

Sellers Terms and Conditions (Sellers Terms) (v.13)

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 Sellers 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 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(f);

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

EPC means an Energy Performance Certificate;

Fee means an amount payable by a Seller pursuant to these Sellers 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 the 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 a Listing;

Reservation Fee means the fee set out at clause 7.3 and calculated in accordance with clause 10.1;

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

Reservation Form 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;

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

Sole Agency Period shall have the meaning give to it in clause 9.1;

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 Seller (as calculated in accordance with clause 16) in order to terminate this Agreement otherwise than pursuant to any right of cancellation that a Seller has under clause 3; and **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 the right to cancel the agreement between us which will be created when you accept these Sellers Terms at any time within 14 days of accepting these Sellers 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 in writing that you have decided to cancel.
- 3.3. We will not begin to provide the Services set out in these Sellers 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 £250 in respect of services rendered if you cancel the contract between us during the Cancellation Period and provided that you have not activated a Listing. If you do activate a Listing and the Bidding Window closes during the Cancellation Period the Services will have been performed and if you cancel during the Cancellation Period in these circumstances you will still have to pay any fees that are payable by you under these Sellers Terms.

- 3.5. You always have your right to terminate this agreement under the relevant provisions of clause 15.

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 7.3 and 7.4 below), We are not involved in the actual transaction between Seller and Buyer to sell the Property and the contract for the purchase of any Property remains solely between the Seller and Buyer. We are a modern method of auction.
- 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 and have accepted the Buyers Terms or as a Seller and have accepted these Sellers Terms.
- 4.4. Following registration Sellers are to provide Us with the relevant information for Us to be able to create a Listing on their behalf and to advertise their properties for sale in accordance with clause 5.
- 4.5. We Offer a fully managed sales service to the Seller that is free of charge and as part of this service we shall:
- (a) make Listings which are completed by Us and approved by the Seller available on Our Site;
 - (b) provide, free of charge, the sales & marketing information that supports the listing such as Photography, Floorplans and EPC;
 - (c) organise, administer and host Open Days to allow interested Buyers to attend and view the Property (which includes administering the registration of Buyers to attend an Open Day) as more fully described in clause 6;
 - (d) arrange for the Listing to be shown on third party property sales advertising websites (for example, Rightmove and/or Zoopla);

- (e) make available the Bidding Process (which includes administering this process and allowing bids only from Buyers that have been verified by Us) as detailed more fully in clause 7;
- (f) provide you with a "For Sale" sign to display (if you wish) at the Property;
- (g) prepare the Memorandum of Sale in the circumstances set out in clause 7.3;
- (h) send out the Memorandum of Sale in accordance with clauses 7.3 and 7.4; and
- (i) provide a dispute resolution forum in accordance with clause 19.

5. Listings

5.1. A Listing will 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) Images of the Property (including 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 we create a Listing on their behalf 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 to purchase with 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, We shall agree with the Seller 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 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 by us we shall provide the Seller an opportunity to peruse and approve the listing prior making the Listing Active. We may contact the seller at this stage to request further information or to discuss the Listing. We will also carry out checks to confirm the Seller identity prior to making the Listing Active. Please see clause 8.2 for more details.
- 5.6. Once a Listing is approved, 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 these 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 these Sellers Terms).
- 5.11. Your 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. 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. We shall host Open days on behalf of the Seller unless agreed otherwise by Us.
- 6.2. Where the Seller has indicated that it wishes to hold an Open Day, We shall specify the time and date on which we propose to host such Open Day and the duration of such Open Day.
- 6.3. Interested Buyers shall be required to register their interest in attending the Open Day.
- 6.4. We shall be entirely responsible for conducting the Open Day, including verifying the identify of any Buyer and dealing with any security requirements.

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 5 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 5 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 5 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 15:57 (i.e. with 3 minutes to go), the Bidding Window would be automatically extended to 16:02 to ensure the bid would be at least 5 minutes old when the Bidding Window closed. Provided no other bid was placed during the period between 15:57 and 16:02, 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. The Listing will become an Inactive Listing. 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 the opportunity to reserve the property by payment of the Reservation Fee within 2 hours of the bidding window closing and to complete the Reservation Form within the following 48 hours (Reservation Period) 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 the opportunity to reserve the property by payment of the Reservation Fee within 2 hours of the bidding window closing and to complete the Reservation Form within the following 48 hours (Reservation Period) 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 make payment of the fee within 2 hours of the bidding window closing in accordance with clause 9.1, to reserve the Property (the **Reservation Fee**). The buyer is then required to complete the **Reservation Form** (This form requires the buyer to provide full and accurate buyer and conveyancer details) within a period of 48 hours from when the bidding window ends (the **Reservation Period**).
- 7.4. Once the Reservation Fee has been received, we shall issue a VAT receipt by email and then on receipt of the completed **Reservation Form**, 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. Sellers Obligations

8.1. The Seller:

- (a) shall comply with the Terms of Website Use and the provisions of these Sellers Terms at all times when using and in connection with the Website.
- (b) confirms that it has the necessary authority, power and capacity to agree to these Sellers Terms which includes the Seller being 18 years or older and having full mental capacity;
- (c) confirms that it is the beneficial owner of the Property or has authority from the beneficial owner to sell the Property in accordance with these Sellers Terms.
- (d) confirms that the content of any Listing created by or associated with the Seller's account shall be complete, accurate and shall not be misleading. If the Seller becomes aware of any incorrect information in any Listing it shall advise Us so that we can amend the Listing immediately.
- (e) Shall endeavour to ensure the sales process is completed within 90 days after the Reservation Period.
- (f) Confirms that it will not attempt to bid on a property that it has a vested interest in or will instruct/knowingly allow a connected party to bid on property that they own or has a vested interest in.

8.2. Under the Money Laundering Regulations 2007 We must carry out identity checks on both Buyers and on Sellers. Checks are completed using an electronic system and may require us to ask Sellers for additional information such as a copy of their

passport or driving licence. We shall use any such information in accordance with Our Privacy Policy and clause 18.

9. Sole Agency Rights

9.1. In consideration for the provision of Our Services you agree that whilst you have an Active Listing on Our Site, you will not market the Property anywhere else. For the entirety of the Listing Duration and for a period of 3 months following the end of the Listing Duration (the **Sole Agency Period**), you agree that We shall have the sole agency rights in respect of the Property.

10. Fees

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

(a) 3.6% (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) £3,600 (inclusive of VAT).

Examples:

Fee-

Winning bid or the Buy It Now price between £1-£100,000: **£3,600**

Winning bid or the Buy It Now price over £100,000: **3.6%** of selling price (If the Winning Bid or the Buy It Now Price is £180,000 then the fee will be £6,480 (inclusive of VAT) and so on.)

10.2. Usually the Seller will not be required to pay for Our Services. In the circumstances detailed in clause 10.3, the Seller shall pay Us an amount equal to the lower of:

(a) the value of Reservation Fee; or

(b) the higher of:

(i) 3.6% (inclusive of VAT) of the Buy It Now Price where one is specified;

(ii) 3.6% (inclusive of VAT) of the Reserve Price where one is specified; or

(iii) £3,600 (inclusive of VAT).

10.3. You will be liable to pay the amount set out in clause 10.2 if:

(a) at any time during the Sole Agency Period unconditional contracts for the sale of the Property are exchanged:

- (i) with a purchaser introduced to you via Our Site during the Sole Agency Period who has purchased the Property otherwise than in accordance with the Bidding Process and the applicable Buyers Terms; or
- (ii) with a purchaser introduced to you by any other agent during the Sole Agency Period;

and, in each case, we have not been paid an amount equal to the Reservation Fee by you or (where clause 10.3(a)(i) applies) the relevant Buyer; or

(b) you withdraw a Listing at any point:

- (i) during the Bidding Window (including any extension to the same by the Anti Sniping Tool); or
- (ii) during the Reservation Period;

and in each case you have not already paid an amount equal to the Reservation Fee; or

(c) you withdraw from the sales process having been through the Bidding Process and after a Buyer has paid the Reservation Fee. In such circumstances, We shall reimburse the Buyer the value of any Reservation Fee it may have paid in relation to such Bidding Process and you shall be liable to pay us the amount set out in clause 10.2.

11. Your Account and Password

11.1. Where a Seller 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 Seller or allocated by Us, at any time, if in Our reasonable opinion a Seller has failed to comply with any of the provisions of these terms of use.

- 11.3. If a Seller knows or suspects that anyone else knows their user identification code or password, that Seller must promptly notify Us at info@hammerpricehomes.co.uk or on 020 3814 1888.

12. Uploading Content to Our Site

- 12.1. Whenever you provide information to Us that is used to create a Listing, you must comply with the content standards set out in Our Acceptable Use Policy (**Content Standards**).
- 12.2. You confirm that any such contribution does comply with those Content 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 provide that is made available on Our Site does not breach clauses 14.3(i) or 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 that you provide which is uploaded 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 clause 13 (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 provided by you (including any Listing) or any other user of Our Site.
- 12.7. We have the right to remove any posting (including any Listing on Our Site if, in Our opinion, the content does not comply with the content standards set out in Our Acceptable Use Policy or if it does not comply with these Sellers Terms.
- 12.8. The views expressed by other users on Our Site do not represent Our views or values.

13. Rights You Licence

13.1. When We upload or post content to Our Site (including in any Listing), 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:

- (a) use any and all content posted and/or uploaded to the extent necessary to provide the Services (including making the Listings available on Our Site to the general public and other users); and
- (b) make any Listings available to other media and publications and to edit the Listings in the event that We deem it necessary or desirable to do so; and
- (c) use any Listings in any marketing and or promotional material relating to the Services and/or Our Site.

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 provide that we upload 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 Sellers must check the relevant pages to take note of any such changes.

14.3. Listings and any other content which you provide that We 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 Use Policy or of any of your obligations under these Sellers 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 that you have provided;
 - (d) bring legal proceedings against you for the reimbursement of any costs or expenses that We have lost as a result of a breach of Our Acceptable Usage Policy or these Sellers 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 Our sole agency rights in respect of the Property come to an end and You will not be required to make any payment to Us under clause 10.2 or 10.3 and no Termination Fee is payable by You.

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. 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 this clause 16 a Termination Fee does not apply, you may terminate this agreement immediately at any time by contacting us at info@hammerpricehomes.co.uk or on 020 3814 1888 and requesting the removal of any Listings from Our Site and the closure of your account with Us. Please note that (subject to your right to cancel this agreement under clause 3) you will be unable to close your account where there is an outstanding Fee on your account.

16.3. Where you wish to terminate this agreement and you have no Active Listings, provided that:

- (a) any fees previously incurred pursuant to clause 10.2 have been paid; or
- (b) where there has been a Winning Bid or a Buyer has clicked the Buy It Now Button, the Reservation Fee has been paid

in each case, a Termination Fee will not apply.

16.4. Where you wish to terminate this agreement and you have no Active Listings but either:

- (a) any fees previously incurred pursuant to clause 10.2 remain outstanding; or
- (b) where there has been a Winning Bid or a Buyer has clicked the Buy It Now Button, the Reservation Fee has not been paid

in each case you may not terminate this agreement (except as set out in clause 3 (Right to Cancel)) until a Termination Fee equivalent to the value of the outstanding fees incurred pursuant to clause 10.2 or the Reservation Fee has been paid. For the avoidance of doubt, where the Termination Fee has been paid, the Seller shall no longer be liable for any fees which may have been incurred under clause 10.2.

16.5. Where you have an Active Listing and wish to terminate this agreement and such termination would also result of the withdrawal of a Listing in any of the circumstances set out in clause 10.3(b), the Termination Fee payable shall be an amount calculated in accordance with clause 10.2. For the avoidance of doubt, where a Seller has paid a Termination Fee in accordance with this clause 16.5 any fee incurred pursuant to clause 10.3 in respect of the same Active Listing shall no longer be payable and clause 9.2 shall not apply.

17. Liability and Disclaimer

17.1. Nothing in these Sellers 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 have committed a 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 Sellers Terms and that they comply with these Sellers 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 Sellers Terms even if such losses were foreseeable at the time that you agreed to these Sellers 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 Sellers Terms shall be limited to the higher of:

- (a) £3,000; or
- (b) 125% of the applicable Reservation Fee. E.g. If the applicable Reservation Fee was £5,000 then this would equate to £6,250 and so on.

17.8. Subject to clause 17.1, where the Seller is a consumer, We are responsible to you for your foreseeable loss and damage that is caused by us. If we fail to comply with these Sellers 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 Sellers Terms to both parties when you accepted these Sellers Terms;
- (b) losses that were not caused by a breach of these Sellers 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 dealt with according to Our Privacy Policy and shall be treated as confidential and not passed to any third parties. By accepting these Sellers Terms, you consent to the use and processing of your data (including personal data) in the manner and for the purposes set out in these Sellers 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 Sellers 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.