

Conditions of Sale 2023 Edition

Explanatory Memorandum

Subject	
General	<p>It is recommended that the 2023 Edition of the contract is used for all transactions commencing on or after 1 November 2023.</p> <p>The 2023 Edition General Conditions are intended to be general in their nature and, in certain circumstances, will require to be amended by Special Condition in keeping with good conveyancing practice. Practitioners are reminded that:</p> <ul style="list-style-type: none">• Special Conditions altering or deleting a General Condition should give the reason for such variation, unless manifestly evident; and• Special Conditions should be utilised in instances where it is required to adopt recommendations or advices of the Law Society or of any committee associated with it, where such recommendations or advice are at variance with provisions expressed in the General Conditions. <p>A list of some relevant practice notes are set out attached at Appendix 1, with hyperlinks for convenience.</p> <p>Practitioners should note that the 2023 Edition General Conditions have been adapted to provide for the use of gender-neutral language throughout. References to particular genders have been amended to be more gender neutral, in keeping with the general move to more inclusive language.</p> <p>Some language has also been adjusted to reflect more straightforward 'simple English' throughout, consistent with the general move in this direction in terms of legal drafting.</p> <p>Some statutory references have been updated and some capitalisation of terms for reference to defined terms have been updated.</p> <p>There have been changes in the formatting to the document and the inclusion of headings as opposed to marginal notes, to allow for indexation and easier navigation of the document.</p> <p>Where numerals were referenced in the 2019 Edition, reference is now made to both the numeric reference and words to ensure clarity and to allow for consistency when drafting special conditions, where it is considered best practice to include both words and numbers when drafting. This will assist in avoiding potential ambiguities that may be introduced by a typographical error.</p>

	<p>The interpretation sections have been combined and overhauled, with the severance language now included as a new General Condition 49.</p> <p>In some General Conditions, excluding the General Conditions relating to 'Completion Notices', reference is now made to Working Days. The position in relation to Completion Notices has intentionally not been changed in this Edition, given the familiarity that practitioners have in relation to these provisions and the importance of these timelines in transactions.</p> <p>Given the number of stylistic and other changes, it is not practicable to list them all out and, for convenience, a link to a comparison document is attached at Appendix 2. The more material changes are summarised below.</p>
Numbering and references	<p>In recognition of the general desire, where practicable, to retain the original numbering, particularly in respect of key provisions, efforts have been made to retain the original numbering.</p> <p>As a result, there are two new General Conditions – General Condition 48 (Counterparts and Electronic Exchange) and General Condition 49 (Severance) – inserted at the end of the document, and a new General Condition 3 (Data Protection) inserted towards the beginning, as the interpretation provisions in the 2019 Edition (formerly General Conditions 2 and 3) have been brought together in one General Condition, now numbered General Condition 2.</p>
Documents Schedule	<p>Reference has been made in the Documents Schedule to some suggested headings for grouping documents that may be referred to in the Documents Schedule.</p> <p>These headings are not mandatory and are simply a guide and suggestions for practitioners when drafting to simplify review by their counterparty.</p>
Special Conditions	<p>The standard Special Conditions 1 and 2 have been retained, with the inclusion of clear reference at Special Condition 1 to the 'Law Society 2023 General Conditions'. These should be included in every Contract for Sale.</p> <p>Reference has also been made in the Special Conditions section to the use of a Special Condition 3 for VAT, where the appropriate VAT Conditions tailored for the transaction by tax advisors should be inserted, and Special Condition 4 for Title, which should be drafted specifically for the transaction and title. These are for reference only and simply a guide for practitioners and to remind practitioners to deal with these matters when drafting.</p>
Table of Contents	<p>A table of contents has been included for easier reference and navigation of the document, which is hyperlinked in the electronic PDF version of the 2023 Edition.</p>
Definitions	<p>Practitioners' attention is brought to the following new definitions that have been inserted in the definitions section:</p>

	<p>'Building Bye-Laws' means the rules and regulations set by any Competent Authority regarding development works carried out between 13 December 1989 and 1 June 1992 made under the Public Health Acts or Dublin Corporation Act 1890.</p> <p>'Building Bye-Law Approvals' means Building Bye-Law approvals (if any) made under the Public Health Acts or Dublin Corporation Act 1890.</p> <p>'Building Control Acts' means the Building Control Acts 1990 to 2020 and all regulations made under those Acts.</p> <p>'Contract' means this Contract, which shall include for the avoidance of doubt any variation or amendment thereof evidenced in writing between the parties.</p> <p>'Data Protection Laws' means all applicable privacy and data protection laws including, without limitation, the General Data Protection Regulation ((EU) 2016/679) ('GDPR'), the Data Protection Act 2018, and the Electronic Communications Directive 2002/58/EC, and any implementing, derivative or related legislation, rule, or regulation.</p> <p>'DX' means the DX Document Exchange private business-to-business network that provides a delivery service for the legal services sector in Ireland.</p> <p>'Planning Acts' means the Local Government (Planning and Development) Acts 1963 to 1999 and the Planning and Development Acts 2000 to 2022 and all regulations made under those Acts.</p> <p>'Planning Legislation' means the Local Government (Planning and Development) Acts 1963 to 1999, the Planning and Development Acts 2000 to 2022, the Building Bye-Laws, and the Building Control Acts 1990 to 2020, and all regulations made under those Acts.</p> <p>'Shared Personal Data' means personal data shared by the Vendor or the Purchaser with the other for the purposes of the Sale.</p> <p>'Solicitor' means the solicitor or firm of solicitors from time to time representing the Vendor or Purchaser (as the case may be) in respect of the Sale.</p>
<p>New General Condition 3 – Data Protection</p>	<p>A new General Condition has been inserted as General Condition 3, as follows:</p> <p>3 Data Protection</p> <p>The Vendor and the Purchaser shall each comply with Data Protection Laws in the course of their respective processing of Shared Personal Data in connection with the Sale and shall not otherwise process Shared Personal Data unless permitted by law. The Vendor and the Purchaser confirm consent to the sharing of</p>

	<p>Shared Personal Data in connection with or ancillary to the Sale with any third parties that may ordinarily be expected to receive and or consider such Shared Personal Data.</p> <p>This new General Condition simply acknowledges that the parties will each comply with Data Protection Laws in the course of their respective processing of Shared Personal Data (where appropriate) in connection with the transaction. It also provides for the sharing of personal data for any actions incidental to the transaction (e.g. registration, financing).</p> <p>Practitioners are reminded that the Contract is personal to the parties, and this provision only relates to the relationship between the parties. The obligations of the relevant solicitor/firm are separate and governed by the regulations.</p> <p>In appropriate cases, a suitable Special Condition should be drafted and included in the Contract where there is a need to deal with personal and/ or sensitive data in a specific manner between the parties or otherwise for the purpose of the transaction.</p>
<p>Amendment to General Condition 7(d) – Requisitions</p>	<p>The phrase "<i>toties quoties</i>" has been replaced with "<i>as often as may arise</i>" in keeping with the move towards more simple English.</p>
<p>Amendment to General Condition 10 – Registered Land</p>	<p>An amendment has been made to General Condition 10 to include a specific obligation on a Vendor to provide a map, consistent with Requisition 22.f (see below). Please note that is not anticipated that a map will be required where the transfer of part does not require a separate map (e.g. where it is an entire plot or the property described in a folio and the transfer can be effected by the use of words as opposed to by reference to a map).</p> <p>(g) where the Subject Property is part only of the lands in a Folio, the Vendor shall:</p> <p>(i) <u>furnish to the Purchaser a map of the Subject Property complying with the requirements of the Land Registry as at the Date of Sale;</u> and</p> <p>(ii) do everything within the reasonable power or procurement of the Vendor to satisfy within a reasonable time any Land Registry mapping queries arising on the registration of the Assurance to the Purchaser so far as it affects that land; and</p> <p>(iii) pay and discharge any outlay to the Land Registry which ought properly to be paid by the Vendor <u>them</u>, including additional fees attributable to default on the <u>their</u> part of</p>

<p>Amendment to General Condition 21 – Entitlement to Interest</p>	<p>An amendment has been made to General Condition 21(c) to clarify the entitlement of the Purchaser to compensation by way of interest on the Purchase Price and to be more consistent with the wording of General Condition 21(b) – see below.</p> <p>(c) If by reason of any default on the part of the Vendor the Sale shall not have been completed on or before the later of:</p> <p>(i) the Closing Date; or</p> <p>(ii) such subsequent date whereafter delay in completing shall not be attributable to default on the part of the Purchaser;</p> <p>the Vendor shall pay compensation to the Purchaser calculated as the amount of the Purchase Price. The compensation shall be such sum as is equivalent to interest at the Stipulated Interest Rate <u>on the Purchase Price</u> for the period between the Closing Date (or as the case may be such subsequent date as aforesaid) and the Completion Date. The Vendor shall not for the purposes of this <u>General Condition 21</u> be deemed to be in default during the period of notice given pursuant to clause (b) of this General Condition 21(b). Such compensation shall accrue from day to day and shall be payable before and after any judgment.</p>
<p>Amendment to General Condition 32(d)(ii) – Building Bye-Law Approval</p>	<p>This General Condition has been amended to reflect the amendments to the definitions section in relation to Building Bye-Laws:</p> <p>"(iii) (if available) Building Bye-Law Approvals made under the Public Health Acts or Dublin Corporation Act 1890 and Commencement Notices issued under regulations made pursuant to the Building Control Acts 1990 to 2020; and"</p>
<p>Amendment to General Condition 40 – Exclusions from Risk</p>	<p>An amendment has been made to General Condition 40(b) to clarify that the exclusion only relates to damage not materially affecting value occasioned when vacating the Subject Property – see below:</p> <p>(b) to damage <u>not materially affecting value</u> occasioned by operations reasonably undertaken by the Vendor in their the removal <u>of contents</u> from, and vacation of, the Subject Property, provided that the same are so undertaken with reasonable care;</p>
<p>Amendment to General Condition 45 – Notices</p>	<p>Among other changes, a new General Condition 45(v) has been inserted to account for service of notices by Document Exchange and a new General Condition 45(b) acknowledging service on the solicitors for the parties has also been included – see below:</p> <p>(v) <u>where the address of the Solicitor to be served includes a numbered box at a DX by sending it by DX addressed to the</u></p>

	<p><u>numbered DX box of the Solicitor representing the intended recipient;</u></p> <p>(b) <u>Any notice given to either party's Solicitor in any of the methods set out in General Condition 45 shall be deemed for the purposes of this Contract to have been given to that party.</u></p> <p>Practitioners should take care to remove fax and DX details from their letterhead and published address/contact details if no longer actively using and or monitoring such services.</p>
<p>Amendment to General Condition 47 – Dispute Resolution</p>	<p>Among other changes, General Condition 47(b) has been amended to confirm that the arbitration shall be conducted in the English language in Ireland – see below:</p> <p>(b) If the mediation does not start within <u>twenty (20) Working Days</u> (or such longer period as the parties agree in writing) from the date of appointment of the mediator or if the parties are unable to resolve the difference or dispute by mediation within <u>forty (40) Working Days</u> from the date of appointment of the mediator the difference or dispute shall be submitted to arbitration by a sole arbitrator to be appointed (in the absence of agreement between the parties upon such appointment and on the application of either of them) by the President (or other officer endowed with the functions of such President) for the time being of the Law Society of Ireland or (in the event of the President or other officer as aforesaid being unable or unwilling to make the appointment) by the next senior officer of that Society who is so able and willing to make the appointment and such arbitration shall be governed by the Arbitration Act 2010, <u>conducted in English and the place of arbitration shall be Ireland</u>, provided however that if the arbitrator shall relinquish <u>their</u> appointment or die, or if it shall become apparent that for any reason <u>they</u> shall be unable or shall have become unfit or unsuited (whether because of bias or otherwise) to complete <u>their</u> duties, or if <u>they</u> shall be removed from office by court order, a substitute may be appointed in <u>their</u> place and in relation to any such appointment the procedures hereinbefore set forth shall be deemed to apply as though the substitution were an appointment de novo which said procedures may be repeated as many times as may be necessary.</p>
<p>New General Condition 48 – Counterparts and Electronic Exchange</p>	<p>A new General Condition 48 has been inserted to provide, where appropriate, express confirmation of the parties' consent to electronic exchange of contracts and the use of counterparts and the potential to use electronic signatures. This change does not in any way alter the current position in relation to the formalities for execution and exchange of a simple contract for the sale and purchase of land, and the parties are free to elect</p>

to use electronic signatures as appropriate in keeping with legislative requirements, and the wording incorporates the suggested wording referenced at Clause 14 of the 'Updated Guidance Note Regarding E-Signatures, Electronic Contracts and Certain Other Electronic Transactions'. This guidance note is available through the link referred to at Appendix 3.

48 Counterparts and Electronic Exchange

- (a) This Contract may be executed in any number of counterparts, including electronic counterparts, each of which is an original and all of which when taken together shall constitute one and the same Contract.
- (b) This Contract shall not be effective however until each party has executed at least one (1) counterpart and those counterparts have been exchanged.
- (c) Without prejudice to any other method of execution and exchange, the transmission by email in PDF or JPEG format (or such other format as is agreed between the parties in advance of transmission) by one party to this Contract (or their Solicitor) to the other(s) (or their Solicitor) of a copy of this Contract duly executed shall have the same effect as the delivery of an original of this Contract.
- (d) Without prejudice to any other method of execution and exchange, subject to other express terms of this Contract governing its validity (including but not limited to the foregoing General Condition 48(b) and General Condition 48(c)) each of the parties to this Contract agrees that:
 - (i) any signature required for the execution of this Contract may be an electronic signature (as defined by the Electronic Commerce Act 2000) and such signature shall have the same effect as a handwritten signature;
 - (ii) the other party shall be entitled to rely on the execution and exchange of this Contract effected electronically; and
 - (iii) the execution and exchange of this Contract effected electronically shall constitute a legally binding agreement among the parties to it and conclusive evidence of such agreement, in each case as if it had been, as applicable, signed, executed and exchanged manually.

New General Condition 49 – Severance	<p>A new General Condition 49 has been inserted to address severance of provisions, giving this condition greater prominence than it had when it was originally referred to solely in the interpretation section of the 2019 Edition – see below:</p> <p>49 Severance</p> <p>If any term, provision, clause or sub-clause of this Contract shall in whole or in part be held by a Court to be unlawful, void or unenforceable under any enactment or rule of law that term, provision, clause or sub-clause or part thereof shall to the extent required be severed from and deemed not to form part of this Contract and the validity and enforceability of the remainder of this Contract shall not be thereby adversely affected.</p>
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Appendix 1
Useful Links Practice Notes

Special Conditions in Contracts for Sale

www.lawsociety.ie/Solicitors/knowledge-base/Practice-Notes/Special-Conditions-in-Contracts-for-Sale

Heading letters in conveyancing transactions 'without prejudice'

www.lawsociety.ie/Solicitors/knowledge-base/Practice-Notes/Heading-letters-in-conveyancing-transactions-without-prejudice

Deletion of General Condition 25 from Contract for Sale

www.lawsociety.ie/Solicitors/knowledge-base/Practice-Notes/deletion-of-general-condition-25-from-contract-for-sale

Online auctions and deposits

www.lawsociety.ie/Solicitors/knowledge-base/Practice-Notes/online-auctions-and-deposits

Entire agreement clauses – residential property sales

www.lawsociety.ie/Solicitors/knowledge-base/Practice-Notes/Entire-agreement-clauses--residential-property-sales

Loan special condition and revaluation of security by lenders

www.lawsociety.ie/Solicitors/knowledge-base/Practice-Notes/Loan-special-condition-and-revaluation-of-security-by-lenders

Use of 'Entire Agreement' Clauses in Contracts for the sale of residential property

www.lawsociety.ie/Solicitors/knowledge-base/Practice-Notes/Use-of-Entire-Agreement-Clauses-in-Contracts-for-the-sale-of-residential-property

Proper Pre-Contract Enquiries

www.lawsociety.ie/Solicitors/knowledge-base/Practice-Notes/Proper-Pre-Contract-Enquiries

Contract closing dates

www.lawsociety.ie/Solicitors/knowledge-base/Practice-Notes/Contract-closing-dates

Deposits In Sale Generally

www.lawsociety.ie/Solicitors/knowledge-base/Practice-Notes/Deposits-In-Sale-Generally1

Receiver Contracts

www.lawsociety.ie/Solicitors/knowledge-base/Practice-Notes/receiver-contracts

Receiver contract special condition unacceptable

www.lawsociety.ie/Solicitors/knowledge-base/Practice-Notes/receiver-contract-special-condition-unacceptable

'No recourse' condition in receiver contracts

www.lawsociety.ie/Solicitors/knowledge-base/Practice-Notes/no-recourse-condition-in-receiver-contracts

Subject to loan clause – a review

www.lawsociety.ie/Solicitors/knowledge-base/Practice-Notes/subject-to-loan-clause---a-review

Conditions of sales by receivers / mortgagees

www.lawsociety.ie/Solicitors/knowledge-base/Practice-Notes/Conditions-of-sales-by-receiversmortgagees

Online auctions and deposits

www.lawsociety.ie/Solicitors/knowledge-base/Practice-Notes/online-auctions-and-deposits

Pre-Contract deposit should be stated to be paid to stakeholder or on trust

www.lawsociety.ie/Solicitors/knowledge-base/Practice-Notes/Pre-Contract-deposit-should-be-stated-to-be-paid-to-stakeholder-or-on-trust

Appendix 2
Comparison of 2023 Edition Contract for Sale as against 2019 Edition Contract for Sale

<https://www.lawsociety.ie/globalassets/documents/committees/conveyancing/precedents/2023/compare-gc-2023-for-publication-to-gc-2019.pdf>

Appendix 3
Guidance on Electronic Signatures and Electronic Contracts

**Updated Guidance Note Regarding E-Signatures, Electronic Contracts and Certain
Other Electronic Transactions**

www.lawsociety.ie/globalassets/documents/committees/business/e-signatures-electronic-contracts-other-electronic-transactions.pdf

Guidance on the 'virtual' execution of documents

www.lawsociety.ie/Solicitors/knowledge-base/Practice-Notes/Guidance-on-the-virtual-execution-of-documents