **Us**). We are a limited company registered in England and Wales under company number 08819923 and have Our registered office at 102 Chapel Lane, Wigan, WN3 4HG and our VAT number is 206 1357 41.

### **2. Definitions**

- 2.1. In these Buyers Terms the following terms shall have the following definitions unless stated otherwise:

**Acceptable Use Policy** means the policy regarding the use of Our Site as is published on Our Site and may be altered from time to time and shall include the provisions of clause 14;

**Active Bid** means a Bid whilst the relevant Bidding Window remains open;

**Active Listing** shall have the meaning given to it in clause 5.8;

**Anti-Sniping Tool** shall have the meaning given to it in clause 7.2.b;

**Bidding Process** means the process described at clause 7.2;

**Bidding Window** shall have the meaning given to it in clause 5.4.c subject to any early close where a Buyer clicks the Buy It Now Button in accordance with clause 7.2.g;

**Bid Only** has the meaning given to it in clause 5.3.a;

**Bid or Buy It Now** has the meaning given to it in clause 5.3.b;

**Buyer** means a person registered on Our Site and acting in accordance with the Buyers Terms being a person interested in purchasing Property shown on Our Site;

**Buy It Now** means an invitation for a Buyer to reserve the Property for purchase;

**Buy It Now Button** means a button or some other similar device on Our Site which a Buyer clicks to register its desire to reserve a property for purchase;

**Buy It Now Price** means the price, set by the Seller when creating the Listing, which the Seller would be prepared to accept to immediately reserve the Property and to



make the Listing an Inactive Listing so as to prevent any further bids and/or interest being registered by any other Buyer;

**Client Account** means a designated account in which We shall hold Reservation Fees received from Buyers in accordance with these Buyers Terms;

**Highest Bidder** means the bidder who has the highest bid recorded on the bid log at any given time. Where two bidders both have bid the same amount then the highest bidder will be deemed as the bidder who bid that amount at the earliest time;

**Inactive Listing** shall have the meaning given to it in clause 5.7;

**Late Bid** shall have the meaning given to it in clause 7.2.b;

**Listing Duration** shall have the meaning set out in 5.4.a;

**Listing** means the posting on Our Site containing the detail set out in clause 5.1;

**Open Day** means a day on which a Seller may invite registered Buyers to visit the Property to carry out a tour of the Property;

**Property** means the property which is referred to and which is the subject of the Listing;

**Reservation Fee** means the fee set out at clause 7.3 and calculated in accordance with clause 9.3;

**Reservation Period** shall have the meaning given to it in clause 7.3;

**Reserve Price** means the minimum price set by the Seller when creating the Listing;

**Seller** means a person registered on Our Site and acting in accordance with the Sellers Terms being a person who has created a Listing to market a property for sale on Our Site;

**Services** means those services provided by Us to the Buyer as described more fully in clause 4;

**Starting Price** means the price at which the Seller specifies bidding shall be required to start; Typically this would be between 15 – 20% lower than the reserve. The starting price may be reduced however during the active listing period if the interest level is low to help stimulate interest levels and get an auction underway. This may mean that sometimes the Starting Price is more than 20% below the Reserve.

**Termination Fee** means a fee payable by the Buyer (as calculated in accordance with clause 16) in order to terminate this Agreement otherwise than pursuant to any right of cancellation that a Buyer has under clause 3; and

**Unmortgageable** means the Property cannot be mortgaged and/ or where the mortgagee provides a retention clause to the value of 100% of the Property.

**Winning Bid** shall have the meaning given to it in clause 7.2.c.

**Winning Bidder** means the bidder who is announced as the bidder that has won the auction. The winning bidder will have the highest bid recorded on the bid log and the auction has closed out with the highest bid:

- a. Meeting or exceeding the original Reserve Price
- b. Meeting the agreed revised Reserve Price after negotiation with the highest bidder as referred to in clause 7.2, d. ,i. ,A

### **3. Right to Cancel**

- 3.1. Where you are a consumer, you have a legal right to cancel the agreement between us which will be created when you accept these Buyers Terms at any time within 14 days of accepting these Buyers Terms (the **Cancellation Period**). Advice about your legal right to cancel this agreement is available from your local Citizen's Advice Bureau and/or Trading Standards office.
- 3.2. To cancel this agreement during the Cancellation Period, you just need to let us know that you have decided to cancel in writing.
- 3.3. We will not begin to provide the Services set out in these Buyer Terms and you will not be able to create or activate a Listing during the Cancellation Period.
- 3.4. If you do wish us to provide the Services during the Cancellation Period, We can do so but you will be liable for a fee of up to £75 in respect of services rendered if you cancel the contract between us during the Cancellation Period and provided that you have not placed a bid or successfully reserved any property by clicking a Buy It Now Button. If you do place a bid or successfully reserve any property by clicking a Buy It Now Button, the Services will have been performed and you will still have to pay any Reservation Fee and/or any other fee payable by you in accordance with these Buyers Terms.

### **4. Services**

- 4.1. We provide a marketing website to allow Sellers to offer their properties for sale and to facilitate Buyers in locating and initiating the purchase process.
- 4.2. We do not have possession or own any of the properties listed on Our Site and, with the exception of issuing the Memorandum of Sale (see clauses 7.4 and 7.5 below), We are not involved in the actual transaction between Seller and Buyer and the contract for the purchase of any property remains solely between the Seller and Buyer. We are not an auctioneer.
- 4.3. Our Site is free to access by the general public but there are areas of Our Site that are only available for access if you have formally registered with us as either a Buyer or a Seller and have accepted the additional terms which apply to Sellers and/or to Buyers.
- 4.4. Following registration Buyers are permitted to bid on or to reserve Properties in accordance with clause 7.
- 4.5. We shall:
  - a. make Listings which are completed by Sellers that have been verified by Us (properly and in accordance with Our Sellers Terms) available on Our Site;
  - b. administer the registration process for Open Days, where the Seller indicates during the creation of a Listing that it wishes to host one or more Open Days to allow interested Buyers to attend and view the Property;
  - c. make available the Bidding Process (which includes administering the process to allow bids only from Buyers that have been verified by Us) as detailed more fully in clause 7;
  - d. prepare the Memorandum of Sale in the circumstances set out in clause 7.4;
  - e. send out the Memorandum of Sale in accordance with clauses 7.4 and 7.5; and
  - f. provide a dispute resolution forum in accordance with clause 19.

## **5. Listings**

- 5.1. A Listing must consist of:
  - a. a textual description of one Property;
  - b. a Starting Price;

- c. details and/or links to the Energy Performance Certificate (**EPC**);
  - d. up to 12 images of the Property (which may include floor plans); and
  - e. a Reserve Price (this will not be visible on Our Site).
- 5.2. The Seller may also specify a Buy It Now Price for the Property in the Listing.
- 5.3. Sellers are required to specify when creating a Listing whether the Property is to be marketed as:
- a. an invitation for a Buyer to place a bid with a view to the Winning Bid reserving the Property for purchase with no option to Buy It Now (**Bid Only**); or
  - b. an invitation for a Buyer to place a bid with a view to the Winning Bid reserving the Property for purchase with the alternative option being open to a Buyer to reserve the Property for purchase at any point during the Bidding Window by the Buyer clicking the Buy it Now Button and agreeing to reserve the Property for purchase at the Buy It Now Price (**Bid or Buy It Now**).
- 5.4. At the point of creating the Listing, the Seller may choose each of the following from the options provided on Our Site:
- a. the duration of the Listing, being the total duration that the Listing will be shown as either an Active Listing or Inactive Listing on Our Site (**Listing Duration**);
  - b. the period (if any) that the Seller wishes the Listing to be added as an Inactive Listing prior to the opening of the Bidding Window; and
  - c. the duration during which new bids may be placed (the **Bidding Window**) once the Listing becomes an Active Listing. The default duration of the Bidding Window shall be 2 - 3 days (subject to operation of the Anti-Sniping Tool).
- 5.5. Once the Listing is created and is submitted by a Seller, the Listing shall be reviewed by Us to ensure that all the required information is present and to ensure that the Listing meets the Acceptable Use Policy. We will also carry out checks to confirm the Seller's identity.
- 5.6. Once a Listing is approved by Us, the Listing may be added to Our Site as either an Active Listing or as an Inactive Listing and We shall also arrange at this point for the Listing to be shown on third party property sales advertising websites (for example, Rightmove).
- 5.7. An inactive Listing shall be shown on Our Site to the general public but shall not be available for interested Buyers to bid on unless and until the Listing becomes an

Active Listing and may include Listings where the Bidding Window has recently closed (an **Inactive Listing**).

- 5.8. An Active Listing shall:
- a. be shown on Our Site to the general public; and
  - b. be available for interested Buyers to register their interest in the Property by either placing a bid or clicking the Buy It Now Button.
  - c. The default period for an Active Listing shall be 28 days but sometimes it will be more or less than this.
- 5.9. The Listing will remain on Our Site for the Listing Duration but shall only be available to the Buyers to register their interest whilst the Listing is an Active Listing.
- 5.10. We reserve the right to remove any Listings which do not comply with the Sellers Terms or the Terms of Website Use. We shall also remove Listings within a reasonable period following the conclusion of the Bidding Window (unless we are requested not to in accordance with the Sellers Terms).
- 5.11. Each Listing is with Us and We confirm that We are a Member of The Property Ombudsman (TPO) scheme and subscribe to its Code of Practice and complaints, details of which can be obtained online at [www.tpos.co.uk](http://www.tpos.co.uk). By accepting these terms you consent to us using your details in any compliance or monitoring process linked to the TPO scheme.
- 5.12. When creating a Listing, Sellers must comply with the Consumer Protection from Unfair Trading Regulations 2008. Sellers must disclose any information of which they are aware in relation to the Property in a clear and timely way. Sellers must take all reasonable steps to ensure that all statements made in a Listing about the Property which is the subject of that Listing are accurate and are not misleading. This applies equally to any text or pictures included in the Listing. In addition, when discussing the Property which is the subject of any Listing or when providing any information in relation to any such Property to any Buyer or any representative of any Buyer, Sellers must ensure such information is accurate and is not misleading. Any answers which a Seller provides to any questions about the Property which is the subject of a Listing must be truthful and must not be misleading.

## 6. **Open Days**



- 6.1. When creating a Listing, each Seller shall be given the option of holding one or more Open Days to allow interested Buyers to view the Property.
- 6.2. Where the Seller has indicated that it wishes to hold an Open Day, it shall also specify the time and date on which it wishes to hold such Open Day and the duration of such Open Days.
- 6.3. Interested Buyers shall be required to register their interest in attending the Open Day and We shall provide Sellers with a guest list of the Buyers who have registered to attend the Open Day.
- 6.4. We take no responsibility for the actions of any Buyer or any Seller during the course of an Open Day.
- 6.5. Buyers that have attended an open day will be enabled for bidding on that property when the Bidding Window opens. It is at the discretion of Hammer Price Homes whether a registered Buyer that hasn't viewed the property via an open day is able to participate in the online bidding. Our compliance team will evaluate the risks attached to such before allowing them to Bid. The decision of the compliance team will be made in the best interest of the Vendor and their decision will be final.
- 6.6. A Buyer will not be able to join the bidding process after the scheduled finish time has passed. In other words a Buyer cannot place their first bid during extended time. By way of an example if an auction is due to close at 1.00pm then once this time has passed a Buyer cannot place their first Bid after this time.

## 7. Marketing

- 7.1. In addition to displaying each Listing, Our Site provides a platform to allow interested Buyers to place bids against properties which they wish to purchase.
- 7.2. The following process shall apply where a Seller has designated that the Listing is to be marketed pursuant to the Bid Only option or the Bid or Buy It Now option:
  - a. Once the Listing appears on Our Site and is an Active Listing any interested Buyer will have the duration of the Bidding Window (subject to any extension by operation of the Anti-Sniping Tool) in which it may enter a bid (in accordance with Our Buyers Terms) for the Property.
  - b. If a bid is placed by a Buyer in the last 10 minutes of the Bidding Window (a **Late Bid**), the Bidding Window will be automatically extended for an additional period to ensure that such Late Bid is at least 10 minutes old when the Bidding Window closes to allow other Buyers the opportunity to react to the Late Bid. This



process shall continue until no further bids are placed during the last 10 minutes of the Bidding Window (as may have been extended pursuant to this clause) or until 72 hours after the Bidding Window was originally due to close. The process described in this clause shall be referred to as the **Anti-Sniping Tool**. By way of example, if the Bidding Window was due to close at 16:00 and a bid was placed at 15:54 (i.e. with 6 minutes to go), the Bidding Window would be automatically extended to 16:04 to ensure the bid would be at least 10 minutes old when the Bidding Window closed. Provided no other bid was placed during the period between 15:54 and 16:04, the Bidding Window shall then close. If another bid was placed during this period, the Bidding Window would be further extended in accordance with this clause.

- c. The highest bid made in accordance with Our Buyers Terms during the Bidding Window (as may have been extended by operation of the Anti-Sniping Tool) which meets or exceeds the Reserve Price shall be classed as the **Winning Bid**.
- d. Where the highest bid does not meet or exceed the Reserve Price, the Property will not be reserved and We shall carry out a review of the Bidding Process and the Seller shall be given the following options:
  - i. to select from any one or more of the following:
    - A. consider selling to the highest bidder at the highest bid recorded on the bid log or at a negotiated higher price. Under each scenario the auction would be closed out and the Highest Bidder would be announced as the Winning Bidder. Any such negotiation would be handled by the managing sales agent.
    - B. specify another Bidding Window for the Listing (this could be for as little as 30 minutes or may be longer); and/or
    - C. alter the Listing to market it subject to the Buy It Now option; and/or
    - D. alter the Listing to alter the Reserve Price; and/or
    - E. keep the Listing as an Inactive Listing; or
  - ii. withdraw the Listing from Our Site.
- e. Where the Seller has chosen to relist the Listing, the Listing shall progress through the Bidding Process in the usual way as set out above.
- f. **A Winning Bid will not result in the immediate sale and purchase of the Property but will give the Buyer a period of 48 hours in which to pay a Reservation Fee to reserve the Property to allow both the Buyer and Seller**





**to proceed to the formal exchange of contracts. Please note that the payment of a Reservation Fee is completely separate from any payment by the Buyer of the purchase price and the Reservation Fee will not be credited or reduce the amount of the purchase price for the Property.**

- g. Where the Seller has designated a Buy It Now Price and, during the Bidding Window, a Buyer clicks this option and confirms (in accordance with Our Buyers Terms) that it wishes to register its interest to purchase the Property at the Buy It Now Price, the Bidding Window will end immediately and, subject to Our verifying that the Buyer has acted in accordance with the Buyers Terms, the Buyer will have been successful in reserving the Property for 48 hours.
  - h. **A Buyer clicking the Buy It Now button will not result in the immediate sale and purchase of the Property but will give the Buyer a period of 48 hours in which to pay a Reservation Fee to reserve the Property to allow both the Buyer and Seller to proceed to the formal exchange of contracts. Please note that the payment of a Reservation Fee is completely separate from any payment by the Buyer of the purchase price and the Reservation Fee will not be credited or reduce the amount of the purchase price for the Property.**
- 7.3. Where a Buyer has submitted a Winning Bid or has clicked the Buy It Now Button to reserve the Property, the Buyer shall have a period of 48 hours from when the Bidding Window ends or from clicking the Buy It Now Button (the **Reservation Period**) to pay a fee in accordance with clause 9.1, to reserve the Property (the **Reservation Fee**).
- 7.4. Once the Reservation Fee has been received, We shall prepare a Memorandum of Sale recording the intention of the Seller to sell and the Buyer to buy the Property which was the subject of the relevant Listing.
- 7.5. We shall send the Memorandum of Sale to each of the following:
- a. the Seller;
  - b. the Buyer;
  - c. the solicitors named by the Seller (as notified to Us); and
  - d. the solicitors named by the Buyer (as notified to Us)

in each case via email using the information provided by the Seller and Buyer during registration.

## **8. Buyers Obligations**

### **8.1. The Buyer:**

- a. shall comply with the Terms of Website Use and the provisions of these Buyers Terms at all times when using and acting in connection with the Website;
- b. confirms that it has the necessary authority, power and capacity to agree to these Buyers Terms which includes the Buyer being 18 years or older and having full mental capacity;
- c. confirms that it has the necessary authority, power and capacity to agree to place a bid and/or click the Buy It Now Button to reserve a Property;
- d. confirms that it does not have a vested interest in the property that they are bidding on whether financially or other and that they are bidding on the property because they have a genuine interest in purchasing it.
- e. confirms that it will pay the vendor the winning auction price on completion and understands that any attempt to renegotiate on price post-auction will hold them in breach of the buyer terms & conditions and that the Reservation Fee would become non-refundable at that point regardless of any other terms.

- 8.2. Under the Money Laundering Regulations 2007 We must carry out identity checks on both Buyers and Sellers. Checks are completed using an electronic system and may require us to ask Buyers for additional information such as a copy of a form of I.D (e.g. passport or driving licence) which we shall use in accordance with Our Privacy Policy and clause 18.

We will undertake these checks prior to activating a Buyers account meaning that a Buyer cannot book onto an Open day until such checks have been done and the account is activated.

In the event that a registered buyer wins an auction then as part of our money laundering requirements the buyer will provide us with a copy of a form of I.D (e.g. passport or driving licence) within 2 working days of winning the auction.

## **9. Fees**

### 9.1. Where:

- a. a bid that you submit properly and in accordance with these Buyers Terms is the Winning Bid; or
- b. you click the Buy It Now Button;

you shall, during the Reservation Period, pay the Reservation Fee to Us to reserve the Property for purchase.

- 9.2. If you fail to pay the Reservation Fee during the Reservation Period the Property will not be reserved and the Seller shall be entitled to re-market the Property to other Buyers but you shall still be liable to us for the Reservation Fee.

- 9.3. The value of the Reservation Fee is dependent on the price bracket and shall be the higher of either:

- a. 3.0% (inclusive of VAT) of the value of the accepted Winning Bid or the Buy It Now Price where the Buyer has clicked the Buy It Now Button; or
- b. £3,000 (inclusive of VAT).

Examples:

#### **Fee-**

Winning bid or the Buy It Now price between £1-£100,000: **£3,000**  
Winning bid or the Buy It Now price over £100,000: **3.0%** of selling price (If the Winning Bid or the Buy It Now Price is £180,000 then the fee will be £5,400 (inclusive of VAT) and so on.)

## **10. Reimbursement of Reservation Fee**

- 10.1. Upon receipt, the Reservation Fee shall be held in our Client Account pending confirmation of exchange of contracts or earlier release in accordance with these Buyers Terms.

- 10.2. Subject to clause 10.6, we shall not release the value of the Reservation Fee to our trading accounts until the earlier of the following:

- a. confirmation from the Buyer and Seller that contracts for sale have been exchanged in relation to the Property to which the Reservation Fee relates; or
  - b. the operation of clause 10.3 and/or 10.5(b).
- 10.3. **Subject to clause 10.3 (a), if, having paid the Reservation Fee, you withdraw from the purchase process then you shall forfeit the Reservation Fee and We shall be entitled to retain and use the same. A Buyer does not have the right to have the Reservation Fee returned due to their own personal circumstances such as affordability.**
- a. Only in the following circumstances can the Buyer withdraw from the purchase and have the Reservation Fee returned:
    - i. There is a problem with title and the property should not have been marketed for sale.
    - ii. A problem uncovered during the searches that makes it unreasonable for the Buyer to continue with the purchase.
    - iii. Significant structural issue(s), whereby the property would require underpinning and the cost is likely to run into tens of thousands of pounds to rectify, this would need to be documented in a formal report, compiled by a Chartered structural engineer and provided to us no later than 60 of the 90 day process (see milestones in section 10.6). Roof work, lintel damage and work to the drains would not warrant a return of the reservation fee. This clause does not apply if the Listing states that the property is significantly structurally impaired.
    - iv. Where the property has been listed for mortgage buyers also and the property is subsequently deemed to be unmortgageable by a recognised lender. Proof in writing from the lender would need to be provided to us before considering a return of the reservation fee no later than day 75 of the 90 day process (see milestones below)
- 10.4. If, having paid the Reservation Fee, you withdraw from the sale and purchase process with good cause as We shall determine acting reasonably and in accordance with clause 10.3 above, We shall reimburse you the value of the Reservation Fee.
- 10.5. Subject to clause 10.6, if, after you have paid the Reservation Fee, the Seller withdraws the Property from the market and/or withdraws from the sale and purchase process, we shall reimburse you the value of the Reservation Fee and the Seller shall

be liable to pay Us an amount equal to the Reservation Fee in accordance with the Sellers Terms.

- 10.6. Where the Seller's withdrawal from the sale and purchase process is attributable wholly or mainly to unreasonable actions on your part, clause 10.5 shall not apply and We shall treat the withdrawal as a withdrawal by the Buyer under the circumstances of clause 10.2 (i.e. a withdrawal without good cause) and you shall forfeit the Reservation Fee. For the avoidance of doubt, this shall include circumstances where the Buyer fails to engage with the sale and purchase process. In order to help assess the Buyer's conduct the following structure (hereinafter known as milestones), shall be used:

Milestones	
Stage	From date of Memorandum of Sale
Surveys to be completed	No later than day 45
Mortgage offer to be finalised	No later than day 75
Completion	No later than day 90

- 10.7. Subject to the extension that may be granted in the circumstances set out in clause 10.8, where after a period of 3 months from the conclusion of the Reservation Period, We have not been contacted by either the Buyer or Seller to indicate the progress of the sale and purchase, We shall be entitled to release and use the Reservation Fee and clauses 10.4 and 10.5 (reimbursement) shall no longer apply.
- 10.8. We consider 90 days to be sufficient time to complete the sales process. If owing to extraordinary circumstances further time is required to complete the sales process We should be notified in writing by both the Buyer and Seller before the expiry of 3 months from the conclusion of the Reservation Period. Thereupon we shall exercise our discretion as to whether further time shall be allowed and, if approved by Us, the length of any such extension. The Buyer and Seller terms shall apply to this new date.
- 10.9. For the avoidance of doubt, where either the Buyer or Seller has withdrawn from the sale and purchase process and the relevant Property remains unsold. We shall be entitled at our discretion (and upon the request of the Seller) to re-list the Property on Our Site.

## **11. Your Account and Password**

- 11.1. Where a Buyer is provided with a user identification code, password or any other piece of information as part of Our security procedures, it must treat such information as confidential and it must not be disclosed to any third party.
- 11.2. We have the right to disable any user identification code or password, whether chosen by a Buyer or allocated by Us, at any time, if in Our reasonable opinion a Buyer has failed to comply with any of the provisions of these terms of use.
- 11.3. If a Buyer knows or suspect that anyone else knows their user identification code or password, that Buyer must promptly notify Us at [info@hammerpricehomes.co.uk](mailto:info@hammerpricehomes.co.uk) or on 020 3814 1888.

## **12. Uploading Content to Our Site**

- 12.1. Whenever you make use of a feature that allows you to upload content to Our Site, bid on or reserve a Listing, or to make contact with other users of Our Site, you must comply with the content standards set out in Our Acceptable Use Policy.
- 12.2. You confirm that any such contribution does comply with those standards, and you will be liable to us and, if you are a business user, shall indemnify us for any breach of that confirmation. This means you will be responsible for any loss or damage we suffer as a result of your breach of this clause.
- 12.3. You also confirm that any content you upload, post or otherwise make available on Our Site does not breach clause 14.3(p) and, if you are a business user, you agree to indemnify us for any loss caused to Us by reason of your breach of this clause.
- 12.4. Any content you upload to Our Site will be considered non-confidential and non-proprietary. You retain all of your ownership rights in your content, but you are required to grant us and other users of the Site a limited licence to use, store and copy that content and to distribute and make it available to third parties. The rights you license to us are described in the next paragraph (Rights you Licence).
- 12.5. We also have the right to disclose your identity to any third party who is claiming that any content posted or uploaded by you to Our Site constitutes a violation of their intellectual property rights, or of their right to privacy.
- 12.6. We will not be responsible, or liable to any third party, for the content or accuracy of any content posted by you or any other user of Our Site.



- 12.7. We have the right to remove any posting you make on Our Site if, in Our opinion, your post does not comply with the content standards set out in Our Acceptable Use Policy or if it does not comply with these Buyers Terms.
- 12.8. The views expressed by other users on Our Site do not represent Our views or values.
- 12.9. You are solely responsible for securing and backing up your content.

### **13. Rights You Licence**

- 13.1. When you upload or post content to Our Site, you grant Us (and any of Our subcontractors in connection with Our Site and/or this agreement) a non-exclusive, worldwide, perpetual, irrevocable, royalty free licence to use any and all content posted and/or uploaded by you to the extent necessary to provide our services in accordance with these Buyers Terms, the Sellers Terms and the Terms of Website Use.

### **14. Acceptable Use Policy**

- 14.1. We operate an Acceptable Use Policy for all Sellers and all Buyers who access the services that We provide through Our Site and as such you undertake as part of your usage of this website to comply with the following standards which apply to any contribution or content you upload or post to Our Site.
- 14.2. We may change Our policy on acceptable use at any time by amending it at any time and online and with notice. As such Buyers must check the relevant pages to take note of any such changes.
- 14.3. Any content which you upload or post on Our Site must not:
  - a. be defamatory of any other person;
  - b. be obscene or contain any such material that could be regarded or interpreted as such.
  - c. be hateful or inflammatory or in any way seek to promote such views;
  - d. promote material that would be regarded as sexually explicit;
  - e. promote or incite the use of violence;
  - f. be discriminatory in any way and this would include but not necessarily limited to matters based on race, religion, sex, sexual orientation, transgender or age;
  - g. infringe Our copyright, database rights or trademarks of any person using or not using Our service;

- h. be likely to deceive any person;
- i. breach the provisions of the Consumer Protection from Unfair Trading Regulations 2008;
- j. be made in breach of any legal duty owed to a third party, such as a contractual duty or a duty of confidence;
- k. promote any activity which would or may be regarded as illegal;
- l. be able to be regarded as threatening or abusive or in any other way intimidating or likely to cause upset nuisance or annoyance to another party;
- m. be used for fraudulent purposes up to and including but not exclusive of using another person's identity or fraudulently representing another party;
- n. be likely to give the impression that any contributions made emanate from us if that is not the case;
- o. facilitate any unlawful act through the use of Our Site and any and all other related services;
- p. breach any copyright law or the intellectual property rights of any third party.

## **15. Our Rights to Suspend Your Account and/or Terminate this Agreement**

- 15.1. Where there has been a breach by you of Our Acceptable Usage Policies or of any of your obligations under these Buyers Terms and such breach is more than a trivial breach, we reserve the right to take any or all of the following actions:
- a. terminate this agreement;
  - b. immediate temporary or permanent withdrawal of your right to use Our Site;
  - c. removal without warning of any posting or material uploaded to Our Site;
  - d. bring legal proceedings against you for the reimbursement of any costs or expenses that We have lost as a result of a material breach of Our Acceptable Usage Policy or these Buyers Terms, and Our costs may include but would not be limited to administrative and legal costs.
- 15.2. If we terminate this agreement under clause 15.1 after you have paid the Reservation Fee but before we have provided You with a Memorandum of Sale, We will either provide you with the Memorandum of Sale or refund to you the Reservation Fee.



## **16. Your Rights to Terminate this Agreement and Close Your Account**

- 16.1. This clause 16 has no affect on and is subject to your legal right to cancel this agreement during the Cancellation Period (please see clause 3).
- 16.2. Subject to clause 3, You may terminate this agreement immediately at any time upon the provision of notice and payment of any applicable Termination Fee (determined in accordance with this clause 16). Where, in accordance with these Buyers Terms a Termination Fee does not apply, you may terminate this agreement immediately at any time by contacting us at [info@hammerpricehomes.co.uk](mailto:info@hammerpricehomes.co.uk) or on 020 3814 1888 and requesting that we close your account with Us. Please note that (subject to your right to cancel this agreement under clause 3) you will be unable to request the closure of your account where there is an outstanding Fee on your account and if you seek to close your account when you still have Active Bids clause 16.5 shall apply.
- 16.3. Where you wish to terminate this agreement by closing your account and you have no Active Bids, provided that any fees previously incurred pursuant to clause 9.1 have been paid a Termination Fee will not apply.
- 16.4. Where you wish to terminate this agreement by closing your account and you have no Active Bids but any fees previously incurred pursuant to clause 9.1 remain outstanding you may not terminate this agreement or close your account until Termination Fee(s) equivalent to the value of the Reservation Fees has been paid. For the avoidance of doubt, where the Termination Fee(s) have been paid, you shall no longer be liable for any fees under clause 9.1.
- 16.5. Subject to your right to cancel this agreement under clause 3, where you have one or more Active Bids and wish to terminate this agreement and close your account, the termination and closure shall not take effect unless and until:
- a. an Active Bid of higher value is placed by another Buyer in respect of each Listing on which you have an Active Bid; or
  - b. the Bidding Window(s) of the Listing(s) against which you have Active Bids has/ have ended and you do not have any Winning Bids; or
  - c. where the Bidding Window(s) close(s) and you do have any Winning Bids, then clause 9.1 shall apply and you shall be required to pay Us the Termination Fee(s) in accordance with 16.4 prior to being able to terminate this agreement.

## **17. Liability and Disclaimer**

- 17.1. Nothing in these Buyers Terms excludes or limits Our liability for death or personal injury arising from Our negligence (or otherwise where the Seller is a consumer), Our fraud or fraudulent misrepresentation, or any other liability that cannot be excluded or limited under English law. In certain circumstances it is not possible for Us to limit or

exclude Our liability and this is particularly the case if you are a consumer. Where you are a consumer, the limitations and exclusions of liability that are set out in clauses 17.6 and 17.7 shall not apply to you but the remainder of this clause 17 shall apply to you.

17.2. The content on Our Site is largely user generated and is presented for general information purposes only. While We update Our Site regularly We cannot guarantee nor do We warrant or represent that the information that is contained on it is always current at the time that the information is displayed.

17.3. We make every effort to ensure so far as is reasonably possible to guard against computer viruses or other malicious programmes but you accept that by using Our Site that there is a risk and you should take your own precautions to guard against computer viruses or other malicious programmes which could be downloaded.

17.4. As part of the service We offer We also reserve the right to close or suspend the usage of it by giving you notice in writing where We deem it necessary or appropriate to do so. We will only take this action where you are in breach of the Acceptable Use Policy that is more than a trivial breach and/or We reasonably consider it to be in your interest for us to do so.

17.5. It is your responsibility to ensure that any party or representative that you appoint to represent you is aware of these Buyers Terms and that they comply with these Buyers Terms.

17.6. Subject to clause 17.1, where you are a business user, our liability for loss and damage suffered by you shall be as follows:

- a. to the extent permitted by law, we exclude all conditions, warranties, representations or other terms which may apply to Our Site or any content on it, whether express or implied;
- b. to the fullest extent permitted by law, We shall not be liable to you in respect of any losses:
  - i. incurred as a result of any reliance placed on any information contained on Our Site; or
  - ii. caused as a result of any computer virus or other malicious programme which is found to originate from Our Site.
- c. to the fullest extent permitted by law, We shall not be liable to you for any indirect losses including (but not limited to):
  - i. loss of profits, sales, business, or revenue;

- ii. business interruption;
- iii. loss of anticipated savings;
- iv. loss of business opportunity, goodwill or reputation; or
- v. any other indirect or consequential loss or damage.

arising out of or in connection with these Buyers Terms even if such losses were foreseeable at the time that you agreed to these Buyers Terms.

17.7. Subject to clauses 17.1 and 17.6, where you are a business user, the extent of Our liability to you or to any third party whether for breach of contract, misrepresentation, tort (including negligence), breach of statutory duty arising out of or in connection with these Buyers Terms shall be limited to the higher of:

- a. £3,000; or
- b. 125% of the applicable Reservation Fee.

17.8. Subject to clause 17.1, where the Buyer is a consumer, We are responsible to you for your foreseeable loss and damaged that is caused by us. If we fail to comply with these Buyers Terms, we are responsible for loss or damage you suffer that is a foreseeable result of our breaking this contract or our failing to use reasonable care and skill. We are not responsible to you or to any third party for:

- a. losses that were not foreseeable as a probable result of the breach of these Buyers Terms to both parties when you accepted these Buyers Terms;
- b. losses that were not caused by a breach of these Buyers Terms by Us or Our officers, employees, agents, contractors or subcontractors; and/or
- c. losses incurred in connection with the operation of a business.

## **18. Personal Details**

18.1. Where personal details are collected as part of a member's usage or subscription to Our Site then all such details will be treated as confidential and not passed to any third parties. By accepting these Buyers Terms, you consent to the use of your data (including personal data) in the manner and for the purposes set out in these Buyers Terms (including with respect to our obligations pursuant to clause 8.2 regarding the Money Laundering Regulations 2007) and Our Privacy Policy.

**19. Dispute Resolution**

19.1. In the event of any dispute between us, we will endeavour to try and resolve the matter within 28 days. However should this not be possible then we reserve the right to refer the matter for independent mediation and conciliation. By accepting these Buyers Terms you consent to disputes being dealt with in this way.

**20. Applicable law**

20.1. If you are a consumer, please note that these terms of use, its subject matter and its formation, are governed by English law. You and we both agree to that the courts of England and Wales will have non-exclusive jurisdiction. However, if you are a resident of Northern Ireland you may also bring proceedings in Northern Ireland, and if you are resident of Scotland, you may also bring proceedings in Scotland.

20.2. If you are a business, these terms of use, its subject matter and its formation (and any non-contractual disputes or claims) are governed by English law. We both agree to the exclusive jurisdiction of the courts of England and Wales.