

# CONTRACT OF SALE OF REAL ESTATE

Part 1 of the form of contract published by the Law Institute of Victoria and The Real Estate Institute of Victoria

The Vendor agrees to sell and the purchaser agrees to buy the property, being the land and the goods, for the price and on the terms set out in this contract.

The terms of this contract are contained in the -

- particulars of sale; and
- special conditions, if any; and
- general conditions.

in that order of priority.

## SIGNING OF THIS CONTRACT

**WARNING: THIS IS A LEGALLY BINDING AGREEMENT, YOU SHOULD READ THIS CONTRACT BEFORE SIGNING IT.**

Purchasers should ensure that, prior to signing this contract, they have received -

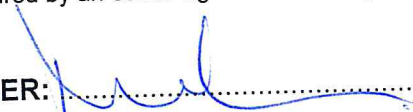
- a copy of the Section 32 Statement required to be given by a vendor under Section 32 of the Sale of Land Act 1962 in accordance with Division 2 of Part 11 of that Act; and
- a copy of the full terms of this contract.

The authority of a person signing -

- under power of attorney; or
- as director of a corporation; or
- as agent authorised in writing by one of the parties -

must be noted beneath the signature.

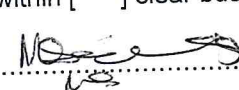
Any person whose signature is secured by an estate agent acknowledges being given by the agent at the time of signing a copy of the terms of this contract.

**SIGNED BY THE PURCHASER:**  on 9.1.17 2017

Print name(s) of person(s) signing Julian Edman

State nature of authority, if applicable Director

This offer will lapse unless accepted within [ ] clear business days (3 clear business days if none specified)

**SIGNED BY THE VENDOR**  A Szmecinski on 9.1.17 2017

Print name(s) of person(s) signing X MIRIAM SZMECINSKI AND ADRIAN SZMERLING

State nature of authority, if applicable X Zalman Szmeling

The **DAY OF SALE** is the date by which both parties have signed this contract.

### IMPORTANT NOTICE TO PURCHASERS

**Cooling-off period** (Section 31 Sale of Land Act 1962)

You may end this contract within 3 clear business days of the day that you sign the contract if none of the exceptions listed below applies to you.

You must either give the vendor or the vendor's agent **written** notice that you are ending the contract or leave the notice at the address of the vendor or the vendor's agent to end this contract within this time in accordance with this cooling-off provision.

You are entitled to a refund of all the money you paid EXCEPT for \$100.00 or 0.2% of the purchase price (whichever is more) if you end the contract in this way.

**EXCEPTIONS** The 3-day cooling-off period does not apply if:

- You bought the property at or within 3 clear business days **before or after** a publicly advertised auction; or
- The property is used mainly primarily for industrial or commercial purposes; or
- The property is more than 20 hectares in size and is used primarily mainly for farming; or
- You and the vendor have previously signed a contract for the sale of the same land in substantially the same terms; or
- You are an estate agent or a corporate body.

**PARTICULARS OF SALE**

**VENDORS' ESTATE AGENTS**

Name: Rodney Morley  
Address: 203 Balaclava Road, Caulfield North 3161  
Telephone: 9525 9222  
Fax: 9525 9362

**VENDORS**

Names: Chasam Nominees Pty. Ltd., Adrian Szmertling and Miriam Szmertling  
Address: c/- Unit 4, 1 Mackay Avenue, Glenhuntly 3163

**VENDORS' LEGAL PRACTITIONER**

Name: Jacques Goldwaser  
Address: Suite 16, Level 7, 24 Albert Road, South Melbourne 3205  
Telephone: 9077 5552  
Fax: 9077 1932

**PURCHASER**

Name: Edelman Investments Pty Ltd  
Address: as trustee for edelman super fund.  
32 Lucas Street, Caulfield South.

**PURCHASER'S LEGAL PRACTITIONER OR CONVEYANCER**

Name:  
Address:  
Telephone:  
Fax:

**LAND** (general conditions 3 and 9)

The land is described in the attached copy title(s) and plan(s) as: Certificate of Title Volume 8935 Folios 135 & 162 being Unit 1 & Accessory Unit 32 on Strata Plan 3101 and includes all improvements and fixtures.

**PROPERTY ADDRESS**

The address of the land is Flat 1 & Accessory Unit 32, 399 Alma Road, Caulfield North

**GOODS SOLD WITH THE LAND** (general condition 2.3(f))

All fixed floor coverings, light fittings and window furnishings

**PAYMENT** (general condition 11)

PRICE \$ 600,000  
DEPOSIT \$ 60,000 by 9 / 7 / 2017 (of which \$ 60,000 has been paid)  
BALANCE \$ 540,000 payable at settlement

**GST** (general condition 13)

The price includes GST (if any) unless the words 'plus GST' appears in this box:

If this sale is a sale of land on which a 'farming business' is carried on which the parties consider meet the requirements of section 38-480 of the GST Act or of a 'going concern' then add the words 'farming business' or 'going concern' in this box

If the margin scheme will be used to calculate GST then add the words 'margin scheme' in this box:

[Empty box]

**SETTLEMENT** (general condition 10)

is due on 8 / 09 / 2017

unless the land is a lot on an unregistered plan of subdivision, in which case settlement is due on the later of:

- the above date; and
- 14 days after the vendor gives notice in writing to the purchaser of registration of the plan of subdivision

**LEASE** (general condition 1.1)

At settlement the purchaser is entitled to vacant possession of the property unless the words 'subject to lease' appear in this box in which case refer to general condition 1.1.

Subject to Lease

If 'subject to lease' then particulars of the lease are: (\*only complete the one that applies. Check tenancy/lease agreement before completing details)

\*residential tenancy agreement for a fixed term

OR

\*periodic residential tenancy agreement determinable by notice

OR

\*lease for a term of 12 months commencing on 18 September 2016 and ending on 17 September 2017 with [ ] option to renew, each of [ ] years

**TERMS CONTRACT** (general condition 23)

If this contract is intended to be a terms contract within the meaning of the Sale of Land Act 1962 then add the words 'terms contract' in this box, and refer to general condition 23 and add any further provisions by way of special conditions.

[Empty box]

**LOAN** (general condition 14)

The following details apply if this contract is subject to a loan being approved:

Lender:.....

Loan amount: \$ \_\_\_\_\_ Approval date: / / 2017

**SPECIAL CONDITIONS**

This contract does not include any special conditions unless the words 'special conditions' appear in this box:

SPECIAL CONDITIONS

**GENERAL CONDITIONS**

**TITLE**

**1. Encumbrances**

- 1.1 The purchaser buys the property subject to:
- (a) any encumbrance shown in the section 32 statement other than mortgages or caveats; and
  - (b) any reservations in the crown grant; and
  - (c) any lease referred to in the particulars of sale.
- 1.2 The purchaser indemnifies the vendor against all obligations under any lease that are to be performed by the landlord after settlement.
- 1.3 In this general condition 'section 32 statement' means a statement required to be given by a vendor under section 32 of the Sale of Land Act 1962 in accordance with Division 2 of Part 11 of that Act.

**2. Vendor warranties**

- 2.1 The vendor warrants that these general conditions 1 to 28 are identical to the general conditions 1 to 28 in the standard form of contract of sale of real estate prescribed by the Estate Agents (Contracts) Regulations 2008 for the purposes of section 53A of the Estate Agents Act 1980.
- 2.2 The warranties in general conditions 2.3 and 2.4 replace the purchaser's right to make requisitions and inquiries.

2.3 The vendor warrants that the vendor:

- (a) has, or by the due date for settlement will have, the right to sell the land; and
- (b) is under no legal disability; and
- (c) is in possession of the land, either personally or through a tenant; and
- (d) has not previously sold or granted any option to purchase, agreed to a lease or granted a pre-emptive right which is current over the land and which gives another party rights which have priority over the interest of the purchaser; and
- (e) will at settlement be the holder of an unencumbered estate in fee simple in the land; and
- (f) will at settlement be the unencumbered owner of any improvements, fixtures, fittings and goods sold with the land.

2.4 The vendor further warrants that the vendor has no knowledge of any of the following:

- (a) public rights of way over the land;
- (b) easements over the land;
- (c) lease or other possessory agreement affecting the land;
- (d) notice or order affecting the land which will not be dealt with at settlement, other than the usual rate notices and any land tax notices;
- (e) legal proceedings which would render the sale of the land void or voidable or capable of being set aside.

- 2.5 The warranties in general conditions 2.3 and 2.4 are subject to any contrary provisions in this contract and disclosures in the section 32 statement required to be given by the vendor under section 32 of the Sale of Land Act 1962 in accordance with Division 2 of Part 11 of that Act.
- 2.6 If sections 137B and 137C of the Building Act 1993 apply to this contract, the vendor warrants that:

- (a) all domestic building work carried out in relation to the construction by or on behalf of the vendor of the home was carried out in a proper and workmanlike manner; and
  - (b) all materials used in that domestic building work were good and suitable for the purpose for which they were used and that, unless otherwise stated in the contract, those materials were new; and
  - (c) domestic building work was carried out in accordance with all laws and legal requirements, including, without limiting the generality of this warranty, the Building Act 1993 and regulations made under the Building Act 1993.
- 2.7 Words and phrases used in general condition 2.6 which are defined in the Building Act 1993 have the same meaning in general condition 2.6.

**3. Identity of the land**

- 3.1 An omission or mistake in the description of the property or any deficiency in the area, description or measurements of the land does not invalidate the sale.
- 3.2 The purchaser may not:
- (a) make any objection or claim for compensation for any alleged misdescription of the property or any deficiency in its area or measurements; or
  - (b) require the vendor to amend the title or pay any cost of amending title.



**4. Services**

4.1 The vendor does not represent that the services are adequate for the purchaser's proposed use of the property and the vendor advises the purchaser to make the appropriate inquiries. The condition of the services may change between the day of sale and settlement and the vendor does not promise that the services will be in the same condition at settlement as they were on the day of sale.

4.2 The purchaser is responsible for the connection of all services to the property after settlement and the payment of any associated cost.

**5. Consents**

The vendor must obtain any necessary consent or licence required for the sale. The contract will be an end and all money paid must be refunded if any necessary consent or licence is not obtained by settlement.

**6. Transfer**

The transfer of land document must be prepared by the purchaser and delivered to the vendor at least 10 days before settlement. The delivery of the transfer of land document is not acceptance of title. The vendor must prepare any document required for assessment of duty on this transaction relating to matters that are or should be within the knowledge of the vendor and, if requested by the purchaser, must provide a copy of that document at least 3 days before settlement.

**7. Release of security interest**

7.1 This general condition applies if any part of the property is subject to a security interest to which the Personal Property Securities Act 2009 (Cth) applies.

7.2 For the purposes of enabling the purchaser to search the Personal Property Securities Register for any security interests affecting any personal property for which the purchaser may be entitled to a release, statement, approval or correction in accordance with general condition 7.4, the purchaser may request the vendor to provide the vendor's date of birth to the purchaser. The vendor must comply with a request made by the purchaser under this condition if the purchaser makes the request at least 21 days before the due date for settlement.

7.3 If the purchaser is given the details of the vendor's date of birth under condition 7.2, the purchaser must (a) only use the vendor's date of birth for the purposes specified in condition 7.2; and (b) keep the date of birth of the vendor secure and confidential.

7.4 The vendor must ensure that at or before settlement, the purchaser receives-

(a) a release from the secured party releasing the property from the security interest; or (b) a statement in writing in accordance with section 275(1)(b) of the Personal Property Securities Act 2009 (Cth) setting out that the amount or obligation that is secured is nil at settlement; or (c) a written approval or correction in accordance with section 275(1)(c) of the Personal Property Securities Act 2009 (Cth) indicating that, on settlement, the personal property included in the contract is not or will not be property in which the security interest is granted.

7.5 Subject to general condition 7.6, the vendor is not obliged to ensure that the purchaser receives a release, statement, approval or correction in respect of personal property-

(a) that-

(i) the purchaser intends to use predominantly for personal, domestic or household purposes; and (ii) has a market value of not more than \$5,000.00 or, if a greater amount has been prescribed for the purposes of section 47(1) of the Personal Property Securities Act 2009 (Cth), not more than that prescribed amount; or (b) that is sold in the ordinary course of the vendor's business of selling personal property of that kind.

7.6 The Vendor is obliged to ensure that the purchaser receives a release, statement, approval or correction in respect of personal property described in general condition 7.5 if-

(a) the personal property is of a kind that may or must be described by serial number in the Personal Property Securities Register; or (b) the purchaser has actual or constructive knowledge that the sale constitutes a breach of the security agreement that provides for the security interest.

7.7 A release for the purposes of general condition 7.4(a) must be in writing.

7.8 A release for the purposes of general condition 7.4(a) must be effective in releasing the goods from the security interest and be in a form which allows the purchaser to take title to the goods free of that security interest.

7.9 If the purchaser receives a release under general condition 7.4(a) the purchaser must provide the vendor with a copy of the release at or as soon as practicable after settlement.

7.10 In addition to ensuring that a release is received under general condition 7.4(a), the vendor must ensure that at or before settlement the purchaser receives a written undertaking from a secured party to register a financing change statement to reflect that release if the property being released includes goods of a kind that

are described by serial number in the Personal Property Securities Register.

7.11 The purchaser must advise the vendor of any security interest that is registered on or before the day of sale on the Personal Property Securities Register, which the purchaser reasonably requires to be released, at least 21 days before the due date for settlement.

7.12 The vendor may delay settlement until 21 days after the purchaser advises the vendor of the security interests that the purchaser reasonably requires to be released if the purchaser does not provide an advice under general condition 7.11.

7.13 If settlement is delayed under general condition 7.12, the purchaser must pay the vendor interest from the due date for settlement until the date on which settlement occurs or 21 days after the vendor receives the advice, whichever is the earlier, and

(b) any reasonable costs incurred by the vendor as a result of the delay-

as though the purchaser was in default.

7.14 The vendor is not required to ensure that the purchaser receives a release in respect of the land. This general condition 7.14 applies despite general condition 7.1.

7.15 Words and phrases which are defined in the Personal Property Securities Act 2009 (Cth) have the same meaning in general condition 7 unless the context requires otherwise.

**8. Builder warranty insurance.**

The vendor warrants that the vendor will provide at settlement details of any current builder warranty insurance in the vendor's possession relating to the property if requested in writing to do so at least 21 days before settlement.

**9. General law land**

9.1 This general condition only applies if any part of the land is not under the operation of the Transfer of Land Act 1958.

9.2 The vendor is taken to be the holder of an unencumbered estate in fee simple in the land if there is an unbroken chain of title starting at least 30 years before the day of sale proving on the face of the documents the ownership of the entire legal and equitable estate without the aid of other evidence.

9.3 The purchaser is entitled to inspect the vendor's chain of title on request at such place in Victoria as the vendor nominates.

9.4 The purchaser is taken to have accepted the vendor's title if:

(a) 21 days have elapsed since the day of sale; and

(b) the purchaser has not reasonably objected to the title or reasonably required the vendor to remedy a defect in the title.

9.5 The contract will be at an end if:

(a) the vendor gives the purchaser a notice that the vendor is unable or unwilling to satisfy the purchaser's objection or requirement and that the contract will end if the objection or requirement is not withdrawn within 14 days of the giving of the notice; and

(b) the objection or requirement is not withdrawn in that time.

9.6 If the contract ends in accordance with general condition 9.5, the deposit must be returned to the purchaser and neither party has a claim against the other in damages.

9.7 General condition 10.1 should be read, in respect of that part of the land which is not under the operation of the Transfer of Land Act 1958, as if the reference to 'registered proprietor' is a reference to 'owner'.

**MONEY**

**10. Settlement**

10.1 At settlement:

(a) the purchaser must pay the balance; and

(b) the vendor must:

(i) do all things necessary to enable the purchaser to become the registered proprietor of the land; and

(ii) give either vacant possession or receipt of rents and profits in accordance with the particulars of sale.

10.2 The vendor's obligations under this general condition continue after settlement.

10.3 Settlement must be conducted between the hours of 10.00am and 4.00pm unless the parties agree otherwise.

**11. Payment**

11.1 The purchaser must pay the deposit:

(a) to the vendor's licensed estate agent; or

(b) if there is no estate agent, to the vendor's legal practitioner or conveyancer; or

(c) if the vendor directs, into a special purpose account in an authorised deposit-taking institution in Victoria specified by the vendor in the joint names of the purchaser and the vendor.

11.2 If the land sold is a lot on an unregistered plan of subdivision, the deposit:

(a) must not exceed 10% of the price; and

(b) must be paid to the vendor's estate agent, legal practitioner or conveyancer and held by the estate agent, legal practitioner or conveyancer on trust for the purchaser until the registration of the plan of subdivision.

11.3 The purchaser must pay all money other than the deposit:

(a) to the vendor, or the vendor's legal practitioner or conveyancer; or

(b) in accordance with a written direction of the vendor or the vendor's legal practitioner or conveyancer.

11.4 At settlement, payments may be made or tendered:

(a) in cash; or

(b) by cheque drawn on an authorised deposit-taking institution; or

(c) if the parties agree, by electronically transferring the payment in the form of cleared funds.

11.5 For the purpose of this general condition, 'authorised deposit-taking institution' means a body corporate in relation to which an authority under subsection 9(3) of the Banking Act 1959 (Cth) is in force.

11.6 At settlement, the purchaser must pay the fees on up to three cheques drawn on an authorised deposit-taking institution. If the vendor requests that any additional cheques be drawn on an authorised deposit-taking institution, the vendor must reimburse the purchaser for the fees incurred.

## 12. Stakeholding

12.1 The deposit must be released to the vendor if:

(a) the vendor provides particulars, to the satisfaction of the purchaser, that either-

(i) there are no debts secured against the property; or

(ii) if there are any debts, the total amount of those debts do not exceed 80% of the sale price; and

(b) at least 28 days have elapsed since the particulars were given to the purchaser under paragraph (a); and

(c) all conditions of Section 27 the Sale of Land Act 1962 have been satisfied.

12.2 The stakeholder must pay the deposit and any interest to the party entitled when the deposit is released, the contract is settled, or the contract is ended.

12.3 The stakeholder may pay the deposit and any interest into court if it is reasonable to do so.

## 13 GST

13.1 The purchaser does not have to pay the vendor any GST payable by the vendor in respect of a taxable supply made under this contract in addition to the price unless the particulars of sale specify that the price is plus GST. However the purchaser must pay to the vendor any GST payable by the vendor:

(a) solely as a result of any action taken or intended to be taken by the purchaser after the day of sale, including a change of use; or

(b) if the particulars of sale specify that the supply made under this contract is of land on which a 'farming business' is carried on and the supply (or part of it) does not satisfy the requirements of section 38-480 of the GST Act; or

(c) if the particulars of sale specify that the supply made under this contract is of a going concern and the supply (or part of it) does not satisfy the requirements of section 38-325 of the GST Act.

13.2 The purchaser must pay to the vendor any GST payable by the vendor in respect of a taxable supply made under this contract in addition to the price if the particulars of sale specify that the price is 'plus GST'. 13.3 If the purchaser is liable to pay GST, the purchaser is not required to make payment until provided with a tax invoice, unless the margin scheme applies.

13.4 If the particulars of sale specify that the supply made under this contract is of land on which a 'farming business' is carried on:

(a) the vendor warrants that the property is land on which a farming business has been carried on for the period of 5 years preceding the date of supply; and

(b) the purchaser warrants that the purchaser intends that a farming business will be carried on after settlement on the property.

13.5 If the particulars of sale specify that the supply made under this contract is a 'going concern':

(a) the parties agree that this contract is for the supply of a going concern; and

(b) the purchaser warrants that the purchaser is, or prior to settlement will be, registered for GST; and

(c) the vendor warrants that the vendor will carry on the going concern until the date of supply.

13.6 If the particulars of sale specify that the supply made under this contract is a 'margin scheme' supply, the parties agree that the margin scheme applies to this contract.

13.7 This general condition will not merge on either settlement or registration.

13.8 In this general condition:  
(a) 'GST Act' means A New Tax System (Goods and Services Tax) Act 1999 (Cth); and  
(b) 'GST' includes penalties and interest.

#### 14. Loan

14.1 If the particulars of sale specify that this contract is subject to a loan being approved, this contract is subject to the lender approving the loan on the security of the property by the approval date or any later date allowed by the vendor.  
14.2 The purchaser may end the contract if the loan is not approved by the approval date, but only if the purchaser:

(a) immediately applied for the loan; and  
(b) did everything reasonably required to obtain approval of the loan; and  
(c) serves written notice ending the contract on the vendor within 2 clear business days after the approval date or any later date allowed by the vendor; and  
(d) is not in default under any other condition of this contract when the notice is given.

14.3 All money must be immediately refunded to the purchaser if the contract is ended.

#### 15. Adjustments

15.1 All periodic outgoings payable by the vendor, and any rent and other income received in respect of the property must be apportioned between the parties on the settlement date and any adjustments paid and received as appropriate.

15.2 The periodic outgoings and rent and other income must be apportioned on the following basis:

(a) the vendor is liable for the periodic outgoings and entitled to the rent and other income up to and including the day of settlement; and  
(b) the land is treated as the only land of which the vendor is owner (as defined in the Land Tax Act 2005); and  
(c) the vendor is taken to own the land as a resident Australian beneficial owner; and  
(d) any personal statutory benefit available to each party is disregarded in calculating apportionment.

#### Transactional

##### 16. Time

16.1 Time is of the essence of this contract.

16.2 Time is extended until the next business day if the time for performing any action falls on a Saturday, Sunday or bank holiday.

##### 17. Service

17.1 Any document sent by-

(a) post is taken to have been served on the next business day after posting, unless proved otherwise.

(b) email is taken to have been served at the time of receipt within the meaning of section 13A of the Electronics Transactions (Victoria) Act 2000.

17.2 Any demand, notice, or document required to be served by or on any party may be served by or on the legal practitioner or conveyancer for that party. It is sufficiently served if served on the party or on the legal practitioner or conveyancer:

(a) personally; or

(b) by pre-paid post; or

(c) in any manner authorised by law or the Supreme Court for service of documents, including any manner authorised for service on or by a legal practitioner.

(d) by email

17.3 This general condition applies to service of any demand, notice or document by or on any party, whether the expression "give" or "serve" or any other expression is used.

##### 18. Nominee

The purchaser may nominate a substitute or additional transferee, but the named purchaser remains personally liable for the due performance of all the purchaser's obligations under this contract.

##### 19. Liability of signatory

Any signatory for a proprietary limited company purchaser is personally liable for the due performance of the purchaser's obligations as if the signatory were the purchaser in the case of default by a proprietary limited company purchaser.



**20. Guarantee**  
The vendor may require one or more directors of the purchaser to guarantee the purchaser's performance of this contract if the purchaser is a proprietary limited company.

**21 Notices**

The purchaser is responsible for any notice, order, demand or levy imposing liability on the property that is issued or made on or after the day of sale that does not relate to periodic outgoings. The purchaser may enter the property to comply with that responsibility where action is required before settlement.

**22. Inspection**

The purchaser and/or another person authorised by the purchaser may inspect the property at any reasonable time during the 7 days preceding and including the settlement day.

**23. Terms contract**

23.1 If this is a 'terms contract' as defined in the Sale of Land Act 1962:

(a) any mortgage affecting the land sold must be discharged as to that land before the purchaser becomes entitled to possession or to the receipt of rents and profits unless the vendor satisfies section 29M of the Sale of Land Act 1962; and

(b) the deposit and all other money payable under the contract (other than any money payable in excess of the amount required to so discharge the mortgage) must be paid to a legal practitioner or conveyancer or a licensed estate agent to be applied in or towards discharging the mortgage.

23.2 While any money remains owing each of the following applies:

(a) the purchaser must maintain full damage and destruction insurance of the property and public risk insurance noting all parties having an insurable interest with an insurer approved in writing by the vendor;

(b) the purchaser must deliver copies of the signed insurance application forms, the policies and the insurance receipts to the vendor not less than 10 days before taking possession of the property or becoming entitled to receipt of the rents and profits;

(c) the purchaser must deliver copies of any amendments to the policies and the insurance receipts on each amendment or renewal as evidence of the status of the policies from time to time;

(d) the vendor may pay any renewal premiums or take out the insurance if the purchaser fails to meet these obligations;

(e) insurance costs paid by the vendor under paragraph(d) must be refunded by the purchaser on demand without affecting the vendor's other rights under this contract;

(f) the purchaser must maintain and operate the property in good repair (fair wear and tear excepted) and keep the property safe, lawful, structurally sound, weatherproof and free from contaminations and dangerous substances;

(g) the property must not be altered in any way without the written consent of the vendor which must not be unreasonably refused or delayed;

(h) the purchaser must observe all obligations that affect owners or occupiers of land;

(i) the vendor and/or other person authorised by the vendor may enter the property at any reasonable time to inspect it on giving 7 days written notice, but not more than twice in a year.

**24. Loss or damage before settlement**

24.1 The vendor carries the risk of loss or damage to the property until settlement.

24.2 The vendor must deliver the property to the purchaser at settlement in the same condition it was in on the day of sale, except for fair wear & tear.

24.3 The purchaser must not delay settlement because one or more of the goods is not in the condition required by general condition 24.2, but may claim compensation from the vendor after settlement.

24.4 The purchaser may nominate an amount not exceeding \$5,000.00 to be held by a stakeholder to be appointed by the parties if the property is not in the condition required by general condition 24.2 at settlement.

24.5 The nominated amount may be deducted from the amount due to the vendor at settlement and paid to the stakeholder, but only if the purchaser also pays an amount equal to the nominated amount to the stakeholder.

24.6 The stakeholder must pay the amounts referred to in general condition 24.5 in accordance with the determination of the dispute, including any order for payment of the costs of the resolution of the dispute.

**25. Breach**

A party who breaches this contract must pay to the other party on demand-

- (a) compensation for any reasonably foreseeable loss to the other party resulting from the breach; and
- (b) any interest due under this contract as a result of the breach.

## DEFAULT

### 26. Interest

Interest at a rate of 2% per annum plus the rate for the time being fixed by section 2 of the Penalty Interest Rates Act 1983 is payable on any money owing under the contract during the period of default, without affecting any other rights of the offended party.

### 27. Default notice

27.1 A party is not entitled to exercise any rights arising from the other party's default, other than the right to receive interest and the right to sue for money owing, until the other party is served and fails to comply with a written default notice.

27.2 The default notice must

- (a) specify the particulars of the default; and
- (b) state that it is the offended party's intention to exercise the rights arising from the default unless, within 14 days of service of the notice being given –
  - (i) the default is remedied; and
  - (ii) the reasonable costs incurred as a result of the default and any interest payable are paid.

### 28. Default not remedied

28.1 All unpaid money under the contract becomes immediately payable to the vendor if the default has been made by the purchaser and is not remedied and the costs and interest are not paid.

28.2 The contract immediately ends if:

- (a) the default notice also states that unless the default is remedied and the reasonable costs and interest are paid, the contract will be ended in accordance with this general condition; and
- (b) the default is not remedied and the reasonable costs and interest are not paid by the end of the period of the default notice.

28.3 If the contract ends by a default notice given by the purchaser:

- (a) the purchaser must be repaid any money paid under the contract and be paid any interest and reasonable costs payable under the contract; and
- (b) all those amounts are a charge on the land until payment; and
- (c) the purchaser may also recover any loss otherwise recoverable.

28.4 If the contract ends by a default notice given by the vendor:

- (a) the deposit up to 10% of the price is forfeited to the vendor as the vendor's absolute property, whether the deposit has been paid or not; and
- (b) the vendor is entitled to possession of the property; and
- (c) in addition to any other remedy, the vendor may within one year of the contract ending either:

- (i) retain the property and sue for damages for breach of contract; or
- (ii) resell the property in any manner and recover any deficiency in the price on the resale

and any resulting expenses by way of liquidated damages; and

- (d) the vendor may retain any part of the price paid until the vendor's damages have been determined and may apply that money towards those damages; and
- (e) any determination of the vendor's damages must take into account the amount forfeited to the

vendor.

28.5 The ending of the contract does not affect the rights of the offended party as a consequence of the default.

**SPECIAL CONDITIONS**

1. The said land shall be offered for sale by public auction subject to the Vendor's reserve price. The Rules for the conduct of the Auction shall be as set out in Schedule 1 to the Sale of Land (Public Auctions) Regulations 2014 or any rules prescribed by regulation which modify or replace those Rules.

2. The Purchaser acknowledges that prior to entering this Contract the Purchaser has made enquiries of the appropriate authorities, satisfied himself as to the zoning and planning restrictions (including all planning approvals, permits and consents) on and in respect of the land and the use to which the land may be put and the development thereof. The Purchaser takes the property subject to any restrictions imposed by any Authority howsoever empowered to control the use, development or enjoyment of the land including under any Act, Order, Planning Scheme, Regulation or By - law. No such restriction shall constitute a defect in the Vendor's Title or affect the validity of this Contract and the Purchaser shall not make any requisition or objection nor be entitled to claim any compensation from the Vendor in respect thereof or in respect of the Vendor's compliance or non-compliance therewith.

3. The Purchaser acknowledges that:

(a) the Vendor makes no representation that the improvements on the land sold or any alterations or additions thereto comply with the requirements of the relevant Responsible Authorities.

(b) having inspected the property hereby sold and save as is otherwise expressly provided acknowledges that he is purchasing the property in its present condition and state of repair and that the Vendor is under no liability or obligation to the Purchaser to carry out any repairs, renovations, alterations or improvements to the property sold.

(c) there are no conditions warranties or other matters affecting the sale other than those embodied herein and that no representations or statements of any kind have been made either orally or in writing by the Vendor or its Agents which induced the Purchaser to enter into this Contract. The Purchaser further acknowledges that the Vendor has not nor has anyone on the Vendor's behalf made any representation or warranty as to the fitness for any particular purpose or in relation to any other matter in respect to the property sold and the Purchaser expressly releases the Vendor and or its servants or agents from any claims or demands in respect thereof.

(d) the Vendor makes no representation that any pool, pond, fountain, spa or smoke detector complies with the relevant regulations and the Purchaser buys and accepts the same (if any) as is and will make no claim for compensation nor requisition in this regard.

(e) the Vendor makes no representation as to the presence or otherwise of contamination (if any) or fill (if any) on the property hereby sold and the Purchaser shall not be entitled to make any requisition, objection or claim any compensation in respect thereof.

4. The chattels sold are sold without any warranties or conditions and the property in the chattels shall not pass to the Purchaser until payment in full of the purchase price.

5. If the property includes a swimming pool which requires the erection of a swimming pool fence so as to satisfy Regulations 5.13 and 5.13A of the Building (Swimming Pool Fences) Regulations 2001 then the Purchaser must pay the cost of complying with those Regulations and must indemnify the Vendor in relation thereto.
6. The Purchaser's liability and obligation to pay the purchase money interest and other moneys payable under this Contract and otherwise to pay perform and observe the terms and conditions of this Contract and the right of the Vendor to enforce each and every such liability and obligation shall not be or be deemed to be waived diminished varied prejudiced or otherwise affected by any time indulgence or forbearance allowed or granted or extended by the Vendor to the Purchaser or by any acceptance by the Vendor of moneys tendered by the Purchaser otherwise than in accordance with this Contract and time shall be and remain of the essence of this Contract notwithstanding any act or omission on the part of the Vendor.
7. If there is more than one Purchaser, it is the Purchaser's responsibility to ensure the Contract correctly records at the date of sale the proportions in which they are buying the property ("the proportions"). If the proportions recorded in the Transfer of Land differ from those recorded in the Contract, it is the Purchaser's responsibility to pay any additional duty which may be assessed as a result of the variation. The Purchaser fully indemnifies the Vendor, the Vendor's agent and the Vendor's Solicitor against any claims or demands which may be made against any or all of them in relation to any additional duty payable as a result of the proportions in the Transfer of Land differing from those in the Contract. This Special Condition shall not merge on completion.
8. The Purchaser is responsible for the connection of all services to the property after settlement and the payment of any associated costs.
- 9.1 The Purchaser warrants that the provisions of the Foreign Acquisitions and Takeovers Act 1975 (Cth) do not require the Purchaser to obtain consent to enter into this Contract of Sale.
- 9.2 If there is a breach of the warranty contained in Special Condition 9.1 (whether intentional or not) the Purchaser must indemnify and compensate the Vendor for any loss, damage or cost which the Vendor incurs as a result of the breach.
- 9.3 This warranty and indemnity do not merge on completion of this Contract of Sale.
10. The following amendments are made to the General Conditions:
  - 10.1 General Condition 5 is deleted and replaced by the following:
  - 10.2 General Condition 6 is amended by inserting the following sentence at the end of the General Condition:



The Purchaser will be deemed to have defaulted in payment of the balance of the price if the Transfer of Land document is not delivered as required by this General Condition. The default will be deemed to commence on the settlement date and terminate 10 days after the date on which the Vendor receives the Transfer of Land document.

10.3 General Condition 11 is amended by deleting General Conditions 11.4(a) and 11.4(c).

10.4 General Condition 11.5 is amended to read:

For the purpose of this General Condition "authorised deposit taking institution" means a Bank.

10.5 General Condition 11.6 is deleted and replaced with the following:

The purchaser must pay bank fees on up to 6 bank cheques at settlement, but the vendor must pay the bank fees on any additional bank cheques requested by the vendor.

10.6 General Condition 12.4 is amended by adding the following:

Where the Purchaser is deemed by Section 27(7) of the Sale of Land Act 1962 to have given the deposit release authorisation referred to in Section 27(1), the Purchaser is also deemed to have accepted title in the absence of any prior express objection to title.

10.7 General Condition 20 is deleted and replaced with the following:

If the Purchaser shall be or include a Company, then the representative of that Company who executes this Contract on behalf of such Company shall simultaneously execute the attached form of Guarantee and HEREBY ACKNOWLEDGES that he has requested the Vendor to enter into this Contract with such Purchaser Company.

10.8 General Condition 25 is deleted and replaced with the following:

If the Purchaser shall default in compliance with the terms and conditions of this Contract the Purchaser shall pay upon demand:-

(a) interest as herein provided; and

(b) all expenses incurred by the Vendor as a result of such breach.

10.9 General Condition 24 is amended by deleting General Conditions 24.4, 24.5 and 24.6.

11.1 Words defined or used in Subdivision 14-D of Schedule 1 to the Taxation Administration Act 1953 (Cth) have the same meaning in this Special Condition unless the context requires otherwise.

11.2 Every Vendor under this Contract is a foreign resident for the purposes of this Special Condition unless the Vendor gives the Purchaser a Clearance Certificate issued by the Commissioner under Section 14-220(1) of Schedule 1 to the Taxation

Administration Act 1953 (Cth). The specified period in the Clearance Certificate must include the actual date of settlement.

11.3 This Special Condition only applies if the Purchaser is required to pay the Commissioner an amount in accordance with Section 14-200(3) or Section 14-235 of Schedule 1 to the Taxation Administration Act 1953 (Cth) ("the amount") because one or more of the Vendors is a foreign resident, the property is or will have a market value of \$2 million or more just after the transaction, and the transaction is not excluded under Section 14-215(1) of Schedule 1 to the Taxation Administration Act 1953 (Cth).

11.4 The amount is to be deducted from the Vendor's entitlement to the Contract consideration. The Vendor must pay to the Purchaser at settlement such part of the amount as is represented by non-monetary consideration.

11.5 The Purchaser must:

(a) engage a Legal Practitioner or Conveyancer ("representative") to conduct all the legal aspects of settlement, including the performance of the Purchaser's obligations in this Special Condition; and

(b) ensure that the representative does so.

11.6 The terms of the representative's engagement are taken to include instructions to have regard to the Vendor's interests and instructions that the representative must:

(a) pay, or ensure payment of, the amount to the Commissioner in the manner required by the Commissioner and as soon as reasonably and practicably possible, from moneys under the control or direction of the representative in accordance with this Special Condition if the sale of the property settles;

(b) promptly provide the Vendor with proof of payment; and

(c) otherwise comply, or ensure compliance with, this Special Condition;

despite

(d) any contrary instructions, other than from both the Purchaser and the Vendor; and

(e) any other provision in this Contract to the contrary.

11.7 The representative is taken to have complied with the obligations in Special Condition 11.6 if:

(a) the settlement is conducted through the electronic conveyancing system operated by Property Exchange Australia Ltd. or any other electronic conveyancing system agreed by the parties; and

(b) the amount is included in the settlement statement requiring payment to the Commissioner in respect of this transaction.

11.8 Any Clearance Certificate or document evidencing variation of the amount in accordance with Section 14-235(2) of the Taxation Administration Act 1953 (Cth) must be given to the Purchaser at least 5 business days before the due date for settlement.

11.9 The Vendor must provide the Purchaser with such information as the Purchaser requires to comply with the Purchaser's obligation to pay the amount in accordance with Section 14-200 of Schedule 1 to the Taxation Administration Act 1953 (Cth). The information must be provided within 5 business days of request by the Purchaser. The Vendor warrants that the information the Vendor provides is true and correct.

11.10 The Purchaser is responsible for any penalties or interest payable to the Commissioner on account of late payment of the amount.

12. The provisions of this Contract will not merge on either settlement or registration and shall continue to bind the Vendor and the Purchaser to the extent that any of them require to be complied with after the settlement date.

## Special condition 13 – Electronic conveyancing

Settlement and lodgement will be conducted electronically in accordance with the Electronic Conveyancing National Law and Special Condition 13 applies, if the box is marked "EC".

13.1 This Special Condition has priority over any other provision to the extent of any inconsistency. This Special Condition applies if the Contract specifies, or the parties subsequently agree in writing, that settlement and lodgement of the instruments necessary to record the Purchaser as registered proprietor of the land will be conducted electronically in accordance with the Electronic Conveyancing National Law.

13.2 A party must immediately give written notice if that party reasonably believes that settlement and lodgement can no longer be conducted electronically.

13.3 Each party must:

(a) be, or engage a representative who is, a subscriber for the purposes of the Electronic Conveyancing National Law,

(b) ensure that all other persons for whom that party is responsible and who are associated with this transaction are, or engage, a subscriber for the purposes of the Electronic Conveyancing National Law, and

(c) conduct the transaction in accordance with the Electronic Conveyancing National Law.

13.4 The Vendor must open the Electronic Workspace ("workspace") as soon as reasonably practicable. The workspace is an electronic address for the service of notices and for written communications for the purposes of any electronic transactions legislation.

13.5 The Vendor must nominate a time of the day for locking of the workspace at least 7 days before the due date for settlement.

13.6 Settlement occurs when the workspace records that:  
(a) the exchange of funds or value between financial institutions in accordance with the instructions of the parties has occurred; or  
(b) if there is no exchange of funds or value, the documents necessary to enable the purchaser to become registered proprietor of the land have been accepted for electronic lodgement.

13.7 The parties must do everything reasonably necessary to effect settlement:

- (a) electronically on the next business day, or
- (b) at the option of either party, otherwise than electronically as soon as possible – if, after the locking of the workspace at the nominated settlement time, settlement in accordance with special condition 13.6 has not occurred by 4.00 pm, or 6.00 pm if the nominated time for settlement is after 4.00 pm.

13.8 Each party must do everything reasonably necessary to assist the other party to trace and identify the recipient of any mistaken payment and to recover the mistaken payment.

13.9 The Vendor must before settlement:

- (a) deliver any keys, security devices and codes (“keys”) to the Estate Agent named in the Contract;
- (b) direct the Estate Agent to give the keys to the Purchaser or the Purchaser’s nominee on notification of settlement by the Vendor, the Vendor’s subscriber or the Electronic Network Operator;
- (c) deliver all other physical documents and items (other than the goods sold by the contract) to which the Purchaser is entitled at settlement, and any keys if not delivered to the estate agent, to the Vendor’s subscriber or, if there is no Vendor’s subscriber, confirm in writing to the Purchaser that the Vendor holds those documents, items and keys at the Vendor’s address set out in the contract, and
- (d) direct the Vendor’s subscriber to give (or, if there is no Vendor’s subscriber, give) all those documents and items, and any such keys, to the Purchaser or the Purchaser’s nominee on notification of settlement by the Electronic Network Operator.

13.10 The vendor must, at least 7 days before the due date for settlement, provide the original of any document required to be prepared by the Vendor in accordance with General Condition 6.