

# Financial Asset Search Terms and Conditions

## Definitions

In these terms and conditions, the following terms have the following meanings:

"**we**", "**us**" and "**our**" refer to Landmark FAS Limited, a company incorporated in England and Wales with Registered Number 5861567 whose registered office is at 5-7 Abbey Court, Eagle Way, Sowton, Exeter, Devon EX2 7HY and it is this company that is the contracting party with you;

"**Conditions**" means these terms and conditions including any amendments to them from time to time that form part of a Contract with you;

"**Confidential Information**" means all information relating to the Contract in any form (including, without limitation, in written, oral, visual and electronic form) which has been or may hereafter be disclosed to the other party or its directors, employees, agents or advisers in connection with the Contract;

"**Contract**" means the agreement between us and you incorporating these Conditions;

"**Consumer**" means a natural person acting for purposes that are outside trade, business or profession;

"**you**", "**your**" refers to a party with whom we have contracted on the basis of these Conditions; and

"**Services**" means the services that we are to supply under a Contract.

## 1. Basis of Contract

- a. These Conditions govern the relationship between you and us. Where these Conditions are not expressly accepted by you, they will be deemed to have been accepted by you, and you agree to be bound by these Conditions, when you place any order for Services or pay for any Services provided to you by us.
- b. These Conditions together with your order, the charges payable to us and delivery details in relation to your order and our privacy policy, which is available on our website ([www.landmarkfas.co.uk](http://www.landmarkfas.co.uk)), constitute the entire agreement between the parties relating to the supply of Services to you by us. You acknowledge that you have not relied on any statement, promise or representation made or given by or on behalf of us which is not set out in the Conditions or delivery details. Nothing in this clause 1.b shall limit or exclude any liability for fraud.
- c. You acknowledge that you have not entered into this Contract in reliance upon any warranty or representation made by us or any other person and you waive any rights to damages or to rescind a Contract that you may have for misrepresentation (other than a fraudulent misrepresentation).
- d. We may from time to time alter the Conditions and the pricing structure that are the bases on which we enter into Contracts. Any change to our Conditions and pricing structure will be publicised on our website and, if you have provided to us an e-mail address for communication, will be emailed to that address. Any Contract that is entered into incorporates the Conditions and pricing structure current at the time that Contract is entered by you and by us. A separate Contract is deemed to be entered into by you and by us on each separate occasion when you place an order for Services. A copy of our current Conditions is available on request being made by you.
- e. You warrant to us that you are not contracting as a "consumer" (as defined under the Unfair Contract Terms in Consumer Contracts Regulations 1999). We will not enter into a Contract to provide Services to a consumer.
- f. If any part of these Conditions is unenforceable (including any provision in which we exclude our liability to you) the enforceability of any other part of these Conditions will not be affected
- g. We shall be entitled to assign or transfer the contract as we think fit. We may also sub-contract the performance of the Contract in whole or in part. The Contract is personal to you. You shall not assign, transfer or otherwise deal with any of your rights and obligations under the Contract without our prior written consent.

## 2. Charges

- a. The charges payable by you to us for Services are those set out in the current relevant price lists supplied by us to you or as quoted in writing by us to you or as published by us. All charges are stated exclusive of Value Added Tax and Value Added Tax (at the then prevailing rate) will be paid in addition thereon.
- b. We are entitled to invoice you for our charges for the Services at any time after a Contract has been entered into between you and us and you will pay our invoice in full within thirty (30) days of the date on our invoice.

- c. If you fail to pay by the due date any amount payable by you under the Contract, we shall be entitled, but not obliged to, charge you interest on the overdue amount, payable by you immediately on demand, accruing from the due date up to the date of actual payment, after as well as before judgment, at the rate set out in the Late Payment of Commercial Debts (Interest) Act 1998 from time to time and fixed sum compensation under the Late Payment of Commercial Debts Regulations 2002. Such interest shall accrue on a daily basis.

## 3. Supply of Services

- a. Without prejudice to any other means of communication, we will be entitled to communicate with you, and will normally do so, by e-mail to any e-mail address that you have supplied to us. Invoices may be issued by e-mail.
- b. Any dates quoted by us to you for the provision of the Services are approximate and do not have any contractual effect and shall not be treated as being of the essence of the Contract.
- c. By entering into a Contract with us you are appointing us to be your agent for the purposes of seeking information from third parties on your behalf within the scope of our Services and we may represent ourselves as such but only for that purpose. You authorise us to supply your details to third parties, as requested/required, but only for the purposes of the performance by us of the Services and for no other purpose whatsoever. Our Services will in no circumstance involve us having any authority on your part to enter into any contract with any third party that is binding upon you and our agency is limited to seeking information on your behalf from third parties.
- d. We make no representation express or implied that our Services will give rise to positive results, nor as to the accuracy of any responses received by us from third parties nor that responses will be received. The Services are intended to form one part of your due diligence process in connection with the location of assets. Our Services are limited to making the appropriate enquiries (with the institutions we detail) on one occasion only, collating responses received and issuing one single report to you after 28 days from the date when our first enquiry is issued to a third party. If we receive additional responses after 28 days but before 90 days from the date when our first enquiry is issued to a third party we will issue another report free of charge to you incorporating those responses. Any responses received beyond such 90 days will be advised to you but not in the format of a report.
- e. We are entitled to withhold any deliverables connected with the Services until all sums due to us by you under the Contract have been received by us in cleared funds
- f. We will use reasonable endeavours to ensure that none of the materials that we may provide you with contain or promulgate any viruses or other malicious code. It is however recommended that you should virus check all materials received by you from us by e-mail and regularly check your computer for the presence of viruses and other malicious codes. We exclude to the fullest extent permitted by applicable law all liability other than liability for death or personal injury in connection with any damage or loss caused by computer viruses or other malicious code originating or contracted from us.
- g. You are entitled to make such use of the Services as you think fit, including without limitation providing the Services either as a stand-alone product or report in combination with any other service you may offer third parties on your terms and conditions.
- h. The deliverables associated with the Services will, unless the parties agree otherwise, be provided in PDF format.

## 4. Your Obligations

- a. You undertake and warrant to us that you:
  - i. are a "probate professional", being a member of: STEP (The Society of Trust and Estate Practitioners); the Law Society of England and Wales; The Scottish Law Society; or a recognised professional body which is acceptable to us and is responsible for the regulation of probate professionals within your country of practice;
  - ii. are in receipt of an original or office copy entry of the death certificate for the deceased individual to whom the Services relate and any other necessary and/or appropriate documentation relating to the supply of the Services and will provide copies of the same to us on request;
  - iii. have, in the context of the requested Services, been properly appointed by the deceased individual or their estate to act on behalf of the estate and to obtain, use and disclose the information provided by us in accordance with all applicable laws;
  - iv. will only instruct us to search for information which you are specifically authorised to access and only use such information in accordance with such authorisation; and
  - v. shall otherwise comply with the provisions of all applicable laws, including, without limitation, in relation to the disclosure or processing of any information obtained through us.

## 5. Liability

- a. Nothing in the Conditions excludes or limits either party's liability for death or personal injury caused by that party's negligence or wilful default and the remainder of this clause 5 is subject to this provision.
- b. Subject to clause 5.c, we shall use all reasonable skill and care in providing the Services to you.
- c. You acknowledge and agree that the Services are provided on the express basis that the information provided within the Services is derived from third party sources. For this reason we do not warrant the accuracy or completeness of any such information provided by us. The Services rely on the sources as described by us and we do not claim that these represent an exhaustive or comprehensive list of all sources that might be consulted.
- d. If you become aware of any defect in the information provided within the Services you shall notify us within seven days of the delivery date. If we are satisfied that there is a defect in the information provided within the Services we shall update our records and notify the originators of that information accordingly. Save for your rights under clause 5.a this will be your sole remedy and our sole liability for such defects
- e. As most of the information provided within the Services is provided to us by others, we cannot control its accuracy or completeness nor is it within the scope of our Services to check the information on the ground, accordingly we shall only be liable for loss or damage caused by our breach of clauses 5.a or 5.b or by our negligence or wilful default and, save as set out in clause 5.a, we shall not in any other circumstances be liable for any inaccuracies, omissions or faults nor shall we have any liability if the relevant information is used otherwise than strictly in accordance with these Conditions
- f. Save as set out in clause 5.a, we shall not be liable in contract, tort (including negligence) or for breach of statutory duty or in any other way for:
  - i. any indirect or consequential losses;
  - ii. loss arising from or in connection with loss of revenues, profits, contracts or business or failure to realise anticipated savings; or
  - iii. loss of goodwill or reputation.
- g. Save as set out in clause 5.a, our total liability in contract or tort (including negligence) or for breach of statutory duty, in relation to each individual Contract, shall not exceed an aggregate amount of £25,000.
- h. Save in respect of defects in information in respect of which the time limited in clause 5.d shall apply, we shall not be liable for any other claim relating to the Services unless we are notified in writing within 12 months of the date of the issues becoming apparent.
- i. You shall have no direct claim or other right of recourse against any third party supplier of information to us.
- j. Unless expressly stated in these Conditions, all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are excluded from the Contract.
- k. We are registered under the Data Protection Act 1998. You authorise us to hold any data that you supply to us on our computer system and to use the same for any purpose that can reasonably be inferred from the nature of the Services that are the subject of the Contract. We retain information that you have provided to us in respect of your client, and any responses that we have received pursuant to the Services for a period of up to 7 years after the date that the Contract is entered into between you and us.

## 6. Confidentiality

- a. In consideration of both parties entering into the Contract each party hereby undertakes to the other (each such undertaking being made separately) as follows:
  - i. each party will maintain the Confidential Information in strict confidence and, save as provided herein, will not divulge any of the Confidential Information to any third party; and
  - ii. neither party will make use of the Confidential Information other than for the purpose of the Contract which, for the avoidance of doubt, shall include an ability to disclose information to third parties as necessary to obtain the Services.
- b. The provisions of this clause shall not apply to any information which enters the public domain:
  - i. other than as a result of the breach by either party of its obligations under clause 6; or
  - ii. which is already in the public domain at the date of the Contract.
- c. We undertake to use the information you provide to us solely for the purpose of fulfilling our obligations under the terms of the Contract and satisfying your orders for our Services. We shall make no other use of the information and shall take all reasonable measures to preserve the security and confidentiality of such information.

## 7. Force Majeure

Neither party shall be liable for any delay in performing or for failure to perform its obligations hereunder if the delay or failure results from any cause or circumstance whatsoever beyond its reasonable control, including any breach or non-performance of the Contract by the other party (hereinafter "event of force majeure"), provided the same arises without the fault or negligence of such party. If an event of force majeure occurs, the date(s) for the performance of the obligation affected shall be postponed for as long as is made necessary by the event of force majeure, provided that if any event of force majeure continues for a period of or exceeding 28 days, either party shall have the right to terminate the Contract forthwith by written notice to the other party. Each party shall use its reasonable endeavours to minimise the effects of any event of force majeure.

## 8. General

- a. Subject to the provisions of clause 3, the relationship of the parties is that of independent contractors dealing at arm's length and nothing in these Conditions shall be construed so as to constitute either as an employee of the other, and neither party is authorised to represent the other party as such.
- b. Any notice to be given under these Conditions may be delivered personally or sent by pre-paid post or courier to the other party at the address given at commencement of the Contract or such other addresses as may be notified in writing by either party to the other from time to time. Any notice as sent shall be deemed to have been duly given if sent by personal delivery or courier upon delivery at the address of the relevant party and, if sent by pre-paid post two (2) days after the date of posting.
- c. No variation of or amendment to the Conditions shall bind either party unless made in writing and signed by both parties hereto.
- d. Failure of either party to enforce or exercise, at any time or for any period, any term the Contract, does not constitute, and shall not be construed as, a waiver of such term and shall not affect the right later to enforce such term or any other term herein contained.
- e. The Contract shall be governed by and construed in accordance with English law. The parties to the Contract irrevocably agree that the courts of England are to have exclusive jurisdiction to settle any questions or disputes which may arise out of or in connection with the Contract.
- f. If any dispute arises out of the Contract the parties will in good faith attempt to settle it by mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the dispute. To initiate the mediation a party must give notice in writing ("the Mediation Notice") to the other party requesting a mediation in accordance with this clause. The mediation is to take place not more than 28 days after the date of the Mediation Notice. If there is any issue on the conduct of the mediation upon which the parties cannot agree within 14 days of the Mediation Notice, the parties shall procure that CEDR will, at the request of any party, decide the issue for the parties, having consulted with them first. The cost of such mediation shall be borne by the parties equally. Recourse to this dispute resolution procedure shall be binding on the parties as to the submission to mediation but not as to its outcome and accordingly all negotiations are to be conducted in strict confidence and without prejudice to the rights of the parties in future legal hearings. Except for the right to seek interlocutory relief no party may commence proceedings until 7 days after the parties have failed to reach a binding settlement by mediation.
- g. Provisions of the Conditions which either are expressed to survive its termination or from their nature or context it is contemplated that they are to survive such termination shall remain in full force and effect notwithstanding such termination.
- h. The parties shall do and execute all such further acts and things as are reasonably required to give full effect to the rights given and the transactions contemplated by the Contract.
- i. Nothing in these Conditions shall confer any benefit or the right to enforce any term of the Contract on any third party (including under the Contracts (Rights of Third Parties) Act 1999).

Email: [customerservices@landmarkfas.co.uk](mailto:customerservices@landmarkfas.co.uk)