

CONDITIONS OF SALE 2017 EDITION

EXPLANATORY MEMORANDUM



General	It is recommended that this new edition of the contract is utilised for all transactions commencing on or after 3 January 2017.
Numbering	<p>For the most part, the original numbering of the General Conditions has been retained because people are familiar with them. Those with minor changes are:</p> <ul style="list-style-type: none">• Old General Conditions 1 and 2 (Definitions) have been amalgamated into new General Condition 1• Old General Condition 3 (Interpretation) has been broken out into new General Conditions 2 and 3• New General Conditions 1, 2 and 3 have been re-grouped under a new combined heading 'Definitions and Interpretation'• Old General Condition 51 has been renamed 'Dispute Resolution'
Memorandum page	<ul style="list-style-type: none">• The spousal consent at the top has been expanded to include civil partner consent• Space has been allocated for provision of tax type(s) (under tax number(s)). Although not current practice in the majority of cases, Revenue may ask for tax type for stamping purposes and it is advisable to obtain it at contract stage.• Space has been allocated for Nominated Email Addresses of the solicitors in a transaction, if they agree that notices under the contract may be served by email. See also 49 below.
Particulars page	<p>Wording has been added as a prompt to practitioners to describe both the property (ALL THAT) and details of tenure (HELD).</p> <p>Wording has been added at the end of the page to allow for the insertion of the property's LPT property ID number if applicable.</p>
Non-Title Information Sheet	<p>The non-title information sheet has been updated to reflect current requirements. The content and wording of existing items has been refined and the following new items have been added:</p> <ul style="list-style-type: none">• NPPR• Household Charge• LPT• Radon. People have queried why radon is specifically included. This was a concession by the Law Society to assist in heightening awareness of the dangers of radon.

GENERAL CONDITIONS

1	<p>The applicability of all of the definitions has been extended to Special Conditions as well as General Conditions.</p> <p>New definitions: “Completion” “Completion Date” “Nominated Email Address” “Planning Register”</p> <p>Amended definitions: “Apportionment Date” “Closing Date” “Competent Authority” “Development” “Purchased Chattels”</p>
10	<p>The committee considered splitting General Condition 10 (Leasehold Title) to provide separately or in different ways for commercial and residential property – but decided against it as it is a matter for a special condition in appropriate circumstances.</p>
18 & 33	<p>General Condition 18 (Requisitions) is amended to take account of judicial commentary in <i>Kiely –v- Delaney</i> [2012] IESC 41 concerning a potential conflict between General Conditions 18 and 33 (Differences – Errors). That case held that the right to rescind pursuant to Condition 18 was not available to a Vendor where a Purchaser maintained a claim for compensation pursuant to Condition 33. The effect of this judgment is reflected in the revised wording of the Condition.</p>
20	<p>Old General Condition 20(c) has been removed. Old General Condition 20(d) has been renumbered as 20(c) and amended to require the Vendor to provide a tax type in addition to a tax number, and, where applicable, an LPT property ID, all properly vouched. Another new obligation has been introduced requiring the Vendor to give reasonable assistance to the Purchaser in stamping the purchase deed.</p>
24	<p>General Condition 24 was reviewed in light of almost complete disregard of 24(c) in relation to postal closings. However, it was decided not to change it to any great degree because it is a fall-back position to cover a situation where other closing arrangements are not agreed in writing by the parties (which alternative arrangements in writing are now allowed for in 24(c)).</p>
25	<p>General Condition 25 (c) (Completion and Interest) has been amended to include a new provision for a Purchaser to claim compensation for a Vendor’s late closing. The provision attempts to mirror the process where a Vendor may charge interest and it is based on a similar provision in the England & Wales precedent contract whereby a Vendor can be penalised for delay in completion. A Purchaser making such a claim may need to consider the tax treatment of any compensation recovered.</p>
27	<p>General Condition 27 (Apportionment and Possession) has been overhauled to tidy up the wording to fix the Apportionment Date, to clear up anomalies and to conform to practice.</p>
29	<p>General Condition 29 (Compulsory Registration) is amended to extend from 2 years to 6 years the period within which the Vendor will provide reasonable assistance to a Purchaser (at a Purchaser’s expense) with registration matters. This reflects longer registration timeframes for first registrations.</p>

35 General Condition 35 (Disclosure of Notices) is mostly a change in format and a tidying up of provisions making it clear the Purchaser is on notice of anything which is entered on the planning register. It should be noted that the general requirement on a Vendor to disclose notices under certain Acts does not relieve a Purchaser from the requirement to do a planning search pre-contract.

36 General Condition 36 (Development) has had a radical overhaul. The thinking behind it is that solicitors were routinely excluding the condition in its entirety or varying it to such a degree that, in effect, no warranty was being given. The new wording provides as follows:

- The Vendor warrants compliance with planning in respect only of his own period of ownership.
- The Vendor is also required to disclose any breach of or non-compliance with planning of which he is aware. This includes, but is not limited to, any matter disclosed to him at the time of purchase.
- As the period of warranty is being shortened to operate from the date the Vendor first acquired an interest in the property, Vendors should now be willing to leave in General Condition 36 and Purchasers should resist its exclusion.
- The Vendor is on notice of anything disclosed when he purchased the property.
- The changes in this condition come down to an apportionment of risk – the Vendor warrants planning compliance for his own period of ownership PLUS he is required to disclose anything which he is on notice of: if he is not on notice of a matter concerning a breach of or non-compliance with planning legislation, then the risk is with the Purchaser.
- It is emphasised that it is a false security for a Purchaser to rely on the Vendor’s warranty and duty of disclosure as a reason for not carrying out a planning search.
- Where an executor (who is not a joint owner of the property) is selling, a Purchaser’s solicitor will need to do a full investigation into planning pre-contract as the executor will not be in a position to give a warranty.
- The old Building Bye Laws (BBL) are treated as obsolete (and references to the old BBL amnesty have been dropped) but to be produced if available (similar to commencement notices).
- There is still a requirement on the Vendor to produce -
 - a) Fire Safety Certificates
 - b) Revised Fire Safety Certificates
 - c) Disability Access Certificates
 - d) Revised Disability Access Certificates
 - e) Regularisation Certificates
- The condition has been updated to include the requirements for certification under the 2014 and 2015 Building Control Regulations. Provided the statutory Certificate of Compliance on Completion (CCC) is registered with the building control authority, a Purchaser will not need any further evidence of compliance with building control – however, he will still need a certificate of compliance with planning. If the CCC cannot be viewed online, the Purchaser must obtain a certified copy from the Vendor.

GENERAL CONDITIONS (continued)

- 36 (continued)
- The condition also provides for requirements where there is an opt-out from statutory certification. A Purchaser must –
 - a) see the Declaration of Intention to Opt Out (either online or, if not online, by way of provision by the Vendor of a certified copy)
 - b) obtain evidence of registration of such Declaration of Intention to Opt Out
 - c) obtain a certificate of / an opinion on compliance with building control
 - d) obtain a certificate of / an opinion on compliance with planning.

49

General Condition 49 (Notices) is amended to provide an option for the service of notices by email to a nominated email address to be stipulated in the allotted space on the Particulars page, if the solicitors have agreed to it. It is a matter for the solicitors to decide whether service of notices by email is appropriate and there is no requirement to provide a nominated email address. If no nominated email address is provided then the option of service by email does not apply.

51

General Condition 51 (Dispute Resolution) has been amended to include a provision for mediation prior to arbitration. It should be noted that the application of this condition is limited to dispute resolution of only certain general conditions.

Conveyancing Committee

December 2016