

# GENERAL CONDITIONS OF SALE

## LAW SOCIETY OF NORTHERN IRELAND (3<sup>rd</sup> EDITION 2<sup>nd</sup> REVISION)

### IMPORTANT NOTICE

The contract shall comprise:

- Memorandum of Sale and General Conditions of Sale

Special Conditions (if any)

These General Conditions should not be altered or amended in any way by interlineations, deletions, additions or otherwise. Any alterations or additions which may be necessary should be made the subject of Special Conditions inserted in the Special Conditions.

### DEFINITIONS AND NOTICES

- 1.1** These Conditions may be cited as the Law Society of Northern Ireland's Conditions of Sale (3<sup>rd</sup> Edition 2<sup>nd</sup> Revision) and reference to 'the contract' shall mean any contract incorporating all or any of these Conditions and shall extend to the 'Special Conditions' which expression shall include the particulars of sale and any sale plan used in connection with the contract. In case of any conflict between the terms of the Special and General Conditions, the Special Conditions shall prevail. Headings shall not affect the construction of these Conditions.
- 1.2** Any notice under the contract shall be effectively given if sent by facsimile transmission or delivered either to the intended recipient or to his solicitors and respectively at his or their last known address by the Royal Mail or the DX System. Where sent by the Royal Mail or the DX System, the notice shall be deemed to have been received on the second day after posting. The notice may be signed by the party giving same or his Solicitors.
- 1.3** In these conditions where the context admits:
- (a) expressions not otherwise defined have the same meanings as in the Conveyancing Acts 1881 to 1911, the Land Registration Act (Northern Ireland) 1970, and the interpretation Act (Northern Ireland) 1954 and in the interpretation of the contract the latter Act shall apply in the same manner as in the interpretation of an enactment to which it is stated to apply;
  - (b) 'assurance' includes any disposition of land and 'mortgage' includes any charge on registered land;

- (c) 'Lease' and 'Landlord' have the meanings assigned to them respectively by the Landlord and Tenant Act (Ireland) 1860 and 'Lease' includes a perpetual interest as by the said Act defined and an underlease;
- (d) 'purchase money' includes the price to be paid under the contract for chattels, fixtures or fittings;
- (e) 'Bank' shall mean a branch situated in Northern Ireland of any financial institution recognised by the Bank of England as a Bank under the Banking Act 1979;
- (f) 'competent authority' shall include the Statutory Charges Registry, any Government Ministry, Department or Agency and District Council, any other authority or any body authorised by virtue of any statutory provision to exercise or to procure the exercise of compulsory powers of purchase of land or powers restricting or modifying the manner of use of land or to maintain any register in relation to land or to matters affecting occupiers of land;
- (g) 'Working days' shall exclude a Saturday, Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971;
- (h) Reference to any legislation shall include any legislation by which it is amended, modified or replaced.

## **SEARCHES, STATUTORY CHARGES AND ENQUIRIES**

### **2.1** It shall be the duty of the Vendor to disclose to the Purchaser prior to completion

- (a) all matters of which he has or ought to have knowledge which are registered with any competent authority pursuant to any statutory provision;
- (b) all matters of which he has or ought to have knowledge which might reasonably be expected to be disclosed as a result of searches or enquiries made by or on behalf of a purchaser or which a prudent purchaser ought to make of any such competent authority and which have arisen or come into being at any time prior to the contract being formed and subject to which the property is being sold

Provided that the duty of the Vendor shall be satisfied by the disclosure to the Purchaser of the searches or certificates referred to in Condition 2.3 and by clear replies to any enquiries raised by or on behalf of the Purchaser prior to the formation of the contract.

### **2.2**

- (a) Failure on the part of the part of the Vendor to comply with the provisions of Condition 2.1 shall be ground for rescission of the contract by the Purchaser in addition to any other remedy which may be available to the Purchaser.

- (b) In the event of any pre-existing prejudicial fact or act being disclosed by the Vendor or appearing on the searches or enquiries herein before referred to subsequent to the formation of the contract (as defined in Condition 5 hereof) but prior to completion the Purchaser shall be entitled to rescind the contract unless such fact or act shall be of such a nature as not materially to affect either the value of the property or the enjoyment thereof by the Purchaser.

**2.3** The Vendor shall produce to the Purchaser prior and by way of condition precedent to completion the following searches or certificates namely:

- (a) a full and complete Property Certificate in the form prescribed and used from time to time by the Department of the Environment for Northern Ireland (or any successor thereto);
- (b) a local authority search in the form prescribed and used by the Local Authority for the area in which the property is situate;
- (c) a statutory charges search against the property in sale;
- (d) a hand search on the index of names in the Registry of Deeds against the Vendor from the date of the Vendor's acquisition of the property to the time of supplying the search or a folio search in relation to any relevant Land Registry Folio or Folios in which the property in sale may be comprised. Where the Vendor is selling otherwise than as beneficial owner a hand search shall be furnished against the last party to have acquired the property for sale as well as against the Vendor;
- (e) Enforcement of Judgment Office search and bankruptcy search or, in the case of a Company, a Companies Office search against the Vendor. Where the Vendor is selling otherwise than as beneficial owner the required searches shall be furnished against the last party to have acquired the property for value.

**2.4** In so far as the information required to be disclosed by Condition 2.1 shall be contained or shall purport to be contained in any of the certificates or searches mentioned in Condition 2.3 the Purchaser shall rely on the information contained in such certificate or search and the Vendor shall be exonerated from liability in respect of any statement or representation made by him either before or after the date of the contract or in the contract itself in respect of the matters covered by any of the said certificates or searches notwithstanding that any such statement or representation shall be incomplete or inaccurate provided always that such statement or representation shall have been honestly made.

**2.5** Without prejudice to the provisions of Condition 2.2 the Purchaser will at his own expense comply with any requirement, notice or order made by any competent authority (whether made before or after the formation of the contract) and indemnify the Vendor in respect of any liability thereunder, and if on any default of the Purchaser in compliance therewith the Vendor shall incur any expenditure in respect thereof the Purchaser shall repay the same to the Vendor on or before completion of the sale with interest at the rate applicable under Condition 16 from the date of expenditure until repayment.

- 2.6** In order to comply with Condition 2.2, 2.3 and 2.4 the certificate or search referred to in Condition 2.3(a), (b) or (c) shall bear date not more than 6 calendar months prior to the date of completion fixed by the contract.

### **VACANT POSSESSION AND TENANCIES**

- 3.1** Unless Special Conditions otherwise provide the property is sold with vacant possession on completion.
- 3.2** Where the property is sold subject to any lease or tenancy the Vendor shall furnish to the Purchaser or his solicitors a copy of any lease or agreement in writing, or where not in writing such evidence of the nature and terms of the tenancy as the Vendor may be able to supply, together with copies of any notices in the Vendor's possession served by or upon the lessee or tenant.
- 3.3** Save as aforesaid the Vendor shall state the amount of the legally recoverable rent and other terms of the tenancy and the Purchaser shall be entitled, in the absence of knowledge or notice to the contrary, to rely on the accuracy of such statement.

### **EASEMENTS, RESERVATIONS, RIGHTS, LIABILITIES AND COVENANTS**

- 4.1** Save for the matters subject to which the property is sold by virtue of Condition 2 or the Special Conditions, the Vendor shall disclose, before the formation of the contract, the existence of all easements, rights, privileges and liabilities (without prejudice to the generality of the foregoing including all rights of way and rights of drainage) other than those apparent on inspection of the property which are known by the Vendor to affect the property or which the Vendor has reason to suppose are likely to affect it.
- 4.2** Without prejudice to the foregoing:
- (a) the Purchaser shall buy with full notice of the actual state and condition of the property and shall take it as it stands, save where it is to be constructed or converted by the Vendor;
  - (b) the property is sold, and will if the Vendor so requires be conveyed, subject to all rights of way, water, light, drainage and other easements, rights, privileges and liabilities affecting it; and
  - (c) where all or any part of the property adjoins or is near to any other land of the Vendor the Purchaser shall not acquire any rights or easement thereover which would restrict the free use of the Vendor's other land for building or any other purpose whatsoever and the assurance shall so provide and, if disclosed prior to the making of the contract or apparent on inspection, the assurance shall also contain reservations and provisions reserving to the Vendor easements and rights equivalent to any existing quasi-easements and quasi-rights over the property sold;
  - (d) where the property is subject to any matter contained in any deed or document, a copy or abstract of which has been submitted to the Purchaser prior to the date of contract, which matter would but for this provision be void against a Purchaser for

value in the absence of registration, the Purchaser shall indemnify the Vendor against all claims, demands and liability howsoever arising in respect thereof.

- 4.3** Notwithstanding anything herein before contained if the property is sold subject to restrictive covenants the Purchaser shall be deemed to have purchased with full knowledge thereof.

## **FORMATION OF CONTRACT AND DEPOSIT**

- 5.1** The contract (other than in a sale by auction) shall be formed upon receipt by the Purchaser or his solicitor of a copy of the Purchaser's offer as accepted by the Vendor (or on his behalf). The Purchaser or his solicitor shall be deemed to have received such copy at the latest:
- (a) by the close of business on the second working day after dispatch of the same by the Vendor's solicitor through the Royal Mail or through the DX System;
  - (b) on completion of an effective facsimile transmission; or
  - (c) upon delivery if the same is delivered by hand.
- 5.2** Upon the formation of the contract the Purchaser shall within 5 working days pay such deposit as may have been agreed to the solicitor for the Vendor who shall hold the same as agent for the Vendor.
- 5.3** In the event of the deposit not being paid as provided for in Condition 5.2 the Vendor shall be entitled to rescind the contract upon giving 5 working days' notice in writing to the Purchaser's solicitor unless payment shall be made within that time, time to be of the essence, or to claim interest at the rate provided for in Condition 16.1(a) hereof on the deposit or such part thereof as may be outstanding from the date of non-payment until the date of payment or, if it be later, the date of the actual completion. The Vendors right to recover interest under this condition shall exist even though the contract may be subject to a condition which remains unsatisfied. Such interest shall form part of the purchase monies due on completion and Condition 16 shall apply and be interpreted accordingly.

## **RISK**

- 6.1** The Vendor shall, on completion, transfer the property in the same physical state as it was at the date of the contract (fair wear and tear excepted) and shall retain the risk until completion.
- 6.2** If the property suffers any damage between the time of formation of the contract and actual completion which makes the property unusable for its purpose as at the formation of the contract:

- (a) the Purchaser may rescind the contract, in which event the provisions of Condition 18.2 shall apply, or alternatively, the Purchaser may affirm the contract, in which case the Purchaser's right to compensation shall be confined to the cost of making good the damage to the property; or
  - (b) the Vendor may rescind the contract where the property has become unusable for its purpose as at the date of the contract as a result of damage for which the Vendor could not reasonably have insured or for which compensation is not available from the Crown or any competent authority or where the Vendor is prohibited by a legal duty or restriction from making good the said damage.
- 6.3** The Vendor is under no obligation to the Purchaser to insure the property.
- 6.4** Where a breach of Condition 6.1 has occurred which is not sufficient to entitle the Purchaser to rescind, the Purchaser shall be entitled to compensation from the Vendor in the amount required to remedy the damage.
- 6.5** Where the Purchaser is entitled to compensation from the Vendor in accordance with this clause he shall notify the Vendor of the circumstances of the claim within 10 working days of the actual completion.

## **DELIVERY OF TITLE**

- 7.1** Within 5 working days of the formation of the contract there shall be delivered to the Purchaser or his solicitors the title to the property sold or copies thereof, if this has not already been done and, as soon as practicable, the Searches and Certificates referred to in Condition 2.
- 7.2** If a document of title refers to any plan material to the description of the property, or to any covenants contained in a document earlier in date than the document with which the title commences, and such plan or earlier document or a copy thereof is in the possession of the Vendor or his trustees or mortgagee, the Vendor shall supply a copy thereof with the title, provided always that nothing herein or done on foot hereof shall operate as a waiver of the benefit of any stipulation as to the root of title.
- 7.3** The Vendor shall not be required to procure the production of any document not in his possession or not in the possession of his mortgagee or trustees and of which the Vendor cannot reasonably obtain production nor to trace or state who has the possession of the same.
- 7.4** The Vendor shall produce to the Purchaser an uncertified copy Land Registry map in respect of titles registered in the Land Registry or, in case of unregistered lands, an ACE map or a map otherwise based on Ordnance Survey standards suitable for an application to the Land Registry for first compulsory registration.

## **TITLE AND TENURE**

- 8.1** Subject to the proviso to Condition 8.2 no title to the property prior to the date of the document specified in the Special Conditions as the commencement of the title to the property, or if there are no Special Conditions in that behalf, prior to the date implied for the commencement of such title, shall be called for or required and no objection, requisition, or enquiry will be entertained or allowed in respect of any title prior to said date no matter how the information suggesting the same shall have come to the notice of the Purchaser and the deed or document mentioned in the Special Conditions as the root of title shall be conclusively admitted as a good root of title to the property for the purposes of the present sale.
- 8.2** Where the property is held under a Fee Farm Grant or Lease the right and title of the Grantor or Lessor to make same shall be admitted and no investigation of any prior or superior title shall be permitted, nor shall any objection be made by reason of the said Fee Farm Grant or Lease being Sub-Fee Farm Grant or Sub-Lease, or by reason of the property being held with other property subject to any other or greater head rent than that reserved by the said Fee Farm Grant or Lease; provided always that, save where registered with a good Fee Farm Grant title or a good leasehold title, where the property is held under a Fee Farm Grant or Lease for a perpetual interest or a term of more than 21 years and said Grant or Lease shall have been made or executed within 12 years prior to the present sale, the Vendor shall deduce title to the Landlord's estate or interest for the space of 12 years prior to the date of said Grant or Lease.
- 8.3** Where the property is held under a Fee Farm Grant, a Lease, a transfer or conveyance held subject to the observance of covenants, the following provisions of this Condition shall apply:
- (a) The Fee Farm Grant, Lease transfer or conveyance or copies thereof having been made available, the Purchaser (whether he has inspected the same or not) shall be deemed to have bought with full notice of the contents thereof and the property is sold subject to the rent reserved by the Fee Farm Grant or Lease and to the covenants, conditions and agreements in the said Fee Farm Grant, Lease transfer or conveyance and in all superior assurances (if any) so far as same relate to the property.
  - (b) the production of the receipt for rent last accrued due prior to the completion date or of a statutory declaration by the Vendor either that the rent reserved by the Lease of Fee Farm Grant has not been collected by the person entitled thereto for a period of not less than 6 years nor has that person demanded such rent for such period shall be conclusive evidence that all the covenants, conditions and agreements contained in said Fee Farm Grant or Lease and in every superior Grant or Lease (if any) have been complied with or that any breaches thereof (including breaches of a continuing nature) have been effectively waived up to the date of actual completion; where there is only a nominal ground rent or nominal fee farm rent or in the case of the sale of freehold land held subject to covenants, the Purchaser shall be entitled to have a certificate by the Vendor confirming that any covenants to which the property may be subject have been duly observed and performed;

- (c) on production of a receipt for the last payment due for rent under the Fee Farm Grant or Lease the Purchaser shall assume without proof that the person giving the receipt though not the original Grantor or Lessor is the Landlord or his duly authorised agent;
- (d) the sale is subject to any necessary consent to convey or assign or sub-let being obtained. The costs of obtaining such consent shall be paid by the Vendor, but if the consent is not obtained prior to the date for completion either party may by notice in writing to the other rescind the contract and thereupon the provisions of Condition 18.2 shall apply.

**8.4** Where the property is held subject to any perpetual or terminable rent charge or rent, but such rent charge or rent is wholly or partially charged on other lands and the property being sold has been indemnified against such rent charge or rent or part thereof, then:

- (a) no objection shall be made on account of the existence of the said rent charge or rent, or of any covenants, conditions or agreements in the instrument creating the same or for enforcing the same;
- (b) no further indemnity shall be required by the Purchaser beyond the assignment of the benefit of any indemnity to which the Vendor may be entitled;
- (c) the Purchaser shall assume that such rent or rent charge has been duly paid, and all covenants, conditions and agreements created by the instrument creating the same have been performed and observed, or any breaches thereof waived.

**8.5** Where any property is to be assigned, or sub-demised, subject to an apportioned rent mentioned in the contract, the Purchaser shall accept the assignment or under lease at or subject to the apportioned rent and in the case of an assignment shall not require the consent of the Landlord to be obtained, or the rent to be otherwise legally apportioned.

**8.6.1** Where the title to the property is registered in the Land Registry, the property is sold subject to each and every burden which by virtue of Schedule 5 of the Land Registration Act (Northern Ireland) 1970 affects the land and to such Schedule 6 burdens of the kinds mentioned at paragraphs 2, 6, 11, 12, 15 and 16 of Part 1 of the Schedule as may be registered as affecting the land, and also subject to all the exceptions, reservations, burdens, qualifications, notes and restrictions in the relevant Folio appearing.

**8.6.2** The evidence of the Registered Title shall consist of the following:

- i. the relevant Land Certificate(s);
- ii. where appropriate, the original counterpart or an office copy of the Registered Fee Farm Grant, Lease or transfer;
- iii. where appropriate an affidavit (or certificate):
  - (a) to reclassify the title as absolute;

- (b) to confirm that the Vendor or his predecessor in title has complied with all matters set out in the Certificate pursuant to which he has become registered as owner.
- iv. Such further evidence as may be required to establish the Vendor's title to dispose of the property by virtue of Section 33 of the 1970 Act;
- v. Such affidavits or certificates as to execution of documents as may be required by the Registrar pursuant to rules made pursuant to the 1970 Act;
- vi. An official uncertified copy of the Land Registry Map of the lands comprised in the Folio(s) on which the property is registered;
- vii. Where part only of a folio is being sold a map suitable for registration purposes.

**8.6.3** Save in so far as provided by the Special Conditions the Purchaser shall not be at liberty to call for the removal from or cancellation on the Register of any of the burdens, qualifications, notes or restrictions referred to in Condition 8.6.1.

**8.6.4** Unless the certificate is deposited at the Registry the Vendor shall deliver the land certificate and/or the charge certificate as the case may require to the Purchaser on completion of the purchase, or, if only a part of the land comprised in the certificate is dealt with, or only a derivative estate is created, he shall, at his own expense, produce or procure the production of the certificate in accordance with the statutory provisions for the completion of the Purchaser's registration. Where the certificate has been lost or destroyed the Vendor shall pay the costs of the proceedings required to enable the Registrar to proceed to such completion without it.

**8.7** Any statutory covenant to be implied in an assurance by the Vendor conveying as beneficial owner shall be so limited as not to affect him with liability for a subsisting breach of any covenant or condition concerning the state or condition whereof the Purchaser is by Condition 4.2 deemed to have full notice.

## **MORTGAGES**

**9.1** Except to the extent that the Purchaser elects to redeem the Vendor's mortgage pursuant to Clause 15.6, the Vendor shall be obliged to ensure that any mortgages or charges subsisting at completion are vacated and discharged.

**9.2** Where the title includes a mortgage in favour of a Bank, Building or Friendly Society or a society registered under the Industrial and Provident Societies Acts, or any trustees or other persons on behalf of such a society, no evidence shall be required in relation to the rules, constitution or incorporation of the society and the Purchaser shall assume that any receipt given on the discharge of every such mortgage and purporting to be executed in the manner required by the statutory provisions relating to the society was duly executed by all proper persons and is valid and effectual.

## **REQUISITIONS**

- 10.1** No later than 10 working days before completion or within 10 working days after the date of the contract if later, the Purchaser shall send to the Vendor's solicitors a statement in writing of all objections and requisitions, if any, to or on:
- (a) the title or evidence of title;
  - (b) the said documents; and
  - (c) the contract, as regards matters not thereby specifically provided for.
- 10.2** Replies to all such objections or requisitions shall be made within 5 working days of receipt thereof and subject thereto, the title shall be deemed to be accepted.
- 10.3** All objections and requisitions not included in any statement sent within the time aforesaid and not going to the root of the title shall be deemed to have been waived.
- 10.4** The said documents, though in fact imperfect or incomplete, shall be deemed to be perfect and complete, except for the purpose of any objections or requisitions which could not have been taken or made on the information therein contained. For the purposes of the foregoing stipulation where a document, or a copy thereof, refers whether by recital or otherwise to a missing or imperfect document, or copy, then it shall be deemed to contain the information on which an objection or requisition could have been taken or made concerning such missing or imperfect document or copy.
- 10.5** Any challenge to the replies to any objections or requisitions shall be in writing and made within 5 working days after the day of delivery thereof.

## **PREPARATION OF ASSURANCE**

- 11.1** Save where the sale is by way of grant of Lease conveyance or transfer a draft of which is attached to the Contract, the draft assurance prepared by or on behalf of the Purchaser shall be delivered at the office of the Vendor's solicitors at least 10 working days before the date fixed for completion and the engrossment (first executed by the Purchaser, where requisite) delivered within 5 working days after return of the approved draft and delivery of the draft or engrossment shall not prejudice any outstanding requisition.
- 11.1.1** Where the sale is by way of Lease, the Lease and a counterpart thereof (and where registration in the Land Registry is required, two counterparts thereof) shall be in accordance (as nearly as the circumstances admit) with the form of draft Lease (if any) and map annexed to the contract or otherwise sufficiently identified by the signatures of the parties or their solicitors, and the engrossments thereof shall be prepared by the Vendor's solicitors and on completion shall be stamped and registered by and at the expense of the Purchaser.
- 11.1.2** The Purchaser shall in the assurance covenant to indemnify the Vendor and his estate (and any estate of which he is personal representative or trustee) against all actions, claims and liability for breach of any covenant, stipulation or provision subject to

which the property is expressed to be sold where the Vendor or any such estate would remain liable after assurance.

- 11.1.3** Where a document is retained in the possession of a mortgagee, trustee or personal representative, the Purchaser shall accept an acknowledgement of his right of production and delivery of copies from the person in possession thereof, without any undertaking for safe custody from him or any other person, save that if a mortgagor who is not in a fiduciary position occurs in a conveyance he shall, if so required, covenant that if and when he receives the document he will, at the cost of a person requiring it, given an undertaking for safe custody.
- 11.1.4** The Vendor shall demise or convey the property to the Purchaser named in the contract or such other person as the Purchaser may nominate but shall not be required to demise or convey the property in more than one lot, nor at a price other than the contractual price nor at a price divided between different parts of the property.
- 11.1.5** The execution of any assurance by the Vendor or other necessary party shall be witnessed either by a solicitor or two other independent persons. In case of a body corporate the application of its seal shall be witnessed by two office holders or persons lawfully authorised.
- 11.1.6** The Vendor warrants that on completion by himself and all other necessary parties the Purchaser shall receive the assurance to the Purchaser duly executed.

## **IDENTITY AND BOUNDARIES**

- 12.1** The Vendor shall identify and describe the property with sufficient accuracy as to measurements and quantities to inform the Purchaser of what the Vendor is proposing to sell. Such identification or description may, at the option of the Vendor, be evidenced by the documents of title or by a map or plan.
- 12.2** Where the Vendor chooses to furnish the said identification or description by way of a map or plan it shall be prepared and provided at the Vendor's expense. The map or plan shall be of such a nature and of such a scale as to be acceptable, where applicable, to the Land Registry and in any event to enable the boundaries, measurements, area and precise location of the property to be accurately discerned. The map or plan shall show so far as possible the appropriate position of all easements appurtenant to or affecting the property or such as are to become appurtenant to or affect the property.
- 12.3** If the Purchaser shall require a statutory declaration whether by the Vendor or otherwise that the property as identified by the Vendor in accordance with Conditions 12.1 and 12.2 has been held and enjoyed for at least 12 years in accordance with the title shown that declaration shall be prepared by the Vendor, approved by the Purchaser and provided at the expense of the Vendor.

## **MISDESCRIPTION AND COMPENSATION**

- 13.1** Measurements and quantities, if substantially correct, shall not be the subject of compensation, nor shall any compensation be payable in respect of any mistake in a sale plan furnished for the purpose of identity; but where an incorrect statement, error or omission, whether as to measurements, quantities or otherwise, materially affects the description of the property, nothing in this paragraph shall prevent the payment or allowance of compensation under the next paragraph.
- 13.2** Subject as aforesaid, any such error, omission or mis-statement in the contract or in replies to any enquiry oral or written made with respect to the property in the course of the negotiations leading to the contract (whether or not it materially affects the description of the property) shall not annul the sale, nor entitle the Purchaser to be discharged from his purchase but shall entitle the Purchaser or the Vendor as the case may require, to compensation; provided that the Purchaser shall not be entitled to such compensation in respect of any matter of which he is deemed to have notice under Condition 3.3 or 4.2 where applicable.
- 13.3** If any dispute arises between the parties as to the amount of such compensation, it shall, in default of any successful mediation under Condition 23, be settled by an independent expert agreed by the parties or, in default of such agreement, nominated by the President of the Law Society of Northern Ireland. The decision of such independent expert shall be final and binding on the parties and the fees of such expert shall be borne equally by the parties unless the expert otherwise directs.
- 13.4** Nothing in these Conditions shall:
- (a) entitle the Vendor to compel the Purchaser to accept or the Purchaser to compel the Vendor to assure (with or without compensation) property which differs substantially from the property agreed to be sold and purchased, whether in quantity, quality, tenure or otherwise, if the Purchaser or the Vendor respectively would be prejudiced by reason of such difference; or
  - (b) affect the right of the Purchaser to rescind or repudiate the contract where compensation for a claim attributable to a material error, omission or mis-statement cannot be assessed.

## **POSSESSION BEFORE COMPLETION**

- 14.1** If the Purchaser (not already being in occupation as lessee or tenant at a rent) is let into occupation of the property before the completion date then, as from the date of his going into occupation until actual completion, or until rescission of the contract he ceases to occupy the property, the Purchaser shall:
- (a) be the licensee/ caretaker and not the tenant of the Vendor;
  - (b) pay interest on the balance purchase money at the rate prescribed by Condition 16.1;
  - (c) keep the property in as good repair and condition as it was in when he went into occupation;

- (d) pay, or otherwise indemnify the Vendor against outgoings and expenses (including the cost of insurance) in respect of the property, the Purchaser at the same time taking or being credited with the income of the property (if any) and
  - (e) not to carry out any development within the meaning of the Planning (Northern Ireland) Orders.
- 14.2** Upon rescission of the contract, or upon the expiration of not less than 5 working days' notice given by the Vendor to the Purchaser, the Purchaser shall forthwith give up the property in such repair or condition as aforesaid.
- 14.3** A Purchaser going into occupation before the completion date shall be deemed thereby to have accepted the Vendor's title.
- 14.4** Where the Purchaser is allowed access to the property for the purpose only of carrying out work or installations, the Purchaser shall not be treated as being let into occupation within the meaning of this Condition.

#### **COMPLETION AND APPORTIONMENT**

- 15.1** The date for completion shall be stated in the Memorandum of Sale but if not so stated shall be the first working day after the expiration of 4 weeks from the date of the contract, and completion shall, in default of prior agreement, take place at the office of the Vendor's solicitors or, if required by the Vendor, at the office of the solicitors for the Vendor's mortgagee.
- 15.2** Ground rent will be paid by the Vendor to the gale day immediately preceding the date for completion except where such date is a gale day when ground rent as opposed to rack rent will be paid by the Vendor to such date and no apportionment of ground rent shall be made.
- 15.2.1** The Vendor shall produce to the Purchaser an up to date receipt for any ground rent paid.
- 15.3** The Vendor will discharge the rates up to the date for completion.
- 15.4** Apportionment of income and outgoings (other than ground rent) of the property shall be made as follows:
- (a) Where the property is sold with entire vacant possession but with the benefit of sub-rents or where the Purchaser is in possession of the entire property under a tenancy at a rent, apportionment shall be made of the rental income as at the date of actual completion (that day itself to be apportioned to the Vendor).
  - (b) In any case not expressly provided for in this Condition or in Conditions 14 or 16, apportionment shall be made as at the date fixed for completion.
- 15.5** Completion shall be by a cheque drawn on the Purchaser's Solicitors' client account for the amount required.

- 15.6** Where the Vendor has to discharge a mortgage or other charge and if the Purchaser has so required in writing prior to 5 working days before the date for completion the Vendor shall produce a completion statement in which he shall state the amount due to redeem it and the Purchaser shall be entitled to make payment of such part of the balance purchase money payable directly to the mortgagee by cheque or telegraphic transfer or as in Condition 15.5.
- 15.7** Where the Purchaser's solicitor requires any undertaking relating to completion from the Vendor's Solicitor:
- (a) any such undertaking (other than the undertakings contained in the completion letter recommended under the Home Charter Scheme) shall be void unless same has been received by the Vendor's Solicitor not less than 3 working days prior to the date for completion;
  - (b) where Condition 15.7 is not adhered to, any provision in the completion letter to the effect that encashment of the purchase monies is deemed acceptance of the undertakings contained in that letter is also void, save so far as the undertakings contained in the completion letter recommended under the Home Charter Scheme are concerned;
  - (c) the Purchaser's solicitor acknowledges that the Vendor's solicitor has the benefit of this Clause;
  - (d) notwithstanding the generality of the foregoing the Vendor's solicitor and Purchaser's solicitor may waive the terms of this Clause by express agreement.
- 15.8** Where Value Added Tax is due to be paid on the consideration:
- (a) the Vendor shall supply on completion a VAT invoice showing the Vendor's VAT Registration Number and any other details required from time to time by law;
  - (b) the Purchaser shall upon receipt of the VAT invoice or on the date of completion, whichever is the later, pay to the Vendor or his solicitor the appropriate amount of VAT;
  - (c) the Vendor shall provide to the Purchaser a VAT receipt for the amount so paid;
  - (d) interest at the rate provided for in Condition 16.1(a) shall run on any Value Added Tax outstanding from the date of completion to the date of supply or delivery of the VAT invoice (whichever shall be later).
- 15.9** Any sum agreed to be paid for the purchase of furnishings fittings or other chattels shall, in the absence of specific agreement to the contrary, be deemed to form part of the balance purchase money, to be payable on completion and to be subject to these conditions in the same manner as the remainder of the balance purchase money including, but without prejudice to the generality of the foregoing, the conditions relating to the payment of interest.

## **INTEREST ON PURCHASE MONEY**

- 16.1** If the sale shall not have been completed on or before the date fixed for completion then:
- (a) if the sale is with entire vacant possession the Purchaser shall pay interest at the rate specified in the Special Conditions or if none interest at the rate of 6% above the UK clearing Bank of England and in force at the date of the contract on the amount of the purchase money (less any deposit paid) from and including the date fixed for completion until the day of actual completion of the sale but excluding that day and interest under Condition 14 shall not be payable for any period in respect of which interest is paid under this Condition,
  - (b) if the sale is subject to any tenancy or tenancies of the whole or any part of the property, the Purchaser shall pay interest at the same rate and for the same period as specified in the last preceding sub-clause, save that the Vendor shall have the right notwithstanding Condition 15.4(b) to take the rents and profits less the outgoings of the whole property for the same period instead of the said interest.
- 16.2** The Purchaser shall not be liable to pay interest under Condition 16.1 if and so long as delay in completion is attributable to the Vendor's default.
- 16.3** If delay in completion shall arise otherwise than by reason of the Purchaser's default and the Purchaser shall at his risk place the purchase money, less any deposit paid under the contract, on a deposit account in a Bank or Building Society and forthwith give notice thereof to the Vendor, then from the date of such deposit in a Bank or Building Society the Vendor shall not be entitled to exercise the alternative right to rents and profits conferred by Condition 16.1(b) and shall for such period as the Purchaser is not in default accept such interest as is actually produced from such Bank or Building Society deposit in lieu of interest under Condition 16.1.
- 16.4** If the sale of property sold with entire vacant possession shall be completed after the date for completion and delay in completion is attributable to the default of the Vendor and he retains or withholds physical possession, the Purchaser may, in lieu of his rights at law or in equity, require the Vendor to pay or allow to him on actual completion the equivalent of a fair rent (at a rate calculated as an annual sum equal to the rateable valuation of the property at the date of contract) for such period as delay in completion shall have been due to the default of the Vendor.

## **SALE OF PART OF UNREGISTERED LAND**

- 17.** Where part only of the lands on a title is being sold the Purchaser will supply free to the Vendor a counterpart or certified photocopy of the registered assurance.

## **RESCISSION**

- 18.1** If the Purchaser takes or makes any objection or requisition as to title, assurance or otherwise which the Vendor is unable or, on the ground of unreasonable expense or other reasonable ground, unwilling to remove or comply with and does not withdraw

the same within 10 working days after being required in writing so to do, the Vendor may rescind the contract by notice in writing served on the Purchaser, notwithstanding any intermediate negotiation or litigation.

- 18.2** If the contract is rescinded under Conditions 2.2, 6.2, 8.3(d) or 18.1 or 21.2(b) the Vendor shall repay to the Purchaser the deposit and any money paid on account of the purchase price but without interest and the Purchaser shall return all papers in his possession belonging to the Vendor and at the expense of the Vendors procure the cancellation of any entry relating to the contract in any register but shall otherwise have no claim against the Vendor.

## **NOTICES TO COMPLETE AND REMEDIES ON DEFAULT**

- 19.1** This Condition shall apply in every case except where the Special Conditions provide that time is to be of the essence of the contract in respect of the date for completion.
- 19.2** If the sale shall not be completed on the day for completion either party may on that date or at any time thereafter (unless the contract shall first have been rescinded or become void) give to the other party notice in writing to complete the transaction in accordance with this Condition but such notice shall only be effective if the party giving the same at the time the notice is sent is either ready, able and willing to complete or is not so ready, able and willing by reason of the default or omission of the other party to the contract.
- 19.3** Upon service of an effective notice pursuant to the preceding clause it shall be an express term of the contract that the party to whom the notice is given shall complete the transaction within 5 working days after the day of service of the notice (excluding the day of service) and in respect of such period time shall be of the essence of the contract but without prejudice to any intermediate right of rescission by either party.
- 19.4** If the Purchaser does not comply with the terms of an effective notice served by the Vendor under this Condition then:
- (a) the Purchaser shall forthwith on the expiry of that notice, or within such further period as the Vendor may allow, return all papers in his possession belonging to the Vendor and at his own expense procure the cancellation of any entry relating to the contract in any register; and
  - (b) without prejudice to any other rights or remedies available to him at law or in equity, the Vendor may:
    - i. forfeit and retain for his own benefit the deposit paid by the Purchaser; and
    - ii. resell the property whether by auction or by private treaty without previously tendering an assurance to the Purchaser;
    - iii. recover by auction at law any deposit contracted to be paid by the Purchaser but not paid at the time of service of the notice.

(c) If on any such re-sale contracted within one year from the date for completion the Vendor incurs a loss, the Purchaser shall pay to the Vendor as liquidated damages the amount of such loss, which shall include all costs and expenses reasonably incurred in any such re-sale or any attempted re-sale, subject to the Vendor giving credit for any deposit and any money paid on account of the purchase price, but any surplus money shall be retained by the Vendor.

**19.5** If the Vendor does not comply with the terms of an effective notice served by the Purchaser under this Condition, then the Purchaser may elect either:

(a) to enforce against the Vendor without any further or other notice under the contract such rights and remedies as may be available to the Purchaser at law or in equity, or

(b) without prejudice to any right of the Purchaser to damages, to give notice in writing to the Vendor forthwith to repay to the Purchaser any deposit and any money paid on account of the purchase price, but on compliance with that notice the Purchaser shall no longer be entitled to any right to specific performance of the contract and shall return forthwith all papers in his possession belonging to the Vendor, and at the expense of the Vendor procure the cancellation of any entry relating to the contract in any register.

**19.6** The party serving a notice under this Condition may at the request or with the consent of the other party extend the term of the notice for one or more specifically stated periods of time and thereupon the term of the notice shall be deemed to expire on the last day of such extended period or periods, and the notice shall operate as though this Condition stipulated such extended period of notice in lieu of 5 working days, and time shall be of the essence of the contract accordingly.

## **CONDITIONS APPLICABLE TO AUCTIONS**

**20.1** In a sale by auction:

(a) the auctioneer may refuse to accept a bid;

(b) the highest accepted bidder shall be the purchaser;

(c) the Vendor reserves the following rights:

i. To divide the property into lots and sub-divide, rearrange or consolidate any lots;

ii. To bid up to any reserved price, by himself or his agent

iii. Without disclosing a reserved price, to withdraw from the sale any property or lot at any time before it has been sold, whether or not the sale has commenced.

(d) unless otherwise provided in the contract the sale is subject to a reserved price for the property and, when the property is sold in lots, for each lot;

- (e) if any dispute arises as to any bid, the auctioneer shall forthwith (at his option) either determine the dispute or again put the property or lot in dispute at the last undisputed bid;
  - (f) the purchaser shall forthwith sign the contract and immediately pay to the Vendor or to the Vendor's agent a deposit of 10 per centum of the purchase monies and if the Purchaser shall fail to pay such deposit the contract shall not be formed.
- 20.2** The Vendor shall at the time of the auction provide for inspection the searches and certificates set out in Condition 2.3.
- 20.3** These conditions may be inspected prior to the auction at the place of sale and at the time of the sale but they will not then be read, and the Purchaser shall be deemed to have knowledge of the Conditions and of all the terms thereof and shall be deemed to bid on such terms, whether he shall have inspected the Conditions or not.

## **LOANS**

- 21.1** Where the Purchaser requires an advance from any financial institution to assist him with the purchase he shall state in that part of the memorandum designated for the purpose or otherwise in the body of the contract:
- (a) the amount of the advance required
  - (b) the identity of the financial institution to which application for such advance has been made; and
  - (c) the date by which an offer of advance is expected.
- 21.2** The following conditions shall apply namely:
- (a) the Purchaser shall be deemed to warrant that he has already applied for an advance of the required sum and that he has furnished or will furnish to the financial institution any information which it may require to enable it to deal with the application, provided however that if no specific sum is stated he shall be deemed not to require an advance and provided further that he shall inform the Vendor forthwith upon an offer of the required terms being made;
  - (b) if by the stated date upon which an offer of advance is expected an offer of the required sum has not been made at the normal rate of interest and without abnormal conditions then the Purchaser shall forthwith inform the Vendor and thereupon the contract shall be deemed to be rescinded and Condition 18.2 shall apply, provided however that if no such date is stated then a date 10 working days prior to the date for completion shall be deemed to apply;
  - (c) for the purpose of Condition 21.2(b) the following conditions shall be deemed not to be abnormal conditions:

- i. A condition relating to the state of repair of the property which does not require a retention of at least 2½% of the purchase money against repairs or improvements;
- ii. A condition requiring the redemption of any existing mortgage.

(d) If the Purchaser does not inform the Vendor within 5 working days after the stated date that an offer of the required sum has not been made in accordance with Condition 21.2(b) it shall be deemed that the Purchaser does not require an advance.

## **CONTINUING CONTRACTUAL OBLIGATIONS**

22. Notwithstanding the completion by the Purchaser, any part of the contract to which effect is not given by the assurance, and which is capable of taking effect after completion, shall remain in full force and effect.

## **MEDIATION**

23. In the event of any dispute or difference arising between the parties which is not resolved by negotiation, either party may refer the matter to the Law Society of Northern Ireland Dispute Resolution Service ('the service') and if the matter has not been resolved within 10 working days of referral to the service or such longer period as both parties shall agree, then the mediation by the service shall be deemed to be at an end and each party shall be free to pursue his own remedies.

## **CHATTELS**

24. Where chattels, fittings or other separate items are included in the sale (whether by auction or private treaty) the same are warranted to be the Vendor's unencumbered property and free of any bill of sale, lien, hiring, hire-purchase or other third party claim, save as specified in the Special Conditions.

## **DEFECTS**

25. Without prejudice to the parties' rights or remedies at common law, any complaint about any chattels which are included in the sale or services to or on the premises not being in working order in accordance with any representations made by the Vendor shall be made to the Vendor's solicitor within 15 working days of completion and time shall be of the essence in this respect and if no complaint shall be made within such a period, the Purchaser shall be deemed to have accepted all such chattels or services as being in accordance with the contract.

## **SOLICITORS:**