

The Cyprus Common Auction Conditions



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CHARTERED SURVEYORS

REAL ESTATE AUCTION SERVICES



Introduction

The Cyprus Common Auction Conditions are based upon the Common Auction Conditions (Edition2) produced by the Royal Institution of Chartered Surveyors (RICS) and adapted to comply with Cyprus law and practice

They have three main sections:

1. Glossary

This gives special meanings to some words used in the rest of the conditions

2. The conduct of the auction

These conditions regulate the conduct of the auction. If you read our catalogue or attend the auction you do so on the basis that you accept them

3. Conditions of sale

If you buy a lot you will sign a **preliminary contract of sale** or a **preliminary sale agreement** under which you agree to be bound by the conditions of sale that apply to that lot. These conditions are:

- General Conditions that apply to all lots
- Any extra General Conditions in the catalogue or an addendum
- Special Conditions that only apply to the lot you are buying (and which may vary the General Conditions)

The conditions are legally binding.

Important notice

A prudent buyer will, before bidding for a lot at an auction:

- Take professional advice from a conveyancer and, in appropriate cases, a chartered surveyor and an accountant
- Read the conditions
- Inspect the lot
- Carry out usual searches and make usual enquiries
- Check the content of all available leases and other documents relating to the lot
- Check that what is said about the lot in the catalogue is accurate
- Have finance available for the deposit and purchase price

The conditions assume that the buyer has acted like a prudent buyer.

If you choose to buy a lot without taking these normal precautions you do so at your own risk.

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Glossary

In the **conditions** wherever it makes sense:

- singular words can be read as plurals, and
- plurals as singular words
- a 'person' includes a corporate body
- words of one gender include the other genders

And where the following words appear in blue they have the specified meanings:

Addendum

An amendment or addition to the **conditions** whether contained in a supplement to the **catalogue**, a written notice from the **auctioneers** or an oral announcement at the **auction**

Approved bank

A Cyprus clearing bank

Auction

The auction advertised in the **catalogue**

Auctioneers

The auctioneers at the **auction**

Business day

Any day except (a) a Saturday or a Sunday (b) a bank holiday in Cyprus (c) Good Friday or Christmas Day

Buyer

The person who agrees to buy the **lot** or, if applicable, that person's personal representatives: if two or more are jointly the **buyer** all obligations can be enforced against them jointly or against each of them separately

Catalogue

The catalogue to which the **conditions** refer including any supplement to it

Completion to buy

The date when the **preliminary contract of sale** or **preliminary sales agreement** is signed, normally the same date as the **auction**.

Completion to Take Possession

The date the full balance of the purchase Price is paid, normally within 60 days of the **auction** date.

Completion to Transfer

The date the Title Deeds are transferred to the **buyer**.

- a) the date the title deeds are transferred, in cases where the title deeds are available
- b) the date the final contract is signed in cases where no separate title is available

Conditions

This glossary, the **conditions** for the conduct of the **auction**, the **general conditions**, any **extra conditions** and the **special conditions**.

Preliminary contract of sale

The **contract** by which the seller agrees to sell and the **buyer** agrees to buy the lot to be used where the seller is named on the individual Title Deed.

Preliminary Sale Agreement

Preliminary sale agreement by which the original buyer who sells agrees to sell and the new buyer agrees to buy the **lot**, to be used where the seller is named on the "contract of sale" as the buyer and he proves that he is the buyer and he has the right to sell

Contract date

The date of the **auction** or, if the **lot** is not sold at the **auction**,

- a) the date the **preliminary contract of sale** or the **preliminary sale agreement** (in cases where separate title deed is not ready yet) is signed by both the **seller** and **buyer** or
- b) if **contracts** are signed, the date of signing.

Documents

Documents of title deeds (including, if title deed is held by the **seller** or the developer and is registered, the entries at the District Lands' Office) and other documents listed or referred to in the **special conditions** relating to the **lot**

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Extra conditions

Any additions to or variations of the **conditions** that are of general application to all **lots**

Interest rate

If not specified in the **special conditions**, 2% above the base rate from time to time of The Bank of Cyprus

Lot

Each separate property described in the **catalogue** or (as the case may be) the property that the **seller** has agreed to sell and the **buyer** to buy

Particulars

The section of the **catalogue** that contains descriptions of each **lot**

Price

The price that the **buyer** agrees to pay for the **lot**

Seller

The person selling the **lot**

VAT

Value Added Tax or other tax of a similar nature

We (and us and our)

The **auctioneers**

You (and your)

Someone who has a copy of the **catalogue** or who attends or bids at the **auction**, whether or not a **buyer**

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The conduct of the auction

The **catalogue** is issued only on the basis that **you** accept these conditions relating to the conduct of the **auction**. They override all other **conditions** and can only be varied if **we** agree.

Our role

As registered & licensed agents for each **seller** we have authority to:

- prepare the **catalogue** from information supplied by or on behalf of each **seller**
- offer each **lot** for sale
- sell each **lot**
- receive and hold deposits
- sign each **preliminary contract of sale** (provided we have power of attorney)
- sign each **preliminary sale agreement** (provided we have power of attorney)
- treat a **contract** as repudiated if the **buyer** fails to sign a **sale memorandum** or pay a deposit as required by the **conditions**.

Our decision on the conduct of the **auction** is final.

We may cancel the **auction**, withdraw **lots** from sale, or alter the order in which **lots** are offered for sale.

Bidding and reserve prices

We may refuse to accept a bid. **We** do not have to explain why.

If there is a dispute over bidding **we** are entitled to resolve it, and **our** decision is final.

Unless stated otherwise each **lot** is subject to a reserve price. If no bid equals or exceeds that reserve price the **lot** will be withdrawn from the **auction**. The **seller** may bid (or ask **us** or another agent to bid on the **seller's** behalf) up to the reserve price but may not make a bid equal to or exceeding the reserve **price**.

Where a guide **price** is given that price is not to be taken as an indication of the value of the **lot** or of the reserve **price**.

The particulars and other information

We have taken reasonable care to prepare **particulars** that correctly describe each **lot**. However the **particulars** are based on information supplied by or on behalf of the **seller** and **we** are not responsible for errors. The **particulars** are for **your** information but **you** must not rely on them. They do not form part of any **contract** between the **seller** and the **buyer**.

If **we** provide any information or a copy of any document **we** do so only on the basis that **we** are not responsible for its accuracy.

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A successful bid is one **we** accept as such.

If **you** make a successful bid for a **lot you** are obliged to buy that **lot** on the terms of the **preliminary contract of sale**. The **price** will be the amount **you** bid plus **VAT** (if applicable). **You** must before leaving the **auction**:

- provide all information **we** reasonably need from **you** to enable us to complete the **preliminary contract of sale** or **preliminary sale agreement** (including proof of **your** identity)
- sign the completed **preliminary contract of sale** or **preliminary sale agreement** and
- pay the deposit

Deposits must be paid by cheque or by bankers' draft drawn in **our** favour on a Cyprus clearing bank.

We may retain the **preliminary contract of sale** or **preliminary sale agreement** signed by or on behalf of the **seller** until **we** receive the deposit in cleared funds.

If **you** make a successful bid for a **lot**:

- **You** are personally liable to buy it even if **you** are acting as an agent. It is **your** responsibility to obtain an indemnity from the person for whom **you** are the agent
- Where the **buyer** is a company **you** warrant that the **buyer** is properly constituted and able to buy the **lot**
- If the **buyer** does not comply with its obligations under the **contract you** are personally liable to buy the **lot** and must indemnify the **seller** in respect of any loss the **seller** incurs as a result of the **buyer's** default.

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The **general conditions** apply except to the extent that they are varied by the **extra conditions**, the **special conditions** or by an **addendum**.

1 The lot

- 1.1 The **lot**, including any rights granted and reserved, is described in the **special conditions**
- 1.2 The **lot** is sold subject to any tenancies disclosed by the **special conditions**, but otherwise with vacant possession on completion.
- 1.3 The **lot** is sold subject to all matters contained or referred to in the **documents** and to such of the following as may affect it, whether they arise before or after the **contract date** and whether or not they are disclosed by the **seller** or are apparent from inspection of the **lot** or the **documents**.
- 1.4 The **buyer** buys with full knowledge of
 - a) the **documents** whether or not the **buyer** has read them
 - b) the physical condition of the **lot** and what could reasonably be discovered on inspection of it, whether or not the **buyer** has inspected it.
- 1.5 The **buyer** is not relying on the information contained in the **particulars** or in any replies to **preliminary** enquiries but on the **buyers** own verification of that information. If any information is not correct any liability of the **seller** and any remedy of the **buyer** are excluded to the extent permitted by statute.

2 Deposit

- 2.1 The amount of the deposit is the greater of
 - a) £2,000 (or the total **Price** if less than £2,000) exclusive of **VAT**
 - b) 10% of the **PRICE** exclusive of **VAT**.
 - c) No deposits are refundable if purchaser fails to proceed
- 2.2 The deposit must be paid to the **auctioneers** by cheque or banker's draft drawn on an **approved bank**

- 2.3 Where the **auctioneers** hold the deposit as stakeholders they are authorised to release it and any interest on it to the **seller** on completion or, if completion does not take place to the person entitled to it under the **conditions**.
- 2.4 If for any reason the deposit is not received by the **auctioneers** in cleared funds within ten business days of the **contract date** the **seller** is entitled to treat the contract as at an end and bring a claim against the **buyer** for breach of contract.
- 2.5 Interest earned on the deposit belongs to the **seller** unless the **conditions** provide otherwise.

3 Title Deed & Ownership

- 3.1 The **seller** must provide, a copy of The Title Deed or in the case the **seller** is not the registered owner, provide a copy of the following;
 - a) The Sales Contract
 - b) Architects Plans
 - c) Planning permission
 - d) Building permission
 - e) Letter from the developer stating that they have no objection to sign final contracts
 - f) Certificate of approval (if available)
 - g) Copy of water bill
 - h) Copy of electricity bill
- 3.2 There shall be two types of sale
 - 3.2.1 The sale of a property for which a separate individual Title Deed exists. The **buyer** and the **seller** will sign a final and binding contract (The **contract of sale**) which will commit both parties on;
 - a) the property to be sold (the **lot**)
 - b) the **seller**
 - c) the **buyer**
 - d) the sale **price**
 - e) the terms of payment
 - f) the delivery time
 - g) transfer date
 - 3.2.2 The sale of a property for which no individual separate Title Deed exists and the property forms part of a development to be built, completed

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and sub-divided. The **buyer** and the **seller** will commit on a **preliminary** basis by both parties signing a **preliminary sale agreement** which shall cover the following;

- a) The property to be sold (the **lot**)
- b) The sale **price**
- c) Time required for the existing contract cancellation and the subsequent new contract to be signed
- d) The delivery date

4 Preliminary sale agreement terms

4.1 The Special Terms in the contract will state

- 4.1.1 The **Contract date** and developer under which they have legal right of possession and the right to dispose of such a possession through a new **Contract of Sale** with the registered owners
- 4.1.2 The cost of such a procedure will be paid by the vendor
- 4.1.3 The vendors undertake to have their said **Contract of Sale** cancelled and a new contract to be signed with the purchaser.
- 4.1.4 Any taxes as from the date of delivery will be the sole responsibility of the purchasers.
- 4.1.5 In the event that the purchaser fails to meet the obligations under the contract on the agreed time and provided the vendor is ready to execute theirs, then the deposit paid in virtue of this agreement will be kept by the vendor less reasonable expenses to the auctioneers as non-refundable and this agreement will be considered null and void
- 4.1.6 In the event that the contract between the developer and the vendor can not be signed by the agreed time the vendor will refund the deposit to the purchaser in case he doesn't refund within 30 days from request he pays 3% interest

from the date of request until date of payment

- 4.1.7 The vendor will provide the purchasers solicitor with copies of the tax clearance certificates for any capital gains tax liability, supply electricity and water bills to enable the purchaser to connect these utilities in the purchaser's name, as from the date of delivery, and withdraw the contact of sale from the land registry in order to enable the new contract to be lodge

5 Preliminary contract of sale terms

5.1 The Special Terms in the contract will state

- 5.1.1 The property is free of any impediments and the agreement may be lodge with the Land Registry Office
- 5.1.2 Any taxes from the date of delivery will be the responsibility of the purchaser
- 5.1.3 The vendor will provide the purchasers solicitor with all the tax clearance certificates showing that that there is no tax liability at the stage of signing the contract. In this respect the purchasers solicitor will provide the vendors solicitor with a copy of the stamped agreement
- 5.1.4 Any dispute between the parties of this agreement shall be resolved under The Laws of Cyprus and the relevant District Court will have exclusive jurisdiction.
- 5.1.5 The purchaser will have the right to sell the property to any third party and the vendor will consent to a new agreement to be signed between him and the new **buyers**, provided that the new contract will be under the same Terms and **conditions**.

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6 Completion

- 6.1 Completion stages will take place as follows
- 6.1.1 **Completion to buy** - Occurs when final contracts are signed
- 6.1.2 **Completion to take possession** - Occurs when the full purchase price is paid, usually 60 days after
- 6.1.3 **Completion of transfer** - Occurs when the Title Deeds are transferred into the name of the **buyer**, provided that the **buyer** obtains the permits from the Cypriot authorities (if required), at a time in the future determined by the availability of the Title Deeds

7 VAT

- 7.1 Where the **conditions** require money to be paid the payer must also pay any **VAT** that is chargeable on that money, but only if given a valid **VAT** invoice.

VARIATIONS TO COMMON AUCTION CONDITIONS

Deposit

Clause 2 of the **general conditions** of Sale is varied to the extent that the deposit will be held by the **auctioneers** as agents for the **seller** except if the Special **conditions** of Sale stipulate otherwise.

Without prejudice to **General Condition** 2.4, in the event that any cheque given as deposit is dishonoured upon presentation or the **buyer** fails to pay the deposit on the date hereof then without notice the **seller** shall if he so chooses have the right to deem the conduct of such **buyer** as a repudiation of the agreement between the **buyer** and the **seller** and may resell without notice and/or take steps which may be available to it as a consequence of the **buyers** breach but without prejudice to any claims it may have against the **buyer** for breach of the agreement or otherwise.

Use

Any description of the **lot** which includes reference to its use does not imply or warrant that it may be legally used for that purpose.

Money Laundering Regulations

If the **buyer** is unable to provide adequate means of identification in the **auction** room either for himself or for the contractual **buyer** (if this is different) the **auctioneer** may retain the sale memorandum signed by or on behalf of the **seller** until such identification is produced and in the absence of its production may (as agent for the **seller**) treat this as the **buyers'** repudiation of the **contract** and re-offer the **lot** for sale.

Liability of the auctioneers

The **auctioneers** shall be under no financial liability in respect of any matters arising out of the **auction** or the **particulars** for any **lot** or any of the **conditions** relating to any **lot**. No claims shall be made against the **auctioneers** by the **buyer** in respect of any loss or damage or claim actually or allegedly suffered by or made against the **buyer** by reason of the **buyer** entering into the **contract**.

Signing Auction Contract

By participating in the **auction** the successful bidder undertakes to sign the **auction contract of sale** or **preliminary contract of sale** immediately following the fall of the hammer on his/her bid, and in any event the **buyer** gives to the **auctioneer** the irrevocable and binding authority to sign the **auction** contract on his/her behalf.

Administration Fee

On completion of the sale there is an administration cost of £250 payable by the buyer (including VAT)