

**MITCHELLS ROBERTON**  
SOLICITORS & ESTATE AGENTS

**CLIENT GUIDE**

**TO THE**

**GLASGOW STANDARD OFFER**

**AND**

**GLASGOW STANDARD CLAUSES (2005 EDITION)**

## **CONTENTS**

SECTION 1. INTRODUCTION

SECTION 2. THE GLASGOW STANDARD OFFER

SECTION 3. THE GLASGOW STANDARD CLAUSES (2005 EDITION)

SECTION 4. EXPLANATION OF THE GLASGOW STANDARD CLAUSES  
(2005 EDITION)

## **SECTION 1. INTRODUCTION**

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

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

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

The offer, any qualified acceptances and the final acceptance are called "the Missives" and 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. When Missives are concluded either party can sue the other to carry out his or her part of the bargain.

One of the greatest advantages of the Scottish system in the past was the speed with which Missives were concluded. The system of each Solicitor having his own style of offer as these became longer and longer and more technical, has slowed this process.

With this in mind The Royal Faculty of Procurators in Glasgow which represents Glasgow solicitors has introduced a style of offer which it is hoped will be used by most Solicitors in the Glasgow and surrounding areas. The offer appears in Section 2 and will define the Purchaser, the Property, the Price, the Date of Entry (ie. the date you have contracted to obtain your keys) and details of any moveable items included in the price. Some of these

Moveables items are already covered by Clause 1 of the Standard Clauses under the heading “Fixtures, Fittings and Contents”. The offer makes reference to the Glasgow Standard Clauses (2005 Edition) and incorporates them as conditions of the offer.

It is not possible to insist that everyone uses these approved styles. All houses are different and parties are free to contract as they wish. However Guidelines have been issued to Solicitors requesting that changes should be made only for valid reasons eg. making the offer subject to survey and not for the reason of style rather than substance.

The aim is to conclude the Missives with either a straight acceptance of the offer or hopefully not more than one qualified acceptance before a final acceptance. The aim is that ideally the Missives should be concluded within one week.

You should realise however that if an offer is put in in the Glasgow Standard style it is now quite conceivable that you will receive an acceptance. Accordingly purchasing clients will have to be completely “upfront” with the seller and will need to state whether their offer is subject to survey or a loan or conclusion of Missives for the sale of their own property. Complete frankness is required as a Purchaser may find himself bound to a contract thinking the old method would allow him more time. From a Sellers point of view there will be now greater transparency regarding the Purchaser’s position.

The purpose of this Guide is to explain the various clauses so that both house Purchasers and Sellers have a clear understanding of their rights and obligations. It is however only a guide. Solicitors preparing Missives have many years of training and experience behind them and it is therefore not possible to fully explain in a short guide like this the legal principals relative to each clause. If a dispute arises as to the meaning of the Missives the Solicitor is the expert to whom to turn.

This form of offer and the standard clauses are designed for use with dwellinghouses.

It is hoped that the introduction of the Glasgow Standard Missives will result in the process of conclusion of Missives becoming much more straightforward with few of the inherent delays that were involved under the old system.

Speed and ease of conclusion of Missives and clauses with which both the Solicitor and the client can become familiar are enormous benefits. Glasgow now has the tools to make this a reality.

## **SECTION 2 THE GLASGOW STANDARD OFFER**

### **STYLE OFFER**

**To :**

Dear Sirs

For the purposes of this offer and the Glasgow Standard Clauses (2005 Edition) aftermentioned:

The **Purchaser** means \_\_\_\_\_ residing at \_\_\_\_\_

The **Property** means \_\_\_\_\_ together with any garage, carport, parking space, garden ground and outbuildings pertaining thereto; all necessary rights of access and all rights exclusive, common, mutual and others pertaining thereto and the parts, privileges and pertinents thereof.

The **Price** means \_\_\_\_\_ POUNDS STERLING (£ \_\_\_\_\_ )  
and \_\_\_\_\_

The **Date of Entry** means the day when vacant possession of the Property will be given in exchange for the Price and will be \_\_\_\_\_ or such other date as may be mutually agreed in writing.

The Purchaser hereby offers to purchase from your client (hereinafter referred to as "the Seller") the Property at the Price and upon the conditions contained in the Glasgow Standard Clauses (2005 Edition) specified in the Deed of Declaration by Marie Elizabeth Brown and Others dated Eighth and registered in the Books of Council and Session for preservation on Ninth, both days of November Two thousand and five, and upon the following further conditions:-

(One) The Price will include the following additional items (if any):

(Two) This offer, unless previously withdrawn, is open for verbal acceptance by 5pm today with written acceptance reaching us no later than 5pm on the fifth working day following the date of this offer and if not so accepted will be deemed to be withdrawn.

Yours faithfully,

### **SECTION 3: THE GLASGOW STANDARD CLAUSES (2005 EDITION)**

This is the Schedule referred to in the foregoing Declaration by Marie Elizabeth Brown and others dated Eighth November 2005.

These are the Glasgow Standard Clauses (2005 Edition) specified in the Deed of Declaration by Marie Elizabeth Brown and others dated Eighth November 2005.

#### 1. FIXTURES, FITTINGS & CONTENTS

The Property is sold with:

- (a) all heritable fittings and fixtures;
- (b) all items of whatever nature fixed or fitted to the Property the removal of which would damage the fabric or decoration of the Property; and
- (c) the following insofar as any were in the Property when viewed by the Purchaser: all types of blinds, pelmets, curtain rails and runners, curtain poles and rings thereon; all carpets and floor coverings (but excluding loose rugs), stair carpet fixings; fitted bedroom furniture; all bathroom and cloakroom mirrors, bathroom and toilet fittings and accessories; kitchen units; any cooker, hob, oven, washing machine, dishwasher, fridge and/or freezer if integral to or encased within matching units, extractor hood and extractor fan; electric storage heaters, electric fires, electric light fittings (including all fluorescent lighting, wall lights, dimmer switches and bulbs and bulb holders but not shades); television aerials and associated cables and sockets, satellite dishes; loft ladders; burglar alarm, other security systems and associated equipment; secondary glazing; shelving and fireplace surround units, fire grates, fenders and associated ironmongery; all growing plants, shrubs, trees (except those in plant pots), external lighting, rotary clothes driers, garden shed or hut, greenhouse, summerhouse.

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

#### 2. SPECIALIST REPORTS

- (a) Any guarantees in force at the Date of Entry in respect of (i) treatments which have been carried out to the Property (or to the larger subjects of which the Property forms part) for the eradication of timber infestation, dry rot, wet rot, rising damp or other such defects, and/or (ii) insulation and double glazing, together with all supporting estimates, survey reports and other papers relating thereto ("the Guarantees") will be exhibited on conclusion of Missives and delivered at settlement.
- (b) The Seller confirms that he is not aware of anything having been done or omitted to be done which might invalidate the Guarantees.
- (c) If requested, and insofar as necessary and competent, the Guarantees will be assigned to the Purchaser at the Purchaser's expense.

3. CENTRAL HEATING ETC.

- (a) The Seller undertakes that any systems or appliances of a working nature (including central heating, water, drainage, electric and gas) forming part of the Property will be in working order commensurate with age as at the Date of Entry.
- (b) The Seller will make good any defect which prevents any system or appliance being in such order provided said defect is intimated in writing within 5 working days of Settlement. Failing such intimation, the Purchaser will be deemed to be satisfied as to the position.
- (c) The Seller will only be responsible for carrying out any necessary repairs to put any system or appliance into such order and will have no liability for any element of upgrading (except to the extent such upgrading is required to put any such system or appliance into that order).
- (d) The lack of any regular service or maintenance of any system or appliance or the fact that it may no longer comply with current installation regulations will not, of itself, be deemed to be a defect.
- (e) The Purchaser will be entitled to execute any necessary repairs at the expense of the Seller without reference to the Seller or the Seller's tradesmen (i) in the event of an emergency; (ii) in the event that the Seller's tradesmen do not inspect the alleged defects within five working days of intimation; or (iii) in the event that any necessary repairs are not carried out within five working days of inspection.
- (f) The Seller confirms that he has received no notice or intimation from any third party that any system or appliance (or any part thereof) is in an unsafe or dangerous condition.

4. DEVELOPMENT

The Seller warrants that he has not been served with nor received any neighbour notification notice issued in terms of planning legislation by any third party. In the event of any such notice being served on or received by the Seller prior to the Date of Settlement the Seller will forward such notice to the Purchaser within five working days of receipt of such notice.

5. STATUTORY NOTICES ETC.

- (a) Any Local Authority (or other public body) notices or orders calling for repairs or other works to the Property issued prior to or on the Date of Entry (or any other work affecting the Property agreed to or authorised by the Seller outstanding at the Date of Entry) will be the responsibility of the Seller. Liability under this condition will subsist until met and will not be avoided by the issue of a fresh notice or order.
- (b) The Seller warrants that he has not received written notification of, approved, entered into or authorised any scheme of common repairs or improvement affecting any larger building of which the Property forms part. Where the Seller approves, enters into or authorises any such scheme or where any such scheme is instructed, the Seller will remain liable for his share of the cost of

such scheme. Details of any such scheme will be disclosed to the Purchaser prior to settlement.

- (c) When any work in terms of clauses (a) or (b) above is incomplete or unpaid for at the Date of Settlement the Purchaser will be entitled to retain from the Price a sum equivalent to the estimated cost of the Seller's share of such works (which estimate will be augmented by 25%). Such retention will be held in an interest bearing account opened by the Purchaser's solicitor, pending discharge of the Seller's liability. The retention will not be released or intromitted without the written authority of the solicitors for both parties. Any shortfall will remain the liability of the Seller.
- (d) On issue of invoices for such works in terms of (a) and (b) above by the Local Authority or other authorised party the retention will be released to make payment of such invoices as soon as reasonably practical.
- (e) Notwithstanding any other term within the Missives this condition will remain in full force and effect without limit of time and may be founded upon until implemented.
- (f) Without prejudice to the above the Purchaser may retain from the Price such sum as is reasonably required to meet any costs for which he may be contingently liable under Section 10(2) of the Title Conditions (Scotland) Act 2003 or Section 12(2) of the Tenements (Scotland) Act 2004.
- (g) Prior to the Date of Entry the Seller will provide full details of any common repairs in respect of which a notice of potential liability for costs has been or is to be registered.

## 6. COMMON REPAIRS AND CHARGES

Where the Property is part of a larger building or of a development, it is a condition that -

- (a) the common charges will be apportioned between the Seller and Purchaser as at the Date of Entry on the basis that (i) the Seller will be responsible for all common repairs and improvements instructed or authorised on or prior to the Date of Entry and (ii) there are no common repairs or improvements instructed or authorised but not yet paid for;
- (b) there are no repairs authorised or instructed nor outstanding work undertaken but not yet completed (or completed, but not yet paid for) in respect of the Property or the larger building or development of which it forms part; and
- (c) evidence in respect of any block insurance policy will be exhibited prior to the Date of Entry.

## 7. ALTERATIONS

- (a) It is an essential condition that all Consents, Planning Permissions, Listed Building Consents, Building Warrants and Completion Certificates have been obtained from the Local Authority or any other relevant authority or from any other person whose consent may be required in terms of the title deeds for the erection of or conversion to form the Property and for any alterations, improvements or extensions made thereto, and that any conditions imposed

thereby have been fully complied with. All relevant Plans, Permissions, Warrants, Certificates and Consents will be exhibited prior to and delivered at settlement.

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

#### 8. FAMILY LAW ACT/ LITIGATION

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

#### 9. ACCESS

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

#### 10. TITLE WARRANTY

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

#### 11. UTILITIES

Prior to settlement the Seller will confirm the present suppliers of utility services (gas, electricity and telephone as applicable) to the Property. The Seller will act reasonably in ensuring that such services are not terminated prior to the Date of Settlement and will co-operate reasonably with the Purchaser in ensuring the transfer of such services to the Purchaser.

#### 12. BREACH OF CONTRACT BY SELLER

If at the Date of Entry the Seller does not give vacant possession or otherwise fails to implement any material obligations due by him in terms of the Missives then the Purchaser will be entitled (provided the Purchaser is in a position to settle the transaction on the Date of Entry) to claim damages for any reasonable loss incurred by him arising from such failure. In the event that the Seller's breach of contract continues for fourteen days after the Date of Entry the Purchaser will be entitled to treat that breach as repudiation and to rescind the Missives on giving the Seller notice to that effect. This condition will apply without prejudice to any other rights or remedies available to the Purchaser.

#### 13. BREACH OF CONTRACT BY PURCHASER

- (a) It will be an essential condition of the Missives that the Price is paid in full by 2.30 p.m. on the Date of Entry.

- (b) The Seller will not be obliged to offer vacant possession except as against payment of the Price and any interest or damages due aftermentioned. Failure to pay will entitle the Seller to rescind the Missives on the expiry of fourteen days from the Date of Entry on giving written notice to that effect and without prejudice to any other rights or remedies available to the Seller. In the event of failure to pay the Price as aforesaid then notwithstanding consignment nor the fact that the Purchaser may have obtained entry interest will accrue in favour of the Seller at the rate of 4% above the Royal Bank of Scotland plc base rate from time to time in force from the Date of Entry until full payment of the Price is made or, in the event of the Seller exercising his right to rescind the Missives, until the contractual date of entry on the first resale of the Property by the Seller (or for a period of twelve months from the Date of Entry whichever is shorter).
- (c) If the Seller exercises his right to rescind then he will be entitled to (i) proceed to resell the Property and (ii) the continuing payment of interest as aforesaid but that without prejudice to the Seller's right to claim additional damages from the Purchaser for any proper and reasonable costs incurred by the Seller arising from the Purchaser's failure to settle.
- (d) The provisions of this clause will not have any effect in any period during which the delay in settlement is attributable to the Seller or his Solicitors.
- (e) This condition will continue to be enforceable notwithstanding rescission.

#### 14. NEW HOME WARRANTY SCHEMES

If the Property was constructed within a ten year period prior to the Date of Entry, there will be delivered at Settlement a Local Authority Completion Certificate in respect of the Property and either

- (a) the appropriate documentation to vouch that the Property is fully covered under the new home warranty schemes provided by NHBC, Zurich Insurance Company, Premier Guarantee or other provider acceptable in terms of the then current edition of the CML Lenders' Handbook for Scotland ("CML"). In this event, the Seller warrants that no claims have been made or ought to have been reported or are pending under the relevant scheme; or
- (b) in the event that the Property was not constructed under the said new home warranty schemes, a Professional Consultant's Certificate (the "PCC") in terms of the current edition of the CML. If the Purchaser, acting reasonably, is dissatisfied with the terms of the PCC, the Purchaser will be entitled to resile from the Missives without penalty to either party but only provided that the Purchaser exercises this right within five working days of the receipt of the PCC.

#### 15. TITLE CONDITIONS

- (a) Where the Property forms part of a larger building the Property will have the benefit of and be subject to the usual common rights applicable to flatted or divided dwellinghouses including a right in common to the solum on which the building of which the Property forms part is erected, the foundations; the roof and roof systems; rhones, downpipes and drains and boundary walls, fences or divisions and the liability for the share of the maintenance, renewal

and upkeep of the foregoing will be shared by the respective proprietors on an equitable basis.

- (b) Any reservation of minerals will be subject to conditions as to adequate compensation and will not include any right to enter the Property or lower its surface. The minerals are included in so far as the Seller has right to same.
- (c) The existing use of the Property is in conformity with the title deeds. There are no unusual, unduly onerous or restrictive burdens, conditions, servitudes or overriding interests (within the meaning of Section 28(1) of the Land Registration (Scotland) Act 1979) affecting the Property.
- (d) There is no outstanding liability for any part of the cost of constructing or maintaining walls, fences, roadways, footpaths or sewers adjoining or serving the Property.
- (e) The Property has the benefit of all necessary servitudes and wayleaves required for its proper enjoyment (including vehicular access rights).

If the title deeds disclose a position other than as stated above the Purchaser will be entitled to resile from the Missives without penalty to either party but only provided the Purchaser exercises this right within five working days of receipt of the Seller's titles. The Purchaser's right to resile will be his sole option in terms of the Missives.

## 16. SETTLEMENT

The Price will be payable on the Date of Entry in, exchange for (i) delivery of a validly executed Disposition in favour of the Purchaser or his nominees; (ii) vacant possession of the Property; and (iii) the keys for the Property; together with

- (a) If the provisions of the Land Registration (Scotland) Act 1979 ("the Act") relating to a first registration under the Act apply, a valid marketable title together with: (i) a Form 10 Report brought down to a date not more than three working days prior to the Date of Entry and showing no entries adverse to the Seller's interest in the Property (the cost of the said Report being the Seller's liability); and (ii) such documents and evidence including a plan as the Keeper may require to enable the Keeper to issue a Land Certificate in the name of the Purchaser as the registered proprietor of the Property without exclusion of indemnity in terms of Section 12(2) of the Act. Such documents will include (unless the Property comprises only part of a tenement or flatted building and does not include an area of ground specifically included in the title to that part) a plan or bounding description sufficient to enable the whole Property to be identified on the ordnance survey map and evidence (such as a Form P16 report) that the description of the whole Property as contained in the title deeds is *habile* to include the whole of the occupied extent.
- (b) If the title to the Property is already registered in terms of the Act a valid marketable Land Certificate containing no exclusion of indemnity in terms of Section 12(2) of the Act with all necessary links in title evidencing the Seller's exclusive ownership of the Property together with (i) a Form 12 Report brought down to a date not more than three working days prior to the Date of Entry and showing no entries adverse to the Seller (the cost of the said Report being the Seller's liability); and (ii) such documents and evidence as the Keeper may require to enable the interests of the Purchaser to be

registered in the Land Register as registered proprietor of the Property without exclusion of indemnity under Section 12(2).

- (c) Where (a) or (b) apply the Land Certificate will disclose no entry, deed or diligence prejudicial to the Purchaser's interest other than such as have been created by or against the Purchaser or have been disclosed to and accepted by the Purchaser prior to the Date of Settlement.
- (d) If the Application for First Registration of the title to the Property is still being processed by the Keeper, the Seller warrants (i) that no requisitions have been made by the Keeper but not implemented; (ii) the Keeper has not indicated any concern with the Application such as might result in any restriction of indemnity or refusal to register, and (iii) any copy documents provided to the Purchaser are true copies of the originals.
- (e) Without prejudice to the above, the Seller warrants that the Property is not affected by any entry in the Register of Community Interests in Land.
- (f) Notwithstanding any other term within the Missives this condition will remain in full force and effect without limit of time and may be founded upon until implemented.

#### 17. INCORPORATED BODIES

- (a) If the Seller is a limited company then prior to the Date of Entry the Seller will exhibit searches in the Register of Charges and company file of the Seller brought down to a date not more than three working days prior to the Date of Entry which searches will confirm that there is no notice regarding the appointment of a receiver, administrator or liquidator, winding up, striking off or change of name affecting the Seller and the full names of the present directors and secretary of the Seller. In the event of such searches disclosing any floating charge affecting the Property at the Date of Entry, there will be delivered a certificate of non-crystallisation of such floating charge granted by the chargeholder, dated not more than three working days prior to the Date of Entry confirming that no steps have been taken to crystallise such Floating Charge and undertaking that upon delivery of the Disposition by the Seller to the Purchaser the Property will cease to form any part of the assets which are subject to the Floating Charge. Within three months after the Date of Settlement such searches against the Seller will be delivered or exhibited brought down to a date 22 days after the date of registration of the Disposition in favour of the Purchaser or his nominees or 43 days after the Date of Entry whichever is the earlier disclosing no entries prejudicial to the registration of the said Disposition;
- (b) The Seller will exhibit or deliver clear searches in the Register of charges and company files of all companies disclosed as owner or former owner of the Property, in the Land Certificate or Form 10, 11, 12 or 13 reports, brought down in each case to a date 22 days after registration in the Land Register of the deed divesting the relevant company of its interest, disclosing no entries prejudicial to the registration of the said deed.

#### 18. RISK

- (a) The Seller will maintain the Property in its present condition, fair wear and tear excepted, until the Date of Settlement.

- (b) The risk of damage to or destruction of the Property howsoever caused will remain with the Seller until the Date of Settlement
- (c) In the event of the Property being destroyed or materially damaged prior to the Date of Settlement either the Purchaser or the Seller will have the right to resile from the Missives without penalty to the other.

19. PROPERTY ENQUIRY CERTIFICATE

- (a) A Property Enquiry Certificate (“PEC”) complying with the current edition of the CML dated not earlier than three months prior to the Date of Entry will be exhibited by the Seller to the Purchaser’s Solicitors prior to the Date of Entry.
- (b) If the PEC discloses any matter which is materially prejudicial to the Purchaser or the Property, the Purchaser will be entitled to resile from the Missives and that without penalty to either party but only provided that the Purchaser exercises his right to resile within five working days of receipt of the PEC. The Purchaser’s right to resile will be his sole option in terms of the Missives.
- (c) For the avoidance of doubt the PEC (i) will not be materially prejudicial if the Property or any part thereof is shown to be subject to an Article 4 direction, to be situated in a conservation area, to be affected by a Tree Preservation Order or to be listed as a building of architectural or historic interest and (ii) will be materially prejudicial if the roadway, footpath, and sewer ex adverso the Property are not maintained by the Local Authority or the Property is not served by a public water supply.

20. COAL MINING REPORT

If the Coal Authority or similar statutory body recommends that a Coal Mining Report is obtained for the Property then such report will be exhibited prior to the Date of Entry. In the event that such report discloses a position materially prejudicial to the Property or the Purchaser’s proposed use of same then the Purchaser will be entitled to resile from the Missives and that without penalty to either party provided the Purchaser exercises this right in writing within five working days of receipt of the said report.

21. OCCUPANCY RIGHTS

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 or the Civil Partnership Act 2004.

22. SUPERSESSION OF MISSIVES

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

23. SELLER'S ADDRESS

The Seller irrevocably authorises his Solicitors to disclose his address after settlement to the Purchaser if requested by the Purchaser in the event of any claim arising after settlement under the Missives.

24. LIMITATION OF CLAIMS

Section 3 of the Contract (Scotland) Act 1997 will be qualified to the extent that any competent claim thereunder will not be available in respect of (i) matters 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 £100.

25. ENTIRE AGREEMENT

The Missives will constitute the entire agreement and understanding between the Purchaser and the Seller with respect to all matters to which they refer and supersede and invalidate all other undertakings, representations and warranties relating to the subject matter thereof which may have been made by the parties either orally or in writing prior to the date of conclusion of the Missives. Each party warrants to the other that he has not relied on any such undertaking, representation or warranty in entering into the Missives.

26. TRUST

The Seller declares that in so far as he remains registered as the proprietor of the Property after payment of the Price he holds the Property as Trustee in a bare trust for the Purchaser until 21 days from the Date of Entry, after which the trust will be at an end.

27. INTERPRETATION

- (a) In these Clauses (i) the masculine includes the feminine; and (ii) words in the singular include the plural and vice versa.
- (b) In these Clauses the word "Settlement" or words "Date of Settlement" mean the date on which settlement is actually effected whether that is the Date of Entry or not.
- (c) In these Clauses "the Missives" means the contract of purchase and sale concluded between the Purchaser and the Seller and constituted inter alia by the Offer or other document incorporating reference to these Clauses.
- (d) In these Clauses "the Purchaser", "the Seller", "the Property", "the Price" and "the Date of Entry" have the meanings set out in the Offer or other document incorporating reference to these Clauses.
- (e) Where, in these Clauses, there is a requirement to exhibit or deliver anything, it will be sufficient compliance if exhibition or delivery is effected on the solicitors acting for the Purchaser or the Seller as appropriate.
- (f) Any intimation will be in writing, and where any intimation must be given within a specified period, time will be of the essence.

## **SECTION 4**

### **EXPLANATION OF THE GLASGOW STANDARD CLAUSES (2005 EDITION)**

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

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

Heritable Fixtures and Fixtures are items of a moveable character that have become “heritable” through attachment to the Property and become part of it and removal of which would damage the Property.

Some moveables (notably carpets and floorcoverings, blinds, curtain rails and runners but not curtains) are included under item (c).

#### **2. SPECIALIST REPORTS**

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

(b) & (c) Self-explanatory

#### **3. CENTRAL HEATING ETC.**

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

#### **4. DEVELOPMENT**

Under planning legislation neighbour notification requires to be given by an owner of adjoining property for certain kinds of development. If a Seller has been served with such a notice then a qualification will be required in the qualified acceptance to explain that there is an exception from the warranty. The Purchaser who will be notified of any fresh notices being served prior to the Date of Settlement i.e. when the price is paid will require to decide whether or not to object.

#### **5. STATUTORY NOTICES ETC.**

(a) If this clause were not included the Purchaser would be liable for any local authority notices or orders requiring repairs to be carried out to the Property issued after the date of conclusion of Missives.

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

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

6. COMMON REPAIRS AND CHARGES

This clause is largely self-explanatory. If the Property is a flat and part of a larger building or a tenement or is a house forming part of a development with common amenity areas this clause will apply. Any charges for maintenance of common items will be apportioned. If there is a factor he will carry out the apportionment. The Seller's solicitor shall notify the factor of the change of ownership. Please note that the Seller will remain liable for repairs authorised or instructed or work undertaken but not yet completed or completed but not yet paid for. This should be read along with Sub-Clause 5(b).

7. ALTERATIONS

(a) Most erections, conversions, alterations and extensions require planning permission from the planning department and building warrant consent from the building control department of the local authority. A Completion Certificate is also required from the local authority on completion of the work.

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

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

8. FAMILY LAW ACT/LITIGATION

Self-explanatory.

9. ACCESS

Self-explanatory.

10. TITLE WARRANTY

Self-explanatory.

11. UTILITIES

Self-explanatory

12. BREACH OF CONTRACT BY SELLER

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

13. BREACH OF CONTRACT BY PURCHASER

If the Purchaser fails to implement his part of the contract by paying the price before 2.30 on the Date of Entry, this specifies the remedies open to the Seller.

14. NEW HOME WARRANTY SCHEME

Many new homes offer protection to owners of houses built by developers if serious structural defects appear in the first ten years. There are a number of schemes operated by NHBC and others acceptable to the Council of Mortgage Lenders ("CML"). Most banks and building societies are covered by the CML Lender's Handbook for Scotland. An alternative is a professional consultant's certificate ("PCC").

15 TITLE CONDITIONS

There are various title matters that need to be looked at by a Purchaser's solicitor to check that the title is a valid and marketable (i.e. readily saleable) title. The titles will be exhibited to the Purchaser's solicitor and the Purchaser will have a right to resile (i.e. get out of the contract) with no penalty to either Seller or Purchaser within five working days if there is anything adverse.

16. SETTLEMENT

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

17. INCORPORATED BODIES

Self-explanatory.

18. RISK

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

19 PROPERTY ENQUIRY CERTIFICATE (a "PEC")

It is normal for the Seller to pay for and produce a certificate from the local authority or a private searching company confirming that there is nothing adverse from a planning point of view. If the PEC discloses any matter which is materially prejudicial to the Purchaser or to the Property the Purchaser can resile from the Missives (i.e. get out of the contract) without penalty provided the Purchaser exercises the right to resile within five working days of receipt by his solicitor of the PEC.

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

20. COAL MINING REPORT.

It is now common for a Seller to obtain at his expense a Coal Mining Report if the Property is within a coal mining area. The Purchaser is entitled to resile from the Missives (i.e. get out of the contract) without penalty if something materially

prejudicial to the Property or the Purchaser's proposed use of the Property is disclosed provided the Purchaser exercises the right to resile within five working days of receipt by his solicitor of the PEC.

21. OCCUPANCY RIGHTS

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

22. SUPERSESION OF MISSIVES

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

23. SELLER'S ADDRESS

Self-explanatory.

24. LIMITATION OF CLAIMS

This clause is designed to give protection to a Purchaser against a breach of the contract by the Seller which becomes apparent after the Purchaser has paid the price and received the title deeds and keys. It allows the Purchaser to seek damages from the Seller except in relation to the matters mentioned. It is felt that claims under £100 are minor in nature (compared to the value of the Property) and that Purchasers should be excluded from claiming for such minor claims.

25. ENTIRE AGREEMENT

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

26. TRUST

This clause is designed to give some protection to a Purchaser during the period that it normally takes for the Stamp Duty Land Tax to be paid and the title to be registered.

27. INTERPRETATION

Self-explanatory.

**Written by Ian C Ferguson who is a Senior Property Law Partner at Mitchells Robertson**