

# **CLIENT GUIDE**

**TO THE**

**SCOTTISH NEW BUILD STANDARD CLAUSES (2015 EDITION)**

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

## **SECTION 1 - PURPOSE OF THE SCOTTISH NEW BUILD STANDARD CLAUSES (2015 EDITION)**

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. The advice and assistance of a Solicitor experienced in house purchase and sale and conveyancing is 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 until now most Builders have had their own style of Standard Missive or Offer to Sell or Purchase that they wish Purchasers to use. It is an Offer where the Builders have specified what the terms will be. There is a wide variety of styles. It was felt desirable to try to standardise these clauses and this has involved some give and take by Clients' Solicitors and Builders' Solicitors in the working party. Builders are commercial entities and have greater negotiating power than a Purchaser. Many Builders have said in the past that the Missives cannot be amended or qualified. The negotiating position of the Builders is reflected in these New Build Standard Clauses but is more likely to be what a client might "settle for" if they tried to amend. The New Build Standard Clauses also take account of the recommendations contained in the Consumer Code for Home Builders.

The offer, any qualified acceptances and the 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.

The offer appears in Section 2 and defines Seller, Purchaser, Development, Property, Price, Reservation Fee, Reservation Form, Deposit, Anticipated Date of Entry, Date of Entry (when you obtain your keys) and Prescribed Rate. The offer makes reference to the Scottish New Build Standard Clauses (2015 Edition) and any incentive or variations to the Scottish New Build Standard Clauses can be added.

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.

The purpose of this Guide is to explain the various clauses so that new house Purchasers 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 and flats. The Clauses are a tool to assist more speedy and straightforward conclusion of Missives.

## **SECTION 2 THE SCOTTISH NEW BUILD STANDARD OFFER**

**This is the style of Offer specified in the Deed of Declaration by Alan John Minty and Ross Alexander MacKay dated 14th April 2015**

Dear Sirs

For the purposes of this Offer and the Scottish New Build Standard Clauses (2015 Edition) aftermentioned:

**The Seller** means ;

**The Purchaser** means ;

**The Development** means  [refer to Phase if necessary];

**The Property** means  the location of which is indicatively shown delineated in  on the [plan] [layout plan] annexed and signed as relative hereto, [or as indicatively shown on the site plan displayed at the Seller's sales office ] [ or as shown marked as Plot Number  of Development Plan Approval Reference  dated  ] together with any garden ground, garage, parking space and/or outbuildings exclusively pertaining thereto and all other parts and pertinents;

**The Price** is  POUNDS STERLING ;

**The Reservation Fee** is  POUNDS STERLING ;

**The Reservation Form** means the reservation form issued by the Seller and signed by the Purchaser;

**The Deposit** is  POUNDS STERLING ;

**The Anticipated Date of Entry** shall be ; [*delete if date of entry fixed and also delete Condition 2.2 of the Scottish New Build Standard Clauses (2015 Edition)*]

**The Date of Entry** shall be [determined in terms of Condition 2.1 of the Scottish New Build Standard Clauses (2015 Edition)]; [or insert fixed date where the Property is complete at point of reservation and delete said Condition 2.1]

**Prescribed Rate** means  per centum per annum;

**The Scottish New Build Standard Clauses (2015 Edition)** means those specified in the Deed of Declaration by Alan John Minty and Ross Alexander Mackay dated 14<sup>th</sup> April and registered in the Books of Council and Session for preservation on 16<sup>th</sup> April both 2015;

**The New Home Warranty Provider** means .

The Seller hereby offers to sell to the Purchaser the Property at the Price and upon the conditions contained in the Scottish New Build Standard Clauses (2015 Edition), and upon the following further conditions:-

(First) This Offer, unless earlier withdrawn, is open for written acceptance reaching us no later than 5.00pm on the 10<sup>th</sup> working day following the date of this Offer and if not so accepted shall be deemed to be withdrawn.

(Second) This Offer and any acceptance of this Offer or any other letter forming part of the Missives, or any amendment or variation of the Missives which is faxed or e-mailed by one party's solicitors to the other party's solicitors will be held to the order of the other party's solicitors from the time it is sent to them by e-mail or fax. The Seller's solicitors and the Purchaser's solicitors undertake to deliver the original of the letter sent by e-mail or fax to the other party's solicitors by post, DX, Legal Post or by hand delivery as soon as practicable after transmission by e-mail or fax.

(Third) *Add any incentives offered and conditions attached to them*

(Fourth) *Add any variations to the Scottish New Build Standard Clauses*

Yours faithfully

### **SECTION 3 THE SCOTTISH NEW BUILD STANDARD CLAUSES (2015 EDITION)**

**This is the Schedule specified in the Deed of Declaration by Alan John Minty and Ross Alexander MacKay dated 14th April 2015**

#### SCOTTISH NEW BUILD STANDARD CLAUSES (2015 EDITION)

#### 1. PRICE

1.1.1 The Purchaser (i) has paid the Reservation Fee and (ii) will pay the Deposit to the Seller within 5 working days of the Conclusion Date. It is an essential condition of the Missives that in the event of the Deposit not being paid within 5 working days of the Conclusion Date the Seller will be entitled, at its sole discretion, to treat the Missives as rescinded, to sell the Property to another party and to retain the Reservation Fee.

1.1.2 Except as provided for in Condition 2.2, the Reservation Fee and the Deposit shall not be refundable but will be a payment to account of the Price.

1.1.3 The Deposit is protected under the terms of the New Home Warranty referred to in Condition 11 in the event of the insolvency of the Seller.

1.2 On the Date of Entry the Purchaser will pay:

1.2.1 the balance of the Price

1.2.2 the Factor's Payment, if any; and

1.2.3 the cost (including where applicable any Value Added Tax) of all or any additions, variations and/or extras beyond the Seller's normal specification, instructed by the Purchaser and accepted by the Seller in so far as not already paid for by the Purchaser.

#### 2. DATE OF ENTRY

- 2.1. The Date of Entry will be the date 10 working days after the later of (a) the date on which the Seller or their solicitors intimate to the Purchaser or their solicitors, in writing, that the Property has been passed by the Local Authority Building Inspector as being habitable and fit for occupation and (b) the date a cover note from the New Home Warranty Provider relative to the Property is sent to the Purchaser or their solicitors whether by e-mail, fax or post.
- 2.2. The Purchaser acknowledges that the Anticipated Date of Entry may change due to adverse weather or other factors beyond the Seller's control.

Either party may rescind the Missives forthwith on service of notice on the other party where any delays to the Anticipated Date of Entry are such that the period of delay continues for the following periods of time beyond the Anticipated Date of Entry:

- 2.2.1 If the roof of the Property (or building of which the Property forms part if the Property is an apartment) was completed prior to the date of this offer:

(a) Houses: 2 months

(b) Apartments: 4 months.

- 2.2.2 If the roof of the Property (or building of which the Property forms part if the Property is an apartment) was not completed prior to the date of this offer:

(a) Houses: 6 months

(b) Apartments: 12 months

In the event of such rescission, the Seller shall refund to the Purchaser within 10 working days of such rescission (i) the Deposit and Reservation Fee and (ii) the cost of any variations or extras instructed and paid for by the Purchaser which at the time

of such rescission either have not been supplied and fitted by the Seller or were agreed by the Seller as being refundable when instructed by the Purchaser.

- 2.3 If the provision of or carrying out of any variations or extras instructed by the Purchaser may cause any delay in the Anticipated Date of Entry, the Seller's Solicitors shall inform the Purchaser's Solicitors of the anticipated length of the delay and the parties shall (both acting reasonably) agree a reasonable extension of time to the Anticipated Date of Entry and record the same in writing.
- 2.4. The Seller shall not be liable nor shall the Purchaser be entitled to receive compensation for any delay in the construction or completion of the Property. The Purchaser's sole remedy for any such delay shall be as set out in Condition 2.2.
- 2.5. The Seller shall not be liable nor shall the Purchaser be entitled to receive compensation in the event that the Date of Entry is earlier than the Anticipated Date of Entry.
- 2.6 Notwithstanding the provisions of Condition 2.1 hereof, the Purchaser shall not be obliged to settle the purchase of the Property any earlier than the date falling 4 weeks prior to the Anticipated Date of Entry unless the Purchaser and Seller otherwise agree in writing.

### 3. FIXTURES, FITTINGS & CONTENTS

- 3.1. The Property is sold with:
  - 3.1.1. all heritable fittings and fixtures and items included within the Seller's standard specification for the Property current at the date of reservation of the Property.;
  - 3.1.2. all items, additions, variations and/or extras instructed and paid for by the Purchaser; and
  - 3.1.3. all items set out in the Reservation Form.

4. NOTICE OF ACCEPTANCE

If not available on the Date of Settlement, a Notice of Acceptance of Completion Certificate from the Local Authority or a Habitation Certificate and/or renewal of a temporary Habitation Certificate will be delivered to the Purchaser within one month of receipt of the same by the Seller. In the event that only a temporary Habitation Certificate is available at the Date of Settlement, the Seller undertakes to renew or extend the same as and when required until a Notice of Acceptance of Completion Certificate from the Local Authority or a Habitation Certificate is issued. 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.

5. REMEDIAL WORK

Provided the Property has been passed by the Local Authority Building Inspector (or similar approved person or body) as habitable and fit for occupation and a cover note from the New Home Warranty Provider has been issued, the Purchaser shall not be entitled to delay settlement in the event that any remedial work remains outstanding at the Date of Entry. Any such remedial work as has been agreed between the Purchaser and Seller will be carried out by the Seller to the reasonable satisfaction of the Purchaser and within a reasonable period following the Date of Entry, all in accordance with the relevant New Home Warranty Provider's standards and guarantee scheme. The Purchaser hereby undertakes to grant reasonable access to the Seller and their employees or agents during normal working hours (Monday to Friday 8am – 5pm) for the carrying out of such work. In such an event, it will be the Purchaser's responsibility to either remove furniture, furnishings and decoration in the Property if the Seller considers that necessary and/or to take such steps as may be required to protect the furniture, furnishings and decoration (including uplifting and re-laying any fitted carpets, vinyl, wooden or tiled floor surfaces or other floor coverings which will be done at the Purchaser's expense but only if and to the extent that they were laid by the Purchaser) to enable the Seller to carry out reasonable inspection and necessary work. Without prejudice to any rights under the New Home Warranty Scheme, the Purchaser shall have



no right of compensation arising from the carrying out of such work or the need for the same.

6. CONSTRUCTION AND VARIATIONS

6.1. The Seller will complete the construction of the Property:

6.1.1. in a good and workmanlike manner;

6.1.2. in all material respects in accordance with the planning permission issued in respect of the Property and all variations or amendments thereto;

6.1.3. in accordance with the building warrant issued in respect of the Property;

6.1.4. to the standards required by the relevant New Home Warranty Provider;  
and

6.1.5. as soon as reasonably practicable taking account of the Seller's programme for constructing the Development and making allowance for any matters outwith their control with the intention of meeting the Anticipated Date of Entry.

6.1.6. copies of the said planning permission and building warrant (but not plans or drawings docquetted or otherwise relative thereto) shall be exhibited prior to settlement.

6.2.1 The Seller shall be entitled without payment of compensation to the Purchaser to employ or use alternative or substituted materials, fittings and fixtures in the construction of the Property, to vary the construction thereof or plans and specifications (subject to any necessary statutory approvals) and/or to vary the boundaries of the Property provided in every case that such variation constitutes a minor change that does not significantly and substantially alter the size, appearance or value of the Property. The Sellers shall notify the Purchasers of such changes in writing as soon as reasonably practicable.

- 6.2.2 If the Seller wishes to employ or use alternative or substituted materials, fittings or fixtures in the construction of the Property and/or to vary the boundaries of the Property or to vary the construction thereof or the plans and specifications such that it constitutes a variation that would significantly and substantially alter the size, appearance or value of the Property, the Seller shall notify the Purchaser or their solicitors of the proposed variation in writing. In the event that the Purchaser does not agree to any such variation, the Purchaser shall be entitled to resile from the Missives within 10 working days of the Seller's notification of the proposed variation. Any decision by the Purchaser to resile from the Missives in terms of this Condition must be intimated to the Seller or its solicitors timeously. If the Purchaser validly resiles from the Missives in terms of this Condition, the Seller shall reimburse any Deposit or Reservation Fee paid by the Purchaser (with no interest payable thereon) within 10 working days of intimation of the Purchaser's decision to resile. If the Purchaser does not intimate to the Seller timeously that it objects to the proposed variation, the Purchaser shall be deemed to have accepted the variation. No variation, whether accepted by the Purchaser or not, shall entitle the Purchaser to any claim for damages or compensation against the Seller.
- 6.3.1 The Seller shall use all reasonable care to ensure that the boundary walls or fences are erected in the position shown on the plan to be annexed to the Disposition to be granted in favour of the Purchaser. In the event that they are not so erected the Purchaser shall if so required permit the Seller or its contractors or agents access to the Property after the Date of Entry to re-position the boundary walls and fences so that they comply with the said plan subject to making good any damage caused thereby. The Purchaser shall not be entitled to any compensation where any boundary fences or walls are re-positioned to align with the title boundary.
- 6.3.2 The Seller shall not be bound by the layout or general scheme of the Development as may be shown on any plans at any time prepared in regard to the Development and may alter such layout or general scheme of development in such manner as the Seller may deem fit and extend development to land adjoining the Development and

the Purchaser shall have no right or title to object to or make any claim against the Seller.

## 7. ROADS AND OTHER INFRASTRUCTURE

7.1 The Price shall include a share of the cost of the completion of the roads, footpaths sewers, drains and other infrastructure works, landscaping, parking areas and bin stores, amenity areas and other common or communal parts of the Development (“the Works”) in terms of the plans approved by the Local Authority, but once so complete, the Purchaser shall be responsible for a share of their maintenance thereafter in accordance with the provisions of the title conditions imposed upon the Property and the Development as at the Date of Entry.

7.2 The Purchaser accepts that the Seller does not warrant or guarantee that the Works or any of them will be taken over for maintenance purposes by the Local Authority or any other body

7.3 If the Works or any of them are not completed on the Date of Entry, the Purchaser shall not be entitled to retain any part of the Price against their completion, but shall pay over the whole balance of the Price and accept the Seller’s obligation to complete the Works in so far as not done as soon as practicable.

7.4 Where required as a condition of any Roads Construction Consent, a Road Bond will be exhibited to the Purchaser prior to the Date of Entry. The Purchaser consents to any application by or on behalf of the Seller for adoption of the roads and footpaths within the Development by the Local Authority

## 8. SERVICE PROVIDERS

If the Local Authority or any service provider or statutory undertaker, in exercise of their powers, respectively decide to erect any lamp standard or telegraph pole, or lay down any necessary cables, pipes, conduits and other transmitters, such rights are reserved for them to do so to serve the Development and /or any other

adjoining land without liability on the Seller. In addition, there are reserved to all service providers and statutory undertakers the necessary wayleaves for supplying, installing and maintaining all necessary services.

9. PROPERTY MANAGEMENT AND FACTORS

9.1 The Purchaser accepts that the Seller may appoint a Factor or Managing Agent to be responsible for the upkeep and maintenance of the open spaces, footpaths, parking areas, any bin store areas, roads, footpaths, services and generally the common or amenity parts of the Development including, where appropriate, any structural landscaping or amenity ground provided in connection with the larger development of which the Development forms part and/or in the case of any flatted property the common parts of the building and to arrange and maintain insurance cover for such parts. The Purchaser further accepts that any Factor or Managing Agent shall be entitled to recover the costs of such maintenance, upkeep and also insurance, premiums together with his own professional fees, on an equitable basis, from all the proprietors in the Development.

9.2 The Purchaser acknowledges that it may be required to pay a Factor's Payment as at the Date of Entry which may be used by the Seller and / or the Factor or Managing Agent as a float and /or towards the cost of establishing, constructing, installing or providing and maintaining and/or adopting the open space, landscaped, play and amenity areas of the Development and / or the larger area of which the Development forms part and any bin stores, shared parking, lifts and other common items.

10. BREACH OF CONTRACT BY THE PURCHASER

In this Condition the Price shall mean the Price plus any costs referred to in Condition 1.2.3 but not yet paid, less the Reservation Fee and if paid, the Deposit.  
Declaring that:

10.1. The Price will be paid in full, by bank transfer of cleared funds to reach the Seller's solicitor's Clients' Account, by 5.00pm on the due date as after defined.

10.2. 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.

10.3. 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:

10.3.1. ordinary damages in respect of all proper and reasonable losses arising out of the late payment of the Price; or

10.3.2. interest on the amount of the Price outstanding at the Prescribed Rate as after defined from the due date until the date when payment is made excluding any period of delay caused by the acts or omissions of the Seller or their agents.

10.4. If the Price remains unpaid in whole or in part at any time more than 10 working days after the due date, not taking into account any period of delay caused by the acts or omissions of the Seller or their agents, 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:

10.4.1. 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 will include Wasted Expenditure); or

10.4.2. 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).

The Seller shall be entitled to retain the Reservation Fee and Deposit and shall apply them towards either the ordinary damages or liquidated damages

10.5. In this Condition:

10.5.1. The “due date” means whichever is the later of:

10.5.1.1. the Date of Entry; or

10.5.1.2. 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;

10.5.2. The “end date” means whichever is the earlier of:

10.5.2.1. the date falling twelve months after the due date; or

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

10.5.3. “Wasted Expenditure” means the aggregate of:

10.5.3.1. 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;

10.5.3.2. any estate agency, marketing and other advertising expenses properly incurred in connection with the resale; and

10.5.3.3. any legal expenses properly incurred in connection with the resale.

11. NEW HOME WARRANTY SCHEMES

The Development will, with effect from the Conclusion Date or earlier, have been registered with the provider of the New Home Warranty. The Seller will provide the appropriate New Home Warranty documentation or New Home Warranty

number and activation code when required in terms of the scheme operated by the relevant New Home Warranty provider.

12. TITLE CONDITIONS

12.1. The title to the Property and the Development will be subject to the reservations, conditions, real burdens, servitudes, wayleaves and other specified in the Development title and any Deed(s) of Servitudes and Real Burdens or such supplementary Deed(s) granted or to be granted in relation to the Development and / or any larger area of which it forms part which will inter alia :

12.1.1. Specify or refer to such clauses as may be considered necessary or appropriate for the use, management, repair, construction and maintenance of the Property and all common parts, common areas and structures of the Development and /or any larger area of which it forms part or within the Disposition to be granted in terms of Condition 14.1 and may also specify any ownership rights in such common parts, areas or structures;

12.1.2 Ensure that the Property has the benefit of all such servitudes and wayleaves as are required for its proper and convenient use (including access rights);

12.1.3 Ensure that the Property (but not the house erected thereon) is subject to a right of access and egress in favour of the Seller and its sub-contractors and agents to allow the Seller to construct or repair adjoining properties including the right to erect scaffolding where necessary on the Property and also to carry out any landscaping necessary and as required by the relevant Planning Authority at the appropriate planting season subject to making good any damage caused in the exercise of such rights.

12.2. The title deeds relating to the Property including any Deed(s) of Conditions or Deed(s) of Servitudes and Real Burdens affecting the Property will (provided that Missives have been concluded) be exhibited at least 10 working days prior to the

Date of Entry to allow the Purchaser to satisfy itself as to their terms. In the event that the title deeds disclose anything which is materially prejudicial to the interest of the Purchaser, the Purchaser will be entitled to resile from the Missives without penalty due to or by either party but only provided the Purchaser intimates its intention to exercise this right within 10 working days of receipt of the title deeds. The Purchaser's right to resile shall be the Purchaser's sole option in terms of the missives. If the Purchaser validly resiles from the Missives in terms of this Condition, the Seller shall reimburse any Deposit paid by the Purchaser (with no interest payable thereon) within 10 working days of intimation of the Purchaser's decision to resile. Failing the exercise of such right to resile, the Purchaser shall be deemed satisfied in all respect with the terms of the title deeds.

12.3. The minerals are included only in so far as the Seller has right to same. If the Development lies within a coal mining area, the Seller shall exhibit, prior to the Date of Entry, a Coal Mining Report which the Purchaser accepts may have been obtained on or before the date the Seller acquired title to the Development. No updated coal mining report will be obtained or exhibited by the Seller.

12.4 The Seller undertakes to comply with and settle when due to be paid any financial contributions payable in terms of any Agreements in terms of Section 75 of the Town and Country Planning (Scotland) Act 1997 (and any amendments thereto) relating to the Development but only where such agreements impose liability to meet the same on individual plot purchasers. If requested, the Seller will deliver evidence of having done so. 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.

13. ADVANCE NOTICES

13.1. 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 Purchaser.



13.2. 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.

13.3 If the Seller rescinds the Missives in the circumstances set out in Clause 10.4, the Purchaser consents to the discharge of the Advance Notice for the Disposition and the Purchaser confirms that it will immediately discharge at its own cost any Advance Notice submitted by it if requested to do so by the Seller.

13.4 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:

(i) 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

(ii) 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.

13.5 The Seller's Solicitors will not provide any letter of obligation either undertaking to clear the records of any deed, decree or diligence or in relation to any of the searches referred to in Condition 15.

#### 14. SETTLEMENT / REGISTRATION OF TITLE

14.1 The Price will be payable on the Date of Entry and, in exchange, the Seller will (i) give vacant possession of the Property (ii) deliver all keys for the Property and deliver to the Purchaser :

14.1.1 A disposition duly executed by the registered proprietor of the Development in the standard form for the Development containing such real burdens, servitudes, reservations, prohibitions and conditions as may

be contained in title deeds for the Development and in the Deed(s) of Conditions or Deed(s) of Servitudes and real Burdens affecting the Development and such additional conditions as the Seller, acting reasonably, considers necessary.

14.1.2 Either :

- (a) A copy extract of the Title Sheet for the Development (containing either:
  - (i) no exclusion of indemnity under Section 12(2) of the Land Registration (Scotland) Act 1979), if such Land Certificate is available; or
  - (ii) no exclusion or limitation of warranty in terms of Section 75 of the Land Registration etc. (Scotland) Act 2012, or
- (b) Copies of the deeds relating to the application for registration of the Development by the registered proprietor and all necessary links in title evidencing the registered proprietor's exclusive ownership of the Property;

14.1.3 a Legal Report brought down to a date as near as practicable to the Date of Entry which report will show:

- (i) no entries adverse to the registered proprietor's interest in the Property;
- (ii) the Advance Notice for the Disposition; and
- (iii) no other Advance Notices prejudicial to the proposed sale of the Property in terms of this Offer ;

the cost of the Legal Report being the responsibility of the Purchaser.

14.1.4 Such documents and evidence 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 part only of a

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 Property to be identified on the cadastral map. No Plans Report for the Property will be obtained or exhibited by the Seller.

14.1.5. 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 disclose no entry, deed or diligence (including any notice of potential liability for costs registered under the Tenements (Scotland) Act 2004 or the Title Conditions (Scotland) Act 2003) prejudicial to the interest of the Purchaser other than such as are created by or against the Purchaser or have been disclosed to, and accepted in writing by, the Purchaser prior to settlement.

14.1.6. A discharge/deed of restriction duly executed by the heritable creditor in any standard security affecting the Property together with completed and signed application forms for recording/registration and payment for the correct amount of recording/registration dues. In the event that the discharge/deed of restriction is not available at Completion, the Purchasers shall, if provided, accept the Seller's solicitor's undertaking to deliver the same within 28 days of Completion,

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

14.3. 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.

## 15. INCORPORATED BODIES

15.1. The Purchaser shall, on or prior to the Date of Entry be entitled to obtain at the Purchaser's own cost a Search in the Company Charges Registers and Company

Files against the registered proprietor of the Development and / or the Seller. In the event that such Search discloses that any notice or notices have been lodged in relation to the appointment of receivers, administrators, administrative receivers, liquidators, winding-up or striking off of such registered proprietor, and / or the Seller, the Purchaser will be entitled (but not bound) to resile from the Missives without penalty (except in respect of any antecedent breach). If the Purchaser validly resiles from the Missives in terms of this Condition, the Seller shall reimburse any Deposit and/or Reservation Fee paid by the Purchaser (with no interest payable thereon) within 10 working days of intimation of the Purchaser's decision to resile.

15.2 If such Search discloses any Floating Charge affecting the Property there will be delivered on the Date of Settlement, a certificate of non-crystallisation of such Floating Charge releasing the Property from the Floating Charge granted by the holders thereof (or their nominees in terms of an authority granted by the floating charge holder) in the floating charge holder's standard style dated not earlier than 3 working days earlier than the Date of Settlement.

15.3. Unless the Title Sheet created for the Property discloses the granter of the Disposition as the registered proprietor of the Development, the Seller shall exhibit a clear Search in the Company Charges Registers and Company Files, against all limited companies other than the granter of the disposition of the Property interested in the Property within the prescriptive period, brought down to 22 days after the companies concerned ceased to be the heritable proprietor of the Property or any part thereof, which Searches will be 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 to the date disclosing no entries prejudicial to the registration of the said deed.

## 16. SPOKEN STATEMENTS

With the exception of any spoken statements or other representations notified by the Purchaser's solicitors to the Seller's solicitors in writing prior to the Conclusion Date as having been relied on by the Purchaser, the Purchaser and the Seller

acknowledge that the Missives set out the entire agreement between the Purchaser and the Seller and shall supersede all spoken statements or other representations.

17. ASSIGNATION

The Purchaser shall not be entitled to assign or in any other way dispose of or deal with his/her/their interest in the Missives, and title will only be taken to the Property in the name of the Purchaser or such close relation or family member as the Purchaser may nominate and the Seller, acting reasonably, approves.

18. RISK

18.1. In the event that the Property is complete at the Conclusion Date, the Seller will maintain it in its present condition, fair wear and tear excepted, until the Date of Settlement.

18.2 The risk of damage to or destruction of the Property howsoever caused will remain with the Seller until the Date of Settlement.18.3 In the event of the Property being destroyed or materially damaged after the Date of Entry has been triggered in terms of Condition 2.1 but prior to the Date of Entry, the Seller shall be entitled to either rebuild or repair the Property or resile from the Missives without penalty. If the Property is not rebuilt or repaired and the Property passed by the Local Authority Building Inspector (or similar approved person or body) as being habitable and fit for occupation and a cover note issued by the New Home Warranty Provider by the expiry of the relevant permitted period of delay referred to in Conditions 2.2.1 and 2.2.2, either the Purchaser or the Seller shall have the right to rescind the Missives without penalty to the other.

19. SUPERSESION OF MISSIVES

The Missives(other than Conditions 4, 10.4, and 14 which will remain in full force and effect until implemented) shall cease to be enforceable after a period of 2

years from the Date of Settlement except insofar as they are founded upon in any court proceedings which have commenced within the said period.

## 20. LIMITATION OF CLAIMS

Section 3 of the Contract (Scotland) Act 1997 will be qualified to the extent that any competent claim thereunder by the Purchaser will not be available in respect of (i) any matters of which the Purchaser was aware disclosed to and accepted by the Purchaser prior to the Date of Entry; or (ii) any item or claim amounting in value to less than £250.

## 21. INTELLECTUAL PROPERTY

The Seller shall retain all intellectual property rights in the design and layout of the Property and the Development. Without prejudice to the generality thereof, the Seller shall be entitled to maintain a photographic record of the Property and the Development and use the same for such purposes as the Seller may require.

## 22. DISPUTES

22.1 If any dispute arises between the Purchaser and the Seller concerning any matter or issue arising from the Missives, the Purchaser and Seller shall seek to resolve such dispute between themselves through the Seller's dispute resolution procedures or, if that is unsuccessful, by Resolution with the New Home Warranty Provider (if and to the extent that the subject matter of the dispute comes within the scope of the New Home Warranty Provider's resolution scheme). The making of a Resolution shall be a condition precedent to any right to bring court proceedings by one party against the other or any referral to arbitration under the New Home Warranty Provider's arbitration scheme. If and to the extent that the dispute falls outside the New Home Warranty Provider's Resolution scheme or part of the dispute is not resolved by the Resolution either party may refer the matter for arbitration in accordance with the New Warranty Provider's arbitration scheme.

22.2 Where appropriate, if the dispute arises within two years from commencement of the New Home Warranty, the New Home Warranty Provider may refer the Purchaser to the “Consumer Code for Home Builders” Independent Dispute Resolution Scheme for adjudication.

## 23. INTERPRETATION

23.1 In these clauses:-

23.1.1 (i) The masculine includes the feminine; and (ii) words in the singular include the plural and vice versa;

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

23.1.3 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;

23.1.4 “the Conclusion Date” means the date of conclusion of the Missives;

23.1.5 Any intimation or notice shall be in writing (which shall include, for avoidance of doubt, faxes or e-mails);

23.1.6 The terms “the Purchaser”, “the Seller”, “the Property”, “the Price”, “the Deposit”, “New Home Warranty Provider”, “Missives”, “Reservation Fee”, “Reservation Form” “Deposit”, “Anticipated Date of Entry”, “Development”, “Prescribed Rate”, and “the Date of Entry” have the meanings set out in the Offer or other document incorporating reference to these Clauses; and

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

23.1.7 "working day" shall mean any day excluding Saturdays and Sundays on which the Clearing Banks in Glasgow and Edinburgh are open for business.

23.1.8 "Factor's Payment" shall mean such sum as shall be intimated to the Purchaser by the Seller to be utilised in terms of Condition 9.2 hereof.

23.1.9 Where at any one time there are two or more persons included in the expression "Purchaser" obligations contained in the Missives which are expressed to be made by the Purchaser are binding jointly and severally on them and their respective executors and representatives whomsoever without the necessity of discussing them in their order;

23.1.10 "2012 Act" means the Land Registration etc (Scotland) Act 2012;

23.1.11 "1979 Act" means the Land Registration (Scotland) Act 1979

23.1.12 "Advance Notice" means an advance notice as defined in Section 56 of the 2012 Act;



## **SECTION 4**

### **EXPLANATION OF THE SCOTTISH NEW BUILD STANDARD CLAUSES (2015 EDITION)**

#### 1. PRICE

This Clause provides that the Price is paid in 3 instalments.

- 1) The Reservation Fee is paid when signing the Reservation Form on site
- 2) The Deposit is payable within five working days of conclusion of missives and
- 3) The balance of the price is due on the actual Date of Entry.

The Reservation Fee will have been paid before an Offer is sent and the amount is acknowledged. The Deposit is payable within 5 working days of the date of conclusion of missives. If not the Seller is entitled to treat the missives or contract as at an end and can sell the Property to someone else and retain the Reservation Fee. The Builder could still continue with the contract at its option.

The Reservation Fee and the Deposit are non-refundable except as provided for in Condition 2.2 or 6.2.2.

On the Date of Entry there will be payable the balance of the Price, Factor's float or payment (if there is a Factor) and the cost of any additions, variations and extras etc.

#### 2. DATE OF ENTRY

Builders do not generally bind themselves to a specific date of entry as there may be problems with the completion of the house due to shortage of materials, suppliers going out of business and other commercial delays. A formula is set out linked to

- 1) the property being passed by the Local Authority as habitable and fit for occupation and
- 2) the issue of a cover note from a New Home Warranty Provider.

However either party can rescind (get out of) the Missives on service of a Notice on the other party where the delays continue for periods of time beyond the Anticipated Date of Entry (ADOE) in 2 situations, namely:-

2.2.1 If the roof of the Property or building of which it forms part is completed prior to the date of the Offer then the period for houses is 2 months and for apartments 4 months.

2.2.2 If the roof of the property or building was not completed prior to the date of the Offer then the period for houses is 6 months and apartments 12 months.

In these 2 circumstances only the Seller will refund the Deposit and Reservation Fee and cost of variations or extras etc which have not been supplied and fitted or were agreed by the Seller as being refundable when instructed by the Purchaser. This period can be extended if extras and variations have been agreed that may cause delay in ADOE.

These timescales are as recommended by the Consumer code for Home Builders.

2.4 The Purchaser is not entitled to receive compensation for delay in construction or completion of the property.

2.5 The Seller shall not be liable nor shall the Purchaser be entitled to receive compensation if the DOE is earlier than the ADOE.

2.6 The Purchaser is not bound to settle the purchase any earlier than the date following 4 weeks prior to ADOE unless the Purchaser and Seller agree in writing.

### 3. FIXTURES, FITTINGS and CONTENTS

Heritable fixtures and fittings are items of a moveable character that become "heritable" by attachment to the Property and have therefore become part of it. The Property sold includes these and items included within the Seller's standard specification for the Property current at the Date of Reservation. It also includes all items, additions, variations and/or extras instructed and paid for by the Purchaser and any items in the Reservation Form.

### 4. NOTICE OF ACCEPTANCE

All new properties and most converted properties require a Local Authority Building Warrant and when completed a Notice of Acceptance of Completion Certificate (NACC). Normally the Property is verbally passed by the Local Authority but the written NACC may take some time to be issued. This clause provides for its delivery. Sometimes it is a 2 stage process with a Habitation Certificate before an NACC.

### 5. REMEDIAL WORK

If the Property has been passed verbally by the Local Authority and a Cover Note issued by a New Home Warranty Provider the Purchaser cannot delay payment because of remedial work. The Seller must complete the remedial work within a reasonable period and the Purchaser must allow reasonable access for the carrying out of the work.

### 6. CONSTRUCTION AND VARIATIONS

There are 2 parts to the contract with the Builder the first being to purchase the Property and the second for the actual building of the Property. This clause imposes obligations on the Builder with regard to the construction of the Property.

6.2.1 The Builder may use alternative or substituted materials, fittings and fixtures or vary the construction of the Property or plans and specification subject to obtaining any necessary statutory approvals and may vary the boundaries of the Property provided in every case that such variation constitutes a **minor** change that does not significantly and substantially alter size, appearance or value.

6.2.2 If there are changes as in 6.2.1 but which would **significantly** and substantially alter size, appearance or value of the Property the Seller has to notify the Purchaser of the proposed variation in writing. If the Purchaser does not agree to such variation the Purchaser shall be entitled to resile (get out of) the Missives within 10 working days of the Seller's notification. In that event the Seller will reimburse any Deposit and Reservation Fee. However if the Purchaser does not intimate to the

Seller that it objects to the proposed variation the Purchaser will be deemed to have accepted the variation.

6.3.1 Boundary walls or fences are to be erected as shown on the Plan attached to the Disposition to be granted to the Purchaser. If not the Purchaser will permit the Seller and its contractors access to reposition the boundary walls and fences subject to making any damage caused but there will be no compensation for the realignment.

6.3.2 This is a normal clause Builders insist upon to the effect that they are not bound by a layout or general scheme of the development and that they may alter such layout or general scheme and may extend development to land adjoining the development and the Purchaser has no right to object or make a claim.

## 7. ROADS AND OTHER INFRASTRUCTURE

The Price includes a share of the cost of completion of roads, footpaths, sewers, drains and other works listed in terms of the plans approved by the Local Authority. Once complete the Purchaser is liable for a share of maintenance of these in accordance with the title conditions imposed on the Property and the development.

7.2 Roads are not always taken over by the Local Authority for maintenance and the Sellers do not guarantee this. If not then maintenance is the responsibility of the Purchaser who is to pay a share.

7.3 The Purchaser cannot retain any part of the Price but has to accept the Seller's obligation to complete the works.

7.4 In most cases there will be a Road Bond exhibited to the Purchaser. The Bond is by a third party granting a guarantee to the Local Authority that the obligations of the Developer under the Roads Construction Consent will be completed.

## 8. SERVICE PROVIDERS

The Local Authority and various statutory undertakers (BT, Scottish Power etc) have powers to erect lamp-standards, telegraph poles and lay down cables, pipes and other service media without liability on the Seller. They also have necessary wayleaves for supplying, installing and maintaining these services.

## 9. PROPERTY MANAGEMENT

9.1. The Seller may appoint a Factor or Managing Agent to deal with maintenance of open spaces and amenity grounds generally and any flatted property and maintain insurance cover for the common parts. The Factor can recover the costs of such maintenance upkeep and insurance and his own fees on an equitable basis from all proprietors in the development.

9.2. There is provision for a Factor's float to be paid in advance.

## 10. BREACH OF CONTRACT BY THE PURCHASER

If the Purchaser fails to implement his part of the contract by paying the Price on the Date of Entry (or the date when payment of the Price was due having regard to any entitlement to withhold payment owing to non-performance by the Seller) 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.

#### 11. NEW HOME WARRANTY SCHEMES

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 used by some smaller builders is a Professional Consultants' Certificate complying with CML Lenders Handbook for Scotland).

#### 12. 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). Normally a Builder will set out real burdens and servitudes in a Deed of Real Burdens or a Deed of Servitudes and Real Burdens covering things like the use, management, repair, construction and maintenance of the Property and common parts, details of servitudes and rights of access to and from the Property by the Builder and its sub-contractors. The titles are exhibited to the Purchaser's Solicitor and the Purchaser will have the right to resile (i.e. get out of the contract) if there is something materially prejudicial to the interest of the Purchaser and must do so within 10 working days of receipt of the title deeds. That is his sole remedy. If the Purchaser validly resiles from the Missives in terms of this condition the Seller is to reimburse the Deposit. If a Purchaser does not exercise a right to resile within that period the Purchaser is deemed satisfied as to the position.

12.3 Minerals (e.g. coal and precious metals) are frequently reserved in the Titles to a third party so the minerals are included only in so far as the Seller has right to these. The Purchaser is to accept a Coal Mining Report against the development.

12.4 The Developer may have entered into an agreement with the Local Authority under Section 75 of the Town & Country Planning (Scotland) Act 1997 that may provide for financial contributions to be payable. The Seller is to comply with and settle these amounts if imposed on individual plot purchasers.

#### 13. ADVANCE NOTICES

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

#### 14. 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 Register searches to be provided by the Seller showing 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). The cost of these Reports are the responsibility of the Purchaser.

15. INCORPORATED BODIES

Searches are required for such bodies in the Register of Companies but these are to be instructed by the Purchaser and at his expense.

15.2 The Search may disclose a Floating Charge against the company and if so they are to obtain a Certificate that the Floating Charge has not crystallised (attached) from the holder of the Charge.

15.3 This covers companies who have previously owned the Property.

16. SPOKEN STATEMENTS

The normal position will be that the Purchaser and Seller acknowledge that the Missives are the entire agreement between the parties and supersede all spoken statements or representations. If some spoken statements or representations are to be relied on they should be notified to the Seller's Solicitors as indicated.

17. ASSIGNATION

The Purchaser is to take the title in his name or in the name of a close relation or family member he nominates and which the Seller acting reasonably approves. He cannot assign to another party.

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. The Seller is also to maintain the Property in present condition.

19. CONDITIONS

Conditions 4, 10.4. and 14 remain in full force and effect until implemented. All other clauses cease to be enforceable after a period of 2 years. That does not mean the Seller is responsible for the Property for 2 years. It does mean that those parts of the contract cease to be enforceable after a period of 2 years from the date of settlement.

20. LIMITATION OF CLAIMS

This clause is designed to give protection to a Purchaser against a breach of contract by the Seller which becomes apparent after the Purchaser has paid the Price. 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 making such minor claims.

21. INTELLECTUAL PROPERTY      Self-explanatory

22. DISPUTES

Both parties are to resolve disputes between them through the Seller's Dispute Resolution Procedures. If that is not successful then by resolution with the New Home Warranty Provider (if and to the extent the dispute comes within the scope of their scheme). The making of a Resolution is necessary before any Court proceedings could be brought by one party against the other or any referral to arbitration under the New Home Warranty Provider's Arbitration Scheme.

If the dispute falls outwith the New Home Warranty Provider's Resolution or part of the dispute is not resolved by the Resolution then either party may refer the matter for arbitration in accordance with the New Home Provider's Arbitration Scheme.

22.2 If the dispute arises within 2 years of commencement of the New Home Warranty, that provider may refer the Purchaser to the "Consumer Code for Home Builders" Independent Dispute Resolution Scheme for Adjudication.

23. INTERPRETATION      Self-explanatory

**Written by Ian C. Ferguson of Mitchells Robertson  
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Scottish New Build Standard Clauses Working Party**