SmartProperty Auctions

TERMS AND CONDITIONS OF SALE

Conditions of Sale

Common Auction Conditions (5th edition, July 2024), together with the Smart Property Auctions Amendments and Additions

These Conditions apply to every lot offered by Smart Property Auctions, whether it is sold before, at or after the auction. Please read them together with the Notice to Bidders, the Special Conditions of Sale in the legal pack, and any addendum for the lot.

AT A GLANCE

1.5% Buyer's Premium, inc. VAT, minimum £5,000	**£3,000** Exclusivity Fee, inc. VAT, normally (may be higher for higher value lots)	**£5,000** Bidder Security for each lot you register on	**10%** Deposit on exchange, held as stakeholder

The Buyer's Premium becomes payable when the contract is formed, however the lot is bought, and must be paid within two Business Days. Any Bidder Security or Exclusivity Fee is credited against it. Full terms are in CONDITIONS A6 and G31 to G33.

WHAT THIS DOCUMENT CONTAINS

Glossary	Definitions, followed by the Smart Property Auctions Additional Definitions
Auction Conduct Conditions (A1–A6)	How the auction is run, how bids are made and when the contract is formed
General Conditions of Sale (G1–G35)	The terms of the contract between the seller and the buyer

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COMMON AUCTION CONDITIONS

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Glossary

This glossary applies to the AUCTION CONDUCT CONDITIONS and the SALE CONDITIONS. It is a compulsory section of the CAC that must be included without variation (but the SPECIAL CONDITIONS may include defined words that differ from the glossary so long as they apply only to the SPECIAL CONDITIONS).

The laws of England and Wales apply to the CONDITIONS, and YOU, WE, the SELLER and the BUYER all submit to the jurisdiction of the courts of England and Wales.

Wherever it makes sense:

- 'month' means calendar month
- singular words can be read as plurals, and plurals as singular words
- a 'person' includes a corporate body
- references to legislation and regulations are to that legislation and those regulations as modified or re-enacted by the date of the AUCTION or the CONTRACT DATE (as applicable)
- references to official guidance and procedures and to the recommendations of a supervisory body are to that guidance and those procedures and recommendations as at the date of the AUCTION or the CONTRACT DATE (as applicable) and
- where the following words appear in small capitals, they have the specified meanings.

Term	Definition
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, to the PARTICULARS, or to both, whether contained in a supplement to the CATALOGUE or the PARTICULARS, or by a written notice from the AUCTIONEERS on the WEBSITE or by email, or by an announcement at the AUCTION.

COMMON AUCTION CONDITIONS

Term	Definition
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.
AML	Anti-money laundering, an expression that includes all laws, regulations and procedures designed to check that money and assets are not the proceeds of crime nor to be used in terrorism.
AML INFORMATION	Information about YOUR identity, that of the BUYER (if not YOU), the source of funds and otherwise sufficient to satisfy US that there is unlikely to be any breach of AML REGULATIONS if you bid at the AUCTION, or the BUYER pays a DEPOSIT, or the BUYER buys a LOT.
AML REGULATIONS	AML regulations at the date of the AUCTION (whether legal requirements, official guidance or recommendations of a supervisory body) to the extent that they must or should be complied with by the AUCTIONEER or (in addition) apply to AUCTIONS and transactions governed by the CAC.
APPROVED FINANCIAL INSTITUTION	Any bank or building society that is regulated by a competent UK regulatory authority 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.

COMMON AUCTION CONDITIONS

Term	Definition
AUCTION	The AUCTION advertised in the CATALOGUE or on the WEBSITE.
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) Saturday or Sunday or (b) a bank or public holiday in England and Wales.
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 for the AUCTION as it exists at the date of the AUCTION (or, if the CATALOGUE is different, the date of the CONTRACT), including any ADDENDUM, whether printed or made available electronically.
COMPLETION	Unless the SELLER and the BUYER otherwise agree, the occasion when they have both complied with the obligations under the CONTRACT that they are obliged to comply with prior to completion, and the amount payable on completion has been unconditionally received in the SELLER'S conveyancer's client account (or as otherwise required by the terms of the CONTRACT).
CONDITION	One of the AUCTION CONDUCT CONDITIONS or SALE CONDITIONS.
CONTRACT	The contract by which the SELLER agrees to sell and the BUYER agrees to buy the LOT.

COMMON AUCTION CONDITIONS

Term	Definition
CONTRACT DATE	The date of the AUCTION or, if the LOT is sold before or after 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 email, 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 (apart from FINANCIAL CHARGES).
EXTRA GENERAL CONDITIONS	Any CONDITIONS added or varied by the AUCTIONEERS starting at CONDITION G30.
FINANCIAL CHARGE	A charge to secure a loan or other financial indebtedness (but not including a rentcharge or local land charge).
GENERAL CONDITIONS	The SALE CONDITIONS, headed 'General conditions of sale', including any EXTRA GENERAL CONDITIONS.
INTEREST RATE	If not specified in the SPECIAL CONDITIONS, the higher of 6% or 4% above the base rate from time to time of Barclays Bank plc. The interest rate will also apply to any judgment debt, unless the statutory rate is higher.
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).

COMMON AUCTION CONDITIONS

Term	Definition
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 or the WEBSITE 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 UK, a person undertaking a similar role).
PRICE	The price (exclusive of vat) 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, but no condition is a SALE CONDITION to the extent that it purports to vary, exclude or replace any AUCTION CONDUCT CONDITION (or all of them) unless that condition has been specifically agreed in writing with the AUCTIONEERS before the date of the AUCTION.
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).

COMMON AUCTION CONDITIONS

Term	Definition
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 schedule of TENANCIES (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.
WEBSITE	The AUCTIONEERS' website, which includes copies of the CATALOGUE and the PARTICULARS and details of the AUCTION.
YOU (and YOUR)	Someone who has seen the CATALOGUE or WEBSITE or who attends or bids at or otherwise participates in the AUCTION, whether or not a BUYER.

Smart Property Auctions Additional Definitions

The following additional defined terms are used in the Smart Property Auctions extra auction conduct conditions (CONDITION A6.3 onwards) and extra general conditions (CONDITION G30 onwards). They are additions only and do not vary the glossary above, which is reproduced without variation.

Term	Definition
BIDDER SECURITY	The sum of £5,000 required from a bidder for each LOT on which they register to bid, paid by bank transfer or held on a credit or debit card before bidding opens, as set out in CONDITION A6.7.
BUYER'S PREMIUM	The fee payable by the BUYER to the AUCTIONEERS under CONDITION G31: 1.5% of the PRICE or £5,000, whichever is greater, both inclusive of VAT, unless a different amount is stated in the PARTICULARS.
DESIGNATED CLOSING TIME	The time at which bidding on a LOT is scheduled to close, as shown on the LOT page of the WEBSITE.
EXCLUSIVITY AGREEMENT	The agreement between the BUYER and the AUCTIONEERS, entered into when the SELLER accepts an offer before or after the AUCTION, under which the BUYER pays the EXCLUSIVITY FEE and agrees to pay the BUYER'S PREMIUM, and the SELLER agrees not to deal with anyone else during the EXCLUSIVITY PERIOD.
EXCLUSIVITY FEE	The fee payable by the BUYER under an EXCLUSIVITY AGREEMENT. It is normally £3,000 inclusive of VAT but may be higher for higher value LOTS, as stated in the PARTICULARS and the EXCLUSIVITY AGREEMENT.

COMMON AUCTION CONDITIONS

Term	Definition
EXCLUSIVITY PERIOD	The period stated in the EXCLUSIVITY AGREEMENT, normally 28 days from payment of the EXCLUSIVITY FEE, within which the BUYER must exchange contracts.
INVITATION TO BUY	An invitation issued through the WEBSITE allowing a BUYER to buy a LOT at an agreed PRICE before the DESIGNATED CLOSING TIME, on the same terms as a SUCCESSFUL BID.
SUCCESSFUL BID	The highest VALID BID for a LOT when bidding closes, provided it meets or exceeds the reserve price, accepted by the AUCTIONEERS on behalf of the SELLER through the operation of the WEBSITE.
VALID BID	A bid recorded and accepted by the WEBSITE before bidding on the LOT closes.

COMMON AUCTION CONDITIONS

Words in small capitals have the special meanings defined in the glossary.
The AUCTION CONDUCT CONDITIONS (as supplemented or varied by CONDITION A6, if applicable) are a compulsory section of the CAC. They cannot be disapplied or varied without OUR written agreement, even by a CONDITION purporting to replace the CAC in their entirety.

A1 Introduction

A1.1 The AUCTION CONDUCT CONDITIONS apply wherever the LOT is located.

A1.2 If you make a bid for a LOT or otherwise participate in the AUCTION, it is on the basis that you accept these AUCTION CONDUCT CONDITIONS. They govern OUR relationship with YOU. They can be varied only if WE specifically agree to the variation in writing before the date of the AUCTION.

A2 OUR role

A2.1 As agents for each SELLER, WE have authority to:

- **a** Prepare the CATALOGUE and PARTICULARS 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 or fails to provide AML INFORMATION.

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.

A2.5 WE may refuse to admit one or more persons to the AUCTION without having to explain why.

A2.6 WE reserve the right to refuse YOUR bid unless YOU have previously complied with OUR registration formalities as set out on OUR WEBSITE or in the CATALOGUE.

A3 Bidding and reserve prices

A3.1 All bids are to be made in pounds sterling exclusive of 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.

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, 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. This CONDITION (A5) applies to the BUYER but only to YOU if YOU are the successful bidder on behalf of the BUYER.

A5.2 The BUYER:

- **a** must buy the LOT on the terms of the SALE MEMORANDUM at the PRICE YOU bid (Plus VAT, if applicable)
- **b** is not obliged to pay any other money, expenses, charges or consideration to the SELLER, the SELLER'S agent, or to anyone else, unless the amount is either specifically stated in the SPECIAL CONDITIONS or is:
  - **i.** a contribution to insurance costs as provided by CONDITION G3.2
  - **ii.** apportionments and/or interest pursuant to CONDITION G10
  - **iii.** ARREARS as provided by CONDITION G11 or
  - **iv.** a payment to US if specified in CONDITION A6.

A5.3 YOU must:

- **a** provide all information WE need from YOU to enable US to complete the SALE MEMORANDUM
- **b** sign the completed SALE MEMORANDUM as BUYER (or as agent for the BUYER), failing which WE are authorised to sign it on the BUYER'S behalf and
- **c** pay the deposit

and if YOU do not, WE may 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.

A5.4 The deposit:

- **a** must be paid in pounds sterling in the manner stipulated in CONDITION A6
- **b** may be declined by US unless drawn on YOUR account, or that of the BUYER, or of another person who would not expose US to a breach of AML REGULATIONS
- **c** is to be held by US (or, at OUR option, the SELLER'S conveyancer) and
- **d** 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 stakeholder unless the SALE CONDITIONS require it to be held as agent for the SELLER.

A5.5 WE may retain the SALE MEMORANDUM signed by or on behalf of the SELLER until the deposit has been received in cleared funds.

A5.6 Where WE hold the deposit as stakeholder, WE are authorised to release it (and interest on it if applicable) to the SELLER on COMPLETION or, if COMPLETION does not take place, to the person entitled to it under the SALE CONDITIONS.

A5.7 If the BUYER does not comply with their 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 10% of the PRICE (or the total PRICE, if less). A SPECIAL CONDITION may, however, require a higher minimum deposit.

A6.2 WE accept the following methods of payment of the deposit: bank transfer to OUR client account, as shown on the WEBSITE and in YOUR registration documents.

Smart Property Auctions extra auction conduct conditions

The following CONDITIONS are added by US under CONDITION A1.2. In them, WE are Capital Prestige Ltd (company number 06079839), registered office 71–75 Shelton Street, Covent Garden, London WC2H 9JQ, trading as Smart Property Auctions, and the WEBSITE is www.smartpropertyauctions.co.uk. They supplement CONDITIONS A1 to A5, which are reproduced above without variation. Where a CONDITION below expressly differs from CONDITIONS A1 to A5, the CONDITION below applies.

A6.3 **BUYER'S PREMIUM.** A BUYER'S PREMIUM is payable to US under CONDITION G31. It is a payment to US specified in this CONDITION A6 for the purposes of CONDITION A5.2(b)(iv).

A6.4 **Money WE hold.** In addition to the deposit, WE have authority to receive and hold the BIDDER SECURITY and any EXCLUSIVITY FEE.

A6.5 **Guide and reserve prices.** The reserve price will be no more than 10% above a single-figure guide price, and will be within any guide range. The reserve price is not disclosed and may change before the AUCTION. Neither the guide price nor the reserve price is a valuation.

A6.6 **Registering to bid.** Before YOU can bid, YOU must: (a) register on the WEBSITE for each LOT YOU wish to bid on, giving the details WE need to complete the SALE MEMORANDUM, including the BUYER's details (if not YOU) and the BUYER's conveyancer; (b) provide the AML INFORMATION WE request, including evidence of identity, the identity of the beneficial owners of any company or trust BUYER, and the source of funds; (c) authorise US to sign the SALE MEMORANDUM on the BUYER's behalf if YOU make the SUCCESSFUL BID; and (d) provide the BIDDER SECURITY.

A6.7 **BIDDER SECURITY.** BIDDER SECURITY may be provided by bank transfer or by an authorised hold on a credit or debit card. If YOU make the SUCCESSFUL BID, the BIDDER SECURITY becomes non-refundable, WE may collect the amount of any card hold, and WE apply it in full towards the BUYER'S PREMIUM. If YOU do not make the SUCCESSFUL BID, it is released or refunded in full.

A6.8 **Closing time and extensions.** Each LOT has a DESIGNATED CLOSING TIME. If a VALID BID is placed in the final 60 seconds, the closing time is extended by 60 seconds, and every further VALID BID during an extension resets the timer to 60 seconds. There is no limit to the number of extensions. Bidding closes when 60 seconds pass without a further VALID BID.

A6.9 **Maximum bids.** If YOU place a maximum bid, the WEBSITE will bid automatically on YOUR behalf, up to that amount, by the smallest increment needed to keep YOUR bid the highest. If YOUR maximum bid equals or exceeds the reserve price, the WEBSITE will first bid at the reserve price, unless a higher bid has already been placed.

A6.10 **Platform failure.** WE will take reasonable steps to keep the WEBSITE available during the AUCTION. If an internet, server or software failure affects the fairness of bidding on a LOT, WE may suspend or cancel bidding on that LOT, or extend its closing time, and offer it again as soon as reasonably possible. To the extent permitted by law, neither WE nor the SELLER are liable for any loss YOU suffer as a result, including where YOUR own internet connection fails.

A6.11 **The PARTICULARS.** All measurements and areas are approximate. Plans and photographs are for identification only, are not to scale, and do not show legal boundaries. Services, systems and appliances have not been tested. Any estimate WE give of rental or capital value is not a valuation. YOU are treated as having read the PARTICULARS, the SALE CONDITIONS and any ADDENDUM, inspected the LOT and taken independent professional advice before YOU offer or bid.

A6.12 **When the CONTRACT is formed.** For the purposes of CONDITION A5.1, a bid is a successful bid if it is the highest VALID BID when bidding on the LOT closes and it meets or exceeds the reserve price. The CONTRACT is formed, and YOU are legally bound, at that moment. WE, or a person WE appoint, will then sign the SALE MEMORANDUM on the BUYER's behalf under the authority given on registration.

A6.13 **Payment after the AUCTION.** Despite CONDITION A5.3(c), the BUYER must pay the deposit, and the balance of the BUYER'S PREMIUM, to US by bank transfer within two BUSINESS DAYS of the CONTRACT DATE, from an account in the BUYER's name or another account WE approve under the AML REGULATIONS. WE hold the deposit as stakeholder and may pay it to the SELLER's conveyancer, to hold as stakeholder, once it has cleared.

A6.14 **If the BUYER defaults.** If the BUYER does not pay the deposit or the BUYER'S PREMIUM when due, or does not provide the AML INFORMATION WE request within five BUSINESS DAYS of the CONTRACT DATE, WE may, as agent for the SELLER, treat that failure as repudiation of the CONTRACT and offer the LOT for sale again. The SELLER may then claim against the BUYER for breach of contract, and the BIDDER SECURITY and any EXCLUSIVITY FEE are not refunded.

A6.15 **Company BUYERS.** Where the BUYER is a company and goes into liquidation, and the liquidator disclaims the CONTRACT, YOU must complete the purchase within 14 days of the SELLER's written notice requiring YOU to do so.

A6.16 **Payment fraud.** WE will only ever ask YOU to pay into the account shown on the WEBSITE and in YOUR registration documents. If YOU receive a request to pay into any other account, do not pay it and call US on 020 3355 3259.

GENERAL CONDITIONS OF SALE

Words in small capitals 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 disapplied or changed in relation to one or more LOTS by SPECIAL CONDITIONS so long as they are SALE CONDITIONS as defined in the glossary.

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:

- **a** Matters registered or capable of registration as local land charges
- **b** Matters registered or capable of registration by any competent authority or under the provisions of any statute
- **c** Notices, orders, demands, proposals and requirements of any competent authority
- **d** Charges, notices, orders, restrictions, agreements and other matters relating to town and country planning, highways or public health
- **e** Rights, easements, quasi-easements, and wayleaves
- **f** Outgoings and other liabilities

g Any interest which overrides, under the *Land Registration Act* 2002

h 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

i 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:

a the BUYER takes them as they are at COMPLETION and the SELLER is not liable if they are not fit for use and

b the SELLER is to leave them at the LOT.

G1.8 The BUYER buys with full knowledge of:

a the DOCUMENTS, whether or not the BUYER has read them and

b 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 they are 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:

a Any minimum deposit stated in the AUCTION CONDUCT CONDITIONS (or the total PRICE, if this is less than that minimum) and

b 10% of the PRICE (exclusive of any VAT on the PRICE).

G2.2 If the deposit is not paid in full by the time stated in the AUCTIONEER'S terms and conditions (time is of the essence for the CONTRACT), or 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:

- **a** The LOT is sold subject to a TENANCY that requires the SELLER to insure the LOT or
- **b** The SPECIAL CONDITIONS require the SELLER to insure the LOT.

G3.2 If the SELLER is required to insure the LOT, then the SELLER:

- **a** must produce to the BUYER on request all relevant insurance details
- **b** must use reasonable endeavours to maintain that or equivalent insurance 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 if it does not cover a contracting purchaser
- **e** must, unless otherwise agreed, cancel the insurance at COMPLETION, apply for a refund of the premium and (subject to the rights of any tenant or other third party) pay that refund to the BUYER and
- **f** (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 are not made 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 official copy of the entries on the register and title plan and, where noted on the register, an official copy of all DOCUMENTS subject to which the LOT is being sold.

b 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 15 years old) and must produce to the BUYER the original or an examined copy of every relevant DOCUMENT.

c If title is in the course of registration, title is to consist of:

i. certified copies of the application for registration of title made to the Land Registry and of the DOCUMENTS accompanying that application

ii. evidence that all applicable stamp duty land tax relating to that application has been paid and

iii. a letter under which the SELLER or their 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.

d The BUYER has no right to object to or make requisitions on any title information after COMPLETION or, if earlier, 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):

a 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

b 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 AML REGULATIONS and Land Registry Rules.

G5 TRANSFER

G5.1 Unless a form of TRANSFER is prescribed by 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 (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

b 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:

- **a** 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
- **b** the form of the new lease is that described by the SPECIAL CONDITIONS and
- **c** 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:

- **a** the balance of the PRICE (plus VAT if applicable) adjusted to take account of apportionments and interest under CONDITION G10
- **b** any amounts payable under CONDITIONS G3.2 and G11

but no other amounts unless stated in the SPECIAL CONDITIONS.

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

- **a** direct transfer from the BUYER'S conveyancer to the SELLER'S conveyancer and
- **b** the release of any deposit held by a stakeholder

or in such other manner as the SELLER'S conveyancer may agree.

G6.4 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:

- **a** terminate 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.

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

- **a** terminate the CONTRACT and
- **b** 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

G8.1 If the CONTRACT is lawfully brought to an end:

- **a** the BUYER must return all papers to the SELLER and appoint the SELLER their agent to cancel any registration of the CONTRACT and

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 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 the licence has been obtained ('licence notice').

G9.4 The SELLER must:

a use all reasonable endeavours to obtain the licence at the SELLER'S expense and

b 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:

a Provide references and other relevant information and

b 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 the SELLER or BUYER for breach of this CONDITION (G9).

G10 Interest and apportionments

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:

- **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 by the BUYER

in which event income and outgoings are to be apportioned on the date from which interest becomes payable by the BUYER.

G10.4 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 accrue 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 accrue at an equal daily rate during the period to which they relate and
- **c** 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 the 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 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 BUYER'S obligation under CONDITION G11.5 is conditional on the SELLER assigning to the BUYER all rights that the SELLER has to recover those ARREARS.

Part 3 – BUYER not to pay ARREARS

G11.7 Part 3 of this CONDITION (G11) applies where the SPECIAL CONDITIONS:

- **a** so state or
- **b** give no details of any ARREARS.

G11.8 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 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 conveyancer may reasonably require

d 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

e 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

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 part 3 of this CONDITION (G11).

G11.9 Where the SELLER has the right to recover ARREARS, they 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:

a The SELLER must comply with the BUYER'S reasonable requirements unless to do so would (but for the indemnity in bullet (c) (below)) 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.

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 their 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.

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 them 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:

- **a** 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
- **b** this CONDITION (G15) applies.

G15.2 The SELLER confirms that:

- **a** they are registered for VAT, either in the SELLER'S name or as a member of the same VAT group and
- **b** they have (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:

- **a** they are registered for VAT, either in the BUYER'S name or as a member of a VAT group
- **b** they have 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
- **c** article 5(2B) of the *Value Added Tax (Special Provisions) Order* 1995 does not apply to them and
- **d** they are 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:

- **a** of the BUYER'S VAT registration
- **b** that the BUYER has made a VAT OPTION and
- **c** that the VAT OPTION has been notified in writing to HM Revenue and Customs
- **d** and, if they do 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:

- **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.

G15.6 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 conveyancer is to notify the BUYER'S conveyancer of that finding and provide a VAT invoice in respect of the sale of the LOT

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 (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:

a make an election on COMPLETION under section 198 of the *Capital Allowances Act* 2001 to give effect to this CONDITION (G16) and

b 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:

- **a** in its condition at COMPLETION
- **b** for such title as the SELLER may have and
- **c** 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:

- **a** 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
- **b** 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.

- **a** 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.

b The BUYER confirms that they will comply with their obligations under TUPE and any SPECIAL CONDITIONS in respect of the transferring employees.

c 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.

d The BUYER is to keep the SELLER indemnified against all liability for the transferring employees after COMPLETION.

G21 Environmental conditions

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:

a service charge expenditure attributable to each TENANCY

b payments on account of service charge received from each tenant

c any amounts due from a tenant that have not been received and

d 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:

a 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 they provide the service charge account or

b 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 the ACTUAL COMPLETION DATE and the BUYER must pay the expenditure incurred in respect of the period 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.

G22.6 If the SELLER holds any reserve or sinking fund on account of future service charge expenditure or a depreciation fund:

a the SELLER must pay 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.

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:

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.

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.

G23.8 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:

a with the cooperation of the SELLER, take immediate steps to substitute themself 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

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.

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:

a on COMPLETION assign it to the BUYER and give notice of assignment to the person who gave the warranty and

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.

G25.3 If a warranty is not assignable, the SELLER must after COMPLETION:

a hold the warranty on trust for the BUYER and

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.

G26 No assignment

G26.1 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 their own expense and as soon as practicable:

- **a** procure that they become registered at the Land Registry as proprietor of the LOT
- **b** procure that all rights granted and reserved by the lease under which the LOT is held are properly noted against the affected titles and
- **c** provide the SELLER with an official copy of the register relating to such lease showing themself registered as proprietor.

G27.2 This CONDITION (G27.2) applies where the LOT comprises part of a registered title. The BUYER must at their own expense and as soon as practicable:

- **a** apply for registration of the TRANSFER
- **b** provide the SELLER with an official copy and title plan for the BUYER's new title and
- **c** 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:

- **a** delivered by hand or
- **b** made electronically and personally acknowledged (automatic acknowledgement does not count) or
- **c** 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:

- **a** when delivered, if delivered by hand, or
- **b** 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

G29.1 No one is intended to have any benefit under the CONTRACT pursuant to the *Contracts (Rights of Third Parties) Act* 1999.

Smart Property Auctions extra general conditions

As the glossary provides, the EXTRA GENERAL CONDITIONS added by the AUCTIONEERS start at CONDITION G30. CONDITIONS G1 to G29 above are reproduced without variation.

G30 Release of Seller from Covenants in the Lease

G30.1 In relation to the *Landlord & Tenant (Covenants) Act* 1995 ("the 1995 Act"):

- **a** The SELLER may, at any time from the date of the SALE MEMORANDUM up to COMPLETION, serve notice on any TENANT of the LOT under the 1995 Act requesting a full release from future liability under the Landlord Covenants in any applicable tenancy.
- **b** If the SELLER serves such a notice, they will use reasonable efforts to secure the release - though they are not required to apply to the Court for a declaration. The BUYER agrees to promptly provide, at their own cost, any information the SELLER reasonably requires to satisfy the TENANT (or the Court, if applicable) that granting the release is reasonable.
- **c** If the SELLER does not obtain such a release before COMPLETION, or chooses not to serve a notice:
  - **i.** The BUYER shall covenant in the transfer to notify the SELLER in writing on the date of Completion, or within five BUSINESS DAYS thereafter, if the BUYER transfers the LOT or any part of it to another party.
  - **ii.** Until the SELLER is released from the Landlord Covenants in any relevant tenancy, the BUYER must obtain from any transferee a covenant in favour of the SELLER in the same form (with necessary modifications) as this

clause. The BUYER and SELLER shall also apply to the Chief Land Registrar to enter a restriction on the Proprietorship Register of the property title. This restriction will prevent the registration of any further transfer of the property unless accompanied by a certificate from the transferee's solicitors confirming either that:

- the provisions of this clause have been fulfilled; or
- the SELLER has been fully released from future liability under the relevant TENANCY covenants.

G31 BUYER'S PREMIUM

G31.1 The BUYER must pay the BUYER'S PREMIUM to the AUCTIONEERS on every sale of the LOT, whether the CONTRACT is made by SUCCESSFUL BID, under an EXCLUSIVITY AGREEMENT, by INVITATION TO BUY or by private treaty, and whether before, at or after the AUCTION.

G31.2 The BUYER'S PREMIUM is payable in addition to the PRICE and the deposit. It is due on the CONTRACT DATE and must be paid within two BUSINESS DAYS of it.

G31.3 Any BIDDER SECURITY or EXCLUSIVITY FEE paid by the BUYER is credited against the BUYER'S PREMIUM.

G31.4 The BUYER'S PREMIUM is earned by the AUCTIONEERS on the CONTRACT DATE. It is not refundable if the CONTRACT does not complete, unless the failure to complete is caused by the AUCTIONEERS.

G31.5 This CONDITION is for the benefit of the AUCTIONEERS, who may enforce it directly against the BUYER under the Contracts (Rights of Third Parties) Act 1999. CONDITION G29 does not apply to this CONDITION.

G32 Offers and the EXCLUSIVITY AGREEMENT

G32.1 Offers for the LOT may be made to the AUCTIONEERS or the SELLER'S estate agent before or after the AUCTION. The SELLER is not obliged to accept any offer.

G32.2 If the SELLER accepts an offer, the BUYER must sign the EXCLUSIVITY AGREEMENT and pay the EXCLUSIVITY FEE. Until both are done, the LOT remains on the market.

G32.3 During the EXCLUSIVITY PERIOD, the SELLER will not market the LOT or deal with any other person, and the BUYER must exchange contracts on the SALE CONDITIONS before the EXCLUSIVITY PERIOD ends.

G32.4 The EXCLUSIVITY FEE is non-refundable if the BUYER withdraws, or does not exchange within the EXCLUSIVITY PERIOD for any reason other than the default or delay of the SELLER or the SELLER'S conveyancer.

G32.5 The EXCLUSIVITY FEE will be refunded to the BUYER in full if, during the EXCLUSIVITY PERIOD, the SELLER withdraws from the sale or deals with any other person.

G32.6 If bidding on the LOT does not reach the reserve price, the AUCTIONEERS may put the highest bid to the SELLER as an offer. If it is accepted, the sale proceeds under this CONDITION, and the BIDDER SECURITY is held as the EXCLUSIVITY FEE.

G33 Sale before or after the AUCTION

G33.1 Subject to any EXCLUSIVITY AGREEMENT, the SELLER may withdraw the LOT before the AUCTION, or sell it before or after the AUCTION, and the AUCTIONEERS are authorised to sell it on the SELLER'S behalf.

G33.2 Any sale by private treaty is subject to CONDITIONS G31 and G32.

G33.3 Neither the AUCTIONEERS nor the SELLER are liable for any costs a bidder incurs in relation to a LOT that is withdrawn, or sold before or after the AUCTION.

G34 Fixtures, fittings, services and media installations

G34.1 The SELLER gives no warranty as to the ownership or condition of any fixtures, fittings, services or installations, including whether any of them are subject to a hire, lease or hire purchase agreement. The BUYER must make their own enquiries.

G34.2 If any such item is subject to an agreement to which the SELLER is a party, the BUYER will indemnify the SELLER against any liability arising from the BUYER'S breach of that agreement after COMPLETION.

G35 PARTICULARS and representations

G35.1 The PARTICULARS and any information given by or on behalf of the SELLER or the AUCTIONEERS are prepared in good faith, but they do not form part of the CONTRACT and the BUYER must check them independently.

G35.2 The BUYER confirms that they have not relied on any statement or representation that is not set out in the SALE CONDITIONS or in the written replies of the SELLER'S conveyancer to the BUYER'S conveyancer.

G35.3 Nothing in this CONDITION limits or excludes liability for fraud or fraudulent misrepresentation, or any other liability that cannot lawfully be limited or excluded.