

OPTIONAL CLAUSES

(for use with Offer to Sell (Vacant Possession) and Offer to Sell (Investment Property))



1 Deposit

The PSG recommend that this clause is inserted after Clause 2.2 in the Offer to Sell (Vacant Possession) and after Clause 2.2 of the Offer to Sell (Investment Property).

Add to Definitions: "Deposit" means the sum of [] POUNDS (£[]) Sterling;

1.1 The Deposit will be payable by the Purchaser to the Seller within [] Working Days after the Conclusion Date.

1.2 The Deposit will be:

1.2.1 placed on joint deposit by the Seller's Solicitors in an interest bearing account in the joint names of the Purchaser's Solicitors and the Seller's Solicitors immediately on receipt, to be held by them as stakeholders pending the occurrence of any of the events described in Clauses 1.2.2 to 1.2.5.

1.2.2 treated as a payment to account of the Price if the purchase of the Property proceeds, and accordingly released at Completion.

1.2.3 forfeited to the Seller if the Purchaser is in material breach of its obligations under the Missives and the Seller properly rescinds the contract constituted by the Missives as a result

1.2.4 returned to the Purchaser if the Seller is in material breach of its obligations under the Missives and the Purchaser properly rescinds the contract constituted by the Missives as a result

1.2.5 [returned to the Purchaser if the precondition[s] in Clause [] [are] [is] not purified or waived in accordance with the Missives.]

1.3 The interest accrued on the Deposit will be paid to the party to whom the Deposit is payable in accordance with the foregoing provisions. For the avoidance of doubt, the interest will be treated as a payment to account of the Price if Clause [1.2.2] applies.

1.4 The parties undertake that they will, and that they will procure that their respective solicitors will, take all such steps as may be necessary as expeditiously as possible to give effect to the foregoing provisions, including signing all necessary bank forms and other documentation.

1.5 The parties agree that Interest will be payable on all sums payable under this Clause 1. The due date for payment of such Interest for the purposes of Clauses [1.2.3, 1.2.4 and 1.2.5] will be the first date [three] Working Days after the occurrence of the event (whether positive or negative) giving rise to the obligation to make payment of the Deposit.

1.6 The Seller's Solicitors and the Purchaser's Solicitors respectively confirm, by the issue and acceptance of this offer, that they are authorised to give effect to this Clause 1 insofar as obligations are imposed on them.

2 **Guarantee of Purchaser's obligations**

The PSG recommend that this clause is inserted after Clause 20 in the Offer to Sell (Vacant Possession) and after Clause 23 of the Offer to Sell (Investment Property).

Add to Definitions: "Guarantor" means [] incorporated under the Companies Acts (Registered Number []), and having its Registered Office at [];

2.1 Without prejudice to Clause [18][22], no acceptance of this offer will be valid unless expressed to be issued on behalf of the Purchaser and the Guarantor. The Purchaser and the Guarantor are bound jointly and severally to perform the Purchaser's obligations under the Missives.

2.2 The liability undertaken by the Guarantor will be an independent obligation continuing in force while any liability or provision under the Missives remains wholly or partially undischarged or unimplemented by the Purchaser, and regardless of any rule of law or of practice to the contrary, will not be discharged or otherwise impaired or prejudiced by the Seller:

- 2.2.1 releasing or giving up any obligation or remedy (present or future) for the indebtedness or liabilities of the Purchaser; or
- 2.2.2 giving time or any other indulgence to the Purchaser or otherwise modifying the terms of the Missives; or
- 2.2.3 doing or omitting any act, matter or thing which would (but for this provision) release the Guarantor.

2.3 If so required by the Seller, the Purchaser and/or the Guarantor will execute and deliver at Completion such further documentation evidencing such joint and several liability as the Seller may require.

Note: If this clause is included, remember to ensure that it is excluded from the supersession clause of the Offer so that it is not superseded automatically.

3 **Rights and servitudes**

The PSG recommend that this clause is inserted after Clause 7.1 in the Offer to Sell (Vacant Possession) and after Clause 8.1 of the Offer to Sell (Investment Property) when new burdens or servitudes are being created.

Alternatively the new burdens and servitudes can be set out in the draft disposition attached as Part of the Schedule to the Offer and do not need to be repeated in the Offer (for styles of dispositions creating new real burdens and servitudes go to www.psglegal.co.uk and click on "Post-feudal reform documentation").

Add to Definitions: "Retained Property" means [];

3.1 In the Disposition the following servitude rights will be imposed on the Property in favour of the Retained Property:

- 3.1.1 [Here list all new servitude rights in favour of the Retained Property]

3.2 In the Disposition the following servitude rights will be imposed on the Retained Property in favour of the Property:

- 3.2.1 [Here list all new servitude rights in favour of the Property]

3.3 In the Disposition the following real burdens will be imposed on the Property for the benefit of the Retained Property:

- 3.3.1 [Here list all new real burdens in favour of the Retained Property]

3.4 In the Disposition the following real burdens will be imposed on the Retained Property for the benefit of the Property

3.4.1 *[Here list all new real burdens in favour of the Property]*

3.5 [If the Disposition creates real burdens and/or servitudes affecting the Property, (whether as the burdened property or the benefited property), and dual registration is required:

3.5.1 the Seller will deliver a completed and signed SAF, or Form 2 in respect of the Seller's property which will benefit from or be burdened by the real burdens and/or servitudes, together with payment for the requisite amount of registration dues in respect of registration of the real burdens and/or servitudes against the Seller's property;

3.5.2 the Purchaser will submit the Form 2 or 3 in respect of the registration of the real burdens and/or servitudes against the Seller's property contemporaneously with the Purchaser's application for registration of the Disposition, along with a Form 4 containing details of both applications, and will provide the Seller with a copy of the Keeper's letter acknowledging receipt of the application within 15 Working Days after Completion.]

4 Service contracts

The PSG recommend that this clause is inserted after Clause 14 in the Offer to Sell (Vacant Possession). It is already included as Clause 18 in the Offer to Sell (Investment Property).

Add to Definitions: "**Service Contracts**" means the service, maintenance and other contracts entered into by or on behalf of the Seller (or its predecessors in title) in connection with the maintenance and management of the Property, brief details of which are set out in Part [] of the Schedule;

4.1 Liability

With effect from Completion, the Purchaser will accept and take over liability for the Service Contracts and accordingly the Purchaser will, in respect of the period following Completion, keep the Seller indemnified from all liability arising under the Service Contracts.

4.2 Assignment

4.2.1 In so far as the Seller can validly do so, the Service Contracts will be assigned to the Purchaser in terms of the draft assignation of service contracts forming Part [] of the Schedule.

4.2.2 The Purchaser will:

- (i) within 15 Working Days after Completion duly execute the assignation of service contracts delivered to the Purchaser at Completion; and
- (ii) within 20 Working Days after Completion, intimate the assignation of service contracts to the appropriate parties and deliver a copy of the intimation to the Seller.

4.3 Termination

The Purchaser will have no responsibility for any [other] service, maintenance, management or similar contracts relating to the Property entered into by the Seller (or its predecessors in title) prior to Completion and [(subject to Clause 4.1] the Seller will, in respect of the period following Completion, indemnify the Purchaser from all liability arising under such contracts. The cancellation costs of any such contracts will be met by the Seller out of its own funds.]

Note: If this clause is included, remember to ensure that it is excluded from the supersession clause of the Offer so that it is not superseded automatically.

5 Construction

The PSG recommend that this clause is inserted after Clause 11 in the Offer to Sell (Vacant Possession) and after Clause 14 of the Offer to Sell (Investment Property)

5.1 In connection with [the works specified at Part [] of the Schedule][any works of construction or refurbishment which have been carried out to the Property during the period of twelve years prior to the date of this Offer] (the "Works") the Seller undertakes to deliver to the Purchaser [on or prior to Completion]:

- 5.1.1 [Collateral warranty agreement[s] in the form which the Seller is entitled to procure under the relevant building contract[s] from the contractor[s] detailed at Part [] of the Schedule;
- 5.1.2 Collateral warranty agreements in the form which the Seller is entitled to procure under the relevant appointment agreements from the consultants detailed at Part [] of the Schedule;
- 5.1.3 Certified copies of the building contract[s] and each appointment agreement relating to the collateral warranty agreements to be delivered pursuant to Clause 5.1.1 and 5.1.2.]
- [5.1.1 An assignation in favour of the Purchaser of the Seller's interest in the collateral warranties set out at Part [] of the Schedule, together with copies of each collateral warranty set out at Part [] of the Schedule and, insofar as available to the Seller, copies of each building contract and appointment agreement to which such collateral warranties relate.]

5.2 The Seller warrants that it has no other contractual rights in relation to the design and construction of the Property that are capable of transfer other than pursuant to any [building contract, appointment agreements and novation agreements certified copies of which are deliverable pursuant to Clauses 5.1.2 and 5.1.3, and any collateral warranty agreements granted to the Seller in relation to them][collateral warranty agreements to be assigned pursuant to clause 5.1.1].

6 Family Law and occupancy rights

If there is any residential property comprised within the Property the PSG recommends that this clause is inserted after Clause 16 in the Offer to Sell (Vacant Possession) and after Clause 20 of the Offer to Sell (Investment Property)

The Seller warrants that:

- 6.1 the Property is not and will not be affected by any Transfer of Property Order made in terms of the Family Law (Scotland) Act 1985 at Completion;
- 6.2 the Seller is not a party to any action in which any such Order is being or has been sought; and
- 6.3 at Completion 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.

7 Company searches clause where the Property is still in the Register of Sasines

The PSG recommends that this clause is added to Clause 8.5 in the Offer to Sell (Vacant Possession) and after Clause 10.2.6 of the Offer to Sell (Investment Property):

Searches in the Register of Charges and Company File of every limited company having an interest in the Property in the prescriptive period (including, where appropriate, a search to identify the directors and secretary of the grantor as at the date of signing of the disposition or other deed divesting such company of its interest in the Property) in each case from the date of their incorporation or the date of inception of the Register (whichever is the later) brought down to the date twenty-two days after the date of recording of the disposition or other deed divesting such company of its interest in the Property in each case disclosing no entry prejudicial to the Purchaser's interest.