

CONDITIONS OF SALE
2019 EDITION

EXPLANATORY
MEMORANDUM

Part 1

Subject	Heading
General	<p>It is recommended that this new edition of the contract is utilised for all transactions commencing on or after 1 January 2019.</p> <p>The Conditions of Sale 2019 edition require the Purchaser to investigate title pre-contract. They envisage that during the pre-contract period, the Vendor will produce adequate documentation to enable the title to be investigated in accordance with prudent conveyancing practice. The General Conditions are intended to be general in their nature. Accordingly, the Committee acknowledges that in certain circumstances they will require modification by way of Special Condition.</p> <p>Attached at Appendix 1 are two quick reference tables of the correspondence of the new and the old conditions: correspondence of the 2019 Edition to the 2017 Edition; and correspondence of the 2017 Edition to the 2019 Edition.</p>
Numbering & References	<p>The Committee recognises the desirability of retaining the old numbering. However, regard was given to the objective that the revised Conditions would follow a more logical order. Accordingly, some General Conditions have been repositioned, giving rise to changes in clause numbers. A table of the changes is included below at Part 2.</p> <p>A general sweep was made for the better use of the defined terms "Conditions" and "General Conditions".</p>
Non-Title Information Sheet	<p>This has been removed in all respects, as the items will be covered by updated Requisitions to be launched to coincide with the Conditions of Sale 2019 edition.</p>
New Definitions	<p>Two new definitions were added as follows:</p> <p>"Accepts" – to describe what acceptance means as regards the Purchaser and the title offered and related matters.</p> <p>"Rejoinders" – to be clearer about what that term means under the Contract.</p>
Amended Definitions	<p>Some minor updates were made, including:</p> <p>"Requisitions" to make it clear that this is the term used to describe both objections and requisitions on title for the purpose of the Conditions.</p>

Part 2 - Changes from 2019 compared to 2017

2019 Number & Heading	2017 Number & Heading	Change/Addition Made or Purpose of Change/Addition
1 to 3	1 to 3 – DEFINITIONS AND INTERPRETATION	No material change.
4	4 – AUCTION	No material change.
5	5 – PRIVATE TREATY SALE	To make it clearer for the benefit of solicitors holding a deposit in escrow that under the Contract the deposit is released from escrow on Completion or upon the occurrence of another event under which the deposit can be dealt with (e.g. lawful forfeiture).
6 – TITLE	6 – PURCHASER ON NOTICE OF CERTAIN DOCUMENTS 7 – DELIVERY OF TITLE 8 – TITLE	<p>The Committee considered that it is important at the outset of General Condition 6 to make it clear that the existing statutory and common law framework remains unchanged even though the title is investigated pre-contract. However, General Condition 6(a) makes it clear that the Conditions will have priority in the case of any conflict.</p> <p>In General Condition 6(b), the title offered and proven is referenced and the Purchaser confirms he has received and is on notice of a copy of the relevant documents including replies to Requisitions. General Condition 6(b) will prevail over the operation of General Condition 6(a).</p> <p>In General Condition 6(c) we find the most fundamental change in the 2019 General Conditions. Here the Purchaser: (i) Accepts the title offered; (ii) confirms he has had the opportunity to raise any Requisitions and Rejoinders; and (iii) effectively accepts that no further or other Requisitions can be raised.</p> <p>The only circumstance in which post-contract Requisitions can be raised is under General Condition 7.</p> <p>General Conditions 6(d) and (e) follow General Conditions 8(b) and (c) in the 2017 Conditions.</p>
7 – POST-CONTRACT REQUISITIONS	17 – REQUISITIONS	Post-contract Requisitions can only be raised on a matter of title which prior to the Date of Sale was not apparent from: (i) the Contract or the documents and information provided to the Purchaser; or (ii) an inspection of the Subject Property; or (iii) an inspection of the Planning Register or the searches (if any) furnished to the Purchaser pursuant to General Condition 15; or (iv) was not otherwise known to the Purchaser prior to the Date of Sale.

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		<p>This constitutes a fundamental change to current conveyancing practice and places a clear duty on the Purchaser, beyond title investigation, to inspect the Planning Register and the Subject Property 'on the ground' prior to the Date of Sale. It also means that the Purchaser buys on notice of any other information he has about the Subject Property prior to the Date of Sale.</p> <p>The Committee considered that it was appropriate to require Purchasers to act promptly i.e. within 5 Working Days, where matters of title arise which were not apparent, as described in General Condition 7(a). If the matter of title complained of was so apparent, the Purchaser cannot raise a valid post-contract Requisition.</p> <p>If Requisitions are not raised in time i.e. within 5 Working Days, they will be considered to have been waived. Similarly, if Rejoinders are not raised in time i.e. within 5 Working Days, the Vendor's replies to Requisitions will be considered to have been accepted as satisfactory.</p> <p>General Conditions 7(c) and 7(d) require the Vendor to reply as soon as practicable to Requisitions and to any Rejoinders raised by the Purchaser.</p> <p>Time is of the essence of this Condition.</p> <p>If there is any dispute as to whether a Requisition or Rejoinder has been validly raised or satisfactorily addressed in accordance with General Condition 7, the matter may be sent for resolution under General Condition 47 (Dispute Resolution).</p>
8 – POST-CONTRACT REQUISITIONS (continued)	18 – REQUISITIONS (continued)	<p>General Condition 8 largely follows General Condition 18 in the 2017 Conditions; however it relates only to Requisitions raised post-contract pursuant to General Condition 7. It no longer includes reference to the Assurance, which is dealt with under General Condition 16. The Committee considers that any disputes about the content of the Assurance should be dealt with under General Condition 47 (Dispute Resolution). General Condition 8 does not include 'or any other matter relating to or incidental to the Sale' (which wording was included in the 2017 Conditions) because Requisitions can only be raised post-contract on matters of title arising pursuant to General Condition 7.</p> <p>As regards the Vendor's right to rescind, this is now subject to a reasonableness provision. This means that</p>

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		<p>the Vendor must 'act reasonably' in exercising its right to rescind the Sale. The Committee considered this change was necessary to align the General Conditions with the common law position and because it would be unfair to the Purchaser for the Vendor to capriciously rescind the Contract.</p>
9	10 – LEASEHOLD TITLE	<p>The Purchaser Accepts, where all or part of the Subject Property is held under a lease: (a) that it has been validly made and is subsisting; and (b) the arrangements if any as regards rent apportionment or indemnity.</p> <p>The Purchaser also Accepts any discrepancy between the covenants or conditions in any sub lease and those in any superior lease, even if that could give rise to forfeiture or a right of re-entry. Therefore, it is the responsibility of the Purchaser to identify any inconsistencies prior to the Date of Sale.</p> <p>The Committee also considered it appropriate to render the endeavours of the Vendor to obtain consent to alienation to be "reasonable endeavours", consistent with the market standard.</p>
10	13 – REGISTERED LAND	<p>Various changes have been made to reflect the fact that the specified documentation in General Conditions 13(a) to (c) has been produced by the Vendor and, where applicable, has been Accepted by the Purchaser prior to the Date of Sale.</p>
11	14 – IDENTITY	<p>The issue of identity must now be settled by the Date of Sale (i.e. pre-contract). For the avoidance of doubt, it is stated that a Purchaser cannot call on the Vendor to produce a declaration of identity unless it is provided for in the Special Conditions. General Condition 11 now confirms that the Vendor has furnished to the Purchaser the information he has as regards identity that is in his possession.</p>
N/a	Former 11 - PRIOR TITLE	<p>This General Condition has been deleted because pursuant to the 2019 Conditions the Purchaser now Accepts the title offered, and so the issue of 'prior title' does not arise.</p> <p>Former General Condition 11(b) made reference to various statutory provisions and required the Vendor after the Date of Sale to deal with 'all points properly taken in or arising out of such investigation'. This provision is no longer appropriate given that the Purchaser Accepts the title offered.</p>

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12	9 – FOREIGN VENDOR	No material change.
N/a	Former 12 – INTERMEDIATE TITLE	This General Condition has been deleted because the Purchaser Accepts the title offered, and so the issue of ‘intermediate title’ does not arise.
13 & 14	15 & 16 – RIGHTS - LIABILITIES – CONDITION OF SUBJECT PROPERTY	<p>In General Condition 13, the Vendor confirms he has disclosed all easements, rights and other matters, referred to as “Relevant Provisions” known by the Vendor to affect the Subject Property and which are likely to affect it after Completion.</p> <p>In General Condition 14, the Purchaser Accepts that he buys subject to these Relevant Provisions and the other matters which appeared in the 2017 Conditions. However, the Purchaser also buys notwithstanding any partial statement or description of a Lease or a Relevant Provision in the Particulars or in the Special Conditions or in any document specified in the Documents Schedule. While full disclosure pre-contract of any such matters by the Vendor is required insofar as it is available to him having made reasonable enquiries, in some cases the Vendor may have incomplete information. A partial description should put the Purchaser on enquiry at the pre-contract stage.</p>
15	19 – SEARCHES	<p>The Vendor confirms he has furnished the searches specified in the Searches Schedule and any searches in the Registry of Deeds in the Vendor’s possession relevant to the title.</p> <p>In the context of the Vendor’s obligation to explain searches, the Committee considered it appropriate to remove the phrase ‘unless same goes to the root of the title’ regarding acts appearing on searches outside the relevant period for the contracted title. The reason for this amendment is that, pursuant to the 2019 General Conditions, on the Date of Sale the Purchaser Accepts the title offered by the Vendor.</p>
16	20 – ASSURANCE	The Committee has moved to paragraph (a) the timeframe for the delivery of the draft Assurance by the Purchaser. Otherwise, the wording largely follows the wording in the 2017 Conditions. As under those Conditions, the delivery of the Assurance will not prejudice any Requisition (or Rejoinders); however this now relates only to those raised post-contract under General Condition 7.
17	21 – VACANT POSSESSION	No material change.

2019 Number & Heading	2017 Number & Heading	Change/Addition Made or Purpose of Change/Addition
18 & 19 – LEASES	22 & 23 – LEASES	General Condition 18 has been changed so that the Vendor confirms what has been provided to the Purchaser prior to the Date of Sale.
20 - 22	24 – 26 - COMPLETION AND INTEREST	Seven and four days have become five and three Working Days respectively.
23	27 – APPORTIONMENT AND POSSESSION	No material change.
24 & 25	28 & 29 COMPULSORY REGISTRATION	No material change.
26	30 – SIGNING “IN TRUST” OR “AS AGENT”	No material change.
27 & 28	31 & 32 – FAILURE TO PAY DEPOSIT	No material change.
29	33 – DIFFERENCES – ERRORS	An “error” now includes an omission or inaccuracy in the replies to Requisitions and Rejoinders, as these are matters which will be delivered to the Purchaser prior to the Date of Sale.
30	34 - DOCUMENTS OF TITLE RELATING TO OTHER PROPERTY	No material change.
31	35 – DISCLOSURE OF NOTICES	No material change.
32	36 – DEVELOPMENT	No material change.
33 - 35	37 - 39 – RECISSION	No material change.
36	40 – COMPLETION NOTICES	No material change.
37	41 – FORFEITURE OF DEPOSIT AND RESALE	No material change.
38	42 – DAMAGES FOR DEFAULT	No material change.
39 – 41	43 – 45 – RISK	No material change.
42	46 – CHATTELS	No material change.
43	47 – INSPECTION	No material change.
44	48 – NON-MERGER	No material change.
45	49 – NOTICES	No material change.
46	50 – TIME LIMITS	No material change.
47	51 – DISPUTE RESOLUTION	The Committee considered it appropriate that the following differences and disputes would be the subject of resolution under the alternative dispute resolution procedures in General Condition 47: (a) whether any

		Requisitions or Rejoinders have been validly raised in accordance with General Condition 7 or satisfactorily addressed by the Vendor; and (b) the terms of the Deed of Assurance.
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Conveyancing Committee

August 2018

Appendix 1

(Comparison Tables)

CONDITIONS OF SALE **2019** EDITION

Correspondence to the 2017 Edition

2019 Number & Heading	2017 Number & Heading
1. (New definitions of 'Accepts' and 'Rejoinders', definition of 'Non-Title Information Sheet' deleted) 2. & 3.	1., 2. & 3. Definitions and Interpretation
4. Auction	4. Auction
5. Private Treaty Sale	5. Private Treaty Sale
6. Title	6. Purchaser on Notice of Certain Document 7. Delivery of Title 8. Title 11. Prior Title 12. Intermediate Title
7. & 8. Post Contract Requisitions	17. & 18. Requisitions
9. Leasehold Title	10. Leasehold Title
10. Registered Land	13. Registered Land
11. Identity	14. Identity
12. Foreign Vendor	9. Foreign Vendor
13. & 14. Rights – Liabilities – Condition of Subject Property	15. & 16. Rights – Liabilities – Condition of Subject Property
15. Searches	19. Searches
16. Assurance	20. Assurance
17. Vacant Possession	21. Vacant Possession
18. & 19. Leases	22. & 23. Leases
20., 21. & 22. Completion and Interest	24., 25. & 26. Completion and Interest
23. Completion and Interest	27. Apportionment and Possession
24. & 25. Compulsory Registration	28. & 29. Compulsory Registration
26. Signing 'In Trust' or 'As Agent'	30. Signing 'In Trust' or 'As Agent'
27. & 28. Failure to Pay Deposit	31. & 32. Failure to Pay Deposit
29. Differences - Errors	33. Differences - Errors
30. Documents of Title Relating to Other Property	34. Documents of Title Relating to Other Property
31. Disclosure of Notices	35. Disclosure of Notices
32. Development	36. Development
33., 34. & 35. Rescission	37., 38. & 39. Rescission
36. Completion Notices	40. Completion Notices
37. Forfeiture of Deposit and Resale	41. Forfeiture of Deposit and Resale
38. Damages for Default	42. Damages for Default
39., 40. & 41. Risk	43., 44. & 45. Risk
42. Chattels	46. Chattels
43. Inspection	47. Inspection
44. Non-Merger	48. Non-Merger
45. Notices	49. Notices
46. Time Limits	50. Time Limits
47. Dispute Resolution	51. Dispute Resolution

CONDITIONS OF SALE **2017** EDITION

Correspondence to the 2019 Edition

2017 Number & Heading	2019 Number & Heading
1., 2., & 3. Definitions and Interpretation	1. (New definitions of 'Accepts' and 'Rejoinders', definition of 'Non-Title Information Sheet' deleted) 2. & 3.
4. Auction	4. Auction
5. Private Treaty Sale	5. Private Treaty Sale
6. Purchaser on Notice of Certain Document 7. Delivery of Title 8. Title	6. Title
9. Foreign Vendor	12. Foreign Vendor
10. Leasehold Title	9. Leasehold Title
11. Prior Title	6. Title
12. Intermediate Title	6. Title
13. Registered Land	10. Registered Land
14. Identity	11. Identity
15. & 16. Rights – Liabilities – Condition of Subject Property	13. & 14. Rights – Liabilities – Condition of Subject Property
17. & 18. Requisitions	7. & 8. Post Contract Requisitions
19. Searches	15. Searches
20. Assurance	16. Assurance
21. Vacant Possession	17. Vacant Possession
22. & 23. Leases	18. & 19. Leases
24., 25. & 26. Completion and Interest	20., 21. & 22. Completion and Interest
27. Apportionment and Possession	23. Completion and Interest
28. & 29. Compulsory Registration	24. & 25. Compulsory Registration
30. Signing 'In Trust' or 'As Agent'	26. Signing 'In Trust' or 'As Agent'
31. & 32. Failure to Pay Deposit	27. & 28. Failure to Pay Deposit
33. Differences - Errors	29. Differences - Errors
34. Documents of Title Relating to Other Property	30. Documents of Title Relating to Other Property
35. Disclosure of Notices	31. Disclosure of Notices
36. Development	32. Development
37., 38. & 39. Rescission	33., 34. & 35. Rescission
40. Completion Notices	36. Completion Notices
41. Forfeiture of Deposit and Resale	37. Forfeiture of Deposit and Resale
42. Damages for Default	38. Damages for Default
43., 44. & 45. Risk	39., 40. & 41. Risk
46. Chattels	42. Chattels
47. Inspection	43. Inspection
48. Non-Merger	44. Non-Merger
49. Notices	45. Notices
50. Time Limits	46. Time Limits
51. Dispute Resolution	47. Dispute Resolution