

# Terms of Business for Burlington Credit Limited

## Standard Terms and Conditions – Service Area: Enforcement Services

Recital(s): These Service Conditions are appended to the Terms of Business for Burlington Credit Limited. The provision of Services pursuant to these Service Conditions will include, but is not limited to, the execution of High Court Writs (varied types), Amicable Recovery of Debt and the execution of Possession Orders etc. The primary objective of these services is to assist in the execution of a Court Order and/or the recovery of money, goods and/or assets. Some of these services are subject to Statutory and Regulatory governance.

### 1. Definitions

In these Service Area Terms and Conditions the following words have the following meanings:

- 1.1 **Abortive Invoice** - an invoice that is payable either by the Instructing Client or (in the event of a settlement agreement being reached between the parties) the Debtor when Burlington Credit Limited is unable to continue and/or complete execution in any matter. The Abortive Invoice will be based on all fees, costs and expenses payable in any given set of circumstances.
- 1.2 **Administrative Agreement** - is a separate agreement that is made between the Instructing Client and Burlington Credit Limited for the provision of administrative services that fall outside the remit of these Service Area Terms and Conditions.
- 1.3 **Burlington Credit Limited** - is the company that provides services under these Service Area Terms and Conditions.
- 1.4 **Creditor** - is the beneficiary of a Debt that is enforceable under the Regulations and who has chosen to instruct Burlington Credit Limited to engage either the HCEO or an Enforcement Agent (as appropriate) in execution of the same on their behalf.
- 1.5 **Debt** - is the amount of money that is payable by the Debtor and that is enforceable under the Regulations. The Debt is the amount of money that the Debtor will need to pay, together with all fees, costs and expenses to the HCEO or Enforcement Agent and the Creditor.
- 1.6 **Debtor** - is the person, business, organisation or other entity being the party owing the Creditor.
- 1.7 **Enforcement Address** - is the address to which the HCEO or Enforcement Agent is directed. It is the address that must be attended and where the HCEO or Enforcement Agent is required to conduct the execution. Sometimes the Enforcement Address can be changed and the HCEO or Enforcement Agent can be asked by the Instructing Client to attend another address. In some cases (subject to the provisions of the Regulations) the HCEO or Enforcement Agent can attend anywhere that he/she believes that he/she will be able to locate any goods belonging to the Debtor.
- 1.8 **Enforcement Agent** - means a person engaged by Burlington Credit Limited who is certificated in accordance with the Certification of Enforcement Agents Regulations 2014 and, where applicable, who is also acting under the authority of the HCEO.
- 1.9 **HCEO** - is the authorised High Court Enforcement Officer engaged by Burlington Credit Limited (currently but not limited to Mr Nicholas Davy Todd). High Court Enforcement Officers are authorised personally by the Lord Chancellor or his designated person pursuant to paragraph 2 (1) of Schedule 7 of the Courts Act 2003 and Regulation 6 of the High Court Enforcement Officers Regulations 2004 to execute judgments and orders of the High Courts and County Courts of England and Wales.
- 1.10 **Insolvency Process** - this means, but not limited to, Company Voluntary Arrangement, Individual Voluntary Arrangement, Administration Order, Administrative Receivership, Administration Order, Bankruptcy, Liquidation, or the calling of a Meeting of Creditors as provided under the various Insolvency statutes and Insolvency Rules.
- 1.11 **Instructing Client** - is 'the Client' as defined in the master 'Terms of Business for Burlington Credit Limited' and as such is any party that has asked Burlington Credit Limited to act for them either directly as a Creditor or sometimes on behalf of a Creditor (where the Instructing Client is acting as agent with actual or ostensible authority of the Creditor). It is expected that solicitors will instruct Burlington Credit Limited and that they have actual or ostensible authority of the Creditor but Burlington Credit Limited reserves the right to ask for further evidence from other agents engaged on behalf of a Creditor. If an Instructing Client requests services relating to any form of execution under the Regulations it will be presumed that the instructions given to Burlington Credit Limited automatically extend to the HCEO or Enforcement Agent.
- 1.12 **Lodgement Date** - the date and time the Debt is received by Burlington Credit Limited.

- 1.13 **Priority** - basically means 'first in first out'. The HCEO or Enforcement Agent will lodge all Debts received by recording the time and date they were received by Burlington Credit Limited (the Lodgement Date). Where there are multiple Debts against the same Debtor, the first Debt to be received by Burlington Credit Limited will be executed first. The money received from the Debtor will be allocated on the same basis. For example, the money received will be given to the Creditor(s) depending on which Debt was received 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> etc.
- 1.14 **Regulations** - all relevant legislation and statutory instruments affecting the enforcement of Debts and the fees recoverable against the Debtor including specifically the Taking Control of Goods Regulations 2013, the Taking Control of Goods (Fees) Regulations 2014, the Tribunals Courts and Enforcement Act 2007 and any supervening legislation.

## **2. Services**

- 2.1 All Services under these Service Area Terms and Conditions are provided in accordance with their relevant statutory and regulatory remit.
- 2.2 In the case of a High Court Writ, the Writ will need to be renewed if execution is not completed either within one year of the court sealing the writ, or within one year of the date of the last payment under the writ. Burlington Credit Limited can do this on behalf of the Instructing Client or it is open for the Instructing Client to organise the same for themselves.
- 2.3 Execution of Debts will be conducted pursuant to the rules and protocol governing Priority.
- 2.4 Burlington Credit Limited will regularly review all matters in which they are instructed. Burlington Credit Limited will take the necessary steps to progress the matter they are instructed to act in. If upon reviewing a matter, it is felt that further instructions are needed from the Instructing Client these will be sought.
- 2.5 Burlington Credit Limited will from time-to-time make recommendations to the Instructing Client about future actions which the Instructing Client may wish to consider and which may be helpful to the Instructing Client considering the available options. However these recommendations do not constitute legal advice and any reliance upon such recommendations are entirely at the Instructing Client's own risk.
- 2.6 Burlington Credit Limited will notify the Instructing Client of any Insolvency Process and when any Insolvency Process prevents continued execution. If an Insolvency Process is commenced by the Debtor before, during or after the execution, all action will be stayed pending resolution of the matter. If Burlington Credit Limited is notified of an Insolvency Process pre-action, then Burlington Credit Limited will withdraw and (where relevant) render an Abortive Invoice to the Instructing Client, unless Burlington Credit Limited is able to secure its fees, expenses and costs from the Insolvency Practitioner.

## **3. Reporting**

- 3.1 Burlington Credit Limited will provide the Instructing Client with reports from time-to-time during the life of the Instructing Client's instructions. The purpose of these reports is to keep the Instructing Client updated and so that any issues can be resolved quickly. The Instructing Client will need to actively participate in this process when needed to respond from time-to-time.
- 3.2 The HCEO or Enforcement Agent, in the normal course of events, will make a report of what happened at each attendance at an Enforcement Address. As a matter of best practice Burlington Credit Limited encourages the HCEO and Enforcement Agents to make their reports as soon as possible after attendance and in some cases during attendance. However it is acknowledged this may not always be possible depending on the events of the HCEO or Enforcement Agent's day. However, a report will be made and this report will provide information about what the HCEO or Enforcement Agent did upon attendance at the Enforcement Address. This report will provide an inventory of seized goods where relevant. Upon receipt of this report from the HCEO or Enforcement Agent, Burlington Credit Limited will review the matter and provide the Instructing Client with all the relevant information and request further instructions if they are needed.
- 3.3 Burlington Credit Limited will agree with the Instructing Client how the Instructing Client would like to communicate. If there is no agreement it will be presumed that the Instructing Client is content to communicate via email, however if the Instructing Client has advised they do not have email, communications will be posted.

## **4. Legal Control of Goods**

- 4.1 Where practicable upon attendance at an Enforcement Address, the HCEO or Enforcement Agent will take photographs of any goods seized and/or all goods which are removed for sale.
- 4.2 If during the execution of any matter relating to these Service Area Terms and Conditions, goods need to be removed Burlington Credit Limited reserves the right to have the goods valued by an independent auctioneer and/or independent

valuation to ensure the best price is obtained and so that the sale value can be considered against the amount payable pursuant to the Debt.

## **5. Execution Process**

- 5.1 All Debtor(s) will be sent an initial letter (known as a Notice of Enforcement) to the Enforcement Address advising them of the statutory period and pending execution before any attendance is made by the HCEO or an Enforcement Agent.
- 5.2 Where the Creditor is using an Instructing Client to act for them as agent(s), then for the purposes of this clause and anywhere else, Burlington Credit Limited is entitled to accept that any instructions from the Instructing Client come from the Creditor. Burlington Credit Limited will rely on the information provided by the Instructing Client throughout the execution process.
- 5.3 If after the statutory period has expired the Debtor continues to fail to pay the Debt, then the HCEO or an Enforcement Agent will be instructed to attend the Enforcement Address.
- 5.4 The Enforcement Address or any alternative address provided will be scheduled for a maximum of 3 attendances, unless otherwise agreed by Burlington Credit Limited.
- 5.5 The HCEO or Enforcement Agent will make attendance(s) with a view to securing payment of the Debt. The HCEO or Enforcement Agent will do this by seizing goods and/or assets he believes reasonably belong to the Debtor (usually by way of a Controlled Goods Agreement in accordance with the Regulations), otherwise securing the Debtor's goods and/or assets by removal or obtaining payment.
- 5.6 If the HCEO or Enforcement Agent is able to obtain payment of the Debt in full during the course of any attendance, this will always be accepted. If payment of the full Debt is made to Burlington Credit Limited this will be accepted.
- 5.7 Any offer to discharge the Debt by way of a reduced settlement offer, any offer to pay the Debt in full by installments or any part-payment collected against the Debt will be included when the HCEO or Enforcement Agent makes the attendance report to Burlington Credit Limited.
- 5.8 Burlington Credit Limited will contact the Instructing Client seeking instructions in connection with any reduced settlement offer. In these circumstances, it will always be for the Instructing Client to decide whether they wish to accept the offer, make a counter-offer or to reject the offer; but
- 5.8.1 If any reduced settlement offer (that is any offer to discharge the Debt that is less than the original value of the Debt) is accepted by the Instructing Client, then the Instructing Client will be liable for all enforcement fees, costs and expenses that would otherwise have been chargeable by the HCEO or Enforcement Agent to the Debtor under the Regulations in the event of seizure and removal of goods for sale (whether or not goods actually available for seizure would have yielded a full return). In that event Burlington Credit Limited shall be entitled to retain all enforcement fees, costs and expenses to which it is entitled under this clause from the proceeds of the reduced settlement sum collected, and shall account to the Instructing Client for the remaining balance thereafter.
- 5.8.2 If a reduced counter settlement offer is made by the Instructing Client, Burlington Credit Limited will contact the Debtor and attempt to reach an agreement. If it is agreed that the reduced counter settlement offer will be paid by installments, then the Instructing Client will be liable for all enforcement fees, costs and expenses that would otherwise have been chargeable by the HCEO or Enforcement Agent to the Debtor under the Regulations in the event of seizure and removal of goods for sale (whether or not goods actually available for seizure would have yielded a full return). However, Burlington Credit Limited can be instructed to administer such payments pursuant to an Administrative Agreement. During the course of the Administrative Agreement the value of the installment payments received will be distributed in accordance with clause 6.6 below. If there is no agreement reached the counter-offer will be deemed rejected and the execution process will continue where possible.
- 5.9 If an offer to pay the Debt in full by installments is accepted by the Instructing Client, then Burlington Credit Limited can be instructed to administer such payments pursuant to an Administrative Agreement. During the course of the Administrative Agreement the value of the installment payments received will be distributed in accordance with clause 6.6 below.
- 5.9.1 In the event that the Instructing Client refuses to accept an offer under 5.9 above that is deemed reasonable by the HCEO or Enforcement Agent (and/or Burlington Credit Limited) and the Instructing Client wishes to withdraw the instructions in the matter, then the Instructing Client will be liable for all enforcement fees, costs and expenses that would otherwise have been chargeable by the HCEO or Enforcement Agent to the Debtor under the Regulations in the event of seizure and removal of goods for sale (whether or not goods actually available for seizure would have yielded a full return). In that event, an Abortive Invoice will be raised and rendered to the Instructing Client.

- 5.10 If the HCEO or Enforcement Agent (and/or Burlington Credit Limited) is able to collect a part-payment that does not represent a reduced settlement offer (and therefore does not compromise the Instructing Client's position to collect the balance of the Debt thereafter using alternative enforcement methods) but represents an opportunity to partially discharge the Debt, then the HCEO or Enforcement Agent (and/or Burlington Credit Limited) may exercise reasonable discretion to accept such payment. In such cases, the HCEO or Enforcement Agent (and/or Burlington Credit Limited) will be trained to use reasonable judgment on a case-by-case basis depending on the availability of goods and/or assets that can be seized to secure payment of the Debt. The HCEO or Enforcement Agent's (and/or Burlington Credit Limited's) decision will take into consideration the Debtor's conduct and the likelihood of a more successful enforcement outcome. If considered necessary the HCEO or Enforcement Agent and/or Burlington Credit Limited will make reasonable attempts to communicate with the Instructing Client while the HCEO or Enforcement Agent is at the Enforcement Address but it is acknowledged that decisions made by the HCEO or Enforcement Agent in such circumstances will be accepted by the Instructing Client.
- 5.11 If an Administrative Agreement is not made and the Instructing Client wishes to withdraw the instructions in the matter as an agreement has been made with the Debtor, then the Instructing Client will be liable for all enforcement fees, costs and expenses that would otherwise have been chargeable by the HCEO or Enforcement Agent to the Debtor under the Regulations in the event of seizure and removal of goods for sale (whether or not goods actually available for seizure would have yielded a full return). In that event, an Abortive Invoice will be raised and rendered to the Instructing Client.
- 5.12 If any offer that has been secured by way of a Controlled Goods Agreement is rejected by the Instructing Client, then the Debtor will be notified and a further attendance will be scheduled so that seized goods can be removed.
- 5.13 If any offer is rejected and upon being notified of the rejection of the offer the Debtor continues to fail in the settlement of the Debt and the HCEO or Enforcement Agent was unable to seize goods or the seized goods were of low value, then further instructions will be sought from the Instructing Client. If the Instructing Client insists on the removal of low value goods, a costs indemnity will be sought from the Instructing Client. Alternatively, the Instructing Client may wish for a further attendance with a view to, either obtain a better levy and/or a better offer. Should the Instructing Client give these instructions Burlington Credit Limited will reasonably assist.
- 5.12 In the event that during the enforcement process (or in the case of a High Court Writ during the life of the Writ) the Debtor defaults on any payment(s) due under an arrangement, the HCEO or Enforcement Agent will attend to remove goods for sale.
- 5.13 If upon attendance at the Enforcement Address the HCEO or Enforcement Agent is unable to secure payment of the Debt, even in part, and there is no payment forthcoming and there is no offer to make payment, Burlington Credit Limited will advise the Instructing Client and seek further instructions.
- 5.14 If the HCEO or Enforcement Agent was able to seize some goods but they could be of low value and insufficient to satisfy the Debt, Burlington Credit Limited will seek instructions from the Instructing Client. If the Instructing Client insists on the removal of low value goods a costs indemnity will be sought from the Instructing Client.
- 5.15 Subject to Section 8 below, if upon attendance at the Enforcement Address the HCEO or Enforcement Agent is able to secure the Debt by seizing goods and/or assets but those goods are 'claimed' as belonging to another person, business or organisation that is not the Debtor, the HCEO or Enforcement Agent will complete his inventory of seized goods and/or assets and, where reasonable, withdraw. The HCEO or Enforcement Agent will ask the third party claimant to put their 'claim' in writing either to be handed to the HCEO or Enforcement Agent or sent to Burlington Credit Limited. It is also possible that Burlington Credit Limited may receive communication after the HCEO or Enforcement Agent's attendance in relation to a person, business or organisation who 'claims' to own goods and/or assets that have been seized. In any event, upon formal notification that a third party has 'claimed' ownership to goods and/or assets seized, Burlington Credit Limited will advise the Instructing Client and seek further instructions. If a third party makes a 'claim' of ownership to goods and/or assets seized in the matter to the Court execution action will normally be stayed by Burlington Credit Limited pending further directions from the Court.
- 5.16 Subject to Section 8 below, if upon attendance at the Enforcement Address the HCEO or Enforcement Agent is able to secure the Debt by seizing goods and/or assets but those goods are 'claimed' to be exempt by the Debtor the HCEO or Enforcement Agent will complete his inventory of seized goods and/or assets and, where reasonable, withdraw. The HCEO or Enforcement Agent will ask the Debtor to put their 'claim for exempt goods' in writing either to be handed to the HCEO or Enforcement Agent or sent to Burlington Credit Limited. It is also possible that Burlington Credit Limited may receive communication after the HCEO or Enforcement Agent's attendance in relation to the Debtor who claims that the seized goods are exempt. In any event, upon formal notification that seized goods are exempt, Burlington Credit Limited will advise the Instructing Client and seek further instructions. All action will normally be stayed by Burlington Credit Limited pending resolution of this matter.

- 5.17 Generally, Burlington Credit Limited as a matter of good practice will use all reasonable endeavours and contact information including letters, fax, telephone, email and/or text message to contact the Debtor to discuss payment(s) in-relation to the recovery of the Debt.
- 5.18 Generally, Burlington Credit Limited will make attempts to collect information from the Instructing Client and from public databases to establish the Debtor's current telephone number(s). Information gained from the HCEO or Enforcement Agent's visits will also be used to assist in the execution.
- 5.19 If it becomes apparent during the course of execution that execution is likely to fail for any reason Burlington Credit Limited will report to the Instructing Client explaining the position.
- 5.20 If, after all of Burlington Credit Limited's best endeavours, it is not possible to either seize goods or assets and no payment could be obtained Burlington Credit Limited will withdraw in the matter and return the instructions. In these circumstances the Instructing Client would not be liable for any further fees, costs or expenses in-relation to the execution. This will be done in the form of a report and if the Instructing Client want to discuss other enforcement options then the Instructing Client should contact Burlington Credit Limited at the earliest opportunity.

## **6. Money Received on Behalf of the Creditor**

- 6.1 All money received on behalf of the Creditor will be held in Burlington Credit Limited's client bank account.
- 6.2 Subject to Section 6.1, all money received on behalf of the Creditor will be held in the Burlington Credit Limited's client bank account for a period of 14 days excluding bank holidays and weekends. After the 14 days have expired Burlington Credit Limited will pay the monies held over to the Instructing Client subject to any deductions to which Burlington Credit Limited are entitled to make including, but not limited to, enforcement costs as set out in clause 6.5.
- 6.3 However, if the money received on behalf of the Creditor becomes connected to any dispute, Insolvency Process and/or court proceeding including any application to have a Court Judgment set aside and/or an application that will deal with the ownership of goods or exempt goods, Burlington Credit Limited will hold all monies held until the final resolution of all the issues or until they are directed by the Court or any other relevant body holding such authority and capacity as to instruct the release of the money.
- 6.4 Payment will normally be made in accordance with the protocol governing Priority, unless after the Lodgment Date if Burlington Credit Limited is asked to suspend enforcement action, the HCEO or Enforcement Agent will proceed to execute under any later Debts in preference to any earlier Debt which is held and which is suspended and will make payments out on any subsequent Debt (s) in preference to any prior Debts which have been suspended.
- 6.5 In respect of all money received Burlington Credit Limited shall retain all enforcement costs to which it is entitled under the Regulations if the debt is paid in full.
- 6.6 Where only part payment is received from the Debtor then such monies shall be divided equally against the enforcement costs (which shall be retained by Burlington Credit Limited together with any Value Added Tax at the prevailing rate) and the Debt (notwithstanding that this may be deemed to contradict other definitions of the term "pro rata" as contained within the provisions of the Regulations).

## **7. Handling Payments that are Refused/Recalled or Charged-Back by a Bank**

- 7.1 If a Debtor's cheque is dishonoured any subsequent payment to Burlington Credit Limited will only be accepted in cash, Building Society cheque, Banker's Draft, BACS or CHAPS payment systems. A dishonoured payment automatically results in Burlington Credit Limited escalating execution/action without any further notice or discussion, unless otherwise agreed by Burlington Credit Limited with the Instructing Client or Debtor.
- 7.2 Where money is recovered by means of a credit card, debit card or other payment card and that payment is thereupon 'charged back' by the cardholder (irrespective of the circumstances surrounding the 'chargeback') through the bank/financial institution after Burlington Credit Limited has released money to the Instructing Client then the Instructing Client will be required, upon being advised of the 'chargeback', to return the funds back to Burlington Credit Limited forthwith.

## **8. Claims of Third Party Ownership and Claims of Exempt Goods**

- 8.1 During the course of an execution under the Regulations:
- 8.1.1 Certain goods belonging to the Debtor and his family, or used by the Debtor in his trade or business may be exempt from seizure; or

8.1.2 A third party who is not the Debtor may make a claim that the goods seized are goods belonging to them.

- 8.2 In these circumstances the HCEO or Enforcement Agent, whilst noting the existence of any such claims will seize goods and will not normally remove them. Any claim will be referred for the further instructions of the Instructing Client.
- 8.3 In the case of Exempt Goods, upon obtaining the Instructing Client's instructions Burlington Credit Limited may be able to write to the Debtor to obtain further information to establish if there is an actual claim for Exempt Goods.
- 8.4 If the claim is for third party ownership of goods then the statutory process set out by the Civil Procedure Rules 1998 CPR Part 85 will be followed.
- 8.5 In either case it may be necessary to make an application to the Court to seek an Order as to how (or if) enforcement can proceed. If this action becomes necessary, Burlington Credit Limited will instruct legal representation that it deems to be of an appropriate level of skill and expertise, which may be through Burlington Credit Limited's internal legal department but may be through external counsel or solicitors as appropriate.
- 8.6 If court proceedings are needed there will be inevitably be a cost implication relating to representation. As such, Burlington Credit Limited will discuss the varied options with the Instructing Client and attempt to agree a way to progress the matter. In some cases, Burlington Credit Limited may need to instruct legal representation before reaching or without reaching agreement with the Instructing Client, and the Instructing Client will be responsible for all costs unavoidably incurred should they be unrecoverable from the Debtor for any reason.

## **9. Auctions / Sale of Goods**

- 9.1 On the occasions where seized goods are removed for sale the Instructing Client and the Debtor will be advised of the date, time and place of the sale. It is open for anyone to attend an auction, but other methods of public sale will also be utilized to obtain the best price (such as BidSpotter or Ebay). Burlington Credit Limited will endeavour to send auction catalogues to the Instructing Client and Debtor, where relevant, at least 3 days before any sale takes place although in many cases these may be made available for inspection through the internet so this would not be necessary.
- 9.2 If Burlington Credit Limited believes that a better value can be achieved for the removed goods and/or assets by organising a sale by a Sealed Bid or Private Treaty then an application will be made to the Court so that the HCEO or Enforcement Agent can obtain the Court's permission to conduct a sale in this manner. If such an application is made, the Instructing Client and the Debtor will be served with the Application Notice and thereupon notified of the hearing. It is open for all interested parties to attend any scheduled hearing in the matter.
- 9.3 If goods are removed but for some reason a sale does not go ahead, costs will normally have been incurred that may not automatically be recoverable from the Debtor under the Taking Control of Goods (Fees) Regulations 2014. In this instance, Burlington Credit Limited will seek to recover these costs from either the Debtor or the Instructing Client.
- 9.3.1 If a sale is cancelled because the Debtor makes an offer to pay the Debt after the goods have been prepared for sale (and sometimes already entered into an auction) but not yet sold, then the Debtor will be asked to pay the Debt as well as the extra costs incurred. Such a request will be made of the Debtor on the basis that refusal to make payment voluntarily could result in the HCEO or Enforcement Agent having to make an application to the court for such costs to be awarded under Regulation 10 of the Taking Control of Goods (Fees) Regulations 2014.
- 9.3.2 In the event that the Debtor offers to pay the Debt and only the statutory fees chargeable under The Taking Control of Goods (Fees) Regulations 2014 thereby refusing to pay the auctioneer's commission, the auctioneer's out of pocket expenses and reasonable disbursements incurred in respect of advertising the sale then the HCEO or Enforcement Agent may have to make an application to the court to determine whether these costs can be recovered from the Debtor.
- 9.4 If it becomes necessary for the HCEO or Enforcement Agent to make an application to the court in the case of 9.3.2 above, Burlington Credit Limited will instruct legal representation that it deems to be of an appropriate level of skill and expertise, which may be through Burlington Credit Limited's internal legal department but may be through external counsel or solicitors as appropriate.
- 9.5 If the costs sought from the Debtor under Regulation 10 of the Taking Control of Goods (Fees) Regulations 2014 in an application made to the court under 9.4 above (and the costs of legal representation of so doing) cannot be recovered from the Debtor, then the Instructing Client will become liable for these costs and these will be included in the Abortive Invoice that is rendered.

## **10. Forced Entry**

- 10.1 Where during the course of execution the HCEO or Enforcement Agent deems it necessary to force entry to a premises Burlington Credit Limited will normally attempt to consult with the Instructing Client.
- 10.2 If the premises are commercial then forced entry is permitted in certain types of execution as long as the HCEO or Enforcement Agent is satisfied that there are no domestic/residential parts connected to the premises.
- 10.3 If the premises are domestic/residential then forced entry is not permitted without the permission of the Court. If this course of action is deemed necessary an application will be made to the Court for the relevant permission.
- 10.4 Further to Section 10.3 above, in these circumstances the Instructing Client will be responsible for all costs associated with any forced entry should they be deemed unrecoverable from the Debtor for any reason, including but not limited to:
- 10.4.1 the cost of the HCEO or Enforcement Agent's time, in both travelling to and waiting at the property; and
- 10.4.2 the cost of the locksmith in both time and materials by forcing entry to the premises, and then renewing locks to leave the property in a secure condition; and
- 10.4.3 Costs incurred in the obtaining of any relevant Court Order.

## **11. Obligations on the Instructing Client**

- 11.1 The Instructing Client must ensure that Burlington Credit Limited is provided with correct and accurate information. If any circumstance changes the Instructing Client must notify Burlington Credit Limited immediately, particularly if a payment is received by the Instructing Client from the Debtor and/or a settlement has been agreed.
- 11.2 The Instructing Client must ensure that the individual or group that is assigned to provide instructions to Burlington Credit Limited has the authority to do so and to make decisions on behalf of the Instructing Client.
- 11.3 The Instructing Client must engage in communication with Burlington Credit Limited from time-to-time.
- 11.4 Where providing instructions for the execution of a High Court Writ of Control the Instructing Client must ensure that the Debt does not relate to any matter regulated under the Consumer Credit Act 1974.
- 11.5 The Instructing Client must advise Burlington Credit Limited if any instructions relate to the recovery of debt that has any connection to the Consumer Credit Act 1974.

## **12. Indemnity**

- 12.1 The Instructing Client shall indemnify Burlington Credit Limited and keep it fully indemnified against any breaches of statutory duty, action proceedings, claims and demands which may be brought or made against it and any costs, claims, damages, demands, charges, expenses, liabilities, reasonable fees, fines/penalties (regulatory or otherwise) or direct losses (excluding loss of goodwill and reputation) which Burlington Credit Limited may suffer, incur or sustain as a result of any direct instruction given by the Instructing Client.

## **13. High-Risk Services**

- 13.1 If Burlington Credit Limited forms the view that any services under these Service Area Terms and Conditions is likely to involve a high or exceptional risk (for example where there is seizure of exceptionally high-value items; threat to human life etc) such that it is desirable to obtain insurance in addition to any existing insurance cover Burlington Credit Limited may suspend provision of services until acceptable insurance cover has been arranged. Burlington Credit Limited reserves the right to recover the cost of doing so from the Instructing Client should the cost not be recoverable from the Debtor.
- 13.2 If such insurance cover cannot be obtained, or the Instructing Client is unwilling to pay for such insurance cover as can be obtained, then Burlington Credit Limited shall be under no obligation to provide services to the Instructing Client.

## **14. Liability for Fees, Costs and Expenses**

- 14.1 In most cases the HCEO or Enforcement Agent will seek to recover all fees, costs and expenses from the Debtor, unless:
- 14.1.1 The Instructing Client chooses to withdraw the instructions before execution is concluded whether prior to an attendance by an HCEO or Enforcement Agent or when on such visit it appears there are insufficient assets and no payment can be collected at which time the Abortive Invoice will be limited to the court fees so far incurred and

not previously invoiced and a Compliance Fee under the Taking Control of Goods (Fees) Regulations 2014 (currently £75.00) plus VAT.

- 14.1.2 The Instructing Client and the Debtor make (or it transpires have already made) a settlement or other compromise agreement of any form and the Instructing Client has failed to advise Burlington Credit Limited, resulting from which the Instructing Client withdraws the instructions upon attendance by an HCEO or Enforcement Agent. In such cases, the Instructing Client will be liable for all enforcement fees, costs and expenses that would have been chargeable by the HCEO or Enforcement Agent to the Debtor under the Regulations in the event of seizure and removal of goods for sale (whether or not goods actually available for seizure would have yielded a full return).
- 14.1.3 An application is made to have Judgment set aside, and the Judgment is set aside pursuant to Civil Procedure Rules 1998 CPR Part 13 then (and only except where the Court orders otherwise) the Instructing Client will be liable for all enforcement fees, costs and expenses that would have been chargeable by the HCEO or Enforcement Agent to the Debtor under the Regulations in the event of seizure and removal of goods for sale (whether or not goods actually available for seizure would have yielded a full return) prior to notification of the application;
- 14.1.4 Execution is stayed, frustrated or prevented in any way or by any event that is beyond the control of Burlington Credit Limited (including frustration of execution by way of a Court Order) then (and only except where the Court orders otherwise) the Instructing Client will be liable for all enforcement fees, costs and expenses that would have been chargeable by the HCEO or Enforcement Agent to the Debtor under the Regulations in the event of seizure and removal of goods for sale (whether or not goods actually available for seizure would have yielded a full return) prior to notification of the event;
- 14.2 In the event that an invoice needs to be raised in these circumstances an Abortive Invoice will be raised and rendered to the liable party.
- 14.3 The principal liable party in respect of an Abortive Invoice shall be the Creditor but where instructions have been received from an Instructing Client, then the Instructing Client is jointly and severally liable to Burlington Credit Limited.
- 14.4 All payments in-relation to any invoice rendered by Burlington Credit Limited should be made within 30 days of the invoice being rendered. Burlington Credit Limited reserves the right to charge late payment interest and charges on any invoice not paid in accordance with this clause and where the Instructing Client is not a consumer such interest and charges will be calculated in accordance with under the Late Payment of Commercial Debts Regulations 2013.
- 14.5 In situations where Burlington Credit Limited are instructed by the same Creditor in respect of several Debtors then it may at its absolute discretion set off any sum owed to it by the Creditor against any monies it collects receives and holds in its client account on behalf of the Creditor in respect of any Debtor before releasing such monies
- 14.6 Neither the Instructing Client nor Creditor shall be entitled to set-off any sums in any manner from payments due to Burlington Credit Limited.