
Lewis Ellis LLP
General Terms and Conditions of Business

Introduction

When the Terms Apply

These terms of business apply where Lewis Ellis provides a service to a client and either (1) there is no written agreement for the provision of that service, or (2) if there is, to the extent that these terms do not conflict with the terms of that written agreement. Reference in these terms to the agreement means the written or informal agreement that is subject to these terms.

Lewis Ellis

Lewis Ellis means Lewis Ellis LLP of 13 Woodstock Street, London W1C 2AG.

Service Level

Standard

Lewis Ellis is to provide the service to the specification and performance level stated in writing or, if none is stated, to the specification and performance level that it ordinarily provides. Any variations must be agreed in writing.

What is not included

Lewis Ellis has no responsibility for anything that is beyond the scope of the service so defined. In particular, it has no liability for:

- advice, or failure to advise, on the condition of a property unless instructed to carry out a formal survey.
- the security, management or insurance of property unless specifically instructed to arrange it.
- the safety of those visiting a property.

Financial Services

Lewis Ellis is not permitted to carry out any activity regulated by the Financial Services and Markets Act 2000.

Estate Agency

Where instructed to carry out estate agency business Lewis Ellis must:

- report in writing all offers it receives
- comply with its obligations under the Estate Agents Act 1979 and regulations made under that Act

Although our reports do not constitute a valuation in accordance with RICS Valuation Professional Standards (8th Edition) we will follow good practice and the principles contained in the RICS Valuation Professional Standards (8th Edition).

Liability and Duty of Care

Duty of care

Lewis Ellis owes to the client a duty to act with reasonable skill and care in providing the service and complying with the client's instructions where those instructions do not conflict with (a) these terms of business, (b) the agreement or (c) applicable law and professional rules.

Liability to the Client

Lewis Ellis has no liability for the consequences, including delay in or failure to provide the services, of any failure by the client or any agent to the client:

- promptly to provide information or other material that Lewis Ellis reasonably requires, or where that information or material provided is inaccurate or incomplete. The client warrants that, where it provides information or material to Lewis Ellis, Lewis Ellis is entitled to rely on its accuracy.
- to follow Lewis Ellis' advice or recommendation.

The liability of Lewis Ellis in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise howsoever caused arising out of or in connection with the provision of services or otherwise under the Agreement is not limited for fraud or where its negligence causes death or personal injury, but otherwise:

- is excluded to the extent that the client or someone on the client's behalf for whom Lewis Ellis is not responsible is responsible;
- is excluded if caused by circumstances beyond Lewis Ellis' reasonable control;
- excludes loss of profit, revenue and anticipated savings;
- excludes indirect, special and consequential losses;
- (where Lewis Ellis is but one of the parties liable) is limited to the share of loss reasonably attributable to Lewis Ellis on the assumption that all other parties pay the share of loss attributable to them (whether or not they do); and
- in any event is limited to £2 million in aggregate under this Agreement.

Liability to Third Parties

Lewis Ellis owes no duty of care and has no liability to anyone but its client, unless specifically agreed in writing by Lewis Ellis. No third party is intended to have any rights under the agreement unless expressly mentioned.

Liability for Others

Lewis Ellis has no liability for products or services that it reasonably needs to obtain from others in order to provide the service.

Delegation

Lewis Ellis may delegate to a third party the provision of the service, or part of it, only where this is reasonable but remains liable for what the third party does unless the client agrees to rely only on the third party (and the client must not unreasonably withhold that agreement). If delegation is at the client's specific request, Lewis Ellis is not liable for what the third party does.

Insurance

Lewis Ellis agrees to effect and maintain appropriate insurance policies, in particular professional indemnity insurance for an amount of not less than £10 million per occurrence or series of occurrences arising from one event.

Protection of Employees

Apart from fraud or criminal conduct no employee of Lewis Ellis has any personal liability to the client and neither the client nor anyone representing the client may make a claim or bring proceedings against an employee or former employee personally.

Liability to Lewis Ellis

The client agrees to indemnify Lewis Ellis against all liability (including without limitation all actions, claims, proceedings, loss, damages, costs and expenses) that relates in any way to the provision of the service except a liability that a court of competent jurisdiction decides or Lewis Ellis acknowledges (whether or not it admits liability) was caused by the fraud, wilful default or negligence of Lewis Ellis or of a delegate for whom Lewis Ellis is responsible under these terms.

Delivering the Service

Timetable

Lewis Ellis is to use reasonable endeavours to comply with the client's timetable but is not responsible for not doing so unless that is agreed in writing. Even then, Lewis Ellis is not liable for delay that is beyond its control.

E-mail and on-line Services

Lewis Ellis may use electronic communication and systems to provide services, making available to the client any software required that is not generally available.

Conflict

If Lewis Ellis becomes aware of a conflict of interest it is to advise its client promptly and recommend an appropriate course of action.

Publicity

Neither Lewis Ellis nor its client may publicise or issue any specific information to the media about the service or its subject matter without the consent of the other.

Criminal Activity

To comply with law and professional rules on suspected criminal activity Lewis Ellis has to check the identity of clients and to report, without telling the client, any activity that it suspects may be linked to crime.

Personal Data

Lewis Ellis processes and protects personal data about clients in compliance with the law of England and Wales wherever in the world that data is accessed. In most cases clients are entitled to see the personal data about them on request.

Intellectual Property

All intellectual property rights in material supplied by the client belong to the client and in material prepared by Lewis Ellis belong to Lewis Ellis. Each has a non-exclusive right to use it for the purposes for which it is supplied or prepared. No third party has any right to use it without the specific consent of the owner.

Confidential Material

Lewis Ellis must keep confidential all material of commercial value to the client of which it becomes aware in providing the service but it may:

- use it to the extent reasonably required in providing the service
- disclose it if the client agrees
- disclose it if required to do so by law, regulation or other competent authority

This obligation continues after termination of the agreement.

The effect of Termination on Client Material

On termination of the agreement Lewis Ellis may, to comply with legal, regulatory or professional requirements, keep one copy of all material it then has that was supplied by or on behalf of the client in relation to the service. The client may request the return or destruction of all other client material.

Destruction of Papers

Lewis Ellis may after six years from the earlier of completion of the service or termination of the agreement destroy any papers it retains.

Remuneration

Investment Acquisition

Lewis Ellis' fee in the event a property introduced by Lewis Ellis proceeds to completion is 1% of the purchase price.

Investment Sale

Lewis Ellis' fee in the event a property marketed by Lewis Ellis proceeds to completion is 1% of the sale price plus agreed disbursements and marketing costs.

Part Performance

Where the service is not performed in full Lewis Ellis is entitled to a reasonable fee proportionate to the service provided as estimated by Lewis Ellis.

Value Added Tax (VAT)

The client must pay VAT at the rate then current on the issue of a valid VAT invoice.

Interest on Overdue Amounts

If an invoice is not paid in full within 30 days Lewis Ellis may charge interest on the balance due at a daily rate of 2% above the base rate of National Westminster Bank.

Miscellaneous

Transfer

The client may transfer the benefit of the agreement but must first get the consent of Lewis Ellis, which will not be unreasonably withheld.

Termination

The client or Lewis Ellis may terminate the agreement immediately by notice to the other if the other:

- has not satisfactorily rectified a substantial or persistent breach of the agreement within the reasonable period specified in an earlier notice to rectify it
- is insolvent according to the laws of its country of incorporation

Effect of Termination on Claims

Termination of the agreement does not affect any claims that arise before termination or the entitlement of Lewis Ellis to its proper fees up to the date of termination or to be reimbursed its expenses.

Notices

A notice is valid if in writing addressed to the last known address of the addressee and is to be treated as served:

- when delivered, if delivered by hand (if that is during normal business hours) otherwise when business hours next commence
- two business days after posting, if posted by recorded delivery
- when actually received, if sent by ordinary mail, fax or electronic mail

Governing law

The law of England and Wales applies to the agreement. Lewis Ellis and the client submit to the exclusive jurisdiction of the courts of England and Wales.