

These are the Aberdeen and Aberdeenshire Standard Clauses (2013 Edition) specified in the Deed of Declaration by John Alexander MacRae and Anne Boyd dated 15th January 2013.

**1. THE PROPERTY AND ITS FIXTURES, FITTINGS AND CONTENTS**

The Property shall be all as advertised by the Seller, described in the sales particulars and as inspected by the Purchaser including the solum thereof (or where the Property is part of larger subjects a share in the solum and any common parts of the said larger subjects) and ground attached (if any), the garage (if any), and the whole other buildings and erections thereon whether temporary, permanent or moveable and the whole pertinents, rights and others pertaining thereto.

The Property is sold including:-

- (a) all heritable fittings and fixtures;
- (b) all items of whatever nature fixed or fitted to the Property the removal of which would materially affect the fabric or decoration of the Property;
- (c) all items specified as included in the sales particulars made available or as advertised to the Purchaser and
- (d) the following insofar as any were in the Property when viewed by the Purchaser (or were fitted, fixed or otherwise pertained to the Property): garden shed or hut, greenhouse, summerhouse, all types of blinds, pelmets, curtain rails and runners, curtain poles and rings thereon; all carpets and floorcoverings (but excluding loose rugs), stair carpet fixings; fitted bedroom furniture; all fitted mirrors, bathroom, shower room and toilet fittings and accessories; kitchen units; all cookers, hobs, ovens, washing machines, dishwashers, fridges and freezers if integral to or encased within matching units; extractor hoods, extractor fans, electric storage heaters, fitted gas or electric fires, electric light fittings (including all fluorescent lighting, external lighting, wall lights, dimmer switches and bulbs and bulb holders, but not shades); television aerials and associated cables and sockets, satellite dishes; loft ladders; clothes poles and rotary clothes driers; smoke and burglar alarms, other security systems and associated equipment; secondary glazing; shelving and fireplace surround units; and all plants, shrubs and trees in the garden with the exception of those in potted containers.

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

**2. AWARENESS OF CIRCUMSTANCES AFFECTING THE PROPERTY**

- (i) So far as the Seller is aware the Property is not affected by:-
  - (a) any Notice of Potential Liability for Costs registered in terms of The Tenements (Scotland) Act 2004;
  - (b) any proposed scheme of common repairs which has not yet been ordered or instructed;
  - (c) registration of rent in terms of the Rent (Scotland) Acts or Housing (Scotland) Acts;
  - (d) any Improvement or Repairs Grant;
  - (e) any contamination from a present or previous use as defined in terms of the Environmental Protection Act 1990 or any amending legislation;
  - (f) flooding which has taken place within the last 5 years;

- (g) any proposals, applications or re-development plans affecting the Property or any adjacent or neighbouring property which could reasonably be considered to be detrimental to the Property;
- (ii) Without prejudice to the foregoing, the Seller warrants that he has not served or been served with, nor received any neighbour notification issued in terms of planning legislation, in respect of any Development. If such notice is served on or received by the Seller prior to the date of settlement, the Seller will immediately forward the notice to the Purchaser's Solicitor. If the proposals contained in the notice would have a materially detrimental effect on the Property the Purchaser will be entitled to resile from the Missives without penalty due to or by either party.

### 3. TIMBER SPECIALIST GUARANTEES

If any timber remedial treatment works have been carried out to the Property within the last 30 years, these have been carried out by timber specialists and their Guarantee(s) which are valid and effectual, together with the relative survey report(s) and any other supporting documents will be exhibited with the acceptance hereof and delivered at settlement.

### 4. CENTRAL HEATING

Any central heating system will be in good and safe working order at the date of settlement having regard to the age, specification and type of the system and, so far as the Seller is aware, has been installed in accordance with all relevant regulations applicable at the time of installation. Any relevant defects in the central heating system will require to be intimated to the Seller's agents in writing within 5 working days of the date of settlement. If any defects are intimated as aforesaid the Seller will have the opportunity (except in the case of emergency as aftermentioned) to instruct reputable tradesmen to carry out any necessary remedial works and only if the Seller has failed to do so within 5 working days of such intimation will the Purchaser be entitled to proceed with the necessary works recovering the reasonable cost thereof from the Seller. However, in the case of emergency (being defined as the complete breakdown of the system or dangerous operation of the system between 1<sup>st</sup> October and 31<sup>st</sup> March in any year) the Purchaser will be entitled to immediately effect the necessary repair, recovering the reasonable cost thereof from the Seller, providing always that written intimation is given to the Seller within the aforementioned 5 working day period. For the avoidance of doubt the Seller shall not be liable for any element of betterment or any upgrading of the system required to comply with the current installation regulations of British Gas or any other competent Authority and the Purchaser accepts that the lack of servicing does not constitute a defect in the system. The Seller will have no liability for defects where the total value including VAT is less than £300.

### 5. STATUTORY NOTICES and COMMON REPAIRS

- (a) The Seller warrants that no Notices or Orders have been issued by the Local Authority or other public body calling for repairs or other works to the Property.
- (b) The Seller warrants that no scheme of common repairs or improvement affecting any larger building of which the Property forms part has been approved, entered into or authorised. Where such a scheme has been approved, entered into or authorised, the Seller shall remain liable for the share of the cost of such works applicable to the Property. Details of any such scheme or any proposal will be disclosed to the Purchaser prior to settlement.
- (c) Clause 5 (b) shall remain in full force and effect without limit of time

notwithstanding any provision to the contrary in the Missives.

- (d) If any Notices or Orders, are issued by the Local Authority or other public body after the date of this offer, but prior to the Date of Entry, the Seller shall be obliged immediately to intimate same to the Purchaser's Agent. If the Seller is unable or unwilling to implement said Notice or Order prior to the Date of Entry, the Purchaser shall have the option of accepting the terms thereof, failing which his sole remedy will be to resile from the Missives without penalty due to or by either party.

#### 6. FACTORING

The Seller will be obliged to intimate the change of ownership to the Factors (if any) and will pay all factoring and insurance charges due for periods up to the Date of Entry. The Seller will disclose details of the factors (if any), any current factoring charges and any common buildings insurance policy, at least 5 working days prior to the Date of Entry.

#### 7. CONSTRUCTION and ALTERATIONS

- (a) If there has been any addition or alteration to the Property within 15 years of the Date of Entry, requiring Planning Permission, Change of Use, Building Warrant, Completion Certificate, Pavement Access Consent, or Listed Building Consent these will be exhibited prior to and delivered at settlement. Any work carried out to the Property after 1<sup>st</sup> May 2005 (other than work carried out in terms of a Building Warrant granted prior to 1<sup>st</sup> May 2005 ) complies with the terms of the Building (Scotland) Act 2003 and the Scottish Building Standards.
- (b) The Seller warrants (i) that any building work carried out to the Property has been in a state of substantial completion for a period of not less than 12 weeks prior to the date of conclusion of missives; and (ii) that no valid objection to the work was made at any time by any person with title and interest to do so under a real burden.
- (c) If any works have been carried out on or to the Property requiring consent of any other party in terms of the Title Deeds such consent will be exhibited prior to and delivered at settlement.
- (d) There are no planning conditions of a continuing nature which restrict the current use of or adversely affect the Property.

#### 8. FAMILY LAW/LITIGATION

The Seller warrants that the Property is not affected by any Transfer of Property Order made in terms of the Family Law (Scotland) Act 1985 or any amendment thereto and this will remain the position at settlement;

#### 9. DISPUTES/LITIGATION

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

#### 10. ACCESS

The seller shall, after conclusion of the Missives, give access to the Purchaser or his agents at agreed times for the purposes of inspection, measurement or the provision of quotations. This right of access shall not be exercised on more than 2 occasions without the consent of the Seller.

11. UTILITIES

Unless the services have already been terminated prior to conclusion of the Missives, the Seller will co-operate in the transfer of gas, electricity, telephone and other service supplies to the Purchaser but the Seller will not be responsible for any re-connection charges incurred.. The Seller may retain the existing telephone number.

12. BREACH OF CONTRACT BY SELLER

- (a) Vacant possession is to be given in exchange for payment of the Price in full by 3pm on the Date of Entry.
- (b) If, because the Seller fails to give vacant possession or implement any material obligation due by him in terms of the Missives, 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 are properly and reasonably incurred by the Purchaser as a direct and foreseeable consequence of the breach by the Seller, which amount may be deducted by the Purchaser from the amount payable to the Seller in settlement of the transaction.
- (c) If the Seller is not, within 14 days of the Date of Entry, in a position to implement the Seller's whole material obligations in terms of the Missives, the Purchaser shall be entitled at any time thereafter to rescind the Missives by giving notice in writing to the Seller, without prejudice to any right or claim competent to the Purchaser arising from the breach of contract by the Seller.

This clause shall be suspended during any delay in settlement attributable to the Purchaser or his Agent and shall continue to be enforceable notwithstanding rescission.

13. BREACH OF CONTRACT BY THE PURCHASER

- (a) The Price will be paid in full by 3.00pm on the due date.
- (b) The Seller shall not be obliged to offer vacant possession except in exchange for payment of the Price and any interest or losses due as aftermentioned.
- (c) If the Price remains unpaid in whole or in part after the due date the Seller will be entitled to payment from the Purchaser, at the Seller's option, of one (but not both) of :
  - (i) an amount equal to all losses arising out of the non-payment of the Price (which may include Wasted Expenditure); OR
  - (ii) interest on the amount of the Price outstanding at the Prescribed Rate from the due date until the date when payment is made.
- (d) If the Price remains unpaid in whole or in part at any time more than 2 weeks after the due date, the Seller will be entitled to rescind the Missives, and to payment from the Purchaser, at the Seller's option, of one (but not both) of:
  - (i) ordinary damages in respect of all losses arising out of the non- payment of the Price and failure of the Missives (which may include Wasted Expenditure); OR
  - (ii) liquidated damages, payable on the end date, calculated as the amount of interest which would have run on the amount of the Price outstanding at the Prescribed Rate from the due date until the end date (under deduction of any increase in the Price obtained by the Seller on a resale of the Property).
- (e) In this clause:

"due date" means whichever is the later of : (i) the Date of Entry; or (ii) the date of which payment of the Price was due having regard to the circumstances of the case including any entitlement to withhold payment owing to non-performance by the Seller.

"end date" means whichever is the earlier of : (i) the date falling 12 months after the due date; or (ii) where the Property is resold following rescission, the date of entry under the contract of resale.

"Wasted Expenditure" includes the following: (i) any capital loss sustained by the Seller on the resale of the Property being the difference between the price under the Missives and the resale price under any such resale; (ii) any estate agency, marketing and other advertising expenses properly incurred in connection with the resale; (iii) any legal expenses properly incurred in connection with the resale; (iv) any expenses in connection with the cancellation of removal of furniture, storage of furniture and transfer or retransfer of furniture incurred as a result of the Purchaser's breach of contract; and (v) any bridging loan costs incurred by the Seller in respect of any purchase transaction which he requires to complete under concluded missives.

"Prescribed Rate" means the rate of 4% above the The Royal Bank of Scotland plc base rate from time to time in force.

14. MISSIVES BY FAX OR EMAIL

If a copy of any signed letter, intended to form part of the missives, is sent by email or fax, the letter will be deemed to have been delivered when the email or fax is received, and the sender will be deemed to be holding the letter on behalf of, and to the order of, the addressee. The original signed letter will be delivered to the addressee within 2 working days.

15. N.H.B.C./ BUILDERS WARRANTY

If the Property was constructed or converted within 10 years prior to the Date of Entry, there shall be delivered at settlement appropriate NHBC documentation (Buildmark 10 Year Notice, Insurance Certificate, or otherwise) or such equivalent new home warranty documentation, or architects certificate of supervision as required by and acceptable to the Council of Mortgage Lenders (Scotland). The Seller is not aware of any current or pending claim under the NHBC, or equivalent scheme.

16. TITLE CONDITIONS

- (a) Any part of the Property which is common or mutual with any adjoining property (including the roof and roof systems; rhones and downpipes; drains and boundary walls; fences or divisions) falls to be maintained, renewed and upheld by respective proprietors on an equitable basis.
- (b) Any reservation of minerals will be subject to conditions as to adequate compensation and support 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 or servitudes affecting the Property.
- (d) There is no outstanding liability for any part of the cost of constructing 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). Any such

servitude and wayleave is formally constituted and any liability relating to same is equitably apportioned.

## 17. SETTLEMENT

- (a) The Price will be payable on the Date of Entry in exchange for (i) delivery of a duly executed valid Disposition in favour of the Purchaser or his nominees (which at the Purchaser's option will contain a Declaration of Trust); (ii) vacant possession of the Property and (iii) all keys for all external doors (and remote controllers for garage doors or parking barriers.)
- (b) In these Clauses the phrase "settlement" or "date of settlement" means when settlement is effected whether that is the Date of Entry or not.
- (c) If the Purchaser's Agent forwards a cheque for the price on the basis that it is to be held as undelivered until certain conditions be fulfilled, without prejudice to any other terms in the Missives, the Seller and his Agent will be obliged to adhere to said conditions before cashing the cheque.

## 18. TITLE REQUIREMENTS

- (a) If the provisions of the Land Registration Scotland Act 1979 ("the Act") and/or any amendment thereof relating to a First Registration under the Act apply, there will be exhibited at least 5 working days prior to the Date of Entry a valid marketable progress of titles for the prescriptive period and any deeds referred to for burdens together with a P16 Report or equivalent confirming that the legal boundaries of the Property coincide with those on the Ordnance Survey Map. If there is a P16 Report or equivalent report discrepancy which is materially prejudicial to the Purchaser's interest in the Property and the Seller fails to remedy same prior to the Date of Entry, the Purchaser's sole remedy shall be to resile from the Missives without penalty due to or by either party. At settlement, there will be delivered in exchange for the price (i) a Form 10A Report brought down to a date as near as practicable to the Date of Settlement showing no entries adverse to the Seller's interest in the property (the cost of said Report being the Seller's liability), (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 Clause 12 (2) of the Act, (iii) an executed Discharge of any outstanding Standard Security, together with relative Forms 2 and 4 and payment for registration dues, failing which an undertaking contained in the Letter of Obligation aftermentioned to deliver same within 14 days of the date of settlement, (iv) a Letter of Obligation by the Seller's solicitor in the Classic style recommended by the Law Society of Scotland, (v) the Disposition specified in Clause 17 hereof; and (vi) where dual registration is applicable the appropriate forms and payment for dual registration dues.
- (b) If the title to the property is already registered in terms of the Act, there will be exhibited at least 5 working days before the Date of Entry a Land Certificate or an Office Copy thereof 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. There will be delivered at settlement in exchange for the price, (i) a Form 12 Report brought down to a date as near as practicable to the date of settlement and showing no entries adverse to the Seller (the cost of the said Report being the Seller's liability), (ii) such documents and evidence as the Keeper may require to enable the interest of the Purchaser to be registered in the Land Register as registered proprietor of the property without exclusion of indemnity under Section 12 (2) of the Act, (iii) an executed Discharge of any outstanding Standard Security, together

with relative Forms 2 and 4 and payment for registration dues, failing which an undertaking contained in the Letter of Obligation aftermentioned to deliver same within 14 days of the Date of Settlement, (iv) a Letter of Obligation by the Seller's solicitor in the Classic style recommended by the Law Society of Scotland; (v) the Disposition specified in Clause 17 hereof; and (vi) where dual registration is applicable, the appropriate forms and payment for dual registration dues.

- (c) 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 have been created by or against the Purchaser or have been disclosed to or accepted in writing by the Purchaser prior to the date of settlement.
- (d) If the Application for First Registration or Transfer of Part of the title to the Property is still being processed by the Keeper, the Seller warrants that (1) no requisitions have been made by the Keeper but not implemented (2) the Keeper has not indicated any concern with the Application such as might result in any restriction of indemnity or refusal to register; and (3) any copy documents provided to the Purchaser's Agent are true copies of the originals.
- (e) Where the Property is not excluded land under the Community Right to Buy (Definition of Excluded Land) Scotland Order 2004, the Seller warrants that he has not received intimation of an Application for Registration, a Notice prohibiting a transfer, a registered interest and/or an Application for Late Registration and that he has not taken any action with a view to a transfer, all in terms of Part 2 of the Land Reform (Scotland) Act 2003. If so required by the Purchaser, the Seller will exhibit a clear Search in the Register of Community Interest immediately prior to settlement.
- (f) Clauses 18 (a), 18 (b), 18 (c) and 18 (d) shall remain in full force and effect without limit of time notwithstanding any provision to the contrary in the Missives.

#### 19. INCORPORATED BODIES

The Seller is not a Limited Company, Limited Liability Partnership or other Incorporated Body.

#### 20. MAINTENANCE and RISK

- (a) The Seller will maintain the Property including any garden ground in its present condition, fair wear and tear excepted, until settlement.
- (b) the risk of damage to or destruction of the Property will remain with the Seller until settlement
- (c) if the Property is destroyed or materially damaged prior to settlement, either the Purchaser or the Seller shall have the right to resile from the Missives without penalty due to or by either party.

#### 21. PROPERTY ENQUIRY CERTIFICATE

A Property Enquiry Certificate dated not earlier than 3 months before the Date of Entry and such other evidence from the appropriate authorities as the Purchaser reasonably requires for compliance with the current Edition of the CML Lenders' Handbook for Solicitors (Scotland) will be exhibited at least 5 working days prior to the Date of Entry.

If the Certificate discloses any matter which is materially prejudicial to the Purchaser and which the Seller is unable or unwilling to remedy before the Date of Entry, the

Purchaser's sole remedy shall be to resile from the Missives without penalty due to or by either party by giving written notice, prior to settlement and within 5 working days of receipt of the said Certificate or other evidence, of his intention to do so.

22. MAINS SERVICES

- (a) The Seller warrants that the existing access to the Property is direct from a roadway taken over for maintenance by the Local Authority and that the Property is connected to mains water, the mains sewer, mains electricity and, if applicable, mains gas.
- (b) If any connection from the Property to the water main, mains sewer, mains electricity supply or mains gas supply runs through ground belonging to a third party the Seller will provide reasonable evidence that all appropriate servitude rights exist and that these are properly constituted.

23. PRIVATE SERVICES

- (a) If the Property is served by a private access, private water supply or private drainage the Seller will disclose this in the acceptance hereof and will provide reasonable evidence that all appropriate servitude rights exist and that these are properly constituted.
- (b) If the Property is served by a private water supply, the Seller (1) warrants that throughout his ownership the quantity of the supply has been sufficient to meet normal domestic requirements and (2) will exhibit prior to settlement an up to date report from the Local Authority and, where applicable, from the Public Analyst evidencing that the supply meets the current minimum statutory requirements.
- (c) If the Property is served by a septic tank, outfall pipe/s and/or soakaway, all necessary Local Authority and SEPA consents, registrations or licences will be exhibited prior to and delivered at settlement. Where the drainage is not already registered with SEPA, the Seller will apply for registration immediately. The Seller warrants that no prohibition notice has been served.

24. COAL AUTHORITY REPORT

If the Property is situated in an area listed in the Directory of Places in Part 4 of the Law Society of Scotland Guidance Notes and Directory 2003, a Coal Mining Search will be exhibited prior to settlement. If the Report discloses any matter materially prejudicial to the Property or the Purchaser's proposed use of same, the Purchaser's sole remedy will be to resile from the Missives and that without penalty due to or by either party by giving written notice of his intention to do so prior to settlement and within 5 working days of receipt of said Report.

25. 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 and appropriate Declaration/Renunciation/Consent evidence to this effect will be delivered at settlement.

26. MINIMUM PERIOD OF OWNERSHIP

The Seller warrants that the Seller has owned the Property for at least 6 months prior to the date of the Offer. This provision shall not apply where the Seller is a personal

representative of the proprietor; or is an institutional heritable creditor exercising its power of sale; or is a receiver, trustee in sequestration or liquidator.

**27. SUPERSESION OF MISSIVES**

The missives shall cease to be enforceable 2 years after the Date of settlement except in so far as (i) they are founded on in Court proceedings commenced within the said period or (ii) this provision is excluded in terms of any other condition of the Missives.

**28. PARTIES' ADDRESSES**

All parties irrevocably authorise their agents to release their current addresses on request.

**29. LIMITATION OF CLAIMS**

No claim may be made by the Purchaser in respect of (i) matters disclosed to and accepted by the Purchaser prior to the date of settlement or (ii) any item or claim amounting in value to less than £300, or (iii) any matter in respect of which any provision in the Missives limits or dictates the remedy available to the Purchaser in the way contemplated by that provision.