

CLIENT GUIDE
TO THE
SCOTTISH STANDARD OFFER
AND
SCOTTISH STANDARD CLAUSES (EDITION 1)

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**Issued by the Edinburgh Conveyancers Forum and the Glasgow Conveyancers Forum on
behalf of the Scottish Standard Clauses Working Party**

SECTION 1 INTRODUCTION

PART 1 - The Purpose of Scottish Standard Clauses

The purchase of a house is the most important single financial transaction most clients undertake. It can be a stressful process for both buyer and seller (and sometimes for their Solicitors too!). The advice and assistance of a Solicitor experienced in house purchase and sale and conveyancing is absolutely essential.

An offer for heritable property in Scotland requires to be in writing and there is no binding or enforceable contract until an offer or a qualified acceptance of an offer is met with by a straight acceptance in writing.

Up to the 1970's, Missives comprised around five clauses. However, cases and other developments in the law made the process more complicated. Offers expanded greatly in size and complexity. It was rarely possible or wise to give an unconditional acceptance of an offer. In addition most individual firm's offers tended to be based on a "wish list" of best possible outcomes for the purchaser. The reality however was that qualified acceptances cut the offer down to size and there then emerged a wording that most Solicitors would "settle for". The Scottish Standard Clauses have been based on the "settled for" position of what most practitioners usually accepted. The aim is that neither Solicitors nor their clients should have to go through the existing painful process of offer and numerous qualified acceptances.

The offer, any qualified acceptances and the final acceptance together are called "the Missives". When final agreement is reached the Missives are said to be concluded and there then exists a legally binding contract. Until that point both the Seller and the Purchaser can back out or withdraw from negotiations, without warning, reason or penalty. When Missives are concluded, either party can sue the other in the event of a breach by one or the parties to carry out his or her part of the bargain.

One of the greatest advantages of the Scottish system in the past was the speed with which Missives were concluded. The system, where each Solicitor had an own style of offer that became longer and longer and more technical, slowed this process. Accordingly over several years various regional areas created Standard Clauses for their area. Now a single style has been adopted by most areas in Scotland called the Scottish Standard Clauses. The offer appears in Section 2 and defines the Purchaser, the Property, the Price, the Date of Entry (when you obtain your keys) and details of any moveable items included in the sale. Some moveable items are already covered by Clause 1 of the Standard Clauses under the heading "Fixtures, Fittings and Contents". The offer makes reference to the Scottish Standard Clauses (Edition 1) and incorporates them as conditions of the offer.

Guidelines issued to Solicitors request that changes should be made for valid reasons of substance e.g. making the offer subject to survey and not for the reasons of style.

The aim is to conclude the Missives with either a straight acceptance of the offer or hopefully not more than one qualified acceptance before a final acceptance. An offer in the Standard style could in theory receive a straight acceptance. Accordingly purchasing clients will have to be completely "upfront" with the seller and will need to state whether their offer is subject to survey or a loan or conclusion of Missives for the sale of their own property. Complete frankness is required as a Purchaser may find himself bound to a

contract thinking the old method would allow him more time. From a Seller's point of view there is now greater transparency regarding the Purchaser's position.

The purpose of this Guide is to explain the various clauses so that both house Purchasers and Sellers understand their rights and obligations. It is however only a guide. If a dispute arises as to the meaning of the Missives your Solicitor is the expert to whom to turn. This form of offer and the standard clauses are designed for use with dwelling houses.

Scottish Standard Clauses are a tool to assist more straightforward conclusion of Missives. Speed and ease of conclusion of Missives and clauses with which a Solicitor and his client can become familiar are enormous benefits.

PART 2 - A Scottish Missives Chain

One of the main aims of the Scottish Standard Clauses is to conclude the Missives (contract for sale and purchase) as soon as is possible with either a straight acceptance of the offer or hopefully not more than one qualified acceptance before a final acceptance.

Due to matters that are outwith the control of the legal profession that aim is now only an aim and not realistic at present. One of the main problems with early conclusion of the Missives is that lending decisions are very slow and loan instructions are not being processed with speed by lenders. Buyers and their Solicitors are wary of concluding Missives until they know the buyer has an offer of loan or at least an offer of loan in principle. Prior to the recession buyers would often act on the strength of a "nod" from the lender but when the recession came some "nods" were withdrawn because of new lending criteria, creating uncertainty and lack of confidence by buyers to predict if they will be granted a loan. Solicitors now find it necessary to urge caution on buyers to obtain a definite offer of loan or an offer of loan in principle before concluding Missives.

Another cause of delay is that before the recession purchasers were "purchase driven" to buy the property they wanted and then to sell their own house knowing it would very likely sell without a problem. Now, most buyers will not wish to take that chance and will not conclude Missives for a purchase until they have sold their own house ("sale driven").

These factors have led to a Scottish Missive Chain. Here is how such a chain works.

A purchaser (P1) cannot conclude Missives with the Seller (S1) because P1 has no offer of loan. S1 cannot enter Missives for purchase with Seller 2 till his sale to P1 is concluded and S1's offer of loan issued and so on up the chain.

Standard Missives are still helpful as if an offer is submitted in the Scottish Standard Clause style it is now possible that you could receive a straight acceptance. This has forced buyers to be more "upfront" with a seller as the buyer needs to add clauses to his Offer to state whether his offer is subject to (1) survey (2) a loan or (3) conclusion of Missives for the sale of their own property. These clauses being non standard are easy to spot in the Offer.

They ensure frankness by a Purchaser who cannot risk concluding Missives without inserting these additional and conditional clauses. From a Seller's point of view there is now much greater transparency regarding the Purchaser's position and what the problem is.

Scottish Standard Missives assist more straightforward conclusion of Missives with few of the delays caused under the old system by non standard missives. Speed and ease of

conclusion of Missives can follow if and when a buyer has his offer of loan and a sale of his own house tied up. Standard clauses with which both the Solicitor and client are familiar remain enormous benefits.

SECTION 2 THE SCOTTISH STANDARD OFFER

This is the style of Offer specified in the Deed of Declaration by Ross Alexander MacKay dated 2 December 2014

Dear Sirs

For the purposes of this offer and the Scottish Standard Clauses (Edition 1) aftermentioned:

The Purchaser means [Click here] residing at [Click here]

The Property means [Click here] together with any garden, carport, garage, parking space and/or outbuildings pertaining thereto and all other parts and pertinents.

The **Price** is [Click here] POUNDS STERLING (£[Click here]), and

The **Date of Entry** shall be [Click here] or such other date as may be mutually agreed in writing.

The Purchaser hereby offers to purchase from your client (hereinafter referred to as “the Seller”) the Property at the Price and upon the conditions contained in the Scottish Standard Clauses (Edition 1) specified in the Deed of Declaration by Ross Alexander MacKay dated 2 December and registered in the Books of Council and Session for preservation on - December both 2014, and upon the following further conditions:-

- (First) The Price will include the following additional items (if any): [Click here]
- (Second) This offer unless earlier withdrawn is open for verbal acceptance by -pm (insert time and date) with written acceptance reaching us no later than - on the -(insert time and day) working day following the date of this offer and if not so accepted shall be deemed to be withdrawn.
- (Third) This offer and any contract to follow hereon are entirely conditional upon (a) a satisfactory survey report and (b) a satisfactory valuation report being obtained by the Purchaser in respect of the Property. The Purchaser and his lenders shall be the sole judges as to what constitutes satisfactory reports.

Yours faithfully

SECTION 3 THE SCOTTISH STANDARD CLAUSES (EDITION 1)

This is the Schedule specified in the Deed of Declaration by Ross Alexander MacKay dated 2 December 2014

SCOTTISH STANDARD CLAUSES (EDITION 1)

INTERPRETATION

In these Clauses:-

“Date of Settlement” or “settlement” means the date on which settlement is actually effected whether that is the Date of Entry or not;

“the Missives” means the contract of purchase and sale concluded between the Purchaser and the Seller of which the Offer incorporating reference to these Clauses forms part;

The terms **“the Purchaser”, “the Seller”, “the Property”, “the Price”** and **“the Date of Entry”** have the meanings set out in the Offer or other document incorporating reference to these Clauses;

“the 2012 Act” means the Land Registration etc (Scotland) Act 2012;

“working day” means any day on which clearing banks in Edinburgh, Glasgow and London are open for normal business

“the Building” means, where applicable, the larger building or tenement of which the Property forms part

The masculine includes the feminine and words in the singular include the plural and vice versa.

Any intimation shall be in writing (which shall include, for avoidance of doubt, faxes or emails).

Where any intimation must be given within a specified period, time will be of the essence.

1 FIXTURES, FITTINGS & CONTENTS

1.1 The Property is sold with:

1.1.1 all heritable fittings and fixtures;

1.1.2 all items of whatever nature fixed or fitted to the Property the removal of which would materially damage the fabric or decoration of the Property;

1.1.3 all items stated to be included in the sales particulars or advertisements made available to the Purchaser;

1.1.4 the following insofar as any were in the Property when viewed by the Purchaser: garden shed or hut, greenhouse, summerhouse; all growing plants, shrubs, trees (except those in plant pots); all types of blinds, pelmets, curtain rails and runners, curtain poles and rings thereon; all carpets and floor coverings (but excluding loose rugs), stair carpet fixings; fitted bedroom furniture; all bathroom and cloakroom mirrors, bathroom and toilet fittings; kitchen units; all cookers, hobs, ovens, washing machines, dishwashers, fridges and freezers if integral to or encased within matching units; extractor hoods, extractor fans, electric storage heaters, electric fires, electric light fittings (including all fluorescent lighting, external lighting, wall lights, dimmer switches and bulbs and bulb holders but not shades); television aerials and associated cables and sockets, satellite dishes; solar panels; loft ladders; rotary clothes driers; burglar alarm, other security systems and associated equipment; secondary glazing; shelving, fireplace surround units, fire grates, fenders and associated ironmongery; and

1.1.5 oil in any storage tank and gas in any gas cylinders or tank remaining at the Date of Settlement.

1.2 Where a wheeled bin or other receptacle for the collection of refuse is provided free of charge by the Local Authority or other body responsible for the collection of refuse, the Seller shall ensure that the wheeled bin or other receptacle is left at the Property for the Purchaser failing which the Seller shall meet the cost of replacing same.

1.3 The Seller warrants that at the Date of Settlement all items included in the Price are owned by the Seller, are or will be free of all debt, and are not the subject of any litigation.

1.4 The Seller undertakes to remove all moveables from the Property not otherwise included in the Price as at the Date of Settlement.

2 AWARENESS OF CIRCUMSTANCES AFFECTING THE PROPERTY

2.1 So far as the Seller is aware (but declaring that the Seller has made no enquiry or investigation into such matters) the Property (including in respect of Clauses 2.1.3 and 2.1.4 the Building, if appropriate) is not affected by:

2.1.1 any Notice of Potential Liability for Costs registered in terms of the Tenements (Scotland) Act 2004 or the Title Conditions (Scotland) Act 2003;

2.1.2 any Notices of Payment of Improvement / Repairs Grants;

2.1.3 flooding from any river or watercourse which has taken place within the last 5 years;

2.1.4 other than as disclosed in the Home Report for the Property any structural defects; wet rot; dry rot; rising damp; woodworm; or other infestation.

3 SPECIALIST REPORTS

3.1 Any guarantees in force at the Date of Entry in respect of (i) treatments which have been carried out to the Property (or to the Building, if appropriate) for the eradication of timber infestation, dry rot, wet rot, rising damp or other such defects, and/or (ii) insulation and double glazing, together with all supporting estimates, survey reports and other papers relating thereto ("**the Guarantees**") will be exhibited on conclusion of the Missives and delivered at settlement.

3.2 The Seller confirms that he is not aware of anything having been done or omitted to be done which might invalidate the Guarantees.

3.3 If requested, and insofar as necessary and competent, the Guarantees will be assigned to the Purchaser at the Purchaser's expense.

4 CENTRAL HEATING, SYSTEMS AND APPLIANCES

4.1 The Seller undertakes that any systems or appliances of a working nature (including central heating, water, drainage, electric and gas) forming part of the Property or included in the Price will be in working order commensurate with age as at the Date of Settlement.

4.2 The Seller will make good any defect which prevents any system or appliance being in such order provided said defect is intimated in writing within 5 working days of settlement. Failing such intimation, the Purchaser will be deemed to be satisfied as to the position.

4.3 The Seller will only be responsible for carrying out any necessary repairs to put any system or appliance into such order and shall have no liability for any element of upgrading (except to the extent such upgrading is required to put any such system or appliance into such order).

4.4 The lack of any regular service or maintenance of any system or appliance or the fact that it may no longer comply with current installation regulations shall not, of itself, be deemed to be a defect.

4.5 The Purchaser shall be entitled to execute any necessary repairs at the expense of the Seller without reference to the Seller or the Seller's tradesmen (i) in the event of an emergency; (ii) in the event that the Seller's tradesmen do not inspect the alleged defects within 5 working days of intimation; or (iii) in the event that any necessary repairs are not carried out within 5 working days of inspection.

4.6 The Seller confirms that he has received no notice or intimation from any third party that any system (or any part thereof) is in an unsafe or dangerous condition.

5 DEVELOPMENT

5.1 The Seller warrants that he has not served or been served with nor received any neighbour notification notice issued in terms of planning legislation in respect of any development. This warranty shall not apply (i) in respect of a development which has been completed, (ii) where any planning permission has lapsed, or (iii) where an

application for planning consent has been refused or withdrawn. In the event of any such notice being served on or received by the Seller prior to the Date of Settlement, the Seller will forward such notice to the Purchaser within 5 working days of receipt of such notice.

- 5.2 Without prejudice to the foregoing, the Seller warrants that he has no knowledge of any proposal which could be reasonably deemed to materially affect the value or amenity of the Property.

6 STATUTORY NOTICES

- 6.1 Any Local Authority (or other public body) notices or orders calling for repairs or other works to the Property dated prior to or on the date of conclusion of the Missives (or any other work affecting the Property agreed to or authorised by the Seller outstanding at the Date of Entry) will be the responsibility of the Seller. Liability under this condition will subsist until met and will not be avoided by the issue of a replacement notice or order.
- 6.2 The Seller warrants that he has not received written notification of, approved, entered into or authorised any scheme of common repairs or improvement affecting the Building. Where the Seller approves, enters into or authorises any such scheme or where any such scheme is instructed, the Seller shall remain liable for his share of the cost of such works. Details of any such scheme will be disclosed to the Purchaser prior to settlement. The Seller undertakes not to enter into, approve or otherwise authorise any such scheme prior to settlement without the consent of the Purchaser.
- 6.3 When any work in terms of Clauses 6.1 or 6.2 above is incomplete or unpaid for at the Date of Settlement the Purchaser will be entitled to retain from the Price a sum equivalent to the estimated cost of the Seller's share of such works (which estimate shall be augmented by 25%). Such retention shall be held in an interest bearing account by the Purchaser's solicitor pending settlement of the Seller's liability. The retention shall not be released or intromitted with without the written authority of the solicitors for the Purchaser and the Seller. Any shortfall will remain the liability of the Seller.
- 6.4 On issue of invoices for such works in terms of Clauses 6.1 and/or 6.2 above by the Local Authority or other authorised party the retention shall be released to make payment of such invoices as soon as reasonably practical.
- 6.5 Notwithstanding any other term within the Missives, Clause 6 will remain in full force and effect without limit of time and may be founded upon until implemented.
- 6.6 Without prejudice to the above, the Purchaser may retain from the Price such sum as is reasonably required to meet any costs for which he may be contingently liable under Section 10(2) of the Title Conditions (Scotland) Act 2003 or Section 12(2) of the Tenements (Scotland) Act 2004 as amended. Such retention shall be held in an interest bearing account by the Purchaser's solicitor pending settlement of that liability. The retention shall not be released or intromitted with without the written

authority of the solicitors for both the Seller and the Purchaser. Any shortfall will remain the liability of the Seller.

- 6.7 Prior to the Date of Entry the Seller will provide full details of any common repairs in respect of which a Notice of Potential Liability for costs has been or is to be registered.

7 PROPERTY MANAGEMENT AND FACTORS

- 7.1 Where the Property is part of any larger subjects (the Building or otherwise) or development, it is a condition that:

7.1.1 common charges will be apportioned between the Seller and the Purchaser as at the Date of Entry on the basis that the Seller will be responsible for all common repairs and improvements carried out, instructed or authorised on or prior to the Date of Entry;

7.1.2 there are no major repairs or improvements proposed, instructed, authorised or completed but not yet paid for in respect of the Property or the larger subjects or the Building or development of which it forms part;

7.1.3 the Seller shall provide the Purchaser with full details of any factoring and block insurance arrangements affecting the Property; and

7.1.4 all other outgoings and charges payable in respect of the Property will be apportioned as at the Date of Entry.

8 ALTERATIONS

- 8.1 Where there have been additions or alterations (including change of use) completed to the Property within 20 years of the Date of Entry, or if the Property has been erected within that period, then the Seller shall exhibit before and deliver at the Date of Entry:

8.1.1 all necessary Listed Building Consents and either:

8.1.1.1 all necessary Building Warrants (including stamped warrant drawings where available) and Certificates of Completion (or, if applicable, Notices of Acceptance of Completion Certificate); or

8.1.1.2 an unqualified Property Inspection Report, Letter of Comfort, or equivalent provided by the relevant Local Authority or other mutually agreed supplier.

- 8.2 All Planning Permissions or other Local Authority consents necessary for additions or alterations (including change of use) completed to the Property (or if the Property has been erected) within 10 years of the Date of Entry shall be exhibited before and delivered at the Date of Entry.

8.3 The Seller warrants (i) that any building work carried out to the Property has been in a state of substantial completion for a period of not less than 12 weeks prior to the date of conclusion of the Missives; and (ii) that no valid objection to the work was made at any time by a person with title and interest to do so under a valid real burden.

8.4 There are no planning conditions of a continuing nature which restrict or prohibit the current use of the Property.

9 DISPUTES/LITIGATION

9.1 The Seller warrants that neither the Property nor the Seller's title are affected by or are under consideration in any court proceedings or other litigation or are the subject of any dispute.

9.2 There are no current disputes with neighbouring proprietors or occupiers or any other parties relating to access, title or common property.

10 ACCESS

10.1 The Seller will after conclusion of the Missives and upon receipt of reasonable notice by the Purchaser give access to the Purchaser or his agents to the Property at reasonable times for the purposes of inspection, measurement or the provision of quotations. This right of access however shall not be exercised on more than 2 occasions without the consent of the Seller.

11 UTILITIES AND SERVICES

11.1 Unless the services have been terminated (which termination shall be intimated to the Purchaser) prior to conclusion of the Missives, the Seller will co-operate in the transfer of gas, electricity, telephone and other service supplies to the Purchaser but the Seller will not be responsible for any re-connection charges incurred. The Seller may retain the existing telephone number.

11.2 Roads

11.2.1 The Seller warrants that:-

EITHER

All roadways, footpaths and kerbs *ex adverso* the Property have been made up and paid for and are maintained by the Local Authority

OR

There is a private access road to and from the Property from a roadway maintained by the Local Authority.

11.3 Water

11.3.1 The Seller warrants that:-

EITHER

The Property is connected to the mains water supply

OR

The Property is connected to a private water supply system and the water supply is of sufficient quality to comply with the bacteriological and chemical parameters laid down in the Private Water Supply (Scotland) Regulations 2006 as amended. So far as the Seller is aware the supply is adequate in quantity at all times for all normal domestic purposes and for the present use of the Property. The Seller will deliver prior to the Date of Entry a report dated not earlier than 6 months prior to the Date of Entry from the Local Authority or where applicable, the Public Analyst evidencing that the said supply meets the said Regulations.

11.4 **Drainage**

11.4.1 The Seller warrants that:-

EITHER

The Property is connected to the public sewer and drainage system

OR

The Property is connected to a private drainage system comprising a septic tank, treatment plant, or reed bed with relative outfall pipe and/or soakaway and all relative pipes, drains and connections ("**the Drainage System**"). There will be exhibited prior to and delivered at the Date of Entry evidence that the Drainage System relating to the Property is either registered or licensed with the Scottish Environment Protection Agency or any other appropriate authority under the Water Environment (Controlled Activities) (Scotland) Regulations 2005. The Seller warrants that he has done nothing nor has any event occurred to contravene or prejudice the terms of the registration or licence.

12 **BREACH OF CONTRACT BY SELLER**

12.1 If at the Date of Entry the Seller does not give vacant possession or otherwise fails to implement any material obligations due by the Seller in terms of the Missives, then the Purchaser will be entitled (provided the Purchaser is in a position to settle the transaction on the Date of Entry) to claim damages for any reasonable loss incurred by the Purchaser arising from such failure.

12.2 In the event that the Seller's breach of contract continues for 14 days after the Date of Entry the Purchaser will be entitled to treat that breach as repudiation and to rescind the Missives on giving the Seller notice to that effect.

12.3 This condition (i) shall apply without prejudice to any other rights or remedies available to the Purchaser, and (ii) shall not apply in the event of the Seller's failure to settle being attributable to the fault of the Purchaser.

13 BREACH OF CONTRACT BY PURCHASER

13.1 The Price will be paid in full on the due date.

13.2 The Seller will not be obliged to give vacant possession of the Property except as against payment of the Price and any interest or losses due as aftermentioned.

13.3 If the Price is paid after the due date, whether in whole or in part, the Seller will be entitled to payment from the Purchaser, at the Seller's option, of one (but not both) of:

13.3.1 ordinary damages in respect of all proper and reasonable losses arising out of the late payment of the Price (which includes but is not limited to Wasted Expenditure); or

13.3.2 interest on the amount of the Price outstanding at the Prescribed Rate from the due date until the date when payment is made.

13.4 If the Price remains unpaid in whole or in part at any time more than 14 days after the due date, the Seller will be entitled to rescind the Missives, and to payment from the Purchaser, at the Seller's option, of one (but not both) of:

13.4.1 ordinary damages in respect of all proper and reasonable losses arising out of the non payment of the Price and failure of the Missives (which includes but is not limited to Wasted Expenditure); or

13.4.2 liquidated damages, payable on the end date, calculated as the amount of interest which would have run on the amount of the Price outstanding at the Prescribed Rate from the due date until the end date (under deduction of any amount by which the Price obtained by the Seller on a re-sale of the Property exceeds the Price).

13.5 In this Clause:

13.5.1 The **"due date"** means whichever is the later of:

(i) the Date of Entry; or

(ii) the date on which payment of the Price was due having regard to the circumstances of the case including any entitlement to withhold payment owing to non-performance by the Seller.

13.5.2 The **"end date"** means whichever is the earlier of:

(i) the date falling 12 months after the due date; or

- (ii) where the Property is re-sold following rescission, the date of entry under the contract of re-sale.

13.5.3 **“Wasted Expenditure”** means the aggregate of:

- (i) any capital loss sustained by the Seller on the resale of the Property being the difference between the Price under the Missives and the resale price under any such resale;
- (ii) any estate agency, marketing and other advertising expenses properly incurred in connection with the resale;
- (iii) any legal expenses properly incurred in connection with the resale;
- (iv) any expenses in connection with the cancellation of removal of furniture, storage of furniture and transfer or retransfer of furniture properly incurred as a result of the Purchaser’s breach of contract; and
- (v) any bridging loan costs (including arrangement charge and interest) incurred by the Seller in respect of any purchase transaction which they require to complete under concluded Missives.

13.5.4 **“Prescribed Rate”** means the rate of 4% above The Royal Bank of Scotland plc base rate from time to time in force.

14 NEW HOME WARRANTY SCHEMES

14.1 If the Property was constructed or converted within 10 years prior to the Date of Entry, there shall be delivered at settlement either:-

14.1.1 appropriate NHBC documentation or such equivalent new home warranty documentation as provided by any alternative warranty provider as approved by and acceptable to the Purchaser’s Lenders, in which event, the Seller warrants that no claims have been made or reported or are pending under the relevant warranty scheme; or

14.1.2 a Professional Consultant’s Certificate with other necessary information all in compliance with the current edition of the CML Lenders’ Handbook for Solicitors (Scotland).

15 TITLE CONDITIONS

15.1 Any part of the Property which is common or mutual with any adjoining property (including the roof and roof systems; rhones and downpipes; drains and boundary walls; fences or divisions) falls to be maintained, renewed and upheld by respective proprietors on an equitable basis.

15.2 Any reservation of minerals will be subject to conditions as to adequate compensation and will not include any right to enter the Property or lower its

surface. The minerals are included in the Property so far as the Seller has right to same.

- 15.3 The existing use of the Property is in conformity with the title to same. There are no unusual, unduly onerous or restrictive burdens, conditions or servitudes affecting the Property.
- 15.4 There is no outstanding liability for any part of the cost of constructing walls, fences, roadways, footpaths or sewers adjoining or serving the Property.
- 15.5 The Property has the benefit of all such servitudes and wayleaves as are required for its proper and existing use (including but not limited to vehicular access, any private water supply or the Drainage System).
- 15.6 If the title to the Property discloses a position other than as stated in this Clause 15, the Purchaser (regardless of his previous state of knowledge) will be entitled to resile from the Missives without penalty to either party but only provided (i) the Purchaser intimates his intention to exercise this right within 10 working days of receipt of the Seller's title; and (ii) such matters intimated as prejudicial are not rectified or clarified to the Purchaser's satisfaction (acting reasonably) by the Date of Entry or within 6 weeks from the date of such intimation whichever is earlier. The Purchaser's right to resile shall be his sole option in terms of the Missives. Failing the exercise of such right to resile, (i) the Purchaser shall be deemed satisfied as to the position, and (ii) the Seller shall be deemed not to be in breach.

16 AWARENESS OF ENCUMBRANCES

- 16.1 The Seller is not aware of any encumbrances as defined in Section 9 of the 2012 Act affecting the Property which are not disclosed in the title to the Property.

17 ADVANCE NOTICES

- 17.1 An "**Advance Notice**" for the purposes of the Missives means an advance notice as defined in Section 56 of the 2012 Act.
- 17.2 The Seller will apply to the Keeper for an Advance Notice for the Disposition, in the form adjusted with the Purchaser, to be entered on the application record for the Property no earlier than 10 working days prior to the Date of Entry. The cost of the Advance Notice for the Disposition will be met by the Seller.
- 17.3 The Seller consents to the Purchaser applying to the Keeper for Advance Notices for any deeds which the Purchaser intends to grant in relation to the Property. The cost of any Advance Notices which the Purchaser applies for will be met by the Purchaser.
- 17.4 If the Seller rescinds the Missives in the circumstances set out in Clause 13 above the Purchaser consents to the discharge of the Advance Notice for the Disposition and the Purchaser confirms that it will immediately discharge at his own cost any Advance Notice submitted by him if requested to do so by the Seller.

- 17.5 If settlement is likely to occur after the Date of Entry, the Seller, if requested to do so by the Purchaser, will apply for a further Advance Notice for the Disposition, in the form adjusted with the Purchaser, and the cost of any additional Advance Notices will be met:
- 17.5.1 by the Seller, if the delay in settlement is due to any failure or breach by or on behalf of the Seller to implement its obligations under the Missives on time; or
 - 17.5.2 by the Purchaser, if the delay in settlement is due to any failure or breach by or on behalf of the Purchaser to implement its obligation under the Missives on time.
- 17.6 The Seller's Solicitors will not provide any letter of obligation undertaking to clear the records of any deed, decree or diligence. However, the Seller shall procure that his Solicitors will grant a Letter of Undertaking obliging them to deliver within 28 days of the Date of Settlement to the Purchaser's Solicitors a Discharge of any outstanding Standard Security granted by the Seller over the Property together with relative Land Registration Application Form ("**the Letter of Undertaking**").

18 SETTLEMENT/REGISTRATION OF TITLE

- 18.1 The Price will be payable on the Date of Entry in exchange for (i) a good and marketable title; (ii) a validly executed Disposition in favour of the Purchaser or his nominee(s); (iii) vacant possession of the Property; (iv) if applicable, the Letter of Undertaking and (v) all keys held by the Seller for the Property as also any code for any operational alarm system; together with:

- 18.1.1 If the provisions of the 2012 Act relating to a first registration apply:-

18.1.1.1 a Legal Report (obtained at the cost of the Seller) brought down to a date not more than 3 working days prior to the Date of Entry (which Report will show (a) no entries adverse to the Seller's interest in the Property; (b) any Advance Notice for the Disposition; and (c) no other Advance Notices other than those submitted by the Purchaser); and

18.1.1.2 such documents and evidence, including a plan, as the Keeper may require to enable the Keeper to create the Title Sheet of the Property without exclusion or limitation of warranty in terms of Section 75 of the 2012 Act.

Such documents will include (unless the Property comprises only part of a tenement or flatted building and does not include an area of ground specifically included in the title to that part) a plan or bounding description sufficient to enable the whole Property to be identified on the cadastral map and evidence (such as a Plans Report Level 3 or equivalent) that (i) the description of the whole Property as contained in the title deeds is *habile* to include the whole of the occupied extent and (ii) there is no conflict between the extent of the Property and registered cadastral units.

18.1.2 If the title to the Property is already registered in terms of the 2012 Act or in terms of the Land Registration (Scotland) Act 1979 (“the 1979 Act”), there will be exhibited in exchange for the Price a copy of the Title Sheet of the Property containing no exclusion or limitation of warranty in terms of Section 75 of the 2012 Act or exclusion of indemnity in terms of Section 12(2) of the 1979 Act with all necessary links in title evidencing the Seller’s exclusive ownership of the Property together with:-

18.1.2.1 a Legal Report (and Plans Report Level 1 if requested) obtained at the cost of the Seller brought down to a date not more than 3 working days prior to the Date of Entry (which Reports will show (a) no entries adverse to the Seller's interest in the Property; (b) any Advance Notice for the Disposition; and (c) no other Advance Notices other than those submitted by the Purchaser); and

18.1.2.2 such documents and evidence as the Keeper may require to enable the Keeper to update the Title Sheet of the Property to disclose the Purchaser as the registered proprietor of the Property without exclusion or limitation of warranty under Section 75 of the 2012 Act.

18.1.3 Where Clauses 18.1.1 or 18.1.2 apply the updated or newly created Title Sheet of the Property will contain no exclusion or limitation of warranty in terms of Section 75 of the 2012 Act and will disclose no entry, deed or diligence (including any Notice of Potential Liability for costs under the Tenements (Scotland) Act 2004 or the Title Conditions (Scotland) Act 2003)) prejudicial to the Purchaser’s interest other than such as have been created by or against the Purchaser or have been disclosed to and accepted in writing by the Purchaser prior to the Date of Settlement.

18.1.4 If an Application for First Registration of the title to the Property is still being processed by the Keeper, the Seller warrants (i) that no requisitions have been made by the Keeper but not implemented, and (ii) the Keeper has not indicated any concern with the Application such as might result in any exclusion or limitation of warranty under the 2012 Act or exclusion of indemnity in terms of the 1979 Act, refusal to register, or rejection of the said application.

18.1.5 Without prejudice to the above, the Seller warrants that the Property is not affected by any entry in the Register of Community Interests in Land.

18.1.6 Notwithstanding any other term within the Missives, this Clause shall remain in full force and effect without limit of time and may be founded upon until implemented.

19 INCORPORATED BODIES

19.1 If the Seller is a limited company, or Limited Liability Partnership, then prior to the Date of Entry the Seller will exhibit searches in the Register of Charges and company

file of the Seller brought down to a date not more than 3 working days prior to the Date of Entry which searches will confirm (a) that there is no notice regarding the appointment of a receiver, administrator or liquidator, winding up, striking off or change of name affecting the Seller and (b) the full names of the present directors and secretary of the Seller.

- 19.2 In the event of such searches disclosing any floating charge affecting the Property at the Date of Entry, there will be delivered a certificate of non-crystallisation of such floating charge granted by the chargeholder, dated not more than 3 working days prior to the Date of Entry, confirming that no steps have been taken to crystallise such floating charge and releasing the Property from the floating charge.
- 19.3 Within 3 months after the date of settlement such searches against the Seller will be delivered or exhibited brought down to a date 22 days after the date of registration of the Disposition in favour of the Purchaser or his nominees or 36 days after the Date of Entry whichever is the earlier disclosing no entries prejudicial to the registration of the said Disposition.
- 19.4 The Seller will exhibit or deliver clear searches in the Register of Charges and company files of all companies disclosed as owner or former owner of the Property, in any Land Certificate, copy Title Sheet or Legal Reports, brought down in each case to a date 22 days after registration in the Land Register of the deed divesting the relevant company of its interest, disclosing no entries prejudicial to the registration of the said deed. The Seller's solicitors will not provide a letter of obligation in respect of such searches.

20 RISK

- 20.1 The Seller will maintain the Property in its present condition, fair wear and tear excepted, until the time at which settlement takes place.
- 20.2 The risk of damage to or destruction of the Property howsoever caused will remain with the Seller until the time at which settlement takes place.
- 20.3 In the event of the Property being destroyed or materially damaged prior to the time at which settlement takes place, either the Purchaser or the Seller shall have the right to rescind the Missives without penalty to the other.

21 PROPERTY ENQUIRY CERTIFICATE

- 21.1 A Property Enquiry Certificate ("**PEC**") dated after the date of conclusion of the Missives but not earlier than 3 months prior to the Date of Entry will be exhibited at least 5 working days prior to the Date of Entry. The PEC shall require to report on all matters required for the Purchaser's solicitors to comply with the current edition of the CML Lenders' Handbook for Solicitors (Scotland).
- 21.2 If the PEC discloses any matter which may be materially prejudicial to the Purchaser or the Property, the Purchaser shall be entitled to resile from the Missives and that without penalty to either party but only provided that (i) the Purchaser intimates his intention to exercise this right within 10 working days of receipt of the PEC; and (ii)

such matters intimated as being prejudicial are not rectified or clarified to the Purchaser's satisfaction (acting reasonably) by the Date of Entry or within 6 weeks from the date of such intimation whichever is earlier. The Purchaser's right to resile shall be his sole option in terms of the Missives. Failing the exercise of such right to resile, (i) the Purchaser shall be deemed satisfied as to the position, and (ii) the Seller shall be deemed not to be in breach.

- 21.3 For the avoidance of doubt, should the Property be sited within a Conservation Area; form part of or be a Listed Building; be subject to the Local Authority Windows Policy or an Article 4 Direction; or be affected by a Tree Preservation Order, this shall not be deemed to be a prejudicial ground entitling the Purchaser to so resile.

22 COAL AUTHORITY REPORT

- 22.1 If the Coal Authority or similar statutory body recommends that a Coal Mining Report is obtained for the Property, then such report shall be exhibited prior to settlement. In the event that such report discloses a position which may be materially prejudicial to the Property or the Purchaser's proposed use of same, then the Purchaser shall be entitled to resile from the Missives and that without penalty to either party only provided (i) the Purchaser intimates his intention to exercise this right in writing within 10 working days of receipt of the said report; and (ii) such matters intimated as being prejudicial are not rectified or clarified to the Purchaser's satisfaction (acting reasonably) by the Date of Entry or within 6 weeks from the date of such intimation whichever is earlier. The Purchaser's right to resile shall be his sole option in terms of the Missives. Failing the exercise of such right to resile, (i) the Purchaser shall be deemed satisfied as to the position, and (ii) the Seller shall be deemed not to be in breach.

23 OCCUPANCY RIGHTS

- 23.1 At the Date of Entry the Property will not be affected by any occupancy rights as defined in the Matrimonial Homes (Family Protection) (Scotland) Act 1981 as amended or the Civil Partnership Act 2004.

24 SUPERSESSION OF MISSIVES

- 24.1 The Missives shall cease to be enforceable after a period of 2 years from the Date of Settlement except insofar as (i) they are founded upon in any court proceedings which have commenced within the said period or (ii) this provision is excluded in terms of any other condition of the Missives.

25 ADDRESS DETAILS

- 25.1 The Seller and the Purchaser irrevocably authorise their respective solicitors to release their current address on demand.

26 LIMITATION OF CLAIMS

- 26.1 No claim will be available or competent to the Purchaser in respect of (i) matters disclosed to and accepted by the Purchaser prior to the Date of Entry or (ii) any items or claims amounting in aggregate value to less than £300.

27 ENTIRE AGREEMENT

- 27.1 The Missives will constitute the entire agreement and understanding between the Purchaser and the Seller with respect to all matters to which they refer and supersede and invalidate all other undertakings, representations, and warranties relating to the subject matter thereof which may have been made by the Seller or the Purchaser either orally or in writing prior to the date of conclusion of the Missives.

28 MINIMUM PERIOD OF OWNERSHIP/POSSESSION

- 28.1 The Seller warrants that he has owned the Property for at least 6 months prior to the date of the Offer or other document incorporating reference to these Clauses. This provision shall not apply where the Seller is a personal representative or executor of the proprietor; or is an institutional heritable creditor exercising its power of sale; or is a receiver, trustee in sequestration, administrator or liquidator.
- 28.2 The Seller warrants that the Property has been possessed openly, peaceably and without judicial interruption by the Seller since the Seller's acquisition of same.

29 GREEN DEAL ETC

- 29.1 The Property is not subject to a green deal plan as defined in Section 1 of the Energy Act 2011.
- 29.2 The Seller shall deliver at or prior to settlement an Energy Performance Certificate in compliance with The Energy Performance of Buildings (Scotland) Regulations 2008, as amended.

30 CROFTING

- 30.1 The provisions of the Crofters (Scotland) Act 1993, as amended, or the Crofting Reform (Scotland) Act 2010 do not apply to the Property.
- 30.2 Any Decrofting Direction or Resumption Order under the said Crofting Acts relating to the Property shall be exhibited prior to and delivered at Settlement.

SECTION 4 EXPLANATION OF THE SCOTTISH STANDARD CLAUSES (EDITION 1)

1. FIXTURES, FITTINGS & CONTENTS

The Offer should specify any moveable items included in the sale.

Heritable fixtures and fixtures are items of a moveable character that have become “heritable” by attachment to the Property and have therefore become part of it.

Oil in a storage tank and gas remaining in a cylinder are now included.

Some moveables are included by reference to sales particulars or adverts.

Others (notably carpets and floor coverings, blinds, curtain rails and runners but not curtains) are included under item (d).

1.2 provides for delivery of a wheeled bin or receptacle.

1.3 The seller warrants his ownership of moveables and that they are free of debt or court action.

1.4 obliges the Seller to remove moveable items not included in the price.

2. AWARENESS OF CIRCUMSTANCES

The Seller states his awareness of Notices or matters that do not affect the Property.

Of course, if the Seller knows of any such Notice, etc then he should tell his solicitor so that the matter can be properly addressed.

3. SPECIALIST REPORTS

3.1 This obliges the Seller to deliver at settlement any Guarantees for rot or rising damp treatments as well as those for insulation and double glazing.

3.2 & 3.3 Self-explanatory

4. CENTRAL HEATING ETC.

The test is “working order” i.e. if the system or appliance works on the Date of Entry (when the keys are obtained), that is sufficient. If, for example, the purchaser has any concerns about the working order of the central heating system it is recommended that he arranges for a separate inspection of it as it will not be covered by the surveyor’s report. Any defects existing at the Date of Entry require to be intimated within five working days of settlement otherwise the claim is lost.

5. DEVELOPMENT

5.1 Under planning legislation, neighbour notification requires to be given by an owner of adjoining property for certain kinds of development. This clause, however, does not apply to notices where the development has been completed prior to the conclusion of Missives, or where the notice in question has lapsed, or where the application for consent has been refused or withdrawn. If a Seller has been served with a neighbour notification notice (other than in the excluded circumstances), then a qualification will be required in the qualified acceptance to explain that there is an exception from the warranty. The Purchaser is to be notified by the Seller of any fresh notices served prior to the Date of Settlement i.e. when the price is paid and will require to decide whether or not to object.

5.2 A warranty by the Seller that he has no knowledge of any proposal of a neighbour which might materially affect the value or amenity of the Property.

6. STATUTORY NOTICES ETC.

6.1 The Seller is liable for any local authority notices or orders requiring repairs to be carried out to the Property issued prior to and on the date of conclusion of Missives. The Purchaser is liable for such notices and orders issued after the date of conclusion of Missives.

6.2 If the Seller has received written notification etc of any scheme of common repairs or improvements he requires to tell his solicitor so that this can be disclosed in a qualified acceptance of the offer.

6.3 - 6.6 provides an agreed mechanism for retention of a sum to deal with such notices.

6.7 Self explanatory except that a Notice of Potential Liability for Costs is a Deed that can be registered against the Title of the Property by a neighbour or the Factor who has been unable to recover costs of common repairs.

7. PROPERTY MANAGEMENT AND FACTORS

If the Property is part of a larger building or tenement (e.g. a flat) or is a house forming part of a development with common amenity areas then this clause applies. Any charges for maintenance of common items will be apportioned at the Date of Entry on the basis stated. If there is a Factor, he will carry out the apportionment. The Seller's solicitor shall supply to the purchaser full details of the factoring and block insurance arrangements and will notify the factor of the change of ownership. Please note that the Seller will remain liable for major repairs or improvements proposed, instructed, authorised or completed but not yet paid for. This should be read along with Sub-Clause 6.2.

8. ALTERATIONS

8.1 Most erections and alterations require planning permission from the planning department and building warrant consent from the building control department of the local authority. Listed Building Consent is also required for a listed building. A Completion Certificate (or Notice of Acceptance of a Completion Certificate) is required from the local authority on completion of the work. The seller is to produce the relevant documents for such work (but in the case of alterations and extensions only if material or significant) carried out within a period of 20 years prior to the Date of Entry.

8.2 The seller should also produce Planning Permission for any such works carried out within a period of 10 years prior to the Date of Entry.

If the Seller has carried out alterations but has not obtained such consents the Seller should contact his solicitor at an early stage and advise him of these and take his advice about how to remedy the situation.

8.3 If the title provides that consent from neighbouring owners was required for alterations but the alteration has been complete for a period of 12 weeks or more with no objection having been made, then neighbouring proprietors lose any right to complain about the particular alteration. However if such an objection has been made you should inform your solicitor who will discuss how to deal with the matter.

8.4 This warrants there are no planning conditions of a continuing nature restricting current use of the Property or adversely affecting it.

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|-----|------------------------|-------------------|
| 9. | DISPUTES/LITIGATION | Self-explanatory. |
| 10. | ACCESS | Self-explanatory. |
| 11. | UTILITIES AND SERVICES | Self-explanatory |

11.1 Self-explanatory

11.2 Roads are not always taken over for maintenance by a local authority. This allows for that being the case.

11.3 Water and 11.4 Drainage are not always taken over for maintenance by a local authority and this covers that situation and what is required.

12. BREACH OF CONTRACT BY SELLER

If the Seller does not implement his part of the Missives, this condition provides a right to the Purchaser to claim damages for reasonable losses.

13. BREACH OF CONTRACT BY PURCHASER

If the Purchaser fails to implement his part of the contract by paying the price on the Date of Entry, this specifies the remedies open to the Seller for interest or damages and the Seller's right to rescind or terminate the Missives and resell.

14. NEW HOME WARRANTY SCHEME

Most new homes and some conversions of older ones protect owners of houses if serious structural defects appear in the first 10 years. A number of schemes operated by NHBC and others are acceptable to lenders. An alternative (where a property does not benefit from such a scheme) is a professional consultant's certificate ("PCC") complying with the CML Lender's Handbook for Scotland.

15. TITLE CONDITIONS

There are various title matters that need to be looked at by a Purchaser's solicitor to check that the title is good and marketable (readily saleable). The titles are exhibited to the Purchaser's solicitor and the Purchaser will have a right to resile (i.e. get out of the contract) with no penalty to either Seller or Purchaser provided (1) the purchaser gives intimation of something prejudicial within 10 working days of obtaining the Titles and (2) if such matters intimated as prejudicial are not rectified or clarified to the Purchaser's satisfaction (acting reasonably) by the Date of Entry or

within 6 weeks of such intimation whichever is earlier. If a purchaser does not exercise a right to resile within that period the purchaser is deemed satisfied as to the position. A seller should advise his solicitor if he is aware of or believes that there may be servitudes affecting the property that are not contained in the Title.

16. AWARENESS OF ENCUMBRANCES

Most Burdens and Servitudes, Leases and the like are mentioned in the Title but some can exist without being stated in the Title. Sellers should disclose these.

17. ADVANCE NOTICES

These provide a priority period to purchasers to register their Title free of challenge by creditors or insolvency, or disposal, or grant of a security to another party.

18. SETTLEMENT/REGISTRATION OF TITLE

This condition requires the Seller to sign and deliver the Disposition transferring the title to the Purchaser and makes provisions for normal Land Registry searches to be provided by the Seller showing that the Seller still has a good title and there is nothing which would prevent the sale such as the Seller having been made bankrupt or having an Inhibition (a court order preventing a sale). If the property has not been previously registered then 18.1.1 applies and if already registered 18.1.2 applies.

19. INCORPORATED BODIES Self-explanatory.

20. RISK

Without this condition the risk of destruction or damage would pass to a Purchaser when Missives are concluded despite the fact that the Purchaser would not yet be living in the house. It is thought to be fairer that the Seller should bear the risk until the time of Settlement when the keys are handed over.

21. PROPERTY ENQUIRY CERTIFICATE ("PEC")

It is usual for the Seller to pay for and produce a certificate from the local authority or a private search company confirming that there is nothing adverse from a planning point of view. If the PEC discloses any matter which is materially prejudicial to the Purchaser or to the Property, the Purchaser can get out of the contract without penalty provided (1) the Purchaser intimates his intent to resile within 10 working days of receipt by his solicitor of the PEC and (2) if such matters intimated as prejudicial are not rectified by the Date of Entry or within 6 weeks of such intimation whichever is earlier. If a Purchaser does not exercise a right to resile within that period the Purchaser is deemed satisfied as to the position.

21.3 Provides clarification as to what is material or not.

22. COAL MINING REPORT

It is usual for a Seller to obtain at his expense a Coal Mining Report if the Property is within a coal mining area. The Purchaser can resile from the Missives (i.e. get out of

the contract) without penalty if something materially prejudicial to the Property or the Purchaser's proposed use of the Property is disclosed provided (1) the Purchaser intimates his intent to resile within 10 working days of receipt by his solicitor of the Report and (2) if such matters intimated as prejudicial are not rectified by the Date of Entry or within 6 weeks of such intimation whichever is earlier. If a Purchaser does not exercise a right to resile within that period the Purchaser is deemed satisfied as to the position.

23. OCCUPANCY RIGHTS

If the Property is a Matrimonial Home and is in the sole name of either the husband or wife then the husband or wife not named on the title has an occupancy right. If the Seller is in a civil partnership then the civil partner has a similar right.

24. SUPERSESION OF MISSIVES

This does not mean that the Seller is responsible for the Property for 2 years. It does mean that any part of the Missives or contract ceases to be enforceable after a period of 2 years from the defined Date of Settlement (DOS) except regarding Clause 6 and 18 which remain in full force until implemented.

If a Purchaser does not settle there will be no DOS and so no time limit of 2 years so that the Missives remain in force under the general law and this clause will not apply.

25. SELLER'S ADDRESS Self-explanatory.

26. LIMITATION OF CLAIMS

This clause is designed to give protection to a Purchaser against a breach of the contract by the Seller which becomes apparent after the Purchaser has paid the price and received the title deeds and keys. It allows the Purchaser to seek damages from the Seller except in relation to the matters mentioned. It is felt that claims under £300 are minor in nature (compared to the value of the Property) and that Purchasers should be excluded from making such minor claims.

27. ENTIRE AGREEMENT

Comments made by the Seller about the Property or the condition of the Property as well as Property Schedules shall be deemed superseded by the Missives.

28. MINIMUM PERIOD OF OWNERSHIP

This clause is designed to comply with lenders' requirements. It is a warranty that the Seller has owned the property for at least 6 months prior to the date of the offer. If this is not the case, the Seller should alert his solicitor.

29. GREEN DEAL ETC

29.1 This clause is designed to ascertain if the Property is subject to a green deal plan. It provides that it is not subject to one as the default position as most sales will not involve a Green Deal. Other provision will need to be made if a Green Deal is involved.

29.2 An Energy Performance Certificate (EPC) forms part of the Home Report but some sales are “off market” so this sub clause reminds sellers of their obligation to provide an EPC if there is no Home Report.

30. CROFTING

This clause is designed to ascertain if the Property is a Croft. It provides that it is not as the default position as most sales will not involve a Croft. Other provision will need to be made if a Croft is involved.

THE SCOTTISH STANDARD CLAUSES WORKING PARTY

are

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- 7) Robert Macduff of Elliot & Co., Perth
- 8) Peter Mason, Macleod & MacCallum, Inverness
- 9) David Kilshaw of Cullen Kilshaw, Galashiels and Peebles
- 10) Sally Swinney of Blackwood & Smith, Peebles
- 11) Rhona Simpson of South Forrest, Inverness
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Written by Ian C. Ferguson of Mitchells Robertson on behalf of the Edinburgh Conveyancers Forum and Glasgow Conveyancers Forum and Scottish Standard Clauses Working Party