

OFFER TO ACCEPT A RENUNCIATION

Guidance Notes



Introduction

This offer to accept a renunciation adopts a similar format to the PSG offer to grant a lease and the offer to sell. It is intended that a draft renunciation (based on the PSG draft renunciation) is annexed to the offer. The offer provides optional wording:

- where there is a “price” to be paid by the Landlord or the Tenant
- where there are arrears and/or a dilapidations payment to be paid by the Tenant
- where there is a Guarantor of the Tenant's obligations
- for suspensive conditions.

There is alternative wording to use depending on whether the renunciation is registrable or not.

We have provided that whether or not the renunciation is registrable the Landlord will be responsible for registration of the renunciation in the Books of Council & Session and in the Land Register where applicable. This accords with the preferred practice, allowing the Landlord to ensure that the lease title sheet is removed.

1 Clause 1 Definitions and Interpretation

In the same way as in the offer to grant a lease and the offer to sell we have used defined terms to streamline the text of the clauses in the offer. Ideally any terms which are defined should appear in the Definitions section rather than within the body of the offer. Delete any definitions which do not apply.

We have included a definition of “Completion Date” as well as “Renunciation Date, in case the payments due by the Tenant have not been paid by the Renunciation Date. The parties should review all references to “Completion Date” and “Renunciation Date” to ensure that they are correct in the context of a particular transaction, mindful of the possibility of payments being made to or by either party.

We have not included any definition for “Advance Notice” or any provisions within the offer for obtaining advance notices. On a renunciation of a lease, advance notices are not always obtained. Should the parties wish to incorporate advance notice provisions, the wording in the PSG offers can easily be adapted.

2 Clause 2 Suspensive Conditions



There is optional wording for suspensive conditions for example obtaining the Landlord's heritable creditor's consent to the acceptance of the renunciation. Insert any additional suspensive conditions in Clause 2.1.2. As the heritable creditor's consent is for the benefit of both Landlord and Tenant neither party may unilaterally waive this condition. Clause 2.2.2 deals with waiving the other suspensive conditions and can be tailored depending on whether the conditions are for the Landlord's or the Tenant's benefit. If the suspensive conditions are for the benefit of both parties Clause 2.2.1 may be amended to include the additional suspensive conditions and Clause 2.2.2 deleted. Clause 2.2.3 provides that both parties must assist each other to enable the suspensive conditions to be purified; whether this is included will depend on the nature of the suspensive conditions.

3 Clause 3.1 Arrears and Price

There are alternative clauses depending on whether there is a price and/or arrears or a payment in lieu of dilapidations to be made. Amend as appropriate. Where the Landlord is paying the Renunciation Payment, you can simply dispense with the definition of Price if you wish.

Property transactions are seen as a fertile source of money laundering activity. If the payment is paid direct from the Tenant to the Landlord's Solicitors or *vice versa* there may be a delay while the solicitor complies with the anti-money laundering regulations. To prevent this we have provided that where funds are paid to the relevant solicitor, the relevant funds must come from a firm of solicitors. The parties are on notice to route the funds in the appropriate way.

4 Clause 3.2 Apportionments

Clause 3.2.1 obliges the Landlord to refund any prepaid rent/insurance referable to the period falling after the Completion Date.

Where the Lease includes a service charge liability, Clause 3.2.2 anticipates a subsequent reconciliation of service charge following the service charge year end in the Lease; for "Accounting Period" substitute the applicable Lease definition.

Clause 3.4.2 addresses the possibility of added occupancy costs being imposed upon the Tenant if the Completion Date is delayed as a result of the Tenant's act or default.

5 Clause 3.3 VAT

Clause 3.3.2 contains a retrospective obligation to pay VAT if an HMRC ruling so requires, on any supplies previously not thought to be standard rated.

6 Clause 3.4 Terms

Mindful of recent case law, the parties' expectations on what "vacant possession" comprises (in the context of the particular transaction) should be considered, so there are no unintended consequences.

7 Clause 3.5 LBTT Requirements

The offer requires the Tenant to file an LBTT return within [five] Business Days of the effective date and make payment of any LBTT that may be due on the Lease. The Tenant must

indemnify the Landlord for any loss suffered as a result of the Tenant failing to submit the LBTT return timeously. There is an optional clause included for the Landlord to file an LBTT return and pay any LBTT where the Price/Renunciation Payment is payable by the Landlord to the Tenant.

8 Clause 3.6 Signing and Registering the Renunciation

There are alternative clauses depending on whether or not the renunciation is registrable. Select whichever option is applicable.

9 Clause 3.7 Guarantee

The acceptance of the offer must be issued on behalf of the Guarantor, as well as on behalf of the Tenant, so that the Guarantor will be a party to the Missives.

10 Clause 4 Title

Clause 4.2 Land Register requirements

This clause is only required if the renunciation is registrable. It mirrors the provisions in the PSG offer to grant a lease and offer to sell and includes a co-operation clause if the application to register the renunciation is rejected.

11 Clause 4.4 Items to be delivered

There are suggestions as to the Tenant might be expected to provide/deliver on the Completion Date, which will require to be tailored to the circumstances.

12 Clause 5 Tenant's Lease Obligations

This clause should be considered on a case by case basis in line with the commercial terms of the specific transaction.

13 Clause 6 Statutory Repairs Notice

This clause deals with compliance and notification of statutory repairs notices. Responsibility for notices issued after the Conclusion Date but before the Renunciation Date and liability on re-issuing of a notice will be a matter for negotiation.

14 Clause 8 Capital Allowances

The inclusion of this clause should be considered on a case by case basis following specialist tax advice.

15 Clause 9 Costs

Clause 10 includes alternatives – it caters for each party bearing their own legal etc. costs and it provides for alternative wording in cases where the Tenant is bearing the whole or a contribution towards the costs of the transaction. If the Tenant is to pay the whole of those costs, delete the words "[a contribution of [] (£[]) POUNDS STERLING (exclusive of VAT, which will be payable by the Tenant in addition) towards]".

16 Clause 10.5 Confidentiality

Consider if it is appropriate to have a confidentiality clause in the Missives given that when the renunciation is registered either in the Books of Council & Session or in the Land Register it will be a public document. If the parties want to register the Missives you should delete this clause.

17 Clause 12 Supersession

Consider carefully if it is appropriate to include a supersession clause. If for any reason the renunciation is not executed within the two year period the Missives will cease to have effect and the parties will not be able to rely on Clause 3.8 (terms binding as if the renunciation had been duly executed) unless that clause is specifically included in the list of clauses that are excluded from the supersession clause.

18 Clause 15 Consent to registration

Be aware of the potential conflict between this clause and the confidentiality clause. If the parties want to keep the terms of the Missives confidential then it is not appropriate to register the Missives in the Books of Council and Session which is a public register.