



Terms & Conditions of Business of South Wales HIPs Limited (“the Company”)

1. Definitions

In these Standard Terms & Conditions where the context otherwise requires the following expressions shall have the following meanings.

“Assessor”	The Domestic Energy Assessor or Home Inspector
“Business”	Estate Agent, Solicitor or Property Professional.
“The Company”	South Wales HIPs Ltd
“Confidential Information”	Shall include, but not necessarily be limited to, all information which is not publicly known including the business, finances, products and services, trade secrets, and any other commercially sensitive information of either party regardless of its nature.
“Contract”	The contract between the Company and the Customer for the provision of the Services which includes these Terms & Conditions and signed Agreements.
“Customer”	The sole trader, individual, partnership, organisation or body corporate who enters into the Contract with the Company.
“EPC”	Energy Performance Certificate
“Lien”	The Company’s right to hold all papers, documents, money or other property held on the Customer’s behalf until such time as all monies due under the Contract are paid in full.
“Price”	The price for the provision of the Services.
“Services”	The provision of Energy Performance Certificates, #Floor Plans, Photographs, Marketing Details supplied by the Company to the Customer.

2. The Services

- The Company shall provide the Customer with the Services as agreed between the parties, and shall act in the Customer’s best interest subject to all statutory duties.
- The Inspection for the provision of the EPC will be carried out by a suitably qualified person. The survey is confined to analysing the energy performance of the building. It is not in any way to determine the structural integrity of the building or its contents, and as such, the Assessor will be unable to comment on matters outside the scope of the EPC.
- The Assessor is not permitted to do anything which would affect or damage the fabric of the building, the inspection being mainly based on visual evidence. In view of this, assumptions will need to be made where the evidence is inconclusive. The Assessor will endeavour to clarify any assumptions made but will not be held liable if they subsequently prove to be incorrect.
- In order to maintain impartiality, the Assessor is prevented from giving any advice on improvements, or recommend suppliers. All recommended improvements will be noted on the EPC. The Assessor is permitted to explain details contained within the EPC but cannot give further advice.

3. The Customer’s Obligations

- The Customer shall:
 - Give full and frank instructions and information to allow the Company properly to carry out the Services.
 - Not ask the Company to work in an improper or unreasonable way.
 - Not deliberately mislead the Company in any way in the nature of the instructions, information or documents given.
 - Co-operate fully with the Company
 - Promptly furnish the Company with such information and documents as it may request for the proper performance of its obligations under this Contract
 - Promptly pay the Price for the Services without any deduction or set off of whatever nature.
 - Have no obligation to offer work to the Company.
- In addition to the above:
 - If a customer places an order by email, an acknowledgement that the Company has received the request will immediately be sent to the customer. The customer’s order constitutes an offer to purchase. A contract will only be deemed to have commenced when the Company has formally accepted that offer.
 - If an agreed appointment is aborted by the customer without giving 24 hours notice, or the inspector is unable to gain access to the property to carry out an inspection, the

customer will be liable for the cost of the EPC in addition to the agreed fee for the Services.

- Where the customer is using the services of an Estate Agent, Solicitor, Mortgage Broker or Property Professional, the Customer gives authority to the Company to divulge any relevant information regarding the provision of the service to that Estate Agent, Solicitor, Mortgage Broker or Property Professional.

4. The Company’s Obligations

- The Company shall:
 - Use its best endeavours to ensure that it and its servants, agents and sub-contractors take all reasonable precautions in performance of the Services.
 - Have no obligation to accept an offer of work from the customer.
- In addition to the above:
 - Where information is given to the Company and subsequently found to be incorrect, the Company reserves the right to amend the price of the service in accordance with the additional work. The company will require payment of the additional fee before any further work is conducted. Should the Customer refuse to sanction the additional fee the Company will consider the contract void and reserves the right to charge for all costs incurred.
 - Links to third party websites are provided solely for convenience. The Company does not have any control over these websites and therefore cannot be held responsible for the contents therein.
 - Some of the conclusions contained in the EPC will be based upon information provided by the customer or agent. Where this is subsequently found to be inaccurate, the Company accepts no liability for the consequences.
 - Any data held by the Company will be held in compliance with the Data Protection Act.

5. Charges and Expenses

- In consideration of the Company carrying out the Services, the Customer shall pay to the Company the agreed price.
- In consideration of any further work or additional attendance required by the Customer of the Company not previously agreed to, the Customer shall pay to the Company such additional amounts based on its standard rates.
- Where the Customer is:
 - An Individual;
 - Payment shall be made immediately in advance of any work being carried out by the Company.
 - A Business;
 - Where the Company provides a service directly to the business, an invoice will be issued with 30 days to pay,
 - Where the business refers the house seller to the Company, the house seller will be treated as an individual, and the payment by that individual will be made as per 5.3.1.
- There is no obligation for the Company to accept any instructions.
- The clauses in section 5 are subject to the Company accepting the instructions offered.
- Upon acceptance of an order, implementation of orders for an EPC will commence immediately and therefore no refunds will be possible.
- If payment of any sum due to the Company is delayed, in addition to its other rights under the Contract, the Company shall be entitled to charge interest thereon of 10% above Barclays Bank Plc base rate until payment; such interest to accrue both before and after any monetary Judgement of any Court.

6. Liability and Insurance

- The Company will indemnify the Customer for direct damage to tangible property caused by the negligence of its employees in connection with the performance of their duties under this Contract. The Company’s total liability under this Clause shall be limited to £2 million for any one event or series of connected events.
- The parties acknowledge and agree that the limitations contained in this Clause 6 are reasonable in the light of all of the circumstances; particularly in respect of the size and nature of the Company, the knowledge of the Customer of his own security and financial position (who can estimate and foresee any loss he may suffer in connection with the Services), and on the basis that the Prices for the Services have been calculated on the basis of the limitations in this Clause.
- The Customer’s statutory rights as a consumer (if any) are not affected. All liability that is not expressly assumed in this Contract is excluded. These limitations will apply regardless of the form of action, whether under statute, in contract or tort including negligence or any other form of action. For the purposes of this Clause 6, the



"Company" includes its employees, sub-contractors and suppliers who shall all have the benefit of the limits and exclusions of liability set out above in terms of the Contracts (Rights of Third Parties) Act 1999. Nothing in this Agreement shall exclude or limit liability for fraudulent misrepresentations.

7. Termination

- 7.1. Either party shall be entitled to terminate this contract forthwith at any time for whatever reason by written notice to the other party.
- 7.2. Any termination of the Contract (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

8. Interpretation

- 8.1. In this Contract unless the context otherwise requires:
 - 8.1.1. Words importing persons include firms, companies and corporations and vice versa.
 - 8.1.2. Any obligation on any party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done
- 8.2. In the case of conflict or ambiguity between any provision contained in the body of these Terms & Conditions and any provision contained in any other correspondence, the provision in the body of these Terms & Conditions shall take precedence.

9. Agency, Partnership

- 9.1. This Contract shall not constitute or imply any partnership, joint venture, agency fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this Contract.

10. Amendments

- 10.1. This Contract may not be released, discharged, supplemented, interpreted, amended, varied or modified in any manner except by an instrument in writing signed by a duly authorised officer or representative of each of the parties.

11. Entire Agreement

- 11.1. This Contract supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to the subject matter of this Contract. However, the obligations of the parties under any pre-existing non-disclosure agreement shall remain in full force and effect insofar as there is no conflict between the same. The parties confirm that they have not entered into this Contract on the basis of any representations that are not expressly incorporated into this Contract.

12. Force Majeure

- 12.1. Notwithstanding anything else contained in this Contract, the Company shall not be liable for any delay in performing its obligations under this Contract if such delay is caused by circumstances beyond its reasonable control (including without limitation any delay caused by any act or omission of any other party). The performance of the Company's obligations shall be suspended during the period that the said circumstances persist and the Company shall be granted an extension of time for performance equal to the period of the delay. Save where such delay is caused by the act or omission of the Customer (in which event the rights, remedies and liabilities of the Company shall be those conferred and imposed by the other terms of this Contract or by law):

13. Notices

- 13.1. All notices under this Contract shall be in writing and shall be deemed to have been duly given:
 - 13.1.1. when delivered, if delivered by hand during normal business hours of the recipient; or
 - 13.1.2. when sent, if transmitted by fax or e-mail and a successful transmission report or return receipt is generated; or

- 13.1.3. in the second business day following mailing, if mailed by national ordinary mail, postage pre-paid; in each case addressed to the most recent address or facsimile number notified to the other party.

14. Severance

- 14.1. If any provision of this Contract is prohibited by law or judged by a Court to be unlawful, void or unenforceable the provision shall, to the extent required, be severed from this Contract and rendered ineffective as far as possible without modifying the remaining provisions of this Contract and shall not in any way affect any other circumstances of or the validity or enforcement of this Contract.

15. Successors and Assignees

- 15.1. This Contract shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assignees and references to the party in this Contract shall include its successors and permitted assignees.

16. Waiver

- 16.1. No delay, neglect or forbearance on the part of either party in enforcing against the other party any term or condition of this Contract shall either be or be deemed to be a waiver or in any way prejudice any right of that party under this Contract. No right, power or remedy in this Contract conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party.

17. Time

- 17.1. The Company will use all reasonable endeavours to achieve completion of the Services in accordance with timescales specified in any Company literature but the timescales are to be treated as an estimate only and time shall not be of the essence in respect of the whole or any part of the Services.

18. Sub-Contracting

- 18.1. The Company may perform any or all of its obligations under this Contract through agents or sub-contractors, provided that the Company shall remain liable for such performance and shall indemnify the Customer against any loss or damage suffered by the Customer arising from any act or omission of such agents or sub-contractors but subject to the limitations set out in this Contract.

19. Third Parties

- 19.1. The parties confirm their intent (subject to clause 6.3) not to confer any rights on any third parties by virtue of this Contract and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Contract.

20. Complaints

- 20.1. The Company has a Complaints Procedure, a copy of which will be made available on request.

21. Proper Law and Jurisdiction

- 21.1. If the parties cannot resolve the dispute by the procedures set out in 21.1 above, the parties shall irrevocably submit to the exclusive jurisdiction of the Courts of England and Wales for the purposes of hearing and determining any dispute arising out of this Contract.
- 21.2. While the dispute resolution procedure above is in progress and any party has an obligation to make a payment to another party, the sum relating to the matter in dispute shall be paid without any deduction or set off whatsoever forthwith to the relevant party in accordance with these terms and conditions, including any contractual or statutory (if higher) interest.
- 21.3. If the previous clause is deemed unreasonable by any Court of Law in England or Wales, the sums in dispute shall be paid into an interest bearing account in the joint names of the parties until the conclusion of legal proceedings.