



**GENERAL TERMS AND CONDITIONS OF BUSINESS (2020) BY  
ALLAN McDUGALL McQUEEN LLP  
*With Addendum re Purchase Transactions***

**1. Introduction**

These Conditions of Business and our Letter of Engagement set out the working relationship and terms of agreement between us, Allan McDougall McQueen LLP and you, our client. By instructing us you agree to accept these terms and that they remain in force unless or until we mutually agree otherwise.

**2. Scope of Work**

The scope of work will be as set out in the Letter of Engagement. This will cover, among other things, what we are going to do for you, matters excluded, any key timescales within which we envisage the delivery taking place and the basis on which our fees and costs will be charged and recovered (we may in certain instances issue a separate fee quote to be read along with our Letter of Engagement).

**3. Instructions**

- 3.1. As your agents we act only on information and instructions given to us. You should not assume that we have knowledge of any factual matters.
- 3.2. If we are acting for more than one person, we may take instructions from one person on behalf of the others and all will be fully liable for any actions taken or fees incurred.
- 3.3. If we are acting for a company or other corporate body, then unless advised otherwise in writing, we shall accept instructions from any Director or other office bearer of the company or body or any other company in its group and from any other person reasonably appearing to us to have its authority to instruct solicitors in the matter concerned.
- 3.4. You may instruct us verbally, by e-mail or in writing although we may ask for formal written confirmation of verbal or e-mail instructions. Unless you expressly notify us to the contrary in writing, we may accept instructions and take action on information sent to us from your e-mail address.

**4. Contracts**

In Scotland, it is common for your agents to enter into legally binding contracts on your behalf and therefore if there are any changes in your instructions you must notify us immediately to ensure we do not commit you to a contract you have subsequently changed your mind about.

## 5. **UK Anti Money Laundering Regulations and Compliance with Related Statutory and Regulatory Provisions**

5.1. We are legally bound at all times to act under the terms of The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (“the Regulations”). We must apply customer due diligence measures to all new and existing clients and the work we are instructed to carry out for them.

5.2. Customer Due Diligence (CDD) measures:

5.2.1. The Regulations require us to carry out various measures before entering into a business relationship with or carrying out any transaction for any client and to monitor that business relationship on an ongoing basis and ensure that the CDD information we have is up to date. We will not start acting for you or carry out any instructions you give us until you have provided us with sufficient information and documentation to allow us to satisfy the CDD requirements imposed by the Regulations. It is therefore essential that you provide all information and documentation requested as soon as possible. We are required to verify the identity of all clients and certain other parties and we must be satisfied that the person is who they say they are by reference to official documents and records and we must keep copies of those documents and records. In this connection we are required to:

5.2.2. Identify and verify the identity of all clients.

5.2.2.1. Private Individuals – We require evidence of current address and proof of identity by way of a copy passport or photographic driving licence. Please note, we must see the principal documents and not photocopies or scanned versions where we have been unable to successfully electronically verify you, or you are required to do so in terms of our internal risk assessment procedures. In particular situations we can accept copies certified by certain professionals. We are happy to confirm what we can accept in this regard. We may also carry out additional online verification of identity using sources including credit checking agencies. By instructing us you agree to us doing so.

5.2.2.2. Corporate bodies and other organisations – The requirements for corporate entities such as companies, partnerships and trusts are more complex and once we know the nature of the entity for whom we will be acting we will advise what checks we need to make and what documentation we need to see. In the case of corporate bodies (other than private individuals) we require to identify and verify the identity of the Beneficial Owner(s) and/or Directors. Where the Beneficial Owner is another legal person, trust, company, foundation or similar legal arrangement or entity we must establish the ownership and control structure of that entity. In broad terms, a Beneficial Owner is any individual who ultimately owns or controls more than 25% of the shares or voting rights in any body corporate and in the case of a trust means the settler, the trustees and the beneficiaries or in cases where the individuals benefitting from the trust have not been determined, the class of person in whose main interest the Trust has been set up.

5.2.3. Assess and obtain information on the purpose and intended nature of the business relationship or transaction. You will need to tell us what the aims of this business relationship or transaction are.

- 5.2.4. Identify and verify the source of clients' wealth and separately the source of any funds to be received by us. This may require us to request copies of bank statements, tax information, employment contracts, pay slips, consultancy agreements or confirmations from accountants, independent financial or tax advisors or other lawyers to enable us to verify the source of your wealth.
- 5.2.5. For the purposes of establishing that the source of funds has been held by you (or any giftor) and not by an undisclosed third party, we require evidence to show that any funds have been held in a UK Bank account (or equivalent UK financial institution), for not less than 3 months prior to the intended use of said funds.
- 5.2.6. Identify any clients who are Politically Exposed Persons (PEPs) and apply an enhanced Client Due Diligence (that is the carrying out of additional checks and verifications) to all such clients. A PEP is an individual who is entrusted with a prominent public function and the definition includes the family members and known close associates of a PEP. We can provide a list of examples of positions and posts the occupiers of which are likely to fall within the definition of a PEP. These include but are not limited to sitting MPs, MSPs and Members of the House of Lords and holders of high ranking judicial or military office. A person remains a PEP for 12 months after ceasing to hold the relevant office. You must advise us if you think you are or may be a PEP.
- 5.2.7. Carry out enhanced CDD where there is a high risk of money laundering or terrorist funding. This includes where:
  - 5.2.7.1. The client is resident or established in a high risk jurisdiction or geographical area, or
  - 5.2.7.2. There is no face to face contact with the client, or
  - 5.2.7.3. The client is a PEP, or
  - 5.2.7.4. A transaction is complex or unusually large, or
  - 5.2.7.5. The client is a legal person or arrangement which is a vehicle for holding personal assets, or
  - 5.2.7.6. The client is a company which has nominee shareholders, or
  - 5.2.7.7. The customer is a business which is cash intensive or the corporate structure of the client is unusual or excessively complex given the nature of the client's business.
- 5.2.8. Identify and verify the identity of any person purporting to act on behalf of a client for example an investment manager, surveyor, other agent or employee of the client who has authority to instruct Allan McDougall McQueen LLP on behalf of the client.
- 5.3. We will not accept any liability for any loss suffered in respect of any delay or failure to carry out your instructions or of us withdrawing from acting for you in circumstances where the reason for this is a failure by you to provide any information or documentation required by us to comply with the foregoing CDD requirements.

#### 5.4. Other matters:

- 5.4.1. The CDD requirements in respect of identifying and verifying the identity of a client or beneficial owner or person giving instructions on behalf of a client set out above must be complied with before the establishment of the business relationship or the carrying out of any transaction. It is therefore important that all required identity and other CDD documentation is provided at the soonest possible opportunity. In particular, please note that we will not be able to accept or pay out any money on your behalf until the relevant CDD procedures have been completed.
- 5.4.2. We cannot accept any payments in cash or by way of Bank Draft or bank branch deposits to any of the firm's bank accounts. Where payment is to be made to any of the firm's bank accounts by bank transfer we require to see evidence of the name, account number and sort code of the account from which the payment is sent in the form of a remittance advice or payment instruction acknowledgement receipt from the bank making the transfer. We cannot accept bank transfers from any third parties including family, friends or related companies without carrying out full CDD on these parties. Any payments into any of the firm's bank accounts which do not comply with the above will be returned to the sending bank. We will not transfer any funds received, from you or on your behalf, which do not comply with the foregoing procedures to any third party even where this may result in a delay in complying with your instructions. Any sums which have to be returned to you such as sums paid to us in error or where excess funds have been received will only be returned to the account they were received from. We will not accept any liability for any loss suffered as a result of any failure to or delay in complying with the foregoing requirements.
- 5.4.3. We are not permitted to hold client money following completion of a matter or transaction unless that money is to be used in connection with another matter or transaction in which we are already instructed by you and the completion of which is due to take place in the foreseeable future.
- 5.4.4. Where a client is unable or fails to provide satisfactory CDD documentation we will not establish a business relationship or carry out any transaction and will terminate any existing business relationship and cease acting.
- 5.4.5. We have to carry out ongoing monitoring and ensure that CDD information is up to date. You must inform us as soon as possible of any change of circumstance such as change of name or residential address, change in source of wealth or the source of funds to be used, or a change in country of residence. In the case of a body corporate (such as a Company, partnership, LLP, association or Trust), you must tell us of any change in the structure, the directors, partners, shareholders or shareholdings or other Beneficial Owners.
- 5.4.6. In any case, before we act for you again we will require proof of identity to be refreshed if the proof that we hold is more 2 years old.
- 5.4.7. We are required to keep copies of all documents acquired as part of the CDD process for a period of 5 years after (in the case of an occasional transaction) the date on which the transaction is complete or in the case of a business relationship that relationship has come to an end. We reserve the right to retain information beyond this time period.
- 5.4.8. Any personal data obtained by Allan McDougall McQueen LLP specifically as part of the CDD process will only be processed for the purpose of preventing money laundering or

terrorist financing or any other purpose referred to in the Regulations. For the purposes of the Data Protection Act 1998 the data controller in respect of any such data is Allan McDougall McQueen LLP.

- 5.4.9. All UK corporate bodies are required in terms of the Regulations to provide us on request with the details and documentation we require to carry out CDD including information identifying its legal or beneficial owners.
- 5.4.10. In terms of the Regulations, the Proceeds of Crime Act 2002 and the Terrorism Act 2000 we must report to government law enforcement agencies any suspicions we have regarding money laundering, terrorist financing or the proceeds of crime. This includes crimes such as tax evasion or tax, benefit or insurance fraud. We are expressly prohibited from notifying any other party of the fact that any such report has been made. Such reports may include a request for consent to continue to act. In the event that such consent is not forthcoming we must withdraw from acting.
- 5.4.11. In view of the increasing incidence and complexity of cybercrime and online fraud, where you tell us of the bank account you wish us to send funds to by phone, email or in a letter, we may contact you on a phone number we have used previously to contact you to verify the account details if we deem it necessary. If we cannot satisfy ourselves that the instruction is genuine and comes from you, we will not process your instruction to transfer the funds until we can confirm the details with you and we will not accept liability for any loss suffered as a result. If you subsequently change the details of the account you request us to transfer funds to, we will apply the same procedure.

## 6. Fees

- 6.1. Fees will be calculated on the basis set out in your initial contact with Allan McDougall McQueen LLP.
  - 6.1.1. In some transactions it is not possible to quote precise fees as the amount of work is not known at the outset. In such cases we will provide an estimate only at that point for initial budgeting/purchase ordering purposes. Any estimate of fees given will not be binding unless it is expressly stated to be a fixed fee quotation. In ongoing matters, we will supply updated estimates as agreed in the Letter of Engagement.
  - 6.1.2. Fees incurred are payable whether or not a matter is successfully concluded or completed and we will charge for the work undertaken by us.
  - 6.1.3. Fee rates are reviewed periodically and, subject to any provisions in the Letter of Engagement, we will inform you of any change of rates in advance of that revision taking effect.
- 6.2. Fixed Fees
  - 6.2.1. Where a fixed fee quotation has been given, the fee will be as quoted.
  - 6.2.2. If additional work is instructed by you, becomes necessary and performed by us outwith the scope of a fixed fee quotation you may be required to pay an additional fee based on the amount of the additional work involved. We will endeavour to provide an estimate of that additional fee at the point the revised or additional instruction is received from you or when identified by us as necessary.

### 6.3. Hourly and Daily Rate Fees

- 6.3.1. Fees will be calculated on the basis of hourly rates applied to the time spent working on the matter. Rates depend on the seniority and specialised knowledge of the appropriately qualified member of our staff. We seek to have the work carried out by the individual who can provide the necessary service at the more efficient rate for the client.
- 6.3.2. The time includes that spent on considering and drafting documents, advising, reporting, dealing with correspondence, telephone calls, e-mails, preparing for and attending meetings and making notes of meetings, researching the law, attending court and travelling. Hourly rates are calculated in units of one tenth of an hour (i.e. 6 minutes). Details of these rates are set out in the Letter of Engagement where appropriate.

### 6.4 Commission

6.4.1 In accordance with standard commercial practice, we will often instruct third party suppliers to provide services to you, which are chargeable as outlays. In certain cases we will receive a supplier discount or commission payment for volumes and cases instructed. In these circumstances, we will have right to retain as our sole property and for our sole benefit all such commissions, discounts and or payments received from said suppliers and no remittance will be made to you in respect of same.

## 7. **Outlays, Other Expenses and VAT**

- 7.1. Fees quoted or estimated exclude outlays and other expenses which we incur on your behalf or in the course of providing you with agreed services.
- 7.2. Outlays incurred by us, specifically on your behalf, such as court costs, fees payable to advocates instructed by us on your behalf, search fees, registration fees, LBTT and property advertisements are due for immediate payment by you. If outlays are incurred by us without VAT being charged, we reserve right to charge VAT on provision of same.
- 7.3. Other expenses incurred in the process of providing you with our services and advice are due for payment along with fees unless agreed otherwise.
- 7.4. We reserve the right to require advance payments from you to cover expected fees and outlays. If payment is not made we may withdraw from acting for you.
- 7.5. V.A.T. will be due and charged at the appropriate rate on all fees, outlays and expenses.

## 8. **Court Costs**

If you instruct us in a matter which goes to Court, you may be found entitled to expenses from another party. Our fees remain payable whether or not courts costs are actually recovered. Experience shows it is unlikely that any amount recovered will be sufficient to meet all your costs. You should therefore assume that even if your action is successful, there will be additional costs payable to us over and above anything that may be recovered from the other party.

## 9. **Payment of Fees and Outlays**

- 9.1. Fees are payable on issue of the Fee Note. Fee Notes may be issued at stages of the transaction or on completion of the transaction, however we will issue interim fee notes monthly unless another basis is agreed with you.
- 9.2. Where you have provided us with debit or credit card details as a method of payment, we will apply for payment 3 days after date of issue to you of the Fee Note or Statement of Outlays. No charge is made for payment by means of an approved debit card. An administration fee of 2% of the total amount is payable on all credit card transactions.
- 9.3. We may deduct from any monies held for you any fees and outlays due to us.
- 9.4. We reserve the right to charge interest on fees (including VAT) and outlays if not paid within thirty days of the relevant invoice date. The rate payable will be at the Royal Bank of Scotland base rate applicable on each day plus 5%. We may also suspend or cease any further work on your behalf if payments are not made within terms.
- 9.5. When you and others are joint clients you will each be jointly and severally liable for fees and outlays which means that we may recover the full amount from any one of you. This also applies where you are representing a company or other corporate body in which you have a significant financial interest: as the individual instructing us, you are liable for our fees and outlays if the corporate body fails to make due payments.
- 9.6. Where it has been agreed that a third party will pay for certain elements of fees and expenses and the third party fails to make payment, you remain liable to us for such payments.

## 10. **Clients' Money**

- 10.1. Where the interest likely to be accrued on money received on your behalf exceeds £100 we will set up a specific deposit account in your name. This interest is payable to you. Where interest is not likely to exceed £100, the funds are held in a general account and interest is not payable to you.
- 10.2. Where we hold money on your behalf, we currently have arrangements with Royal Bank of Scotland plc but may, from time to time, select other financial institutions.
- 10.3. In the event of insolvency of banks or other financial institutions there are limits on the deposit amounts which are guaranteed under the Government backed Financial Service Compensation Scheme. From 30 January 2017 this covers individuals for certain amounts up to £85,000 with higher levels for some temporary high balances. Further information on this is available on the FSCS website at <http://www.fscs.org.uk> or by calling them on the Freephone number [0800 678 1100](tel:08006781100) or writing to them at: Financial Services Compensation Scheme, 10<sup>th</sup> Floor, Beaufort House, St Botolph Street, London, EC3A 7QU.
- 10.4. In the UK there have been instances of clients having funds diverted fraudulently and not being received by the solicitor as intended. This is generally as a result of fraudulent e-mails. In the unlikely event that you receive an e-mail from us advising of a change in our bank details for you to send funds to, please contact our switchboard on 0131 225 2121 and ask to speak to our Cashroom or to the person in the firm you have been dealing with. They will be able to confirm whether or not this is genuine before you make any funds transfer.

## 11. **Transaction Settlements**

Property and other transactions are usually settled by our making payments on your behalf from our

Clients' Account. To comply with Law Society of Scotland Rules we must have cleared funds in that account. You must ensure we have these cleared funds in our Client Account prior to the settlement. You may do so by direct bank transfer or cheque but you should note that cheques can take up to one week to clear. If we do not have cleared funds we will not be able to settle the transaction on the due date in which event you may be in breach of your contract.

## 12. Personal Data

12.1. We will comply with the EU General Data Protection Regulation and the Data Protection Act 2018 in handling and using the personal information that you provide to us as part of representing you in your case. We will only use such personal information where we have an appropriate legal basis and to provide you with legal services, communicate with you and to comply with the legal and regulatory requirements (including Law Society of Scotland requirements) that apply to us as a firm of solicitors in Scotland.

12.2. We will only share your personal information with other parties with your consent, but we may share your personal information with our service providers (to maintain the systems on which your personal information is stored), our debt recovery agents (if you do not pay our fees) and law enforcement agencies (in the event of actual or suspected criminal activity).

12.3. We will only keep your personal information for as long as we are instructed to provide legal services to you and to comply with the legal and regulatory requirements that apply to us. You have the right to request the following in relation to the personal information that we hold about you.

12.3.1. A copy of your personal information and to check that we are holding and using it in accordance with legal requirements.

12.3.2. Correction of any incomplete or inaccurate personal information that we hold about you.

12.3.3. Deletion of your personal information where there is no good reason for us continuing to hold and use it. You also have the right to ask us to do this where you object to us holding and using your personal information.

12.3.4. Temporarily suspend the use of your personal information, for example, if you want us to check that it is correct or the reason for processing it.

12.3.5. The transfer of your personal information to another organisation.

12.4. You can also object to us holding and using your personal information where our legal basis is a legitimate interest (either our legitimate interests or those of a third party).

12.5. You have the right to make a complaint to the Information Commissioner's Office – the UK regulator for data protection – about how we hold and use your personal information. The ICO's contact details are as follows:

Telephone: 0303 123 1113

Website: <https://ico.org.uk/concerns/>

## 13. Communications with You



On the whole, we will communicate with you by e-mail. On occasion, or if you do not have access to e-mail, we will communicate by post. We will be entitled to take e-mail instructions from you or either one of you. In the event that our client is a Company or a partnership, we shall be entitled to accept instructions from any one Director or the Secretary or any single Partner. On occasion we shall be entitled to request that your instructions are signed. Accordingly, it is essential that you should give us instructions quickly following a request for same. In order to do this, it is essential that you should remain in contact with us during the course of this transaction. If you will be unavailable at any time, please advise us. If your contact details change at any point, it is your responsibility to ensure we have up to date contact details.

You should also ensure that you can make yourself available to sign documentation for your transaction in case this needs to be signed in person. If time is available, we shall forward the documentation by post provided we feel that there is sufficient time for this course.

We will deal with matters as expeditiously as possible. However, you will appreciate that we are often delayed in dealing with matters due to the actions or inaction on the part of other parties. We will chase for progress on a reasonable frequency.

#### **14. Termination**

Either you or we may end our appointment at any time. If the appointment is ended all fees (including any cancellation fee quoted) and outlays are due for payment immediately. We reserve the right to retain papers, titles and any other documents pending payment of outstanding sums due. Consumer contract regulations may provide you with additional rights of terminating or cancelling our appointment, and if that is the case we will advise you of your rights in or along with the Letter of Engagement.

#### **15. Auditor**

We expect to provide you with high quality services within fees and terms agreed between us, however, in the event that you do not accept the amount of any fee charged, it can be referred to the independent decision of the Auditor of the Court of Session. Please be aware that the Auditor charges a fee for his services and you will be responsible for the cost of this unless the Auditor decides otherwise.

#### **16. Complaints**

16.1. We aim to provide a high-quality service to all our clients. However, if you are dissatisfied with any aspect of the service provided, please raise the matter as soon as possible with the Partner responsible who will endeavour to resolve the issue. If you are still not satisfied please write to the Client Relations Partner, Allan McDougall McQueen LLP, 3 Coates Crescent, Edinburgh, EH3 7AL specifying your complaint. The Client Relations Partner will then deal with the matter in accordance with the standards laid down by the Law Society of Scotland.

16.2. A copy of our complaint process is available on request from the Partner responsible or the Client Relations Partner at the address above.

16.3. In the event that you remain dissatisfied with the outcome you are entitled to refer the matter to the Scottish Legal Complaints Commission (SLCC), The Stamp Office, 10-14 Waterloo Place, Edinburgh EH1 3EG, Tel: 0131 201 2130 or via email address: [enquiries@scottishlegalcomplaints.org.uk](mailto:enquiries@scottishlegalcomplaints.org.uk). Such reference to the SLCC must be made within one year of the service ending or the event giving rise to the complaint occurring. This period has

been extended to three years for services commencing after 1 April 2017.

16.4. We recognise that Alternative Dispute Resolution Regulations have implemented ADR/EDR Directive 2013/11/EU to promote alternative dispute resolution as a means of redress for consumers in relation to unsatisfactory services. We have, however, chosen not to adopt an ADR process and if you have any concerns about the services you receive from us you should contact the Client Relations Partner as above.

#### **17. Provision of Advice Through Firm Only**

All services and advice supplied by us are the responsibility of Allan McDougall McQueen LLP only and no liability shall attach to any individual whether partner, member, consultant, associate or employee of Allan McDougall McQueen LLP who may have supplied or been involved in supplying any services or advice.

#### **18. Storage and Destruction of Papers and Documents**

We will normally keep our file of papers for 5 years (or another period as may otherwise be stated in the Letter of Engagement) in either a physical or electronic format, however we may thereafter destroy it. We will destroy the original documents for files when the file is closed and only copies of certain documents held on our case management system will be available. There is a risk that in any subsequent dispute or court case electronic copies may not have the same status as original documents potentially reducing their evidential value. Should we thereafter receive a mandate to provide a copy of documents held on our case management file, we will print off the relevant parts of the file and there will be a charge (currently £100 plus VAT) for the paper copies being produced. This fee will be payable before the copies are produced.

We will not destroy documents (such as Wills, Titles and Securities) that you ask us to keep in our custody.

The firm does not presently intend to destroy any of its electronic documentation even after the Law Society's recommended retention periods. However, this policy could change in the future.

#### **19. Post Settlement Claims**

In certain instances we are required to deal with post settlement claims. This might arise if you are a purchaser and there is a claim that you wish us to intimate under the Missives or if you are a seller and we receive an intimated claim from the purchasing solicitors. Our policy is that we will intimate the first claim letter (provided your instructions are received timeously within the time period provided in the Missives and provided you have given us sufficient notice to enable us to do so) at no additional charge. Likewise, if we receive a claim under the Missives, we will forward this to you at no additional charge. If we require to be involved in any further discussion, telephone attendance, e-mail or in writing in connection with the matter, we will be entitled to charge an additional fee at the rate of £250.00 plus VAT per hour for said work. This will be subject to a minimum charge of £100.00 plus VAT. You are asked to make clear in writing or by e-mail to your conveyancer whether you wish us to be engaged in this matter on receipt or on submitting a claim, failure to provide instruction means we will not take the matter further. If we receive instructions to continue, we will assume that you wish us to deal with the matter on your behalf and are agreeable to the charges set out herein.

#### **20. Limitations and exclusions**

20.1. Unless expressly stated in the Letter of Engagement the work will not include:

20.1.1. Monitoring or reminding you of warranty periods or other notice periods. In particular, purchasers who are buying or renting land and buildings in Scotland are obliged to make a Land and Buildings Transaction Tax (LBTT) Return to Revenue Scotland and to pay any LBTT assessed on the transaction. If we are acting for you as a purchaser or tenant, we will prepare and submit the LBTT return on your behalf at the time the property is purchased, or the Lease is completed, provided that you have put us in funds to meet the LBTT payable in full. The Tenant under a Lease is obliged to make three yearly updated Returns to Revenue Scotland and pay any additional LBTT assessed. Penalties apply if these returns are not submitted on time. Whilst we are happy to provide advice and assistance in completing these returns, we will not provide reminders of the due dates and accept no responsibility for failure to submit a return on time. It will be for the client to ensure that they make their own arrangements to ensure that the three yearly return is submitted on time.

20.1.2. Corporate or other tax or fiscal duty advice (other than Land and Buildings Transaction Tax in relation to property transactions). We will assume you have considered the tax consequences of any transaction you instruct us to carry out and that you do not require us to provide or source tax advice on such matters.

20.2. We will use reasonable skill and care in the provision of our services. This may involve the consideration of the level of risks or prospects of success and you accept this is done on the basis of information available to us. Any decision on accepting any such risk is for you alone.

20.3. We are not liable for any advice or opinions or the costs thereof given to you by third parties whether or not recommended by us.

20.4. Our services are provided for you as our client only and no other person may use or rely on them nor derive any rights from them.

20.5. Drafts or other provisional advice should not be relied upon as our final view of any matter.

20.6. Our advice is given in accordance with the law as it exists at the time that the service is provided. We will not be responsible for any changes after the advice was given.

20.7. Nothing in these Conditions of Business shall limit or exclude our liability for:

20.7.1. Death or personal injury caused by our negligence,

20.7.2. Fraud or fraudulent misrepresentation, or

20.7.3. Any other liability which cannot be limited or excluded by applicable law.

20.8. Subject to paragraph 20.7 above, we shall not be liable to you, whether in contract, delict (including negligence), for breach of statutory duty or otherwise, for:

20.8.1. loss of profits, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of or damage to goodwill, loss of use or corruption of software, data or information, or any indirect or consequential loss.

20.9. Subject to paragraph 20.8 above, unless we expressly agree another limit with you in writing, our aggregate liability in respect of any claim, circumstance or series of related claims or

circumstances, whether in contract, delict (including negligence), for breach of statutory duty or otherwise shall be limited to £2,000,000.

20.10. We are not liable for any indirect loss or damage or any loss of profit or other consequential loss.

20.11. We are not liable for the loss of money held on your behalf with any bank or other financial institution if such loss arises from the insolvency or other failure to make payment on the part of such bank or institution for reasons outwith our control.

## 21. **Incidental Financial Business**

22.1 The Firm of Allan McDougall McQueen LLP is licensed by the Law Society of Scotland to carry on Incidental Financial Business under the Society's Practice Rule C2: Incidental Financial Business.

22.2 The Firm of Allan McDougall McQueen LLP is not authorised by the Financial Conduct Authority under the Financial Services and Markets Acts 2000.

22.3 The Firm of Allan McDougall McQueen LLP has Professional Indemnity Insurance under the Law Society of Scotland's Master Policy. The current level of indemnity under the Master Policy is £2m per claim. The Firm of Allan McDougall McQueen LLP is also covered by the Scottish Solicitor's Guarantee Fund which is a fund established under Section 43 of the Solicitors (Scotland) Act 1980 for the purposes of making grants in order to compensate persons who, in the opinion of the Council of the Law Society of Scotland have suffered pecuniary loss by reason of dishonest on the part of a Scottish solicitor in connection with the practice of a solicitor.

## 22. **Other Jurisdictions**

22.1. The scope of our advice extends only to matters of (1) Scots Law, and (2) other laws which have direct application within the Scots Law jurisdiction. Where we give advice in relation to matters which are subject to laws of any other jurisdictions, we cannot accept responsibility or liability for the same. In these cases, we will give advice strictly on the basis we are providing objective commercial advice to help enable you to consider in what form (if any) you require additional advice from persons in that other jurisdiction.

22.2. We can introduce relevant persons qualified in other jurisdictions, however in all cases, your engagement of their services whether directly or indirectly through us is a matter of separate contract and you will be liable for their fees and costs and we do not accept any liability or responsibility for their advice under other jurisdictions or laws out-with Scotland.

## 23. **Scots Law**

Scots Law governs the provision of all services to you and all actions on your behalf, whether or not you are based in Scotland or the services or actions take place in Scotland. The Scottish Courts shall have exclusive jurisdiction to deal with any dispute or matter arising from such services or actions.

## **ADDENDUM TO GENERAL TERMS OF BUSINESS RE A PURCHASE TRANSACTION**

These additional Terms of Business should be read in conjunction with our General Terms of Business and deal with additional matters arising out of the purchase of a Property

### **General**

We are not instructed in relation to financial services such as mortgage and insurance. **It is your responsibility to chase your loan papers and to obtain your own buildings insurance.**

There will be periods when you will hear nothing from us, however this is normal and does not mean that we are not progressing your transaction. **If you have any concerns, please contact one of our many offices or telephone/email the person dealing with your case.** Please check contact details for staff below.

### **Source of Funds (Additional Requirements)**

Please note that we will require you to give us evidence of how you have obtained the funds to pay to us as a deposit on your purchase price or, indeed, the whole price. This evidence will require to be sufficient to show us that you have received the funds legally and that they are your own funds. If you receive any funds from a third party you will require to satisfy us that this is acceptable and the same evidence will be required of the third party along with their ID. **You MUST tell both your lender and us at the earliest possible opportunity if funds have or will (a) come through a third party; and/or (b) been gifted to you. Please note that we will have to declare the source of funds (including gifts and third party loans) to your lenders.**

To satisfy the requirements on source of funds you may have to produce a copy of a Divorce Court order, bank statements going back for considerable periods, evidence by way of letter from a solicitor that you have inherited sums, contracts for the sale of shares, closure of an ISA or evidence from a solicitor showing that the funds came from an earlier sale of property for example. This list is not exhaustive. If you require advice from us, please telephone your conveyancer to discuss what will be acceptable. **We cannot settle your transaction without this evidence being provided and being found to be acceptable to us at least 14 days prior to the proposed Date of Entry.**

### **Our Responsibilities to you**

We are instructed to negotiate the purchase of a property for you. One of our Purchase Negotiators will discuss with you the terms of the Home Report on the property prior to purchase and will give some guidance on the amount you will likely have to offer in order to have some prospect of success. We will, following successful negotiation of a purchase, deal with the conveyancing of that property for you. Any opinions given are for guidance only and may not otherwise be relied upon. We will report to you at various stages in the transaction on the terms of the title and on the terms of the missives. We will also deal with preparation of the documentation required by any lender.

The conveyancing work will be carried out for you either by one of our solicitors or by a paralegal. We do not allocate work to a conveyancer until you have agreed a date of entry. The reason for this is to ensure that no conveyancer is overloaded with transactions and cannot offer an efficient service. Immediately after you are successful with a purchase, your Purchase Negotiator will notify you of the identity and contact details of your conveyancer.

The contract between us for the purchase of this property will terminate once settlement has been effected, any LBTT has been paid on your behalf and the title has been registered. Any claims in terms of the missives will not form part of this contract.

### **Closing Dates**

We will note your interest in any property on request. In most cases, the selling agents will notify interested parties of the setting of a closing date, however there is no legal obligation on them to do so. They may accept another offer without reference to you or us.

## Purchases of New Build Properties

The procedures in respect of new build properties differs in a number of material respects. These will be clearly outlined upon receipt of the documentation from the builders' solicitors. You should be aware that there are two particular aspects to draw to your attention:

- a) The date of entry is an uncertain date. The date can change and you will not be informed of a definite date until around 2 weeks before settlement; and
- b) There are additional outlays payable for searches which are required by your lenders and which the builders will not supply.

## Cladding – External Wall Systems

External wall systems (including but not limited to Cladding)- In certain situations further investigations may be required for flatted dwellinghouses. We cannot give advice on the structural integrity of the building or the necessity of obtaining an EWS1 form ( or any similar structural or building indemnity/report/document) nor give advice on any of same. For all flatted properties we will enquire of the Home Report Surveyor if there is any external wall system for which we require an EWS1. We shall rely on the surveyors advice in relation to your individual purchase. We will not advise on the sufficiency or otherwise of the EWS1, or the sufficiency or otherwise of the Professional Indemnity cover of the provider, but will copy it to you and your lenders for confirmation that you wish to proceed with the purchase. If required and instructed by you we will obtain an assignation in your favour. We will charge an additional fee of £250 + vat for attending to any additional work required in respect of cladding investigations, the EWS1 Form and/or the assignation of said EWS1 form.

## Missives

These are formal letters which pass between solicitors. When all the terms are agreed then the purchase is "concluded".

There is now a standard form of contract for property purchases and sales in most of Scotland which is used by many firms of solicitors. To see the Scottish Standard Clauses, please check the website of The Law Society of Scotland. The Scottish Standard Clauses are hopefully self-explanatory, however if you have any questions regarding the terms of the Standard Clauses, please check the Client Guide on the Law Society's website or the copy we provide during the transaction. If you still have queries, advise us so that we can discuss them with you. We will use the Scottish Standard Clauses in any purchase on your behalf. If you are purchasing a property, please be aware that by instructing us to offer for a property (or if the offer is "subject to survey" and you instruct us to withdraw the survey clause in writing following your receipt of a verbal survey report) you must be willing to be legally bound to purchase the property. It is possible that the seller's solicitor may issue a formal letter accepting the offer which would immediately result in a legally binding contract. You should therefore not instruct us to put an offer in for a property unless you are willing to be legally bound to the purchase and unless you are satisfied that you will be able to finance the purchase.

If you do have difficulty in obtaining mortgage finance or concluding any house sale in time for the date of entry after the conclusion of missives, you will be liable to pay damages to the seller of the property. These damages will include any losses which the seller makes as a result of your failure to complete on time and will certainly include interest at the rate of at least 4% per annum above Bank base rate on the purchase price. If you fail completely to make the payment, you will also be liable for other substantial damages such as the difference between the price you offered and the price the seller actually secures in re-selling the property plus the additional legal fees and expenses as well as other items. **This is a situation you do not want to find yourself in.** Full details of the damages which you could be asked to pay are included in the Standard Clauses.

Please note – **you are not required to sign missives** – you will be bound by our signing the letters on your behalf. We will check with you throughout the negotiation of the missives and will only sign missives on your instructions. You should note, however, that at any point the selling agents could conclude missives without reference to us.

## Survey

Once your offer has been accepted verbally by the selling agents, we will instruct a survey for you at the request of you or your lenders, if you so require and put us in necessary funds to do so. Otherwise a Home Report will have been prepared prior to the marketing of the property commencing by the Seller. While you may be able to rely on this, your lender may not especially if it is more than 3 months old. Moreover, it is your responsibility to review this document and satisfy yourself on all aspects of the report. We do not provide advice on the Home Report and cannot be held liable for any failure to bring matters to your attention within same. We will review the surveyor's comments in the relevant section addressed to legal advisors/solicitors and discuss same with you where relevant.

## Fees

We will provide you with a quotation of the business charges (fees), including VAT and an estimate of payments due to others (outlays) that may be anticipated to arise. Please note that McDougall McQueen may receive volume commission from third party suppliers and by your acceptance hereof you will be deemed to be notified of this fee arrangement. The business charging information is provided for guidance only as a reasonable assessment of how matters may proceed on the basis of the information disclosed and available. Additional charges may arise for any additional services and/or outlays provided in the course of the conduct of the matter in question as a result of any new, undisclosed or unforeseen factors or circumstances arising. Any such additional charges will be advised and agreed in advance where possible. In the event of cancellation of instructions for any reason outwith McDougall McQueen's control, a fee charge for time expended by McDougall McQueen, plus outlays incurred to date of cancellation, will be payable on receipt of invoice.

Additional fees will be charged in respect of Shared Equity Schemes, Help to Buy or separately represented lenders. If any of these are proposed, please ask us for a note of the additional charges involved.

## Land & Buildings Transaction Tax (LBTT)

We will prepare on your behalf a form for submission of your details to Revenue Scotland. We will discuss or request information for the important elements of the form with you (and may in certain instances send the draft form to you along with any security documentation in respect of a loan, prior to settlement). However, by instructing us to proceed with your purchase transaction, you will be deemed to have authorised us to notify Revenue Scotland and to disclose the details of the transaction to them and importantly make the relevant submission on your behalf.

## Title

Please note, in the absence of contrary instructions, the title to the property will be drawn in favour of you both equally between you and to your respective executors and successors (i.e. without a survivorship or such like provisions in the event of either death). We recommend that you deal with this aspect of your testamentary wishes, as well as any connected Inheritance Tax issues, in separate Wills. If you require any further advice on these matters please can you contact our Private client Department on 0131-622-1771. They will be more than happy to assist. **If you wish the title to be drawn in unequal shares or to include a survivorship clause you must advise us immediately of your requirements.**

## Buildings Insurance Cover

It will be your responsibility to obtain buildings insurance cover with effect from 00.01 on the date of entry of your purchase. If you are obtaining a mortgage loan, it is your responsibility to forward to us a copy of your insurance schedule a few days before settlement is due. If you do not do so, the transaction may not settle.

## Tax Advice

We will be unable to give you any advice in relation to tax matters or any potential individual tax consequences of your purchase or sale transaction.

## Settlements

These will take place Monday to Friday only and on days in which the Banks in Scotland are open for business. We will make efforts to ensure that settlement takes place as early in the day as proves possible.

You should be aware that we can be held up by sales having to take place before your purchase does. Accordingly, we cannot give you an estimate of the timing in advance.

### **Retention of Title Deeds**

In some cases, your title deeds will be sent to your lenders following completion of the registration process. If, however, you do not have a lender or your lender does not want the titles sent to them, we would propose to keep the titles in safekeeping for you. We do not charge for this service; however, we would make a reasonable charge (currently £50+ VAT) for retrieving the deeds if they are to be sent out to another firm of solicitors. There will be no charge in the event you instruct us to act in a future transaction.

### **Statutory Notices**

Sometimes these will come to light during the course of a transaction. They are notices by the Council requiring work to happen to the roof or other common parts of a building. If any notices come to our attention during your purchase, we shall check if the invoice has been issued. If it has, the Seller will remain responsible. The Council may still chase you for payment of an account as you are the owner at the time of any reminder being issued in respect of the outstanding invoice. You should, however, inform them that the Seller is responsible and suggest they address the invoice to them.

If the work has not been invoiced, yet the work has been or is in course of being carried out, we will request estimates of the cost and will attempt to agree either (a) the work is completed before the DOE; (b) the Sellers solicitors retain the amount of the average of these plus the Council's management fee of 15% + VAT and plus normally 25% until the work is completed, or (c) that an amount is deducted from the sale price. There is no guarantee that this will be enough to pay the invoice. It should be noted that we are, in accordance with normal practice between solicitors, making a reasonable estimate of costs which might be incurred. However, we cannot foresee any future problems and cost increases and you should appreciate that we will not be liable for any discrepancies between amounts retained and the actual amount of the account you may receive. Technically, in scenario (b) above, the Seller remains liable for these additional costs, however they will be very difficult to recover and would involve you in possible court action. The Council are, however, entitled to recover costs from you.

Please Note: In the event no work has commenced and if the notice has not been implemented, as the valuation of the property was based on in its unimproved condition, the agreed position is that the Purchaser accepts the future liability of these works, as these will improve the property to which the purchaser alone will receive the benefit. Accordingly, such unimplemented statutory notices become your responsibility to attend to the work and pay for it at some point in the future. If you are not happy to proceed on this basis, you must advise us immediately.

Any investigations into the extent of works and obtaining of estimates will incur an additional fee.

### **Payment of Funds**

Please note the terms of these Terms and Conditions with reference to payment of funds to us in time for settlement. It is likely that you will be requested to send most funds by CHAPS for which your bank will charge you a fee or by internet banking. Please do not allow your bank to send the money by any other means as it may cause you and us difficulties just before your transaction is due to settle. Please insist that the money is sent by CHAPS. Please note that, if you send multiple payments (more than 3) by internet banking, we will charge a reasonable fee in respect of the additional administrative work involved. In addition, where we require to make an electronic transfer of funds on your behalf, we reserve the right to charge a small additional bank administration Fee for each payment.

If you require to make a payment to us in these circumstances, your payment should be made to our bank account. We shall supply details of our bank account at the time. The shortfall should be paid by debit card or by bank transfer not later than 3 business days before settlement.

**We have NO intention of changing this account. If you are informed that it has changed, you are being defrauded and you should telephone your conveyancer immediately. You should never communicate by e-mail in these circumstances as you are probably corresponding with the fraudsters rather than our staff.**

It is important that you read this carefully and comply with these terms otherwise your transaction may not settle and you may be charged damages by the seller.

### **Defects in your New Home**



The Scottish Standard Clauses entitle Purchasers, in very limited circumstances, to make a claim against the seller in the event that any central heating system, appliances included in the price or any services at the property are not in reasonable working order. Please check the Standard Clauses for the exact terms of this possible claim. The undernoted comment is intended to be helpful to give you an idea of the extent of any possible claim but is not exhaustive.

You should bear in mind that houses are not perfect. Floorboards may be crooked or sag, windows may not open or the catches may not work, tiles may be loose on the roof or a chimney pot may be about to fall off. You will not have a claim for such defects against the seller. Defects, such as, for example, no stop cock, which do not stop the system working will not entitle you to claim. You should check everything **as soon as you move in** and let us know of any defects for which you can make a valid claim within **4** working days. You will, however, not have a claim in respect of small amounts of less than £400.

You should also note that although you may have a valid claim the seller may not pay without court action being raised. This may be expensive, and even then, if he does not have the funds to pay, you may be left out of pocket. In many cases, it is likely that we will advise against any such action being taken especially when amounts involved are relatively small. We do not carry out court work and would have to pass you to another firm to undertake the litigation.

### **CONTACT DETAILS OF OUR CONVEYANCING OFFICES**

#### **Bruntsfield**

103-105 Bruntsfield Place  
Edinburgh  
EH10 4EQ  
0131 228 1926

#### **Dalkeith**

93 High Street  
Dalkeith  
EH22 1JA  
0131 663 7261

#### **Gorebridge**

26 Main Street  
Gorebridge  
EH23 4BY  
01875 821960

#### **Bonnyrigg**

2 Lothian Street  
Bonnyrigg  
EH19 3AD  
0131 666 2424

#### **Chesser**

2B New Mart Road  
Edinburgh  
EH14 1RL  
0131 622 1771

#### **Penicuik**

20 High Street  
Penicuik  
EH26 8HW  
01968 675694