

YELLOW APRICOT GENERAL CONDITIONS OF SALE

(for auctions of real estate in England and Wales)

Common Auction Conditions (Edition 2, 1st October 2005) reproduced with the consent of the RICS.

INTRODUCTION

The common auction conditions have three main sections:

1. Glossary

This gives special meanings to some words used in the rest of the conditions

2. The conduct of the auction

These conditions regulate the conduct of the auction. If you read our catalogue or attend the auction you do so on the basis that you accept them

3. Conditions of sale

If you buy a lot you will sign a **sale memorandum** under which you agree to be bound by the conditions of sale that apply to that lot. These conditions are:

- General conditions that apply to all lots
- Any extra general conditions in the catalogue or an addendum
- Special conditions that only apply to the lot you are buying (and which may vary the general conditions)

The conditions are legally binding.

IMPORTANT NOTICE

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

- Take professional advice from a conveyancer and, in appropriate cases, a chartered surveyor and an accountant
- Read the conditions
- Inspect the lot
- Carry out usual searches and make usual enquiries
- Check the content of all available leases and other documents relating to the lot
- Check that what is said about the lot in the catalogue is accurate
- Have finance available for the deposit and purchase price
- Check whether VAT registration and election is advisable.

The conditions assume that the buyer has acted like a prudent buyer. If you choose to buy a lot without taking these normal precautions you do so at your own risk.

GLOSSARY

In the **conditions** wherever it makes sense:

- singular words can be read as plurals, and plurals as singular words
- a 'person' includes a corporate body
- words of one gender include the other genders and where the following words appear in blue they have the specified meanings:

Actual completion date

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

Addendum

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

Agreed completion date

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

Arrears

Arrears of rent and other sums due under the **tenancies** but unpaid on the **actual completion date**

Auction

The auction advertised in the **catalogue**

Auctioneers

The auctioneers at the **auction**

Business day

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

Buyer

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

Catalogue

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

Completion

Completion of the sale of the **lot**

Conditions

This glossary, the conditions for the conduct of the **auction**, the **general conditions**, any **extra conditions** and the **special conditions**

Contract

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

Contract date

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

(a) the date of the **sale memorandum** signed by both the **seller** and **buyer** or

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

Documents

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

Extra conditions

Any additions to or variations of the **conditions** that are of general application to all **lots**

General conditions

The conditions so headed

Interest rate

If not specified in the **special conditions**, 4% above the base rate from time to time of Barclays Bank plc

Lot

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

Old arrears

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

Particulars

The section of the **catalogue** that contains descriptions of each **lot**

Practitioner

A receiver, administrative receiver or liquidator or a trustee in bankruptcy

Price

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

Ready to complete

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

Sale memorandum

The form so headed set out in the **catalogue** in which the terms of the **contract** for the sale of the **lot** are recorded

Seller

The person selling the **lot**

Special conditions

The conditions so headed that relate to the **lot**

Tenancies

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

Transfer

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

TUPE

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

VAT

Value Added Tax or other tax of a similar nature

VAT election

An election to waive exemption from **VAT** in respect of the **lot**

We (and us and our)

The **auctioneers**

You (and your)

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

The **catalogue** is issued only on the basis that **you** accept these conditions relating to the conduct of the **auction**. They override all other **conditions** and can only be varied if **we** agree.

Our role

As agents for each **seller** we have authority to:

- prepare the **catalogue** from information supplied by or on behalf of each **seller**
- offer each **lot** for sale
- sell each **lot**
- receive and hold deposits
- sign each **sale memorandum**
- treat a **contract** as repudiated if the **buyer** fails to sign a **sale memorandum** or pay a deposit as required by the **conditions**.

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

We may cancel the **auction**, withdraw **lots** from sale, or alter the order in which **lots** are offered for sale. **We** may also combine or divide **lots**.

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

Bidding and reserve prices

We may refuse to accept a bid. **We** do not have to explain why. If there is a dispute over bidding **we** are entitled to resolve it, and **our** decision is final.

Unless stated otherwise each **lot** is subject to a reserve price. If no bid equals or exceeds that reserve price the **lot** will be withdrawn from the **auction**. The **seller** may bid (or ask **us** or another agent to bid on the **seller's** behalf) up to the reserve price but may not make a bid equal to or exceeding the reserve price.

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

The particulars and other information

We have taken reasonable care to prepare **particulars** that correctly describe each **lot**. However the **particulars** are based on information supplied by or on behalf of the **seller** and **we** are not responsible for errors.

The **particulars** are for **your** information but **you** must not rely on them. They do not form part of any **contract** between the **seller** and the **buyer**. If **we** provide any information or a copy of any document **we** do so only on the basis that **we** are not responsible for its accuracy.

The contract

A successful bid is one **we** accept as such.

If **you** make a successful bid for a **lot** **you** are obliged to buy that **lot** on the terms of the **sale memorandum**. The **price** will be the amount **you** bid plus **VAT** (if applicable). **You** must before leaving the **auction**:

- provide all information **we** reasonably need from **you** to enable us to complete the **sale memorandum** (including proof of your identity that complies with money laundering regulations)
- sign the completed **sale memorandum** and
- pay the deposit

and if **you** do not **we** may either:

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

Deposits must be paid by cheque or by bankers' draft drawn in **our** favour on a UK clearing bank or building society. The **catalogue** states whether **we** also accept debit or credit cards.

We may retain the **sale memorandum** signed by or on behalf of the **seller** until **we** receive the deposit in cleared funds.

If **you** make a successful bid for a **lot**:

- **You** are personally liable to buy it even if **you** are acting as an agent. It is **your** responsibility to obtain an indemnity from the person for whom **you** are the agent
- Where the **buyer** is a company **you** warrant that the **buyer** is properly constituted and able to buy the **lot**
- If the **buyer** does not comply with its obligations under the **contract you** are personally liable to buy the **lot** and must indemnify the **seller** in respect of any loss the **seller** incurs as a result of the **buyer's** default.

GENERAL CONDITIONS

The **general conditions** apply except to the extent that they are varied by **extra conditions**, the **special conditions** or by an **addendum**.

1. The lot

1.1 The **lot**, including any rights granted and reserved, is described in the **special conditions**.

1.2 The **lot** is sold subject to all subsisting **tenancies**, but otherwise with vacant possession on **completion**.

1.3 The **lot** is sold subject to all matters contained or referred to in the **documents** (except financial charges: these the **seller** must discharge on or before **completion**) and to such of the following as may affect it, whether they arise before or after the **contract date** and whether or not they are disclosed by the

seller or are apparent from inspection of the **lot** or from the **documents**:

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

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

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

1.6 Where chattels are included in the **lot** the **buyer** takes them as they are at **completion** and the **seller** is not liable if they are not fit for use.

1.7 The **buyer** buys with full knowledge of:

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

1.8 The **buyer** is not relying on the information contained in the **particulars** or in any replies to preliminary enquiries but on the **buyer's** own verification of that information. If any information is not correct any liability of the **seller** and any remedy of the **buyer** are excluded to the extent permitted by law.

2. Deposit

2.1 The amount of the deposit is the greater of:

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

2.2 The deposit:

- must be paid to the **auctioneers** by cheque or banker's draft drawn on a UK clearing bank or building society (or by such other means of payment as they accept)
- is to be held as stakeholder unless the **special conditions** provide that it is to be held as agent for the **seller**.

2.3 Where the **auctioneers** hold the deposit as stakeholder they are authorised to release it and any interest on it to the **seller** on **completion** or, if **completion** does not take place, to the person entitled to it under the **conditions**.

2.4 If a cheque for the deposit is not cleared on first presentation the **seller** is entitled to treat the **contract** as at an end and bring a claim against the **buyer** for breach of contract.

2.5 Interest earned on the deposit belongs to the **seller** unless the **conditions** provide otherwise.

3. Transfer of risk and insurance

3.1 From the **contract date** the **seller** is under no obligation to insure the **lot** and the **buyer** bears all risk of loss or damage unless:

- (a) the **lot** is sold subject to a **tenancy** that requires the **seller** to insure the **lot** or
- (b) the **special conditions** require the **seller** to insure the **lot**.

3.2 If the **seller** is to insure the **lot** then the **seller**:

- (a) must produce to the **buyer** on request 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 insurance
- (d) must, at the request of the **buyer**, use reasonable endeavours to have the **buyer's** interest noted on any insurance policy that does not cover a contracting purchaser
- (e) must, unless otherwise agreed, cancel the insurance at **completion**
- (f) is to hold in trust for the **buyer** any insurance payments that the **seller** receives in respect of loss or damage arising after the **contract date** and the **buyer** must on **completion** reimburse to the **seller** the cost of insurance (to the extent it is not paid by a tenant or other third party) from and including the **contract date**

3.3 If under a **tenancy** the **seller** insures the **lot** then unless otherwise agreed with the **buyer** the **seller** is to pay any refund of premium.

(a) to the **buyer** or

(b) if the **special conditions** so state, to each tenant in the proportion that the tenant pays premiums under its **tenancy**, first deducting any arrears of premium due from that tenant.

3.4 Section 47 of the Law of Property Act 1925 does not apply.

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

4. Title

4.1 Unless **general condition** 4.2 applies, the **buyer** accepts the title of the **seller** to the **lot** as at the **contract date** and may raise no requisition or objection except in relation to any matter following the **contract date**.

4.2 The **buyer** may raise no requisition or objection to any **documents** made available before the **auction** but in relation to any of the **documents** that is not available before the **auction** the following provisions apply:

(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 of all documents noted on the register that affect the **lot**

(b) if the **lot** is not registered land the **seller** is to give to the **buyer** within five **business days** an abstract or epitome of title starting from the root of title mentioned in the **special conditions** (or, if none is mentioned, a good root of title more than 15 years old) and must produce to the **buyer** the original or an examined copy of every relevant **document**

(c) the **buyer** has no right to object to or make requisitions on any title information more than seven **business days** after that information has been given to the **buyer**.

4.3 Unless otherwise stated in the **special conditions** the **seller** sells with full title guarantee except that:

(a) all matters recorded in registers open to public inspection are to be treated as within the actual knowledge of the **buyer** and

(b) any implied covenant as to compliance with tenant's obligations under leases does not extend to the state or condition of the **lot** where the **lot** is leasehold property.

4.4 If title is in the course of registration title is to consist of certified copies of:

(a) the **documents** sent to the Land Registry

(b) the application to the Land Registry and a letter under which the **seller** or its 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**.

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

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

5. Transfer

5.1 Unless a form of **transfer** is set out in the **special conditions**:

(a) the **buyer** must supply a draft **transfer** to the **seller** at least ten **business days** before the **agreed completion date** and the engrossment (signed as a deed by the **buyer** if condition 5.2 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**.

5.2 If the **seller** remains liable in any respect in relation to the **lot** (or a **tenancy**) following **completion** the **buyer** is specifically to covenant in the **transfer** to indemnify the **seller** against that liability.

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

6. Completion

6.1 **Completion** is to take place at the offices of the **seller's** 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.

6.2 The amount payable on **completion** is the balance of the **price** adjusted to take account of apportionments plus (if applicable) **VAT** and interest.

6.3 Payment is to be made in pounds sterling and only by:

(a) direct transfer to the **seller's** conveyancer's client account and

(b) the release of any deposit held by a stakeholder.

6.4 Unless the **seller** and the **buyer** otherwise agree **completion** takes place when both have complied with their obligations under the **contract** and the total payment is unconditionally received in the **seller's** conveyancer's client account.

6.5 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**.

6.6 Where applicable the **contract** remains in force following **completion**.

7. Notice to complete

7.1 The **seller** or the **buyer** may on or after the **agreed completion date** but before **completion** give the other notice to complete within 10 **business days** (excluding the date on which the notice is given) making time of the essence.

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

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

- (a) rescind the **contract**
- (b) claim the deposit and any interest on it if held by a stakeholder
- (c) forfeit the deposit and any interest on it
- (d) resell the **lot** and
- (e) claim damages from the **buyer**.

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

- (a) rescind the **contract** and
- (b) recover the deposit and any interest on it from the **seller** or, if applicable, a stakeholder.

8. If the contract is brought to an end

If the **contract** is rescinded or otherwise brought to an end:

- (a) the **buyer** must return all papers to the **seller** and appoints the **seller** its agent to cancel any registration of the **contract**
- (b) the **seller** must return the deposit and any interest on it to the **buyer** (and the **buyer** may claim it from the stakeholder, if applicable) unless the **seller** is entitled to forfeit the deposit under general condition 7.3.

9. Landlord's licence

9.1 Where the **lot** is leasehold land and licence to assign is required this condition applies.

9.2 The **contract** is conditional on that licence being obtained, by way of formal licence if that is what the landlord can lawfully require.

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

9.4 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 properly required.

9.5 The **buyer** must:

- (a) promptly provide references and other relevant information, and
- (b) comply with the landlord's lawful requirements.

9.6 If within three months of the **contract date** (or such longer period as the **seller** and **buyer** agree) the licence has not been obtained the **seller** or the **buyer** may (if not then in breach of any obligation under this condition) by notice to the other rescind the **contract** at any time before licence is obtained. Rescission is without prejudice to the claims of either **seller** or **buyer** for breach of this condition 9.

10. Interest and apportionments

10.1 If the **actual completion date** is after the **agreed completion date** for any reason other than the **seller's** default the **buyer** must pay interest at the **interest rate** on the **price** (less any **deposit** paid) from the **agreed completion date** up to and including the **actual completion date**.

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

10.3 Income and outgoings are to be apportioned at **actual completion date** unless:

- (a) the **buyer** is liable to pay interest and
- (b) the **seller** has given notice to the **buyer** at any time up to **completion** requiring apportionment on the date from which interest becomes payable.

10.4 Apportionments are to be calculated on the basis that:

- (a) the **seller** receives income and is liable for outgoings for the whole of the day on which apportionment is to be made
- (b) annual income and expenditure accrues at an equal daily rate assuming 365 days in a year and income and expenditure relating to a period of less than a year accrues at an equal daily rate during the period to which it relates
- (c) where the amount to be apportioned is not known at **completion** apportionment is to be made by reference to the best estimate then available and further payment is to be made by **seller** or **buyer** as appropriate within five **business days** of the date when the amount is known
- (d) rent payable in arrear for a period that includes the day of apportionment is to be apportioned for that period as if paid in advance.

11. Arrears

11.1 The **seller** retains the right to receive and recover **old arrears**.

11.2 While any **arrears** due to the **seller** remain unpaid the **buyer** must:

- (a) try to collect them in the ordinary course of management but need not take legal proceedings, distrain 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 release any tenant or surety from liability to pay **arrears** or accept a surrender of or forfeit any **tenancy** under which **arrears** are due; and
 - (f) if the **buyer** disposes of the **lot** prior to recovery of all **arrears** obtain from the **buyer's** successor in title a covenant in favour of the **seller** in similar form to this condition 11.
- 11.3 Where the **seller** has the right to recover **arrears** it must not without the **buyer's** written consent bring insolvency proceedings against a tenant or seek the removal of goods from the **lot**.

12. Management

- 12.1 This condition applies where the **lot** is sold subject to **tenancies**.
- 12.2 The **seller** is to manage the **lot** in accordance with its standard management policies pending **completion**.
- 12.3 Unless set out in the **special conditions** the **seller** must consult the **buyer** on all management issues that would affect the **buyer** after **completion**, such as an application for licence or a rent review under a **tenancy**, a variation, surrender, agreement to surrender or proposed forfeiture of a **tenancy**, or a new tenancy or agreement to grant a new tenancy and:
- (a) the **seller** must comply with the **buyer's** reasonable requirements unless to do so would (but for the indemnity in paragraph (c)) expose the **seller** to a liability that the **seller** would not otherwise have, in which case the **seller** may act reasonably in such a way as to avoid that liability
 - (b) if the **seller** gives the **buyer** notice of the **seller's** intended act and the **buyer** does not object within five **business days** giving reasons for the objection the **seller** may act as the **seller** intends, and
 - (c) the **buyer** is to indemnify the **seller** against all loss or liability the **seller** incurs through acting as the **buyer** requires, or by reason of delay caused by the **buyer**.

13. Rent deposits

- 13.1 This condition applies where the **seller** is holding or otherwise entitled to money by way of rent deposit in respect of a **tenancy**. In this condition 'rent deposit deed' means the deed or other document under which the rent deposit is held.
- 13.2 If the rent deposit is not assignable the **seller** must on **completion** hold the rent deposit on trust for the **buyer** and, subject to the terms of the rent deposit deed, comply at the cost of the **buyer** with the **buyer's** lawful instructions.
- 13.3 Otherwise the **seller** must on **completion** pay and assign its interest in the rent deposit to the **buyer** under an assignment in which the **buyer** covenants with the **seller** to:
- (a) observe and perform the **seller's** covenants and conditions in the rent deposit deed and indemnify the **seller** in respect of any breach
 - (b) give notice of assignment to the tenant and
 - (c) give such direct covenant to the tenant as may be required by the rent deposit deed.

14. VAT

- 14.1 Where the **conditions** require money to be paid the payer must also pay any **VAT** that is chargeable on that money, but only if given a valid **VAT** invoice.
- 14.2 Where the **special conditions** state that no **VAT election** has been made the **seller** confirms that none has been made by it or by any company in the same **VAT** group nor will be prior to **completion**.

15. Transfer as a going concern

- 15.1 Where the **special conditions** so state the **seller** and the **buyer** intend the sale to be treated as a transfer of a going concern and this condition applies.
- 15.2 The **seller** confirms that the **seller** or a company in the same **VAT** group:
- (a) is registered for **VAT** and
 - (b) has, where necessary, made in relation to the **lot** a **VAT election** that remains valid.
- 15.3 The **buyer**:
- (a) is registered for **VAT**, either in the **buyer's** name or as a member of a **VAT** group
 - (b) has made, or will make before **completion**, a **VAT election** in relation to the **lot**
 - (c) is to give to the **seller** as early as possible before the **agreed completion date** evidence of the **VAT** registration and that a **VAT election** has been made and notified in writing to HM Revenue and Customs
 - (d) must not revoke the **VAT election**, and if it does not produce the relevant evidence at least two **business days** before the **agreed completion date**, general condition 14.1 applies at **completion**.
- 15.4 The **buyer** confirms that after **completion** the **buyer** intends to:
- (a) retain and manage the **lot** for the **buyer's** own benefit as a continuing business as a going concern subject to and with the benefit of the **tenancies**, and
 - (b) collect the rents payable under the **tenancies** and charge **VAT** on them
- 15.5 Unless the **seller** obtains agreement to the contrary from HM Revenue and Customs
- (a) the **seller** must on or as soon as reasonably practicable after **completion** transfer to the **buyer** all **VAT** records for the **lot** and

(b) the **buyer** must keep those records available for inspection by the **seller** at all reasonable times.

15.6 If, after **completion**, it is found that the sale of the **lot** is not a transfer of a going concern then:

(a) the **seller's** conveyancer is to notify the **buyer's** conveyancer of that finding and provide a **VAT** invoice in respect of the sale of the **lot** and

(b) the **buyer** must within five **business days** of receipt of the **VAT** invoice pay to the **seller** the **VAT** due and

(c) if **VAT** is payable because the **buyer** has not complied with this condition 15, the **buyer** must pay and indemnify the **seller** against all costs, interest, penalties or surcharges that the **seller** incurs as a result.

16. Capital allowances

16.1 This condition applies where the **special conditions** state that there are capital allowances available in respect of the **lot**.

16.2 The **seller** is promptly to supply to the **buyer** all information reasonably required by the **buyer** in connection with the **buyer's** claim for capital allowances.

16.3 The value to be attributed to those items on which capital allowances may be claimed is set out in the **special conditions**.

16.4 The **seller** and **buyer** agree:

(a) to make an election on **completion** under Section 198 of the Capital Allowances Act 2001 to give effect to this condition, and

(b) to submit the value specified in the **special conditions** to HM Revenue and Customs for the purposes of their respective capital allowance computations.

17 Maintenance agreements

17.1 The **seller** agrees to use reasonable endeavours to transfer to the **buyer**, at the **buyer's** cost, the benefit of the maintenance agreements specified in the **special conditions**.

17.2 The **buyer** must assume, and indemnify the **seller** in respect of, all liability under such contracts from the **actual completion date**.

18. Landlord and Tenant Act 1987

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

18.2 Unless the **special conditions** state otherwise the **seller** warrants that the **seller** has complied with sections 5B and 7 of that Act and that the requisite majority of qualifying tenants has not accepted the offer.

19. Sale by practitioner

19.1 This condition applies where the sale is by a **practitioner** as agent of the **seller**.

19.2 The **practitioner** has been duly appointed and is empowered to sell the **lot**.

19.3 The **practitioner** and the **practitioner's** partners and staff have no personal liability in connection with the sale or the performance of the **seller's** obligations. The **transfer** is to include a declaration excluding the personal liability of the **practitioner** and of the **practitioner's** partners and staff.

19.4 The **lot** is sold:

(a) in its condition at **completion**

(b) whether or not vacant possession is provided

(c) for such title as the **seller** may have and

(d) with no title guarantee and the **buyer** has no right to rescind the contract or any other remedy if information provided about the **lot** is inaccurate, incomplete or missing.

19.5 Where relevant:

(a) the **documents** must include certified copies of the charge under which the **practitioner** is appointed, the document of appointment by the lender and the **practitioner's** acceptance of appointment, and

(b) the **seller** may require the **transfer** to be by the lender exercising its power of sale under the Law of Property Act 1925.

19.6 The **buyer** understands this condition 19 and agrees that it is fair in the circumstances of a sale by a **practitioner**.

20. TUPE

20.1 Unless the **special conditions** state that **TUPE** applies then the **seller** warrants that there are no employees whose contracts of employment will transfer to the **buyer** on **completion**.

20.2 If the **special conditions** state that **TUPE** applies then:

(a) the **seller** has informed the **buyer** of those employees whose contracts of employment will transfer to the **buyer** on **completion**

(b) not less than five **business days** before the **agreed completion date** the **buyer** must confirm to the **seller** that the **buyer** has offered to employ those employees on the same terms as, or better terms than, their existing contracts of employment

(c) the **buyer** is to keep the **seller** indemnified against all liability for those employees after **completion**.

21. Environmental

21.1 This condition only applies where the **special conditions** so provide.

21.2 The **seller** has made available such reports as the **seller** has as to the environmental condition of the **lot** and has given the **buyer** the opportunity to carry out investigations (whether or not the **buyer** has

read those reports or carried out any investigation) and the **buyer** admits that the **price** takes into account the environmental condition of the **lot**.

21.3 The **buyer** agrees to indemnify the **seller** in respect of all liability for or resulting from the environmental condition of the **lot**.

22. Service charge

22.1 This condition applies where the **lot** is sold subject to **tenancies** that include service charge provisions.

22.2 No apportionment is to be made at **completion** in respect of service charges.

22.3 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.

22.4 In respect of each **tenancy**, if the service charge account shows that:

- (a) payments on account (whether received or still then due from a tenant) exceed attributable service charge expenditure, the **seller** must pay to the **buyer** an amount equal to the excess when it provides the service charge account
- (b) attributable service charge expenditure exceeds payments on account (whether those payments have been received or are still then due), the **buyer** must use all reasonable endeavours to recover the shortfall from the tenant at the next service charge reconciliation date and pay the amount so recovered to the **seller** within five **business days** of receipt in cleared funds and in respect of payments on account that are still due from a tenant **condition 11 (arrears)** applies.

22.5 In respect of service charge expenditure that is not attributable to any **tenancy** the **seller** must pay any incurred in respect of the period before **actual completion date** and the **buyer** must pay any 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**.

22.6 If the **seller** holds any reserve or sinking fund on account of future service charge expenditure:

- (a) the **seller** must assign it (including any interest earned on it) to the **buyer** on **completion** and
- (b) the **buyer** must covenant with the **seller** to hold it in accordance with the terms of the **tenancies** and to indemnify the **seller** if it does not do so.

23. Rent reviews

23.1 This condition applies where the **lot** is sold subject to a **tenancy** under which a rent review due on or before the **actual completion date** has not been agreed or determined.

23.2 The **seller** may continue negotiations or rent review proceedings 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.

23.3 Following **completion** the **buyer** must complete rent review negotiations or proceedings as soon as reasonably practicable but may not agree the level of the revised rent without the written consent of the **seller**, such consent not to be unreasonably withheld or delayed.

23.4 The **seller** must:

- (a) give to the **buyer** full details of all rent review negotiations and proceedings, including copies of all correspondence and other papers, and
- (b) use all reasonable endeavours to substitute the **buyer** for the **seller** in any rent review proceedings.

23.5 The **seller** and the **buyer** are to keep each other informed of the progress of the rent review and have regard to any proposals the other makes in relation to it.

23.6 When the rent review has been agreed or determined the **buyer** must account to the **seller** for any increased rent and interest recovered from the tenant that relates to the **seller's** period of ownership within five **business days** of receipt of cleared funds.

23.7 If a rent review is agreed or determined before **completion** but the increased rent and any interest recoverable from the tenant has not been received by **completion** the increased rent and any interest recoverable is to be treated as **arrears**.

23.8 The **seller** and the **buyer** are to bear their own costs in relation to rent review negotiations and proceedings.

24. Tenancy renewals

24.1 This condition applies where the tenant under a **tenancy** has the right to remain in occupation under part II of the Landlord and Tenant Act 1954 (as amended) and references to notices and proceedings are to notices and proceedings under that Act.

24.2 Where practicable, without exposing the **seller** to liability or penalty, the **seller** must not without the written consent of the **buyer** (which the **buyer** must not unreasonably withhold or delay) serve or respond to any notice or begin or continue any proceedings.

24.3 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.

24.4 Following **completion** the **buyer** must:

- (a) with the co-operation of the **seller** take immediate steps to substitute itself as a party to any proceedings
- (b) use all reasonable endeavours to conclude any proceedings or negotiations for the renewal of the **tenancy** and the determination of any interim rent as soon as reasonably practicable at the best rent or rents reasonably obtainable

(c) if any increased rent is recovered from the tenant (whether as interim rent or under the renewed **tenancy**) account to the **seller** for the part of that increase that relates to the **seller's** period of ownership of the **lot** within five **business days** of receipt of cleared funds.

24.5 The **seller** and the **buyer** are to bear their own costs in relation to the renewal of the **tenancy** and any proceedings relating to this.

25. Warranties

25.1 Available warranties are listed in the **special conditions**.

25.2 Where a warranty is assignable the **seller** must:

- (a) on **completion** assign it to the **buyer** and give notice of assignment to the person who gave the warranty
- (b) apply for, and the **seller** and the **buyer** must use all reasonable endeavours to obtain, any consent to assign that is required. If consent has not been obtained by **completion** the warranty must be assigned within five **business days** after the consent has been obtained.

25.3 If a warranty is not assignable the **seller** must on **completion**:

- (a) hold the warranty on trust for the **buyer**
- (b) at the **buyer's** cost comply with such of the lawful instructions of the **buyer** in relation to the warranty as do not place the **seller** in breach of its terms or expose the **seller** to any liability or penalty.

26. No assignment

The **buyer** must not assign, mortgage or otherwise transfer or part with the whole or any part of the **buyer's** interest under this **contract**.

27. Notices and other communications

27.1 All communications, including notices, must be in writing. Communication to or by the **seller** or the **buyer** may be given to or by their conveyancers.

27.2 If a communication is delivered by hand or is otherwise proved to have been received then it is given when delivered or received. If delivered or received after 1700 hours on a **business day** it is to be treated as received on the next **business day**.

27.3 If a communication is to be relied on that is not delivered by hand or otherwise proved to have been received it must be sent by first-class registered or recorded delivery post to the address of the person to whom it is to be given as specified in the **sale memorandum**. Such a communication will be treated as received on the second **business day** after it has been posted.

28. Contracts (Rights of Third Parties) Act 1999

The **contract** is enforceable only by the **seller** and the **buyer** and (if applicable) their successors in title and, to the extent permitted by the **conditions**, by the **auctioneers**.