

common auction conditions

INTRODUCTION

The common auction conditions have three main sections

- 1. Glossary** This gives special meanings to some words used in the rest of the conditions
- 2. The conduct of the auction** These conditions regulate the conduct of the auction. If you read our catalogue or attend the auction you do so on the basis that you accept them.
- 3. Conditions of sale** If you buy a lot you will sign a sale memorandum under which you agree to be bound by the conditions of sale that apply to that lot. These conditions are
 - general conditions that apply to all lots
 - any extra general conditions in the catalogue or an addendum
 - special conditions that only apply to the lot you are buying (and which may vary the general conditions)
 The conditions are legally binding.

Important notice

- A prudent buyer will, before bidding for a lot at an auction
- take professional advice from a solicitor 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

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.

In the 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 and where the following words appear in small capitals 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 whether contained in a supplement to the CATALOGUE, a written notice from the AUCTIONEERS or an oral announcement at the AUCTION

Agreed completion date (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 bank A UK clearing bank

Arrears Arrears of rent and other sums due under the TENANCIES but unpaid on the ACTUAL COMPLETION DATE

Auction The auction advertised in the CATALOGUE

Auctioneers The auctioneers at the AUCTION

Business day A day which is not (a) a bank or public holiday or (b) a Saturday or a Sunday

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 all 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 Completion of the sale of the LOT

Conditions This glossary, the conditions for the conduct of the AUCTION, the GENERAL CONDITIONS, any EXTRA CONDITIONS and the SPECIAL 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 filed plan) and other documents listed or referred to in the SPECIAL CONDITIONS relating to the LOT

Extra conditions Any additions to or variations of the CONDITIONS that are of general application to all LOTS

General conditions The conditions so headed

Interest rate If not specified in the SPECIAL CONDITIONS, 4% above the base rate from time to time of Barclays Bank plc

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

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

Practitioner a receiver, administrative receiver or liquidator

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 memorandum The form so headed 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

Special conditions The conditions so headed that relate to the LOT

Tenancies All tenancies, leases, licences to occupy and agreements for lease subject to which the LOT is sold, and any documents varying or supplemental to them

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

Tupe The Transfer of Undertakings (Protection of Employment) Regulations 1981 as modified or re-enacted from time to time

VAT Value Added Tax or other tax of a similar nature

VAT election An election to waive exemption from VAT in respect of the LOT

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

The CATALOGUE is issued only on the basis that YOU accept these conditions relating to the conduct of the AUCTION. They override all other CONDITIONS and can only be varied if WE agree.

Our role

As agents for each SELLER we have authority to

- prepare the CATALOGUE from information supplied by or on behalf of each SELLER
- offer each LOT for sale
- sell each LOT
- receive and hold deposits
- sign each SALE MEMORANDUM
- treat a CONTRACT as repudiated if the BUYER fails to sign a SALE MEMORANDUM or pay a deposit as required by the CONDITIONS.

OUR decision on the conduct of the AUCTION is final.

WE may cancel the AUCTION, withdraw LOTS from sale, or alter the order in which LOTS are offered for sale. WE may also combine or divide LOTS.

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.

Bidding and reserve prices

WE may refuse to accept a bid. WE do not have to explain why.

If there is a dispute over bidding WE are entitled to resolve it, and OUR decision is final.

Unless stated otherwise each LOT is subject to a reserve price. If no bid equals or exceeds that reserve price the LOT will be withdrawn from the AUCTION. 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.

Where a guide price is given that price is not to be taken as an indication of the value of the LOT or of the reserve price.

The Particulars and other information

WE have taken reasonable care to prepare PARTICULARS that correctly describe each LOT. However the PARTICULARS are based on information supplied by or on behalf of the SELLER and WE are not responsible for errors.

The PARTICULARS are for YOUR information but YOU must not rely on them. They do not form part of any CONTRACT between the SELLER and the BUYER.

If WE provide any information or a copy of any document WE do so only on the basis that WE are not responsible for its accuracy.

The Contract

A successful bid is one WE accept as such.

If YOU make a successful bid for a LOT YOU are obliged to buy that LOT on the terms of the SALE MEMORANDUM. The PRICE will be the amount YOU bid plus VAT (if applicable). YOU must before leaving the AUCTION

- provide all information WE reasonably need from YOU to enable us to complete the SALE MEMORANDUM including appropriate proof of your identity
 - sign the completed SALE MEMORANDUM and
 - pay the deposit
- and if YOU do not WE may either
- 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
 - sign the SALE MEMORANDUM on YOUR behalf.

Deposits must be paid by cheque or by bankers' draft drawn on an APPROVED BANK in OUR favour.

WE may retain the SALE MEMORANDUM signed by or on behalf of the SELLER until WE receive the deposit in cleared funds.

Buyer's Administration Charge – The successful buyer will be required to pay the Auctioneers a Buyer's Administration Charge of £150 (inc. VAT) upon exchange of contracts for each property purchased.

If YOU make a successful bid for a LOT

- YOU are personally liable to buy it even if YOU are acting as an agent. It is YOUR responsibility to obtain an indemnity from the person for whom YOU are the agent;
- where the BUYER is a company YOU warrant that the BUYER is properly constituted and able to buy the LOT;
- if the BUYER does not comply with its obligations under the CONTRACT YOU are personally liable to buy the LOT and must indemnify the SELLER in respect of any loss the SELLER incurs as a result of the BUYER's default.

The general conditions apply except to the extent that they are varied

By conditions incorporated in any contract of sale prepared by the Seller's solicitors, extra conditions, the special conditions or by an addendum. In the case of any such variation these General Conditions shall be superseded.

1. The LOT

1.1 The LOT, including any rights granted and reserved, is described in the SPECIAL CONDITIONS.

1.2 The LOT is sold subject to any TENANCIES disclosed by the SPECIAL CONDITIONS, but otherwise with vacant possession on COMPLETION.

1.3 The LOT is sold subject to all matters contained or referred to in the DOCUMENTS (except charges that are to be discharged on or before COMPLETION) and 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 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
- anything that is an overriding interest within the meaning of section 70 of the Land Registration Act 1925 or would be if the LOT were registered land
- matters that ought to be disclosed by the searches and enquiries a prudent buyer would make, whether or not the BUYER has made them
- anything the SELLER does not and could not reasonably know about and where any such matter would expose the SELLER to liability the BUYER is to comply with it and indemnify the SELLER against liability.

1.4 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 is to comply with them and must indemnify the SELLER if it does not.

1.5 The LOT does not include any tenant's or trade fixtures or fittings.

1.6 Where chattels are included in the LOT the BUYER takes them as they are at COMPLETION and the SELLER is not liable if they are not fit for use.

1.7 The BUYER buys with full knowledge of (a) the DOCUMENTS whether or not the BUYER has read them

- the physical condition of the LOT and what could reasonably be discovered on inspection of it, whether or not the BUYER has inspected it.

1.8 The BUYER is not relying on the information contained in the PARTICULARS or in any replies to preliminary enquiries but on the BUYER's own verification of that information. If any information is not correct any liability of the SELLER and any remedy of the BUYER are excluded to the extent permitted by statute.

2. Deposit

2.1 The amount of the deposit is the greater of (a) the minimum deposit stated in the CATALOGUE (or the total PRICE, if this is less than that minimum) and (b) 10% of the PRICE exclusive of VAT

2.2 The deposit

- must be paid to the AUCTIONEERS by cheque or banker's draft drawn on an APPROVED BANK made payable to the VENDOR'S SOLICITOR
- is to be held as stakeholder unless the SPECIAL CONDITIONS provide that it is to be held as agent for the SELLER.

2.3 Where the AUCTIONEERS hold the deposit as stakeholder they are authorised to release it and any

- interest on it to the SELLER on COMPLETION or, if COMPLETION does not take place, to the person entitled to it under the CONDITIONS.
- 2.4 If for any reason the deposit is not received by the AUCTIONEERS in cleared funds within 5 BUSINESS DAYS of the CONTRACT DATE the SELLER is entitled to treat the CONTRACT as at an end and bring a claim against the BUYER for breach of contract.
- 2.5 Interest earned on the deposit belongs to the SELLER unless the CONDITIONS provide otherwise.
- 3. Transfer of risk and insurance**
- 3.1 From the CONTRACT DATE the SELLER is under no obligation to insure the LOT and the BUYER bears all risk of loss or damage unless
- (a) the LOT is sold subject to a TENANCY which requires the SELLER to insure the LOT or
- (b) the SPECIAL CONDITIONS require the SELLER to insure the LOT.
- 3.2 If the SELLER is to insure the LOT then the SELLER:
- (a) must produce to the BUYER on request details of the insurance policy
- (b) must use reasonable endeavours to maintain insurance equivalent to that policy and pay the premiums when due
- (c) gives no warranty as to the adequacy of the insurance
- (d) must, at the request of the BUYER, use reasonable endeavours to have the BUYER's interest noted on the policy where the policy does not cover a contracting purchaser
- (e) must, unless otherwise agreed, cancel the policy at COMPLETION
- (f) is to hold in trust for the BUYER any insurance payments that the SELLER receives in respect of loss or damage arising after the CONTRACT DATE and the BUYER must reimburse to the SELLER the cost of insurance (to the extent it is not paid by a tenant or other third party) from the CONTRACT DATE.
- 3.3 If under a TENANCY the SELLER insures the LOT then unless otherwise agreed with the BUYER the SELLER is to pay any refund of premium
- (a) to the BUYER or
- (b) if the SPECIAL CONDITIONS so state, to each tenant in the proportion that the tenant pays premiums under its TENANCY, first deducting any arrears of premium due from that tenant.
- 3.4 Section 47 of the Law of Property Act 1925 does not apply.
- 3.5 Unless the BUYER is already lawfully in occupation of the LOT the BUYER has no right to enter into occupation prior to COMPLETION.
- 4. Title**
- 4.1 Unless GENERAL CONDITION 4.2 applies, the BUYER accepts the title of the SELLER to the LOT as at the CONTRACT DATE and may raise no requisition or objection except in relation to any matter following the CONTRACT DATE.
- 4.2 Where no DOCUMENTS are available before the AUCTION:
- (a) if the LOT is registered land the SELLER is to give to the BUYER within five BUSINESS DAYS of the CONTRACT DATE an office copy of the entries on the register and filed plan and of all documents noted on the register that affect the LOT
- (b) if the LOT is not registered land the SELLER is to give to the BUYER within five BUSINESS DAYS 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
- (c) 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.
- 4.3 Unless otherwise stated in the SPECIAL CONDITIONS the SELLER sells with full title guarantee except that:
- (a) all matters recorded in registers open to public inspection are to be treated as within the actual knowledge of the BUYER and
- (b) any implied covenant as to compliance with tenant's obligations under leases does not extend to the state or condition of the LOT where the LOT is leasehold property.
- 4.4 If title is in the course of registration title is to consist of certified copies of
- (a) the DOCUMENTS sent to the land registry
- (b) the application to the land registry and a letter under which the SELLER or its solicitors 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.
- 4.5 The TRANSFER is to have effect as if expressly subject to all matters subject to which the LOT is sold under the CONTRACT.
- 4.6 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.
- 5. TRANSFER**
- 5.1 Unless a form of TRANSFER is set out in the SPECIAL CONDITIONS
- (a) the BUYER must supply a draft TRANSFER to the SELLER at least ten BUSINESS DAYS before the AGREED COMPLETION DATE and the engrossment
- five BUSINESS DAYS before that date or (if later) two BUSINESS DAYS after the draft has been approved by the SELLER, and
- (b) the SELLER must approve or revise the draft TRANSFER within five BUSINESS DAYS of receiving it from the BUYER.
- 5.2 If the SELLER remains liable in any respect 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.
- 5.3 The TRANSFER is to be executed in duplicate and the BUYER is to return to the SELLER the duplicate duly stamped and denoted at the BUYER'S cost as soon as practicable after COMPLETION.
- 5.4 The SELLER cannot be required to TRANSFER the LOT to anyone other than the BUYER, or by more than one TRANSFER.
- 6. COMPLETION**
- 6.1 COMPLETION is to take place at the offices of the SELLER'S solicitors, or where the SELLER may reasonably require, on a BUSINESS DAY between the hours of 0930 and 1700.
- 6.2 The amount payable on COMPLETION is the balance of the PRICE adjusted to take account of apportionments plus (if applicable) VAT and interest. Payment is to be made in pounds sterling and only by
- (a) direct transfer to the SELLER'S solicitors' bank account and
- (b) the release of any deposit held by a stakeholder. Unless the SELLER and the BUYER otherwise agree COMPLETION takes place when both have complied with their obligations under the CONTRACT and the total payment is unconditionally received in the SELLER'S solicitors' bank account.
- 6.3 If COMPLETION takes place after 1400 hours it is to be treated, for the purposes of apportionment and calculating interest, as if it had taken place on the next BUSINESS DAY.
- 6.4 Where applicable the CONTRACT remains in force following COMPLETION.
7. Notice to complete
- 7.1 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.
- 7.2 The person giving the notice must be READY TO COMPLETE.
- 7.3 If the BUYER fails to comply with a notice to complete the SELLER may, without affecting any other remedy the SELLER has,
- (a) rescind the CONTRACT
- (b) claim the deposit and any interest on it if held by a stakeholder
- (c) forfeit the deposit and any interest on it
- (d) resell the LOT and
- (e) claim damages from the BUYER.
- 7.4 If the SELLER fails to comply with a notice to complete the BUYER may, without affecting any other remedy the BUYER has,
- (a) rescind the CONTRACT and
- (b) recover the deposit and any interest on it from the SELLER or, if applicable, a stakeholder.
8. If the CONTRACT is rescinded or otherwise brought to an end
- (a) the BUYER must return all papers to the SELLER and appoints the SELLER its agent to cancel any registration of the CONTRACT
- (b) 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 GENERAL CONDITION 7.3.
- 9. Landlord's licence**
- 9.1 Where the LOT is leasehold land and licence to assign is required
- (a) the CONTRACT is conditional on it being obtained, by way of formal licence if that is what the landlord or the relevant lease properly requires and
- (b) the AGREED COMPLETION DATE is, if necessary, postponed to the date five BUSINESS DAYS after the SELLER has given notice to the BUYER that licence has been obtained.
- 9.2 The SELLER must
- (a) use all reasonable endeavours to obtain each licence required and
- (b) enter into any authorised guarantee agreement properly required under the lease.
- 9.3 The BUYER must
- (a) promptly provide references and other relevant information, and
- (b) if properly required under the terms of the lease execute such licence or other deed of covenant as may be required and provide guarantees, a rent deposit or other security, which the landlord may require.
- 9.4 If within 3 months of the CONTRACT DATE (or such longer period as the SELLER and BUYER agree) all required licences have not been obtained the SELLER or the BUYER may by notice to the other rescind the CONTRACT at any time before all licences are obtained. Rescission is without prejudice to the claims of either SELLER or BUYER for breach of this condition 9.
- 10. Interest and apportionments**
- 10.1 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 PRICE (less any DEPOSIT paid) from the AGREED COMPLETION DATE up to and including the ACTUAL COMPLETION DATE.
- 10.2 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 pay to the BUYER after COMPLETION any sum to which the BUYER is entitled that the SELLER subsequently receives in cleared funds.
- 10.3 Income and outgoings are to be apportioned at ACTUAL COMPLETION DATE unless
- (a) the BUYER is liable to pay interest and
- (b) the SELLER has given notice to the BUYER at any time up to COMPLETION requiring apportionment on the date from which interest becomes payable.
- 10.4 Apportionments are to be calculated on the basis that
- (a) the SELLER receives income and is liable for outgoings for the whole of the day on which apportionment is to be made
- (b) annual income and expenditure accrues at an equal daily rate assuming 365 days in a year and income and expenditure relating to a period of less than a year accrues at an equal daily rate during the period to which it relates
- (c) where the amount to be apportioned is not known at COMPLETION apportionment is to be made by reference to the best estimate then available 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.
- 11. ARREARS**
- 11.1 The SELLER retains the right to receive and recover OLD ARREARS.
- 11.2 While any ARREARS due to the SELLER remain unpaid the BUYER must:
- (a) try to collect them in the ordinary course of management but need not take legal proceedings, distraint or forfeit the TENANCY;
- (b) 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);
- (c) 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 solicitors may reasonably require;
- (d) if reasonably required, allow the SELLER'S solicitors to have on loan the counterpart of any TENANCY against an undertaking to hold it to the BUYER'S order;
- (e) not 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
- (f) 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 this condition 11.
- 11.3 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.
- 12. Management**
- 12.1 This condition applies where the LOT is sold subject to TENANCIES.
- 12.2 The SELLER is to manage the LOT in accordance with its standard management policies pending COMPLETION.
- 12.3 Unless set out in the SPECIAL CONDITIONS the SELLER must consult the BUYER on all management issues that would affect the BUYER after COMPLETION, such as an application for licence or a rent review under a TENANCY, a variation, surrender, agreement to surrender or proposed forfeiture of a TENANCY, or a new tenancy or agreement to grant a new tenancy and
- (a) 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;
- (b) 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.
- 13. Rent deposits**
- 13.1 This condition applies where the SELLER is holding or otherwise entitled to money by way of rent deposit in respect of a TENANCY. In this condition "rent deposit deed" means the deed or other document under which the rent deposit is held.
- 13.2 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.
- 13.3 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:
- (a) observe and perform the SELLER'S covenants and conditions in the rent deposit deed and indemnify the

- SELLER in respect of any breach
(b) give notice of assignment to the tenant and
(c) give such direct covenant to the tenant as may be required by the rent deposit deed.
- 14. VAT**
- 14.1 Where the CONDITIONS require money to be paid the payer must also pay any VAT that is chargeable on that money, but only if given a valid VAT invoice.
- 14.2 Where the SPECIAL CONDITIONS state that no VAT ELECTION 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.
- 15. Transfer as a going concern**
- 15.1 Where the SPECIAL CONDITIONS so state the SELLER and the BUYER intend the sale to be treated as a transfer of a going concern and this condition applies.
- 15.2 The SELLER confirms that the SELLER or a company in the same VAT group
(a) is registered for VAT and
(b) has, where necessary, made a VAT ELECTION in respect of the LOT which remains valid.
- 15.3 The BUYER
(a) is registered for VAT, either in the BUYER'S name or as a member of a VAT group;
(b) has made, or will make before COMPLETION, a VAT ELECTION in relation to the LOT
(c) is to give to the SELLER as early as possible before the AGREED COMPLETION DATE evidence of the VAT registration and that a VAT ELECTION has been made and notified in writing to HM Customs and Excise
(d) must not revoke the VAT ELECTION and if it does not produce the relevant evidence at least two BUSINESS DAYS before the AGREED COMPLETION DATE, GENERAL CONDITION 14.1 applies at COMPLETION.
- 15.4 The BUYER confirms that after COMPLETION the BUYER intends to:
(a) 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
(b) collect the rents payable under the TENANCIES and charge VAT on them
- 15.5 Unless the SELLER obtains agreement to the contrary from HM Customs & Excise
(a) the SELLER must on or as soon as reasonably practicable after COMPLETION transfer to the BUYER all VAT records for the LOT and
(b) the BUYER must keep those records available for inspection by the SELLER at all reasonable times.
- 15.6 If, after COMPLETION, it is found that the sale of the LOT is not a transfer of a going concern then:
(a) the SELLER's solicitors are to notify the BUYER's solicitors of that finding and provide a VAT invoice in respect of the sale of the LOT and
(b) the BUYER must within five BUSINESS DAYS of receipt of the VAT invoice pay to the SELLER the VAT due and
(c) if VAT is payable because the BUYER has not complied with this condition 15, the BUYER must pay and indemnify the SELLER against all costs, interest, penalties or surcharges that the SELLER incurs as a result.
- 16. Capital allowances**
- 16.1 This condition applies where the SPECIAL CONDITIONS state that there are capital allowances available in respect of the LOT.
- 16.2 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.
- 16.3 The value to be attributed to those items on which capital allowances may be claimed is set out in the SPECIAL CONDITIONS.
- 16.4 The SELLER and BUYER agree:
(a) to make an election on COMPLETION under Section 198 of the Capital Allowances Act 2001 to give effect to this condition; and
(b) to submit the value specified in the SPECIAL CONDITIONS to the Inland Revenue for the purposes of their respective capital allowance computations.
- 17. Maintenance agreements**
- 17.1 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.
- 17.2 The BUYER must assume, and indemnify the SELLER in respect of, all liability under such contracts from the ACTUAL COMPLETION DATE.
- 18. Landlord and Tenant Act 1987**
- 18.1 This condition applies where the sale is a relevant disposal for the purposes of part 1 of the Landlord and Tenant Act 1987
- 18.2 Unless the SPECIAL CONDITIONS state otherwise 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.
- 19. Sale by receiver etc**
- 19.1 This condition applies where the sale is by a PRACTITIONER.
- 19.2 The PRACTITIONER has been duly appointed and is empowered to sell the LOT.
- 19.3 The PRACTITIONER is the agent of the SELLER. The PRACTITIONER and the PRACTITIONER'S partners and staff incur no personal liability in connection with the sale or the performance of the SELLER'S obligations. The TRANSFER is to include a declaration
- excluding the personal liability of the PRACTITIONER and of the PRACTITIONER'S partners and staff.
- 19.4 The LOT is sold
(a) in whatever its condition is at COMPLETION
(b) whether or not vacant possession is provided
(c) for such title as the SELLER may have and
(d) with no covenants for title and the BUYER has no right to rescind the contract or any other remedy if information provided about the LOT is inaccurate, incomplete or missing.
- 19.5 Where the PRACTITIONER is a receiver or administrative receiver:
(a) the DOCUMENTS include certified copies of the charge under which the PRACTITIONER is appointed, the document of appointment by the lender and the PRACTITIONER'S acceptance of appointment; and
(b) the SELLER may require the TRANSFER to be by the lender exercising its power of sale under the Law of Property Act 1925.
- 19.6 The BUYER understands this condition 19 and agrees that it is fair in the circumstances of a sale by a PRACTITIONER.
- 20. TUPE**
- 20.1 Unless the SPECIAL CONDITIONS state that TUPE applies then the SELLER warrants that there are no employees whose contracts of employment will transfer to the BUYER on COMPLETION.
- 20.2 If the SPECIAL CONDITIONS state that TUPE applies then:
(a) the SELLER has informed the BUYER of those employees whose contracts of employment will transfer to the BUYER on COMPLETION
(b) not less than five BUSINESS DAYS before the AGREED COMPLETION DATE the BUYER must confirm to the SELLER that the BUYER has offered to employ those employees on the same terms as, or better terms than, their existing contracts of employment
(c) the BUYER is to keep the SELLER indemnified against all liability for those employees after COMPLETION.
- 21. Environmental**
- 21.1 This condition only applies where the SPECIAL CONDITIONS so provide.
- 21.2 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
- 21.3 The BUYER accepts that as a result the BUYER, not the SELLER, is liable for any pollution on or emanating from the LOT, including the cost of remediating it if required, and the BUYER must indemnify the SELLER in respect of all such liability.
- 22. Service Charge**
- 22.1 This condition applies where the LOT is sold subject to TENANCIES that include service charge provisions. No apportionment is to be made at COMPLETION in respect of service charges.
- 22.2 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:
(a) payments on account of service charge received from each tenant;
(b) service charge expenditure attributable to each TENANCY;
(c) any irrecoverable service charge expenditure.
- 22.4 In respect of each TENANCY, if the service charge account shows that:
(a) payments on account exceed attributable service charge expenditure, the SELLER must pay to the BUYER an amount equal to the excess when it provides the service charge account;
(b) attributable service charge expenditure exceeds payments on account, the BUYER must use all reasonable endeavours to recover the shortfall from the tenant at the next service charge reconciliation date and pay the amount so recovered to the SELLER within five BUSINESS DAYS of receipt in cleared funds.
- 22.5 In respect of irrecoverable service charge expenditure the SELLER must bear any incurred before COMPLETION (apportioned up to and including the ACTUAL COMPLETION DATE) and the buyer must bear any incurred after the 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.
- 22.6 If the SELLER holds any reserve or sinking fund on account of future service charge expenditure
(a) the SELLER must assign it (including any interest earned on it) to the BUYER on COMPLETION and
(b) 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.
- 23. Rent reviews**
- 23.1 This condition 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.
- 23.2 The SELLER may continue negotiations or rent review proceedings 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.
- 23.3 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.
- 23.4 The SELLER must:
(a) give to the BUYER full details of all rent review negotiations and proceedings, including copies of all correspondence and other papers; and
(b) use all reasonable endeavours to substitute the BUYER for the SELLER in any rent review proceedings.
- 23.5 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.
- 23.6 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 which relates to the SELLER'S period of ownership within five BUSINESS DAYS of receipt of cleared funds.
- 23.7 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.
- 23.8 The SELLER and the BUYER are to bear their own costs in relation to rent review negotiations and proceedings.
- 24. Tenancy renewals**
- 24.1 This condition applies where the tenant under a TENANCY has the right to remain in occupation under part 11 of the Landlord and Tenant Act 1954, and references to notices and proceedings are to notices and proceedings under that Act.
- 24.2 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) serve or respond to any notice or begin or continue any proceedings.
- 24.3 The SELLER must notify the BUYER of any notices served and act as the BUYER reasonably directs in relation to those notices.
- 24.4 Following COMPLETION the BUYER must:
(a) with the co-operation of the SELLER take immediate steps to substitute itself as a party to any proceedings;
(b) 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, in the case of the renewed TENANCY, for a term which begins on the day after the term of the old TENANCY expires;
(c) 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.
- 24.5 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.
- 25. Warranties**
- 25.1 Available warranties are listed in the SPECIAL CONDITIONS.
- 25.2 Where a warranty is assignable the SELLER must (a) on COMPLETION assign it to the BUYER and give notice of assignment to the person who gave the warranty
(b) 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.
- 25.3 If a warranty is not assignable the SELLER must on COMPLETION:
(a) hold the warranty on trust for the BUYER
(b) 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.
- 26. 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.
- 27. Notices and other communications**
- 27.1 All communications, including notices, must be in writing. Communication to or by the SELLER or the BUYER may be given to or by their solicitors.
- 27.2 If a communication is delivered by hand or is otherwise proved to have been received then it is given when delivered or received. If delivered or received after 1700 hours on a BUSINESS DAY it is to be treated as received on the next BUSINESS DAY.
- 27.3 If a communication is to be relied on without proof of its receipt it must be sent by first-class registered or recorded delivery post to the address of the person to whom it is to be given as specified in the SALE MEMORANDUM. Such a communication will be treated as received on the second BUSINESS DAY after it has been posted.
- 28. Contracts (Rights of Third Parties) Act 1999**
- The CONTRACT is enforceable only by the SELLER and the BUYER and (if applicable) by their successors in title and, to the extent permitted by the CONDITIONS, by the AUCTIONEERS.