GARDINER
ELECTRICAL
& PROPERTIES

Terms and Conditions

1 Services

1.1 These terms of business and attached Schedule ("Terms") are the sole defining document governing the provision of the Services (as defined in Clause 2) by the Domestic Energy Assessor ("the DEA") to the seller ("Client") of the property to be inspected ("Premises") The Terms supersedes any purchase order issued by the Client and all proposals, terms & conditions, statements, representations or warranties made by or between the DEA and the Client ("Parties") relating to the Services. No variation is valid unless agreed in writing by the Parties.

1.2 Full details of the Client, the Services, the Premises, the appointment time, timetable & method of delivery of any report will be detailed in the Schedule which will be attached to these Terms and form part of the contract between the Parties.

2 The Services

2.1 The Services shall consist of any inspection of the Premises by the DEA and subsequent submission of an Energy Performance Certificate & Recommendation Report ("EPC").

2.2 The DEA will not provide:

a) a survey, condition report or property valuation.

b) Professional services other than related to the provision of an EPC. Any such additional services will be dealt with by a separate contract.

2.3 The DEA will undertake a visual inspection and will not look at parts of the Premises which are covered, unexposed or inaccessible The DEA will not pull up carpets or floor boards Lofts will only be visually inspected if it is safe to do so, access is within 3 metres of floor level & it will not damage the Premises.

3 Statutory Terms for the Preparation of an EPC ("Statutory Terms")

3.1 The EPC will be prepared with reasonable skill and care.

4 Fees & Payment Terms

4.1 The Fees payable for the Services will be as detailed in the Schedule. Fees are to be paid in full (without any deduction or set-off) immediately upon submission of invoice.

4.2 The DEA may charge interest on any outstanding Fees from the due date for payment until the date payment is made at the rate of 2% per annum above the base rate from time to time of Tide Bank.

5 Cancellations or Postponement

5.1 If the appointment is cancelled by the Client on the day of the appointment for whatever reason, 100% of the Fees will be payable to the DEA.

5.2 If the DEA is required to postpone the Services on the day of the appointment due to the failure of the Client to abide by his or her obligations under the Terms, the Fees may at the DEA's entire discretion be increased by up to 50%.

5.3 The DEA may terminate the Terms if there is a conflict of interest.

6 Warranty & Complaints

6.1 The DEA warrants that the Services will be performed in accordance with all legal requirements and the requirements of the DEA's Accreditation Scheme & any relevant Code of Practice.

6.2 Except as expressly set out in Clauses 3.1 and 6.1, all warranties, terms & conditions, whether oral or written, express or implied by statute or otherwise which might have imposed obligations on the DEA in relation to the Services will be excluded to the fullest extent permitted by law.

6.3 The DEA will provide a high level of customer care at all times. In the unlikely event of any complaint, the DEA will seek to resolve any initial complaint by telephone, email or in person as quickly as possible. Should the Client be unhappy with this response they should write to the DEA setting out full details of the complaint within 5 working days. The DEA will usually respond within no more than 15 working days to allow for holidays. If the Client is dissatisfied with this response the matter can be escalated to the DEA's Accreditation Scheme. A copy of the complaints handling process is available on request. This does not affect the Client's legal rights.

7 Client Obligations

7.1 The Client will at his or her own expense provide all such information & co-operation as is reasonably required to enable the DEA to provide the Services. This shall include

a) provision of clear and safe access to all of the Premises,

b) ensuring that no child under the age of 16 is left alone to supervise the inspection;

c) completion and signature of a written Questionnaire which will be sent to the Client in advance of the inspection, setting out information about the Premises.

8 Insurance -The DEA will maintain insurance cover in accordance with the requirements of the DEA's Accreditation Scheme and the minimum terms set by Department of Communities & Local Government.

9 Liabilities

9.1 Notwithstanding anything to the contrary in this Agreement, the liability of the DEA under or in connection with this Agreement, whether arising from contract, negligence or howsoever will be limited as set out in this Clause 9.

9.2 The liability of the DEA is unlimited in respect of any liability arising from:

a) Death or personal injury caused by the negligence of the DEA;

b) any proven fraud on the part of the DEA.

9.3 The aggregate total liability of the DEA is limited to twenty thousand pounds sterling (£20,000) in respect of any claim for loss of, or physical damage to, the Client's tangible property caused by the act or omission of the DEA.

9.4 In respect of any other liability not otherwise covered by this Clause 9, the DEA's aggregate total liability is limited to ten thousand pounds sterling (£10,000).

9.5 The DEA will not be liable for any special, consequential or indirect damages, loss of profits (including direct loss of profits), loss of business, loss of revenue, loss of goodwill or loss of anticipated savings arising out of or in connection with the Terms.

9.6 The Client accepts that the Fees have been set in relation to the risks being assumed by the DEA under the Terms, and that accordingly the limitations on the liability of the DEA detailed in this Clause are reasonable.

10 Confidentiality & Data Protection

10.1 An EPC prepared by the DEA must be entered onto the Register of EPCs.

10.2 Subject to Clause 10.1 and any other contrary legal obligation:

a) All personal information received from the Client will be treated as private & confidential, and will not be disclosed to any other parties without consent, and

b) The DEA will comply with his or her obligations under the Data Protection Act 1998, and the Client is entitled to see any Personal Data held by the DEA in respect of the Client.

c) How the Client's Personal Data will be used by the DEA will be detailed in the Special Conditions in the Schedule.

11 Force Majeure - Except for any payment obligation imposed on the Client, neither party will be liable for a delay in performing, or for a failure to perform, obligations if that delay or failure is caused by circumstances beyond the reasonable control of that party.

12 Third Party Contractual Rights

12.1 The Client and a potential or actual buyer of the Premises may enforce the Statutory Term in Clause 3.1.

12.2 In relation to any other Terms, a person who is not a party to the Terms has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of these Terms. This does not affect any right or remedy of a third party that exists, or is available, apart from that Act.

13 Applicable Law - The laws of England will govern the Terms, and the Parties submit to the exclusive jurisdiction of the English courts.

14 Regulation

14.1 The DEA is licensed under licence number NHER001971 to prepare EPCs under the provisions of the Housing Act 2004.

14.2 The DEA's License is administered by the following Accreditation Scheme:

ECMK accreditation@ecmk.co.uk tel:- 0333 123 1418

Accreditation No: ECMK306075