



Law Society of Ireland

SPECIAL CONDITION 3 (February 2014 Edition)

(INSERT (AMENDED AS APPROPRIATE) INTO THE LAW SOCIETY CONDITIONS OF SALE)

For use in sale of property where VAT is relevant to the sale¹

It is recommended that where this special condition is to be used, prior to settling it, the current Pre-Contract VAT Enquiries should be answered.

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3. DEFINITIONS

3.1 In this Special Condition:

“Adjustment Period”, in respect of Capital Goods, is the period attributed under Section 63(1) of the VAT Act but, where appropriate, is the period attributed to that term under Section 95(12)(c) of the VAT Act;

“Accountable Person”, *“Assignment”*, *“Immovable Goods”*, *“Surrender”* and *“Taxable Person”* have the meanings attributed to those terms by Section 2(1) of the VAT Act;

“Capital Goods” has the meaning attributed to that term under Section 2 and Section 63(2) of the VAT Act;

“Capital Goods Adjustment”, a liability to repay an amount of VAT to Revenue which arises on a supply of a capital good under Section 64 of the VAT Act;

“Capital Goods Record” has the meaning attributed to that term under Section 64(12) of the VAT Act;

“Freehold Equivalent Interest” has the meaning attributed to that term under Section 2 and Section 19(2) of the VAT Act;

“Interest” has the meaning attributed to that term in Section 93(1)(a) of the VAT Act;

“Interval” and *“Refurbishment”* have the meanings attributed to those terms under Section 63(1) of the VAT Act;

“Tenant’s Refurbishment”, means capital goods as described in Section 64(7) of the VAT Act;

“VAT” means Value Added Tax; and

“VAT Act” means Value-Added Tax Consolidation Act 2010 and related VAT regulations.

¹ This special condition is not appropriate for use:

- on the sale of secondhand residential property sold in a private capacity;
 - on the sale of new residential property to a Purchaser as a private person for a VAT inclusive consideration;
 - on the grant of an occupational lease; or
 - where VAT is otherwise not relevant to the sale.
- In any such case Special Condition 3 will be deleted entirely

3.2 Vendor charges VAT at the Appropriate Reduced Rate

3.2.1 In addition to the Purchase Price, the Purchaser shall pay to the Vendor the amount of any VAT as shall be exigible in relation to the Sale, same to be calculated in accordance with the provisions of the VAT Act and the Purchaser shall pay this amount to the Vendor on the later of the completion of the Sale or when an invoice is required to be issued by the Vendor in accordance with the provisions of the VAT Act on delivery of such invoice to the Purchaser.

3.2.2 If the completion of the Sale, being of a Freehold and/or a Freehold Equivalent Interest, is delayed beyond the Closing Date to the extent that the Sale becomes an exempt sale under the VAT Act and the Subject Property comprises Capital Goods, as soon as practicable after such situation arises, the Vendor shall notify the Purchaser in writing accordingly. In such situation, no VAT shall be payable by the Purchaser to the Vendor under Special Condition 3.2.1 but on completion, in addition to the Purchase Price, the Purchaser shall pay to the Vendor the amount which prior to completion the Vendor notifies the Purchaser in writing is equal to the amount for which, as a consequence of the Sale, the Vendor is liable to account for to the Revenue under Section 64(6)(b)(i) of the VAT Act, unless not less than three days prior to the closing date:

- the Purchaser demonstrates to the reasonable satisfaction of the Vendor that the Purchaser is a Taxable Person who independently carries on business in the State; and
- the Purchaser notifies the Vendor in writing that the Purchaser irrevocably joins with the Vendor in the exercise of the joint option to tax the Sale under Section 94(5) or Section 94(7)(b) as appropriate of the VAT Act;

in which case, the joint option to tax the Sale under Section 94(5) or Section 94(7)(b) as appropriate shall be treated as duly exercised and the Purchaser shall account to the Revenue for VAT arising on the Sale on a reverse charge basis in accordance with the provisions of Section 94(6) or Section 94(7)(c) as appropriate of the VAT Act.

3.2.3 The Purchaser is not a person of a kind specified in Section 95(8)(c) of the VAT Act.

The sale of the Subject Property is by private treaty by a Taxable Person and by way of Assignment or Surrender of a lease described in Section 95(1)(b) of the VAT Act (a "Legacy Lease") in respect of which the Adjustment Period will not have expired at the Closing Date.

3.2.4 The Sale is by way of Assignment or Surrender of a lease described in Section 95(1)(b) of the VAT Act (a "Legacy Lease") in respect of which the Adjustment Period will not have expired at the Closing Date and in respect of which the right to exercise the joint option to tax under Section 94(5) of the VAT Act is conferred by Section 95(7)(b) of the VAT Act. Such joint option to tax is hereby exercised. The Purchaser is a Taxable Person for the purpose of the VAT Act which status the Purchaser warrants to the Vendor.

3.3 The Purchaser self-accounts for VAT at the appropriate Reduced Rate in a Private Treaty Sale.

3.3.1 The Sale of the Subject Property is of a Freehold/Freehold Equivalent Interest

in the Subject Property, which is otherwise exempt. The Purchaser is a Taxable Person which status the Purchaser warrants to the Vendor. The joint option to tax the Sale under Section 94(5) or Section 94(7)(b) as appropriate of the VAT Act is hereby exercised by the Vendor and the Purchaser. The Purchaser shall account to Revenue for any VAT arising on the Sale upon a reverse charge basis in accordance with Section 94(6) or Section 94(7)(c) as appropriate of the VAT ²Act.

3.3.2 The Sale is by private treaty by way of Assignment or Surrender of a lease described in Section 95(1)(b) of the VAT Act (a “Legacy Lease”) in respect of which the Adjustment Period will not have expired at the Closing Date. The Purchaser is a person described in Section 95(8)(c) of the VAT Act, which status the Purchaser hereby warrants to the Vendor. Accordingly, the Purchaser shall account to Revenue for any VAT arising on the sale in accordance with Section 95(8)(c) of the VAT Act.

3.3.3 The Sale is by way of Assignment or Surrender of a lease described in Section 95(1)(b) of the VAT Act (a “Legacy Lease”) in respect of which the Adjustment Period will not have expired at the Closing Date and in respect of which the right to exercise the joint option to tax under Section 94(5) of the VAT Act is conferred by Section 95(7)(b) of the VAT Act. Such joint option to tax is hereby exercised. The Purchaser is a Taxable Person for the purpose of the VAT Act which status the Purchaser warrants to the Vendor. Accordingly, the Purchaser shall account to Revenue for any VAT arising on the Sale upon a reverse charge basis in accordance with of Section 95(8)(c) of the VAT Act³.

3.4 The Purchaser pays the Vendor an amount to compensate the Vendor for the Vendor’s liability to pay the Vendor’s Capital Goods Adjustment which arises on the Sale of a Freehold/Freehold Equivalent Interest which is exempt.

3.4.1 In addition to the Purchase Price, the Purchaser shall pay the Vendor the sum of € _____ being the amount for which, as a consequence of the Sale being exempt, the Vendor is liable to account to Revenue under Section 64(6)(b)(i) of the VAT Act [and € _____ being the amount which as a consequence of the Sale not being taxable, the Vendor is unable to reclaim from Revenue under Section 64(6)(a) of the VAT Act]⁴, such amount [or amounts]⁵ to be reduced as appropriate on the date of completion in the event of the passing of any Interval or Intervals after the Closing Date and on or before the date of completion. Where appropriate, the Vendor shall notify the Purchaser in writing of the amount of any reduction in a timely manner prior to the completion of the Sale.

3.4.2 The Purchaser is not a Taxable Person which status the Purchaser warrants to the Vendor. In addition to the Purchase Price, the Purchaser shall pay the Vendor the sum of € _____ being the amount which, as a consequence of the joint option to tax the Sale not being exercisable or exercised, the Vendor is unable to reclaim from Revenue under Section 64(6)(b)(i) of the VAT Act. Such amount is to be reduced as appropriate on the date of completion in the event of the passing of any Interval or Intervals after the Closing Date and on or before the date of completion. Where appropriate, the Vendor shall notify the Purchaser in writing of the amount of any reduction in a timely manner prior to the completion of the Sale.

² The difference between the situation covered in clause 3.3.2 and the situation covered in clause 3.3.3 is that, in the latter, the joint option to tax is exercised.

³ Ibid.

⁴ Delete words in square brackets unless the Vendor was only entitled to partial deductibility on the acquisition or development of the Subject Property.

⁵ Ibid.

3.5 Sale by auction of a Freehold/Freehold Equivalent Interest which is an exempt sale where, unless the joint option to tax the sale is exercised, the Purchaser pays the Vendor the amount of the Vendor's Capital Goods Adjustment or adjustments which arise on the sale.

The Vendor warrants that the Sale of the Subject Property is exempt subject to the joint option to tax provided that the Purchaser is a Taxable Person for the purpose of the VAT Act.

On completion, in addition to the Purchase Price, the Purchaser shall pay to the Vendor the sum of € _____ being the amount, which as a consequence of the Sale, the Vendor is liable to account for to the Revenue under Section 64(6)(b) of the VAT Act [and € _____ being the amount which, as a consequence of the Sale not being taxable, the Vendor is unable to reclaim from Revenue under Section 64(6)(a) of the VAT Act]⁶, such amount [or amounts]⁷ to be reduced as appropriate on the date of completion in the event of the passing of any Interval or Intervals after the Closing Date and on or before the date of completion, unless, not less than three days prior to the Closing Date:

- the Purchaser demonstrates to the reasonable satisfaction of the Vendor that the Purchaser is a Taxable Person; and
- the Purchaser notifies the Vendor in writing that the Purchaser irrevocably joins with the Vendor in the exercise of the joint option to tax the Sale under Section 94(5) or Section 94(7)(b) as appropriate of the VAT Act;

in which case, the joint option to tax the Sale under Section 94(5) or Section 94(7)(b) as appropriate shall be treated as duly exercised and the Purchaser shall account to the Revenue for VAT arising on the Sale on a reverse charge basis in accordance with the provisions of Section 94(6) or Section 94(7)(c) as appropriate of the VAT Act.

3.6 Sale by Auction of a Legacy Lease⁸

3.6.1 The Sale of the Subject Property is by way of Assignment or Surrender of a Lease described in Section 95(1)(b) of the VAT Act (a "Legacy Lease") in respect of which the Adjustment Period will not have expired at the Closing Date.

Unless, not less than three days prior to the Closing Date, the Purchaser demonstrates to the reasonable satisfaction of the Vendor that the Purchaser is a person of a kind specified in Section 95(8)(c) of the VAT Act, in addition to the Purchase Price, the Purchaser shall pay to the Vendor the amount of any VAT as shall be exigible in relation to the Sale on the assumption, whether or not true, that the Purchaser is not a person of a kind specified in Section 95(8)(c) of the VAT Act, same to be calculated in accordance with the provisions of the VAT Act and the Purchaser shall pay this amount to the Vendor on the later of the completion of the Sale or when an invoice is required to be issued by the Vendor in accordance with the provisions of the VAT Act on delivery of such invoice to the Purchaser.

3.6.2 The Sale is by way of Assignment or Surrender of a Lease described in Section 95(1)(b) of the VAT Act (a "Legacy Lease") in respect of which the Adjustment Period referred to in Section 95(12) of the VAT Act will not have expired at the Closing Date.

⁶ Delete words in square brackets unless the Vendor was only entitled to partial deductibility on the acquisition or development of the Subject Property

⁷ Ibid

⁸ See footnote 4 of the Pre-Contract VAT Enquiries (February 2014 Edition)

The Sale is of an Interest in respect of which the right to exercise the joint option to tax under Section 94(5) or Section 94(7)(b) as appropriate of the VAT Act is conferred by Section 95(7)(b) provided the Purchaser is a Taxable Person.

On completion, in addition to the Purchase Price, the Purchaser shall pay to the Vendor the sum of € _____ being the amount, which as a consequence of the Sale not being taxable, the Vendor is unable to reclaim from Revenue under Section 64(6)(a) of the VAT Act, such amount to be reduced as appropriate on the date of completion in the event of the passing of any Interval or Intervals after the Closing Date and on or before the date of completion, unless, not less than three days prior to the Closing Date that either:

- the Purchaser demonstrates to the reasonable satisfaction of the Vendor that the Purchaser is both a Taxable Person of a kind described in Section 95(8)(c) of the VAT Act; and
- the Purchaser notifies the Vendor in writing that the Purchaser irrevocably joins with the Vendor in the exercise of the joint option to tax the Sale under Section 94(5) or Section 94(7)(b) as appropriate of the VAT Act;

in which case, the joint option to tax the Sale under Section 94(5) or Section 94(7)(b) as appropriate of the VAT Act shall be treated as duly exercised and

- if the Purchaser is a person not described in Section 95(8)(c) of the VAT Act then, in addition to the Purchase Price, the Purchaser shall pay to the Vendor the amount of any VAT as shall be exigible in relation to the Sale, same to be calculated in accordance with the provisions of the VAT Act and the Purchaser shall pay this amount to the Vendor on the later of the completion of the Sale or when an invoice is required to be issued by the Vendor in accordance with the provisions of the VAT Act on delivery of such invoice to the Purchaser; and
- if the Purchaser is a person described in Section 95(8)(c) of the VAT Act, the Purchaser shall account to the Revenue for VAT arising on the Sale on a reverse charge basis in accordance with the provisions of Section 94(6) or Section 94(7)(c) as appropriate of the VAT Act.

3.7 On the sale of a property constituting the transfer of a business or part of a business⁹, no VAT applies but the Vendor is required to provide certain information to the Purchaser relating to any Capital Goods comprised in the Subject Property.

The Sale is by way of a transfer of a business.

The Purchaser warrants to the Vendor that the Purchaser is an Accountable Person for the purposes of Section 20(2)(c) the VAT Act and the Purchaser has taken or will take all steps¹⁰ necessary to be taken on the Purchaser's part so that the Sale of the subject property will qualify for relief from VAT under Section 20(2)(c) of the VAT Act, and that the Sale shall not be a supply of goods for the purposes of the VAT Act. The Purchaser shall indemnify and keep the Vendor indemnified against any loss, cost or liability which arises as a result of such warranty being or becoming untrue or incorrect in any respect due to the act, neglect or default of the Purchaser.

⁹ A supply to which Section 20(2)(c) of the VAT Act applies.

¹⁰ For example, in the case of the sale of a let property, Revenue require the Purchaser to exercise the Landlord's joint option to tax in respect a letting to which the Subject Property is subject.

3.8 On the Assignment or Surrender of an Interest in an occupational lease (which is not a Legacy Lease) for a premium paid by the Purchaser to the Vendor where the Purchaser pays the Vendor VAT at the Standard Rate.

The Sale is the supply of a taxable service by the Vendor to the Purchaser for the purposes of the VAT Act. In addition to the Purchase Price, the Purchaser shall pay to the Vendor the amount of any VAT as shall be exigible in relation to the Sale, same to be calculated in accordance with the VAT Act. The Purchaser shall pay this amount to the Vendor on the later of the completion of the Sale or, where an invoice is required to be issued by the Vendor in accordance with the provisions of the VAT Act, on delivery of such an invoice to the Purchaser.

3.9 On the Assignment or Surrender of an interest in an occupational lease (not being a legacy lease) for a premium (reverse premium) paid by the Vendor to the Purchaser, the Vendor pays the Purchaser VAT at the Standard Rate.

The Sale is the supply of a taxable service by the Purchaser to the Vendor for the purpose of the VAT Act.

On the later of the completion of the Sale or where an invoice is required to be issued by the Purchaser in accordance with the provisions of the VAT Act, on delivery of such an invoice to the Vendor, the Vendor shall pay to the Purchaser the amount of any VAT as shall be exigible in relation to the supply in question, same to be calculated in accordance with the provisions of the VAT Act.

3.10 On the Assignment or Surrender of an interest in an occupational lease (legacy or otherwise), the Vendor requires the Purchaser to become responsible for a Tenant's Refurbishment.

The Purchaser undertakes to be responsible for all of the obligations of the Vendor under Section 64(7) of the VAT Act which arise in respect of the Refurbishment of the Subject Property comprising the following works:

[Insert details of works]

The Vendor warrants to the Purchaser that he was entitled to deduct all of the VAT incurred by the Vendor on the acquisition and development of this Refurbishment.

3.11 VAT Information Warranties and Confirmations

Unless previously supplied at or prior to the signing hereof, the Vendor shall supply to the Purchaser:

- copies of the Capital Goods Records for the period up to the latest date prior to the date hereof for the filing of returns in relation to any Capital Goods comprised in the Subject Property¹¹;
- if applicable, a draft of any statement¹² required to be supplied by the Vendor to the Purchaser, under the VAT Act as the Purchaser may reasonably require to enable the Purchaser, on becoming the owner of the Subject Property to comply with the Purchaser's obligations in respect of the Subject Property under the VAT Act;
- answers to any pre-contract VAT enquiries raised by the Purchaser; and

¹¹ Required only if Special Condition 3.7 or 3.10 is used (Transfer of a Business). Delete if not applicable.

¹² Required only if the Subject Property sold is a Legacy Lease. Delete if not applicable.

- such other information in relation to the VAT history of the Subject Property as the Purchaser, acting reasonably, shall in writing require in order to comply with the Purchaser's obligations in respect of the Subject Property under the VAT Act.

The Vendor warrants that all such information and records and, if relevant, any such statement are materially correct and up to date at the date of furnishing thereof and will remain correct and up-to-date on completion save for such adjustment as may be necessary as a result of the passing of any Interval or Intervals, in which case revised information and copy records and if relevant, a revised draft statement to reflect such passing, will be furnished by the Vendor to the Purchaser on or prior to completion.

The certificate of the Vendor's tax advisor shall in the absence of manifest error be conclusive evidence of the amount of any Capital Goods Adjustment relevant to the Subject Property.

The obligations imposed on the Parties under this Agreement shall be in addition to the obligations imposed in relation to the Sale by the VAT Act.