

# General and special conditions

England and Wales



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# General Conditions

England and Wales

## 1. Purpose

These General Conditions set out the basis upon which the Lender named in the Offer makes any Offer and will apply in all instances, unless specifically amended by any Special Conditions set out in the Offer.

These General Conditions and any Special Conditions will continue to apply after the mortgage completes and the Lender will not lose any rights under them because of any delay in using them.

## 2. The Applicant

Where the Applicants are natural persons and there is more than one of them, references to “the Applicant” shall include references to all or any of them. All Applicants must jointly own the legal interest in the Property and are liable individually and jointly and severally, and will sign the Mortgage Deed as joint borrowers.

## 3. Offer of Loan

The Lender may withdraw the Offer at any time, in particular (but not exclusively) where:

- (a) the Loan is not advanced within three months of the Offer being issued;
- (b) there is a change to the Applicant's status, or any non-disclosure by the Applicant of material facts, or the Lender becomes aware of any information which if known earlier may have influenced its decision to lend;
- (c) the Direct Debit mandate is not accepted by the paying bank;
- (d) the Applicant has supplied any false, inaccurate or misleading information or made any false, inaccurate or misleading statement in connection with the application for the Loan;
- (e) the solicitor does not confirm to the Lender (in a manner satisfactory to the Lender) that the title to the Property meets the Lender's criteria and/or is good and marketable;
- (f) the Applicant dies or proposes a Voluntary Arrangement under the Insolvency Act 1986 or has a Bankruptcy Order made against the Applicant under that act or petitions the court for the Applicant's own bankruptcy or, if the Applicant is a company, a petition is presented to wind up the Applicant; a receiver, administrative receiver, administrator or liquidator is appointed over all or part of the Applicant's Property or business or any proposal is made for an arrangement in connection with the Applicant's debts;
- (g) the Applicant breaches any of the terms of the Offer (including these Offer Conditions);
- (h) the Applicant becomes mentally incapacitated.

If for any reason the Loan is no longer required, the Applicant should notify the Lender and the solicitor without delay.

In the event that the need arises to amend the Offer then, at the discretion of the Lender, this may be effected either by issuing a revised Offer or by an amendment in writing.

## 4. Payment of the Loan

Where it is for the purchase or remortgage of a property, the Loan will be advanced to the solicitor by telegraphic transfer one working day prior to the completion date notified. A funds transfer fee will be payable by the Applicant and will be added to the mortgage on completion of the Loan.

## 5. Purpose of the Loan

- 5.1 Where an Offer is made for the purposes of the purchase of a property, the Loan may only be applied towards the acquisition by the Applicant of the Property specified in the Offer.
- 5.2 Where an Offer is made for the purposes of a remortgage of a property, the Loan may only be used to repay all existing mortgages and/or charges secured against the Property specified in the Offer.
- 5.3 Where there is an element of capital raising, any surplus may at the Lender's discretion be paid to the Applicant, subject to any Special Condition.

## 6. Property Insurance

Comprehensive buildings insurance must be arranged in all cases.

If the Applicant arranges buildings insurance:-

- 6.1 The Lender will require the solicitor, on or prior to the request for the advance, to provide a copy of the policy schedule or alternatively to confirm the following details in relation to the policy: name of insurance company, policy number, renewal date, index-linked sum insured and confirmation that the insurer is authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority.



- 6.2 The policy must provide unrestricted reinstatement cover for the full range of perils provided by a comprehensive residential property insurance policy and for a sum insured not less than that stated in the Offer.
- 6.3 The Lender will require the solicitor to confirm that on completion the interest of the Lender will be noted on the policy and that the insurer will be requested in writing to notify the Lender of any reduction in the amount insured or scope of the cover in force. Evidence of payment of the current annual premium may be required by the Lender on request.
- 6.4 The Applicant will be required to contribute towards the cost of the Lender taking out contingency insurance in respect of any loss to the Lender as a result of any inadequacy in the insurance arranged. The amount of the contribution will be stated in the Offer and added to the mortgage on completion of the Loan.

## 7. Interest and monthly payments

The rate of interest applicable to the Loan and the monthly payment are specified in the Offer and these may be varied from time to time in accordance with the mortgage conditions. The Lender may at its discretion vary the interest rate for one or more of the following reasons:-

- (a) to reflect a change which has occurred, or which the Lender reasonably believes will occur, in the cost of funds it uses in its business;
- (b) if there has been a change in the Bank of England base rate or in interest rate levels generally;
- (c) if investment rates have been increased or decreased;
- (d) to take account of a change in law or decisions or guidance by a court, ombudsman, regulator or similar body;
- (e) to reflect a change in the general practice of lenders;
- (f) to reflect a change in the cost to the Lender of providing its services to the Applicant;

If any change in the rate of interest occurs after the Offer is issued, but prior to the completion of the Loan, the revised rate will apply and the Lender may give the Applicant notice of the change and any consequent change in payments.

Interest is charged from the date on which funds are transmitted to the solicitor but will cease to run where funds are returned to the Lender by telegraphic transfer. No interest is charged where the solicitor returns the funds by telegraphic transfer within one working day of transmission by the Lender.

The first payment (which includes any additional interest charged for the period prior to completion of the Loan) will be collected on the ninth working day after completion and may include interest up to the last Business Day of the month in which completion takes place.

## 8. Direct debit

The monthly payments due from the Applicant are to be made by Direct Debit from an account, approved by the Lender, in the Applicant's name, which must be accepted by the paying bank prior to the request for the advance.

## 9. Costs and disbursements

The Applicant is responsible for all costs and disbursements incurred in connection with, or arising out of, the Offer (including those of the solicitor acting for the Lender), whether or not the Loan is completed.

## 10. Change in personal circumstances

If prior to completion of the Loan there are any changes to the personal circumstances of the Applicant or the Guarantor or director where the Applicant is a limited company they must be communicated to the Lender without delay.

## 11. Change to the security address

If prior to completion of the Loan there are any material changes to the Property named in the Offer, they must be communicated to the Lender without delay. The Lender reserves the right to re-inspect the Property and revise the Offer accordingly.

## 12. Early repayment

The Special Conditions may provide that if the Applicant wishes to repay all or part of the Loan early, or the Loan is caused to be repaid, then an amount additional to the amount repaid, or becoming payable, may be payable.

## 13. The Valuation Report

- 13.1 A copy of the Valuation Report obtained by the Lender may be issued to the Applicant as a courtesy. The report has been obtained for the sole benefit of the Lender and will confer no rights on the Applicant against the Lender or the valuer. The report is not a survey, (nor is it sufficient to confirm actual compliance with the Health and Safety Rating System under Part 1 Housing Act 2004), and the duty of the valuer is limited to advising the Lender as to the suitability of the Property as security for the Loan.



Neither the Lender nor the valuer therefore accept responsibility for the workmanship, construction or condition of the Property or its suitability or statutory compliance for letting which are matters upon which the Applicant must satisfy himself. Any defects referred to in the Offer or valuation were apparent to the valuer when the inspection was made but the valuer does not carry out a full structural survey, nor test the services. There may be defects in the Property which would only be revealed by a full structural survey. The Applicant is therefore strongly advised to arrange for a full structural survey to be carried out before entering into any commitment to purchase the Property, or take a loan secured on it and the Lender cannot accept any responsibility for any loss or damage suffered by the Applicant as a result of failing to arrange such a survey.

Neither the Lender nor the valuer make any representation or warranty that the purchase price is a fair price for the Property and the Applicant must rely on his own investigations and enquiries and be satisfied with the price being paid.

- 13.2 Should completion of the Loan not take place within four months of the original date of inspection by the valuer, a revaluation of the Property will be required. The Lender will contact the solicitor to ensure that the Loan is still required and will then make arrangements for the revaluation. A re-valuation fee (at the then current rate) will be payable by the Applicant and added to the mortgage on completion of the Loan.
- 13.3 The valuation figure provided in the Valuation Report is based on the assumptions stated or implied in the Valuation Report. The Lender must be informed immediately by the Applicant and/or the solicitor if any of these are not correct. The Lender may at its discretion refer the matter to the valuer and a re-inspection may be required.

## 14. Property consents and/or approvals

Prior to completion of the Loan, all necessary licences, consents and/or approvals (including, but not limited to, planning permission and building regulations), whether or not detailed in the Valuation Report necessary for the immediate occupation of the Property in accordance with these conditions, must have been obtained. In addition, all necessary consents and approvals (including planning and building regulation) must be obtained and all relevant legislation complied with where the Property includes multiple units or multiple occupation. Copies of all such relevant licences, consents and or approvals must be sent with the deeds to the Lender.

## 15. If property is new or converted or less than ten years old

- 15.1 The Property must have the benefit of either the National House Building Council (NHBC), LABC New Home Warranty Scheme or Premier Guarantee. Any other forms of guarantees or certificates must be submitted to the Lender for approval prior to completion on an individual basis. The Lender may accept monitoring of the Property by a professional consultant if the Property has been built or converted within the last six years and the Lender's other criteria are met.
- 15.2 In addition, where the Property forms part of a building, all common parts (including the structure) must have the benefit of such warranty or certificate, as appropriate.

## 16. Property

No alterations or structural alterations or any change of use may be made to the Property without the prior written consent of the Lender.

## 17. Letting requirements

Throughout the duration of the Loan, the Property shall not be occupied by the Applicant and may only be let, in whole or part, in accordance with this condition:-

- 17.1 On completion of the mortgage, either the Applicant must have vacant possession of the whole of the Property or there must be a bona fide verified acceptable tenancy (see below). There can be no other occupiers on or after completion.
- 17.2 The Applicant must produce any tenancy agreements, notices given to or by tenants or proof of rental payments promptly on request by the Lender.
- 17.3 Where the Applicant is a natural person, neither the Applicant nor any related person (which includes the Applicant's spouse, partner, civil partner, parents, grandparents, siblings, children or grandchildren) may occupy the Property at any time.
- 17.4 Where the Applicant is a limited company, neither the directors, guarantors or shareholders nor any person related to any of them (which includes their respective spouses, partners, civil partners, parents, grandparents, siblings, children or grandchildren) nor any associated subsidiary or parent company or the Applicant may occupy the Property at any time.
- 17.5 The Lender will not advance the Loan if any tenant:-
  - 17.5.1 took up occupation (or was granted a right to occupy) before 16 January 1989 (which would mean the tenant could enjoy protection or benefits under the Rent Act); or
  - 17.5.2 succeeded to (that is took over) the tenancy on the death of a person who was in occupation before 16 January 1989;
  - 17.5.3 is the seller of the Property, a prior owner of the Property, or a member of the seller's or prior owner's family;
  - 17.5.4 has diplomatic immunity;
  - 17.5.5 occupies the Property on the basis of a holiday let;
  - 17.5.6 is an employee of the Applicant.



## Acceptable Tenancies

- 17.6 If the Applicant is to acquire or remortgage the Property with tenants at completion, the Lender will not advance the Loan until the solicitor acting confirms in writing to the Lender, amongst other things, that each tenancy agreement is in accordance with these conditions.
- 17.7 Only two categories of tenancy are acceptable to the Lender. In broad terms, the Property may be let to:-
- 17.7.1 natural persons provided the Applicant complies with these conditions and section A below;
  - 17.7.2 a 'corporate body', provided the Applicant complies with these conditions and section B below.

### Section A – This section applies if the Applicant wishes to let the Property (or part of it) to one or more natural persons.

- A1 Assured Shorthold Tenancies
- A1.1 The Applicant may only let the Property under assured shorthold tenancies as defined by Section 19A of the Housing Act 1988 ('The Act').
- A1.2 Each tenancy agreement must:-
- (a) be in writing;
  - (b) require the rent to be paid at either monthly or quarterly intervals (or in the case of student lets, termly);
  - (c) (i) be either a monthly periodic tenancy (that is rent is payable monthly and the tenancy runs indefinitely from one monthly rental period to the next);  
(ii) be for a fixed term of at least six but not more than thirty six months provided that where the fixed term is for more than twelve months the tenancy agreement must contain a provision allowing the Applicant to terminate the tenancy agreement prior to the end of the term where the Applicant's Lender has the right to exercise its power of sale or has appointed a receiver of rent under the terms of its charge or pursuant to the Law of Property Act 1925;
  - (d) prohibit the tenant from both taking in lodgers or otherwise parting with or sharing possession of the Property or from using it as anything other than a residential dwelling;
  - (e) not contain any provision to the effect that the tenancy is not an assured shorthold.
- A2 Single/Multiple Occupation
- A2.1 The Applicant may let the Property in one of two ways:-
- (a) as a whole under a single tenancy (this may be to one tenant or a number of joint tenants); or
  - (b) under a number of separate tenancies provided each tenancy qualifies as a let of a separate dwelling under the Acts (the solicitor can advise the Applicant on this point) and, if accommodation is shared, paragraph A2.2 must be complied with.
- A2.2 Where tenants have their own separate accommodation (for example a bedroom and living room) but also have to share accommodation (for example a bathroom and kitchen) with others, then each tenancy must include:-
- (a) an exclusive right to occupy specific separate accommodation consisting of at least a bedroom; and
  - (b) a right to use the shared accommodation.
- A3 Private Tenancies
- A3.1 Any tenancy agreement which prevents it being an assured shorthold tenancy due only to the level of rent payable by the tenant must be reported to the Lender and further instructions awaited prior to completion.

### Section B – This section applies if the Applicant wishes to let the Property (or part of it) to a corporate body.

- B1 Acceptable Corporate Tenants
- B1.1 The Applicant may only let the Property to one of the following (referred to in this section as an 'acceptable corporate tenant'):-
- (a) a limited company incorporated under the Companies Acts with its registered office in England, Wales or Scotland;
  - (b) an educational institute, that is:-
    - a university
    - a university college
    - a publicly funded further education or higher education college;
  - (c) a housing association registered under the Housing Association Act 1985;
  - (d) a local housing authority



## B2 Terms of Approved Lease

- B2.1 The Applicant may only let the Property to an acceptable corporate tenant under a fixed term lease for a term of:-
- (a) no more than three years where the tenant is a limited company or an educational institute;
  - (b) no more than five years where the tenant is a housing association or a local housing authority.
- B2.2 In addition to B2.1, any lease to an acceptable corporate tenant must:-
- (a) require the acceptable corporate tenant to pay the rent at monthly or quarterly intervals;
  - (b) require the Property to be used as a residential dwelling only;
  - (c) prohibit the tenant from occupying it or from using it for any business purpose;
  - (d) prohibit the tenant from parting with possession of the Property or allowing any person to occupy it other than an individual or individuals whose rights of occupation do not extend beyond the term granted to the acceptable corporate tenant.

## Vacant possession and occupation

- 17.8 The Property shall not in whole or in part be let to or occupied by the Applicant or any Guarantor or any member of the family or associated subsidiary or parent company (as the case may be) of the Applicant. Unless the Property is let in accordance with the Offer, full vacant possession of the Property must be obtained on completion of the Loan. Throughout the duration of the Loan the Applicant must not part with or share occupancy of the Property other than in accordance with the Offer.

## 18. Title

- 18.1 Title to the Property must be vested in the name of the Applicant and, where there is more than one Applicant, in the names of all of the Applicants jointly prior to completion of the Loan.
- 18.2 Unless the Lender agrees otherwise, where the Offer relates to a remortgage, the Applicant must have been the registered proprietor of the Property for at least six months prior to the date of the application for the Loan.
- 18.3 The Applicant must notify the Lender if he or a predecessor in title acquired the Property within the six years prior to application for anything less than the then full market value.
- 18.4 The Applicant must execute a first legal charge over the Property in favour of the Lender and where appropriate, any ancillary documents including, if required, a floating charge over the Applicant's assets.
- 18.5 *No longer used*
- 18.5A Where the Applicant offers a leasehold property as security for the Loan and also has an interest (*interest includes where the Applicant owns such title outright or jointly with others or controls the entity owning such title*) in the freehold and/or superior title, the Applicant in his capacity as leaseholder and separately as the freeholder/superior title holder (or duly authorised by such persons to act as their agent for this purpose): -
- (a) covenants to observe and perform all of the obligations contained in the lease on the part of the leaseholder/freeholder/superior title holder (as appropriate) (such obligations including the covenants to repair, insure, serve ground rent and service charge demands and to pay the same);
  - (b) acknowledges and confirms that any buyer from the Lender, selling under its power of sale, shall treat this condition as conclusive evidence that as at the date that the sale completed, that there are no breaches of any covenants in the lease and that there are no arrears of any sums due under the lease, including ground rent, service charges, insurance premiums or any other sums;
  - (c) shall charge the freehold interest/superior title to the Lender where it is owned outright by the Applicant or where the Applicant owns a share of the freehold or superior title with others, a suitable form of trust deed or other suitable arrangement will be entered into prior to completion which contains provisions for the appropriate legal and beneficial interest in the freehold/superior title and leasehold title to be transferred simultaneously if the Lender exercises its power of sale.
- 18.6 Freehold interest/long lease
- Where the Property comprises a freehold interest and part(s) have been sold off on long leases, the Lender will require the solicitor to confirm:-
- 18.6.1 that the long leaseholders do not have the right of first refusal as contained in Part 1 Landlord and Tenant Act 1987;
  - 18.6.2 that the long leaseholders do not have the right to enfranchise under the Leasehold Reform Housing and Urban Development Act 1993 (as amended);
  - 18.6.3 that the long leases are bona fide arms length leases, and do not adversely affect the Lender's security;
  - 18.6.4 the insurance arrangements for the Property.
- The Applicant should note the Lender's requirements and that this condition remains for the duration of the Loan. Should the applicant wish to sell off flats or part of the security in future, any such proposal must be referred to the Lender in the first instance for approval.



## 19. Avoidance of fraud

- 19.1 The Applicant must report to the Lender full details of the transaction to which the Offer relates. The solicitor will be requested to verify the information the Applicant provides.
- 19.2 Details of the prices and the names and addresses of the parties involved in the transactions are required from the Applicant and the solicitor where:-
  - 19.2.1 the seller (or the Applicant in the case of a remortgage) does not yet own the Property, or the seller or the Applicant, in the case of a remortgage, has owned the Property for less than six months prior to the date of application or if the Applicant is acquiring it under a sub-sale, back to back or other derivative transaction;
  - 19.2.2 the Applicant has acquired, or will acquire the Property, other than on a bona fide arms length basis;
  - 19.2.3 the solicitor's firm is also acting for the seller.
- 19.3 The Applicant must report to the Lender if under the terms of any agreement with his seller:-
  - 19.3.1 the sum payable to acquire the Property differs to that stated in the Offer;
  - 19.3.2 the Applicant is to receive any discount, price reduction or cash payment or incentive, or if the Applicant is buying through an investment syndicate or club or a property locator;
  - 19.3.3 the Applicant is entitled to receive any chattels, or other items of value, including part exchange arrangements as part of the transaction.  
  
(Items of value could take many forms: possible examples include payment of the Applicant's mortgage, interest or buildings insurance premium for a period, the payment of the Applicant's fees or disbursements by another or the leaving of part of the purchase money outstanding. Genuine fixtures form part of the Property and need not be reported).
- 19.4 The Applicant must report to the Lender if:
  - 19.4.1 the Applicant is not providing the whole of the balance of the purchase price of the Property (after deducting the amount of the Lender's advance) from the Applicant's own resources, without recourse to further borrowing and if all such funds will not be passing through the solicitor's accounts;
  - 19.4.2 any part of the purchase money will not be paid through the solicitor's accounts or is being gifted;
  - 19.4.3 part of the price has been or will be paid direct to the seller or a third party.
- 19.5 The Applicant authorises his solicitor to disclose to the Lender any information or documentation which the solicitor or Lender may consider relevant in the Lender's decision to lend. The Applicant waives any duty of confidentiality or privilege which may otherwise exist between him and the solicitor in relation to the mortgage transaction whether arising prior to release of the Loan or at any time after completion of the Loan. The solicitor's file will be considered as jointly owned between the Lender and the Applicant and the complete file including the financial records and ledgers must be made available to the Lender, if so requested, at any time before or after completion of the Loan.
- 19.6 The Applicant should note that the Lender will undertake fraud audits and check details with fraud prevention agencies, and if false or inaccurate information is given or the Lender suspects fraud the Lender will record this and may require the Loan to be repaid in full.
- 19.7 If fraud is suspected, a criminal prosecution will be pursued and/or a report made to the relevant prosecution authorities and regulatory bodies.

## 20. Multiple mortgages

Subject always to the overriding effect of Mortgage Condition 1.7 (which prevents the mortgage securing a regulated agreement as defined by the Consumer Credit Act), the Legal Charge shall be security not only for the Loan and other money it provides for, but shall also secure all money which may be, or become, owing by the Applicant (and where there is more than one Applicant, any of them) to the Lender on any account. The Lender may, at its discretion, refuse to release any property held as security for the indebtedness of the Applicant until all amounts owing by the Applicant (or where there is more than one Applicant, any one of them) to the Lender have been paid.

## 21. Further borrowing

No further mortgage of the Property may be created by the Applicant without the prior written consent of the Lender.

## 22. Transfer of the mortgage

The Lender reserves the right at any time to assign, transfer or put into trust any interest it may have in the Loan or any security for its repayment.

## 23. No longer used

## 24. References and credit reference agency searches within three months

All references and Credit Reference Agency searches obtained in support of the application for the Loan must be less than three months old at completion. In cases where the references and/or Credit Reference Agency searches are or will be over three months old, the Lender may obtain new references/Credit Reference Agency searches, which must be satisfactory to the Lender, prior to release of funds.



## 25. Power of attorney

All forms, deeds and documents must be executed by the Applicant and may not be executed pursuant to any power of attorney.

## 26. Communication with the Applicant

All telephone calls between the Applicant and the Lender, whether before or after completion of the mortgage, may be recorded and monitored by the Lender for evidential purposes.

## 27. Instructions from the Applicant

- 27.1 In dealing with the Offer or the Loan after completion, the Lender will accept written instructions bearing the Applicant's signature. This includes where instructions are sent by facsimile, a facsimile of the Applicant's signature. The Lender will be entitled to act on any written instructions which appear to it to be genuine.
- 27.2 The Lender will also accept instructions by telephone and may agree with the Applicant security procedures which may be agreed over the telephone. By using the facility to give instructions by telephone, the Applicant agrees to any security procedures the Lender may have provided to him/her. The Lender will be entitled to act on any instruction where it has followed these security procedures. This applies whether or not the instructions were actually given by the Applicant.
- 27.3 The Lender may refuse to implement an instruction if it doubts the authenticity of the instruction or believes that in doing so it may breach any law, regulation or other obligation.
- 27.4 The Applicant must keep all security procedures, codes and identifiers secret and take all reasonable care to prevent their unauthorised or fraudulent use.
- 27.5 Where there is more than one Applicant, the Lender may accept instructions (whether by telephone or in writing) from any one of them.
- 27.6 Where there is more than one Applicant, on the death of any of them the Lender can accept instructions from any survivor or survivors.

## 28. Limiting the Lender's liability

The Lender will not be liable to the Applicant for any loss the Applicant may suffer if the Lender fails to perform any of its obligations under the Offer or these General Conditions as a direct or indirect result of anything outside of the Lender's reasonable control. This includes, but is not limited to, industrial dispute, failure or fluctuation of power or telecommunications supply or any equipment or error in any software, error or lack of clarity in the Applicant's instructions, failure or delay in the supply of services to the Lender by a third party. The Lender will not under any circumstances whatsoever be liable for any indirect losses or loss of profit.

## 29. Assignment

The Offer is personal to, and may not be assigned by, the Applicant. The Lender's Legal Charge gives the Lender the absolute right to transfer the Loan and any security given for it at any time to another person. The Applicant consents to such a transfer.

## 30. Introducer fees

Where the Applicant has been introduced to the Lender by an introducer, that introducer may receive an introduction fee from the Lender. The receipt of that fee could give rise to a conflict of interest between the Applicant and the introducer and the Applicant should discuss this matter with the introducer. The Lender will provide details of any fee paid by it to the introducer on request by the Applicant.





## Special Conditions *(which apply if specified in the Offer)*

England and Wales

### 50. Postal address

The solicitor must provide the full postal address of the Property, inclusive of postcode, on or prior to the request for the advance.

### 51. Full retention – Property under construction/conversion

- 51.1 The solicitor should contact the Lender upon completion of the Property to arrange a re-inspection for which a minimum of 15 working days' notice is required.
- 51.2 A re-inspection fee (at the then current rate) will be payable in advance, or at the discretion of the Lender, added to the mortgage on completion of the Loan.
- 51.3 No part of the Loan will be released until:-
  - 51.3.1 the solicitor confirms that the Property has the benefit of all appropriate and necessary planning permissions (with all requisite conditions satisfied), building regulations approvals/consents, all requisite licences and certificates necessary for the immediate occupation of the Property; and
  - 51.3.2 the Property has been completed to the satisfaction of the Lender and re-inspected by the Lender's valuer; and
  - 51.3.3 the Lender's requirements in relation to the insurance of the Property in the General Conditions have been satisfied.

### 52. Full and part retention – Property requiring essential repairs

- 52.1 The solicitor or Applicant should contact the Lender upon completion of the works specified on the valuation report to arrange a re-inspection for which a minimum of 15 working days' notice is required.
- 52.2 A re-inspection fee (at the then current rate) will be payable in advance.
- 52.3 If a FULL RETENTION is applicable, no part of the Loan will be released until:-
  - 52.3.1 all works detailed in the Valuation Report have been completed to the satisfaction of the Lender and re-inspected by the Lender's valuer; and
  - 52.3.2 the Lender's requirements in relation to the insurance of the Property in the General Conditions have been satisfied.
- 52.4 If a PART RETENTION is applicable, the retention specified in the Offer will not be released until:-
  - 52.4.1 the works detailed in the Valuation Report have been completed to the satisfaction of the Lender and re-inspected by the Lender's valuer; and
  - 52.4.2 the Lender's requirements in relation to the insurance of the Property in the General Conditions have been satisfied.The works should be completed within a period of six months following completion of the Loan.
- 52.5 On re-inspection, should the Property be valued at less than the figure shown on the Offer, the retention amount released may be restricted accordingly.

### 53. No longer used

### 54. Limited refurbishment - retention

- 54.1 The solicitor or the Applicant should contact the Lender to arrange a re-inspection, upon completion of the works specified in this condition for which a minimum of 15 working days' notice is required.
- 54.2 A re-inspection fee (at the then current rate) will be payable in advance, or at the discretion of the Lender, added to the mortgage.
- 54.3 The retention specified in the Offer will not to be released until:
  - 54.3.1 the works proposed by the Applicant to the Property are carried out to the satisfaction of the Lender. (The valuation figure shown in the Offer is the after works figure adopted by the valuer and reflects the proposed works); and
  - 54.3.2 the Lender's requirements in relation to the insurance of the Property in the General Conditions have been satisfied.
- 54.4 The works should be completed within a period of three months following completion of the Loan.
- 54.5 On re-inspection, should the Property be valued at less than the figure shown on this Offer, the retention amount released may be restricted accordingly.



## **55. Arboriculturist specialist report - buildings insurance**

- 55.1 It is a condition of the block insurers that the Applicant must obtain an arboriculturist report in respect of the trees/shrubs detailed in the Valuation Report. All necessary recommendations are to be carried out, under the guidance of the arboriculturist, to prevent damage occurring to the Property.
- 55.2 The solicitor must confirm that the report has been obtained and that the Applicant has been made aware of their obligations to adhere to any actions recommended therein.

## **56. Arboriculturist report**

- 56.1 An arboriculturist report must be obtained by the Applicant as detailed in the Valuation Report. All recommendations are to be carried out within six months of completion.
- 56.2 The solicitor must confirm that the report has been obtained and that the Applicant has been made aware of their obligations to adhere to any actions recommended therein.

## **57. Owners of trees/shrubs on notice**

The solicitor is to obtain an undertaking from the Applicant confirming they will put the owners of the trees/shrubs detailed in the Valuation Report on notice with regard to their responsibility for the maintenance and management of the trees/shrubs to avoid any damage to the Property. The solicitor is to lodge this undertaking with the title deeds.

## **58. Electrical report**

This Offer is subject to the Property having an electrical inspection by a qualified electrician to the latest NICEIC regulations. The contractor's report must be received by the Lender prior to the request for the advance and may be referred to the valuer for his comments before proceeding further.

## **59. Mining Search**

This Offer is subject to the solicitor obtaining an up-to-date and satisfactory search appropriate to the locality. The search must be submitted to the Lender for consideration as soon as it becomes available and, in any event, prior to the request for the advance.

## **60. Garage and/or parking space**

The solicitor must confirm in writing, prior to the request for the advance, that a garage and/or parking space which is located on a separate site forms part of the Property and will be charged to the Lender.

## **61. Agricultural restrictions**

The solicitor must confirm in writing, prior to the request for the advance, that the Property is not subject to any agricultural restrictions or covenants.

## **62. Septic tank**

The solicitor must confirm in writing, prior to the request for the advance, that the Property enjoys satisfactory legal rights and there are adequate covenants and arrangements in respect of the access, use and enforceability of repairs, contributions and insurance in respect of the septic tank or cesspool into which the Property drains.

## **63. *No longer used***

## **64. Direct debit mandate**

This Offer is subject to the receipt by the Lender of a fully completed Direct Debit mandate from an account approved by the Lender, in the Applicant's name which must be accepted by the paying bank prior to the request for the advance.

## **65. Interest only**

This is an interest only Loan and there is no part repayment of principal in the monthly payments. Assuming all obligations are met under the mortgage in full as they fall due, the full amount of the Loan will be outstanding and repayable at the end of the mortgage term. It is the responsibility of the Applicant to ensure that adequate arrangements have been made to repay this Loan in full at the end of the mortgage term.

## **66. Product fee**

The product fee as detailed in the Offer will be added to the mortgage on completion of the Loan.



## 67. Transfer into sole name

The solicitor must ensure that the Property is conveyed into the sole name of the Applicant on completion of the Loan.

## 68. Buildings insurance

Unless buildings insurance is being arranged through the Lender, the solicitor must, on or prior to the request for the advance, provide the following details of the alternative index linked policy in the appropriate section of the Report on Title: Name of insurance company, policy number, renewal date, insured amount and confirmation that the insurer is authorised in the United Kingdom by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority. The policy must be in the insurer's standard form of reinstatement contract and not be for less than the cover stated in the Offer. The preference is for the solicitor to confirm on completion, that the interest of the Lender will be noted on the policy or that the policy has been issued in the joint names of the Lender and the Applicant, and that the insurer has been requested in writing to notify the Lender of any reduction in the amount insured or scope of the cover in force, however this will not be insisted upon if the insurer is not prepared to comply. The Applicant must contribute towards the cost of the Lender taking out contingency insurance, the amount of which is stated on the Offer and added to the mortgage on completion of the Loan. In exceptional cases, a copy of the policy may be required.

## 69. Radon gas

The solicitor is to ensure that the Applicant is aware of the requirement to monitor the levels of radon gas in accordance with procedures laid down by the National Radiological Protection Board and complying with any recommendations/requirements that the NRPB may make.

## 70. Part commercial

The solicitor should note that:-

- 70.1 The Lender requires a charge over the whole of the Property, comprising both the commercial and the residential components of the Property.
- 70.2 As a consequence of 70.1 whilst these instructions apply to the Property as a whole (such that the Lender requires a good and marketable title to the property as a whole) Condition 17 of the Lender's General Conditions applies only to the residential component of the Property. Unless the Lender specifically asks, the solicitor is not required to report on the terms of the commercial lease except for the user clause.

Any changes to the use or occupation of the commercial component after completion of the Loan are not permitted without the prior consent of the Lender in writing. The Lender reserves the right to re-inspect the Property at any time, a re-inspection fee (at the then current rate) will be payable and added to the mortgage.

## 71. House in Multiple Occupation

The Applicant is advised that the valuation carried out for mortgage purposes is not sufficient to confirm actual compliance with the Housing Health and Safety Rating System under Part 1 of The Housing Act 2004 and therefore the Applicant is advised to seek specialist advice in this regard.

Where the Property is a House in Multiple Occupation, FUNDS WILL NOT BE RELEASED UNTIL ALL OF THE FOLLOWING CONDITIONS HAVE BEEN SATISFIED:-

### 71.1 Licence

Where the Property falls within the definition of a House in Multiple Occupation within the Housing Act 2004:-

- 71.1.1 the solicitor must make enquiries with the local authority and report to the Lender if the Property requires a Licence and if so the category of such licence, namely: mandatory, additional/discretionary or selective ("the Licence").
- 71.1.2 if the Property requires a Licence, the solicitor must supply a copy of it to the Lender prior to the request for funds and confirm (after making enquiries with the Licence holder) that all of the conditions to which the Licence is subject have been satisfied. If any conditions remain to be satisfied, the solicitor must report which conditions remain to be satisfied, the reasons why these remain outstanding and the likely timescale for compliance.
- 71.1.3 if the Property requires a Licence but does not have the benefit of one, the solicitor must report this to the Lender and provide details of the reasons why the Property is not licensed and the steps being taken to rectify the matter.  
The solicitor must await the Lender's further instructions.
- 71.1.4 if the Property is being acquired by the Applicant, the solicitor must confirm on or before he submits the Report on Title that the Applicant has made the appropriate licence application. The Licence must be sent to the Lender within three months of completion of the Loan.

In considering all of the above, the solicitor must also have regard to the Houses in Multiple Occupation and Residential Property Licensing Reforms 2018.



## 71.2 Planning and Building Regulations

- 71.2.1 Where the Property falls within the definition of a House in Multiple Occupation the solicitor must confirm that the Property enjoys the benefit of full and unconditional building regulations and planning consents within the town and country planning legislation whether as sui generis (or large HMO use), Class 4 of the Town and Country Planning (Use Classes) (Amendments) (England) Order 2010, an established use certificate or a certificate of lawfulness of existing use or development for its current layout and use as specified in the Valuation Report. The solicitor must send copies of the relevant planning consents and building regulations approvals to the Lender prior to the request for the release of funds.
- 71.2.2 The solicitor must ensure that the Property is not within an area where the local planning authority have revoked the permitted development rights between use classes C3 and C4 by way of an Article 4 Direction Order. If this is the case, the solicitor must obtain evidence that the Property enjoyed HMO use prior to the Article 4 Direction being implemented and forward this to the Lender prior to the request for the release of funds.

## 72. New build/converted property

- 72.1 Where the Property has been built or converted within the last 10 years, the solicitor's attention is drawn to the Lender's requirements in the UK Finance Mortgage Lenders' Handbook, our Part 2 and the Lender's Supplemental Instructions. In addition, the solicitor must confirm in writing prior to the request for the advance, that the Property (and where the Property forms part of a building that all common parts of the building including the structure ('the common parts')) enjoy the applicable new build warranty.
- 72.2 No funds will be released until the solicitor confirms in writing that the Lender's requirements have been met in full and that the Property and common parts have been certified by the local authority in writing as fit for habitation and occupation.

## 73. No longer used

## 74. Purchase moneys

The solicitor must confirm in writing prior to the submission of the Report of Title:-

- 74.1 that the Applicant has provided the whole of the balance of the purchase price of the Property (after deducting the amount of the Lender's advance) from the Applicant's own resources, without recourse to further borrowing; and
- 74.2 that all of the purchase moneys will pass through his client account. Where the solicitor is not representing the Applicant, the solicitor must obtain written confirmation from the Applicant's solicitor that they hold the deposit moneys in their client account; and
- 74.3 that no part of the purchase moneys is being gifted or paid directly to the seller or a third party.

## 75. The Legal Charge and Floating Charge (if applicable)

- (a) The solicitor is reminded to ensure, where the Applicant is a corporate borrower, to register the Legal Charge and Floating Charge (if applicable) at Companies House within the time limits prescribed by statute.
- (b) A certified copy of the Legal Charge must be sent to the Land Registry with the application to register the same. The original Legal Charge must be sent to the Lender with the deeds.

## 76. No longer used

## 77. Mortgage of Part

Where it is apparent from an inspection of the registers of title and the filed plan that the Lender's charge will not extend over all of the land and property comprised in the title, the solicitor must report this to the Lender and provide a plan detailing the land to be charged to the Lender for approval by the Lender and its valuer. Funds will not be released until the solicitor acting for the Lender confirms in writing, before requesting the advance, that the Lender's interest as mortgagee is fully protected so that should the Lender enforce its security, it can pass a good and marketable title to any buyer with all the necessary and appropriate rights appurtenant for the full and continuous enjoyment and use of the Property ("the Rights").

A copy of the addendum to the Legal Charge granting such Rights must be sent to the Lender for its records, prior to requesting the advance. The Lender will not check the accuracy or veracity of such deed and is reliant upon the solicitor acting for the Lender to ensure that the Lender has a good and marketable title and is fully protected.

This Special Condition does not apply to circumstances where either the land and property offered as security is a flying freehold or is affected by a flying freehold, or where the property or land offered as security comprises part of a freehold or leasehold title which is divided horizontally.

## 78. Environmental and Contaminated Land Searches

This Offer is subject to the solicitor obtaining up-to-date Environmental and Contaminated Land Searches and Reports appropriate to the Property and its locality (including its use and former use). The Searches and Reports must be submitted to the Lender for consideration as soon as they become available and in any event, prior to the request for the advance.



79. **Not applicable in England and Wales**

80. **Not applicable in England and Wales**

81. **Not applicable in England and Wales**

82. **Not applicable in England and Wales**

83. **Not applicable in England and Wales**

#### 84. **Holiday Letting Requirements**


Throughout the duration of the Loan, the Property shall not be occupied by the Applicant and may only be occupied, in whole or in part, in accordance with this condition;


- 84.1 On completion of the mortgage, either the Applicant must have vacant possession of the whole of the Property or there must be a bona fide Approved Holiday Occupancy Agreement (see 84.7 below). There can be no other occupiers on or after completion.
- 84.2 The Applicant must produce any occupancy agreements, notices given to or by occupiers or proof of rental payments promptly on request by the Lender.
- 84.3 Where the Applicant is a natural person, neither the Applicant nor any related person (which includes the Applicant's spouse, partner, civil partner, parents, grandparents, siblings, children or grandchildren) may occupy the Property at any time.
- 84.4 Where the Applicant is a limited company, neither the directors, guarantors or shareholders nor any person related to any of them (which includes their respective, spouses, partners, civil partners, parents, grandparents, siblings, children or grandchildren) nor any associated subsidiary or parent company of the Applicant may occupy the Property at any time.
- 84.5 The Lender will not advance the Loan if an occupier occupies the Property other than on the basis of an Approved Holiday Occupancy Agreement.
- 84.6 If the Applicant is to acquire or remortgage the Property with occupiers at completion, the Lender will not advance the Loan until the solicitor acting confirms in writing to the Lender, amongst other things, that each occupier occupies under an Approved Holiday Occupancy Agreement.
- 84.7 The Applicant may only allow the Property to be occupied under an Approved Holiday Occupancy Agreement. An Approved Holiday Occupancy Agreement is one which is:-
- (a) in writing and for a fixed term of not more than one month;
  - (b) expressly states that the occupier has the right to occupy for the purposes of a holiday only and no other purpose;
  - (c) prohibits the occupier from taking in lodgers or otherwise parting with or sharing possession of the Property or from using it for any purpose other than a holiday.
- 84.8 The Applicant may allow the Property to be occupied in one of two ways:-
- (a) as a whole under a single Approved Holiday Occupancy Agreement (this may be to one occupier or a number of occupiers jointly);
  - or
  - (b) under a number of separate Approved Holiday Occupancy Agreements where each agreement relates to a separate dwelling.
- 84.9 Whilst it is the intention of the parties that the Property will be occupied under Approved Holiday Occupancy Agreements, the Lender agrees that the Applicant may from time to time let the Property under an assured shorthold (or in Scotland, private residential) tenancy provided that where this happens the Applicant meets all relevant requirements of special condition 17 (Letting Requirements).


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