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Negative interest rates – sample special conditions

1. PURCHASER BEARS negative INTEREST COST
   1. The deposit **(save any [booking] deposit paid to the [Vendor’s sales agent/auctioneer]**) will be placed by the Vendor’s solicitor on deposit with [**name the bank**] **(the “Bank”)**.
   2. If this Contract is rescinded (but the deposit shall not lawfully be forfeited), and there shall be any negative interest rate(s) and/or any similar charges (the “**Interest Charge**”) imposed by the Bank, regardless of the method or means by which the Interest Charge is applied, then:

the Vendor shall be entitled to deduct from the deposit an amount for the Interest Charge (the “**Interest Deduction**”), calculated at €● for each week (or part of a week) during which the Vendor’s solicitor holds the deposit as stakeholder. General Conditions 33(a), 34 and 36(e) shall be read subject to this Special Condition.[[1]](#footnote-1)

**OR**

the Vendor shall be entitled to deduct from the deposit an amount for the Interest Charge (the “**Interest Deduction**”). The Interest Deduction shall be calculated by the Vendor based on the period during which the Vendor’s solicitor holds the deposit as stakeholder and the method or means by which the Interest Charge is applied by the Bank, and the Vendor’s calculation in this regard shall be final and binding save in the case of manifest error. General Conditions 33(a), 34 and 36(e) shall be read subject to this Special Condition.[[2]](#footnote-2)

* 1. The sum of **€●**[[3]](#footnote-3)shall be added to the balance of the Purchase Price to be paid by the Purchaser on the Closing Date, to cover the Interest Charge (the “**Balancing Payment**”). The Balancing Payment shall be in addition to any adjustments required under General Condition 23, and the expression “balance of the Purchase Price” where used in the Conditions shall be construed accordingly. If Completion is delayed, then the Balancing Payment shall be increased by €● per week (or part of a week)for the period between the Closing Date and the Completion Date.[[4]](#footnote-4)

**OR**

A balancing payment for the Interest Charge (the “**Balancing Payment**”) shall be added to the balance of the Purchase Price to be paid by the Purchaser on the Completion Date. The Balancing Payment shall be calculated by the Vendor as a weekly interest charge based on the period during which the Vendor’s solicitor holds the deposit as stakeholder and the method or means by which the Interest Charge is applied by the Bank, and the Vendor’s calculation in this regard shall be final and binding save in the case of manifest error. The Balancing Payment shall be in addition to any adjustments required under General Condition 23, and the expression “balance of the Purchase Price” where used in the Conditions shall be construed accordingly.[[5]](#footnote-5)

* 1. The Vendor and the Purchaser acknowledge that arrangements for the payment or deduction for negative interest rates and/or charges in this Special Condition constitute a fair estimate and do not constitute a penalty and they do not constitute interest within the meaning of that term in General Condition 21.

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1. VENDOR BEARS INTEREST COST
   1. The deposit **(save any booking deposit paid to the [Vendor’s sales agent/auctioneer]**) will be placed by the Vendor’s solicitor (“**the Vendor’s solicitor**”) on deposit with [**name the bank**] **(the “Bank**”).
   2. Any negative interest rate(s) and/or any similar charges (the “**Interest Charge**”) imposed by the Bank, shall be borne by the Vendor and the Purchaser shall not be obliged to make-up any shortfall or compensate the Vendor for any loss or diminution in value of the deposit when calculating the balance of the Purchase Price to be paid by the Purchaser on Completion.
   3. If this Contract is rescinded (but the deposit shall not lawfully be forfeited), the Vendor shall be liable for any Interest Charge or diminution in value in the deposit and General Conditions 33(a), 34 and 36(e) shall be read subject to this Special Condition.

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1. [[6]](#footnote-6)SHARING OF INTEREST COSTS
   1. The deposit **[(save any [booking] deposit paid to the [Vendor’s sales agent/auctioneer])** will be placed by the Vendor’s solicitor on deposit with **[name the Bank]** **(the “Bank”)**.
   2. If negative interest rate(s) and/or any similar charges (the “**Interest Charge**”) are imposed by the Bank on the deposit, the Vendor and the Purchaser shall share equally between them the cost of such Interest Charge.
   3. On Completion, the balance of the Purchase Price to be paid by the Purchaser shall be adjusted upwards to include 50% of the Interest Charge (in addition to any adjustments required under General Condition 23) and the expression “balance of the Purchase Price” where used in the Conditions shall be construed accordingly.
   4. If this Contract is rescinded (but the contract deposit is not lawfully forfeited), the Vendor shall be entitled to deduct from the deposit 50% of the Interest Charge (if any) and General Conditions 33(a), 34 and 36(e) shall be read subject to this Special Condition.
   5. The amount of the Interest Charge will be calculated by the Vendor based on the negative percentage rate and/or charge applied by the Bank, from the date the deposit is deposited in the bank to the date of Completion or return to the Purchaser in the case of recission, whose calculation shall be final and binding save in the case of manifest error.
   6. The Vendor and the Purchaser acknowledge that arrangements for the payment or deduction for negative interest rates and/or charges in this Special Condition constitute a fair estimate and do not constitute a penalty and they do not constitute interest within the meaning of that term in General Condition 21.

1. This option ensures that the Vendor is not required to make-up any shortfall in the contract deposit if the contract is rescinded and the deposit is to be returned to the Purchaser. As the amount of the deposit is known, the amount of the Interest Charge can be calculated upfront, assuming no change in the Interest Charge. [↑](#footnote-ref-1)
2. Consider using this option for auction sales, as the value of the deposit is not known in advance of the auction. [↑](#footnote-ref-2)
3. Insert appropriate balancing payment based on the value of the deposit and the number of weeks between receiving the deposit and the Closing Date. [↑](#footnote-ref-3)
4. Select for private treaty sale. [↑](#footnote-ref-4)
5. Select for auction sale. [↑](#footnote-ref-5)
6. This is a possible compromise, where the cost of negative interest is treated as a transaction cost to be shared between the parties, whether the sale completes or is rescinded. Another potential compromise is that the Purchaser is not required to make up any shortfall in the deposit on completion and the Vendor is not required to make up any shortfall if the contract is rescinded. [↑](#footnote-ref-6)