Optional Clauses

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

A. DEPOSIT

The PSG recommend that this clause is inserted as a new clause before Clause 2 in the Offer to Sell (Vacant Possession) and the Offer to Sell (Investment Property). If using this clause, amend the wording in Clause 2.1 of the Offer to Sell (Vacant Possession) to read "The Price (less the Deposit)…"

Include references to VAT where VAT is payable on the Price i.e. the sale is not exempt and TOGC relief does not apply.

Add to Definitions:

"Deposit" means the sum of [ ] POUNDS (£[ ]) Sterling [together with VAT of [ ] POUNDS (£[ ] Sterling payable on it;

"Stakeholders" means acting as the principal of both parties and consequently not able to release the deposit to one party without the consent of the other;

1. **Deposit**

1.1 **Payment**

1.1.1 The Deposit [and the VAT payable on it] will be:

(a) paid by the Purchaser within [ ] Business Days after the Conclusion Date by instantaneous bank transfer of cleared funds from the Purchaser's Bank to the Seller's Solicitors; and

(b) held by the Seller's Solicitors in a bank account immediately on receipt as Stakeholders on behalf of the Purchaser and the Seller pending the occurrence of any of the events described in Clauses 1.3.1 and 1.3.2.

1.1.2 A payment not made in accordance with Clause 1.1.1(a) may be refused.

1.1.3 For the purposes of this Clause 1.1, money will not be deemed paid by the Purchaser until such time as same day credit on it is available to the Seller's Solicitors in accordance with normal banking procedure.

1.2 **Cancellation**

If the Purchaser fails to pay the whole of the Deposit with [the VAT and] any Interest due as set out in Clause 1.4.1 within [5] Business Days after the due date the Seller is entitled to rescind the Missives and retain any part of the Deposit and Interest which has been paid by the Purchaser as its own monies [subject however to the Seller being bound to issue a valid VAT invoice to the Purchaser in respect of any VAT included in such part of the Deposit within 30 days of the date the Seller rescinds the Missives].

1.3 **Treatment of Deposit**

1.3.1 The Deposit with [the VAT payable on it and] any accrued interest will be released by the Seller's Solicitors to the Seller:

(a) at Completion and the Deposit will be treated as a payment on account of the Price if the sale of the Property proceeds;

(b) within [3] Business Days after the Seller properly rescinds the Missives as a result of the Purchaser being in material breach of its obligations under the Missives; and

(c) within [3] Business Days after the Seller properly rescinds the Missives in accordance with Clause [2.3.2] (*Seller's* Right *to Rescind*).

1.3.2 The Deposit [and the VAT payable on it together] with any accrued interest will be returned by the Seller's Solicitors to the Purchaser within [3] Business Days after any of the following events:

(a) the Purchaser properly rescinds the Missives in accordance with Clause [2.4.1] (*Purchaser's Right to Rescind*);

(b) [the Purchaser properly resiles from the Missives in accordance with Clause [6.3][1] [7.3][2] (*Documents to be Disclosed*)];

(c) [either the Seller or the Purchaser properly resiles from the Missives or if the Missives automatically terminate in each case in accordance with [Part 6][3] [Part 16][4] of the Schedule (*Community Interests*)];

(d) [the precondition[s] in Clause [ ] [are] [is] not purified or waived in accordance with the Missives and either the Seller or the Purchaser properly resiles from the Missives, or the Missives automatically terminate in accordance with such precondition[s]]; and

(e) either the Seller or the Purchaser properly resiles from the Missives in accordance with Clause [11.2][5] [13.2][6] (*Damage or Destruction*).

1.4 **Interest**

1.4.1 If the Deposit [and the VAT payable on it] or any part of [it] [them] [is] [are] not paid to the Seller on the due date then, notwithstanding consignation, the Purchaser will pay to the Seller Interest on the outstanding money.

1.4.2 The interest accrued on the Deposit [and the VAT payable on it] 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 1.3.1(a) applies.

1.5 **[VAT Invoices**

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[1] Offer to Sell (Vacant Possession)
[2] Offer to Sell (Investment Property)
[3] Offer to Sell (Vacant Possession)
[4] Offer to Sell (Investment Property)
[5] Offer to Sell (Vacant Possession)
[6] Offer to Sell (Investment Property)

1.5.1 If the Deposit is released to the Seller as a result of Clause 1.3.1(a) applying, the VAT invoice to be issued by the Seller to the Purchaser at Completion in terms of Clause [3] will be in respect of the whole Price, including the Deposit.

1.5.2 If the Deposit is released to the Seller as a result of either Clause 1.3.1(b) or Clause 1.3.1(c) applying, the Seller will issue a valid VAT invoice to the Purchaser in respect of the VAT on the Deposit within 30 days of the date the Seller rescinds the Missives.]

1.6 **Undertakings and Confirmations**

1.6.1 The Seller and the Purchaser undertake to each other that it will, and that it will procure that its 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.

1.6.2 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 (Deposit) insofar as obligations are imposed on them.

B. GUARANTEE OF PURCHASER'S OBLIGATIONS

The PSG recommend that this clause is inserted after Clause 17 in the Offer to Sell (Vacant Possession) and after Clause 21 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 [ ];

1. **Guarantee**

1.1 Without prejudice to Clause [19][7] [23][8], 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.

1.2 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:

1.2.1 releasing or giving up any obligation or remedy (present or future) for the indebtedness or liabilities of the Purchaser; or

1.2.2 giving time or any other indulgence to the Purchaser or otherwise modifying the terms of the Missives; or

1.2.3 doing or omitting any act, matter or thing which would (but for this provision) release the Guarantor.

1.3 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.

<u>Note</u>: 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.

[7] Offer to Sell (Vacant Possession)
[8] Offer to Sell (Investment Property)

C. 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 "Title Conditions").

Add to Definitions:

"**Retained Property**" means [ ];

1. **Real Burdens and Servitudes**

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

1.1.1 [*Here list all new servitude rights in favour of the Retained Property*]

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

1.2.1 [*Here list all new servitude rights in favour of the Property*]

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

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

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

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

1.5 [If the Disposition creates real burdens or servitudes or both affecting the Property (whether as the burdened property or the benefited property) and dual registration is required the cost of registering any new real burdens or servitudes against the Seller's property will be paid by the Seller. In addition:

1.5.1 If the Seller's property is in the Register of Sasines:

(a) the Seller will deliver a completed and signed SAF in respect of registration of the real burdens or servitudes (or both) against the Seller's property;

(b) the Purchaser will submit the SAF contemporaneously with the Purchaser's application for registration of the Disposition.

1.5.2 If the Seller's property is registered in the Land Register of Scotland, the Purchaser will include the title number for the Seller's property and the Seller's Solicitors' [two] email address[es] on the application form for registration of the Disposition.]

D. SERVICE CONTRACTS

The PSG recommend that this clause is inserted after Clause 15 in the Offer to Sell (Vacant Possession). It is already included as Clause 19 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;

1. Service Contracts

1.1 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.

1.2 Assignation

1.2.1 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.

1.2.2 The Purchaser will:

(a) within 15 Business Days after Completion duly execute the assignation of service contracts delivered to the Purchaser at Completion; and

(b) within 20 Business Days after Completion, intimate the assignation of service contracts to the appropriate parties and deliver a copy of the intimation to the Seller.

1.3 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 1.1] 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.]

<u>Note</u>: 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.

E. CONSTRUCTION

The PSG recommend that this clause is inserted after Clause 12 in the Offer to Sell (Vacant Possession) and after Clause 14 of the Offer to Sell (Investment Property).

1. Construction

1.1 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]:

1.1.1 [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;

1.1.2 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;

1.1.3 Certified copies of the building contract[s] and each appointment agreement relating to the collateral warranty agreements to be delivered pursuant to Clauses 1.1.1 and 1.1.2.]

OR

1.1.4 [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.]

1.2 The Seller confirms 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 1.1.2 and 1.1.3, and any collateral warranty agreements granted to the Seller in relation to them] [collateral warranty agreements to be assigned pursuant to Clause 1.1.4].

F. 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 granter 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.

G. COMMUNITY RIGHT TO BUY WHERE PARTIES AGREE TO PROCEED WITH A SALE OF THE PROPERTY EXCLUDING THE LAND THAT IS SUBJECT TO THE RIGHT TO BUY

The PSG recommend that this clause is inserted as paragraph 1.6 of Part 6 of the Schedule in the Offer to Sell (Vacant Possession), and as paragraph 1.6 in Part 16 of the Schedule in the Offer to Sell (Investment Property).

1.1 If the Disposition is of no effect by virtue of the 2003 Act, but the property affected by the Part 2 Notice consists of part only of the Property then within [5] Business Days of the date on which this is established:

(a) the Purchaser will be entitled to request that the Seller delivers to the Purchaser an amended Disposition [and plan], conveying to the Purchaser the remainder of the Property which is unaffected by the Part 2 Notice;

(b) in exchange the Purchaser will withdraw its application for registration of the Disposition and within [5] days after receipt, deliver it to the Seller;

(c) the Price will be reduced by a sum equivalent to the value of the property affected by the Part 2 Notice, such sum to be determined in accordance with the criteria set out in section 59 of the 2003 Act; and

(d) within [5/10] Business Days of the value of the property affected by the Part 2 Notice being determined in accordance with section 60 of the 2003 Act, the Seller will pay an equivalent sum to the Purchaser.