

Common Auction Conditions, Amendments to Common Auction Conditions and General Conditions of Sale for Online Unconditional (Immediate Exchange) Property Auction

Successfully selling local
property to local and national
buyers through online timed
auctions



[auctionhouse.co.uk](https://www.auctionhouse.co.uk)

AUCTION
HOUSE
ONLINE

Common Auction Conditions (Edition 3)

REPRODUCED WITH THE CONSENT OF THE RICS

INTRODUCTION

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

GLOSSARY

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

AUCTION CONDUCT CONDITIONS

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

SALE CONDITIONS

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

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

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

Wherever it makes sense:

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

Actual completion date

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

Addendum

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

Agreed completion date

Subject to condition G9.3:

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

Approved financial institution

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

Arrears

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

Arrears schedule

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

Auction

The auction advertised in the catalogue.

Auction conduct conditions

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

Auctioneers

The auctioneers at the auction.

Business day

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

Buyer

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

Catalogue

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

Completion

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

Condition

One of the auction conduct conditions or sales conditions.

Contract

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

Contract date

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

- (a) the date of the sale memorandum signed by both the seller and buyer; or
- (b) if contracts are exchanged, the date of exchange. If exchange is not effected in

person or by an irrevocable agreement to exchange made by telephone, fax or electronic mail the date of exchange is the date on which both parts have been signed and posted or otherwise placed beyond normal retrieval.

Documents

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

Financial charge

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

General conditions

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

Interest rate

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

Lot

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

Old arrears

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

Particulars

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

Practitioner

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

Price

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

Ready to complete

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

Sale conditions

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

Sale memorandum

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

Seller

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

Special conditions

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

Tenancies

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

Tenancy schedule

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

Transfer

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

TUPE

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

VAT

Value Added Tax or other tax of a similar nature.

VAT option

An option to tax.

We (and us and our)

The auctioneers.

You (and your)

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

AUCTION CONDUCT CONDITIONS

A1 INTRODUCTION

- A1.1 Words in bold type have special meanings, which are defined in the Glossary
- A1.2 The catalogue is issued only on the basis that you accept these auction conduct conditions. They govern our relationship with you and cannot be disappplied or varied by the sale conditions (even by a condition purporting to replace the whole of the Common Auction Conditions). They can be varied only if we agree.

A2 OUR ROLE

- A2.1 As agents for each seller we have authority to:
 - (a) prepare the catalogue from information supplied by or on behalf of each seller;
 - (b) offer each lot for sale;
 - (c) sell each lot;
 - (d) receive and hold deposits
 - (e) sign each sale memorandum; and
 - (f) treat a contract as repudiated if the buyer fails to sign a sale memorandum or pay a deposit as required by these auction conduct conditions.
- A2.2 Our decision on the conduct of the auction is final.
- A2.3 We may cancel the auction, or alter the order in which lots are offered for sale. We may also combine or divide lots. A lot may be sold or withdrawn from sale prior to the auction.

Common Auction Conditions (Edition 3)

REPRODUCED WITH THE CONSENT OF THE RICS

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

A3 BIDDING AND RESERVE PRICES

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

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

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

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

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

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

A4 THE PARTICULARS AND OTHER INFORMATION

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

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

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

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

A5 THE CONTRACT

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

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

A5.3 You must before leaving the auction:

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

A5.4 If you do not we may either:

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

A5.5 The deposit:

- (a) is to be held as stakeholder where VAT would be chargeable on the deposit were it to be held as agent for the seller, but otherwise is to be held as stated in the sale conditions; and
- (b) must be paid in pounds sterling by cheque or by bankers' draft made payable to us on an approved financial institution. The extra auction conduct conditions may state if we accept any other form of payment.

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

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

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

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

A6 EXTRA AUCTION CONDUCT CONDITIONS

A6.1 Despite any special condition to the contrary the minimum deposit we accept is £3,000 (or the total price, if less). A special condition may, however, require a higher minimum deposit.

GENERAL CONDITIONS OF SALE

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

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 the lot 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, but excluding any financial charges: these the seller must discharge 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) outgoing and other liabilities;

(g) any interest which overrides, within the meaning of 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.

G1.8 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.

G1.9 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.

G1.10 The buyer is not to rely on the information contained in the particulars but may rely on the seller's conveyancer's written replies to preliminary 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 The deposit

(a) must be paid in pounds sterling by cheque or banker's draft drawn on an approved financial institution (or by any other means of payment that the auctioneers may accept); and

(b) is to be held as stakeholder unless the auction conduct conditions provide that it is to be held as agent for the seller.

G2.3 Where the auctioneers hold the deposit as stakeholder they 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.

G2.4 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.

G2.5 Interest earned on the deposit belongs to the seller unless the sale conditions provide otherwise.

G3. BETWEEN CONTRACT AND COMPLETION

G3.1 Unless the special conditions state otherwise, the seller is to insure the lot from and including the contract date to completion and:

(a) produce to the buyer on request all relevant insurance details;

(b) pay the premiums when due;

(c) if the buyer so requests, and pays any additional premium, use reasonable endeavours to increase the sum insured or make other changes to the policy;

(d) 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) 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 (to the extent not already paid by the buyer or a tenant or other third party) for the period from and including the contract date to completion.

G3.2 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.

G3.3 Section 47 of the Law of Property Act 1925 does not apply.

G3.4 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 except in relation to any matter that occurs after the contract date.

G4.2 If any of the documents is not made available before the auction the following provisions apply:

(a) The buyer may raise no requisition on or objection to any of the documents that is made available before the auction.

(b) 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.

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

(d) If title is in the course of registration, title is to consist of certified copies of:

- (i) the application for registration of title made to the land registry;
- (ii) the documents accompanying that application;
- (iii) evidence that all applicable stamp duty land tax relating to that application has been paid; and
- (iv) 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.

(e) The buyer has no right to object to or make requisitions on any title

Common Auction Conditions (Edition 3)

REPRODUCED WITH THE CONSENT OF THE RICS

- 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 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 Land Registry Rules when making application for registration of the transaction to which the conditions apply.
- 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 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.
- G5.3 The seller cannot be required to transfer the lot to anyone other than the buyer, or by more than one transfer.
- 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
- G6.3 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.
- G6.4 Unless the seller and the buyer otherwise agree, completion cannot take place until both have complied with their obligations under the contract and the balance of the price is unconditionally received in the seller's conveyancer's client account.
- 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 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.
- 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 properly required.
- G9.5 The buyer must:
- (a) promptly 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 licence has not been obtained 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 licence is obtained. 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 price (less any deposit paid) from the agreed completion date up to and including 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 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 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, 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.
- 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 in advance on the most recent rent payment date on or within four months preceding completion.
- G11.2 If on completion there are any arrears of current rent the buyer must pay them, whether or not details of those arrears are given in the special conditions.
- G11.3 Parts 2 and 3 of this condition G11 do not apply to arrears of current rent.
- Part 2 Buyer to pay arrears
- G11.4 Part 2 of this condition G11 applies where the special conditions give details of arrears.
- G11.5 The buyer is on completion to pay, in addition to any other money then due, an amount equal to all arrears of which details are set out in the special conditions.
- G11.6 If those arrears are not old arrears the 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 seller's conveyancer may reasonably require
 - (d) if reasonably required, allow the seller's conveyancer to have on loan the counterpart of any tenancy against an undertaking to hold it to the buyer's order;
 - (e) not without the consent of the seller release any tenant or surety from liability to pay arrears or accept a surrender of or forfeit any tenancy under which arrears are due; and
 - (f) if the buyer disposes of the lot prior to recovery of all arrears obtain from the buyer's successor in title a covenant in favour of the seller in similar form to part 3 of this condition G11.
- G11.9 Where the seller has the right to recover arrears 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 case the seller may act reasonably in such a way as to avoid that liability;
 - (b) if the seller gives the buyer notice of the seller's intended act and the buyer does not object within five business days giving reasons for the objection the seller may act as the seller intends; and
 - (c) the buyer is to indemnify the seller against all loss or liability the seller incurs through acting as the buyer requires, or by reason of delay caused by the buyer.
- G13. RENT DEPOSITS**
- G13.1 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.
- G13.2 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,

Common Auction Conditions (Edition 3)

REPRODUCED WITH THE CONSENT OF THE RICS

- comply at the cost of the buyer with the buyer's lawful instructions.
- G13.3 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.
- 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 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 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 contracts 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 1 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 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; 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.

Amendments to Common Auction Conditions relating to Online Unconditional (Immediate Exchange) Auctions

AMENDMENTS TO COMMON AUCTION CONDITIONS

Where the Royal Institution of Chartered Surveyors Common Auction Conditions (third edition) ("CAC") are to be construed in the context of an online auction and bidding system the CAC shall be varied as follows:

THE FOLLOWING DEFINITIONS IN THE CAC GLOSSARY SHALL BE DELETED AND REPLACED AS FOLLOWS:

ADDENDUM

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 the auctioneers on the auctioneers website.

AUCTION

The auction for each lot advertised in the catalogue which will take place online via the internet, using unique Uniform Resource Locator (URL) for each auction lot.

AUCTIONEERS

The auctioneer will be a member of Auction House network as named within the property details.

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 are jointly the buyer their obligations can be enforced against them jointly or against each of them separately.

CATALOGUE

Unless otherwise stated this will take the form of 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

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.

MEMORANDUM OF SALE

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 which will either be in email or written.

YOU (AND YOUR)

Someone who has a copy of the catalogue or who views the URL or who is a bidder at the auction, whether or not a buyer.

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

ANTI-MONEY LAUNDERING INFORMATION

Means the provision of 2 pieces of identification for anti-money laundering purposes - these must include 1 piece of photo identification (a passport or driver's licence for example) and a utility bill including the buyer's/seller's (as appropriate) home address which cannot be dated older than 3 months. Or we might use an electronic verification system to verify you from basic details using electronic data, however it is not a credit check of any kind so will have no effect on you or your credit history. In certain cases we may follow both routes noted.

BUYER'S PAYMENT

10% of the sale price (minimum £5,000) which will represent the Buyers Deposit unless varied within the property details.

BUYERS PREMIUM

If applicable is payable to the auctioneers. The amount of Buyers Premium is disclosed within the property details and/or in the special condition of sale.

DEPOSIT

Means Buyers Deposit.

EXTRA AUCTION CONDUCT CONDITIONS

Auction House - Extra Auction Conduct Conditions for participation and the purchase of property by online auction, available at www.auctionhouse.co.uk/online-auction/current-online-auctions.

60 SECOND RULE

Means the rule which stipulates that any person who bids online within the last 60 seconds of a specific lot closing time will instigate the automatic extension of the lot closing time by an additional 60 seconds and so on for any such subsequent bids until a winning bid is achieved.

THE AUCTION CONDUCT CONDITIONS SHALL BE VARIED AS FOLLOWS:

Conditions A2.1 (f) shall be deleted and replaced with:

(f) Treat a contract as repudiated if the buyer fails to pay the Buyers Deposit and the Administration Fee or provide anti-money laundering information to us as required by these auction conditions.

Condition A5.1 shall be deleted and replaced with:

A5.1 A successful bid is one we accept as such (normally when the auction time has elapsed with a winning bid). This condition A5 applies to you if you make the successful bid for a lot.

Conditions A5.3 shall be deleted and replaced with:

A5.3 By close of business on the day of the auction, the successful bidder must:

- (a) provide anti-money laundering information to us: and
- (b) provide all information we reasonably need from you to enable us to complete the Memorandum of Sale: and
- (c) pay the Buyers Deposit in cleared funds from an account held with an approved financial institution but we will not accept the Buyers Deposit and the buyer will not be able to pay the Buyers Deposit until the buyer has complied with condition A5. 3(a).

Condition A5.4 shall be deleted and replaced with:

A5.4 If you do not we may, as agent for the seller, treat that failure as your repudiation of the contract and offer the lot for sale again: the seller may then have a claim against you for breach of contract and you will be banned from all future auctions.

Condition A5.5(b) shall be deleted.

Condition A5.6 shall be deleted.

Condition A6 shall be deleted and replaced with:

A6 The Extra Auction Conduct Conditions shall be incorporated into the auction conduct conditions as if set out in full in the auction conduct conditions.

THE GENERAL CONDITIONS OF SALE SHALL BE VARIED AS FOLLOWS:

Condition G2.1 shall be deleted.

Condition G2.2 shall be deleted and replaced with:

G2.2 The deposit is to be held as stakeholder unless the auction conduct conditions provide that it is to be held as agent for the seller.

Condition G2.4 shall be deleted.

Amendments to Common Auction Conditions relating to Online Unconditional (Immediate Exchange) Auctions

AUCTION HOUSE – EXTRA AUCTION CONDUCT CONDITIONS FOR THE PARTICIPATION AND PURCHASE OF PROPERTY BY ONLINE AUCTION

1. INTERPRETATION

- 1.1 The definitions in this clause and those definitions set out in the Common Auction Conditions apply in these Extra Auction Conduct Conditions (“Terms”).

APPOINTMENT

means the appointment of Auction House by the seller pursuant of the Appointment Letter.

APPOINTMENT LETTER

means the letter prepared by Auction House setting out the Services, the remuneration arrangements and other terms and conditions that form part of the Appointment.

CAC’s

means The Royal Institution of Chartered Surveyors Common Auction Conditions (third edition)

CONDITIONALLY REFUNDABLE REGISTRATION FEE

means the fee paid by the potential buyer upon Registration if applicable.

AUCTION HOUSE

means the member of Auction House Network as named in the property details.

REGISTRATION

means:

- (i) The payment by the potential buyer of the Conditionally Refundable (if applicable) Registration Fee electronically in cleared funds, or as otherwise notified by Auction House in the registration process;
- (ii) the completion of the relevant registration form by the potential buyer

60 SECOND RULE

means the rule which stipulates that any person who bids online within the last 60 seconds of a specific lot closing time will instigate the automatic extension of the lot closing time by a additional 60 seconds and so on for any subsequent bids until a winning bid is achieved.

- 1.2 Headings do not affect the interpretation of these Terms.
- 1.3 The headings of these Terms do not form part of the Terms.
- 1.4 Reference to writing or written in these Terms includes faxes and e-mail unless otherwise notified by Auction House.
- 1.5 If any of these Terms are inconsistent with any other term of the CAC’s (as amended), these Terms shall prevail.
- 1.6 All lots entered for online auction are subject to these Terms and (for the avoidance of doubt) the CAC’s.
- 1.7 All buyers and sellers acknowledge and agree that these Terms (and, for the avoidance of doubt, the CAC’s) are binding upon them, and by the buyers completing Registration and Auction House accepting the sellers property for auction, these Terms are deemed accepted and incorporated into all dealings as between the relevant parties

2. ENTRY INTO AUCTION

- 2.1 Auction House sell as agents for the seller and as such are not responsible for any default by the seller.
- 2.2 Auction House reserve the right to refuse to accept any

Registration if any of the elements of Registration are not acceptably completed. Auction House reserve the right to refuse to accept any Anti-Money Laundering information in the event it is not satisfied as to its authenticity or acceptability. In the event the Anti-Money Laundering Information is not acceptable or provided, Auction House will not (as applicable) send or sign the Memorandum of Sale and the Buyers Payment will not be accepted and in addition to the provisions of the CAC (as amended), the Buyer will lose any Conditionally Refundable Registration Fee.

- 2.3 Unless otherwise agreed by Auction House in writing, Auction House will not accept a lot without the information and documentation set out in its Appointment letter and Agency Agreement.

3. BASIS OF SALE

- 3.1 All lots are sold ‘as they lie’ with all faults and imperfections and errors of description. Illustrations in catalogues or brochures are for identification only.

Buyers should satisfy themselves prior to sale as to the condition of each lot and should exercise and rely on their own judgement as to whether the lot accords with its description. Neither Auction House, their servants or agents will be responsible for errors of description or the genuineness or authenticity of any lot.

- 3.2 Auction House has the right to revise and amend these Terms from time to time to reflect changes in market conditions affecting its business, changes in technology, changes in payment methods, changes in relevant laws and regulatory requirements and changes in various systems’ capabilities.

4. CONDUCT OF THE AUCTION

- 4.1 For the avoidance of doubt, the parties to the contract of sale of the lot set on the contract date are the buyer and the seller. Auction House is not a party to the contract of sale and is not liable for any breach thereof by either the buyer or the seller.
- 4.2 Persons participate in the online auctions at their own risk and, subject to condition 6.2 below, neither the seller nor Auction House will be individually or collectively responsible for any loss or damage whatsoever occasioned to any person or property due to anything which may be present on the auction site.
- 4.3 Auction House shall have the right, at its discretion, to refuse participation in the online auction by any person
- 4.4 The details of the property will be made available to potential buyers on the Auction House website auctionhouse.co.uk, and associate portals and websites before the commencement of the auction.
- 4.5 Anti-Money Laundering Information must be presented by a successful buyer to Auction House before the auction has commenced or within, but no later than close of business on the day of the successful bid (further to the process notified to Buyers by Auction House in the catalogue and the Buyers guide). The Anti-Money Laundering Information can be presented to Auction House at any regional office of Auction House. Alternatively, buyers may request their solicitors to provide Anti-Money Laundering Information to Auction House. Auction House reserve the right to refuse acceptance of any Anti-Money Laundering Information.
- 4.6 The 60 second Rule shall operate as necessary during the online auctions.

Amendments to Common Auction Conditions relating to Online Unconditional (Immediate Exchange) Auctions

5. COMPLETION OF PURCHASE

- 5.1 Immediately following the contract date and subject to the satisfaction of the provisions of condition 4.5 above, Auction House will send the buyers payment invoice to the buyer, and, subject to receipt of payment in cleared funds. Auction House will then send the Memorandum of Sale to the buyer, seller, the buyers solicitors (provided Auction House are provided with such details) and sellers solicitors. All required payments will be settled in full and before the Memorandum of Sale is sent to the buyer, seller and the buyers solicitor and sellers solicitor and will be in sterling (GBP) by way of online payment or as otherwise specified in the catalogue within 24 hours following issue of the buyers payment invoice. All queries in relation to methods of payment must be made to Auction House accounts department and unless otherwise agreed by Auction House the timing required under these Terms for payment is of the essence, and will under no circumstances be adjusted further for a failure on the part of the buyer to make the necessary enquiries and preparations in order to pay the buyers premium and/or price.
- 5.2 In respect of telegraphic transfers, the remitting bank must include the invoice number, and any other reference as shown in the catalogue, or as otherwise notified by Auction House.

6. BUYERS DEFAULT

- 6.1 If the buyer does not honour its obligations for payment of the buyers payment then Auction House as agents of the seller shall at its absolute discretion and without prejudice to any other rights it may have, be entitled to exercise the remedies set out in the CAC (as amended) as well as retain the Conditionally Refundable Registration Fee (if applicable).
- 6.2 For the avoidance of doubt, nothing in these Terms limits Auction House liability nor, where applicable, the liability of the buyer or seller for:
- (a) death or personal injury caused by negligence; or
 - (b) fraud or fraudulent misrepresentation; or
 - (c) any breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - (d) losses for which it is prohibited by section 7 of the Consumer Protection Act 1987 to limit liability; or
 - (e) any other matter for which it would be illegal or unlawful to exclude or attempt to exclude liability.

7. GENERAL DATA PROTECTION REGULATIONS (GDPR)

- 7.1 Auction House will only use the personal information supplied to them to provide the auction services, or to inform buyers and sellers about similar services which they provide when such parties have opted in to receiving such material via email or by completing the relevant web page.
- 7.2 Buyers and sellers acknowledge and agree that Auction House may pass their details to credit reference agencies, solicitors and other third parties where legally required.
- 7.3 We will provide it to others only where it is required and as outlined below, or in accordance with your stipulated wishes.

Your information will not be passed to a third party not listed in our Third Party Processors schedule without obtaining your consent.

- 7.4 Negotiating with Prospective Buyers and Handling Offers to Purchase: We will negotiate with prospective buyers and take offers from them prior to auction and post auction. This process will involve providing them with relevant personal information to facilitate a successful negotiation. This will also involve providing sellers with relevant and necessary personal information about potential buyers. You should ensure that you treat any information we provide to you as confidential and it must not be passed on or shared with any other person or business.
- 7.5 Auction Sale: Once an auction sale is made we will complete a Memorandum of Sale with details of the seller, the buyer and solicitors acting and circulate this to all four parties. We may provide your and sellers contact information to various professionals that may be acting for you, such as surveyors and contractors wanting access to the property to produce estimates, etc. We will discuss your purchase of with various parties once an auction sale has been made in order to facilitate completion of the sale.
- 7.6 Your details may be added to our mailing list and we may send you information regarding other relevant services we can provide to you. You will be able to unsubscribe to these emails at any time. We will retain the personal information we hold for up to 6 years, because the time limit for any party to initiate civil action against us should they believe they have a claim is 6 years. If you would like to contact us regarding any data issue, please contact Auction House on enquiries@auctionhouse.co.uk.
- 7.7 You have the following rights relating to the information Auction House holds on you – the right to make a Subject Access Request (SAR) to find out more about the data we hold about you, the right to be informed, the right of access, the right to rectification, the right to erasure (also known as the 'right to be forgotten'), the right to restrict processing, the right to data portability and the right to object. More information on your rights is available at www.ico.org.uk

8. GENERAL

- 8.1 If any court or competent authority decides that any of the provisions of these Terms are invalid, unlawful or unenforceable to any extent, the term will, to that extent only be severed from the remaining terms, which will continue to be valid to the fullest extent permitted by law.
- 8.2 If or to the extent that any of these Terms (as amended from time to time in writing by Auction House) are Terms to which any of the provisions of the Unfair Contract Terms Act 1977 or the Supply of Goods and Services Act 1982 or any subsequent modification or re-enactment thereof apply then such Terms shall be enforceable only to the extent permitted by those Acts or their subsequent modification or reenactment and these Terms shall be construed accordingly.
- 8.3 If Auction House fails, at any time while these Terms are in force, to insist that the Seller and/or Buyer perform their obligations under these Terms, or if Auction House does not

exercise any of its rights or remedies under these Terms, that will not mean that Auction House has waived such rights or remedies and will not mean that Auction House will automatically waive any subsequent default by the seller and/or buyer. No waiver by Auction House of any of these Terms shall be effective unless Auction House expressly says that it is a waiver and Auction House tell the buyer and seller so in writing.

8.4 A person who is not party to these Terms shall not have any rights under or in connection with them under the Contracts (rights of Third Parties) Act 1999.

8.5 These Terms shall be governed by English law and Auction House, the seller and the buyer all agree to the exclusive jurisdiction of the English courts.

9. ONLINE TERMS OF PARTICIPATION AND SALE

9.1 The provisions of all Terms above apply to the sale of lots made through auctionhouse.co.uk (the "website"), and to the extent that such adjustments in practical application of the Terms are warranted by virtue of the electronic medium of participation in any given auction, so such adjustments shall be deemed made so to give full application to all relevant and applicable Terms.

9.2 All participants in the Website auctions warrant that they are of legal age and legally capable of entering into binding contracts.

10. COMPLAINTS PROCEDURE

Should you have any problems with Auction House services which you are unable to resolve with the Auctioneer involved you should write to: Managing Director, Auction House, The Barn, Newmarket Road, Cringleford, Norwich NR4 6UE. The complaint will be acknowledged within five working days of receipt and an investigation undertaken. A formal written outcome of the investigation will be sent to you within 15 working days of our acknowledgement letter to you. This letter will also confirm that you are entitled, if dissatisfied, to refer the matter to The Property Ombudsman (TPO) within six months for a review (for further details see below).

11. THE PROPERTY OMBUDSMAN

We are certain that you will be satisfied with our service but if you have any concerns we operate a formal Complaints Procedure as detailed above. We are a Member of The Property Ombudsman (TPO) scheme and abide by its Code of Practice. For the avoidance of doubt, TPO will only review complaints made by consumers. By signing this Agreement you give us consent to provide any information regarding your purchase and how you can be contacted if the Ombudsman asks us to do so. Full details of the Ombudsman scheme are available on request.



AHEA0918

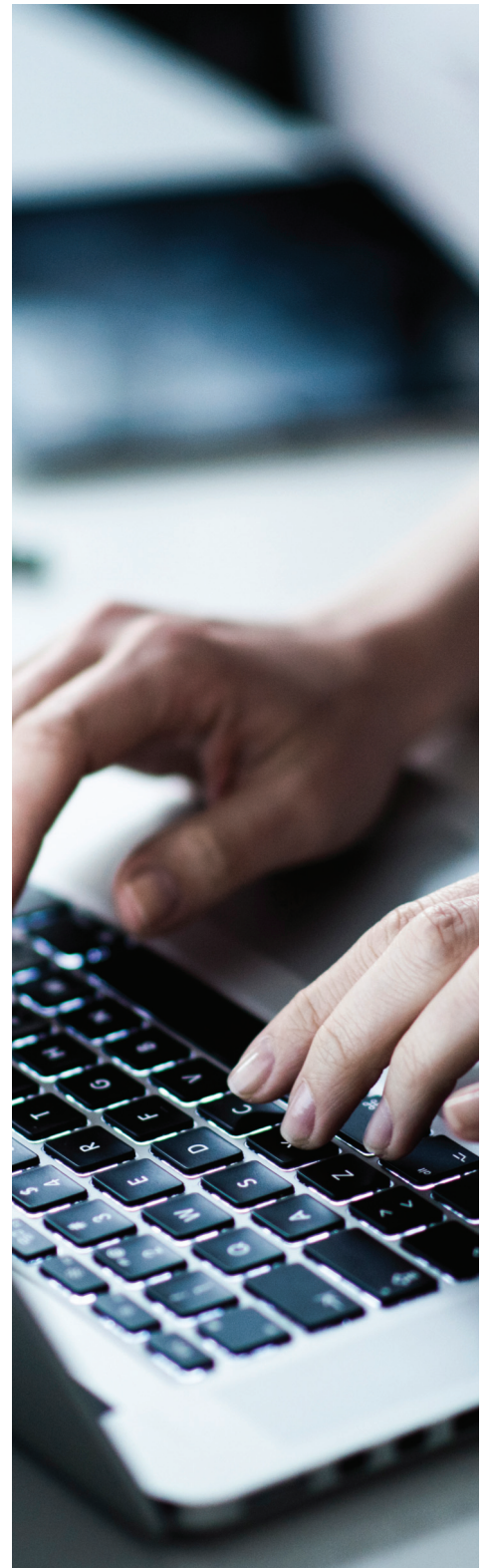
auctionhouse.co.uk



PROPERTY AUCTION EXPERTS
LOCALLY REGIONALLY NATIONALLY

Online Auction Buyer Terms & Conditions for Conditional (Flexible Exchange) Auction Sale

Successfully selling local
property to local and national
buyers through online timed
auctions



auctionhouse.co.uk

AUCTION
HOUSE
ONLINE

Auction House Online

Online Auction Buyer Terms and Conditions for Conditional (Flexible Exchange) Auction Sale

These conditions govern the conduct of AH Online auctions run by Auction House Online in conjunction with Essential Information Group. By proceeding to bid you agree to the Online Auction Terms and Conditions. If you are successful in winning the Auction you agree to pay your non-refundable Administration Fee as stipulated in the Exclusivity Agreement within 24 hours of winning the Auction. All properties sold by Auction House using Online Auctions are governed by these conditions. By agreeing to these Terms and Conditions, you agree to be bound by them for subsequent property lots that you bid on in the future. In the event that we change the Terms and Conditions, you will be required to accept the new Terms before you can continue to bid.

The bidder accepts that the Auctioneer cannot guarantee that the internet connectivity, server or software will not fail from time to time. In the event of a total or partial failure the Auctioneer reserves the right to declare the result of the Auction null and void and to restart the Auction when the service is restored. All properties sold by auction using Online Conditional (Flexible Exchange) Auction are governed by these conditions.

Introduction

These 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 (Auction Conduct Conditions)

This section regulates the conduct of the auction. If you bid for a property which is offered for sale in an Online Conditional (Flexible Exchange) Auction, you do so on the basis that you accept the Auction Conduct Conditions.

3. Conditions of Exclusivity (Exclusivity Agreement Conditions)

If you are the highest bidder at the end of an Online Auction, and your bid is at or higher than the Reserve Price, then your submission of your winning bid will be deemed to have secured your exclusive 'Option to Purchase' the **property** at the winning Bid Price within the prescribed time period as set out in the

Memorandum of Sale.

In the event of a sale being agreed Pre Auction or Post Auction to you, the Conditions of the Exclusivity Agreement shall apply.

The conditions are legally binding.

Important Notice

A prudent buyer will, before bidding for a property:-

- Take professional advice from a conveyancer and, in appropriate cases, a chartered surveyor and an accountant.
- Read the conditions.
- Have a suitable source of finance available for the **Administration Fee, Purchase Price, Buyers Premium** and all other charges described in the property details and/or in the Special Conditions of Sale.
- If available, review the Property Auction Pack and, if necessary, provide this for review to a conveyancer.
- 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 property without taking these normal precautions you do so at your own risk.

1. GLOSSARY

This glossary applies to the auction conduct conditions and the Exclusivity Agreement conditions.

Wherever it makes sense:-

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

Additional Fee

A payment made by a buyer to extend the **Exclusivity Period** beyond its original term

Administration Fee

For services to the buyer and to cover transaction costs incurred by the Auctioneer. This amount to be paid by the buyer within 24 hours of winning the auction.

Approved Financial Institution

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

Auction

The Online Auction

Auctioneer

Us as the auctioneer providing the **Online Auctions** and moderating.

Auction Pack (if applicable)

The pack of documents relating to the property which is being offered at an **Online Auction**.

Bidder

The person who registers to bid and partake in an **Online Auction**.

Bidder Registration Process

The process by which data and information is collected in relation to a **Bidder**. This will include but is not limited to identity, credit or debit card details, contact information.

Business Day

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

Buyer

The person who bids and wins the **Exclusivity Agreement** for the **property** or, if applicable, that person's personal representative or **agent**. If two or more are jointly the **buyer**, their obligations can be enforced against them jointly or against each of them separately.

The **buyer** warrants that they are 18 years of age or older and entitled to enter into binding contracts.

Buyers Premium

Represents the purchase fee paid by the **Buyer**.

Completion

Contract completion will be set for 20 working business days following **contract** exchange unless agreed otherwise by the **seller**. The completion date represents the end date of the **period of Exclusivity**.

Condition

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

Contract

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

Exclusivity Agreement

The form of contract which the **buyer** agrees to be bound by, and by **Us** (on behalf of the **seller**) giving the **buyer** the exclusive right to exchange **Contracts** to purchase the **Property** within the **Exclusivity Period** set out in the

Memorandum of Sale.

Exclusivity End Date

The last day of the agreed **Exclusivity Period**.

Memorandum of Sale

Document that confirms the particulars of the transaction.

Online

On our website or, where applicable, one of our accredited partner's websites.

Option to Buy

Provides the winning auction **buyer** an exclusive period of 20 working business days to proceed to exchange of contracts for the **property**.

Previously Marketed Price

The price at which the property has been previously offered by us or by any accredited partner agent.

Price

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

Property

The property that is the subject of the **Online Auction**.

Seller

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

Winning Bid

Highest bid at or above the reserve.

We (and us and our)

The **auctioneers**.

You (and your)

Someone who bids on an **auction**, whether or not a **buyer**.

2. CONDITIONAL (FLEXIBLE EXCHANGE) ONLINE AUCTION CONDUCT CONDITIONS

2.1 Introduction

- 2.1.1 Words in **bold** type have specified meanings, which are defined in the **Glossary**.
- 2.1.2 Where a **property** is advertised for Online Auction **you** have been given access to that auction only on the basis that **you** accept these **auction conduct conditions** which govern **our** relationship with **you** and cannot be treated as not applicable or varied by the **sale conditions** (even by a **condition** purporting to replace the whole of the Conditional Online (Flexible Exchange) Auction Conditions). They can be varied only if **we** agree in writing. These conditions shall also apply in the case of Pre Auction and Post Auction sales.

2.2 Our role

- 2.2.1 As agents for each **seller** we have authority to:-
- (a) offer each **property** for sale by **Online Auction**;
 - (b) receive **non-refundable Administration Fees**;
 - (c) sign each **Exclusivity Agreement** on behalf of each seller; and
 - (d) treat an **Exclusivity Agreement** as void if the buyer fails to pay the **Administration Fee**.
- 2.2.2 **Our** decision on the conduct of the **Online Auction** is final.
- 2.2.3 **We** may cancel the **Online Auction**, or change the way in which a **property** is offered for sale or vary the amount of **Administration Fee**. **We** may also combine or divide **properties**. A **property** may be sold or withdrawn from sale prior to the **Online Auction** or Post Auction.

- 2.2.4 **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.

2.3 Bidding and reserve prices

- 2.3.1 All bids are to be made in British pounds sterling exclusive of any applicable **VAT**.
- 2.3.2 **We** may refuse to accept a bid. **We** do not have to explain why.
- 2.3.3 All bids made **online** must comply with the terms and conditions which apply to use of our website or to the use of our partner's websites (as applicable).
- 2.3.4 If there is a dispute over bidding **we** are entitled to resolve it, and **our** decision is final.
- 2.3.5 Unless stated otherwise, each **property** is subject to a Reserve Price. If no bid equals or exceeds that Reserve Price at the end of the Online Auction, the **property** shall be withdrawn from the **Online Auction**.
- 2.3.6 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**.
- 2.3.7 Where a guide price (or range of prices) is given, that guide or up to 10% above that single figure guide, is the minimum price at which, or range of prices within which, the **seller** might be prepared to sell at. But guide prices may change and 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.

2.4 Property Description

- 2.4.1 **We** have taken reasonable care to describe each **property**. The description of a **property** is based on information supplied by or on behalf of the **seller**. **You** need to check that the information is correct.
- 2.4.2 The description of a **property** may change prior to the **Online Auction** and it is **your** responsibility to check that **you** have the correct version.
- 2.4.3 If **we** provide information, or a copy of a document, provided by others **we** are not responsible for the accuracy of that information or document.

2.5 The Exclusivity Agreement

- 2.5.1 A successful bid is one which is the highest bid at the end of the Online Auction and is at or higher than the reserve unless otherwise Pre Auction or Post Auction offers that are agreed by negotiation.
- 2.5.2 You are to ensure that the payment of the Administration Fee will be made to Us in accordance with the Online Auction process, and that payment will take place within 24 hours after the end of the auction or in the case of Pre Auction or Post Auction Sales within 24 hours of agreement.
- 2.5.3 By accepting these terms and conditions you authorise the **Memorandum**

of Sale to be signed by **us** on your behalf at the close of the auction if **you** are the successful bidder.

- 2.5.4 You must provide all information we reasonably need from you to enable us to complete the **Memorandum of Sale** (including proof of your identity and address).
- 2.5.5 If you do not we may as agent for the **seller** treat that failure as **your** voiding of the **Exclusivity Agreement** and offer the property for sale again or offer the property to any under-bidder. The seller may then have a claim against you for breach of contract.
- 2.5.6 Where an **Administration Fee** is paid, that **Administration Fee**:-
- (a) is a non-refundable payment made by the **buyer** to the auctioneer for services provided to the **buyer**.
 - (b) must be paid in British pounds sterling by a debit card, or direct bank transfer. Directions for payment will be provided by **Us**.
- 2.5.7 We will retain electronic data of your **Winning Bid** and all other bid activity on the property.
- 2.5.8 If **you** do not comply with your obligations under the **Exclusivity Agreement** then **you** are personally liable to comply even if **you** are acting as an agent for the **buyer** or buying on behalf of a company.
- 2.5.9 Where the **buyer** is a company, **you** warrant that the **buyer** is properly constituted and able to buy the **property**.

3. EXCLUSIVITY AGREEMENT CONDITIONS

3.1 Introduction

- 3.1.1 Words in **bold** type have specified meanings, which are defined in the **Glossary**.
- 3.1.2 Where **you** win an **Online Auction** with an **Exclusivity Agreement**, **you** agree that **your Winning Bid** is legally binding to proceed on these Terms and Conditions.
- 3.1.3 These conditions summarise the terms of the **Exclusivity Agreement**.

3.2 Payment of Administration Fee

- 3.2.1 This condition applies where an **Administration Fee** must be paid by **you** on winning a Conditional (Flexible Exchange) **Online Auction** for a property
- 3.2.2 Conditional upon payment of the **Administration Fee** our signing on **your** behalf the **Memorandum of Sale**, the **property** shall be reserved to you, the **buyer** for the **Exclusivity period** stated in that **Exclusivity Agreement**, this is the period in which time the buyer is to exchange contracts to purchase the **property**.
- 3.2.3 The **Administration Fee** is paid to and retained by us.

3.3 Seller's obligations

- 3.3.1 Upon the **Exclusivity Agreement** being signed and **Administration Fee** being paid, the **seller** will grant to the **buyer** a period of exclusivity to proceed to legally contract.
- 3.3.2 During the **Exclusivity Period** the **seller** agrees:-
- (a) he or she has instructed us not to agree another **Exclusivity Agreement** of the property;
 - (b) not to transact or attempt to transact with the title to the **property**;
 - (c) not to send, instruct, or allow anyone else to send any contract for sale of the property to anyone other than the buyer's solicitors;
 - (d) to give such access to the **property** as may be reasonably required by any surveyor or valuer appointed by the **buyer**;
 - (e) not to give access to any other person to view the **property** nor negotiate with anyone other than the buyer any terms for the sale of the **property**;
 - (f) to use all reasonable endeavours to proceed to a formal exchange of contracts within the **Exclusivity Period**;
 - (g) to immediately instruct the **seller's** solicitors via the Memorandum of Sale to issue a contract for the sale of the **property** to the **buyer's** solicitors and to do all other work required to enable contracts for the sale of the **property** to be exchanged within the **Exclusivity Period**.
- 3.3.3 The **seller** may (but shall not be obliged to) grant an extension of the **Exclusivity Period** stated in the **Exclusivity Agreement**. Any such extension shall be confirmed in writing by **us** to the **seller's** solicitor and to the **buyer's** solicitor. An extension will usually require the payment of an Additional Fee.

3.4 Buyer's obligations

3.4.1 The buyer agrees:-

- (a) to use all reasonable endeavours to proceed to a formal exchange of contracts on or before the target contract exchange deadline date as referenced within the **Memorandum of Sale** with contract completion on or before the **Exclusivity end date**.
- (b) to immediately instruct the **buyer's** solicitors to review title to the **property**, negotiate the draft contract for the purchase of the **property**, raise enquiries of the **seller** and any third parties about the property and do any other work required to enable contracts for the purchase of the **property** to be exchanged within the **exclusivity period**;
- (c) to promptly:-
 - (i) if the **buyer** intends to use a loan in connection with the purchase of the **property**, apply to the relevant lender and complete all necessary documentation and do all such things as such lender may require to process the **buyers** application as soon as possible including the payment of any application fees;
 - (ii) if the **buyer** or the **buyers** mortgagee or lender requires that the **property** is surveyed and/or valued, use all reasonable endeavours to arrange for the survey and/or valuation to take place at the **property** as soon as reasonably practicable including the payment of any valuation fee; and
 - (iii) keep the **auctioneer** and our accredited partner agent (if applicable) and the **sellers** solicitors advised of progress with the application for the loan.
- (d) the date of **completion** shall be specified in the **contract** exchanged for the purchase of the **property** and the **buyer** shall use all reasonable endeavours to complete the purchase of the **property** by such date;
- (e) the **buyer** agrees that if contracts for the purchase of the **property** have not been legally and unconditionally exchanged within the exclusivity period the **seller** has the absolute right to re-offer the **property** for sale free of any obligation to the **buyer**. In such a case the **buyer** accepts that the **Administration Fee** is non-refundable.

3.5 Binding obligations

- 3.5.1 These conditions of exclusivity must be read in conjunction with the **Exclusivity Agreement** applicable to a particular **property**. Where there is any conflict or inconsistency between these conditions and the provisions of an individual **Exclusivity Agreement**, the relevant provisions of the **Exclusivity Agreement** shall apply.

- 3.5.2 As these conditions and the **Exclusivity Agreement** comprise legally binding obligations on **you**, it is recommended you seek independent legal advice on these conditions and the **Exclusivity Agreement** before making any bid on a **property**.

3.6 Auctioneer

- 3.6.1 You acknowledge and agree that we act as an agent of the **seller** and not in our own capacity.
- 3.6.2 Save in the event of fraud or death or personal injury resulting from our negligence, neither **us** nor any of our group companies, affiliates, third party service providers, licensors, officers, directors or employees shall have any liability of any nature howsoever arising in relation to these conditions or to any **property**.
- 3.6.3 The **Bidder** accepts and agrees that the **Auction** as provided by the **Auctioneer**, their agents or servants, can be subject to full or partial failure from time to time due to, but not limited to, internet connectivity, server or software, and the **Auctioneer** will not be liable in any way for any loss or damage to the **buyer** in this event.

Complaints Procedure

Should you have any problems with Auction House services which you are unable to resolve with the Auctioneer involved you should write to: Managing Director, Auction House, The Barn, Newmarket Road, Cringleford, Norwich NR4 6UE. The complaint will be acknowledged within five working days of receipt and an investigation undertaken. A formal written outcome of the investigation will be sent to you within 15 working days of our acknowledgement letter to you. This letter will also confirm that you are entitled, if dissatisfied, to refer the matter to The Property Ombudsman (TPO) within six months for a review (for further details see below).

The Property Ombudsman

We are certain that you will be satisfied with our service but if you have any concerns we operate a formal Complaints Procedure as detailed above. We are a Member of The Property Ombudsman (TPO) scheme and abide by its Code of Practice. For the avoidance of doubt, TPO will only review complaints made by consumers. By signing this Agreement you give us consent to provide any information regarding the sale of your Property and how you can be contacted if the Ombudsman asks us to do so. Full details of the Ombudsman scheme are available on request to the buyer. For more information please visit the website www.tpos.co.uk.



AHEA0918

auctionhouse.co.uk



PROPERTY AUCTION EXPERTS
LOCALLY REGIONALLY NATIONALLY