

**CLIENT GUIDE**  
**TO THE**  
**COMBINED STANDARD OFFER**  
**AND**  
**COMBINED STANDARD CLAUSES (2011 EDITION)**

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**Issued by the Standard Missives Joint Working Party of The Edinburgh Conveyancers  
Forum and The Royal Faculty of Procurators in Glasgow**

## **SECTION 1 INTRODUCTION**

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 Combined 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 are together 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 the Edinburgh Solicitors Forum and The Royal Faculty of Procurators in Glasgow which represent Edinburgh and Glasgow solicitors have introduced a style of offer which it is hoped will be used by most Solicitors in the Edinburgh, Glasgow, surrounding areas and perhaps further

afield. The offer appears in Section 2 and will define the Purchaser, the Property, the Price, the Date of Entry (i.e. the date you have contracted to obtain your keys) and details of any moveable items included in the price. Some of these 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 Combined Standard Clauses (2011 Edition) and incorporates them as conditions of the offer.

It is not possible to insist that everyone uses these approved styles. However Guidelines have been issued to Solicitors requesting that changes should be made only for valid reasons e.g. making the offer subject to survey and not for the reason of style rather than substance.

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 within 1 week. You should realise however that if an offer is submitted in the Combined Standard style it is now quite conceivable that you could receive an 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 will be 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 have a clear understanding of their rights and obligations. It is however only a guide. Solicitors preparing Missives have many years of training and experience behind them and it is therefore not possible to fully explain in a short guide like this all the legal principles relative to each clause. If a dispute arises as to the meaning of the Missives the Solicitor is the expert to whom to turn. This form of offer and the standard clauses are designed for use with dwellinghouses.

Combined Standard Missives will assist more straightforward conclusion of Missives with few of the inherent delays that were involved under the old system. Speed and ease of conclusion of Missives and clauses with which both the Solicitor and the client can become familiar are enormous benefits. These Standard Missives are the tool to make this a reality.

## **SECTION 2 THE COMBINED STANDARD OFFER**

This is the style of Offer specified in the Deed of Declaration by Ross Alexander MacKay and Others dated 20 September 2011.

Dear Sirs

For the purposes of this offer and the Combined Standard Clauses (2011 Edition) 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 Combined Standard Clauses (2011 Edition) specified in the Deed of Declaration by Ross Alexander MacKay and Others dated 20th and registered in the Books of Council and Session for preservation on 22nd both September 2011, 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 5pm today with written acceptance reaching us no later than 5pm on the fifth 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.
- (Fourth) If the transaction following on from this offer is ARTL compatible (and provided that the Seller’s Solicitors are registered under ARTL) it will proceed under ARTL. Neither the Purchaser’s Solicitors nor the Seller’s Solicitor will withdraw from using ARTL during the progress of the transaction without good cause and without giving reasonable prior notice to that effect to the other Solicitor. The following definitions apply to this clause:-

“ARTL” means the computer system provided by the Registers of Scotland to enable the creation of electronic documents and the electronic generation and communication of an application for registration of an interest in land in the Land Register of Scotland and the automated registration of that interest;

“ARTL compatible” means in respect of a transaction one which is capable of being processed under ARTL as being of a kind and falling within a geographical area approved by the Registers of Scotland for such processing.

Yours faithfully

NB: Optional clause (Fifth) for Edinburgh agents:

(Fifth) In the event that any of the windows within the Property have been altered or replaced within ten years of the Date of Entry, written confirmation from a Local Authority, qualified architect or other approved third party will be delivered at settlement confirming that such replacement windows comply with building and planning regulations as at date of installation.

### **SECTION 3 THE COMBINED STANDARD CLAUSES (2011 EDITION)**

This is the Schedule specified in the Deed of Declaration by Ross Alexander MacKay and Others dated 20 September 2011.

#### COMBINED STANDARD CLAUSES (2011) EDITION

##### 1. FIXTURES, FITTINGS & CONTENTS

The Property is sold with:

- (a) all heritable fittings and fixtures;
- (b) 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;
- (c) all items stated to be included in the sales particulars or advertisements made available to the Purchaser; and
- (d) 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 floorcoverings (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; 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.

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.

The Seller undertakes that the Property will be left in a clean and tidy condition at settlement.

## 2. SPECIALIST REPORTS

- (a) 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 larger subjects of which the Property forms part) 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.
- (b) The Seller confirms that he is not aware of anything having been done or omitted to be done which might invalidate the Guarantees.
- (c) If requested, and insofar as necessary and competent, the Guarantees will be assigned to the Purchaser at the Purchaser's expense.

## 3. CENTRAL HEATING ETC.

- (a) 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 will be in working order commensurate with age as at the Date of Settlement.
- (b) 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.
- (c) 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).
- (d) 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.
- (e) 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.

- (f) 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.

#### 4. DEVELOPMENT

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. STATUTORY NOTICES

- (a) 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.
- (b) The Seller warrants that he has not received written notification of, approved, entered into or authorised any scheme of common repairs or improvement affecting any larger subjects of which the Property forms part. 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.
- (c) When any work in terms of clauses (a) or (b) 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 both parties. Any shortfall will remain the liability of the Seller.
- (d) On issue of invoices for such works in terms of clauses (a) and/or (b) 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.

- (e) Notwithstanding any other term within the Missives, this condition will remain in full force and effect without limit of time and may be founded upon until implemented.
- (f) 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. 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 parties. Any shortfall will remain the liability of the Seller.
- (g) 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.

## 6. PROPERTY MANAGEMENT AND FACTORS

Where the Property is part of larger subjects, it is a condition that:

- (a) 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;
- (b) 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 building or development of which it forms part;
- (c) evidence of any block insurance policy will be exhibited prior to the Date of Entry; and
- (d) all other outgoings and charges payable in respect of the Property will be apportioned as at the Date of Entry.

## 7. ALTERATIONS

- (a) Where there have been additions or alterations (including change of use) completed to the Property (or if the Property has been erected) within 20 years of the Date of Entry then the following documentation shall be exhibited before and delivered at the Date of Entry: all necessary Listed Building Consents together with
  - (i) all necessary Building Warrants (including stamped warrant drawings) and Certificates of Completion (or, if applicable, Notices of Acceptance of Completion Certificate) or
  - (ii) an unqualified Local Authority Property Inspection Report, Letter of Comfort, or equivalent.

- (b) All Planning Permissions 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.
- (c) 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. FAMILY LAW ACT/LITIGATION

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. ACCESS

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.

10. TITLE DISPUTES

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

11. UTILITIES AND SERVICES

- (a) Prior to settlement the Seller will confirm the present suppliers of utility services (gas, electricity and telephone as applicable) to the Property. The Seller shall act reasonably in ensuring that such services are not terminated prior to the Date of Settlement and shall co-operate reasonably with the Purchaser in ensuring the transfer of such services to the Purchaser.
- (b) The Property is connected to mains services (that is: public water and drainage).
- (c) There is direct access to the Property from a road which has been adopted for maintenance by the local authority.

12. BREACH OF CONTRACT BY SELLER

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. 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. 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

- (a) The Price will be paid in full on the due date.
- (b) The Seller will not be obliged to give vacant possession except as against payment of the Price and any interest or losses due as aftermentioned.
- (c) 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:
  - (i) ordinary damages in respect of all proper and reasonable losses arising out of the late payment of the Price (which will include Wasted Expenditure ); or
  - (ii) interest on the amount of the Price outstanding at the Prescribed Rate from the due date until the date when payment is made.
- (d) 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:
  - (i) 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 will include Wasted Expenditure); or
  - (ii) 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).
- (e) In this clause:
  - (A) 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.

(B) 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.

(C) “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.

(D) “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

If the Property was constructed within 10 years prior to the Date of Entry, there shall be delivered at settlement either (i) appropriate NHBC documentation or such equivalent new home warranty documentation as provided by any alternative warranty provider as approved by and acceptable to the Council of Mortgage Lenders, in which event, the Seller warrants that no claims have been made or reported or are pending under the relevant warranty scheme; or (ii) a Professional Consultant’s Certificate with other necessary information all in compliance with the current edition of the CML Lenders’ Handbook for Solicitors (Scotland).

#### 15.1 TITLE CONDITIONS

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

- (b) 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 so far as the Seller has right to same.
- (c) The existing use of the Property is in conformity with the title deeds. There are no unusual, unduly onerous or restrictive burdens, conditions or servitudes affecting the Property
- (d) There is no outstanding liability for any part of the cost of constructing walls, fences, roadways, footpaths or sewers adjoining or serving the Property.
- (e) The Property has the benefit of all such servitudes and wayleaves as are required for its proper and convenient use (including vehicular access rights).

If the title deeds disclose a position other than as stated above, 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 titles; 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.

## 15.2 AWARENESS OF SERVITUDES

The Seller is not aware of any servitudes or overriding interests (within the meaning of Section 28 (1) of the Land Registration (Scotland) Act 1979) affecting the Property which are not disclosed in the title deeds for the Property.

## 16. SETTLEMENT/REGISTRATION OF TITLE

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; and (iv) the keys for the Property; together with:

- (a) If the provisions of the Land Registration (Scotland) Act 1979 ("the Act") relating to a first registration under the Act apply, (i) a Form 10 Report brought down to a date not more than 3 working days prior to the Date of Entry and showing no entries adverse to the Seller's interest in the Property (the cost of the said Report being the Seller's liability); and (ii) such documents and evidence, including a plan, as the Keeper may require to enable the Keeper to issue a Land Certificate (in paper or electronic format) in the name of the Purchaser as the registered proprietor of the Property without exclusion of indemnity in terms of Section 12(2) of the 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 Ordnance Survey map and evidence (such as a Form P16 report or equivalent) that the description of the whole Property as contained in the title deeds is *habile* to include the whole of the occupied extent.

- (b) If the title to the Property is already registered in terms of the Act, there will be delivered in exchange for the Price a Land Certificate (in paper or electronic format) containing no exclusion of indemnity in terms of Section 12(2) of the Act with all necessary links in title evidencing the Seller's exclusive ownership of the Property together with (i) a Form 12 Report brought down to a date not more than 3 working days prior to the Date of Entry and showing no entries adverse to the Seller's interest in the Property (the cost of the said Report being the Seller's liability); and (ii) such documents and evidence as the Keeper may require to enable the interest of the Purchaser to be registered in the Land Register as registered proprietor of the Property without exclusion of indemnity under Section 12(2).
- (c) Where clauses (a) or (b) apply the Land Certificate will disclose no entry, deed or diligence 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.
- (d) 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 of indemnity or refusal to register.
- (e) 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.
- (f) Notwithstanding any other term within the Missives, this condition shall remain in full force and effect without limit of time and may be founded upon until implemented.

#### 17. INCORPORATED BODIES

- (a) If the Seller is a limited company, 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 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 the full names of the present directors and secretary of the Seller. 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. 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.

- (b) 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 the Land Certificate or Form 10, 11, 12 or 13 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.

#### 18. RISK

- (a) The Seller will maintain the Property in its present condition, fair wear and tear excepted, until the time at which settlement takes place.
- (b) 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.
- (c) 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.

#### 19. PROPERTY ENQUIRY CERTIFICATE

- (a) 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).
- (b) 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.

- (c) 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.

20. COAL AUTHORITY REPORT

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.

21. OCCUPANCY RIGHTS

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.

22. SUPERSESION OF MISSIVES

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.

23. ADDRESS DETAILS

All parties irrevocably authorise their agents to release their current address on demand.

24. LIMITATION OF CLAIMS

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 £250.

25. ENTIRE AGREEMENT

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 parties either orally or in writing prior to the date of conclusion of the Missives. Each party warrants to the other that he has not relied on any such undertaking, representation or warranty in entering into the Missives.

26. MINIMUM PERIOD OF OWNERSHIP

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 of the proprietor; or is an institutional heritable creditor exercising its power of sale; or is a receiver, trustee in sequestration or liquidator.

27. INTERPRETATION

In these Clauses:-

- (a) (i) The masculine includes the feminine; and (ii) words in the singular include the plural and vice versa;
- (b) The phrase "Date of Settlement" means the date on which settlement is actually effected whether that is the Date of Entry or not;
- (c) "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;
- (d) Any intimation shall be in writing (which shall include, for avoidance of doubt, faxes or emails);
- (e) 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; and
- (f) Where any intimation must be given within a specified period, time will be of the essence.

## **SECTION 4 EXPLANATION OF THE COMBINED STANDARD CLAUSES (2011 EDITION)**

### **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” through attachment to the Property and have therefore become part of the Property.

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).

The seller warrants his ownership of moveables and that they are free of debt or court action. The seller is to leave the Property in a clean and tidy condition.

### **2. SPECIALIST REPORTS**

(a) 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.

(b) & (c) Self-explanatory

### **3. 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.

### **4. DEVELOPMENT**

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. STATUTORY NOTICES ETC.

(a) 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.

(b) 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.

(c)-(g) provides an agreed mechanism for retention of a sum to deal with such notices.

6. PROPERTY MANAGEMENT AND FACTORS

This clause is largely self-explanatory. 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 this clause will apply.

Any charges for maintenance of common items will be apportioned at the Date of Entry. If there is a factor, he will carry out the apportionment.

The Seller's solicitor shall 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 5(b).

7. ALTERATIONS

(a) Most erections and alterations require planning permission from the planning department and building warrant consent from the building control department of the local authority. A 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.

(b) 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.

(c) Edinburgh City Council have particular policies relative to their area regarding replacement windows with which this clause deals.

(d) If the title provided 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 may have lost

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.  | FAMILY LAW ACT/LITIGATION    | Self-explanatory. |
| 9.  | ACCESS                       | Self-explanatory. |
| 10. | TITLE DISPUTES               | Self-explanatory. |
| 11. | UTILITIES                    | Self-explanatory  |
| 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

Many new homes offer protection to owners of houses built by developers if serious structural defects appear in the first 10 years. There are a number of schemes operated by NHBC and others acceptable to the Council of Mortgage Lenders ("CML"). An alternative (where a property does not benefit from a standard structural defect warranty) is a professional consultant's certificate ("PCC").

The loan instructions issued by most banks and building societies are covered by the CML Lender's Handbook for Scotland.

- 15 15.1 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 (i.e. readily saleable). The titles will be 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.

#### 15.2 AWARENESS OF SERVITUDES

This is a declaration as to the Seller's awareness of servitude rights (like access rights, rights to install and maintain, repair and renew service media) or overriding

interests (e.g. in favour of public utilities) which may exist but do not appear from an examination of the Title Deeds. The seller should advise his solicitor if he is aware of or believes that there may be any servitudes affecting the property.

16. SETTLEMENT

This condition requires the Seller to sign the deed or document 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 is personal to the Seller 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 (a) applies and if already registered (b) applies.

17. INCORPORATED BODIES Self-explanatory.

18. 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.

19. 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.

(c) Provides clarification as to what is material or not.

20. 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.

21. 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.

22. SUPERSESION OF MISSIVES

This clause does not mean that the Seller is responsible for the Property for two years. It does mean that any part of the Missives or contract ceases to be enforceable after a period of two years from the defined Date of Settlement except regarding Clause 5 and 16 which remain in full force until implemented.

In cases where the Purchaser does not settle there will be no Date of Settlement so there is no time limit of two years. In those cases the Missives remain in force under the general law and this clause will not apply.

23. SELLER'S ADDRESS Self-explanatory.

24. 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 £250 are minor in nature (compared to the value of the Property) and that Purchasers should be excluded from claiming for such minor claims.

25. 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.

26. 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.

27. INTERPRETATION Self-explanatory.

**Written by Ian C. Ferguson of Mitchells Robertson as a Member of the Standard Missives  
Joint Working Party of The Edinburgh Conveyancers Forum  
and The Royal Faculty of Procurators in Glasgow**