

Developer's Offer Explained

QUALITY HOMES LIMITED

36 Construction Avenue
New Town
NW24 5TR

Dear Sirs

We, **Hamish McIntosh and Catriona McIntosh residing at 76 Old Street, Old Town**, hereby offer to purchase from you that dwelling house forming **Plot 6 of the development at Pristine Street, New Town** as seen on the site layout plan, which plan is demonstrative only and not taxative and may be varied by you as circumstances require, and that on the following terms and conditions:-

(The first paragraph gives details of the buyers and the property to be bought. Unless the house has already been built the offer will refer to the Plot number.)

1. The price shall be **ONE HUNDRED AND FIFTY THOUSAND POUNDS (£150,000.00) STERLING** together with the cost of any additions, variations or extra items which we have instructed in writing.

(Clause 1 states the purchase price. You will see that it allows for the buyer to instruct extras at a later date.)

2. The price shall be payable as follows:
 - (a) A deposit of **£2500** (of which a reservation fee of **£500** has already been paid) will be payable within 10 days of the date of your acceptance of this offer. In the event that the said deposit is not paid within the said 10 days you shall be entitled to resile from the contract hereon and to sell the house to another party and to retain the reservation fee.
 - (b) The cost of any additions, variations and extras.
 - (c) The balance of the purchase price will be paid on the date of entry aftermentioned by payment of cleared funds by telegraphic transfer by us or on our behalf direct to your Sellers solicitors Clients Account.

(Clause 2 sets out the reservation fee and deposit and when they are required to be paid to the developer. The reservation fee is usually non-refundable. It also requires that the balance of the purchase price be paid by telegraphic transfer rather than by a cheque on the date of entry. This is the norm in new build transactions.)

3. (a) Where the house has not been passed by the Local Authority as habitable at the date of conclusion of missives to follow hereon, the date of entry will be ten days after you have intimated to us or our agents that (a) the subjects are complete and have been inspected and passed by the Local Authority as habitable and fit for occupation and (b) that the National House Building Cover Note has been issued or such earlier date within the ten day period as is mutually agreed.
(b) Where the house has been passed by the local authority as habitable and fit by the local authority and a National House Building Cover Note has been issued at the date of our reservation of the subjects the date of entry will be twenty eight days from the date of conclusion of missives to follow hereon.

(Clause 3 explains when the date of entry will occur. If the house has not been completed the date of entry will be ten days after the Local Authority and the NHBC have both confirmed that they have passed the house as ready for occupation. The NHBC Warranty Note will be explained in Clause 9. As previously explained the developer in these circumstances will not be able to give you a specific date of entry. He might give you a likely date but you will not be able to hold them to it. You will only gain entry to your house once it has been completed.

If on the other hand that the house has already been built and is ready to move in, then you will have a specified date of entry. Under this contract the date of entry is 28 days after the contract has been signed by the developer.)

4. Entry and actual vacant possession will only be granted to us on full payment of the purchase price. Consignation of the purchase price or any part thereof will not be accepted.

(Entry to the new house will only be given to the buyer when they have paid over the full purchase price.)

5. Payment of the Purchase Price on the date of entry (together with the price of any extra items ordered by us) is an essential condition of the contract. If the Purchase Price is not paid on the date of entry in terms of condition 2 hereof you will be entitled to charge interest at the rate of five per centum per annum above the Bank of Scotland Base Lending Rate from the date of entry until settlement . If, at the end of seven days from the date of entry the purchase price or any part remains unpaid you will be entitled, at your sole discretion, and without prejudice to any other remedy competent to you, to terminate the contract constituted by this offer and its acceptance and to resell the house. In the event of you exercising your option to resell, the deposit and any sum paid by us for extras shall be retained by you and be applied to loss sustained on the re-sale of the house including interest on the Purchase Price and all expenses and outlays properly incurred by you. We shall have no concern with the expenditure of the deposit nor shall have any right to demand an accounting thereof from you. Interest will not be charged where the delay in settlement is wholly attributable to you or your agents.

(This is the interest penalty clause and is always inserted in every house sale contract whether it is an existing property or a new build. If the buyers do not come up with the full purchase price on the date of entry then they will be liable to penalty interest which will accrue on a daily basis until payment is made. It is normal in a clause of this type to allow the developer the right to remarket and sell the property to another party if the buyer does not come up with the money within 7 to 14 days. The buyer, however, will still be liable for daily interest under this contract until the developers receive the purchase price from the new buyers. In addition to the interest payable the buyer will also become responsible for any extra costs the developer may incur when re-selling the property, e.g. extra legal costs, additional advertising costs. Moreover the buyer will be liable for any shortfall in price from the new sale.)

6. The subjects of purchase will be completed in accordance with the plans and specifications inspected by us but the sizes in said plans and specifications are approximate only and no warranty is given that the plans and specifications may not be varied where necessary You reserve the right to vary the materials where necessary due to shortage or lack of or delay in obtaining the same and to complete the development in such a manner at your sole discretion shall deem suitable. In the event that you vary the materials as aforesaid any substituted materials will be of at least as good quality as those originally specified.

(This clause allows the developer to vary the materials. This clause is put in for practical considerations. It covers the situation where one of the developer's suppliers goes bust and they have to locate materials from a different supplier. The buyer's position is covered as the clause states that the developer can not use materials of an inferior quality.)

7. You shall not be bound by the layout or general scheme of the development of the Estate as may be shown on any plans at any time prepared in regard to the Estate and may alter such layout or general scheme of development in such manner as you may deem fit and extend development to and adjoining the Estate and we shall have no right or title to object to or make claims against you.

(Clause 7 allows the developer to make variations to the estate layout after a contract has been completed with a buyer. You should be aware the site plan that the buyers will have examined before completing the contract could be varied by the developer at any time. This clause usually does not cause any problems but if the buyer has any concerns they should bring it to the attention of their solicitor.)

8. The purchase price shall include the formation of roads, footpaths, sewers and drains to the standard required by the Local Authority and also for the formation of parking areas, landscaped areas and amenity areas to the appropriate standard. We will maintain jointly along with any other proprietors, the proprietors having an interest therein until the same are taken over by the Local Authority. You do not warrant that the roads, footpaths, sewers, drains and parking space and landscaped and amenity areas or any of them or any part or parts will be taken over by the Local Authority and no sum will be retained from the Purchase Price nor will any part of the Purchase Price be consigned at settlement to await completion of the same. You will enter into an appropriate Road Guarantee with the Local Authority if required to do so and evidence that the appropriate sums have been deposited with the Local Authority will be exhibited prior to the purchase.

(It is usual for there to be a condition attached to the planning permission of the development that the developer will be responsible for the formation of the roads, footpaths, drains and sewers and that they will be completed to a certain standard. When this standard has been met the Local Authority will take the responsibility of maintenance of them for all time coming. The clause is stating the purchase price has already taken into account the cost of the formations of the roads, footpaths drains and sewers. The developer will usually have taken out some kind of insurance cover to ensure the these services will be completed and will be taken over by the Local Authority and that no responsibility in

the future will lie with the owners of the houses on the development. Your solicitor will check the position here.)

9. You will provide me with the appropriate National House Buildmark Scheme and there will be delivered to us in due course the Council's 10 year notice.

(Most substantial developers are members of the National House Building Council and as such offer the benefit of NHBC Certificates to cover the house against certain defects over a 10 year period. The defects covered are of a structural nature and not matters relating perhaps to shoddy decorating. These defects are covered under Clause 16.)

10. The risk of damage to or destruction of the subjects of sale shall not pass to us until actual vacant possession is given to us. In the event of material damage or destruction prior to settlement either party shall be entitled to resile from the missives without penalty or expense.

(This clause ensures that the buyer will not require to have buildings insurance in place until the date of entry.)

11. The subjects of sale will be subject to all necessary servitude rights of access for laying, installing, connecting, inspecting, replacing and maintaining all drainage, sewerage, electric and gas pipes and cables and all others in your favour and your successors, the Local Authority, Public Boards, Statutory Undertakers and all others concerned. There is further reserved to us all necessary rights of access in connection with the development and construction of the subjects as may be necessary to complete building work on adjacent properties.

(This clause allows service providers rights of access to maintain or replace cables, pipes etc. The clause also allows access to the developer, if required, to complete neighbouring properties. For example they may require to be in your garden if they are constructing a boundary fence for the neighbouring house.)

12. The minerals are included in the purchase price only in so far as you have right thereto.

(This is something your solicitor will check when he is examining the title over the new house.)

13. The subjects of sale are sold for private residential purposes only and shall be conveyed with the rights, common, mutual and otherwise and subject to the reservations, prohibitions, conditions and other contained in the titles of the development and to be contained in the Deed of Conditions for your development, the terms of which we agree to accept. We understand that you will appoint a factor to be responsible for the upkeep and maintenance of common parts for an initial period to be reviewed thereafter in terms of the said Deed of Conditions. We further understand that the factor shall be entitled to recover all costs of such maintenance and upkeep, together with their own professional fees on an equitable basis from all the proprietors in the development.

(This property can only be used as a house and not for business purposes. This also means that the buyer can not run a business in the back room of the house.

The clause also refers to a Deed of Conditions. This is the legal document which sets out the conditions which all the owners of the houses in the development must follow. Again your solicitor will check through this document to ensure there is nothing untoward.

Finally a factor will be appointed over the development. It is very common for a factor to be appointed over a new housing development. The factor will be responsible for maintaining the common parts of the development. There will usually be an annual factoring charge. Enquiries should be made by either the buyer or their solicitor as to the amount of the factoring charge.)

14. In exchange for the payment of the full sums due on the date of entry there will be delivered a duly executed Disposition by the infert proprietor in our favour in the form required by you and there will be exhibited or delivered either a Land Certificate (containing no exclusion of indemnity under Section 12 (2) of the Land Registration (Scotland) Act 1979) or copies of all writs lodged with the Keeper in support of an application for first registration and all necessary links in title evidencing the grantors ownership of the subjects of sale and a Form 12 Report brought down as near as practicable to the date of settlement and showing no entries adverse to the grantors interest, the cost of said Report being our responsibility. In addition you will furnish us with such documents and evidence as the Keeper may require to enable our interest to be registered as proprietor in the Land Register without exclusion of indemnity under section 12(2). The Land Certificate to be issued to us will disclose no entry, deed or diligence prejudicial to our interest other than

such as are created by or against us, or have been disclosed to and accepted by us prior to the date of entry. Notwithstanding the delivery of the Disposition above referred to, this clause shall remain in full force and effect and may be founded upon.

No searches in the Register of Charges or the Companies files will be provided. You warrant that the infett proprietor have not granted and will not prior to the date of entry grant any Floating Charge. We may obtain such Searches at our own expenses and if such Searches disclose any entries adverse to the subjects of sale, which cannot be cleared prior to the date of entry we may rescind the missives, without penalty due or by.

(This clause will be inserted in the contract for the purchase of existing and new properties. The aim of the clause is to ensure that the buyer receives a good title to their new house. The buyer's Solicitors will ensure all conditions under this clause are met before the date of entry giving the buyers a valid and marketable title to their new home.)

15. We shall have no concern with terms of any planning permission, building warrant or the like relating to the house or estate. We will not be entitled to demand sight of the same but will accept your assurance that all necessary permissions, warrants and the like have been obtained and are in order. You will undertake to deliver a copy of the Completion Certificate as soon as received from the Local Authority.

(The buyer can not ask to see building regulation documents to the new house. The developer will have to ensure these are in place before the date off entry. Again this is normal practice when buying a new build.)

16. You shall be bound to make good any defects which become apparent in the subjects of sale attributable to faulty materials or workmanship provided any such defects are intimated to us in writing within 6 months of the date of entry. You will not be liable for any defects in the decoration of walls or ceilings attributable to chemical reaction of the brick or plaster or the drying out of the plaster and any defects due to normal shrinkage or drying out.

(The developer will have to repair any defects intimated to them by the buyer within 6 months. This is often referred to as the snagging list. These are defects due to poor materials or workmanship. They do not cover structural defects which will be covered under the NHBC warranty discussed at clause 9.)

Yours faithfully

Date

Signature

Signature

Then Offeror should sign where indicated before an independent witness who should complete the witness details.

Witness

Name

Address

(The buyers will sign the offer in the presence of one witness.)

On behalf of Quality Homes Limited, we hereby accept the forgoing offer on the terms and conditions stated therein.

Date

Witness

36 Construction Avenue
New Town

(Once the signed offer has been returned to the developer they in turn will sign the contract. As soon as it is signed by the developer there is a concluded contract to the purchase of the house and both parties are legally tied in.)