

# Capture.

## Capture Property Marketing Ltd Terms & Conditions

The following terms and conditions refer to Capture Property Marketing and its relationship with its clients and potential clients.

### Interpretation and Definitions

#### Interpretation

The words of which the initial letter is capitalized have meanings defined under the following conditions. The following definitions shall have the same meaning regardless of whether they appear in singular or in plural.

#### Definitions

For the purposes of these Terms and Conditions:

Affiliate means an entity that controls, is controlled by or is under common control with a party, where "control" means ownership of 50% or more of the shares, equity interest or other securities entitled to vote for election of directors or other managing authority.

Country refers to: United Kingdom

Company (referred to as either "the Company", "We", "Us" or "Our" in this Agreement) refers to Capture Property Marketing, 7-9 North Parade Buildings, Bath, BA1 1NS.

Device means any device that can access the Service such as a computer, a mobile phone or a digital tablet.

Service refers to the Website.

Terms and Conditions (also referred as "Terms") mean these Terms and Conditions that form the entire agreement between You and the Company regarding the use of the Service.

Third-party Social Media Service means any services or content (including data, information, products or services) provided by a third-party that may be displayed, included or made available by the Service.

Website refers to Capture Property, accessible from <https://www.captureproperty.com/>

You means the individual accessing or using the Service, or the company, or other legal entity on behalf of which such individual is accessing or using the Service, as applicable.

### Acknowledgment

These terms and conditions form part of a legal contract between Capture Property Marketing Ltd ("CPM") of 7-9 North Parade Buildings, Bath, BA1 1NS and our client/customer: whose name being as appears on any formal written contract between CPM and said client/customer or as appearing on any invoice from CPM to said client/customer (being posted to either a

known place of work/residence, the registered office of or as otherwise specified in writing to CPM by said client/customer). In placing an order with CPM (and through whatever means whether electronic verbal or written correspondence – and whether directly or via authorized agent or employee of the client/customer) the client/customer hereby agrees to be bound by these terms and conditions.

All orders and requests for any additional products or services or variations to any order will be subject to CPM's acceptance which will be notified to the client/customer in confirmation of any order(s) and such acceptance shall then be conditional upon the application of these terms and conditions.

CPM reserves the right to amend these TCs at any time but will endeavor to notify the client/customer of any such material change.

These Terms and Conditions govern the use of this Service and the agreement that operates between You and the Company. These Terms and Conditions set out the rights and obligations of all users regarding the use of the Service.

Your access to and use of the Service is conditioned on Your acceptance of and compliance with these Terms and Conditions. These Terms and Conditions apply to all visitors, users and others who access or use the Service.

By accessing or using the Service You agree to be bound by these Terms and Conditions. If You disagree with any part of these Terms and Conditions then You may not access the Service.

You represent that you are over the age of 18. The Company does not permit those under 18 to use the Service.

Your access to and use of the Service is also conditioned on Your acceptance of and compliance with the Privacy Policy of the Company. Our Privacy Policy describes Our policies and procedures on the collection, use and disclosure of Your personal information when You use the Application or the Website and tells You about Your privacy rights and how the law protects You. Please read Our Privacy Policy carefully before using Our Service.

### **Links to Other Websites**

Our Service may contain links to third-party web sites or services that are not owned or controlled by the Company.

The Company has no control over, and assumes no responsibility for, the content, privacy policies, or practices of any third-party web sites or services. You further acknowledge and agree that the Company shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with the use of or reliance on any such content, goods or services available on or through any such web sites or services.

We strongly advise You to read the terms and conditions and privacy policies of any third-party web sites or services that You visit.

### **Charges and Fees**

CPM's charges and fees are subject to change from time to time; hence, unless a particular rate is pre-agreed in writing as chargeable the charges and fees will be those given to the client at the time of order and in any event shall be those pre-charged (via direct debit, pay pal or otherwise) or invoiced to the client/customer upon a periodic basis – usually monthly. Unless otherwise agreed to the contrary all invoices are due for payment within 7 days of the date of invoice. Accordingly, CPM reserves the right (1) not to deliver printed or

other commissioned materials services or products until cleared funds are received and (2) to charge, at its discretion, interest on unpaid credit accounts or invoices outside of these terms, at 8% above the Bank of England base rate[1] [2] .

All invoices are subject to VAT where applicable. If invoices remain unpaid after 30 days, from the date of invoice, CPM shall be deemed to have the right to rescind all licenses, written or implied, for usage of images, floorplans or any other materials supplied, electronic or otherwise, with immediate effect pursuant to the copyright act of 1988. By placing an order and hereby agreeing to these TCs the client/customer expressly agrees that the charges, fees and actions, and as governed by these TCs, are fair and reasonable.

### **Services, Products & Materials**

CPM provides directly or indirectly a wide range of products and services which are not limited to, but may include; Photography, Printed Materials, Floor plans, Design, Energy Performance Certificates, Lease and License Plans, Web Site Design, Software/IT servicing, Branding Consultation, Training and Teaching Materials and Business Management Services and any addition to or variation of same as described from time to time on CPM's website.

### **Photography**

Photography is a subjective artform. If a Client requires a reshoot due to creative differences, the Client will pay Capture an additional photography fee of one hundred percent of the fee stated in the quote or invoice for the original shoot, plus all expenses for the reshoot. If there is a technical problem with photography e.g. a number of out of focus photographs, Capture will cover the cost of a re-shoot.

### **Supply of Services, Products & Materials**

CPM will use all reasonable care in the supply of any commissioned services, products and materials (individually or collectively called "the materials") including, but not limited to,

those outlined in these TCs. It is however the client/customers responsibility to check that all supplied services and/or products or materials are reasonably fit for purpose, correct and to reasonable satisfaction. If, for any reason, there is material dissatisfaction CPM must be informed immediately and in writing stating the nature of the dissatisfaction and allowing CPM the opportunity, at its sole discretion, to consider making correction, replacement or otherwise rectifying. Floor plans, specifically, are for indicative purposes only, are not produced to scale unless otherwise stated and all areas, sizes, measurements etc. are approximate.

CPM will not be held liable for any errors in Floor plans that have been proofed by the client/customer as approved and hence are then forever deemed as fit for purpose.

Brochure and other printable/publishable materials products or services specifically (including for incorporation in web sites, marketing materials or the like) will be proofed digitally. And by so approving a proof for print/publication the client/customer accepts full liability for the contents and format and will be deemed as having checked all aspects of the proof. This includes, but is not limited to, the text, photographs, any graphs or other graphical representation and floor-plans (and whether any of these are based upon information supplied by CPM or the client/customer). Specifically, the client/customer expressly warrants that the information or content supplied by them for inclusion in the materials are both fit for purpose and legitimately can be freely used by CPM.

It is accepted that the client/customer will not be held liable for any problems with the materials that are caused by information or content supplied by the client/customer, its agents or any third party related to the client/customer or from which CPM is directed by the client/customer to obtain said information or content. Unless otherwise specifically agreed as part of any particular contract – or subsequently accepted by CPM in writing (and which

acceptance shall be at its sole discretion) – CPM shall not be liable for executing, or the costs/financial damages associated with, any reproduction, replacement or substitution of the materials whether due to (a) claim (by the client/customer) as to inherent material fault, error or sub-standard quality or (b) external factors such as but not exclusively inclement weather, industrial action or (c) any other third party interference or limiting factor.

### **Client/Customer Primary Obligations**

The client/customer will be held wholly liable for all CPM charges/fees/costs pertaining to CPM's execution of the order including those described in our cancellations policy and the charges for non-payment described herein.

By placing the order and hence pursuant to these TCs the client/customer will be held responsible for providing or facilitating timely access to property premises or other places where CPM's work is expected to be performed/partly performed (and responsible for any costs licenses or permissions associated with such access); and as CPM reasonably requires for its contracted employees, sub-contractors, consultants or freelance operators. Furthermore, the client is responsible for ensuring that said property premises or other place are fit, safe and accessible for CPM to be able to efficiently execute its work and in a suitably presentable condition to CPM's reasonable satisfaction.

The client/customer will receive final files and documentation (brochures, photography, floor plan & EPC) when full payment has been received.

Client/customer may request that payment be made by the property owner instead of the estate agent. In the event that the homeowner does not pay their invoice, it is the responsibility of the client/customer/estate agent to pay on the property owners' behalf.

### **Cancellation Policy**

CPM operates the following cancellation policy which the client/customer expressly agrees to be bound by and furthermore the client/customer also accepts that all terms described herein are fair and reasonable. Cancellation or postponement of any work in respect of the materials will be at CPM's sole discretion. Specifically, such cancellation or postponement in respect of any materials for which a visit to a property premises etc., is required will generally not be chargeable provided notified in writing to CPM and acknowledged up to 2pm on the working day prior to the appointment. Cancellation after this time will automatically incur a cancellation fee of up to 60% of the invoice total.

### **Termination**

We may terminate or suspend Your access immediately, without prior notice or liability, for any reason whatsoever, including without limitation if You breach these Terms and Conditions.

Upon termination, your right to use the Service will cease immediately.

CPM reserves all rights to terminate this agreement at its sole discretion. All Fees and charges properly invoiced by CPM will become payable regardless of and within the earlier of (i) 7 days of CPM's written termination of the contract/delivery of the materials the subject of any order from the client/customer or (ii) the delivery of CPM's final invoice.

### **Warranties and Liabilities**

CPM warrants that it will use all reasonable skill, care and duty to provide the materials that comprise the order. All other warranties on the part of CPM; express or implied; are hereby excluded to the fullest extent permitted by law. And any liability CPM may have (whether in contract, tort, including negligence or otherwise) shall in any event be limited to the total fees paid by the client/customer in respect of any order and pursuant to these TCs. For the

avoidance of doubt CPM shall not be liable to the client/customer or to any third party for any loss of profits, loss of sales, loss of turnover or loss of use (or corruption) of data or software or for any indirect, consequential or special loss. CPM shall not be responsible for any delay or failure to execute the materials as described herein for reasons outside of its sole direct control as regards the execution of its contractual obligations.

The client/customer hereby shall be deemed to indemnify CPM against any default or failing in respect of any of the client/customers obligations herein; express or implied.

Notwithstanding any damages that You might incur, the entire liability of the Company and any of its suppliers under any provision of this Terms and Your exclusive remedy for all of the foregoing shall be limited to the amount actually paid by You through the Service or £100 if You haven't purchased anything through the Service.

To the maximum extent permitted by applicable law, in no event shall the Company or its suppliers be liable for any special, incidental, indirect, or consequential damages whatsoever (including, but not limited to, damages for loss of profits, loss of data or other information, for business interruption, for personal injury, loss of privacy arising out of or in any way related to the use of or inability to use the Service, third-party software and/or third-party hardware used with the Service, or otherwise in connection with any provision of this Terms), even if the Company or any supplier has been advised of the possibility of such damages and even if the remedy fails of its essential purpose.

Some states do not allow the exclusion of implied warranties or limitation of liability for incidental or consequential damages, which means that some of the above limitations may not apply. In these states, each party's liability will be limited to the greatest extent permitted by law.

## **Copyright and License**

The copyright for all the materials and any inherent intellectual property within or with respect to the materials will remain with CPM for the term laid out in the copyright act of 1988. CPM reserves the right to rescind or retract any license, implied, written, or otherwise, upon termination of this agreement or at any other time, including in respect of non-payment for invoiced materials, at CPM's sole discretion.

By purchasing the materials from CPM the client/customer hereby agrees to a limited use/license for the materials. This license prohibits the re-use of the materials for any purpose, other than the client/customer direct use; such prohibition to include, but not exclusively, onward sale, exhibition and illustration; without the express prior written consent of CPM.

## **General Terms**

All terms herein shall be bound into any other agreement the client/customer may have with CPM and into any agreement the client/customer may have with any third party in respect of the client/customers primary obligations to CPM and particularly as regards Warranties/Liabilities/Copyright insofar as the client/customer should reasonably be expected bring to the attention of and to pass these down (but then upon a deemed joint and several basis) to said third parties. These terms and conditions are the only ones as between CPM and the client/customer unless otherwise agreed in writing from time to time by both parties.

In the event of part of this agreement being deemed unenforceable by a court of law, the rest of this agreement will continue to apply.

Any notice given under this agreement must be made in writing and sent by pre-paid first-class post to the party's respective addresses.

This agreement shall be governed by English Law and the English courts.

#### "AS IS" and "AS AVAILABLE" Disclaimer

The Service is provided to You "AS IS" and "AS AVAILABLE" and with all faults and defects without warranty of any kind. To the maximum extent permitted under applicable law, the Company, on its own behalf and on behalf of its Affiliates and its and their respective licensors and service providers, expressly disclaims all warranties, whether express, implied, statutory or otherwise, with respect to the Service, including all implied warranties of merchantability, fitness for a particular purpose, title and non-infringement, and warranties that may arise out of course of dealing, course of performance, usage or trade practice. Without limitation to the foregoing, the Company provides no warranty or undertaking, and makes no representation of any kind that the Service will meet Your requirements, achieve any intended results, be compatible or work with any other software, applications, systems or services, operate without interruption, meet any performance or reliability standards or be error free or that any errors or defects can or will be corrected.

Without limiting the foregoing, neither the Company nor any of the company's provider makes any representation or warranty of any kind, express or implied: (i) as to the operation or availability of the Service, or the information, content, and materials or products included thereon; (ii) that the Service will be uninterrupted or error-free; (iii) as to the accuracy, reliability, or currency of any information or content provided through the Service; or (iv) that the Service, its servers, the content, or e-mails sent from or on behalf of the Company are free of viruses, scripts, trojan horses, worms, malware, timebombs or other harmful components.

Some jurisdictions do not allow the exclusion of certain types of warranties or limitations on applicable statutory rights of a consumer, so some or all of the above exclusions and limitations may not apply to You. But in such a case the exclusions and limitations set forth in this section shall be applied to the greatest extent enforceable under applicable law.

#### **Governing Law**

The laws of the Country, excluding its conflicts of law rules, shall govern this Terms and Your use of the Service. Your use of the Application may also be subject to other local, state, national, or international laws.

#### **Disputes Resolution**

If You have any concern or dispute about the Service, you agree to first try to resolve the dispute informally by contacting the Company.

#### **For European Union (EU) Users**

If You are a European Union consumer, you will benefit from any mandatory provisions of the law of the country in which you are resident in.

#### **United States Legal Compliance**

You represent and warrant that (i) You are not located in a country that is subject to the United States government embargo, or that has been designated by the United States government as a "terrorist supporting" country, and (ii) You are not listed on any United States government list of prohibited or restricted parties.

#### **Severability and Waiver**

##### **Severability**

If any provision of these Terms is held to be unenforceable or invalid, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.

### **Waiver**

Except as provided herein, the failure to exercise a right or to require performance of an obligation under this Terms shall not effect a party's ability to exercise such right or require such performance at any time thereafter nor shall be the waiver of a breach constitute a waiver of any subsequent breach.

### **Translation Interpretation**

These Terms and Conditions may have been translated if We have made them available to You on our Service. You agree that the original English text shall prevail in the case of a dispute.

### **Changes to These Terms and Conditions**

We reserve the right, at Our sole discretion, to modify or replace these Terms at any time. If a revision is material We will make reasonable efforts to provide at least 30 days' notice prior to any new terms taking effect. What constitutes a material change will be determined at Our sole discretion.

By continuing to access or use Our Service after those revisions become effective, you agree to be bound by the revised terms. If You do not agree to the new terms, in whole or in part, please stop using the website and the Service.

### **Contact Us**

If you have any questions about these Terms and Conditions, you can contact us:

By visiting this page on our website: <https://www.captureproperty.com/contact-us/>

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