

INTRODUCTION

The Highland Standard Clauses have been agreed and set up by local solicitors in Inverness to both simplify and speed up the sale and purchase of domestic Property in the Highlands. The Clauses are widely used although their use is not compulsory. The Clauses have been drafted so far as possible with a view to arriving at a set of standard clauses that are fair to both parties.

An offer is required to be in writing and there is no binding or enforceable contract until missives have been concluded. Missives usually comprise the offer made by the Purchaser's solicitor, the seller's acceptance of this (normally qualified with conditions and known as a Qualified Acceptance) and any acceptance of these conditions. Once missives have been concluded unconditionally neither party can withdraw from the transaction without being liable to the other in damages.

This guide is not intended to be a detailed or exhaustive examination of the Highland Standard Clauses from a legal viewpoint, but rather is provided with a view to enabling clients to identify particular conditions which are likely to be of relevance to them. If, having gone through this guide, there are any matters about which you are still unclear please contact your solicitor immediately. It is hoped that the use of the Standard Clauses will result in the process of conclusion of missives becoming much more straightforward.

The Highland Standard Clauses are shown attached in **bold print**. Immediately underneath each Clause there is a short explanation in *italics print*. The explanation does not form part of the Highland Standard Clauses.

These are the Highland Standard Clauses (2007 Edition) specified in the Deed of Declaration by the Faculty of Solicitors of the Highlands dated 17th and registered BCS 18th, both September, 2007.

1. Settlement

1.1 The Price shall be payable and vacant possession shall be given not later than 2.30pm on the Date of Entry and the payment of the Price is hereinafter referred to as "Settlement".

1.2 Purchaser's Default

Time shall be of the essence of the bargain to the extent that:-

1.2.1 If the price or any part thereof is not paid timeously, then notwithstanding consignment or the fact that entry has not been taken by the Purchaser, the Purchaser shall pay to the seller whichever the seller may elect of the following:

EITHER

1.2.1.1 Interest on the amount outstanding at the rate of five per centum per annum above the Bank of Scotland base lending rate from time to time until the earliest of [a] the date when full payment of the price is made by the Purchaser, or [b] the date twelve months after the Date of Entry, or [c] the date when the seller completes a resale of the Property and receives the resale price (under declaration quoad [b] and [c] above that in the event of any shortfall between the purchase price hereunder and the resale price, interest as aforesaid shall continue to apply to any such shortfall until such time as the shortfall shall have been paid to the seller).

OR

1.2.1.2 An amount equal to the total of all losses, costs and damages which the seller, acting reasonably, has incurred or may incur arising from such breach of contract by the Purchaser, including without prejudice to the generality, any costs relating to a bridging or other loan effected to enable the seller to complete a purchase of heritable property.

1.2.2 If the price is not paid in full within twenty-one days of the Date of Entry, the seller shall be entitled at any time thereafter to rescind the missives by giving Notice thereof to the Purchaser, without prejudice to any right or any claim competent to the seller arising from the breach of contract by the Purchaser.

1.2.3 This clause 1.2 shall be suspended during any delay in Settlement attributable to the seller or his agents.

1.3 Seller's Default

Time shall be of the essence of the bargain to the extent that:-

1.3.1 If, as a result of the failure of the seller to implement the seller's whole obligations in terms hereof timeously, Settlement does not take place

timeously the seller shall pay to the Purchaser an amount equal to the total of all losses, costs and damages which the Purchaser, acting reasonably, has incurred or may incur as a result thereof, which amount may be deducted by the Purchaser from the amount payable to the seller in settlement of the transaction.

1.3.2 If the seller is not within a period of twenty-one days of the Date of Entry in a position to implement the seller's whole obligations in terms hereof, the Purchaser shall be entitled at any time thereafter to rescind the missives by giving Notice thereof to the seller, without prejudice to any right or claim competent to the Purchaser arising from the breach of contract by the seller.

1.3.3 This clause 1.3 shall be suspended during any period when the seller is unable to implement the seller's whole obligations in terms hereof as a result of any delay attributable to the Purchaser or his agents.

This Clause sets out what happens if the seller or Purchaser fails to implement his part of the missives by 2.30pm on the date of entry. The Clause explains that both seller and Purchaser have particular obligations which they must fulfil on the date of entry. If settlement cannot be effected on the date of entry then normally the party responsible for the delay will be liable for the sanctions set out in the Clause.

2. Fixtures and Fittings

2.1 The Fixtures and Fittings comprise the whole fixtures and fittings in or about the Property, all of which are owned outright by the seller, and include without prejudice to that generality, the following items (so far as the same presently exist) which are in or about the Property namely:

2.1.1 garages, garden sheds or huts, coal bunkers, outhouses, carports, garden frames, greenhouses, summerhouses, fencing and paving slabs, and all plants, shrubs and trees in the garden;

2.1.2 all types of blinds, fitted pelmets, curtain rails and runners, curtain poles and rings thereon, and stair carpet fixings;

2.1.3 all fitted bedroom furniture, all bathroom, shower room, w.c. and cloakroom fittings including mirrors, showers, cabinets and other toilet fittings, and all kitchen units (free standing or fitted), extractor hoods and extractor fans;

2.1.4 all central heating plant, electric storage heaters, wall heaters, immersion heater, loft insulation and all other lagging;

2.1.5 oil in any storage tank and gas in any gas cylinders or tank remaining at Settlement;

2.1.6 all electric light fittings, including all fluorescent lights, wall lights (including brackets and shades or bowls in the case of wall lights), dimmer switches, bulbs and bulb holders;

2.1.7 television aerials with leads-in, satellite dishes, loft ladder, rotary clothes dryer, clothes poles, door chimes, burglar and fire alarms, other security systems and associated equipment, double glazing units and/or secondary glazing, shelving, and fireplace surround units; and

- 2.2** Where a wheeled bin or other receptacle for the collection of refuse is provided for the Property by the Local Authority or other body responsible therefor, the seller shall deliver the same to the Purchaser, failing which the seller shall meet the cost of replacement thereof.

Heritable fixtures and fittings are items of a moveable character that have become 'heritable' through attachment to the Property and become part of it. The removal of these items would cause damage to the Property. Items which are specified under this Clause are only included in the sale in so far as they presently exist and are within your Property. If you are the seller you must advise your solicitor if there are any items mentioned in this list which you would not wish to include in the price

3. Condition of Property, Fixtures and Fittings

- 3.1** So far as the seller is aware the Property (including the larger building or tenement of which the Property forms part, if relevant) is not and except in so far as covered by the Guarantees has not been affected by: (i) any material defect in the water supply, drainage, gas or electric systems; or (ii) any wet rot, dry rot, rising damp or infestation by woodworm or other insect.
- 3.2** If the Property is of timber framed construction, so far as the seller is aware, no cavity foam or other cavity wall insulation has at any time been introduced into the wall cavities.
- 3.3** Any guarantees in force at the Date of Entry in respect of (i) treatments which have been carried out for 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 with the acceptance hereof and delivered at Settlement. If the Guarantees are not to the Purchaser's reasonable satisfaction, he shall be entitled to rescind the missives without penalty to or by either party, by giving Notice thereof to the seller prior to Settlement or within twenty-one days of the receipt of the Guarantees whichever is the earlier. If requested the seller will assign at his expense all his rights under the Guarantees to the Purchaser, insofar as necessary and competent.
- 3.4.1** So far as the seller is aware any central heating system and any storage heaters are presently free from material defect and in working order and will be left by the seller at the Date of Entry in the like condition as they are at present.
- 3.4.2** So far as the seller is aware the water, drainage, electric and gas systems of the Property are now, and at the Date of Entry will be, free from material defect and in working order.
- 3.4.3** "working order" shall be interpreted commensurate with the age of the said systems or storage heaters. Neither the failure to service the central heating system nor the fact that it may no longer comply with current installation regulations shall of itself be deemed to be a defect.
- 3.4.4** The seller shall meet the reasonable cost (if such cost exceeds One Hundred and Fifty Pounds (£150)) of rectifying any material defect in and/or putting into working order the said systems or storage heaters which existed at Settlement provided the Purchaser gives Notice of the

existence of such material defect within seven days of Settlement. Before instructing the works required to remedy such material defect or to put into working order such systems or storage heaters the Purchaser shall allow the seller a reasonable opportunity for inspection.

- 3.5** The Property and all other items included in the Price will be maintained by the seller in their present condition, fair wear and tear excepted, and will remain at the seller's risk until Settlement. If the buildings forming part of the Property are materially damaged or destroyed prior to Settlement, the Purchaser or seller shall be entitled to rescind the missives without penalty to or by either party by giving Notice thereof to the other party.

The seller must produce any current guarantees in relation to work carried out at the Property along with supporting estimates and survey reports. The seller is asked to confirm that the services and systems are working and are free from material defect and will be left at the date of entry in the same condition as they were when missives were concluded. The Purchaser has only seven days from the date of entry within which to give notice of any alleged material defects. The seller will not be responsible for any such defects which cost less than £150 to remedy. In terms of Standard Clause 3.5 the seller must maintain the Property and keep it insured until the date of entry. The Purchaser will only become responsible for insuring the Property from the date of entry.

4. Common Rights/Repairs/Factoring

- 4.1** Where the Property forms part of a larger building, it includes a right in common to the solum. The liability for the upkeep of the roof, main walls, common passages and stairs and other common parts is shared equally or on some other equitable basis and reasonable evidence to this effect shall be produced prior to the Date of Entry.
- 4.2** Where the Property includes a right in common in any property, the liability for the cost of maintenance and/or repair of such common property will be shared equally or on some other equitable basis.
- 4.3** The seller will free and relieve the Purchaser of the liability for the cost of any maintenance and/or common repairs carried out, ordered or instructed prior to Settlement.
- 4.4** The seller is not aware of any intended scheme of common repairs which has not yet been ordered or instructed.
- 4.5** The seller shall provide the Purchaser with full details of any factoring and block insurance arrangements affecting the Property. The liability for all costs due under such arrangements for the period until Settlement shall remain with the seller.

This Clause is primarily concerned with tenement or flatted properties. The seller should tell his solicitor about any Notices for outstanding work or any common repairs so that the question of liability for such work or repairs is covered in the missives. If any Notices relating to work or common repairs are received before the date of entry the seller should give these to his solicitor. The seller will remain liable for work or repairs authorised before the date of entry whether completed or not. The seller must tell his solicitor about any factoring or block insurance arrangements.

5. Roads, Water and Drainage

5.1 Roads

The seller warrants that:-

EITHER

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

OR

5.1.2 There is a private access road from a roadway maintained by the local authority.

5.2 Water

The seller warrants that:-

EITHER

5.2.1 The Property is connected to the mains water supply.

OR

5.2.2 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 and so far as the seller is aware is adequate in quantity at all times for all normal domestic purposes and for the present use of the Property.

5.3 Drainage

The seller warrants that:-

EITHER

5.3.1 The Property is connected to the public sewer and drainage system.

OR

5.3.2 The Property is connected to a private drainage system comprising a septic tank 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 Settlement 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 and the seller warrants that he has done nothing to contravene or prejudice the terms of the registration or licence.

5.4 It is a material condition that if any of clauses 5.1.2, 5.2.2 or 5.3.2 applies, this fact shall be disclosed to the Purchaser in the acceptance hereof and in that event there shall be no binding bargain until the Purchaser accepts the position in writing.

The seller should tell his solicitor if the Property has a private access road, a private water supply or a private drainage/sewerage system. There are tests which require to be carried out on private water supplies and standards and requirements set out by the Scottish Environment Protection Agency (SEPA) in respect of private drainage systems. Satisfactory water test results and the required paperwork from SEPA will need to be obtained by the seller prior to the date of entry.

6. Planning and Development

So far as the seller is aware:-

- 6.1 The existing use of the Property is the permitted use under planning legislation, free from materially adverse conditions, orders or notices thereunder. Without prejudice to the foregoing generality, any restriction as to who may occupy the Property shall be a materially adverse condition for the purpose of this sub-clause;**
- 6.2 All development carried out on the Property has been done in accordance with Planning legislation, the Building (Scotland) Acts, other statutory provisions and any orders, regulations, consents or permissions thereunder;**
- 6.3 There are no Closing Orders, Demolition Orders, other statutory orders or notices or road widening or road re-alignment proposals affecting the Property;**
- 6.4 There are no resolutions or proposals for the compulsory acquisition of the Property or any part thereof and the Property is not in an area designated or proposed to be designated for development by the appropriate authority;**
- 6.5 The Property is of a tolerable standard in terms of the Public Health (Scotland) Acts and the Housing (Scotland) Acts;**
- 6.6 The Property is not listed in either the statutory lists of buildings of special historical or architectural interest or in the Schedule of Monuments maintained by Historic Scotland.**
- 6.7.1 There are no entries relating to the Property in the Register maintained under section 78R(1) of the Environmental Protection Act 1990 (including any amendment, variation or re-enactment thereof) (in this clause 6.7 “the Act”);**
- 6.7.2 The Local Authority has not served any notice relating to the Property under section 78B(3) of the Act;**
- 6.7.3 The Local Authority has not consulted with the seller or any occupier of the Property under section 78G(3) of the Act in relation to anything to be done on the Property as a result of adjoining or adjacent land being contaminated;**
- 6.7.4 No entry has been made in the Register and the Local Authority has not served a notice under section 78(B)(3) of the Act in relation to any adjoining or adjacent land which has been identified as contaminated because it is in such a condition that harm or pollution of controlled waters might be caused on the Property.**

- 6.8** The Local Authority has not resolved to serve any notice of the type referred to in clauses 6.7.2 or 6.7.4 hereof nor to consult in terms of 6.7.3 hereof.

The seller should tell his solicitor if he is aware of any Notices or restrictions affecting the Property or of any alterations carried out to the Property.

7. Permissions and Certificates

- 7.1** There will be exhibited prior to and delivered at Settlement all necessary planning permissions, building warrants, certificates of completion and other statutory consents relating to the Property.
- 7.2** The usual Property Enquiry Certificates dated not more than three months before Settlement and such other evidence from the appropriate authorities as the Purchaser may reasonably require shall be exhibited prior to and delivered at Settlement to vouch that the position is as disclosed in clauses 5 and 6 hereof, other than as stated in clause 6.8 hereof.
- 7.3** The seller will exhibit prior to Settlement and within seven days of receipt of same any notice, order or other documentation relating to the Property issued by any authority or statutory body prior to Settlement.
- 7.4** If any of the documents referred to in clauses 5.3.2, 7.1, 7.2 and 7.3 is not exhibited timeously or discloses any matter materially and adversely affecting the Property, then the Purchaser's only remedy will be to rescind the missives without penalty to or by either party, by giving Notice thereof to the seller prior to Settlement or within twenty-one days of the receipt of the document disclosing such matter, whichever is the earlier. Failing such Notice, the Purchaser shall be deemed to have accepted such matter.

The seller must produce all Local Authority documentation for the construction of and for any alterations to the Property, including all Planning Permissions and stamped plans, Building Warrants and stamped plans and Completion Certificates. In most cases the solicitor will not have seen the Property and if you are aware of any alterations to the Property you should tell your solicitor. The Property Enquiry Certificates confirm various matters relating to the Property and cover issues such as the status of the roads and footpaths giving access to the Property and whether the water supply and sewerage system are public or private. They also provide information about some planning matters affecting the Property.

8. Electricity and Gas

The Property is directly connected to the mains electricity supply and if the Property has a gas supply, that supply is a mains gas supply. There are no outstanding charges or liabilities relating to the connection of the electricity supply and any gas supply. There is no supply agreement in force affecting the Property and requiring a minimum revenue to be paid to the appropriate electricity or gas supplier.

The seller should tell his solicitor if the Property is not connected to the mains electricity or mains gas supply.

9. Development Proposals

So far as the seller is aware as at the date of the seller's acceptance hereof, there are no proposals for development requiring Planning Permission and/or Building

Warrant nor has any such Permission or Warrant been obtained in relation to any property either adjoining or in the neighbourhood of the Property. The seller has received no written intimation of any such proposals.

Neighbour notification requires to be given by an owner of adjacent property for certain kinds of development. If as a seller you have received such a notice you should let your solicitor have a copy of the notice. The seller is asked to confirm the position so far as he is aware at the date of the acceptance of the offer. It is not a guarantee as to the position. This matter is not covered by the Property Enquiry Certificates and if you as a Purchaser are concerned about the possibility of planned development in the area you should make appropriate enquiries at the local planning office before missives are concluded.

10. Titles and Searches

10.1 Disposition

At Settlement there will be delivered a validly executed marketable disposition of the Property in favour of the Purchaser or the Purchaser's nominees;

10.2 First Registration

If the title is not registered under the Land Registration (Scotland) Act 1979 (in this clause 10 "the Act"):-

10.2.1 The seller will at or prior to Settlement deliver or exhibit:-

10.2.1.1 A valid marketable prescriptive progress of titles, and all writs referred to for burdens;

10.2.1.2 A Form 10 Report or, if applicable, a Form 11 Report, brought down to a date not more than three days prior to the date of Settlement and showing no entries including (without prejudice to the generality) any Notice of Potential Liability of Costs registered under the Tenements (Scotland) Act 2004 adverse to the seller's interest, the cost of the said report being the responsibility of the seller.

10.2.1.3 Such documents and evidence as the Keeper may require to enable the Keeper to issue a land certificate in name of the Purchaser or the Purchaser's nominees as the registered proprietor of the Property and containing no exclusion of indemnity in terms of section 12(2) of the Act; such documents shall include (unless the whole Property only comprises part of a tenement or flatted building) a plan or bounding description sufficient to enable the Property to be identified on the Ordnance Survey map and evidence (such as a Form P16 Report) that the description of the Property as contained in the title deeds is habile to include the whole of the occupied extent.10.2.2.The land certificate will disclose no entry, deed or diligence prejudicial to the Purchaser's interest other than such as are created by or against the Purchaser or have been disclosed to and accepted by the Purchaser prior to Settlement.

10.2.3 Notwithstanding the terms of Clause 16 hereof, this clause 10.2 shall remain in full force and effect and may be founded upon until implemented.

10.3 Registered Interests

If the title is registered under the Act:-

- 10.3.1 The seller will at or prior to Settlement deliver or exhibit:-**
 - 10.3.1.1 A land certificate containing no exclusion of indemnity in terms of section 12(2) of the Act;**
 - 10.3.1.2 All necessary links in title evidencing the seller's exclusive ownership of the Property;**
 - 10.3.1.3 A P17 Report if required; and**
 - 10.3.1.4 A Form 12 Report or, if applicable, a Form 13 Report brought down to a date not more than three days prior to the date of Settlement and showing no entries including (without prejudice to the generality) any Notice of Potential Liability of Costs registered under the Tenements (Scotland) Act 2004 adverse to the seller's interest.**
- 10.3.2 The cost (if any) of the said reports shall be the responsibility of the seller.**
- 10.3.3 In addition, the seller will furnish to the Purchaser such documents and evidence as the Keeper may require to enable the interest of the Purchaser to be registered in the Land Register without exclusion of indemnity in terms of said section 12(2).**
- 10.3.4 The land certificate to be issued to the Purchaser will disclose no entry, deed or diligence prejudicial to the Purchaser's interest other than such as are created by or against the Purchaser or have been disclosed to and accepted by the Purchaser prior to Settlement.**
- 10.3.5 There are no overriding interests affecting the Property at Settlement.**
- 10.3.6 Notwithstanding the terms of Clause 16 hereof, this clause 10.3 shall remain in full force and effect and may be founded upon until implemented.**

10.4 Incorporated Bodies

The seller will produce appropriate evidence, if required, to satisfy the Purchaser that there are no entries in any Charges Register or company files which adversely affect the title.

If the seller is a Company or other incorporated body:-

- 10.4.1 The seller will deliver or exhibit within three months after Settlement:-**
 - 10.4.1.1 A Search or Searches in the Register of Charges disclosing no charges granted by the seller other than such as may have been disclosed to and accepted by the Purchaser prior to Settlement; and**
 - 10.4.1.2 A Report in the Companies Office files of the seller brought down to disclose no notices relating to the winding up, liquidation, administration, suspension, receivership or striking off and disclosing its registered office bearers;**

- 10.4.2** Each such Search and Report shall be brought down to twenty-two days after the date when the seller ceased to be infert in or have an interest in the Property or any part thereof;
- 10.4.3** There shall be exhibited an Interim Report on the Search in the Register of Charges and the Report in the Companies Office files both dated not more than three days prior to Settlement. If such Interim Report shall disclose any floating charge which is still in force, there shall be delivered at Settlement a certificate of non-crystallisation of such floating charge by the security holders in such terms as the Purchaser may reasonably require.

10.5 **Community Interests in Land**

As at the date of conclusion of missives there is no entry in the Register of Community Interests in Land prohibiting the Seller from transferring the Property to the Purchaser.

This clause provides that the Purchaser will receive a valid title deed (“the disposition”) in exchange for the price, and that there is nothing to stop the seller transferring ownership of the Property to the Purchaser. For example, a seller should tell his solicitor if he has been made bankrupt or has any court orders against him.

Clauses 10.2 and 10.3 deal with the registration of the title deed in the Land Register. The Land Register officials will require to examine all documents produced to them and this process can take many months to complete. A seller must deliver to the Purchaser’s solicitors all documents which the Land Register will need to register the title. Sometimes following settlement, the Land Register may ask the Purchaser’s solicitors to produce further documentation and the seller must co-operate with this request and pay for any additional documentation which may reasonably be required.

11. Title Conditions, etc

- 11.1** Without prejudice to the generality of clause 10:-
- 11.1.1** The Property is as possessed by the seller and as seen by the Purchaser;
- 11.1.2** Where the Property does not have direct access to a roadway maintained by the Local Authority, a servitude right of way for vehicles and pedestrians shall be granted to the Purchaser by the access route at present used from such a roadway to the Property. Liability for the maintenance, repair and renewal of the access route is or shall be the responsibility of the proprietors having right to use the said access route, the liability being shared on an equitable basis;
- 11.1.3.1** If the connection to the mains water supply lies outwith the Property any necessary servitudes permitting the use of the water supply system as at present existing will be granted in favour of the Purchaser; and
- 11.1.3.2** If any part of such water supply system is not part of the public mains water supply system but is common to the Property and other subjects the title deeds contain provisions for the maintenance, repair and when necessary renewal of such part by the parties served by the same according to user or on some other equitable basis.
- 11.1.4** If the Property is connected to a private water supply system:-

- 11.1.4.1 All necessary servitude rights for the use, maintenance, repair and renewal of the said system shall be granted to the Purchaser; and**
- 11.1.4.2 If any part of the said system is common to the Property and other subjects, liability for the maintenance, repair and when necessary renewal of the said system shall be the responsibility of the persons having right to use the same, the liability being shared on an equitable basis.**
- 11.1.5 If the Property is connected to public sewer and drainage system:-**
 - 11.1.5.1 If the connection to the public sewer lies outwith the Property, any necessary servitudes for any existing pipes or drains between the Property and the public sewer will be granted in favour of the Purchaser; and**
 - 11.1.5.2 If any part of the drainage system for the Property is not part of the public sewer but is common to the Property and other subjects the title deeds contain provisions for the maintenance, repair and where necessary renewal of such parts by the parties served by the same according to user or on some other equitable basis.**
- 11.1.6 If the Property is connected to a private drainage system comprising a septic tank with relative outfall pipe or soakaway and all relative pipes, drains and connections (“the Drainage System”); and**
 - 11.1.6.1 The Drainage System for the Property either lies entirely within the Property or all necessary servitude rights permitting the same to be used as at present used by the seller and for the maintenance, repair and renewal thereof will be granted to the Purchaser; and**
 - 11.1.6.2 If any part of the Drainage System is common to the Property and any other subjects all necessary rights in common will be granted to the Purchaser and the title deeds contain provision for the maintenance, repair and renewal of the Drainage System by the parties having right to use the same on an equitable basis.**
- 11.1.7 All necessary servitude rights of access for the inspection, maintenance, repair and renewal of the Property shall be granted to the Purchaser;**
- 11.1.8 There are no servitudes or other third party rights and no unusual or unduly onerous real conditions which materially and adversely affect the Property;**
- 11.1.9 There are no repayable grants affecting the Property;**
- 11.1.10 All obligations affecting the Property have been duly implemented and so far as continuing, are being duly complied with;**
- 11.1.11 There is no outstanding liability for any part of the cost of constructing walls, fences, roadways, footpaths or sewers or other services;**

- 11.1.12** The Property includes the minerals in so far as the seller has right thereto. If the minerals have been reserved to any party, such reservation does not include any right to enter upon or work the surface of the Property and is subject to that party making good any surface damage occasioned thereby. So far as the seller is aware, no mines, metals or minerals have been at any time removed from the Property, there is no intention to work the same and no Planning Consent has been granted therefor.
- 11.1.13** In the event that the Property lies within a town or place identified as an affected area in the 1999 Directory and Guidance Notes for Coal Mining Searches issued by the Law Society of Scotland (or any amendment thereto) regarding Coal Mining Searches, the seller shall exhibit prior to and deliver at Settlement a Coal Mining Search from the Coal Authority dated not earlier than six months prior to Settlement which does not disclose any matter materially and adversely affecting the Property.
- 11.2** If there is any matter which is at variance with the terms of clauses 11.1, 4.1 or 4.2, and which materially and adversely affects the Property, the Purchaser's only remedy shall be to rescind the missives without penalty to or by either party, by giving Notice thereof to the seller prior to Settlement or within twenty-one days of such matter being disclosed to the Purchaser, whichever is the earlier. Failing such Notice, the Purchaser shall be deemed to have accepted such matter.

This clause deals with a number of matters and, in particular, deals with the legal rights for access to and services for the Property. You should tell your solicitor if the Property has a private access road or a private water or drainage system. The seller should have the necessary legal rights (referred to as "servitude rights") for this access and/or services.

As your solicitor has not seen the Property, if you believe that there may be a difference between the boundaries and what the seller owns you should tell your solicitor.

This clause also provides that the legal title to the Property is not affected by any unusual or adverse conditions. The seller should tell his solicitor if there are any Grants affecting the Property.

12. New Property Warranties

If the dwellinghouse forming part of the Property has been completed within ten years prior to Settlement:-

EITHER

- 12.1** There will be exhibited prior to and delivered at Settlement home warranty scheme documentation from NHBC or Zurich Municipal;

OR

- 12.2** There will be exhibited with the acceptance hereof and delivered at Settlement, a certificate issued by a qualified and indemnified professional consultant with adequate professional indemnity insurance cover which is acceptable to the Purchaser. The Purchaser shall be deemed to have accepted such certificate unless he gives Notice to the contrary within twenty-one days of receipt thereof.

This clause deals with dwellinghouses which are less than ten years old. There are several schemes which offer protection to owners of properties if certain defects appear within the first ten years. The most common are operated by the National House Building Council (NHBC) or Zurich.

Instead, it is possible that a Professional Consultant's Certificate from a suitably qualified individual, such as a Chartered Architect, may be available. If the Purchaser is getting a mortgage, the Certificate may need to be approved by his lender.

13. Council Tax

During the period of the seller's ownership, no alterations have been made to the Property, which could result in a change in the band of the Property for Council Tax purposes.

The seller should tell his solicitor if he has made any alterations to the Property, as the Council can adjust the Council Tax banding following a sale.

14. Matrimonial / Family Homes

14.1 At Settlement, the Property will not be affected by any occupancy rights as defined in the Matrimonial Homes (Family Protection) (Scotland) Act 1981 as amended and the Civil Partnership Act 2004 and appropriate evidence to this effect will be delivered at Settlement.

14.2 In the event of any Moveables being included in the Property the seller warrants that no application to the Court has been made under Section 3(2) of the said 1981 Act or under Section 103(2) of the said 2004 Act.

If the seller is one individual the appropriate documentation will require to be signed to confirm that there is no spouse or civil partner who would have any ongoing rights to occupy the Property. Any spouse or civil partner may need to sign a document to consent to the sale.

15. Crofting

The provisions of the Crofters (Scotland) Act 1993 do not apply to the Property. Any Decrofting Direction or Resumption Order under the Crofting Acts relating to the Property shall be exhibited prior to and delivered at Settlement.

The seller should tell his solicitor if there are any crofting rights affecting the Property.

16. Continuation of Missives

Subject to the terms of clauses 10.2.3 and 10.3.6 the missives shall cease to be enforceable after a period of two years from Settlement except (a) in any court proceedings which have commenced within that period and (b) in relation to any obligation which the seller undertakes to implement after Settlement.

This clause provides that some parts of the missives will continue in force for two years from the date of entry. This does not mean that the seller is responsible for the condition of the Property for two years. It allows for any claims to be made within this period. In the unusual event of a claim having to be made this requires to be done within this two year period.

17. Trust Declaration

During the period commencing with the delivery to the Purchaser of the disposition and ending with its effective registration in the Land Register the seller shall hold the title to the Property, so far as not effectively transferred to

the disponee by delivery of the disposition, in trust for the disponee and a declaration to this effect shall be included in the disposition.

This clause gives some protection to a Purchaser during the period following the date of entry, until the Purchaser's title deed is submitted to the Land Register.

18. Seller's Address

The seller's address after Settlement will be disclosed to the Purchaser's solicitors if requested by the Purchaser or his solicitor in the event of a claim arising after Settlement.

The seller's current address must be disclosed if there is a claim after the date of entry.

19. Notices

19.1 Any Notice under the missives shall be in writing and service of the letter giving same may be effected by delivery, ordinary or recorded delivery post, DX, LP or fax to the solicitor of the seller or of the Purchaser as the case may be.

19.2 It shall be sufficient in proving service of a Notice sent by recorded delivery post, to show that the envelope containing the same was properly addressed to the solicitor of the seller or of the Purchaser as the case may be.

19.3 Where Notice must be given within any specific period, time shall be of the essence, and where the Notice is given by recorded delivery post, the date of posting shall be deemed to be the date of delivery.

This clause deals with the form and manner of serving Notices if required.

20. Interpretation

In this Schedule of Conditions and in the offer annexed hereto:-

20.1 The headings on the numbered clauses do not form part of the offer and shall not affect the interpretation thereof;

20.2 The masculine includes the feminine; and

20.3 Words in the singular include the plural and words in the plural include the singular.

This clause deals with the interpretation of certain phrases within the missives.