

CONDITIONS

THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF *CLAUSE 8 (OUR LIABILITY)*.

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

Abort Charge: the fee charged to the Client by PBS for withdrawal of the Services after the Commencement Date as further described in Schedule 1, available from our office on request.

Applicable Regulations: mean the Taking Control of Goods Regulations 2013; the Taking Control of Goods (Fees) Regulations 2014, the Tribunals, Courts and Enforcement Act 2007 (as amended); and/or any other appropriate regulations that come into force from time to time which are applicable to the provisions of the Services.

Charges: the fees and charges payable by the Client for the supply of the Services in accordance with clause 5 and as further described in Schedule 1, available from our office on request.

Client: the person, firm, authorised company representative or legal professional who purchases Services from PBS, as specified on the relevant Services Document and shall also be referred to as '**You**' and/or '**Your**'.

Client Default: has the meaning set out in clause 7.4.

Client Instructions: means the detailed instructions issued by You to PBS as set out in relevant Services Document(s) in respect of which PBS are expressly authorised by You to provide the Services.

Commencement Date: has the meaning given in clause 3.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 13.11.

Contract: the contract between PBS and the Client for the supply of Services in accordance with these Conditions and shall be made up of the relevant Services Document, these Conditions and Schedule 1 (available from our office on request). If there is any conflict or ambiguity between any of these documents, then the Conditions shall take priority over the Schedules, and the relevant Services Document shall take priority over the Conditions and the Schedules.

Controlled Goods Agreement: means an agreement which may be entered into between the Debtor and PBS where, if the Debtor does not stick to the terms of such agreement, the Debtor's goods may be removed, or secured on site (commercial premises only), and sold.

CRAR means commercial rent arrears recovery undertaken under the Applicable Regulations;

Creditor: shall mean a person who is owed a debt

Debtor: shall mean a person who owes a debt

Enforcement Agent: means a person certified every two (2) years by the County Court, responsible for the enforcement of warrants of control against goods.

Intellectual Property Rights: copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

New Client: a Client who has instructed us 5 or less times in a year.

PBS: Parkinson Bailiff Services Limited registered in England and Wales with company number 3263858 whose registered office is at The Lodge to Shaw Hill, 177 Preston Road, Whittle Le Woods, Chorley PR6 7PR and shall also be referred to as "**We**", "**Us**" and/or "**Our**".

Services: the services, supplied by PBS to the Client as set out in the relevant Services Document which may include CRAR.

Services Document: the document for the Services identified on PBS' website <https://crm.parkinsonbailiff.co.uk/>.

Services Stage: shall mean the compliance stage, the enforcement stage and the sale or disposal stage as further described here <https://www.legislation.gov.uk/uksi/2014/1/regulation/5> (as amended from time to time).

Site: means where the Services are to be provided as set out on the relevant Services Document.

1.2 Interpretation

1.2.1 Unless expressly provided otherwise in this Contract, a reference to legislation or a legislative provision:

1.2.1.1 is a reference to it as amended, extended or re-enacted from time to time; and

1.2.1.2 shall include all subordinate legislation made from time to time under that legislation or legislative provision.

1.2.2 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.2.3 A reference to **writing** or **written** includes fax and email.

1.2.4 A reference to a person shall include a natural person, corporate or unincorporate body (whether or not having separate legal personality).

2. **Provision of these Conditions**

These Conditions are available on our website <https://crm.parkinsonbailiff.co.uk/pdf/Terms%20and%20Conditions%20PBS%20January%202020.pdf> and upon request in writing to the address detailed above.

3. **Instructing us**

- 3.1 The relevant Services Document constitutes an offer by the Client to purchase Services in accordance with these Conditions. By completing a Services Document You become the Client and authorise PBS to provide the Services to You as set out in the relevant Services Document and agree to be bound by these Conditions.
- 3.2 The relevant Services Document shall only be deemed to be accepted when PBS issues written acceptance of the relevant Services Document to You at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 3.3 PBS reserves the right to decline any instructions without stating a reason. In such circumstances any monies paid to PBS in respect of those instructions prior to the provision of any Services may be refunded to You by PBS at PBS's sole discretion.
- 3.4 These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

4. **The Supply of Services**

- 4.1 PBS shall provide the Services as set out in the relevant Services Document in all material respects.
- 4.2 These Services may be performed by PBS's employees, staff, agents, subcontractors and/or consultants and in accordance with the Client Instructions set out in the relevant Services Document.
- 4.3 PBS shall use reasonable endeavours to meet any performance dates specified in the relevant Services Document or in any correspondence we provide to you, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 4.4 PBS reserves the right to amend the Services if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and PBS shall notify the Client in any such event.
- 4.5 PBS shall provide the Services in accordance with the Client Instructions and applicable law using reasonable care and skill.

5. **Charges and disbursements**

- 5.1 PBS will apply fees and disbursements as stipulated in the Applicable Regulations which shall be recoverable from the Debtor in the first instance.
- 5.2 The Client shall pay the Charges further described at Schedule 1 (available from our office on request).
- 5.3 PBS shall invoice the Client on completion of the Services in arrears, unless otherwise advised by PBS. Alternatively the Client shall pay PBS prior to PBS undertaking the Services if reasonably requested to do so by PBS, for instance in circumstances where the Client is a New Client.
- 5.4 The Client shall pay each invoice submitted by PBS:
 - 5.4.1 within 30 days of the date of the invoice; and
 - 5.4.2 in full and in cleared funds to a bank account nominated in writing by PBS, and
 - 5.4.3 time for payment shall be of the essence of the Contract.
- 5.5 All amounts payable by the Client under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). VAT will be charged at the current rate on Charges, fees and other costs where applicable and in accordance with HMRC guidance. Our VAT number is 677 5750 84. The Client shall pay the VAT unless otherwise stated.
- 5.6 If the Client fails to make a payment due to PBS under the Contract by the due date, then, without limiting PBS's remedies under clause 10, PBS will be entitled to charge the Client and, where charged, the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 5.6 will accrue each day at 4% a year above the Bank of England's base lending rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 5.7 The Client, with the consent of the Creditor, hereby authorises PBS to, if necessary, engage an Enforcement Agent to recover from the Debtor exceptional disbursements which are not otherwise recoverable under the Applicable Regulations.
- 5.8 In the event that PBS is authorised to undertake activity pursuant to clause 5.7, PBS and/or the Client/Creditor shall satisfy the Court that the disbursements to which it relates are necessary for effective enforcement of the sum to be recovered, having regard to all the circumstances including the amount of that sum; and the nature and value of the goods which have been taken into control, or which it is sought to take into control.

- 5.9 In matters relating to the recovery of monies, if the Client receives payment on or after the Commencement Date and the payment includes Charges incurred by PBS, the Client must forward the sums to cover any outstanding Charges to PBS in full, unless expressly agreed otherwise by PBS.
- 5.10 If the Client or Creditor negotiates payment outside of the enforcement process set out in this Contract, either by agreement or consent order, the Client shall become liable for all Charges that otherwise would have been recoverable from the Debtor.
- 5.11 If the Client instructs PBS and after the Commencement Date the Client subsequently requests to cancel or suspend the Services then the Client shall be liable to pay to PBS all Charges up to and including the relevant Services Stage. PBS shall also be entitled to charge the Client an Abort Charge as set out in Schedule 1 (available from our office on request).
- 5.12 In certain activities and services:
- 5.12.1 (e.g. forfeitures) PBS will invoice the Client directly for the costs associated with providing the Services, which will include contractors' charges, legal fees, PBS administration costs and any other associated miscellaneous costs. In such circumstances the Client will make payment of the sums due within the timescales specified on the invoice. These may be different to the timescales as listed at clause 5.4. If any element of an invoice is queried, that part of the invoice which has not been queried is to be paid in any event. In regard to forfeitures, costs associated with providing the Services may change when PBS are undertaking the Services and PBS reserve the right to pass on these increased costs; and,
- 5.12.2 (e.g. removal of trespassers) costs may change whilst PBS are on site, according to the nature of the individual case. In such circumstances PBS reserve the right to pass on these increased costs.
- 5.13 The Client may also be liable to pay costs associated with debt recovery procedures, where applicable, should the matter remain unpaid beyond the terms stated.
- 5.14 For the avoidance of doubt the Client shall remain liable to PBS for the payment of all Charges, notwithstanding the financial standing of the Client's customer.
- 5.15 Any change in VAT or fees charged by a court will take effect immediately, and PBS reserves the right to delay the processing of transfer up or enforcement until such time as all monies due are settled in full. PBS will notify the Client of such a change as soon as is practicable.
- 5.16 Where a Client instructs a managing agent or a third party authorised to act on the Client's behalf to instruct PBS to provide Services, the Client shall remain liable for payment of all Charges in circumstances where the managing agent or third party is replaced for whatever reason. The Client shall inform PBS of any changes to the identity of that person.

6. Payments

- 6.1 Unless the Client objects, PBS shall be entitled to enter into a payment arrangement with the Debtor under a signed Controlled Goods Agreement where payment in full cannot be obtained.
- 6.2 In matters falling under the Applicable Regulations where the Debtor makes a part payment towards the debt, this payment will be allocated firstly in respect of fees and disbursements payable to PBS, in accordance with the Applicable Regulations. Any remaining amounts will be allocated to the Client in respect of the debt concerned.
- 6.3 PBS will make immediate payment to the Client of any monies collected, once cleared funds are available, in accordance with the Client Instructions, or as amended in writing.

7. Your responsibilities

- 7.1 The Client shall:
- 7.1.1 provide PBS with accurate information and documentation set out in the Client Instructions, it being acknowledged that PBS will rely entirely upon the same in attempting to provide the Services;
- 7.1.2 co-operate with PBS in all matters relating to the Services;
- 7.1.3 provide PBS, its employees, agents, consultants and subcontractors, with access to the Site and other facilities as reasonably required by PBS. This shall include (but not be limited to) gaining full access to the Site to carry out any forfeiture as per the Torts (Interference with Goods) Act 1977;
- 7.1.4 provide PBS with such information and materials as PBS may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- 7.1.5 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- 7.1.6 comply with all applicable laws and regulations, including, for the avoidance of doubt, the Applicable Regulations;
- 7.1.7 keep PBS regularly informed of any changes to any employees of the Client for the purposes of clause 7.3
- 7.1.8 have a good understanding of the Commercial Rent Arrears Regulations set out in the Applicable Regulations; and
- 7.1.9 keep PBS regularly informed of any event which may affect the progress of the Client Instructions.
- 7.2 The Client warrants to PBS that no other enforcement action is being carried out that would prevent or hinder PBS from carrying out their enforcement duties under the Contract.
- 7.3 Where an employee of the Client, who is registered and has online access to PBS' customer relationship management system, has their employment with that Client terminated, it is the responsibility of the Client to inform PBS immediately so

that online access for the employee can be removed. PBS will not be held responsible for any future access by that person, where the Client has omitted to notify PBS of the termination.

- 7.4 If PBS's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (**Client Default**):

- 7.4.1 without limiting or affecting any other right or remedy available to it, PBS shall have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations in each case to the extent the Client Default prevents or delays PBS's performance of any of its obligations;
- 7.4.2 PBS shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from PBS's failure or delay to perform any of its obligations as set out in this clause 7.4; and
- 7.4.3 the Client shall reimburse PBS on written demand for any Charges and/or costs or losses sustained or incurred by PBS arising directly or indirectly from the Client Default.

8. Our liability: THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 8.1 These terms do not affect Our liability to You in any way for personal injury or death arising from our negligence, nor our liability for fraudulent misrepresentation or misrepresentation as to a fundamental matter made by one of Our employees or agents, nor any other liability which cannot be excluded or limited under applicable law.
- 8.2 Subject to clause 8.1 PBS will not be liable for any loss of income, loss of profits, loss of markets, loss of reputation, loss of customers, loss of use, loss of an opportunity even if we had knowledge that such damages or loss might arise or for any indirect, incidental, special or consequential damages or loss howsoever arising including without limitation breach of contract, negligence, wilful act or default.
- 8.3 References to liability in this clause 8 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 8.4 Nothing in this clause 8 shall limit the Client's payment obligations under the Contract.
- 8.5 Subject to clause 8.1 PBS's total liability to the Client shall not exceed the total amount of Charges payable by the Client under the Contract.
- 8.6 All claims, whether made by one or more of the parties, arising from the same act or omission, or from a series of related acts or omissions, shall be regarded as one claim.
- 8.7 Any claim arising in connection with this Contract must be notified to Us in writing within 6 (six) months of the date that such liability arises. Failure to provide notice within this period will forfeit any claim.
- 8.8 The Client shall indemnify PBS against:
 - 8.8.1 all actions at law, as well as against all costs, charges or expenses which PBS may incur or be liable to pay by reason of their provision of the Services; and
 - 8.8.2 all liabilities, costs, expenses, damages and losses (including any direct, indirect, or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) arising out of, or in connection with the Client providing an incorrect or incomplete instruction to PBS as part of the Client Instructions.
- 8.9 The Client will not hold PBS accountable for any goods forcibly or clandestinely removed. Should any cheque or credit/debit card payment collected by PBS be recalled by the bank or credit/debit card company, after PBS has paid funds over to the Client, and for reasons beyond PBS's control, the Client shall repay those funds to PBS immediately and deem that rent to be still unpaid.

9. Advice given

- 9.1 Please be aware that we are not a law firm and we do not provide legal advice. Any advice provided by PBS relates strictly to the provision of the Services and should not be relied upon as legal advice.
- 9.2 PBS accepts no liability for any actions you may take or loss or damage you incur as a result of advice given in any communication with us or contained in marketing material. We accept no liability for loss or damage you may suffer by instructing any firm of solicitors to whom we may refer.
- 9.3 None of the content presented on PBS's website constitutes legal advice in relation to any of the Services.

10. Termination

- 10.1 Without affecting any other right or remedy available to it, PBS may terminate the Contract with immediate effect by giving written notice to the Client if:
 - 10.1.1 the Client fails to pay any amount due under the Contract on the due date for payment;
 - 10.1.2 PBS reasonably believe that the Client is being untruthful; or

10.1.3 the Client and/or the Client Instructions cause or would cause PBS, in PBS' reasonable opinion, to infringe any applicable laws and/or the Applicable Regulations.

10.2 Without affecting any other right or remedy available to it, PBS may suspend the supply of Services under the Contract or any other contract between the Client and PBS if the Client fails to pay any amount due under the Contract on the due date for payment.

11. Consequences of termination

11.1 On termination of the Contract the Client shall immediately pay to PBS all of PBS's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, PBS shall submit an invoice, which shall be payable by the Client immediately on receipt.

11.2 Termination of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

11.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

12. Data processing

12.1 How we process your data is set out in our privacy notice which can be found here: www.parkinsonbailiff.co.uk/privacy-policy/

13. General

13.1 These Conditions shall not affect any provision of the general law or professional standards applicable to the relationship between PBS and the Client.

13.2 PBS aims to provide a high-quality service to our clients. If You have a concern about the way the Services are being supplied then in the first instance You should raise this with Your usual contact or case manager. In any other event please contact our Client Services Team on client@parkinsonbailiff.co.uk.

13.3 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Client) shall be owned by PBS.

13.4 Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

13.5 PBS may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

13.6 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 13.7.

13.7 Each party may disclose the other party's confidential information:

13.7.1 to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this 13.7,

13.7.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

13.8 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

13.9 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

13.10 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

13.11 Except as set out in these Conditions, no variation, alteration, substitution or modification of these Conditions by the Client shall be binding on PBS unless expressly agreed by a Director of PBS. PBS may revise these Conditions at any time. The amended Conditions will be effective from the date they are posted on <https://crm.parkinsonbailiff.co.uk/pdf/Terms%20and%20Conditions%20PBS%20January%202020.pdf>. You, the Client, are expected to check these Conditions from time to time to take notice of any binding changes that may have been made. Some of the provisions contained in these Conditions may also be superseded by provisions or notices published elsewhere on our website and may include regulatory changes. For more information please contact us or call us on 08450 090909.

13.12 A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the

Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

- 13.13 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision or part-provision of this Contract deleted under this clause 13.14 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 13.14 Any notice given to a party under or in connection with the Contract shall be given in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office. PBS (but not the Client) shall also be entitled to provide any notice to the Client via email to the address specified in the relevant Services Document (if any is given to PBS).
- 13.15 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 13.16 The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.
- 13.17 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.