

# **INDEX - SCOTTISH STANDARD CLAUSES (EDITION 1)**

## **INTERPRETATION**

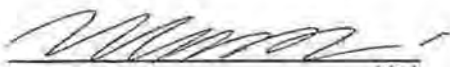
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14/48601

AT EDINBURGH the Third day of December Two thousand and fourteen the Deed hereinafter reproduced was presented for registration in the Books of the Lords of Council and Session for preservation and is registered in the said Books as follows:-

I, **ROSS ALEXANDER MACKAY WS**, 19 Canning Street, Edinburgh, Convenor of the Law Society of Scotland Property Law Committee **CONSIDERING THAT** it has been felt appropriate to produce Standard Clauses which are intended to be incorporated in contracts for the purchase and sale of dwellinghouses and other residential properties (which Clauses are to be known as "the Scottish Standard Clauses (Edition 1)") **HEREBY DECLARE** that the clauses detailed in the Schedule annexed and executed as relative hereto are the Scottish Standard Clauses (Edition 1); And I declare that any party desiring to use the Scottish Standard Clauses (Edition 1) shall be at liberty to do so and to add to and alter or vary the same in any contract as they may wish; And I further declare for the information of any party using the Scottish Standard Clauses (Edition 1) that the style of offer annexed and signed as relative hereto is intended for use along with the Scottish Standard Clauses (Edition 1) but that it is at the entire discretion of any party to decide whether to use the same or any variation thereof: **IN WITNESS WHEREOF** these presents are executed as below:-

  
\_\_\_\_\_  
(sign)

Signature of witness

Nicola Jane Lemon

\_\_\_\_\_  
(Print)

Full name of witness

19 Canning Street, Edinburgh EH3 8EH

\_\_\_\_\_  
Address of witness

  
\_\_\_\_\_  
Signature of **ROSS ALEXANDER MACKAY**

EDINBURGH

\_\_\_\_\_  
Town/Place of signing

2 December 2014

\_\_\_\_\_  
Date of signing

15

AJ6065157/1

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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

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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.

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- 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.

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## 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.

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## **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.

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## **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



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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

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- 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.

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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.

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## 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:-

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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.

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- 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.

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## **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.

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## **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.