



**LAW SOCIETY
GENERAL
CONDITIONS OF
SALE**

2001 EDITION

**EXPLANATORY
MEMORANDUM**

The Society's General Conditions of Sale have been revised and the new 2001 Edition will be available from mid-December for use by the profession from 2nd January, 2002 onward.

The Conditions have been reviewed in the light of legislative and other changes and of submissions and recommendations made to the Society. Remarkably few changes have been sought. Amongst those advocated were a number which were considered to be of insufficient overall significance to warrant adoption as General Conditions. It was felt that, where pertinent, these more isolated incidents should be made the subject of Special Conditions, and this course is recommended.

The general format and ordering of the Conditions has been retained, with the following being the more important changes therein:-

1. Recognition of the Euro and the provision on page 1 of spaces for the PPS numbers of the parties. These numbers have an added importance in conveyancing matters and the spaces should, at the initial stage, be completed accurately in all relevant cases.
2. No change has been made in Special Condition 3 dealing with Value-Added Tax, but attention is drawn to the important marginal note opposite same regarding assignments and surrenders of leasehold interests.
3. The introduction of a "Non-Title Information Sheet" at pages 5 and 6. This is an innovation which is tied to General Condition 33 and care must be taken to ensure that the Sheet be completed correctly.
4. The inclusion on page 7 of an additional introductory note to the effect that a Special Condition altering or deleting a General Condition should give the reason for such variation.
5. Condition 3 contains a severance clause with regard to void, illegal or invalid provisions.
6. Condition 5 has been expanded to clarify the point that moneys paid by the Purchaser to the Vendor's Solicitor prior to the sale are to be held by him as Trustee for the Purchaser.
7. A new Condition 9 has been inserted to highlight the fact that where the Vendor is a body established outside the State, this must be disclosed prior to the sale. The Condition goes no further than requiring disclosure, but it is anticipated that the



Purchaser's awareness of the position will encourage him to approach the Vendor (pre-contract) on the lines of the recommendation published at pages 34 and 35 of the Society's Gazette of March, 2001.

8. Condition 13 (h) is new and places an obligation on the Vendor to deal with Land Registry mapping queries where the transaction involves a part only of the lands comprised in a Folio. This obligation extends to the discharge of Registry fees which ought properly to be paid by the Vendor including those attributable to his default.
9. Condition 20 (b) is also new and deals with the completion and handing over by the Vendor of the "Particulars Delivered Form" where same is appropriate.
10. New Condition 25(c) deals with disputes regarding the payment of interest and is self explanatory. This provision should help to ease an area of difficulty and avoid delays.
11. The wording of Condition 35 has been somewhat revised partially in recognition of the expanded scope of the Planning Register as introduced by the Planning and Development Act, 2000. Practitioners, whether acting for a vendor or purchaser, must ensure that a planning search is carried out before contracts are exchanged.
12. Condition 36 has always been contentious. Alternative approaches to the existing planning warranty were considered but ultimately the warranty has been retained in a modified form. The new Condition should be read carefully. The amendments seek to reduce the exposure of vendors, particularly where they are not aware that opinions or certificates on which they have relied are inaccurate or erroneous. The Law Society's recommendation in relation to evidence of compliance with financial conditions where roads are in charge has been incorporated in Condition 36(e)(i).

In recent times there has been a tendency to delete Condition 36 entirely, and often for reasons which are either not stated or are unjustified. This trend should be resisted and the planning warranty should not be excluded save in exceptional circumstances, or where there is full disclosure (by way of Special Condition or otherwise) of the underlying facts.

13. The new Condition 41(a) alters the wording of the former Condition 41 slightly and Condition 41(b) introduces a procedure affording protection to a stakeholding Solicitor on the forfeiture of a deposit.
14. Condition 42 has been expanded to incorporate sub-Condition (b), which, in effect, excludes the applicability of the oft-criticised Rule in *Bain v. Fothergill*. Basically, the

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*Circulated to the profession
with a sample of the new
contract,
December 2001*

**AMENDMENTS TO
CONDITIONS OF
SALE, 2001 EDITION**

*Published in Committee Notes
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latter denies damages to a Purchaser for loss of bargain where a contract goes off due to the Vendor's failure to show good title. In such a circumstance, provided the Vendor was not fraudulent and did not otherwise act in bad faith, the Purchaser is limited to recovery of his deposit with interest and expenses incurred in the investigation of title. The introduction of sub-Condition(b) is felt to be fair and to be justified, but it could create yet further exposure for members of the profession.

15. Condition 49(c) allows for service of notices by facsimile transmission.

16. Questions under Condition 25 regarding interest are no longer to be referable to arbitration and accordingly former sub-paragraph (b) of Condition 51 has been removed.

The opportunity is taken of re-emphasising the importance of dealing with appropriate matters by way of pre-contract enquiry.

UPDATE: Practitioners should have regard to the changes made by any subsequent edition of the Conditions of Sale or any subsequent practice note.

The attention of practitioners is drawn to the following matter:

The first print run of the new Conditions of Sale, 2001 Edition, at General Condition 36, did not impose an obligation on the vendor to provide the purchaser with a certificate of compliance in appropriate cases in respect of the Building Control Act and Regulations made thereunder. Subsequent print runs of the contract document contain appropriate amendments to address that situation. The principal amendment is the addition in the third sub-paragraph of Condition 36(e)(ii) of the words "and (where applicable) the requirements of the Building Control Act, 1990 and regulations made thereunder".

Practitioners using the first print run of the Conditions of Sale 2001 Edition should provide for this matter by way of special condition.