

Auction General Conditions

Definitions and Interpretation

Special capitalised words are used throughout this document, and, unless the context suggests otherwise the word is defined on its first use.

These conditions "General Conditions" apply to the sale of each lot placed in the auction "Lot" subject to any variation or addition referred to in the special conditions of sale "Special Conditions" relating to the Lot and which Special Conditions shall have precedence over these General Conditions.

Seller's Reservation

1. The owner of, or person authorised to deal with, the Lot "Seller" reserves to itself the following rights:
 - [a] to withdraw the Lot from the auction;
 - [b] the right to sell by private bargain the whole or any part of the Lot before the auction and that without disclosing the reserve price or giving any reason;
 - [c] to consolidate two or more lots into one Lot; and
 - [d] the right to bid by itself or by the Auctioneer up to the reserve price.

Reserve Price

2. Unless otherwise stated, there will be an undisclosed reserve price.

Bidding

3. The Auctioneer retains the right to regulate the bidding and refuse any bid or bids without assigning any reason therefore in their sole and absolute discretion. All bidders are required to register their details and provide proof of identity and any other regulatory requirements as detailed by the Auctioneer to obtain a bidder's number prior to bidding. In the event of competition, each offer after the first shall exceed the immediately preceding offer by such sum as may be prescribed by the Auctioneer. The Auctioneer retains the right to divide and sell the Lot in separate lots if the Lot is unsold or sell a group of individual lots as one lot. All bids are to be made clearly. The person offering the reserve price or, should there be more offers than one above the reserve price, the highest bidder, shall be the successful bidder "Purchaser" and such bid shall be the price payable by the Purchaser to the Seller for the Lot ("Price"). On the fall of the Auctioneer's hammer on the successful bid, the Purchaser must provide the Auctioneer with their allocated bidding number and in default the Auctioneer shall be entitled to re-submit the Lot for sale. The Purchaser shall then immediately pay the Deposit in the manner prescribed by the Auctioneer. After paying the necessary Deposit the Purchaser shall then immediately complete and sign the Minute of Preference and Enactment, the date of which shall be the date of the auction and shall become bound and obliged for the sum offered by the Purchaser. If the successful bidder acted as an agent, they must give details of their principal at the time of completing and signing the Minute of Preference and Enactment. In default the Auctioneer will be entitled to re-submit the Lot for sale or allocate a representative to sign the contract as offeror for the Purchaser and principal. A bid which does not reach the reserve price at the time of auction may be held provisionally by the Auctioneer and submitted to the Seller of the Lot to be accepted or rejected. The bidder is held liable to their provisional bid price for 7 working days after the auction date. If the Auctioneer does not return an answer to the bidder within this time, then the bidder is not required to stand on their provisional bid. If the provisional bid is accepted, then the bidder shall be the Purchaser and is required to proceed under auction terms immediately upon notification.
4. Where the sale of a Lot is agreed pre or post auction then the payment of the Deposit shall bind the person purchasing the Lot as the Purchaser to these General Conditions and any Special Conditions and the Purchaser will proceed as if the Lot had been purchased at the auction. The Auctioneer reserves the right to modify the specified Date of Entry in the auction contract to reflect any agreement reached between the Seller and the Purchaser.
5. Where a Deposit payment is made by telephone or proxy form there shall be no cooling off period allowed. In default of the Purchaser signing the contract the Auctioneer will be entitled to allocate a representative to sign the contract as offeror for the Purchaser and principal.

6. If the Purchaser is a Limited Company, then: -

[a] The contract to purchase the Lot shall be deemed to be entered into at the request of the person bidding at the Auction "Guarantor".

[b] The Guarantor warrants that the Purchaser is a properly constituted Limited Company of good standing and empowered to purchase any estate or interest in land in the United Kingdom and that the Guarantor has been duly authorised by the Purchaser to bind the Purchaser to purchase the Lot.

[c] The Guarantor guarantees to the Seller "as witnessed by the signature of the Guarantor on the Minute of Preference and Enactment which the Guarantor shall be deemed to sign as agent for the Purchaser and as the Guarantor of the Purchaser" as follows:

i. That the Guarantor shall within five working days of any request therefor provide to the Seller's solicitors such evidence as they may reasonably require to verify the warranties given by the Guarantor under clause 6.b;

ii. That the Purchaser will observe and perform its obligations under this contract to purchase the Lot and the Guarantor will pay and make good to and keep the Seller indemnified in respect of all losses, actions, costs, expenses and damages of the Seller arising by virtue of any breach by the Purchaser of such obligations and the Guarantor's liabilities to the Seller hereunder shall not be released by any neglect or forbearance on the part of the Seller in enforcing or giving time to the Purchaser for the performance of the Purchaser's contract to purchase the Lot; and

iii. That if any liquidator of the Purchaser shall disclaim this contract to purchase the Lot then the Seller may within 28 days from the date of such disclaimer give the Guarantor fourteen days written notice requiring the Guarantor to accept such disposition of the subjects contained in the Lot upon the same terms as the General Conditions and Special Conditions "as if any such liquidator had not disclaimed the same" save that time shall be of the essence for the purpose of the date for completion which shall be on or before the expiry of such fourteen days' notice and the Guarantor shall "in addition to the payment of all sums due from the Purchaser to the Seller under this contract" pay to the Seller any interest which should have been payable to the Seller by the Purchaser but for such disclaimer.

Judge of Roup

7. The Judge of the Roup shall be the Auctioneer named in any Minute of Preference and Enactment and shall have power to determine whatever questions or differences may occur at the Auction between Seller and a bidder or among the bidders themselves in relation to the foresaid Auction, to prefer the highest bidder and to adjourn the Auction from time to time.

Deposit

8. A Deposit of 10% of the Price subject to a minimum of £5,000 ("Deposit") shall be paid by the successful bidder or the Purchaser contemporaneously with the execution of the Minute of Enactment and Preference to the Auctioneer as agents for the Seller, and after the completion and subscription of the Minute of Preference and Enactment. Payment of the Deposit must be made by cleared funds in such a manner as the Auctioneer, in their sole discretion, specify. If the Purchaser fails to pay the Deposit, the Auctioneer may re-sell the Lot or require the bidder immediately preceding to the Purchaser to complete the purchase at the last offer without prejudice to the Seller's right to claim damages against the Purchaser for their failure. If a cheque given for the payment of the Deposit is dishonoured on presentation or if the Purchaser fails to pay such Deposit immediately after subscription of the Minute of Preference and Enactment, the Seller will be entitled to treat this as breach of contract by the Purchaser and will be entitled, but not bound, to rescind the contract and re-sell the Lot. Without prejudice to this the Seller may still claim damages for breach of contract against the Purchaser. The Auctioneer reserves the right to hold the Minute of Preference and Enactment until cleared funds have been secured from the Purchaser.

Date of Entry and Settlement

9. The date of entry "Date of Entry", when the balance of the Price is payable, shall take place on the date specified in the Special Conditions or, if not specified, twenty-eight days after the date of the auction or such earlier date as may be mutually agreed between Seller and the Purchaser. The Price will be exclusive of VAT. Should VAT be chargeable on the Lot, the Seller reserves their right to charge VAT in addition to the Price, in exchange for a valid VAT invoice. On the Date of Entry, the balance of the Price will require to be paid by the Purchaser's solicitor to the Seller's Solicitor's Client Account by same day electronic transfer. If the balance of the Price has not been paid in full by 3pm on the Date of Entry the Seller's solicitor shall be entitled to refuse to settle the transaction on that day or, as a condition of completing after 3pm on that day, to require that the next working day shall be deemed to be the Date of Entry for the purpose of calculating interest on the balance of the Price payable, and apportioning incomings and outgoings. Payment of the balance of the Price in full by 3pm on the Date of Entry is of the essence of the contract. In the event of the balance of the Price or any part thereof remaining outstanding as at the Date of Entry, then notwithstanding consignment or the fact that entry has not been taken by the Purchaser, the Purchaser shall be deemed to be in material breach of contract and further, interest will accrue, on the balance of the Price, in favour of the Seller at the rate of five per cent per annum above the Royal Bank of Scotland plc base lending rate governing from time to time until full payment of the balance of the Price "including the interest accrued" is made or, in the event of the Seller exercising their option to rescind the contract, until such time as the Seller shall have completed re-sale of the Lot and received the re-sale price and further interest shall run on any shortfall between the balance of the Price and the re-sale price until such time as the shortfall shall have been paid to the Seller by the Purchaser. If the balance of the Price, with interest as aforesaid, is not paid in full by the date seven days after the Date of Entry the Seller will be entitled to treat the Purchaser as being in material breach of contract and will be entitled to rescind the contract without liability upon giving prior written notice to that effect to the Purchaser and, in such circumstances, the Deposit will be held to be forfeit to the Seller, without prejudice to the Seller's right to claim damages for all losses, damages and expenses suffered as a result of the breach of contract by the Purchaser, so far as such losses exceed the Deposit forfeited by the Purchaser, including interest on the balance of the Price calculated as set out in this clause. For computation, the interest element of any claim by the Seller shall be deemed to be a liquidate penalty provision eligible notwithstanding the exercise by the Seller of their option to rescind the contract for non-payment of the Price or any repudiation of the contract by the Purchaser. If for any reason the Seller is unable to complete the sale of the Lot, then the Deposit will be returned to the Purchaser. The Purchaser agrees that the Auctioneer and Seller will not be held liable for any expenses, loss of possible income incurred by the Purchaser in this instance or any liability whatsoever.

Risk and Destruction

10. The risk of damage or destruction of the Lot will pass to the Purchaser on the date of signing of the Minute of Preference and Enactment by or on behalf of the Purchaser and the Purchaser shall make their own arrangements for insurance of the Lot with effect from that time. The Seller will be under no liability in respect of any damage to or destruction of the Lot from whatever cause as from this time. The Purchaser will be bound to proceed with the purchase of the Lot notwithstanding any damage to or destruction of the Lot from whatever cause.

Tenancy

11. The Purchaser is deemed to have satisfied itself as to any lease or tenancy agreement in place and accept the terms of any such agreement for the Lot.

Apportionment of Rents, Rates, Taxes etc

12. The Purchaser will be entitled to any rents of the Lot purchased by them from and after the date of payment of the Price in full. All apportionments between the Seller and the Purchaser of rent or other receipts or outgoings shall be made as at the Date of Entry on a day/year basis on the assumption of a 365-day year.

Necessary Enquiries

13. The Purchaser shall be deemed to have made all necessary enquiries in connection with the planning position, the status of roads, footpaths, water, drains and sewage and generally all such other matters as are normally covered by Registers of Scotland Land Register/ Sasine Searches, Property Enquiry Certificates, Coal Authority Reports, Searches in the personal registers, charges registers and registers of inhibitions and insolvencies and the Seller will not be required to produce any such certificates or searches. Purchasers are advised to make their own enquiries to the Lot. The Purchaser is deemed to have placed no reliance whatsoever on:

[a] any sales evidence or lettings evidence which appears in the catalogue or websites, and the Purchaser shall be deemed to have made their own enquiries with regards to sales evidence and letting potential of the Lot.

[b] any comments made either verbally or in the catalogue or on websites, with respect to; descriptions or location, accommodation details or descriptions or statements, any rental guarantees, any sales evidence whatsoever, any lettings evidence whatsoever, any prospective development potential of the Lot or any related property which may be stated whatsoever, or anything which appears on the descriptive page or website relating to the Lot whatsoever, or has been verbally said to the Purchaser or prospective purchasers.

No Warranty

14. No warranty or representation is given by the Seller or the Auctioneer:

[a] that the present use of the Lot is a permitted use under the Town and Country Planning [Scotland] Acts.

[b] as to the state or condition of the Lot or any part of it.

[c] as to whether the Lot is subject to any schemes, resolutions, development orders, improvement notices or other proposals under the Housing Acts or other legislation or regulations of whatever kind.

[d] as to descriptions, extents, boundaries, advertisements, accommodation, rentals, rateable value, Council Tax, leases, burdens, servitudes, rights of way or wayleaves, whether formally constituted or not, building warrants, building warrant plans, certificates of completion, planning permissions, superior consents, planning or any orders, regulations or notices made by or issued by an authority, or any particulars, plans, documents or information given by the Seller or their agents;

[e] as to whether the Lot is affected by rights and interests of statutory undertakers including rights and interests relating to electricity sub-stations, generators and gas governors and that irrespective of whether such rights and interests are held under lease, title, missives or otherwise nor as to the extent to which the Lot is subject to or has the benefit or any leases and other rights of possession and occupancy or other third party interests; or

[f] that upon registration of the Disposition or Assignment in favour of the Purchaser a Title Sheet in favour of the Purchaser or any derivative interest from the Purchaser shall be granted without exclusion or limitation of warranty or any relevant note by the Keeper of the Registers of Scotland.

Title

15. The Purchaser accepts the title to the Lot as it stands, tantum et tale, and the Purchaser will be taken bound to have satisfied themselves as to the validity and sufficiency of the title and the Seller's right to the Lot and their ability to sell same. Without prejudice to the foregoing or to any other clause within the General Conditions or Special Conditions, the Purchaser will be bound to accept the title subject to such burdens, conditions, rights of pre-emption, rights of redemption, encumbrances as set out in Section 9 of the Land Registration etc. (Scotland) Act 2012 ("2012 Act") (whether specified or referred to in the title or not), Caveats as defined in Part 6 of the 2012 Act and restrictions on use which may be imposed or contained in the title or otherwise affect the Lot and will be bound to comply therewith or obtain any necessary Waiver thereof all at their own expense. The minerals will be conveyed only in so far as the Seller has right thereto. The Lot will be sold under burden of any servitudes and rights of wayleave for laying and maintaining sewers, drains, pipes, cables, electricity, telegraph, and telephone poles, wires, and stays that may be laid in, under, through or across the Lot. The Purchaser will free and relieve the Seller of all obligations incumbent upon the Seller to construct, uphold or maintain any items of common property and any fences, walls, drains, ditches, water supplies or other works with connection

to the Lot. If the title to a Lot is not registered in the Land Register of Scotland or in Sasine Registers, it will be deduced in accordance with the Special Conditions. Any plan which the Purchaser may wish to incorporate in their title to the Lot or annex to the Disposition in their favour, or which may be required by the Keeper of the Land Register of Scotland "Keeper" shall be prepared at the sole expense of the Purchaser and shall not be warranted by the Seller. The Seller shall be under no obligation to obtain any documents and/or evidence which the Keeper may require to enable the Keeper to update or create [as the case may be] the Title Sheet of the Lot to disclose the Purchaser as the registered proprietor of the Lot, including: -

(a) a plan or bounding description sufficient to enable the Lot to be identified on the cadastral map; and

(b) evidence [such as a plans report] that [i] the description of the Lot in the title is habile to include the whole of the occupied extent and [ii] there is no conflict between the extent of the Lot and any registered cadastral units.

16. Any documents and/or evidence required shall be obtained by and at the sole expense of the Purchaser and shall not be warranted by the Seller.
17. The Seller's Solicitors will be under no obligation to exhibit or deliver any evidence including consents, affidavits or renunciations required under or by virtue of the terms of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 as amended or the Civil Partnership Act 2004.

Disposition

18. On the Date of Entry and in exchange for payment of the whole Price and interest thereon (if any) the Seller shall deliver to the Purchaser:-

(d) a duly executed Disposition or Assignment of the Lot in favour of the Purchaser and under the reservations, burdens, conditions, and others referred to in the title deeds of the Lot or otherwise affecting the same; and

(e) any tenancy or lease documentation relating to the Lot.

19. Any current lets, servitudes, rights of possession and other rights however constituted shall be excluded from the warrandice to be granted in said Disposition. The Seller will not be required to convey, transfer or assign the whole or any part of the Lot to any person or body other than the Purchaser or Guarantor if the Purchaser defaults or its liquidator disclaims the contract nor shall the Seller be required to execute a Disposition or Assignment other than of the whole Lot nor at a price different from that stated in the Minute of Preference and Enactment.

Searches

20. No Legal Reports, searches in the Register of Community Interests in Land or Searches in the Charges Registers or Company Files for the Seller or any predecessors in title will be exhibited nor will any letters of non-crystallisation of any floating charge be exhibited or delivered in respect of any floating charge granted by the Seller or any predecessor in title. No Advance Notice as defined in Section 56 of the 2012 Act will be applied for by the Seller in relation to the Disposition. The Purchaser's solicitors shall be entitled to register at their own cost an Advance Notice in respect of the Disposition in favour of the Purchaser and any Standard security by the Purchaser in favour of a lender [provided that such Advance Notices are discharged immediately if requested by the Seller's Solicitors]. The Seller will be responsible for the discharge of any recorded/registered Standard Securities affecting the Lot. Where any Lot is being sold by the Seller as heritable creditor in possession no discharge of the Standard Security in favour of the Seller or of any pari-passu or postponed Standard Securities will be exhibited or delivered. No discharge of any inhibitions registered against the granter of the said Standard Security in favour of the Seller as heritable creditor and dated after the date of registration of the said Standard Security shall be exhibited or delivered.

21. Subject to the existence of any Leases or other interests detailed in the Special Conditions, the Purchaser shall accept that vacant possession is given of the whole or any part of the Lot which is sold with vacant possession notwithstanding that there may be furniture, fittings or effects remaining therein and shall not be entitled to require the Seller to arrange for the removal of same, nor object to the taking of same, since the Seller gives no warranty as to the ownership of any moveable items situated within the Lot.

Supercession

22. Notwithstanding the delivery of the Disposition or any Assignment in favour of the Purchaser, these General Conditions of Sale, any Special Conditions of Sale, the Articles of Roup and the Minute of Preference and Enactment to follow thereon will form a continuing and enforceable contract, except in so far as fully implemented thereby, but the contract shall cease to be enforceable after a period of six months from the Date of Entry. In any case for which a memorandum of sale is signed in place of a Minute of Preference and Enactment and Articles of Roup then the Purchaser is responsible to ensure that the sale proceeds under the principles of these General Conditions and that the Deposit is paid as such, and an offer is submitted immediately to the Seller's solicitor without condition utilising these General Conditions. Should any contracts be incorrectly executed and there be a discrepancy or disagreement on the terms, prices, and parties of the contract then referral will be made to the Auctioneer's auction notes and any applicable evidence. Failure of a Seller to produce a home report or Energy Performance Certificate (EPC) when required does not constitute breach of contract on behalf of the Seller. The Seller has a duty to produce a home report as specified by law. The Auctioneers will make all attempts to ensure necessary documentation is requested when required but may not be held liable for the Seller's actions who are ultimately responsible for the cost and production of the home report and EPC.

Jurisdiction

23. The Laws of Scotland shall apply to the interpretation of these General Conditions of Sale and any Minute of Preference and Enactment following hereon, and the Articles of Roup and the Seller and the Purchaser, by subscription of the relevant Minute of Preference and Enactment, will thereby prorogate the jurisdiction of the Sheriff Court in Scotland and bind themselves to submit to the jurisdiction of the said Sheriff Court in relation to all actions arising out of these presents.