

# STANDARD COMMERCIAL PROPERTY CONDITIONS (THIRD EDITION - 2018 REVISION)

## PART 1

### 1. GENERAL

#### 1.1 Definitions

In these conditions:

- 1.1.1 (a) "accrued interest" means:
- (i) if money has been placed on deposit or in a building society share account, the interest actually earned
  - (ii) otherwise, the interest at which might reasonably have been earned by depositing the money at interest on seven days' notice of withdrawal with a clearing bank
- less, in either case, any proper charges for handling the money
- (b) "accommodation day" has the meaning given in condition 9.3.2
- (c) "clearing bank" means a bank admitted by the Bank of England as a direct participant in the CHAPS system
- (d) "completion date" has the meaning given in condition 9.1.1
- (e) "contract date" has the meaning given in condition 9.1.1 from time to time in force
- (f) "conveyancer" has the meaning given by rule 25.7A of the Land Registration Rules 2003
- (g) "lease" includes sub-lease, tenancy and agreement for a lease or sub-lease
- (h) "mortgage" means a mortgage or charge securing the performance of any obligation (whether or not for the payment of money)
- (i) "notice to complete" means a notice requiring completion of the contract in accordance with condition 9.8
- (j) "option to buy" means an option to buy any land having effect under Part 1 of Schedule 9B to the Housing Act 1988 and references to exercising the option to buy include exercising the option under previous legislation and options of this kind includes such options
- (k) "post" includes postal services provided by a postal operator and "postal services" has the meaning given to it by section 27(1)(a) and (c) of the Postal Services Act 2000 and "postal operator" has the meaning given by section 27(2) and (4) of that Act
- (l) "pre-conditional" means a notice, order or proposal given or made (whether before or after the date of the contract) by a body acting on statutory authority
- (m) "transfer" includes obligation
- (n) "transfer" includes conveyance and assignment
- (o) "VAT" means value added tax
- (p) "working day" means any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory Bank Holiday

1.1.2 In these conditions the terms "absolute title" and "official copies" have the special meanings given to them by the Land Registration Act 2002.

1.1.3 A party is ready, able and willing to complete:

- (a) if it would be, but for the default of the other party; and
- (b) in the case of the seller, even though the property remains subject to a mortgage, if the amount to be paid on completion enables the property to be transferred free of all mortgages (except those to which the sale is expressly subject)

1.1.4 (a) The conditions in Part 1 apply subject to any variations or exclusions in the contract.

(b) A condition in Part 2 only applies if expressly incorporated into the contract.

1.2 **Joint parties**

If there is more than one seller or more than one buyer, the obligations which they undertake can be enforced against them all jointly or against each individually.

1.3 **Notice and documents**

1.3.1 A notice required or authorised by the contract is to be in writing.

1.3.2 Giving a notice or delivering a document to a party's conveyancer has the same effect as giving or delivering it to that party.

1.3.3 Where delivery of the original document is not essential, a notice or document is validly given or sent if it is sent by:

- (a) fax to a fax number for the intended recipient expressly given in the contract for that purpose; or
- (b) e-mail to an e-mail address for the intended recipient expressly given in the contract for that purpose.

1.3.4 Subject to conditions 1.3.5 to 1.3.7, a notice is given and a document delivered when it is received.

1.3.5 (a) A notice or document sent through the document exchange is received when it is available for collection.

(b) A notice or document which is received after 4.00 p.m. on a working day, or on a day which is not a working day, is to be treated as having been received on the next working day.

(c) An auto-mated response to a notice or document sent by e-mail that the intended recipient is out of the office is to be treated as proof that the notice or document was not received.

1.3.6 Condition 1.3.7 applies unless there is proof:

- (a) that a notice or document has not been received; or
- (b) of the actual time of receipt.

1.3.7 A notice or document sent by the following means is treated as having been received as follows:

- (a) by first class post: before 4.00 pm on the second working day after posting
- (b) by second class post: before 4.00 pm on the third working day after posting
- (c) through a document exchange: before 4.00 pm on the first working day after the day on which it would normally be available for collection by the addressee
- (d) by fax: one hour after despatch
- (e) by e-mail: one hour after despatch

1.3.8 In condition 1.3.7, "first class post" means a postal service which seeks to deliver mail as fast as it can on the next working day in all or the majority of cases.

1.4 **Assignment and sub-sales**

1.4.1 The buyer is not entitled to transfer the benefit of the contract.

1.4.2 The seller cannot be required to transfer the property in parts or to any person other than the buyer.

1.5 **Third party rights**

Nothing in this contract creates rights under the Contracts (Rights of Third Parties) Act 1999 intended to be enforceable by third parties.

2. **VAT STANDARD RATED SUPPLY**

2.1 The seller warrants that the sale of the property will constitute a supply chargeable to VAT at the standard rate.

2.2 The buyer is to pay the seller on completion an additional amount equal to the VAT in exchange for a VAT invoice from the seller.

3. **FORMATION**

3.1 **Date**

3.1.1 If the parties intend to make a contract by exchanging duplicate copies by post or through a document exchange, the contract is made when the last copy is posted or deposited at the document exchange.

3.1.2 If the parties' conveyancers agree to treat exchange as taking place before duplicate copies are actually exchanged, the contract is made as so agreed.

3.2 **Deposit**

3.2.1 Unless otherwise agreed, the buyer is to pay a deposit of 10 per cent of the purchase price no later than the date of the contract. Where the agreed deposit is less than 10 per cent of the purchase price, condition 9.4.3 applies.

3.2.2 Except on a sale by auction the deposit is to be paid by electronic means from an account held in the name of a conveyancer as a clearing bank to an account in the name of the seller's conveyancer and is to be held by the seller's conveyancer as stakeholder on terms that on completion it is to be paid to the seller with accrued interest.

3.3 **Auctions**

3.3.1 On a sale by auction the following conditions apply to the property and, if it is sold on lots, to each lot.

3.3.2 The sale is subject to a reserve price.

3.3.3 The seller, or a person on its behalf, may bid up to the reserve price.

3.3.4 The auctioneer may refuse any bid.

3.3.5 If there is a dispute about a bid, the auctioneer may resolve the dispute or restart the auction at the last unbid price.

3.3.6 The auctioneer is to hold the deposit as agent for the seller.

3.3.7 If any cheque tendered in payment of all or part of the deposit is dishonoured when first presented, the seller may, within seven working days of being notified that the cheque has been dishonoured, give notice to the buyer that the contract is discharged by the buyer's breach.

4. **MATTERS AFFECTING THE PROPERTY**

4.1 **Freedom from incumbrances**

4.1.1 The seller is selling the property free from incumbrances, other than those mentioned in condition 4.1.2.

4.1.2 The incumbrances subject to which the property is sold are:

- (a) those disclosed in the contract;
- (b) those discoverable by inspection of the property before the date of the contract;
- (c) those the seller does not and could not reasonably know about;
- (d) matters, other than mortgages, disclosed or which would have been disclosed by the searches and enquiries which a prudent buyer would have made before entering into the contract;
- (e) public rights.

4.1.3 After the contracting date, the seller is to give the buyer written details without delay of any new public rights and of anything in writing which it seems about continuing a matter covered by condition 4.1.2.

4.1.4 The buyer is to bear the cost of complying with any outstanding public requirement and is to indemnify the seller against any liability resulting from a public requirement.

4.2 **Physical state**

4.2.1 The buyer accepts the property in the physical state it is in at the date of the contract unless the seller is building or converting it.

4.2.2 A leasehold property is not subject to any subsisting breach of a condition or tenant's obligation relating to the physical state of the property which renders the lease liable to forfeiture.

4.2.3 A sub-lease is granted subject to any subsisting breach of a condition or tenant's obligation relating to the physical state of the property which renders the seller's own lease liable to forfeiture.

5. **LEASES AFFECTING THE PROPERTY**

5.1 **General**

5.1.1 This condition applies if any part of the property is sold subject to a lease.

5.1.2 The seller having provided the buyer with full details of each leaseable copies of documents embodying the lease terms, the buyer is treated as entering into the contract knowing and accepting those terms.

5.1.3 The seller is not to serve a notice to end the lease nor to accept a surrender.

5.1.4 The seller is to inform the buyer without delay if the lease ends.

5.1.5 The buyer is to indemnify the seller against all claims arising from the lease after actual completion, this includes claims which are enforceable against a buyer for want of registration.

5.1.6 If the property does not include all the land let, the seller may apportion the rent and, if the lease is a new tenancy, the buyer may require the seller to apply under section 19 of the Landlord and Tenant (Covenants) Act 1995 for the new apportionment to bind the tenant.

5.2 **Property management**

5.2.1 The seller is promptly to give the buyer full particulars of:

- (a) any court or arbitration proceedings in connection with the lease; and
- (b) any application for a licence, consent or approval under the lease.

5.2.2 Conditions 5.2.1 to 5.2.3 do not apply to a rent review process to which condition 9.1 applies or any negotiations or proceedings to which condition 9.2 applies.

5.2.3 Subject to condition 5.2.4, the seller is to conduct the proceedings in accordance with written directions given by the buyer from time to time (for which the seller is to apply, unless to do so might place the seller in breach of an obligation to the tenant or a statutory duty).

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**Trevor Rushton**



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