

# COMMON AUCTION CONDITIONS (EDITION 4, JANUARY 2019)

## REPRODUCED WITH THE CONSENT OF THE RICS

### INTRODUCTION

The Common Auction Conditions have been produced for real estate auctions in England and Wales to set a common standard across the industry. They are in three sections:

#### GLOSSARY

The glossary gives special meanings to certain words used in both sets of conditions.

#### AUCTION CONDUCT CONDITIONS

The Auction Conduct Conditions govern the relationship between the auctioneer and anyone who has a catalogue, or who attends or bids at the auction. They cannot be changed without the auctioneer's agreement.

#### SALE CONDITIONS

The Sale Conditions govern the agreement between each seller and buyer. They include general conditions of sale and template forms of special conditions of sale, tenancy and arrears schedules and a sale memorandum.

### GLOSSARY

This glossary applies to the **auction conduct conditions** and the **sale conditions**.

Wherever it makes sense:

- singular words can be read as plurals, and plurals as singular words;
- a "person" includes a corporate body;
- words of one gender include the other genders;
- references to legislation are to that legislation as it may have been modified or re-enacted by the date of the **auction** or the **contract date** (as applicable); and
- where the following words are printed in bold type they have the specified meanings.

#### ACTUAL COMPLETION DATE

The date when **completion** takes place or is treated as taking place for the purposes of apportionment and calculating interest.

#### ADDENDUM

An amendment or addition to the **conditions** or to the **particulars** or to both whether contained in a supplement to the **catalogue**, a written notice from the **auctioneers** or an oral announcement at the **auction**.

#### AGREED COMPLETION DATE

Subject to **condition** G9.3:

- (a) the date specified in the **special conditions**; or
- (b) if no date is specified, 20 **business days** after the **contract date**; but if that date is not a **business day** the first subsequent **business day**.

#### APPROVED FINANCIAL INSTITUTION

Any bank or building society that has signed up to the Banking Code or Business Banking Code or is otherwise acceptable to the **auctioneers**.

#### ARREARS

Arrears of rent and other sums due under the **tenancies** and still outstanding on the **actual completion date**.

#### ARREARS SCHEDULE

The arrears schedule (if any) forming part of the **special conditions**.

#### AUCTION

The auction advertised in the **catalogue**.

#### AUCTION CONDUCT CONDITIONS

The conditions so headed, including any extra auction conduct conditions.

#### AUCTIONEERS

The auctioneers at the **auction**.

#### BUSINESS DAY

Any day except (a) a Saturday or a Sunday; (b) a bank holiday in England and Wales; or (c) Good Friday or Christmas Day.

#### BUYER

The person who agrees to buy the **lot** or, if applicable, that person's personal representatives: if two or more are jointly the **buyer** their obligations can be enforced against them jointly or against each of them separately.

#### CATALOGUE

The catalogue to which the **conditions** refer including any supplement to it.

#### COMPLETION

Unless otherwise agreed between **seller** and **buyer** (or their conveyancers) the occasion when both **seller** and **buyer** have complied with their obligations under the **contract** and the balance of the **price** is unconditionally received in the **seller's** conveyancer's client account.

#### CONDITION

One of the **auction conduct conditions** or **sales conditions**.

#### CONTRACT

The contract by which the **seller** agrees to sell and the **buyer** agrees to buy the **lot**.

#### CONTRACT DATE

The date of the **auction** or, if the **lot** is not sold at the **auction**:

- (a) the date of the **sale memorandum** signed by both the **seller** and **buyer**; or
- (b) if contracts are exchanged, the date of exchange. If exchange is not effected in person or by an irrevocable agreement to exchange made by telephone, fax or electronic mail the date of exchange is the date on which both parts have been signed and posted or otherwise placed beyond normal retrieval.

#### DOCUMENTS

Documents of title (including, if title is registered, the entries on the register and the title plan) and other documents listed or referred to in the **special conditions** relating to the **lot**.

#### IMPORTANT NOTICE

A prudent buyer will, before bidding for a lot at an auction:

- take professional advice from a conveyancer and, in appropriate cases, a chartered surveyor and an accountant;
- read the conditions;
- inspect the lot;
- carry out usual searches and make usual enquiries;
- check the content of all available leases and other documents relating to the lot;
- check that what is said about the lot in the catalogue is accurate;
- have finance available for the deposit and purchase price;
- check whether VAT registration and election is advisable;

**The conditions assume that the buyer has acted like a prudent buyer.**

**If you choose to buy a lot without taking these normal precautions you do so at your own risk.**

#### FINANCIAL CHARGE

A charge to secure a loan or other financial indebtedness (not including a rentcharge).

#### GENERAL CONDITIONS

That part of the **sale conditions** so headed, including any extra general conditions.

#### INTEREST RATE

If not specified in the **special conditions**, 4% above the base rate from time to time of Barclays Bank plc. (The **interest rate** will also apply to judgment debts, if applicable.)

#### LOT

Each separate property described in the **catalogue** or (as the case may be) the property that the **seller** has agreed to sell and the **buyer** to buy (including **chattels**, if any).

#### OLD ARREARS

**Arrears** due under any of the **tenancies** that are not "new tenancies" as defined by the Landlord and Tenant (Covenants) Act 1995.

#### PARTICULARS

The section of the **catalogue** that contains descriptions of each **lot** (as varied by any **addendum**).

#### PRACTITIONER

An insolvency practitioner for the purposes of the Insolvency Act 1986 (or, in relation to jurisdictions outside the United Kingdom, any similar official).

#### PRICE

The price that the **buyer** agrees to pay for the **lot**.

#### READY TO COMPLETE

Ready, willing and able to complete: if **completion** would enable the **seller** to discharge all **financial charges** secured on the **lot** that have to be discharged by **completion**, then those outstanding financial charges do not prevent the **seller** from being **ready to complete**.

#### SALE CONDITIONS

The **general conditions** as varied by any **special conditions** or **addendum**.

#### SALE MEMORANDUM

The form so headed (whether or not set out in the **catalogue**) in which the terms of the **contract** for the sale of the **lot** are recorded.

#### SELLER

The person selling the **lot**. If two or more are jointly the **seller** their obligations can be enforced against them jointly or against each of them separately.

#### SPECIAL CONDITIONS

Those of the **sale conditions** so headed that relate to the **lot**.

#### TENANCIES

Tenancies, leases, licences to occupy and agreements for lease and any documents varying or supplemental to them.

#### TENANCY SCHEDULE

The tenancy schedule (if any) forming part of the **special conditions**.

#### TRANSFER

Transfer includes a conveyance or assignment (and "to transfer" includes "to convey" or "to assign").

#### TUPE

The Transfer of Undertakings (Protection of Employment) Regulations 2006.

#### VAT

Value Added Tax or other tax of a similar nature.

#### VAT OPTION

An option to tax.

#### WE (AND US AND OUR)

The **auctioneers**.

#### YOU (AND YOUR)

Someone who has a copy of the **catalogue** or who attends or bids at the **auction**, whether or not a **buyer**.

### AUCTION CONDUCT CONDITIONS

#### A1 INTRODUCTION

A1.1 Words in bold type have special meanings, which are defined in the Glossary.

A1.2 The **catalogue** is issued only on the basis that **you** accept these **auction conduct conditions**. They govern our relationship with **you** and cannot be disappplied or varied by the **sale conditions** (even by a **condition** purporting to replace the whole of the Common Auction Conditions). They can be varied only if **we** agree.

#### A2 OUR ROLE

A2.1 As agents for each **seller** we have authority to:

- (a) prepare the **catalogue** from information supplied by or on behalf of each **seller**;
- (b) offer each **lot** for sale;
- (c) sell each **lot**;
- (d) receive and hold deposits;
- (e) sign each **sale memorandum**; and
- (f) treat a **contract** as repudiated if the **buyer** fails to sign a **sale memorandum** or pay a deposit as required by these **auction conduct conditions**.

A2.2 **Our** decision on the conduct of the **auction** is final.

A2.3 **We** may cancel the **auction**, or alter the order in which **lots** are offered for sale. **We** may also combine or divide **lots**. A **lot** may be sold or withdrawn from sale prior to the **auction**.

A2.4 **You** acknowledge that to the extent permitted by law **we** owe **you** no duty of care and **you** have no claim against **us** for any loss.

#### A3 BIDDING AND RESERVE PRICES

A3.1 All bids are to be made in pounds sterling exclusive of any applicable **VAT**.

A3.2 **We** may refuse to accept a bid. **We** do not have to explain why.

A3.3 If there is a dispute over bidding **we** are entitled to resolve it, and **our** decision is final.

A3.4 Unless stated otherwise each **lot** is subject to a reserve price (which may be fixed just before the **lot** is offered for sale). If no bid equals or exceeds that reserve price the **lot** will be withdrawn from the **auction**.

A3.5 Where there is a reserve price the **seller** may bid (or ask **us** or another agent to bid on the **seller's** behalf) up to the reserve price but may not make a bid equal to or exceeding the reserve price. **You** accept that it is possible that all bids up to the reserve price are bids made by or on behalf of the **seller**.

A3.6 Where a guide price (or range of prices) is given that guide is the minimum price at which, or range of prices within which, the **seller** might be prepared to sell at the date of the guide price. But guide prices may change. The last published guide price will normally be at or above any reserve price, but not always – as the **seller** may fix the final reserve price just before bidding commences

#### A4 THE PARTICULARS AND OTHER INFORMATION

A4.1 **We** have taken reasonable care to prepare **particulars** that correctly describe each **lot**. The **particulars** are based on information supplied by or on behalf of the **seller**. **You** need to check that the information in the **particulars** is correct.

A4.2 If the **special conditions** do not contain a description of the **lot**, or simply refer to the relevant **lot** number, you take the risk that the description contained in the **particulars** is incomplete or inaccurate, as the **particulars** have not been prepared by a conveyancer and are not intended to form part of a legal contract.

A4.3 The **particulars** and the **sale conditions** may change prior to the **auction** and it is **your** responsibility to check that **you** have the correct versions.

A4.4 If **we** provide information, or a copy of a document, provided by others **we** do so only on the basis that **we** are not responsible for the accuracy of that information or document.

#### A5 THE CONTRACT

A5.1 A successful bid is one **we** accept as such (normally on the fall of the hammer). This **condition** A5 applies to **you** if **you** make the successful bid for a **lot**.

A5.2 **You** are obliged to buy the **lot** on the terms of the **sale memorandum** at the **price** **you** bid plus **VAT** (if applicable).

A5.3 **You** must before leaving the **auction**:

- (a) provide all information **we** reasonably need from **you** to enable **us** to complete the **sale memorandum** (including proof of your identity if required by **us**);
- (b) sign the completed **sale memorandum**; and
- (c) pay the deposit.

A5.4 If **you** do not **we** may either:

- (a) as agent for the **seller** treat that failure as **your** repudiation of the **contract** and offer the **lot** for sale again: the **seller** may then have a claim against **you** for breach of contract; or
- (b) sign the **sale memorandum** on **your** behalf.

#### A5.5 THE DEPOSIT:

(a) is to be held as stakeholder where **VAT** would be chargeable on the deposit were it to be held as agent for the **seller**, but otherwise is to be held as stated in the **sale conditions**; and

(b) must be paid in pounds sterling by cheque or by bankers' draft made payable to **us** on an **approved financial institution**. The extra auction conduct conditions may state if **we** accept any other form of payment.

A5.6 **We** may retain the **sale memorandum** signed by or on behalf of the **seller** until the deposit has been received in cleared funds.

A5.7 If the **buyer** does not comply with its obligations under the **contract** then:

- (a) **you** are personally liable to buy the **lot** even if **you** are acting as an agent; and
- (b) **you** must indemnify the **seller** in respect of any loss the **seller** incurs as a result of the **buyer's** default.

A5.8 Where the **buyer** is a company **you** warrant that the **buyer** is properly constituted and able to buy the **lot**.

#### A6 EXTRA AUCTION CONDUCT CONDITIONS

A6.1 Despite any **special condition** to the contrary the minimum deposit **we** accept is £2,000 (or the total **price**, if less). A **special condition** may, however, require a higher minimum deposit.

# GENERAL CONDITIONS OF SALE

Words in bold type have the special meanings defined in the Glossary.

The **general conditions** (as WE supplement or change them by any **extra general conditions** or **addendum**) are compulsory but may be dispensed or changed in relation to one or more **lots** by **special conditions**. The template form of **sale memorandum** is not compulsory but is to be varied only if we agree. The template forms of **special conditions** and schedules are recommended, but are not compulsory and may be changed by the **seller** of a **lot**.

## G1 THE LOT

G1.1 The **lot** (including any rights to be granted or reserved, and any exclusions from it) is described in the **special conditions**, or if not so described is that referred to in the **sale memorandum**.

G1.2 The **lot** is sold subject to any **tenancies** disclosed by the **special conditions**, but otherwise with vacant possession on **completion**.

G1.3 The **lot** is sold subject to all matters contained or referred to in the **documents**. The **seller** must discharge **financial charges** on or before **completion**.

G1.4 The **lot** is also sold subject to such of the following as may affect it, whether they arise before or after the **contract date** and whether or not they are disclosed by the **seller** or are apparent from inspection of the **lot** or from the **documents**:

- matters registered or capable of registration as local land charges;
- matters registered or capable of registration by any competent authority or under the provisions of any statute;
- notices, orders, demands, proposals and requirements of any competent authority;
- charges, notices, orders, restrictions, agreements and other matters relating to town and country planning, highways or public health;
- rights, easements, quasi-easements, and wayleaves;
- outgoings and other liabilities;
- any interest which overrides, under the Land Registration Act 2002;
- matters that ought to be disclosed by the searches and enquiries a prudent **buyer** would make, whether or not the **buyer** has made them; and
- anything the **seller** does not and could not reasonably know about.

G1.5 Where anything subject to which the **lot** is sold would expose the **seller** to liability the **buyer** is to comply with it and indemnify the **seller** against that liability.

G1.6 The **seller** must notify the **buyer** of any notices, orders, demands, proposals and requirements of any competent authority of which it learns after the **contract date** but the **buyer** must comply with them and keep the **seller** indemnified.

G1.7 The **lot** does not include any tenant's or trade fixtures or fittings. The **special conditions** state whether any chattels are included in the **lot**, but if they are:

- the **buyer** takes them as they are at **completion** and the **seller** is not liable if they are not fit for use, and
- the **seller** is to leave them at the **lot**.

G1.8 The **buyer** buys with full knowledge of

- the **documents**, whether or not the **buyer** has read them; and
- the physical condition of the **lot** and what could reasonably be discovered on inspection of it, whether or not the **buyer** has inspected it.

G1.9 The **buyer** admits that it is not relying on the information contained in the **particulars** or on any representations made by or on behalf of the **seller** but the **buyer** may rely on the **seller's** conveyancer's written replies to written enquiries to the extent stated in those replies.

## G2 DEPOSIT

G2.1 The amount of the deposit is the greater of:

- any minimum deposit stated in the **auction conduct conditions** (or the total **price**, if this is less than that minimum); and
- 10% of the **price** (exclusive of any **VAT** on the **price**).

G2.2 If a cheque for all or part of the deposit is not cleared on first presentation the **seller** may treat the **contract** as at an end and bring a claim against the **buyer** for breach of **contract**.

G2.3 Interest earned on the deposit belongs to the **seller** unless the **sale conditions** provide otherwise.

## G3 BETWEEN CONTRACT AND COMPLETION

G3.1 From the **contract date** the **seller** has no obligation to insure the **lot** and the **buyer** bears all risks of loss or damage unless

- the **lot** is sold subject to a **tenancy** that requires the **seller** to insure the **lot** or
  - the **special conditions** require the **seller** to insure the **lot**.
- If the **seller** is required to insure the **lot** then the **seller**
- must produce to the **buyer** on request all relevant insurance details;
  - must use reasonable endeavours to maintain that or equivalent insurance and pay the premiums when due;
  - gives no warranty as to the adequacy of the insurance;
  - must at the request of the **buyer** use reasonable endeavours to have the **buyer's** interest noted on the policy if it does not cover a contracting purchaser;
  - must, unless otherwise agreed, cancel the insurance at **completion**, apply for a refund of premium and (subject to the rights of any tenant or other third party) pay that refund to the **buyer**; and
  - (subject to the rights of any tenant or other third party) hold on trust for the **buyer** any insurance payments that the **seller** receives in respect of loss or damage arising after the **contract date**, or assign to the **buyer** the benefit of any claim;

and the **buyer** must on **completion** reimburse to the **seller** the cost of that insurance as from the **contract date** to the extent not already paid by the **buyer** or a tenant or other third party).

G3.3 No damage to or destruction of the **lot**, nor any deterioration in its condition, however caused, entitles the **buyer** to any reduction in **price**, or to delay **completion**, or to refuse to complete.

G3.4 Section 47 of the Law of Property Act 1925 does not apply to the **contract**.

G3.5 Unless the **buyer** is already lawfully in occupation of the **lot** the **buyer** has no right to enter into occupation prior to **completion**.

## G4 TITLE AND IDENTITY

G4.1 Unless **condition** G4.2 applies, the **buyer** accepts the title of the **seller** to the **lot** as at the **contract date** and may raise no requisition or objection to any of the **documents** that is made available before the **auction** or any other matter, except one that occurs after the **contract date**.

G4.2 The following provisions apply only to any of the following **documents** that is not made available before the **auction**:

- If the **lot** is registered land the **seller** is to give to the **buyer** within five **business days** of the **contract date** an official copy of the entries on the register and title plan and, where noted on the register, of all **documents** subject to which the **lot** is being sold.
- If the **lot** is not registered land the **seller** is to give to the **buyer** within five **business days** of the **contract date** an abstract or epitome of title starting from the root of title mentioned in the **special conditions** (or, if none is mentioned, a good root of title more than fifteen years old) and must produce to the **buyer** the original or an examined copy of every relevant **document**.
- If title is in the course of registration, title is to consist of:
  - certified copies of the application for registration of title made to the Land Registry and of the **documents** accompanying that application;
  - evidence that all applicable stamp duty land tax relating to that application has been paid; and
  - a letter under which the **seller** or its conveyancer agrees to use all reasonable endeavours to answer any requisitions raised by the Land Registry and to instruct the Land Registry to send the completed registration **documents** to the **buyer**.
- The **buyer** has no right to object to or make requisitions on any title information more than seven **business days** after that information has been given to the **buyer**.

G4.3 Unless otherwise stated in the **special conditions** the **seller** sells with full title guarantee except that (and the **transfer** shall so provide):

- the covenant set out in section 3 of the Law of Property (Miscellaneous Provisions) Act 1994 shall not extend to matters recorded in registers open to public inspection; these are to be treated as within the actual knowledge of the **buyer**; and
- the covenant set out in section 4(1)(b) of the Law of Property (Miscellaneous Provisions) Act 1994 shall not extend to any condition or tenant's obligation relating to the state or condition of the **lot** where the **lot** is leasehold property.

G4.4 The **transfer** is to have effect as if expressly subject to all matters subject to which the **lot** is sold under the **contract**.

G4.5 The **seller** does not have to produce, nor may the **buyer** object to or make a requisition in relation to, any prior or superior title even if it is referred to in the **documents**.

G4.6 The **seller** (and, if relevant, the **buyer**) must produce to each other such confirmation of, or evidence of, their identity and that of their mortgagees and attorneys (if any) as is necessary for the other to be able to comply with applicable Money Laundering Regulations and Land Registry Rules.

## G5 TRANSFER

G5.1 Unless a form of **transfer** is prescribed by the **special conditions**

- the **buyer** must supply a draft **transfer** to the **seller** at least ten **business days** before the **agreed completion date** and the engrossment (signed as a deed by the **buyer** if **condition** G5.2 applies) five **business days** before that date or (if later) two **business days** after the draft has been approved by the **seller**; and
- the **seller** must approve or revise the draft **transfer** within five **business days** of receiving it from the **buyer**.

G5.2 If the **seller** has any liability (other than to the **buyer**) in relation to the **lot** or a **tenancy** following **completion**, the **buyer** is specifically to covenant in the **transfer** to indemnify the **seller** against that liability.

G5.3 The **seller** cannot be required to **transfer** the **lot** to anyone other than the **buyer**, or by more than one **transfer**.

G5.4 Where the **special conditions** state that the **seller** is to grant a new lease to the **buyer**

- the **conditions** are to be read so that the **transfer** refers to the new lease, the **seller** to the proposed landlord and the **buyer** to the proposed tenant;
- the form of new lease is that described by the **special conditions**; and
- the **seller** is to produce, at least five **business days** before the **agreed completion date**, the engrossed counterpart lease, which the **buyer** is to sign and deliver to the **seller** on **completion**.

## G6 completion

G6.1 **completion** is to take place at the offices of the **seller's** conveyancer, or where the **seller** may reasonably require, on the **agreed completion date**. The **seller** can only be required to complete on a **business day** and between the hours of 0930 and 1700.

G6.2 The amount payable on **completion** is the balance of the **price** adjusted to take account of apportionments plus (if applicable) **VAT** and interest, but no other amounts unless specified in the **special conditions**.

G6.3 Payment is to be made in pounds sterling and only by

- direct **transfer** from the **buyer's** conveyancer to the **seller's** conveyancer; and
- the release of any deposit held by a stakeholder or in such other manner as the **seller's** conveyancer may agree. Unless the **seller** and the **buyer** otherwise agree, **completion** cannot take place until both have complied with the obligations under the **contract** that they are obliged to comply with prior to **completion**, and the amount payable on **completion** is unconditionally received in the **seller's** conveyancer's client account or as otherwise required by the terms of the **contract**.

G6.5 If **completion** takes place after 1400 hours for a reason other than the **seller's** default it is to be treated, for the purposes of apportionment and calculating interest, as if it had taken place on the next **business day**.

G6.6 Where applicable the **contract** remains in force following **completion**.

## G7 NOTICE TO COMPLETE

G7.1 The **seller** or the **buyer** may on or after the **agreed completion date** but before **completion** give the other notice to complete within ten **business days** (excluding the date on which the notice is given) making time of the essence.

G7.2 The person giving the notice must be **ready to complete**.

G7.3 If the **buyer** fails to comply with a notice to complete the **seller** may, without affecting any other remedy the **seller** has:

- terminate the **contract**;
- claim the deposit and any interest on it if held by a stakeholder;
- forfeit the deposit and any interest on it;
- resell the **lot**; and
- claim damages from the **buyer**.

G7.4 If the **seller** fails to comply with a notice to complete the **buyer** may, without affecting any other remedy the **buyer** has:

- terminate the **contract**; and
- recover the deposit and any interest on it from the **seller** or, if applicable, a stakeholder.

## G8 IF THE CONTRACT IS BROUGHT TO AN END

If the **contract** is lawfully brought to an end:

- the **buyer** must return all papers to the **seller** and appoints the **seller** its agent to cancel any registration of the **contract**; and
- the **seller** must return the deposit and any interest on it to the **buyer** (and the **buyer** may claim it from the stakeholder, if applicable) unless the **seller** is entitled to forfeit the deposit under **condition** G7.3.

## G9 LANDLORD'S LICENCE

G9.1 Where the **lot** is or includes leasehold land and licence to assign or sublet is required this **condition** G9 applies.

G9.2 The **contract** is conditional on that licence being obtained, by way of formal licence if that is what the landlord lawfully requires.

G9.3 The **agreed completion date** is not to be earlier than the date five **business days** after the **seller** has given notice to the **buyer** that licence has been obtained ("licence notice").

G9.4 The **seller** must

- use all reasonable endeavours to obtain the licence at the **seller's** expense; and
- enter into any Authorised Guarantee Agreement ("AGA") properly required (procuring a guarantee of that AGA if lawfully required by the landlord).

G9.5 The **buyer** must promptly

- provide references and other relevant information; and
- comply with the landlord's lawful requirements.

G9.6 If within three months of the **contract date** (or such longer period as the **seller** and **buyer** agree) the **seller** has not given licence notice to the **buyer** the **seller** or the **buyer** may (if not then in breach of any obligation under this **condition** G9) by notice to the other terminate the **contract** at any time before the **seller** has given licence notice. That termination is without prejudice to the claims of either **seller** or **buyer** for breach of this **condition** G9.

## G10 INTEREST AND APPOINTMENTS

G10.1 If the **actual completion date** is after the **agreed completion date** for any reason other than the **seller's** default the **buyer** must pay interest at the **interest rate** on the money due from the **buyer** at **completion** for the period starting on the **agreed completion date** and ending on the **actual completion date**.

G10.2 Subject to **condition** G11 the **seller** is not obliged to apportion or account for any sum at **completion** unless the **seller** has received that sum in cleared funds. The **seller** must promptly pay to the **buyer** after **completion** any sum to which the **buyer** is entitled that the **seller** subsequently receives in cleared funds.

G10.3 Income and outgoings are to be apportioned at the **actual completion date** unless:

- the **buyer** is liable to pay interest; and
  - the **seller** has given notice to the **buyer** at any time up to **completion** requiring apportionment on the date from which interest becomes payable by the **buyer**; in which event income and outgoings are to be apportioned on the date from which interest becomes payable by the **buyer**.
- Apportionments are to be calculated on the basis that:
- the **seller** receives income and is liable for outgoings for the whole of the day on which apportionment is to be made;
  - annual income and expenditure accrues at an equal daily rate assuming 365 days in a year (or 366 in a leap year), and income and expenditure relating to some other period accrues at an equal daily rate during the period to which it relates; and
  - where the amount to be apportioned is not known at **completion** apportionment is to be made by reference to a reasonable estimate and further payment is to be made by **seller** or **buyer** as appropriate within five **business days** of the date when the amount is known.

G10.5 If a payment due from the **buyer** to the **seller** on or after **completion** is not paid by the due date, the **buyer** is to pay interest to the **seller** at the **interest rate** on that payment from the due date up to and including the date of payment.

## G11. ARREARS

### Part 1 – Current rent

G11.1 "Current rent" means, in respect of each of the **tenancies** subject to which the **lot** is sold, the instalment of rent and other sums payable by the tenant on the most recent rent payment date on or within four months preceding **completion**.

G11.2 If on **completion** there are any **arrears** of current rent the **buyer** must pay them, whether or not details of those **arrears** are given in the **special conditions**.

G11.3 Parts 2 and 3 of this **condition** G11 do not apply to **arrears** of current rent.

### Part 2 – buyer to pay for arrears

G11.4 Part 2 of this **condition** G11 applies where the **special conditions** give details of **arrears**.

G11.5 The **buyer** is on **completion** to pay, in addition to any other money then due, an amount equal to all **arrears** of which details are set out in the **special conditions**.

G11.6 If those **arrears** are not **OLD arrears** the **seller** is to assign to the **buyer** all rights that the **seller** has to recover those **arrears**.

### Part 3 – buyer not to pay for arrears

G11.7 Part 3 of this **condition** G11 applies where the **special conditions**

- so state; or
- give no details of any **arrears**.

G11.8 While any **arrears** due to the **seller** remain unpaid the **buyer** must:

- try to collect them in the ordinary course of management but need not take legal proceedings or forfeit the **tenancy**;
- pay them to the **seller** within five **business days** of receipt in cleared funds (plus interest at the **interest rate** calculated on a daily basis for each subsequent day's delay in payment);
- on request, at the cost of the **seller**, assign to the **seller** or as the **seller** may direct the right to demand and sue for **OLD arrears**, such assignment to be in such form as the **seller's** conveyancer may reasonably require;
- if reasonably required, allow the **seller's** conveyancer to have on loan the counterpart of any **tenancy** against an undertaking to hold it to the **buyer's** order;
- not without the consent of the **seller** release any tenant or surety from liability to pay **arrears** or accept a surrender of or forfeit any **tenancy** under which **arrears** are due; and
- if the **buyer** disposes of the **lot** prior to recovery of all **arrears** obtain from the **buyer's** successor in title a covenant in favour of the **seller** in similar form to part 3 of this **condition** G11.

G11.9 Where the **seller** has the right to recover **arrears** it must not without the **buyer's** written consent bring insolvency proceedings against a tenant or seek the removal of goods from the **lot**.

- G12 MANAGEMENT**
- G12.1 This **condition** G12 applies where the **lot** is sold subject to **tenancies**.
- G12.2 The **seller** is to manage the **lot** in accordance with its standard management policies pending **completion**.
- G12.3 The **seller** must consult the **buyer** on all management issues that would affect the **buyer** after **completion** (such as, but not limited to, an application for licence; a rent review; a variation, surrender, agreement to surrender or proposed forfeiture of a **tenancy**; or a new **tenancy** or agreement to grant a new **tenancy**) and:
- the **seller** must comply with the **buyer's** reasonable requirements unless to do so would (but for the indemnity in paragraph (c)) expose the **seller** to a liability that the **seller** would not otherwise have, in which case the **seller** may act reasonably in such a way as to avoid that liability;
  - if the **seller** gives the **buyer** notice of the **seller's** intended act and the **buyer** does not object within five **business days** giving reasons for the objection the **seller** may act as the **seller** intends; and (c) the **buyer** is to indemnify the **seller** against all loss or liability the **seller** incurs through acting as the **buyer** requires, or by reason of delay caused by the **buyer**.
- G13 RENT DEPOSITS**
- G13.1 Where any **tenancy** is an assured shorthold **tenancy**, the **seller** and the **buyer** are to comply with their respective statutory duties in relation to the protection of tenants' deposits, and to demonstrate in writing to the other (before **completion**, so far as practicable) that they have complied.
- G13.2 The remainder of this **condition** G13 applies where the **seller** is holding or otherwise entitled to money by way of rent deposit in respect of a **tenancy**. In this **condition** G13 "rent deposit deed" means the deed or other document under which the rent deposit is held.
- G13.3 If the rent deposit is not assignable the **seller** must on **completion** hold the rent deposit on trust for the **buyer** and, subject to the terms of the rent deposit deed, comply at the cost of the **buyer** with the **buyer's** lawful instructions.
- G13.4 Otherwise the **seller** must on **completion** pay and assign its interest in the rent deposit to the **buyer** under an assignment in which the **buyer** covenants with the **seller** to:
- observe and perform the **seller's** covenants and conditions in the rent deposit deed and indemnify the **seller** in respect of any breach;
  - give notice of assignment to the tenant; and
  - give such direct covenant to the tenant as may be required by the rent deposit deed.
- G14 VAT**
- G14.1 Where a **SALE condition** requires money to be paid or other consideration to be given, the payer must also pay any **VAT** that is chargeable on that money or consideration, but only if given a valid **VAT** invoice.
- G14.2 Where the **special conditions** state that no **VAT option** has been made the **seller** confirms that none has been made by it or by any company in the same **VAT** group nor will be prior to **completion**.
- G15 TRANSFER AS A GOING CONCERN**
- G15.1 Where the **special conditions** so state:
- the **seller** and the **buyer** intend, and will take all practicable steps (short of an appeal) to procure, that the sale is treated as a **transfer** of a going concern; and
  - this **condition** G15 applies.
- G15.2 The **seller** confirms that the **seller**:
- is registered for **VAT**, either in the **seller's** name or as a member of the same **VAT** group; and
  - has (unless the sale is a standard-rated supply) made in relation to the **lot** a **VAT option** that remains valid and will not be revoked before **completion**.
- G15.3 The **buyer** confirms that
- it is registered for **VAT**, either in the **buyer's** name or as a member of a **VAT** group;
  - it has made, or will make before **completion**, a **VAT option** in relation to the **lot** and will not revoke it before or within three months after **completion**;
  - article 5(2B) of the Value Added Tax (Special Provisions) Order 1995 does not apply to it; and
  - it is not buying the **lot** as a nominee for another person.
- G15.4 The **buyer** is to give to the **seller** as early as possible before the **agreed completion date** evidence
- of the **buyer's** **VAT** registration;
  - that the **buyer** has made a **VAT option**; and
  - that the **VAT option** has been notified in writing to HM Revenue and Customs; and if it does not produce the relevant evidence at least two **business days** before the **agreed completion date**, **condition** G14.1 applies at **completion**.
- G15.5 The **buyer** confirms that after **completion** the **buyer** intends to
- retain and manage the **lot** for the **buyer's** own benefit as a continuing business as a going concern subject to and with the benefit of the **tenancies**; and
  - collect the rents payable under the **tenancies** and charge **VAT** on them.
- G15.6 If, after **completion**, it is found that the sale of the **lot** is not a **transfer** of a going concern then:
- the **seller's** conveyancer is to notify the **buyer's** conveyancer of that finding and provide a **VAT** invoice in respect of the sale of the **lot**;
  - the **buyer** must within five **business days** of receipt of the **VAT** invoice pay to the **seller** the **VAT** due; and
  - if **VAT** is payable because the **buyer** has not complied with this **condition** G15, the **buyer** must pay and indemnify the **seller** against all costs, interest, penalties or surcharges that the **seller** incurs as a result.
- G16 CAPITAL ALLOWANCES**
- G16.1 This **condition** G16 applies where the **special conditions** state that there are capital allowances available in respect of the **lot**.
- G16.2 The **seller** is promptly to supply to the **buyer** all information reasonably required by the **buyer** in connection with the **buyer's** claim for capital allowances.
- G16.3 The value to be attributed to those items on which capital allowances may be claimed is set out in the **special conditions**.
- G16.4 The **seller** and **buyer** agree:
- to make an election on **completion** under Section 198 of the Capital Allowances Act 2001 to give effect to this **condition** G16; and
  - to submit the value specified in the **special conditions** to HM Revenue and Customs for the purposes of their respective capital allowance computations.
- G17 MAINTENANCE AGREEMENTS**
- G17.1 The **seller** agrees to use reasonable endeavours to **transfer** to the **buyer**, at the **buyer's** cost, the benefit of the maintenance agreements specified in the **special conditions**.
- G17.2 The **buyer** must assume, and indemnify the **seller** in respect of, all liability under such agreements from the **actual completion date**.
- G18 Landlord and Tenant Act 1987
- G18.1 This **condition** G18 applies where the sale is a relevant disposal for the purposes of part I of the Landlord and Tenant Act 1987
- G18.2 The **seller** warrants that the **seller** has complied with sections 5B and 7 of that Act and that the requisite majority of qualifying tenants has not accepted the offer.
- G19 Sale by **practitioner**
- G19.1 This **condition** G19 applies where the sale is by a **practitioner** either as **seller** or as agent of the **seller**.
- G19.2 The **practitioner** has been duly appointed and is empowered to sell the **lot**.
- G19.3 Neither the **practitioner** nor the firm or any member of the firm to which the **practitioner** belongs has any personal liability in connection with the sale or the performance of the **seller's** obligations. The **transfer** is to include a declaration excluding that personal liability.
- G19.4 The **lot** is sold
- in its condition at **completion**;
  - for such title as the **seller** may have; and
  - with no title guarantee; and the **buyer** has no right to terminate the **contract** or any other remedy if information provided about the **lot** is inaccurate, incomplete or missing.
- G19.5 Where relevant:
- the **documents** must include certified copies of those under which the **practitioner** is appointed, the **document** of appointment and the **practitioner's** acceptance of appointment; and
  - the **seller** may require the **transfer** to be by the lender exercising its power of sale under the Law of Property Act 1925.
- G19.6 The **buyer** understands this **condition** G19 and agrees that it is fair in the circumstances of a sale by a **practitioner**.
- G20 TUPE**
- G20.1 If the **special conditions** state "there are no employees to which **TUPE** applies", this is a warranty by the **seller** to this effect.
- G20.2 If the **special conditions** do not state "there are no employees to which **TUPE** applies" the following paragraphs apply:
- the **seller** must notify the **buyer** of those employees whose **contracts** of employment will **transfer** to the **buyer** on **completion** (the "Transferring Employees"). This notification must be given to the **buyer** not less than 14 days before **completion**.
  - the **buyer** confirms that it will comply with its obligations under **TUPE** and any **special conditions** in respect of the **transferring** Employees.
  - the **buyer** and the **seller** acknowledge that pursuant and subject to **TUPE**, the **contracts** of employment between the **transferring** Employees and the **seller** will **transfer** to the **buyer** on **completion**.
  - the **buyer** is to keep the **seller** indemnified against all liability for the **transferring** Employees after **completion**.
- G21 ENVIRONMENTAL**
- G21.1 This **condition** G21 only applies where the **special conditions** so provide.
- G21.2 The **seller** has made available such reports as the **seller** has as to the environmental condition of the **lot** and has given the **buyer** the opportunity to carry out investigations (whether or not the **buyer** has read those reports or carried out any investigation) and the **buyer** admits that the **price** takes into account the environmental condition of the **lot**
- G21.3 The **buyer** agrees to indemnify the **seller** in respect of all liability for or resulting from the environmental condition of the **lot**.
- G22 SERVICE CHARGE**
- G22.1 This **condition** G22 applies where the **lot** is sold subject to **tenancies** that include service charge provisions.
- G22.2 No apportionment is to be made at **completion** in respect of service charges.
- G22.3 Within two months after **completion** the **seller** must provide to the **buyer** a detailed service charge account for the service charge year current on **completion** showing:
- service charge expenditure attributable to each **tenancy**;
  - payments on account of service charge received from each tenant;
  - any amounts due from a tenant that have not been received;
  - any service charge expenditure that is not attributable to any **tenancy** and is for that reason irrecoverable.
- G22.4 In respect of each **tenancy**, if the service charge account shows:
- that payments that the tenant has made on account exceed attributable service charge expenditure, the **seller** must pay to the **buyer** an amount equal to that excess when it provides the service charge account; or
  - that attributable service charge expenditure exceeds payments made on account, the **buyer** must use all reasonable endeavours to recover the shortfall from the tenant as soon as practicable and promptly pay the amount so recovered to the **seller**; but in respect of payments on account that are still due from a tenant **condition** G11 (arrears) applies.
- G22.5 In respect of service charge expenditure that is not attributable to any **tenancy** the **seller** must pay the expenditure incurred in respect of the period before **actual completion date** and the **buyer** must pay the expenditure incurred in respect of the period after **actual completion date**. Any necessary monetary adjustment is to be made within five **business days** of the **seller** providing the service charge account to the **buyer**.
- G22.6 If the **seller** holds any reserve or sinking fund on account of future service charge expenditure or a depreciation fund:
- the **seller** must pay it (including any interest earned on it) to the **buyer** on **completion**; and
  - the **buyer** must covenant with the **seller** to hold it in accordance with the terms of the **tenancies** and to indemnify the **seller** if it does not do so.
- G23 RENT REVIEWS**
- G23.1 This **condition** G23 applies where the **LOT** is sold subject to a **tenancy** under which a rent review due on or before the **actual completion date** has not been agreed or determined.
- G23.2 The **seller** may continue negotiations or rent review proceedings up to the **actual completion date** but may not agree the level of the revised rent or commence rent review proceedings without the written consent of the **buyer**, such consent not to be unreasonably withheld or delayed.
- G23.3 Following **completion** the **buyer** must complete rent review negotiations or proceedings as soon as reasonably practicable but may not agree the level of the revised rent without the written consent of the **seller**, such consent not to be unreasonably withheld or delayed.
- G23.4 The **seller** must promptly:
- give to the **buyer** full details of all rent review negotiations and proceedings, including copies of all correspondence and other papers; and
  - use all reasonable endeavours to substitute the **buyer** for the **seller** in any rent review proceedings.
- G23.5 The **seller** and the **buyer** are to keep each other informed of the progress of the rent review and have regard to any proposals the other makes in relation to it.
- G23.6 When the rent review has been agreed or determined the **buyer** must account to the **seller** for any increased rent and interest recovered from the tenant that relates to the **seller's** period of ownership within five **business days** of receipt of cleared funds.
- G23.7 If a rent review is agreed or determined before **completion** but the increased rent and any interest recoverable from the tenant has not been received by **completion** the increased rent and any interest recoverable is to be treated as **arrears**.
- The **seller** and the **buyer** are to bear their own costs in relation to rent review negotiations and proceedings.
- G24 tenancy renewals**
- G24.1 This **condition** G24 applies where the tenant under a **tenancy** has the right to remain in occupation under part II of the Landlord and Tenant Act 1954 (as amended) and references to notices and proceedings are to notices and proceedings under that Act.
- G24.2 Where practicable, without exposing the **seller** to liability or penalty, the **seller** must not without the written consent of the **buyer** (which the **buyer** must not unreasonably withhold or delay) serve or respond to any notice or begin or continue any proceedings.
- G24.3 If the **seller** receives a notice the **seller** must send a copy to the **buyer** within five **business days** and act as the **BUYER** reasonably directs in relation to it.
- G24.4 Following **completion** the **buyer** must:
- with the co-operation of the **seller** take immediate steps to substitute itself as a party to any proceedings;
  - use all reasonable endeavours to conclude any proceedings or negotiations for the renewal of the **tenancy** and the determination of any interim rent as soon as reasonably practicable at the best rent or rents reasonably obtainable; and
  - if any increased rent is recovered from the tenant (whether as interim rent or under the renewed **tenancy**) account to the **seller** for the part of that increase that relates to the **seller's** period of ownership of the **lot** within five **business days** of receipt of cleared funds.
- G24.5 The **seller** and the **buyer** are to bear their own costs in relation to the renewal of the **tenancy** and any proceedings relating to this.
- G25 WARRANTIES**
- G25.1 Available warranties are listed in the **special conditions**.
- G25.2 Where a warranty is assignable the **seller** must:
- on **completion** assign it to the **buyer** and give notice of assignment to the person who gave the warranty; and
  - apply for (and the **seller** and the **buyer** must use all reasonable endeavours to obtain) any consent to assign that is required. If consent has not been obtained by **completion** the warranty must be assigned within five **business days** after the consent has been obtained.
- G25.3 If a warranty is not assignable the **seller** must after **completion**:
- hold the warranty on trust for the **buyer**; and
  - at the **buyer's** cost comply with such of the lawful instructions of the **buyer** in relation to the warranty as do not place the **seller** in breach of its terms or expose the **seller** to any liability or penalty.
- G26 NO ASSIGNMENT**
- The **buyer** must not assign, mortgage or otherwise **transfer** or part with the whole or any part of the **buyer's** interest under this **contract**.
- G27 REGISTRATION AT THE LAND REGISTRY**
- G27.1 This **condition** G27.1 applies where the **lot** is leasehold and its sale either triggers first registration or is a registrable disposition. The **buyer** must at its own expense and as soon as practicable:
- procure that it becomes registered at the Land Registry as proprietor of the **lot**;
  - procure that all rights granted and reserved by the lease under which the **lot** is held are properly noted against the affected titles; and
  - provide the **seller** with an official copy of the register relating to such lease showing itself registered as proprietor.
- G27.2 This **condition** G27.2 applies where the **lot** comprises part of a registered title. The **buyer** must at its own expense and as soon as practicable:
- apply for registration of the **transfer**;
  - provide the **seller** with an official copy and title plan for the **buyer's** new title; and
  - join in any representations the **seller** may properly make to the Land Registry relating to the application.
- G28 NOTICES AND OTHER COMMUNICATIONS**
- G28.1 All communications, including notices, must be in writing. Communication to or by the **seller** or the **buyer** may be given to or by their conveyancers.
- G28.2 A communication may be relied on if:
- delivered by hand; or
  - made electronically and personally acknowledged (automatic acknowledgement does not count); or
  - there is proof that it was sent to the address of the person to whom it is to be given (as specified in the **sale memorandum**) by a postal service that offers normally to deliver mail the next following **business day**.
- G28.3 A communication is to be treated as received:
- when delivered, if delivered by hand; or
  - when personally acknowledged, if made electronically; but if delivered or made after 1700 hours on a **business day** a communication is to be treated as received on the next **business day**.
- G28.4 A communication sent by a postal service that offers normally to deliver mail the next following **business day** will be treated as received on the second **business day** after it has been posted.
- G29 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**
- No one is intended to have any benefit under the **contract** pursuant to the **contracts** (Rights of Third Parties) Act 1999.
- G30 EXTRA GENERAL CONDITIONS**