

EXPLANATION OF THE TAYSIDE STANDARD OFFER (JUNE 2008 EDITION)

1. FIXTURES, FITTINGS & CONTENTS

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

Heritable Fixtures and Fittings 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).

Any additional moveable items, such as curtains, white goods, etc., should be specified in the offer under Section D for extras.

2. CONDITION OF PROPERTY & SPECIALIST REPORTS

(a) This clause requires the seller to confirm that he is not aware of the property being affected by any of the defects listed. The seller is not being asked to guarantee that the property has no defects, simply to confirm that he is not aware of any.

(b) Any existing timber specialist guarantees and reports require to be exhibited to the purchaser’s solicitors and delivered at settlement.

(c) & (d) Self explanatory.

3. CENTRAL HEATING ETC.

Clause (a) requires the seller to ensure that the central heating and all other systems in the property are in proper working order at the date of entry. The seller is not guaranteeing that the systems are in perfect order or that they comply with all current regulations, and if a purchaser has any concerns regarding the central heating system, it is recommended that he obtains a separate inspection prior to submitting the offer.

Any defects in the central heating system require to be intimated by the purchaser in writing within five days of settlement, and the clause contains provisions for further inspections and for the seller to meet the cost of any necessary repairs.

Clause (g) relates to appliances which are included in the sale. Please note that the seller is not providing a guarantee as to the condition of appliances, but simply stating that, so far as the seller is aware, the appliances are in proper working order. The purchaser should therefore satisfy himself as to the condition of appliances before submitting his offer.

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. This clause also contains provision for the purchaser to pull out of the transaction in the event of notification of a proposal which would materially affect the value or amenity of the property.

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) provide an agreed mechanism for retention of a sum to deal with such notices.

(h) Self explanatory.

6. FACTORS AND 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, the seller should notify their solicitor of the identity of the factor so he can be requested to 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) This clause details the relevant paperwork which will be required in the event of alterations having been carried out to the property. The clause however states that the paperwork should only be sought for works which have been carried out in the past twenty years, as it is intended that historic alterations, particularly those of a trivial nature, should no longer be the subject of lengthy in-depth investigation.

(b) Special provision is required for alterations to listed buildings and there is therefore no time limit placed on the requirement for providing listed building consent to any additions or alterations.

(c) If the title provided that consent from neighbouring owners was required for alterations but the alteration has been complete for a period of twelve 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, the seller should inform his solicitor who will discuss how to deal with the matter.

8. LITIGATION

Self-explanatory.

9. ACCESS

Self-explanatory.

10. UTILITIES

Self-explanatory

11. 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").

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 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. pull out of the contract) with no penalty to either seller or purchaser within five working days if there is anything adverse. Clause 12(f) requires the seller to exhibit all necessary title deeds and documentation not less than five days prior to the date of entry, failing which the purchaser may postpone settlement. This clause is designed to allow the purchaser and his agents sufficient time to carry out all necessary conveyancing.

13. SETTLEMENT

This clause requires the seller to sign the deed or document transferring the title to the purchaser and allow the purchaser to move in to the property on the entry date, and makes provisions for normal Land Register 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.

14. BREACH OF CONTRACT BY SELLER

If the seller does not implement his part of the contract, this provides a right to the purchaser to claim damages for reasonable losses.

15. BREACH OF CONTRACT BY PURCHASER

If the purchaser fails to implement his part of the contract by not paying the price on the date of entry, this specifies the remedies open to the seller. It is important for a purchaser to be aware, prior to submitting an offer, of the stringent penalties which he may incur in the event of his failing to settle the transaction. Clause 15(c) stipulates the penalties which would apply in the event of a delay in the sale, whilst Clause 15(d) details the penalties applicable if the transaction were to fall through due to the purchaser failing to pay the price within two weeks of the date of entry. A purchaser should note that even a delay of one day may incur substantial penalties, as the purchaser could be liable for any bridging loan costs and other expenditure incurred by the seller as a result of the delay.

16. INCORPORATED BODIES

This clause contains specific provisions which will apply if the seller is a company.

17. RISK

This clause stipulates that the seller remains responsible for maintaining and insuring the property until settlement.

18. ROADS, WATER, DRAINAGE AND ENVIRONMENTAL MATTERS

This clause requires the seller to provide information as to whether or not the property can be accessed from a public road and if connected to the public water and drainage supplies. If not, it is necessary to check the position regarding services and to ensure that the title deeds contain any necessary rights of access or rights to connect to the appropriate services. This clause also requires the seller to confirm that there are no environmental issues.

19. PROPERTY ENQUIRY CERTIFICATE

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

property enquiry certificate discloses any matter which is materially prejudicial to the purchaser or to the property, the purchaser can resile from the missives (i.e. pull 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 property enquiry certificate.

20. COAL MINING REPORT

In some areas of the country, it is necessary to provide a Coal Mining Report. This would not be required in Dundee or Angus.

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. Similarly, if the seller is in a civil partnership, and the property is the family home, then the civil 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 means that the seller and the purchaser can enforce the contract against one another for a period of two years after the date of entry, apart from Clauses 5 (Statutory Notices) and 12 (Title) 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 the purchaser should be excluded from claiming for such minor claims.

25. 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.

26. INTERPRETATION

Self-explanatory.