

# Online Property Auctions Scotland - Auction Terms & Conditions

## Introduction

Online Property Auctions Scotland Ltd (or "we") operate the site opascotland.com ("the Site"). Our headquarters are at 272 Bath Street, Glasgow, G2 4JR. We are registered with company number SC631109.

These General Conditions apply to the sale of each of these lots in the auction subject to any variation or addition referred to in the special conditions of sale relating to the relevant lot.

## Seller Rights

The seller reserves to itself the following rights:

- (a) to withdraw any lot from the auction;
- (b) the right to sell by private bargain the whole or any part of any lot before the auction and that without disclosing the reserve price or giving any reason therefore;
- (c) to consolidate two or more lots into one and;
- (d) the right to bid by itself or by the auctioneer up to the reserve price. Special conditions of sale shall have precedence over these general conditions of sale, in case of any conflict.

## Buyer's Premium

The successful bidder will pay the buyer's premium of either £2,500/3% (whichever is the greater) for a Lot at an Auction. All bidders will pre-authorise a card payment of the buyer's premium of £2,500/3% (whichever is the greater). In the event of an unsuccessful bid these funds will be released. Buyer's premiums are subject to VAT at the standard rate.

## Buy it Now

After the property has been exposed for Auction and prior to the Auction Date the Seller may set a buy it now date when a prospective bidder will be entitled to submit a bid to purchase the Property from the Seller at a fixed price.

## Reserve Price

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

## Bidding

The auctioneer retains the right to regulate the bidding and refuse any bid or bids without assigning any reason therefore in his sole and absolute discretion. All bidders are required to register their details, provide proof of identity to satisfy the Seller's Money Laundering Regulations and 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 any lot in separate lots if the whole 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 if there be more offers than one above the reserve price, the highest bidder, shall be the purchaser. On the fall of the auctioneer's hammer on his successful bid, the successful bidder shall then immediately pay to the Auctioneer the Deposit. If the bidder wishes to bid on a subsequent lot then they may do so under the discretion of the auctioneers and pay the deposit once they are finished bidding. If the successful bidder acted as an Agent he must give details of his Principal at the time of completing and signing the Minute of Preference and Enactment. After paying the Deposit the successful bidder 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 him. In the event of the successful bidder not paying the deposit the auctioneer will be entitled to re-submit the lot for sale. The bidder permits Online Property Auctions Scotland Ltd to complete the minute of preference and enactment on their behalf. This will be signed by an employee of Online Property Auction Scotland Ltd) as offeror for the bidder & principal. A bid which does not reach the reserve price at the time of auction may be held provisionally by the auctioneer & submitted to the vendor of the property to be accepted or rejected. Where the sale of a lot is agreed pre or post auction then the payment of the deposit shall bind the purchaser to these terms and conditions of sale and the purchaser will proceed as per a regular auction sale. The auctioneers reserve the right to modify the specified date of entry in the auction contract as per any negotiation between purchaser and seller.

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 successful bidder ("the 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 therefore provide to the seller's solicitors such evidence as they may reasonably require to verify the warranties given by the Guarantor under clause 3(b) hereof.

(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. (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 (*mutatis mutandis*) as this contract (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.

## **Deposit**

A deposit of 10% of the purchase price (subject to a minimum of £3,000) shall be paid by the successful bidder or the purchaser within 24 hours after the making of the successful bid to the auctioneers, "Online Property Auctions Scotland Ltd", as Agents for the seller and stakeholder between the parties, and after the completion and subscription of the Minute of Preference and Enactment. Payment of the deposit must be made by bank transfer to the auctioneer's client bank account Barclays Bank plc, Sort Code: 20-29-24, Account Number: 43567192 or by credit/debit card. Prior to any part submitting a bid for any Lot the bidder will be required to pay the buyer's premium of £2,500/3% plus VAT at standard rate to the auctioneer. In the event of the prospective Purchaser's bid being unsuccessful the auctioneer will return the sum of £2,500/3% plus VAT at standard rate to the prospective Purchaser. If the successful bidder or purchaser fails to pay the deposit within 24 hours after making the successful bid, the auctioneer may re-sell the lot or require the immediately preceding bidder to complete the purchase at his last offer without prejudice to the seller's right to claim damages against the purchaser for his failure. Without prejudice to this the seller may still claim damages for repudiation of the contract against the purchaser. The auctioneer reserves the right to hold the Minute of Preference and Enactment until clear funds have been secured from the purchaser.

## **Date of Entry and Payment of Balance of Purchase price**

The date of entry, when the balance of the purchase price is payable, shall take place on the date specified in the Special Conditions of Sale or, if not therein specified, twenty one days from the date of the Auction or such earlier date as may be mutually agreed between Seller and the Purchaser. The purchase price will be exclusive of Value Added Tax (VAT). Should VAT Be chargeable on the Lot, the Seller reserves its right to charge VAT in addition to the purchase price, in exchange for a valid VAT invoice. If the balance of the purchase price has not been paid in full by 3pm on the date of Entry the Seller's Solicitors 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 purchase price payable, and apportioning incomings and outgoings. Payment of the balance of the purchases 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 purchase price or any part thereof remaining outstanding as at the date of entry, the notwithstanding

consignation 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 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 purchase price (including the interest accrued) is made or, in the event of the Seller exercising his 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 purchase price hereunder and the re-sale price until such time as the shortfall shall have been paid to the Sellers. If the balance of the purchase 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 Purchaser's deposit will be held to be forfeit to the Seller, without prejudice to the Seller's right to claim damages for all loss, damage and expense suffered as a result of the breach of contract by the Purchaser, so far as such loss exceeds the deposit forfeited by the Purchaser, including interest on the balance of the purchase price calculated as set out in this clause. The auctioneer's agreed sales commission is still payable by the vendor in the case that a purchaser is held in breach of contract. For the purpose of 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 his option to rescind the contract for non-payment of the price or any repudiation of the contract by the Purchaser. This clause and the commencement of accrual of interest as specified herein shall not have effect in any period during which non-payment by the Purchaser is attributable to fault on the part of the Seller or his agents. If for any reason the vendors are unable to complete the sale of Lot then all deposit monies will be returned to the purchaser. The purchaser agrees that the auctioneers & vendors will not be held liable for any expenses or loss of possible income incurred by the purchaser in this instance. Where a vendor decides to not or is unable to complete the sale of a property it will be the vendors sole responsibility and liability to return the full deposit monies including any commissions paid to the purchaser immediately.

## **Insurance**

The risk of damage or destruction of the Lot will pass to the Purchaser on the date of subscription of the Minute of Preference and Enactment by or on behalf of the Purchaser and the Purchaser shall make his own arrangements for insurance of the subjects 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 damage to or destruction of the Lot from whatever cause.

## **Apportionment of Rents, Rates, Taxes etc**

The Purchaser will be entitled to any rents of the Lot purchased by him from and after the date of payment of the purchase price in full. All apportionments as 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.

## **Planning and Related Matters**

The Purchaser shall be deemed to have made all necessary enquiries in connection with the planning position, the status of roads, footpaths, and main drains and generally all such other matters as are normally covered by Local Authority Searches and Property Enquiry Certificates and the Seller will not be required to produce and such certificates or Searches. All purchasers and prospective purchasers are deemed to have placed no reliance whatsoever on any sales evidence or lettings evidence which appears in the catalogue or websites, and all purchasers are advised to make their own enquiries with regards to sales evidence and letting potential on all properties. All purchasers and prospective purchasers are deemed to have placed no reliance whatsoever on any comments made either verbally or in the catalogue or on websites, with respect to; descriptions of any property or location, accommodation details or descriptions or statements, any rental guarantees, any sales evidence whatsoever, any lettings evidence whatsoever, any prospective development potential of any property which may be stated whatsoever, or anything which appears on the LOT page of any property whatsoever, auctioneers websites or may have been verbally said to all purchasers and prospective purchasers. The Purchaser shall assume that the present use of the lot is a permitted use under the Town and Country Planning (Scotland) Acts but no representation or warranty is given by or on behalf of the Seller and nothing communicated by or on behalf of the Auctioneers, whether verbally or in writing, will constitute such a representation or warranty by the Seller that such use is, will become or will continue to become a permitted use within these provisions. No warranty or representation is given by or on behalf of the Seller either as to the state or condition of the Lot or any part of it or as to whether the same subject to any schemes, resolutions, development orders, improvement notices or other proposals under the Housing Acts or other legislation or regulations. The Purchaser shall be deemed to purchase in all respects subject to such matters and warrants that he has and shall be deemed to have made all necessary local Searches and Enquiries prior to the Auction and to have full knowledge of all matters that would be disclosed thereby. Without prejudice to the foregoing provisions the Purchaser will accept full liability and responsibility for the cost of implementing any outstanding Statutory Notice issued by the Local Authority or by any other Authority.

## **Title**

The title will be taken as it stands and the Purchaser will be taken bound to have satisfied himself as to the validity and sufficiency of the title and the Seller's right to the Lot and his ability to sell same. Without prejudice to the foregoing or to any other General or Special Condition of Sale, the Purchaser will be bound to accept the title subject to such burdens, conditions, rights of pre-emption, rights of redemption, restrictions on use, encumbrances as set out in Section 9 of the Land Registration etc. (Scotland) Act 2012 (the "2012 Act") (whether specified or referred to in the title or not) and Caveats as defined in Part 6 of the 2012 Act 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 his 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, 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 within or in connection with the Lot. If the title to a Lot is not registered at The Land Register of Scotland (the "Land Register") or in the Sasine Register, it will be deduced in accordance with the Special Conditions of Sale. The Seller shall be under no obligation to obtain any documents

and evidence which the Keeper of the Land Register (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. Such documents and evidence shall be obtained by and at the sole expense of the Purchaser and shall not be warranted by the Seller. The Sellers' 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.

## **Searches**

No Legal Reports, searches in the Register of Community Interests in Land or searches in the Register of Charges and Company Files for the Seller or any predecessors in title will be exhibited or delivered 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 Letter of Obligation will be delivered by the Seller's Solicitors and 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 Seller will be responsible for the discharge of any recorded Standard Securities affecting the Lot. Where any Lot is being sold by the Seller as heritable creditor in possession no discharges of the Standard Security in favour of the Seller or of any *pari passu* or postponed Standard Securities will be exhibited or delivered. No discharges of any inhibitions registered against the grantor 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.

## **No Warranties**

The Lot is exposed for sale as it exists, *tantum et tale*, and not according to any advertisement thereof, nor this catalogue, nor any information of any nature whatsoever that may be communicated to the Purchaser at or before the date of the Auction. No warranty is given as to descriptions, extents, boundaries, advertisements, accommodation, rentals, rateable value, or other payment, the allocation thereof, leases, burdens, servitudes, rights of way or wayleaves, whether formally constituted or not, building warrants, building warrant plans, certificates of completion, planning permissions, superior's 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 his agents. The Purchaser accepts that he has enquired and satisfied himself on all matters or otherwise he takes all risks. No warranty is given 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 of any leases and other rights of possession and occupancy or other third party interests. 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. The Purchaser is deemed to have satisfied themselves as to any lease agreement in place and accept the terms of any such agreement for the Lot. The Purchaser shall be bound to accept any exclusion or limitation of warranty on the updated or newly created (as the case may be) Title Sheet of the Lot (disclosing the Purchaser as the registered proprietor) in terms of Section 75 of the 2012 Act, and any entry, deed or diligence disclosed thereon, including any charging order under the Buildings (Recovery of Expenses) (Scotland) Act 2014 and any notice of potential liability for costs registered under the Tenements (Scotland) Act 2004 or the Title Conditions (Scotland) Act 2003). The Principal Articles of Roup, Special Conditions of Sale and the title deeds relating to the Lot and all subsidiary documentation will be available prior to the date of the Auction for inspection on line and the Purchaser whether inspecting the same or not shall be deemed to purchase with full knowledge of the contents thereof and the Purchaser shall raise no objection thereto or requisition thereon whatsoever and accepts no warrandice shall be granted by the Seller. In relation to tenanted properties purchasers are expected to satisfy themselves as to any lease agreements or stated rental prices. Rent payable may be less or more than stated in catalogue. Purchasers are deemed to accept the current terms of any tenancy whether or not stated in the auction particulars.

## **Claims**

The Purchaser shall relieve the Seller of all claims in any way competent to tenants or others whether such claims arise by agreement or at Common Law or by Statute and all payments or charges, in respect of repairs, whether payable in one sum or by instalments and whether arising from statute, by Local Authority Notice at Common Law or otherwise and no warranty is expressed in respect of the condition of the property which shall be accepted by the Purchaser as found.

## **Disposition or Assignment**

On the date of entry and in exchange for payment of the whole purchase price and interest thereon (if any) the Seller shall deliver to the Purchaser (i) 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 (ii) any occupancy, tenancy or lease documentation relating to the Lot. 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 for 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.

## **Judge of the Roup**

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 also to adjourn the Auction from time to time.

## **Completion**

Notwithstanding the delivery of the Disposition or any Assignment in favour of the Purchaser, these General Conditions, 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 three months from the date of entry. In any case 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 terms and conditions and that the deposit is paid as such and an offer is submitted immediately to the vendors solicitor without condition utilising these terms & 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 vendor to produce a home report or EPC when required does not constitute breach of contract on behalf of the vendor. The vendor has a duty to produce a home report as specified by law and interpreted by the vendor. The auctioneers will make all attempts to ensure necessary documentation is requested when required but may not be held liable for the vendor's actions who are ultimately responsible for the cost and production of the home report and EPC.

## **Misrepresentation**

All statements made in the Particulars of Sale are made without responsibility on the part of the Auctioneers or Seller and are statements of opinions and are not to be taken as or implying a statement or representation of fact. Any Purchaser shall be deemed to have satisfied himself by inspection or otherwise as to the correctness of each statement contained in the Particulars. Neither the Seller nor Auctioneers make or give any representation or warranty in relation to any aspect of the Lot nor have the Auctioneers or any person in the employment of the Auctioneers any authority to do so on the Sellers behalf. The Purchaser acknowledges that he does not place and has not placed any reliance whatsoever on any statements or representations, in writing or otherwise, made, or alleged to have been made by or on behalf of the Seller.

## **Applicable Law**

The Law of Scotland shall apply to the interpretation of these General Conditions 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.

## **Arbitration**

If any questions arise regarding the true meaning and intent of the Articles of Roup or the Minute of Preference and Enactment or the rights and obligations of the parties under the same or otherwise affecting the Lot, every such question shall be submitted on the application of either party to the amicable decision of any arbiter having experience in residential or



commercial property as the case may be to be appointed by the President of the Law Society of Scotland, whose decision shall be conclusive and binding on all concerned. The terms of Section 3 of the Administration of Justice (Scotland) Act 1972 are expressly excluded.