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Extra Special Conditions of Sale for Conditionality

The following conditions are to be treated as being appended to the special conditions where a Bid is allowed to be made conditionally as to such matter

1. FUNDS AVAILABLE CONDITION

This contract is conditional on the buyer obtaining sufficient funds to acquire the Property on terms acceptable to the buyer ("Funds") no later than five working days before the completion date or such later date as the parties may agree in writing ('the Expiry Date')

- 1.1 The buyer must do as quickly as possible all acts and things necessary to obtain such Funds whether such acts or things be concerned with completing application forms paying survey fees answering correspondence or any other matter appertaining to the obtaining of a loan, or by raising Funds by such other means which may include completing the sale of a property
- 1.2 The buyer will keep the seller fully informed of progress towards satisfaction of this condition and promptly answer the seller's enquiries as to such progress
- 1.3 The buyer must give notice in writing to the seller immediately upon the buyer securing Funds ("Funds Notice")
- 1.4 Upon service of the Funds Notice this contract shall be deemed to have become unconditional
- 1.5 If by the Expiry Date the seller has not received a Funds Notice
 - 1.5.1 either the seller or the buyer shall be entitled forthwith to rescind this contract and provide a written notice thereof to the other; and
 - 1.5.2 a sum amounting to 0.5% of the Price shall be forfeit unless the sole reason for no Funds Notice being served prior to the Expiry Date is due to another condition precedent not being satisfied; and
 - 1.5.3 the seller shall return the balance of the Deposit forthwith to the buyer; and

1.5.4 the buyer shall arrange for the cancellation of any entry made in the register of land charges maintained under the Land Charges Act 1972 or the register of title for the lot for the purpose of protecting this contract

1.6 The buyer may waive this condition at any time up to the Expiry Date by giving notice in writing to the seller

2. SURVEY CONDITION

2.1 This contract is conditional on the buyer obtaining a satisfactory building survey in respect of the lot acceptable to the buyer five working days before the agreed completion date or such later date as the parties may agree in writing ('the Expiry Date')

2.2 The buyer must do as quickly as possible all acts and things necessary to obtain a survey report whether such acts or things be concerned with completing the application forms paying fees answering correspondence or any other matter appertaining to the obtaining of the survey report

2.3 The buyer must not withdraw instructions from a surveyor without the prior written consent of the seller (such consent not to be unreasonably withheld or delayed)

2.4 The buyer will keep the seller informed of the progress with the survey arrangements and promptly answer the seller's enquiries as to progress

2.5 The buyer must give to the seller a notice within 3 working days of the buyer's receipt of copy of any survey report stating in writing with reasons whether the survey report is acceptable to the buyer or not and if not also providing a copy of the survey report ("Survey Notice")

2.6 If the survey report is stated to be acceptable this contract shall be deemed to have become unconditional in so far as the building survey is concerned on the date of the Survey Notice

2.7 The buyer shall only be entitled to treat a survey report as being unacceptable if it discloses a material issue and the buyer details such material issue in the Survey Notice

2.8 Within 5 working days of receipt of a Survey Notice suggesting a material issue the seller shall serve notice in writing on the buyer ("Survey Counternotice") either

2.8.1 accepting that the material issue suggested in the Survey Notice is accepted by the seller as being a material issue in which event any Initial Deposit paid by the buyer shall be returned by the recipient of it (when in cleared funds); or

2.8.2 disputing that an issue stated in a Survey Notice is a material issue in which event:

2.8.2.1 the dispute shall be referred to an independent surveyor as hereinafter provided IT BEING AGREED THAT the seller may withdraw its dispute at any time thereafter; and

2.8.2.2 the agreed completion date shall be postponed until 5 working days following the date of issue of the expert's decision

2.9 Dispute resolution

- 2.9.1 If a dispute or difference arises between the parties as to whether or not a material issue has been specified in a Survey Notice such dispute or difference shall be determined by an independent building surveyor (acting as an expert and not as an arbitrator) then the following provisions of this clause 2.9 shall apply
- 2.9.2 In default of agreement the expert shall be appointed by the President for the time being of the Royal Institution of Chartered Surveyors (or a person authorised by the President to make appointments on his behalf) ("the President") on the application of either the seller or the buyer
- 2.9.3 If the expert dies, becomes incapable of acting or declines to act (and he shall be deemed to have declined to act if he fails to give a decision within 6 weeks of his appointment unless the seller and the buyer jointly agree to an extension of time), the President shall, in the absence of agreement, and on the application of either the seller or the buyer, discharge him and nominate a successor
- 2.9.4 The seller shall allow the expert access to the Property to do anything that he considers necessary to carry out his function
- 2.9.5 The expert shall be a chartered surveyor and shall have not less than 3 years recent experience in undertaking building surveys
- 2.9.6 The expert shall invite the seller and the buyer to submit to him within such time limits as he shall consider appropriate (being not less than 15 working days)
- 2.9.6.1 representations accompanied, if desired, by supporting evidence as to the issue in dispute and
- 2.9.6.2 cross-representations on the other party's submissions
- 2.9.7 The expert's decision shall be final and binding
- 2.9.8 The expert shall be entitled to make an award in respect of costs, but in the absence of an award, the costs of the reference to the expert shall be borne equally by the seller and the buyer
- 2.9.9 If either the seller or the buyer pays all the expert's fees and disbursements, that party may recover from the other party any part of them which fall to be paid by the other party as a liquidated debt
- If the expert determines that a material issue was specified in the Survey Notice then the contract shall be treated as having been rescinded as at the date of the issue of the expert's decision and in such case any Deposit paid by the buyer shall be returned by the recipient of it (when in cleared funds)
- 2.9.10 If the expert determines that a material issue was not specified in the Survey Notice then the buyer shall be required to complete the contract within 5 working

days of the issue of the expert's decision and if the actual completion date is after the agreed completion date the provisions of general condition 7 shall apply

- 2.10 If by the Expiry Date the seller has not received a Survey Notice then the seller shall thereafter be entitled within 5 working days to provide a notice in writing to the buyer either:
- 2.10.1 rescinding this contract and in such case any Deposit paid by the buyer shall be returned to the buyer (without interest); or
 - 2.10.2 treating this contract as having become unconditional;
- 2.11 On any rescission of this contract pursuant to the provisions of this condition the buyer shall arrange for the cancellation of any entry made in the register of land charges maintained under the Land Charges Act 1972 or the register of title for the lot for the purpose of protecting this contract
- 2.12 The buyer may waive this condition at any time up to the Expiry Date by giving notice in writing to the seller

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