

# OPA365 Terms And Conditions v1.1

## 1. INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these terms and conditions:

**“Auction”** means the online auction for the Property taking place on the Website;

**“Buyer Fee”** means an amount equal to 1.5% of the Sale Price subject to a minimum of £1,000 (plus VAT) payable by the Buyer to OPA365 upon Completion of an Auction;

**“Buyer”** means the Member making the highest bid in an Auction;

**“Conditions”** means these terms and conditions of use of the Website;

**“Completion”** means completion of the sale of the Property from the Seller to the Buyer;

**“Contract For Sale”** means the contract for the sale of the Property prepared by the Seller (or his solicitor);

**“Deposit”** means the Deposit payable under the the Contract For Sale and as defined therein;

**“Member”** means a Website user who has registered their membership with OPA365 in accordance with Condition 5;

**“OPA365”** means Opanet Limited (company number 05933757) whose registered office is at Entrada House, 6 East Street, Leeds, West Yorkshire LS2 7AP;

**“Property”** means a property submitted for sale through the Website by a Seller;

**“Seller”** means a Member who has registered a Property for sale through the Website;

**“User”** means a Visitor and/or a Member;

**“Visitor”** means a visitor to the Website who has not registered to become a Member; and

**“Website”** means the website hosted at [www.OPA365.com](http://www.OPA365.com) and associated sub-sites.

1.2 Headings in these conditions shall not affect their interpretation.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

## 2. **APPLICATION OF CONDITIONS**

2.1 All use of the Website is on the terms and conditions below.

2.2 These Conditions replace all other terms and conditions previously applicable to the provision of the Website.

2.3 If you do not agree to these Conditions cease use of the Website immediately.

2.4 You may print and keep a copy of these Conditions. They are a legal agreement between you and OPA365 and can only be modified with OPA365's consent. OPA365 reserves the right to change the Conditions at its discretion by changing them on the Website.

## 3. **INTELLECTUAL PROPERTY**

The contents of the Website are protected by international copyright laws and other intellectual property rights. The owner of these rights is OPA365, its affiliates or other third party licensors. All product and company names and logos contained within the Website are the trademarks, service marks or trading names of their respective owners, including OPA365.

## 4. **USE OF THE WEBSITE**

4.1 Please note that the Website is available only to individuals that can form legally binding contracts under applicable law. You must be over 18 years to place a bid on an Auction.

4.2 OPA365 reserves the right to bar users from the Website, on a permanent or temporary basis at its discretion. Any such user shall be notified and must not then attempt to use the Website under any other name or through any other user.

4.3 OPA365 will try to make the Website available but cannot guarantee that the Website will operate continuously or without interruptions or be error free and can accept no liability for its unavailability. You must not attempt to interfere with the proper working of the Website and, in particular, you must not attempt to circumvent security, tamper with, hack into, or otherwise disrupt any computer system, server, website, router or any other internet connected device.

4.4 OPA365 reserves the right to make changes or corrections, alter, suspend or discontinue any aspect of the Website or the content or services available through it, including your access to it. Unless explicitly stated to the contrary, any new features including new content, and/or the provision of further services shall be subject to these Conditions.

## 5. REGISTRATION

- 5.1 In order to access some details of Properties on the Website, have the right to list a Property on the Website, or to bid on a Property, you must submit a completed registration form to OPA365 together with such appropriate identification documentation as OPA365 may request. At its sole discretion, OPA365 may refuse your application for registration. If your application for registration is accepted, OPA365 will confirm this by sending you an email containing an account activation link.
- 5.2 Each registration is for a single user only. You may not share your user name and password with any other person nor with multiple users on a network.

## 6. SECURITY

You are solely responsible in all respects for all use of and for protecting the confidentiality of any username, email verification and password that may be given to you or selected by you for access to the Website. You may not share these with or transfer them to any third parties. You must notify OPA365 immediately of any unauthorised use of them or any other breach of security regarding the Website that comes to your attention.

## 7. INFORMATION YOU PROVIDE

- 7.1 The following applies to any information you provide to OPA365, for example, during any registration or subscription process:
- 7.1.1 You authorise OPA365 to use, store or otherwise process any personal information which relates to and/or identifies you, including, but not limited to, your name and address, to the extent reasonably necessary to provide the services which are available through our website by OPA365, its partners, successors (including the purchaser of the whole or part of its business), associates, sub-contractors or other third parties.
- 7.1.2 If you obtain or choose to bid on a Property through the Website then OPA365 may collect information about your bidding behaviour and if you send OPA365 personal correspondence such as emails or letters then we may collect this information into a file specific to you (together, the various purposes set out in this paragraph and in the privacy policy shall be known as the “**Purposes**”). All such information collected by OPA365 shall be referred to in these terms and conditions as “**Personal Information**”.

7.1.3 You must ensure that the Personal Information you provide is accurate and complete and that all registration details (where applicable) contain your correct name, address and other requested details. For more information about how OPA365 deals with your Personal Information, please read the privacy policy.

7.2 OPA365 is registered with the Information Commissioner as a Data Controller with registration number: Z1901976.

7.3 By accepting these terms and conditions, you agree to the processing and disclosure of the Personal Information for the Purposes. If you would like to review or modify any part of your Personal Information then you should email OPA365 at [admin@OPA365.com](mailto:admin@OPA365.com).

## 8. **AUCTION PROCESS**

8.1 Once a Property is listed at the time stated in our confirmation, the Auction shall begin and Members will be entitled to bid on the Property.

8.2 The Auction will be run as set out in the Auction Process described on the Website.

## 9. **SELLING A PROPERTY**

The following Conditions apply if you are listing a Property for Auction on the Website:

### 9.1 **Submitting Details**

To list a Property you must follow the instructions given on the Website. OPA365 recommends that you seek independent advice from your solicitor prior to submitting your Property for Auction so that your solicitor can prepare all the necessary documentation. You or your solicitor (authorised by you) should upload details of the Home Information Pack and your solicitor's contact details together with any variation to the RICS Standard Terms and Conditions.

### 9.2 **Guide Price and Reserve Price**

9.2.1 When you provide us with details of the Property, we will confirm with you our Guide Price.

9.2.2 You must set a Reserve Price, which is the minimum amount that you will accept for the Property. The Reserve Price should be no more than 90% of the Guide Price.

### 9.3 **Conditional Exchange**

9.3.1 At the end of the Auction OPA365 will forward details of the winning bidder to you and your solicitors. You agree that you will immediately take the Property off the market at the end of the Auction and agree to fully exchange the Contract For Sale at the Sale Price with the Buyer within 5 Business Days. Your solicitors should notify OPA365 of exchange of contracts by email to [admin@OPA365.com](mailto:admin@OPA365.com) or the completion tracker service on the site.

9.3.2 The end of the Auction does not constitute formal exchange of contracts as prescribed by the Law of Property Act 1925 however, if you subsequently refuse to continue based on the Contract For Sale submitted by you and at the Final Price then you may be liable to a Cancellation Fee of £250 plus VAT. This Cancellation Fee is acknowledged by you to be a fair and reasonable charge in respect of OPA365's administration expenses incurred during the aborted sale and will be taken if notice of exchange has not been received within 5 Business Days of the Auction ending.

### 9.4 **Fees**

9.4.1 Subject to Condition 9.3.2, OPA365 does not charge the Seller for its services as its fee is recovered from the Buyer. You may still be charged a fee by your estate agent and you should check the terms and conditions of your contract with them.

9.4.2 Where you have requested additional services, you will provide OPA365 with details of a valid credit or debit card which will be used to take payment of any fees incurred for such services.

### 9.5 **Relisting Property**

Should exchange of contracts not take place within the deadlines specified in Condition 9.3.1 then you may relist the Property for Auction.

## 10. **BUYING A PROPERTY**

The following Conditions apply if you wish to bid on a Property at Auction:

### 10.1 **Property Details**

All information provided on the Property is provided by the Seller and OPA365 gives no warranties or representations as to its accuracy. You should seek independent legal advice before exchanging Contracts For Sale. We recommend that you liaise with your solicitor prior to bidding on a Property.

## 10.2 **Bidding**

10.2.1 Bids are submitted electronically. By placing a bid a Member accepts these terms and conditions.

10.2.2 Prior to making a bid, you must provide OPA365 with details of a valid credit or debit card. No fees will be charged to the card for registering or bidding. However, the card may be used to recover the Cancellation Fee set out in clause 10.3.1.

## 10.3 **Conditional Exchange**

10.3.1 At the end of the Auction OPA365 will forward details of the Seller and the Seller's solicitors to you and your solicitors. You agree with the Seller to fully exchange the Contract For Sale within 5 Business Days. Your solicitors should notify OPA365 of exchange of contracts by email to [admin@OPA365.com](mailto:admin@OPA365.com) or the completion tracker service on the site. If OPA365 do not receive notification of exchange of contracts within this time period, then OPA365 will be entitled to charge a Cancellation Fee of £250 plus VAT using the card details you supplied prior to bidding. This Cancellation Fee is acknowledged by you to be a fair and reasonable charge in respect of OPA365's administration expenses incurred during the aborted sale and will be taken if notice of exchange has not been received within 5 Business Days of the Auction ending.

10.3.2 The end of the Auction does not constitute formal exchange of contracts as prescribed by the Law of Property Act 1925.

10.3.3 Your solicitors should notify OPA365 of Completion by email to [admin@OPA365.com](mailto:admin@OPA365.com), at which point OPA365 will be entitled to charge the Buyer's Fee.

## 10.4 **Fees**

The Buyer's Fee is non-refundable (save at the absolute discretion of OPA365) and is a fee payable to OPA365 and does not form part of any contract with the Seller to purchase the Property.

## 11. **LIMITATION OF LIABILITY**

- 11.1 OPA365 make no representations whatsoever about any other websites which you may access through the Website. When you access any other website you understand that it is independent from OPA365 and that OPA365 has no control over the content or availability of that website. In addition, a link to any other website does not mean that OPA365 endorses or accepts any responsibility for the content, or the use of, such a website and shall not be liable for any loss or damage caused or alleged to be caused by or in connection with use of or reliance on any content, goods or services available on or through any other web or resource. Any concerns regarding any external link should be directed to its website administrator or web master.
- 11.2 OPA365 provides most information on this Website free of any access charge. Where not charged for the information provided on the Website is provided on the basis of no liability for the information given. Where we provide a chargeable service to you we accept liability for direct loss arising from our not having used reasonable skill and care in the provision of such services up to the price you have paid us for such service.
- 11.3 In no event shall OPA365 be liable to you for, in the case of non-chargeable services any direct, and for both chargeable and non-chargeable services any indirect or consequential loss, loss of profit, revenue or good will arising from your use of the Website or information on the Website. Subject as provided below, all terms implied by law are excluded.
- 11.4 OPA365 accepts liability for death or personal injury caused by negligence or responsibility for fraudulent misrepresentation that cannot, under English law, be excluded.
- 11.5 OPA365 makes no warranty or guarantee that the Website or information available over it complies with laws other than those of England.

## 12. **NOTICES**

- 12.1 All notices shall be given:
- 12.1.1 to OPA365 via email at [admin@OPA365.com](mailto:admin@OPA365.com) or by post at Entrada House, 6 East Street, Leeds, West Yorkshire LS2 7AP; or
- 12.1.2 to you at either the email or postal address you provide during any ordering process.
- 12.2 Notice will be deemed received when an email is received in full (or else on the next business day if it is received on a weekend or a public holiday in the place of receipt) or three (3) days after the date of posting.

### 13. GENERAL

- 13.1 OPA365 may, but you may not, assign any rights and/or transfer, sub-contract or delegate any obligations under these Conditions, and/or charge or deal in any other manner with these Conditions or any of our respective rights or obligations. Any purported assignment, transfer, sub-contracting, delegation, charging or dealing in contravention of this Condition 13.1 shall be ineffective. These Conditions are personal to you and are entered into by you for your own benefit and not for the benefit of any third party.
- 13.2 OPA365 may alter these Conditions from time to time and post the new version on the Website, following which all use of the Website will be governed by that version.
- 13.3 These Conditions together with the privacy policy and payment method instructions, if any, are the whole agreement between you and OPA365. You acknowledge that you have not entered into this agreement in reliance upon any statement, warranty or representation made by OPA365 or any other person and you irrevocably and unconditionally waive any rights to claim damages and/or to rescind these terms and conditions by reason of any misrepresentation (other than a fraudulent misrepresentation) that is not contained in the Conditions or privacy policy or payment method instructions.
- 13.4 If any provision or term of these Conditions shall become or be declared illegal, invalid or unenforceable for any reason whatsoever, such term or provision shall be divisible from the other Conditions and shall be deemed to be deleted from them.
- 13.5 These Conditions do not confer any rights on any person or party (other than you and/or OPA365) pursuant to the Contracts (Rights of Third Parties) Act 1999.

### 14. GOVERNING LAW AND JURISDICTION

English law shall apply to these Conditions, notwithstanding the jurisdiction where you are based. You irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute which may arise out of, under, or in connection with these Conditions and for those purposes irrevocably submit all disputes to the jurisdiction of the English courts. The place of performance shall be England.