

## **COMMON AUCTION CONDITIONS FOR REAL ESTATE AUCTIONS (4<sup>TH</sup> EDITION) REPRODUCED WITH THE CONSENT OF THE RICS**

### **INTRODUCTION:**

The Common Auction Conditions are designed for real estate auctions, to set a consistent practice across the industry. There are three sections, all of which are to be included without variation, except where stated.

### **Glossary**

The glossary gives special meanings to certain words used in the conditions.

### **Auction Conduct Conditions**

The Auction Conduct Conditions govern the relationship between the auctioneer and anyone who participates in the auction. They apply wherever the property is located, and cannot be changed without the auctioneer's agreement.

We recommend that these conditions are set out in a two-part notice to bidders, part one containing advisory material – which auctioneers can tailor to their needs – and part two the auction conduct conditions and any extra auction conduct conditions.

### **Sale Conditions**

The Sale Conditions apply only to property in England and Wales, and govern the agreement between each seller and buyer. They include general conditions of sale and template forms of special conditions of sale, tenancy and arrears schedules and a sale memorandum. They must not be used if other standard conditions apply.

## **GLOSSARY**

This glossary applies to the AUCTION CONDUCT CONDITIONS and the SALE CONDITIONS. It is a compulsory section of the Common AUCTION Conditions 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:

- singular words can be read as plurals, and plurals as singular words;
- a "person" includes a corporate body;
- words of one gender include the other genders;
- references to legislation are to that legislation as it may have been modified or re-enacted by the date of the AUCTION or the CONTRACT DATE (as applicable); and
- where the following words 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 or to the PARTICULARS or to both whether contained in a supplement to the CATALOGUE, a written notice from the AUCTIONEERS or an oral announcement at the AUCTION;
“Agreed COMPLETION Date”	Subject to CONDITION G9.3:  (a) the date specified in the SPECIAL CONDITIONS; or  (b) if no date is specified, 20 BUSINESS DAYS after the CONTRACT DATE;  but if that date is not a BUSINESS DAY the first subsequent BUSINESS DAY;
“Approved Financial Institution”	any bank or building society that 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;
“Auction”	the AUCTION advertised in the CATALOGUE;
“Auction Conduct Conditions”	the conditions so headed, including any extra AUCTION CONDUCT CONDITIONS;
“Auctioneers”	the AUCTIONEERS at the AUCTION;
“Business Day”	any day except (a) 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 then different, the date of the CONTRACT) including any ADDENDUM and 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;
“Contract Date”	The date of the AUCTION or, if the LOT is sold before or after the AUCTION: <ul style="list-style-type: none"> <li>(a) the date of the SALE MEMORANDUM signed by both the SELLER and BUYER; or</li> <li>(b) if CONTRACTs are exchanged, the date of exchange;</li> </ul> <p>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;</p>
“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 rent charge 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% and 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);

“Old Arrears”	ARREARS due under any of the TENANCIES that are not “new TENANCIES” as defined by the Landlord and Tenant (Covenants) Act 1995;
“Particulars”	the section of the CATALOGUE that contains descriptions of each LOT (as varied by any ADDENDUM);
“Practitioner”	an insolvency PRACTITIONER for the purposes of the Insolvency Act 1986 (or, in relation to jurisdictions outside the United Kingdom, 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;
“Sales Conditions”	the GENERAL CONDITIONS as varied by any SPECIAL CONDITIONS or ADDENDUM;
“Sale Memorandum”	the form so headed (whether or not set out in the CATALOGUE) in which the terms of the CONTRACT for the sale of the LOT are recorded;
“Seller”	the person selling the LOT. If two or more are jointly the SELLER their obligations can be enforced against them jointly or against each of them separately;
“Special Conditions”	those of the SALE CONDITIONS so headed that relate to the LOT;
“Tenancies”	TENANCIES, leases, licences to occupy and agreements for lease and any DOCUMENTS varying or supplemental to them;
“Tenancy Schedule”	the 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;

“YOU (and YOUR)” Someone who has seen the CATALOGUE or who attends or bids at or otherwise participates in the AUCTION, whether or not a BUYER.

## **AUCTION CONDUCT 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 Common AUCTION Conditions. They cannot be disappplied or varied without OUR agreement, even by a CONDITION purporting to replace the Common AUCTION Conditions 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 agree.

### **A2 OUR role**

A2.1 As agents for each SELLER we have authority to

(a) prepare the CATALOGUE from information supplied by or on behalf of each SELLER;

(b) offer each LOT for sale;

(c) sell each LOT;

(d) receive and hold deposits;

(e) sign each SALE MEMORANDUM; and

(f) treat a CONTRACT as repudiated if the BUYER fails to sign a SALE MEMORANDUM or pay a deposit as required by these AUCTION CONDUCT CONDITIONS or fails to provide identification as required by the AUCTIONEERS.

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 YOU may not be allowed to bid unless YOU provide such evidence of YOUR identity and other information as WE reasonably require from all bidders.

### 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 (normally on the fall of the hammer). This CONDITION A5 applies to YOU only if YOU make the successful bid for a LOT.

A5.2 YOU are obliged to buy the LOT on the terms of the SALE MEMORANDUM at the PRICE YOU bid (plus VAT, if applicable).

A5.3 YOU must before leaving the AUCTION

- (a) provide all information WE reasonably need from YOU to enable US to complete the SALE MEMORANDUM (including proof of your identity if required by US);
- (b) sign the completed SALE MEMORANDUM; and
- (c) pay the deposit.

A5.4 If YOU do not WE may either

- (a) as agent for the SELLER treat that failure as YOUR repudiation of the CONTRACT and offer the LOT for sale again: the SELLER may then have a claim against YOU for breach of CONTRACT; or
- (b) sign the SALE MEMORANDUM on YOUR behalf.

A5.5 The deposit

- (a) must be paid in pounds sterling by cheque or by bankers' draft made payable to US (or, at OUR option, the SELLER'S conveyancer) drawn on an APPROVED FINANCIAL INSTITUTION (CONDITION A6 may state if WE accept any other form of payment);
- (b) may be declined by US unless drawn on YOUR account, or that of the BUYER, or of another person who (we are satisfied) would not expose US to a breach of money laundering 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.

A5.6 WE may retain the SALE MEMORANDUM signed by or on behalf of the SELLER until the deposit has been received in cleared funds.

A5.7 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.

A5.8 If the BUYER does not comply with its obligations under the CONTRACT then

- (a) YOU are personally liable to buy the LOT even if YOU are acting as an agent; and
- (b) YOU must indemnify the SELLER in respect of any loss the SELLER incurs as a result of the BUYER's default.

- A5.9 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% (or the total PRICE, if less). A SPECIAL CONDITION may, however, require a higher minimum deposit.

## **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. 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 it is not relying on the information contained in the PARTICULARS or on any representations made by or on behalf of the SELLER but the BUYER may rely on the SELLER'S conveyancer's written replies to written enquiries to the extent stated in those replies.
- G2 Deposit
- G2.1 The amount of the deposit is the greater of:
  - (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 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 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 is 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, 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 fifteen 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 its conveyancer agrees to use all reasonable endeavours to answer any requisitions raised by the Land Registry and to instruct the Land Registry to send the completed registration DOCUMENTS to the BUYER.
- (d) The BUYER has no right to object to or make requisitions on any title information more than seven BUSINESS DAYS after that information has been given to the BUYER.

G4.3 Unless otherwise stated in the SPECIAL CONDITIONS the SELLER sells with full title guarantee except that (and the TRANSFER shall so provide):

- (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 Money Laundering 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 new lease is that described by the SPECIAL CONDITIONS; and
  - (c) (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 the balance of the PRICE adjusted to take account of apportionments plus (if applicable) VAT and interest, but no other amounts unless specified in the SPECIAL CONDITIONS.
- G6.3 Payment is to be made in pounds sterling and only by
- (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
- If the CONTRACT is lawfully 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; 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 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 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 accrues at an equal daily rate assuming 365 days in a year (or 366 in a leap year), and income and expenditure relating to some other period accrues at an equal daily rate during the period to which it relates; and

(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 SELLER or BUYER as appropriate within five BUSINESS DAYS of the date when the amount is known.

G10.5 If a payment due from the BUYER to the SELLER on or after COMPLETION is not paid by the due date, the BUYER is to pay interest to the SELLER at the INTEREST RATE on that payment from the due date up to and including the date of payment.

G11. ARREARS

*Part 1 – Current rent*

G11.1 “Current rent” means, in respect of each of the TENANCIES subject to which the LOT is sold, the instalment of rent and other sums payable by the tenant on the most recent rent payment date on or within four months preceding COMPLETION.

G11.2 If on COMPLETION there are any ARREARS of current rent the BUYER must pay them, whether or not details of those ARREARS are given in the SPECIAL CONDITIONS.

G11.3 Parts 2 and 3 of this CONDITION G11 do not apply to ARREARS of current rent.

*Part 2 – BUYER to pay for ARREARS*

G11.4 Part 2 of this CONDITION G11 applies where the SPECIAL CONDITIONS give details of ARREARS.

G11.5 The BUYER is on COMPLETION to pay, in addition to any other money then due, an amount equal to all ARREARS of which details are set out in the SPECIAL CONDITIONS.

G11.6 If those ARREARS are not OLD ARREARS the SELLER is to assign to the BUYER all rights that the SELLER has to recover those ARREARS.

*Part 3 – BUYER not to pay for ARREARS*

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

- (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
- (d) SELLER'S conveyancer may reasonably require;
- (e) 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;
- (f) 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
- (g) if the BUYER disposes of the LOT prior to recovery of all ARREARS obtain from the BUYER'S successor in title a covenant in favour of the SELLER in similar form to part 3 of this CONDITION G11.

G11.9 Where the SELLER has the right to recover ARREARS it must not without the BUYER'S written consent bring insolvency proceedings against a tenant or seek the removal of goods from the LOT.

G12 Management

G12.1 This CONDITION G12 applies where the LOT is sold subject to TENANCIES.

G12.2 The SELLER is to manage the LOT in accordance with its standard management policies pending COMPLETION.

G12.3 The SELLER must consult the BUYER on all management issues that would affect the BUYER after COMPLETION (such as, but not limited to, an application for licence; a rent review; a variation, surrender, agreement to surrender or proposed forfeiture of a TENANCY; or a new TENANCY or agreement to grant a new TENANCY) and:

- (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

- (b) case the SELLER may act reasonably in such a way as to avoid that liability;
- (c) 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
- (d) the BUYER is to indemnify the SELLER against all loss or liability the SELLER incurs through acting as the BUYER requires, or by reason of delay caused by the BUYER.

G13 Rent deposits

G13.1 Where any TENANCY is an assured shorthold TENANCY, the SELLER and the BUYER are to comply with their respective statutory duties in relation to the protection of tenants' deposits, and to demonstrate in writing to the other (before COMPLETION, so far as practicable) that they have complied.

G13.2 The remainder of this CONDITION G13 applies where the SELLER is holding or otherwise entitled to money by way of rent deposit in respect of a TENANCY. In this CONDITION G13 "rent deposit deed" means the deed or other DOCUMENT under which the rent deposit is held.

G13.3 If the rent deposit is not assignable the SELLER must on COMPLETION hold the rent deposit on trust for the BUYER and, subject to the terms of the rent deposit deed, comply at the cost of the BUYER with the BUYER's lawful instructions.

G13.4 Otherwise the SELLER must on COMPLETION pay and assign its interest in the rent deposit to the BUYER under an assignment in which the BUYER covenants with the SELLER to:

- (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 it or by any company in the same VAT group nor will be prior to COMPLETION.

G15 TRANSFER as a going concern

G15.1 Where the SPECIAL CONDITIONS so state:

- (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 the SELLER:

- (a) is registered for VAT, either in the SELLER'S name or as a member of the same VAT group; and
- (b) has (unless the sale is a standard-rated supply) made in relation to the LOT a VAT OPTION
- (c) that remains valid and will not be revoked before COMPLETION.

G15.3 The BUYER confirms that

- (a) it is registered for VAT, either in the BUYER'S name or as a member of a VAT group;
- (b) it has made, or will make before COMPLETION, a VAT OPTION in relation to the LOT and will not revoke it before or within three months after COMPLETION;
- (c) article 5(2B) of the Value Added Tax (Special Provisions) Order 1995 does not apply to it; and
- (d) it is not buying the LOT as a nominee for another person.

G15.4 The BUYER is to give to the SELLER as early as possible before the AGREED COMPLETION DATE evidence

- (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
- (d) writing to HM Revenue and Customs;

and if it does not produce the relevant evidence at least two BUSINESS DAYS before the AGREED COMPLETION DATE, CONDITION G14.1 applies at COMPLETION.

G15.5 The BUYER confirms that after COMPLETION the BUYER intends to

- (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:

- (a) to make an election on COMPLETION under Section 198 of the Capital Allowances Act 2001 to give effect to this CONDITION G16; and
- (b) to submit the value specified in the SPECIAL CONDITIONS to HM Revenue and Customs for the purposes of their respective capital allowance computations.

G17 Maintenance agreements

G17.1 The SELLER agrees to use reasonable endeavours to TRANSFER to the BUYER, at the BUYER's cost, the benefit of the maintenance agreements specified in the SPECIAL CONDITIONS.

G17.2 The BUYER must assume, and indemnify the SELLER in respect of, all liability under such agreements from the ACTUAL COMPLETION DATE.

G18 Landlord and Tenant Act 1987

G18.1 This CONDITION G18 applies where the sale is a relevant disposal for the purposes of part I of the Landlord and Tenant Act 1987

G18.2 The SELLER warrants that the SELLER has complied with sections 5B and 7 of that Act and that the requisite majority of qualifying tenants has not accepted the offer.

G19 Sale by PRACTITIONER

G19.1 This CONDITION G19 applies where the sale is by a PRACTITIONER either as SELLER or as agent of the SELLER.

G19.2 The PRACTITIONER has been duly appointed and is empowered to sell the LOT.

G19.3 Neither the PRACTITIONER nor the firm or any member of the firm to which the PRACTITIONER belongs has any personal liability in connection with the sale or the performance of the SELLER's obligations. The TRANSFER is to include a declaration excluding that personal liability.

G19.4 The LOT is sold

- (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 it will comply with its 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

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;
- (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
- (b) expenditure, the SELLER must pay to the BUYER an amount equal to that excess when it provides the service charge account; or
- (c) that attributable service charge expenditure exceeds payments made on account, the BUYER must use all reasonable endeavours to recover the shortfall from the tenant as soon as practicable and promptly pay the amount so recovered to the SELLER;

but in respect of payments on account that are still due from a tenant CONDITION G11 (ARREARS) applies.

G22.5 In respect of service charge expenditure that is not attributable to any TENANCY the SELLER must pay the expenditure incurred in respect of the period before ACTUAL COMPLETION DATE and the BUYER must pay the expenditure incurred in respect of the period after ACTUAL COMPLETION DATE. Any necessary monetary adjustment is to be made within five BUSINESS DAYS of the SELLER providing the service charge account to the BUYER.

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

- (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 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
  - (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
- The BUYER must not assign, mortgage or otherwise TRANSFER or part with the whole or any part of the BUYER'S interest under this CONTRACT.
- G27 Registration at the Land Registry
- G27.1 This CONDITION G27.1 applies where the LOT is leasehold and its sale either triggers first registration or is a registrable disposition. The BUYER must at its own expense and as soon as practicable:
- (a) procure that it becomes 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) (c) provide the SELLER with an official copy of the register relating to such lease showing itself registered as proprietor.

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

(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

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

## THE LEADERS ROMANS GROUP LIMITED

### TRADITIONAL METHOD CONDITIONS FOR ONLINE AUCTIONS

#### AMENDMENTS TO THE COMMON AUCTION CONDITIONS

Where the Royal Institution of Chartered Surveyors Common Auction Conditions (4<sup>th</sup> Edition) ("CACs") are to be construed in the context of an online auction and bidding system the CACs shall be varied as follows:

The following definitions in the CAC Glossary shall be deleted and replaced as follows:

- "Addendum" means an amendment or addition to the Conditions or to the Particulars or to both whether contained in a supplement to the Catalogue or a notice from us on our Website;
- "Auction" means the auction for each Lot advertised in the Catalogue which will take place on the Website;
- "Auctioneers" means The Leaders Romans Group (UK) Limited, (a company incorporated in England and Wales with company registration number 09939099) whose registered office is at Crowthorne House, Nine Mile Ride, Wokingham, Berkshire, RG40 3GZ;
- "Buyer" means the person who has made the highest valid Bid once the Auction has finished (taking into account the application of the 60 Second Rule) or, if applicable that person's personal representatives. If two or more persons are jointly the Buyer their obligations can be enforced against them jointly or against each of them separately;
- "Catalogue" means the online sales Particulars, text, hypertext links and associated imagery present upon the Website which shall be the Catalogue to which the Conditions refer including any supplement to it;
- "Contract Date" means the date that the Auction has finished (taking into account the application of the 60 Second Rule) or, if the Lot is not sold at the Auction:
- (a) the date the Sale Memorandum is 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, 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;

"You" (and "Your") means someone who registers to use the Website and/or places a Bid in an Auction which includes the Buyer.

THE FOLLOWING DEFINITIONS SHALL BE ADDED AS NEW DEFINITIONS IN THE CAC GLOSSARY:

"Auction Account" means a Member's profile and registration on the Website through which a Member agrees to be bound by and act in accordance with these Terms and which has been approved by us;

"Auction Start Time" means the start time for the Auction on the Website;

"Auction Window" means the duration of the Auction, being the Initial Window (taking into account the application of the 60 Second Rule) as detailed in clause 6 of the Extra Auction Conditions;

"Bid" means the bid submitted by a Bidder in respect of a Lot via the Website;

"Bidder" means the Member making a Bid(s);

"Buyer Information Pack" means the pack of documents relating to a Lot which is advertised on the Website and to which only a Member shall have access;

"Deposit" shall be 10% of the Price;

"Extra Auction Conduct Conditions" means our Extra Auction Conduct Conditions for the participation and purchase of property by online unconditional Auction, available in the Catalogue;

"Initial Window" means the initial duration of the Auction excluding the 60 Second Rule;

"Intellectual Property Rights" means patents, rights to inventions, copyright and related rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or

equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

“Member”

means a person who completes an Auction Account registration enabling them to participate in the Auction and to Bid for a Lot;

“Payment Processor”

means a third party online payment processor who we may appoint from time to time to collect, process and remit any payments required under these Terms;

“Technical Services Provider”

means a third party provider of technical services such as web-hosting, transaction facilitation and support and maintenance who we may appoint from time to time, to host and support the operation of the Website;

“Website”

means our online Auction accessible at [www.romans.co.uk](http://www.romans.co.uk) and any other website and/or application through which we may provide the opportunity to participate in an Auction from time to time;

“60 Second Rule”

means the rule which stipulates that any person who submits a Bid within the last 60 seconds of the end of the Initial Window will instigate the automatic extension of the Initial Window by an additional 60 seconds and so on for any such subsequent Bids until a winning Bid is achieved.

**THE LEADERS ROMANS GROUP LIMITED**  
**TRADITIONAL METHOD CONDITIONS FOR ONLINE AUCTIONS**  
**EXTRA AUCTION CONDITIONS ("TERMS")**

**1. SCOPE AND APPLICATION**

- 1.1 These Terms set out the provisions governing your access to the Website and for participation in an Auction.
- 1.2 By proceeding to access the Website you accept these Terms.
- 1.3 These Terms must be read in conjunction with the CAC's (as amended). Where there is any conflict or inconsistency between these Terms and CAC's, these Terms shall prevail.

**2. THE WEBSITE**

- 2.1 The Website is made available free of charge.
- 2.2 We do not guarantee that the Website, or any content on it, will be free from errors or omissions.
- 2.3 We do not guarantee that the Website, or any content on it, will always be available or that access will be uninterrupted. Access to the Website is permitted on a temporary basis. We may suspend, withdraw, discontinue or change all or any part of the Website without notice. We will not be liable to you if for any reason the Website is unavailable at any time or for any period.
- 2.4 You are responsible for making all arrangements necessary for you to have access to the Website including, without limitation, ensuring that you have working hardware and sufficient internet connection.
- 2.5 You are responsible for ensuring that all persons who access the Website through your internet connection are aware of these Terms and that they comply with them.
- 2.6 We do not guarantee that content available on or through the Website is appropriate or available in locations other than the United Kingdom. We may limit the availability of the Website or any service described on the Website to any person or geographic area at any time. If you choose to access the Website from outside the United Kingdom, you do so at your own risk.

**3. YOUR AUCTION ACCOUNT**

- 3.1 You warrant and represent that all information and documents you provide during the Auction Account registration process or at any time via the Website or otherwise

in relation to an Auction is up-to-date, complete, truthful, accurate and not misleading.

- 3.2 In order to comply with our 'know your client' requirements and obligations under applicable anti-money laundering regulations (and any related, applicable legislation, rules or regulations), we may restrict Members from registering more than one Auction Account without our express authority.
- 3.3 You must register for an Auction Account to be able to Bid in an Auction.
- 3.4 In order to Bid in an Auction we will ask you to provide to us and/or our Payment Processor certain information and documentation which may include, without limitation:
  - 3.4.1 Proof of your identity and date of birth;
  - 3.4.2 Proof of your address dated within the last 3 months;
  - 3.4.3 Your solicitor's details; and
  - 3.4.4 Your bank details.
- 3.5 Pursuant to the requirements in clause 3.4 you may be required to upload securely to the Website the following documents, including, without limitation:
  - 3.5.1 A copy of a valid and current form of photo identification (for example, a passport or driving licence);
  - 3.5.2 Proof of address (for example, a bank statement or utility bill (which, in each case, must be dated within the last three (3) months)); and
  - 3.5.3 Where applicable, certain further information and documentation relating to a representative appointed by you.
- 3.6 Where you are acting as agent for a proposed nominee Buyer, and the person or entity details of such proposed Buyer are known prior to the Auction, we may require you to provide relevant identification and verification information and supporting documents in respect of that person. Where the precise identity of such proposed nominee Buyer is not known prior to the Auction (for example in the event that a nominee Buyer is a special purpose vehicle to be incorporated at a later date), and you are the winning Bidder, you will be required to submit relevant identification and verification information and documentation within one Business Day of the close of the Auction.
- 3.7 We will review your application to register for an Auction Account and we will notify you when your application has been successful or in the event we refuse your application.
- 3.8 You must keep your Auction Account username, password and any other information used for our security procedures confidential.

3.9 We have the right (in our absolute discretion) to disable any username or password, whether chosen by you or allocated by us, or to suspend or terminate your Auction Account, at any time, if in our reasonable opinion you have failed to comply with any of these Terms.

#### **4. PRE-AUCTION ENQUIRIES AND DUE DILIGENCE**

4.1 Before Bidding for a Lot it is your sole responsibility to:

4.1.1 take professional advice from a conveyancer and, in appropriate cases, a chartered surveyor and an accountant;

4.1.2 read these Terms;

4.1.3 inspect the Buyer Information Pack for the relevant Lot;.

4.1.4 have finance available for the deposit and Purchase Price;

4.1.5 carry out usual searches and make usual enquiries;

4.1.6 check the content of all available leases and other documents relating to the Lot;

4.1.7 check the Website for any amendments or notifications issued in relation to the Lot;

4.1.8 view and inspect the Lot;

4.1.9 check whether VAT registration and election is advisable.

4.2 If you choose to Bid for a Lot without taking the normal precautions listed in clause 4.1 you do so at your own risk.

4.3 We have taken reasonable care to describe each Lot in the Catalogue. The description of a Lot is based on information supplied by or on behalf of the Seller. You need to satisfy yourself that the information is correct.

4.4 The description of a Lot and the Buyer Information Pack may change prior to the Auction and it is your responsibility to check that you have accessed the most up to date versions.

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

#### **5. PRE-AUCTION SECURITY AUTHORISATION AND DEPOSIT**

5.1 A security payment or pre-authorisation may be required in advance of the Auction Start Time in order for you to place a Bid ("Security").

5.2 We will handle the Security as follows:

5.2.1 Security Authorisation

- (a) Where applicable (in our absolute discretion), we may require a pre-authorisation hold on a Members personal debit card in order to allow you to place a Bid ("Security Authorisation"). The amount of the Security Authorisation will be five thousand pounds sterling (£5,000), although this is subject to change in our absolute discretion. The amount required will be specified in the lot particulars.
- (b) Funds in respect of the Security Authorisation will not leave your account unless you win the Auction.
- (c) We cannot accept corporate or company debit cards.

5.2.2 Personal Debit card payment

- (a) Where applicable (in our absolute discretion), we may require a debit card payment in respect of the Security. The amount of the card payment will be five thousand pounds sterling (£5,000), although this is subject to change in our absolute discretion.

5.2.3 Bank telegraphic transfer (or "TT")

- (a) Where applicable (in our absolute discretion), we may require a TT payment of the Security direct to:
  - (i) Our client account;
  - (ii) The Seller's solicitor's client account; or
  - (iii) Any other nominated account.

5.3 Where we accept payment of the Security from you via debit card or TT and you are unsuccessful in the Auction, we will return the Security to the bank account from which the payment originated.

5.4 The Security for unsuccessful Bidders in an Auction shall be released or, as the case may be, refunded, when the Auction has ended. This may take up to five working days from the end of the Auction to process.

5.5 Subject to clause 5.2.1(b). In the event that you win an Auction, we shall be entitled to charge or hold the full amount of the Security as part-payment of the Deposit.

5.6 Unless otherwise agreed by us, the Security and Deposit shall be calculated and paid in GB pounds sterling (£). Any applicable foreign exchange rates will be at the rate notified by us. Any foreign exchange fees will be payable by the Bidder.

- 5.7 Subject to our instruction and absolute discretion, the Buyer shall pay the Deposit by way of payment into our client account via debit card or TT payment.
- 5.8 Within two Business Days of the end of the Auction the winning Bidder will be required to pay to us:
- 5.8.1 The balance of the Deposit (if any), being a sum equal to the Deposit amount minus any Security already paid; plus
- 5.8.2 A Buyer's charge if applicable.
- 5.9 Unless otherwise stated or referred to in the Catalogue, the Deposit will be held by us as stakeholder for the Seller.
- 5.10 We reserve the right to appoint our Payment Processor to request, receive and handle the Security and, where applicable, the Deposit. You agree to the terms and conditions governing the use and data privacy of the relevant Payment Processor's service from time to time in force which are available at <https://www.sagepay.co.uk/policies>

## **6. CONDUCT OF THE AUCTION**

- 6.1 We will perform our obligations under these Terms with reasonable care and skill.
- 6.2 We act as agent for each Seller under whose authority we may:
- 6.2.1 prepare the Catalogue based on information provided by the Seller;
- 6.2.2 offer each Lot for sale by way of Auction; and
- 6.2.3 receive and hold the Deposit for the Seller;
- 6.3 In the event of a failure of internet connectivity, hardware, servers or software or any other issue affecting our ability to run the Auction and/or the Website or your ability to access the Website and, where applicable, make Bids and/or to send or receive notifications, we reserve the right to suspend or cancel an Auction. Wherever possible, and subject to instructions from the Seller, we shall use our reasonable endeavours to re-list or re-start any affected Auction.
- 6.4 For each Lot we will display on the Website:
- 6.4.1 The planned Auction Start Time;
- 6.4.2 The Initial Window; and
- 6.4.3 Any extension of the Initial Window through the application of the 60 Second Rule.
- 6.5 Each Auction shall commence at the Auction Start Time.

- 6.6 All Bids are to be made in pounds sterling exclusive of any applicable VAT.
- 6.7 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 that Lot will be withdrawn from the Auction.
- 6.8 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.
- 6.9 Where a guide price (or range of prices) is given, that guide is the minimum price at which, or range of prices within which, the Seller might be prepared to sell at the date of the guide price. But guide prices may change. The last published guide price will normally be at or above any reserve price, but not always – as the Seller may fix the final reserve price just before bidding commences.
- 6.10 Once an Auction commences, a clock will be displayed on the applicable Catalogue page showing the time remaining until the end of the Auction (in hours, minutes and seconds, as applicable). The clock will count down until the end of the Auction.
- 6.11 The 60 Second Rule shall operate as necessary during the Auction.
- 6.12 Where no valid Bids have been received (either at all or which are not in excess of the reserve price) by the end of the Initial Window, we may re-offer the lot, subject to instructions from the Seller.
- 6.13 Once you are registered to Bid for a particular Lot, you may submit a Bid or Bids by either:
- 6.13.1 Clicking on the "place Bid" button on the relevant Catalogue page for the Lot for which you are authorised to Bid; or
  - 6.13.2 Submitting a starting Bid and maximum Bid amount.
- 6.14 Once your Bid has been lodged it cannot be withdrawn.
- 6.15 The applicable Bidding increments shall be set out on the applicable Catalogue.
- 6.16 The highest Bid which meets or exceeds the reserve price shall be deemed the winning Bid.
- 6.17 If two or more Bidders attempt to lodge identical Bids, the first Bid that we receive and acknowledge to the Bidder will take precedence.
- 6.18 If you have placed a Bid on a Lot or you are watching the Catalogue, you will be notified of the outcome of the Auction when the Auction has ended.
- 6.19 Our decision on the conduct of the Auction is final.

- 6.20 We may cancel the Auction, or change the way in which a Lot is offered for sale. We may also combine or divide Properties. A Lot may be sold or withdrawn from sale prior to the Auction.
- 6.21 We may refuse to accept a Bid. We do not have to explain why.
- 6.22 If there is a dispute over Bidding we are entitled to resolve it, and our decision is final.

## **7. LIMITATION OF LIABILITY**

- 7.1 Nothing in these Terms excludes or limits our liability for death or personal injury arising from our negligence, or our fraud or fraudulent misrepresentation, or any other liability that cannot be excluded or limited by English law.
- 7.2 To the extent permitted by law, we exclude all conditions, warranties, representations or other terms which may apply to the Website or any content on it, whether express or implied.
- 7.3 We will not be liable to any user for any loss or damage, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, even if foreseeable, arising under or in connection with:
  - 7.3.1 Use of, or inability to use, the Website; or
  - 7.3.2 Use of or reliance on any content displayed on the Website.
- 7.4 Subject to clause 7.1, we will not be liable for any loss of profits, loss of sales, loss of business, loss of revenue, business interruption, loss of anticipated savings, loss of business opportunity, loss of goodwill, damage to reputation or any indirect or consequential loss or damage.
- 7.5 We will not be liable for any loss or damage caused by a virus, distributed denial-of-service attack, or other technologically harmful material that may infect your computer equipment, computer programs, data or other proprietary material due to your use of the Website or to your downloading of any content on it, or on any website linked to it.
- 7.6 We assume no responsibility for the content of websites linked on the Website. Such links should not be interpreted as endorsement by us of those linked websites. We will not be liable for any loss or damage that may arise from your use of them.
- 7.7 Except for our liability under clause 7.1, our total liability to you whether as a Member, Bidder, represented person or person accessing the Website with our consent, in respect of all other losses not excluded by clauses 7.2 to 7.5 inclusive arising under or in connection with these Terms and the use of the Website, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed £1,000,000.00 (one million pounds sterling).

## **8. INTELLECTUAL PROPERTY**

- 8.1 We are the licensee of all Intellectual Property Rights in the Website.
- 8.2 We are the owner, or in some circumstances, may be the licensee of the Intellectual Property Rights in the material published on the Website. Those works are protected by copyright laws and treaties around the world. All such rights are reserved.
- 8.3 You must not modify the paper or digital copies of any materials you have printed off or downloaded in any way, and you must not use any illustrations, photographs, video or audio sequences or any graphics separately from any accompanying text.
- 8.4 Our status (and that of any identified contributors) as the authors of content on the Website must always be acknowledged in any material you reproduce.
- 8.5 You must not use any part of the content on the Website for commercial purposes without obtaining a licence to do so from us or our licensors.
- 8.6 If you print off, copy or download any part of the Website in breach of these Terms, your right to use the Website will cease immediately and you must, upon our request, return or destroy any copies of the materials you have made.

## **9. UPLOADING CONTENT TO THE WEBSITE**

- 9.1 Whenever you make use of a feature that allows you to upload content to the Website, you must comply with Essential Information Group's (EIG) Privacy Policy (available at <https://www.eigpropertyauctions.co.uk/legal/privacy-policy>). If we believe such content does not comply with this policy, we have the right to remove the content.
- 9.2 You warrant that any such content complies with our policies, and you will be liable to us and indemnify us against all liabilities, costs, expenses, damages and losses (including but not limited to all interest, penalties, legal costs and all other reasonable professional costs and expenses) suffered or incurred by us arising out of or in connection with any breach of that warranty.
- 9.3 Except for identification, verification information and documentation provided to us, any content you upload to the Website will be considered non-confidential and non-proprietary.
- 9.4 You retain all of your ownership rights in your content, but you are required to grant us and other users of the Website a limited licence to use, store and copy that content and to distribute and make it available to third parties including, without limitation, the relevant Payment Processor and/or the Technical Services Provider.
- 9.5 We have the right to disclose your identity to any third party who is claiming that any content posted or uploaded by you to the Website constitutes a violation of their intellectual property and/or privacy rights.

9.6 We will not be responsible, or liable to any third party, for the content or accuracy of any content posted by you or any other user of the Website.

9.7 You are solely responsible for securing and backing up your content and making a record of any communication or notification from or to us in relation to the Website.

## **10. VIRUSES**

10.1 We do not guarantee that the Website will be secure or free from bugs or viruses.

10.2 You are responsible for configuring your information technology, computer programmes and systems in order to access the Website and send and receive communications or notifications in relation to the Website. You should use your own virus protection software.

10.3 You must not misuse the Website by knowingly introducing viruses, Trojans, worms, logic bombs or other material which is malicious or technologically harmful. You must not attempt to gain unauthorised access to the Website, the server on which the Website is stored or any server, computer or database connected to the Website.

10.4 You must not attack the Website via a denial-of-service attack or a distributed denial-of service attack. By breaching this provision, you would commit a criminal offence under the Computer Misuse Act 1990.

10.5 We will report any such breach to the relevant law enforcement authorities and we will co-operate with those authorities by disclosing your identity to them. In the event of such a breach, your right to use the Website will cease immediately.

## **11. LINKING TO THE WEBSITE**

11.1 You may link to our home page, provided you do so in a way that is fair and legal and does not damage our reputation or take advantage of it.

11.2 You must not establish a link in such a way as to suggest any form of association, approval or endorsement on our part where none exists.

11.3 You must not establish a link to the Website on any website that is not owned by you.

11.4 The Website must not be framed on any other site, nor may you create a link to any part of the Website other than the home page.

11.5 We reserve the right to withdraw linking permission without notice.

11.6 The website in which you are linking must comply in all respects with the content standards set out in EIG's Privacy Policy (available at <https://www.eigpropertyauctions.co.uk/legal/privacy-policy>)

## **12. DATA PROTECTION**

In order to access the Website you need to provide us with personal data as part of the Auction Account Registration process. We will process and retain your personal data in accordance with our Privacy Policy which is available at <http://www.romans.co.uk/Privacy-Policy> .

## **13. ANTI-MONEY LAUNDERING**

13.1 We are under stringent requirements to identify persons with whom we interact and accepts funds from for the purposes of applicable anti-money laundering legislation.

13.2 We reserve the right (in our absolute discretion) to make further due diligence enquiries and to seek further verification and/or implement further controls and monitoring systems with respect to Auction Account registrations or attempted registrations.

13.3 If satisfactory evidence of your identity (or, where applicable, the identity of any other person involved in an Auction, including, without limitation, a represented person or a nominee Buyer) is not provided within a reasonable time, there may be circumstances in which we are not able to proceed with the required services via the Website or otherwise.

13.4 Our work is regulated by the Proceeds of Crime Act 2002 and we are required to report all knowledge or suspicion (or reasonable grounds for knowledge or suspicion) that a criminal offence giving rise to any direct or indirect benefit from criminal conduct has been committed. Failure to report such knowledge or suspicion would be a criminal offence. This duty to report exists regardless of whether the suspected offence has been, or is about to be, committed by a client or by a third party.

13.5 If as part of our normal work we obtain knowledge or suspicion (or reasonable grounds for knowledge or suspicion) that such offences have been committed we are required to make a report to the National Crime Agency. We shall not in any circumstances discuss the existence or otherwise of any reports with you or with anyone else.

## **14. GENERAL**

14.1 We may revise these Terms at any time. Please check our website from time to time to take notice of any changes we make, as they are binding on you.

14.2 Unless it expressly states otherwise, these Terms do not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any provision of this set of Terms.

14.3 These Terms, their subject-matter and the formation of any agreement made under them (and any non-contractual disputes or claims) are governed by English law. Any dispute arising under these Terms (and any non-contractual disputes or claims) shall be subject to the exclusive jurisdiction of the courts of England and Wales.