

# Arnold Bloch Leibler

Lawyers and Advisers

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## Contract of Sale

Re: 26 Frenchs Forest Road East,  
Frenchs Forest NSW 2086

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**Arnold Bloch Leibler**

Level 21, 333 Collins Street  
Melbourne Victoria 3000 Australia

Level 24, Chifley Tower, 2 Chifley Square  
Sydney NSW 2000 Australia

**CERTIFICATE BY PURCHASER'S LAWYER**  
(sections 66S(5) & 66W Conveyancing Act 1919 (NSW))

I  
of

lawyer, CERTIFY as follows:

- 1 I am a lawyer currently admitted in New South Wales.
- 2 I am giving this certificate in accordance with section 66W of the *Conveyancing Act 1919 (NSW)* in relation to a contract for the sale of 26 Frenchs Forest Road East, Frenchs Forest NSW, 2086 between:  
  
Twinfly Investments Pty Limited ACN 623 854 339 ("Vendor")  
  
and  
  
("Purchaser")  
  
("Contract") in order that there is no cooling off period in relation to the Contract.
- 3 I:
  - (a) do not act for the Vendor;
  - (b) am not employed in the legal practice of a lawyer acting for the Vendor; and
  - (c) am not a member or employee of a firm of which a lawyer acting for the Vendor is a member or employee.
- 4 I have explained to the Purchaser:
  - (a) the effect of the Contract;
  - (b) the nature of this certificate; and
  - (c) that the effect of giving this certificate to the Vendor is that there is no cooling off period in relation to the Contract.

**DATED**            the            day of            2020

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Signature of Australian Legal Practitioner  
under the *Legal Profession Uniform Law (NSW)*

## Contract for the sale of land – 2019 edition

TERM	MEANING OF TERM	NSW Duty:
Vendor's agent	Savills (NSW) Pty Ltd ABN 93 002 647 225 of Level 25, Governor Phillip Tower, 1 Farrer Place, NSW 2000 Licence number 218481	<b>Phone:</b> 0423 923 003 <b>Fax:</b> <b>Ref:</b> David Hickey <b>Email:</b> dhickey@savills.com.au
Co-agent	Skyline Real Estate Pty Limited ABN 28 003 776 985 3/14 Frenchs Forest Road, Frenchs Forest NSW 2086 Licence No. 300543	<b>Phone:</b> 0416 207 215 <b>Fax:</b> <b>Ref:</b> Stuart Bath <b>Email:</b> Stuart@skylinerealestate.com.au
Vendor	Twinfly Investments Pty Limited ACN 623 854 339	
Vendor's solicitor	<b>ARNOLD BLOCH LEIBLER</b> Level 24, Chifley Tower, 2 Chifley Square, Sydney NSW 2000	<b>Phone:</b> (02) 92267262 <b>Ref:</b> 021912915 <b>Email:</b> liamt@abl.com.au
Date for completion	42 days after the Contract Date	
Land (address, plan details and title reference)	26 Frenchs Forest Road East, Frenchs Forest NSW, 2086 Lot 84 in deposited plan 20077 and being the land referred to in Folio Identifier 84/20077	

Improvements ☐ VACANT POSSESSION ☒ subject to an existing tenancy  
☐ HOUSE ☐ garage ☐ carport ☐ home unit ☐ carspace ☐ storage space  
☐ none ☒ other: **Any buildings on the Land**  
 Attached copies ☒ documents in the List of Documents as marked or as numbered  
☐ Other documents:

**A real estate agent is permitted by legislation to fill up the items in this box in a sale of residential property.**

Inclusions	<input type="checkbox"/> blinds <input type="checkbox"/> dishwasher <input type="checkbox"/> light fittings <input type="checkbox"/> stove <input type="checkbox"/> built-in wardrobes <input type="checkbox"/> fixed floor coverings <input type="checkbox"/> range hood <input type="checkbox"/> pool equipment <input type="checkbox"/> clothes line <input type="checkbox"/> insect screens <input type="checkbox"/> solar panels <input type="checkbox"/> TV antenna <input type="checkbox"/> curtains <input type="checkbox"/> other:
Exclusions Purchaser	<b>All chattels and equipment that are owned by persons other than the Vendor</b>
Guarantor(s)	
Purchaser's solicitor	
Price	\$
Deposit	\$ (10% of the price, unless otherwise stated)
Balance	\$
Contract date	the day of 20 (if not stated, the date this contract was made)

Buyer's agent **Phone:**  
**Fax:**  
**Ref:**

**Vendor**  
 See Execution Page

**GST AMOUNT (optional)**  
 The price includes GST of: \$

**Witness**

**Purchaser** ☐ JOINT TENANTS ☐ tenants in common ☐ in unequal shares  
 See Execution page

**Witness**

BREACH OF COPYRIGHT MAY RESULT IN LEGAL ACTION

## Choices

Vendor agrees to accept a **deposit bond** (clause 3) ☒ NO ☐ yes  
**proposed electronic transaction** (clause 30) ☐ no ☒ YES

## Tax information (the parties promise this is correct as far as each party is aware)

Land tax is adjustable ☐ NO ☒ yes  
 GST: Taxable Supply Refer to Additional Clause 53 ☐ NO ☐ yes in full ☐ yes, to an extent  
 Margin scheme will be used in making the taxable supply ☐ NO ☐ yes

This sale is not a taxable supply because (one or more of the following may apply) the sale is:

- ☐ not made in the course or furtherance of an enterprise that the vendor carries on (section 9-5(b))  
☐ by a vendor who is neither registered nor required to be registered for GST (section 9-5(d))  
☐ GST-free because the sale is the supply of a going concern under section 38-325  
☐ GST-free because the sale is subdivided farm land or farm land supplied for farming under Subdivision 38-0  
☐ input taxed because the sale is of eligible residential premises (sections 40-65, 40-75(2) and 195-1)

Purchaser must make an *RW payment*  
 (residential withholding payment)

☒ NO ☐ yes (if yes, vendor, must provide further details)

If the further details below are not fully completed at the contract date the vendor must provide all these details in a separate notice within 14 days of the contract date.

***RW payment (residential withholding payment) – further details***

Frequently the supplier will be the vendor. However, sometimes further information will be required as to which entity is liable for GST, for example, if the vendor is part of a GST group or a participant in a GST joint venture.

Supplier's name: **#{name}#**  
 Supplier's ABN: **#{ABN}#**  
 Supplier's business address: **#{address}#**

Supplier's email address: **#{e-mail}#**  
 Supplier's phone number: **#{phone}#**  
 Supplier's proportion of *RW payment*: **#{insert}#**

\_\_\_\_\_ If more than one supplier, provide the above details for each supplier.

Amount purchaser must pay – price multiplied by the *RW rate* (residential withholding rate): **#{insert}\$**

Amount must be paid: ☐ AT COMPLETION ☐ At another time (specify):

Is any of the consideration not expressed as an amount in money? ☐ NO ☐ yes

\_\_\_\_\_ If "yes", the GST inclusive market value of the non-monetary consideration: **#{insert}#**

Other details (including those required by regulation or the ATO forms):

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General		Strata or community title (clause 23 of the contract)	
<input checked="" type="checkbox"/> 1	property certificate for the land	<input type="checkbox"/> 32	property certificate for strata common property
<input checked="" type="checkbox"/> 2	plan of the land	<input type="checkbox"/> 33	plan creating strata common property
<input type="checkbox"/> 3	unregistered plan of the land	<input type="checkbox"/> 34	strata by-laws
<input type="checkbox"/> 4	plan of land to be subdivided	<input type="checkbox"/> 35	strata development contract or statement
<input type="checkbox"/> 5	document that is to be lodged with a relevant plan	<input type="checkbox"/> 36	strata management statement
<input checked="" type="checkbox"/> 6	section 10.7(2) planning certificate under Environmental Planning and Assessment Act 1979	<input type="checkbox"/> 37	strata renewal proposal
<input checked="" type="checkbox"/> 7	additional information included in that certificate under section 10.7(5)	<input type="checkbox"/> 38	strata renewal plan
<input checked="" type="checkbox"/> 8	sewerage infrastructure location diagram (service location diagram)	<input type="checkbox"/> 39	leasehold strata - lease of lot and common property
<input checked="" type="checkbox"/> 9	sewer lines location diagram (sewerage service diagram)	<input type="checkbox"/> 40	property certificate for neighbourhood property
<input checked="" type="checkbox"/> 10	document that created or may have created an easement, profit à prendre, restriction on use or positive covenant disclosed in this contract	<input type="checkbox"/> 41	plan creating neighbourhood property
<input type="checkbox"/> 11	<i>planning agreement</i>	<input type="checkbox"/> 42	neighbourhood development contract
<input type="checkbox"/> 12	section 88G certificate (positive covenant)	<input type="checkbox"/> 43	neighbourhood management statement
<input type="checkbox"/> 13	survey report	<input type="checkbox"/> 44	property certificate for precinct property
<input type="checkbox"/> 14	building information certificate or building certificate given under <i>legislation</i>	<input type="checkbox"/> 45	plan creating precinct property
<input checked="" type="checkbox"/> 15	lease (with every relevant memorandum or variation)	<input type="checkbox"/> 46	precinct development contract
<input type="checkbox"/> 16	other document relevant to tenancies	<input type="checkbox"/> 47	precinct management statement
<input type="checkbox"/> 17	licence benefitting the land	<input type="checkbox"/> 48	property certificate for community property
<input type="checkbox"/> 18	old system document	<input type="checkbox"/> 49	plan creating community property
<input type="checkbox"/> 19	Crown purchase statement of account	<input type="checkbox"/> 50	community development contract
<input type="checkbox"/> 20	building management statement	<input type="checkbox"/> 51	community management statement
<input type="checkbox"/> 21	form of requisitions	<input type="checkbox"/> 52	document disclosing a change of by-laws
<input type="checkbox"/> 22	<i>clearance certificate</i>	<input type="checkbox"/> 53	document disclosing a change in a development or management contract or statement
<input checked="" type="checkbox"/> 23	land tax certificate	<input type="checkbox"/> 54	document disclosing a change in boundaries
<b>Home Building Act 1989</b>		<input type="checkbox"/> 55	information certificate under Strata Schemes Management Act 2015
<input type="checkbox"/> 24	insurance certificate	<input type="checkbox"/> 56	information certificate under Community Land Management Act 1989
<input type="checkbox"/> 25	brochure or warning	<input type="checkbox"/> 57	document relevant to off-the-plan sale
<input type="checkbox"/> 26	evidence of alternative indemnity cover	<b>Other</b>	
<b>Swimming pools Act 1992</b>		<input checked="" type="checkbox"/> 58	Development Consent DA2018/1597.
<input type="checkbox"/> 27	certificate of compliance		
<input type="checkbox"/> 28	evidence of registration		
<input type="checkbox"/> 29	relevant occupation certificate		
<input type="checkbox"/> 30	certificate of non-compliance		
<input type="checkbox"/> 31	detailed reasons of non-compliance		

**HOLDER OF STRATA OR COMMUNITY TITLE RECORDS – Name, address, email address and telephone number**  
 Not applicable

REFER TO ADDITIONAL CLAUSES 33 TO 60 WHICH ARE ATTACHED TO AND FORM PART OF THIS CONTRACT  
 BREACH OF COPYRIGHT MAY RESULT IN LEGAL ACTION

## EXECUTION PAGE

### EXECUTED BY THE PURCHASER

EXECUTED by

)

\_\_\_\_\_  
Signature of Purchaser

\_\_\_\_\_  
Name of Purchaser

OR

EXECUTED by

)

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/company secretary  
(delete as applicable)

\_\_\_\_\_  
Name of director (print)

\_\_\_\_\_  
Name of director/company secretary (print)

### EXECUTED BY THE GUARANTOR

EXECUTED by

)

\_\_\_\_\_  
Signature of Guarantor

\_\_\_\_\_  
Name of Guarantor

EXECUTED by

)

\_\_\_\_\_  
Signature of Guarantor

\_\_\_\_\_  
Name of Guarantor

**EXECUTED BY THE VENDOR**

**EXECUTED by Twinfly Investments Pty )  
Limited ACN 623 854 339 )**

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/company secretary  
(delete as applicable)

\_\_\_\_\_  
Name of director (print)

\_\_\_\_\_  
Name of director/company secretary (print)

**OR**

**EXECUTED by )  
 )  
as attorney for Twinfly Investments Pty )  
Limited ACN 623 854 339 under a power )  
of attorney dated  
in the presence of**

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of Attorney  
By executing this document the Attorney  
states that it has received no notice of  
revocation of the power of attorney

\_\_\_\_\_  
Name of witness (print)

## **VENDOR GST WITHHOLDING NOTICE**

(pursuant to section 14-255(1) of Schedule 1 of the *Taxation Administration Act 1953* (Cth) ("TAA"))

The Vendor gives notice to the Purchaser under section 14-255(1) of Schedule 1 of the TAA that the Purchaser is not required to make a payment to the ATO under section 14-250 of Schedule 1 of the TAA in respect of the supply of the Property made by the Vendor to the Purchaser under or pursuant to this Contract.



**IMPORTANT NOTICE TO VENDORS AND PURCHASERS**

Before signing this contract you should ensure that you understand your rights and obligations, some of which are not written in this contract but are implied by law.

**WARNING—SMOKE ALARMS**

The owners of certain types of buildings and strata lots must have smoke alarms (or in certain cases heat alarms) installed in the building or lot in accordance with regulations under the *Environmental Planning and Assessment Act 1979*. It is an offence not to comply. It is also an offence to remove or interfere with a smoke alarm or heat alarm. Penalties apply.

**WARNING—LOOSE-FILL ASBESTOS INSULATION**

Before purchasing land that includes any residential premises (within the meaning of Division 1A of Part 8 of the *Home Building Act 1989*) built before 1985, a purchaser is strongly advised to consider the possibility that the premises may contain loose-fill asbestos insulation (within the meaning of Division 1A of Part 8 of the *Home Building Act 1989*). In particular, a purchaser should:

- (a) search the Register required to be maintained under Division 1A of Part 8 of the *Home Building Act 1989*, and
- (b) ask the relevant local council whether it holds any records showing that the residential premises contain loose-fill asbestos insulation.

For further information about loose-fill asbestos insulation (including areas in which residential premises have been identified as containing loose-fill asbestos insulation) contact NSW Fair Trading.

### **COOLING OFF PERIOD (PURCHASER'S RIGHTS)**

1. This is the statement required by section 66X of the *Conveyancing Act 1919* and applies to a contract for the sale of residential property.
2. EXCEPT in the circumstances listed in paragraph 3, the purchaser may rescind the contract at any time before 5 pm on—
  - (a) the tenth business day after the day on which the contract was made—in the case of an off the plan contract, or
  - (b) the fifth business day after the day on which the contract was made—in any other case.
3. There is NO COOLING OFF PERIOD:
  - (a) if, at or before the time the contract is made, the purchaser gives to the vendor (or the vendor's solicitor or agent) a certificate that complies with section 66W of the Act, or
  - (b) if the property is sold by public auction, or
  - (c) if the contract is made on the same day as the property was offered for sale by public auction but passed in, or
  - (d) if the contract is made in consequence of the exercise of an option to purchase the property, other than an option that is void under section 66ZG of the Act.
4. A purchaser exercising the right to cool off by rescinding the contract will forfeit to the vendor 0.25% of the purchase price of the property. The vendor is entitled to recover the amount forfeited from any amount paid by the purchaser as a deposit under the contract and the purchaser is entitled to a refund of any balance.

### **DISPUTES**

If you get into a dispute with the other party, the Law Society and Real Estate Institute encourage you to use informal procedures such as negotiation, independent expert appraisal, the Law Society Conveyancing Dispute Resolution Scheme or mediation (for example mediation under the Law Society Mediation Program).

### **AUCTIONS**

Regulations made under the Property, Stock and Business Agents Act 2002 prescribe a number of conditions applying to sales by auction.

**WARNINGS**

1. Various Acts of Parliament and other matters can affect the rights of the parties to this contract. Some important matters are actions, claims, decisions, licences, notices, orders, proposals or rights of way involving:
 

<b>APA Group</b> <b>Australian Taxation Office</b> <b>Council</b> <b>County Council</b> <b>Department of Planning, Industry and Environment</b> <b>Department of Primary Industries</b> <b>Electricity and gas</b> <b>Land &amp; Housing Corporation</b> <b>Local Land Services</b>	<b>NSW Department of Education</b> <b>NSW Fair Trading</b> <b>Owner of adjoining land</b> <b>Privacy</b> <b>Public Works Advisory</b> <b>Subsidence Advisory NSW</b> <b>Telecommunications</b> <b>Transport for NSW</b> <b>Water, sewerage or drainage authority</b>
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If you think that any of these matters affects the property, tell your solicitor.
2. A lease may be affected by the Agricultural Tenancies Act 1990, the Residential Tenancies Act 2010 or the Retail Leases Act 1994.
3. If any purchase money is owing to the Crown, it will become payable before obtaining consent, or if no consent is needed, when the transfer is registered.
4. If a consent to transfer is required under legislation, see clause 27 as to the obligations of the parties.
5. The vendor should continue the vendor's insurance until completion. If the vendor wants to give the purchaser possession before completion, the vendor should first ask the insurer to confirm this will not affect the insurance.
6. The purchaser will usually have to pay transfer duty (and sometimes surcharge purchaser duty) on this contract. If duty is not paid on time, a purchaser may incur penalties.
7. If the purchaser agrees to the release of deposit, the purchaser's right to recover the deposit may stand behind the rights of others (for example the vendor's mortgagee).
8. The purchaser should arrange insurance as appropriate.
9. Some transactions involving personal property may be affected by the Personal Property Securities Act 2009.
10. A purchaser should be satisfied that finance will be available at the time of completing the purchase.
11. Where the market value of the property is at or above a legislated amount, the purchaser may have to comply with a foreign resident capital gains withholding payment obligation (even if the vendor is not a foreign resident). If so, this will affect the amount available to the vendor on completion.
12. Purchasers of some residential properties may have to withhold part of the purchase price to be credited towards the GST liability of the vendor. If so, this will also affect the amount available to the vendor. More information is available from the ATO.

The vendor sells and the purchaser buys the *property* for the price under these provisions instead of Schedule 3 Conveyancing Act 1919, subject to any *legislation* that cannot be excluded.

## 1 Definitions (a term in *italics* is a defined term)

In this contract, these terms (in any form) mean –

<i>adjustment date</i>	the earlier of the giving of possession to the purchaser or completion;
<i>bank</i>	the Reserve Bank of Australia or an authorised deposit-taking institution which is a bank, a building society or a credit union;
<i>business day</i>	any day except a bank or public holiday throughout NSW or a Saturday or Sunday;
<i>cheque</i>	a cheque that is not postdated or stale;
<i>clearance certificate</i>	a certificate within the meaning of s14-220 of Schedule 1 to the <i>TA Act</i> , that covers one or more days falling within the period from and including the contract date to completion;
<i>deposit-bond</i>	a deposit bond or guarantee from an issuer, with an expiry date and for an amount each approved by the vendor;
<i>depositholder</i>	vendor's agent (or if no vendor's agent is named in this contract, the vendor's <i>solicitor</i> , or if no vendor's <i>solicitor</i> is named in this contract, the buyer's agent);
<i>document of title</i>	document relevant to the title or the passing of title;
<i>FRCGW percentage</i>	the percentage mentioned in s14-200(3)(a) of Schedule 1 to the <i>TA Act</i> (12.5% as at 1 July 2017);
<i>FRCGW remittance</i>	a remittance which the purchaser must make under s14-200 of Schedule 1 to the <i>TA Act</i> , being the lesser of the <i>FRCGW percentage</i> of the price (inclusive of GST, if any) and the amount specified in a <i>variation served by a party</i> ;
<i>GST Act</i>	A New Tax System (Goods and Services Tax) Act 1999;
<i>GST rate</i>	the rate mentioned in s4 of A New Tax System (Goods and Services Tax Imposition - General) Act 1999 (10% as at 1 July 2000);
<i>GSTRW payment</i>	a payment which the purchaser must make under s14-250 of Schedule 1 to the <i>TA Act</i> (the price multiplied by the <i>GSTRW rate</i> );
<i>GSTRW rate</i>	the rate determined under ss14-250(6), (8) or (9) of Schedule 1 to the <i>TA Act</i> (as at 1 July 2018, usually 7% of the price if the margin scheme applies, 1/11 <sup>th</sup> if not);
<i>legislation</i>	an Act or a by-law, ordinance, regulation or rule made under an Act;
<i>normally</i>	subject to any other provision of this contract;
<i>party</i>	each of the vendor and the purchaser;
<i>property</i>	the land, the improvements, all fixtures and the inclusions, but not the exclusions;
<i>planning agreement</i>	a valid voluntary agreement within the meaning of s7.4 of the Environmental Planning and Assessment Act 1979 entered into in relation to the <i>property</i> ;
<i>requisition</i>	an objection, question or requisition (but the term does not include a claim);
<i>rescind</i>	rescind this contract from the beginning;
<i>serve</i>	serve in writing on the other <i>party</i> ;
<i>settlement cheque</i>	an unendorsed <i>cheque</i> made payable to the person to be paid and – <ul style="list-style-type: none"> <li>• issued by a <i>bank</i> and drawn on itself; or</li> <li>• if authorised in writing by the vendor or the vendor's <i>solicitor</i>, some other <i>cheque</i>;</li> </ul>
<i>solicitor</i>	in relation to a <i>party</i> , the <i>party's</i> solicitor or licensed conveyancer named in this contract or in a notice <i>served by the party</i> ;
<i>TA Act</i>	Taxation Administration Act 1953;
<i>terminate</i>	terminate this contract for breach;
<i>variation</i>	a variation made under s14-235 of Schedule 1 to the <i>TA Act</i> ;
<i>within</i>	in relation to a period, at any time before or during the period; and
<i>work order</i>	a valid direction, notice or order that requires work to be done or money to be spent on or in relation to the <i>property</i> or any adjoining footpath or road (but the term does not include a notice under s22E of the Swimming Pools Act 1992 or clause 22 of the Swimming Pools Regulation 2018).

## 2 Deposit and other payments before completion

- 2.1 The purchaser must pay the deposit to the *depositholder* as stakeholder.
- 2.2 *Normally*, the purchaser must pay the deposit on the making of this contract, and this time is essential.
- 2.3 If this contract requires the purchaser to pay any of the deposit by a later time, that time is also essential.
- 2.4 The purchaser can pay any of the deposit by giving cash (up to \$2,000) or by unconditionally giving a *cheque* to the *depositholder* or to the vendor, vendor's agent or vendor's *solicitor* for sending to the *depositholder* or by payment by electronic funds transfer to the *depositholder*.

- 2.5 If any of the deposit is not paid on time or a *cheque* for any of the deposit is not honoured on presentation, the vendor can *terminate*. This right to *terminate* is lost as soon as the deposit is paid in full.
- 2.6 If the vendor accepts a bond or guarantee for the deposit, clauses 2.1 to 2.5 do not apply.
- 2.7 If the vendor accepts a bond or guarantee for part of the deposit, clauses 2.1 to 2.5 apply only to the balance.
- 2.8 If any of the deposit or of the balance of the price is paid before completion to the vendor or as the vendor directs, it is a charge on the land in favour of the purchaser until *termination* by the vendor or completion, subject to any existing right.
- 2.9 If each *party* tells the *depositholder* that the deposit is to be invested, the *depositholder* is to invest the deposit (at the risk of the *party* who becomes entitled to it) with a *bank*, in an interest-bearing account in NSW, payable at call, with interest to be reinvested, and pay the interest to the *parties* equally, after deduction of all proper government taxes and financial institution charges and other charges.

### 3 Deposit-bond

- 3.1 This clause applies only if this contract says the vendor has agreed to accept a *deposit-bond* for the deposit (or part of it).
- 3.2 The purchaser must provide the original *deposit-bond* to the vendor's *solicitor* (or if no *solicitor* the *depositholder*) at or before the making of this contract and this time is essential.
- 3.3 If the *deposit-bond* has an expiry date and completion does not occur by the date which is 14 days before the expiry date, the purchaser must *serve* a replacement *deposit-bond* at least 7 days before the expiry date. The time for service is essential.
- 3.4 The vendor must approve a replacement *deposit-bond* if –
  - 3.4.1 it is from the same issuer and for the same amount as the earlier *deposit-bond*; and
  - 3.4.2 it has an expiry date at least three months after its date of issue.
- 3.5 A breach of clauses 3.2 or 3.3 entitles the vendor to *terminate*. The right to *terminate* is lost as soon as –
  - 3.5.1 the purchaser *serves* a replacement *deposit-bond*; or
  - 3.5.2 the deposit is paid in full under clause 2.
- 3.6 Clauses 3.3 and 3.4 can operate more than once.
- 3.7 If the purchaser *serves* a replacement *deposit-bond*, the vendor must *serve* the earlier *deposit-bond*.
- 3.8 The amount of any *deposit-bond* does not form part of the price for the purposes of clause 16.7.
- 3.9 The vendor must give the purchaser the *deposit-bond* –
  - 3.9.1 on completion; or
  - 3.9.2 if this contract is *rescinded*.
- 3.10 If this contract is *terminated* by the vendor –
  - 3.10.1 *normally*, the vendor can immediately demand payment from the issuer of the *deposit-bond*; or
  - 3.10.2 if the purchaser *serves* prior to *termination* a notice disputing the vendor's right to *terminate*, the vendor must forward the *deposit-bond* (or its proceeds if called up) to the *depositholder* as stakeholder.
- 3.11 If this contract is *terminated* by the purchaser –
  - 3.11.1 *normally*, the vendor must give the purchaser the *deposit-bond*; or
  - 3.11.2 if the vendor *serves* prior to *termination* a notice disputing the purchaser's right to *terminate*, the vendor must forward the *deposit-bond* (or its proceeds if called up) to the *depositholder* as stakeholder.

### 4 Transfer

- 4.1 *Normally*, the purchaser must *serve* at least 14 days before the date for completion –
  - 4.1.1 the form of transfer; and
  - 4.1.2 particulars required to register any mortgage or other dealing to be lodged with the transfer by the purchaser or the purchaser's mortgagee.
- 4.2 If any information needed for the form of transfer is not disclosed in this contract, the vendor must *serve* it.
- 4.3 If the purchaser *serves* a form of transfer and the transferee is not the purchaser, the purchaser must give the vendor a direction signed by the purchaser personally for this form of transfer.
- 4.4 The vendor can require the purchaser to include a form of covenant or easement in the transfer only if this contract contains the wording of the proposed covenant or easement, and a description of the land benefited.

### 5 Requisitions

- 5.1 If a form of *requisitions* is attached to this contract, the purchaser is taken to have made those *requisitions*.
- 5.2 If the purchaser is or becomes entitled to make any other *requisition*, the purchaser can make it only by *serving* it –
  - 5.2.1 if it arises out of this contract or it is a general question about the *property* or title - *within* 21 days after the contract date;
  - 5.2.2 if it arises out of anything *served* by the vendor - *within* 21 days after the later of the contract date and that *service*; and
  - 5.2.3 in any other case - *within* a reasonable time.

**6 Error or misdescription**

- 6.1 *Normally*, the purchaser can (but only before completion) claim compensation for an error or misdescription in this contract (as to the *property*, the title or anything else and whether substantial or not).
- 6.2 This clause applies even if the purchaser did not take notice of or rely on anything in this contract containing or giving rise to the error or misdescription.
- 6.3 However, this clause does not apply to the extent the purchaser knows the true position.

**7 Claims by purchaser**

- Normally*, the purchaser can make a claim (including a claim under clause 6) before completion only by *serving* it with a statement of the amount claimed, and if the purchaser makes one or more claims before completion –
- 7.1 the vendor can *rescind* if in the case of claims that are not claims for delay –
- 7.1.1 the total amount claimed exceeds 5% of the price;
- 7.1.2 the vendor *serves* notice of intention to *rescind*; and
- 7.1.3 the purchaser does not *serve* notice waiving the claims *within* 14 days after that *service*; and
- 7.2 if the vendor does not *rescind*, the *parties* must complete and if this contract is completed –
- 7.2.1 the lesser of the total amount claimed and 10% of the price must be paid out of the price to and held by the *depositholder* until the claims are finalised or lapse;
- 7.2.2 the amount held is to be invested in accordance with clause 2.9;
- 7.2.3 the claims must be finalised by an arbitrator appointed by the *parties* or if an appointment is not made *within* 1 month of completion, by an arbitrator appointed by the President of the Law Society at the request of a *party* (in the latter case the *parties* are bound by the terms of the Conveyancing Arbitration Rules approved by the Law Society as at the date of the appointment);
- 7.2.4 the purchaser is not entitled, in respect of the claims, to more than the total amount claimed and the costs of the purchaser;
- 7.2.5 net interest on the amount held must be paid to the *parties* in the same proportion as the amount held is paid; and
- 7.2.6 if the *parties* do not appoint an arbitrator and neither *party* requests the President to appoint an arbitrator *within* 3 months after completion, the claims lapse and the amount belongs to the vendor.

**8 Vendor's rights and obligations**

- 8.1 The vendor can *rescind* if –
- 8.1.1 the vendor is, on reasonable grounds, unable or unwilling to comply with a *requisition*;
- 8.1.2 the vendor *serves* a notice of intention to *rescind* that specifies the *requisition* and those grounds; and
- 8.1.3 the purchaser does not *serve* notice waiving the *requisition* *within* 14 days after that *service*.
- 8.2 If the vendor does not comply with this contract (or a notice under or relating to it) in an essential respect, the purchaser can *terminate* by *serving* a notice. After the *termination* –
- 8.2.1 the purchaser can recover the deposit and any other money paid by the purchaser under this contract;
- 8.2.2 the purchaser can sue the vendor to recover damages for breach of contract; and
- 8.2.3 if the purchaser has been in possession a *party* can claim for a reasonable adjustment.

**9 Purchaser's default**

- If the purchaser does not comply with this contract (or a notice under or relating to it) in an essential respect, the vendor can *terminate* by *serving* a notice. After the *termination* the vendor can –
- 9.1 keep or recover the deposit (to a maximum of 10% of the price);
- 9.2 hold any other money paid by the purchaser under this contract as security for anything recoverable under this clause –
- 9.2.1 for 12 months after the *termination*; or
- 9.2.2 if the vendor commences proceedings under this clause *within* 12 months, until those proceedings are concluded; and
- 9.3 sue the purchaser either –
- 9.3.1 where the vendor has resold the *property* under a contract made *within* 12 months after the *termination*, to recover –
- the deficiency on resale (with credit for any of the deposit kept or recovered and after allowance for any capital gains tax or goods and services tax payable on anything recovered under this clause); and
  - the reasonable costs and expenses arising out of the purchaser's non-compliance with this contract or the notice and of resale and any attempted resale; or
- 9.3.2 to recover damages for breach of contract.

**10 Restrictions on rights of purchaser**

- 10.1 The purchaser cannot make a claim or *requisition* or *rescind* or *terminate* in respect of –

BREACH OF COPYRIGHT MAY RESULT IN LEGAL ACTION

- 10.1.1 the ownership or location of any fence as defined in the Dividing Fences Act 1991;
- 10.1.2 a service for the *property* being a joint service or passing through another property, or any service for another property passing through the *property* ('service' includes air, communication, drainage, electricity, garbage, gas, oil, radio, sewerage, telephone, television or water service);
- 10.1.3 a wall being or not being a party wall in any sense of that term or the *property* being affected by an easement for support or not having the benefit of an easement for support;
- 10.1.4 any change in the *property* due to fair wear and tear before completion;
- 10.1.5 a promise, representation or statement about this contract, the *property* or the title, not set out or referred to in this contract;
- 10.1.6 a condition, exception, reservation or restriction in a Crown grant;
- 10.1.7 the existence of any authority or licence to explore or prospect for gas, minerals or petroleum;
- 10.1.8 any easement or restriction on use the substance of either of which is disclosed in this contract or any non-compliance with the easement or restriction on use; or
- 10.1.9 anything the substance of which is disclosed in this contract (except a caveat, charge, mortgage, priority notice or writ).
- 10.2 The purchaser cannot *rescind* or *terminate* only because of a defect in title to or quality of the inclusions.
- 10.3 *Normally*, the purchaser cannot make a claim or *requisition* or *rescind* or *terminate* or require the vendor to change the nature of the title disclosed in this contract (for example, to remove a caution evidencing qualified title, or to lodge a plan of survey as regards limited title).
- 11 Compliance with work orders**
- 11.1 *Normally*, the vendor must by completion comply with a *work order* made on or before the contract date and if this contract is completed the purchaser must comply with any other *work order*.
- 11.2 If the purchaser complies with a *work order*, and this contract is *rescinded* or *terminated*, the vendor must pay the expense of compliance to the purchaser.
- 12 Certificates and inspections**
- The vendor must do everything reasonable to enable the purchaser, subject to the rights of any tenant –
- 12.1 to have the *property* inspected to obtain any certificate or report reasonably required;
- 12.2 to apply (if necessary in the name of the vendor) for –
- 12.2.1 any certificate that can be given in respect of the *property* under *legislation*; or
- 12.2.2 a copy of any approval, certificate, consent, direction, notice or order in respect of the *property* given under *legislation*, even if given after the contract date; and
- 12.3 to make 1 inspection of the *property* in the 3 days before a time appointed for completion.
- 13 Goods and services tax (GST)**
- 13.1 Terms used in this clause which are not defined elsewhere in this contract and have a defined meaning in the *GST Act* have the same meaning in this clause.
- 13.2 *Normally*, if a *party* must pay the price or any other amount to the other *party* under this contract, GST is not to be added to the price or amount.
- 13.3 If under this contract a *party* must make an adjustment or payment for an expense of another party or pay an expense payable by or to a third party (for example, under clauses 14 or 20.7) –
- 13.3.1 the *party* must adjust or pay on completion any GST added to or included in the expense; but
- 13.3.2 the amount of the expense must be reduced to the extent the party receiving the adjustment or payment for the representative member of a GST group of which that party is a member) is entitled to an input tax credit for the expense; and
- 13.3.3 if the adjustment or payment under this contract is consideration for a taxable supply, an amount for GST must be added at the *GST rate*.
- 13.4 If this contract says this sale is the supply of a going concern –
- 13.4.1 the *parties* agree the supply of the *property* is a supply of a going concern;
- 13.4.2 the vendor must, between the contract date and completion, carry on the enterprise conducted on the land in a proper and business-like way;
- 13.4.3 if the purchaser is not registered by the date for completion, the *parties* must complete and the purchaser must pay on completion, in addition to the price, an amount being the price multiplied by the *GST rate* ("the retention sum"). The retention sum is to be held by the *depositholder* and dealt with as follows –
- if *within* 3 months of completion the purchaser *serves* a letter from the Australian Taxation Office stating the purchaser is registered with a date of effect of registration on or before completion, the *depositholder* is to pay the retention sum to the purchaser; but
  - if the purchaser does not *serve* that letter *within* 3 months of completion, the *depositholder* is to pay the retention sum to the vendor; and
- 13.4.4 If the vendor, despite clause 13.4.1, *serves* a letter from the Australian Taxation Office stating the vendor has to pay GST on the supply, the purchaser must pay to the vendor on demand the amount of GST assessed.
- 13.5 *Normally*, the vendor promises the margin scheme will not apply to the supply of the *property*.

- 13.6 If this contract says the margin scheme is to apply in making the taxable supply, the *parties* agree that the margin scheme is to apply to the sale of the *property*.
- 13.7 If this contract says the sale is not a taxable supply –
- 13.7.1 the purchaser promises that the *property* will not be used and represents that the purchaser does not intend the *property* (or any part of the *property*) to be used in a way that could make the sale a taxable supply to any extent; and
- 13.7.2 the purchaser must pay the vendor on completion in addition to the price an amount calculated by multiplying the price by the *GST rate* if this sale is a taxable supply to any extent because of –
- a breach of clause 13.7.1; or
  - something else known to the purchaser but not the vendor.
- 13.8 If this contract says this sale is a taxable supply in full and does not say the margin scheme applies to the *property*, the vendor must pay the purchaser on completion an amount of one-eleventh of the price if –
- 13.8.1 this sale is not a taxable supply in full; or
- 13.8.2 the margin scheme applies to the *property* (or any part of the *property*).
- 13.9 If this contract says this sale is a taxable supply to an extent –
- 13.9.1 clause 13.7.1 does not apply to any part of the *property* which is identified as being a taxable supply; and
- 13.9.2 the payments mentioned in clauses 13.7 and 13.8 are to be recalculated by multiplying the relevant payment by the proportion of the price which represents the value of that part of the *property* to which the clause applies (the proportion to be expressed as a number between 0 and 1). Any evidence of value must be obtained at the expense of the vendor.
- 13.10 Normally, on completion the vendor must give the recipient of the supply a tax invoice for any taxable supply by the vendor by or under this contract.
- 13.11 The vendor does not have to give the purchaser a tax invoice if the margin scheme applies to a taxable supply.
- 13.12 If the vendor is liable for GST on rents or profits due to issuing an invoice or receiving consideration before completion, any adjustment of those amounts must exclude an amount equal to the vendor's GST liability.
- 13.13 If the purchaser must make a *GSTRW payment* the purchaser must –
- 13.13.1 at least 5 days before the date for completion, serve evidence of submission of a *GSTRW payment* notification form to the Australian Taxation Office by the purchaser or, if a direction under clause 4.3 has been served, by the transferee named in the transfer served with that direction;
- 13.13.2 produce on completion a *settlement cheque* for the *GSTRW payment* payable to the Deputy Commissioner of Taxation;
- 13.13.3 forward the *settlement cheque* to the payee immediately after completion; and
- 13.13.4 serve evidence of receipt of payment of the *GSTRW payment* and a copy of the settlement date confirmation form submitted to the Australian Taxation Office.
- 14 Adjustments**
- 14.1 Normally, the vendor is entitled to the rents and profits and will be liable for all rates, water, sewerage and drainage service and usage charges, land tax, levies and all other periodic outgoings up to and including the *adjustment date* after which the purchaser will be entitled and liable.
- 14.2 The *parties* must make any necessary adjustment on completion.
- 14.3 If an amount that is adjustable under this contract has been reduced under *legislation*, the *parties* must on completion adjust the reduced amount.
- 14.4 The *parties* must not adjust surcharge land tax (as defined in the Land Tax Act 1956) but must adjust any other land tax for the year current at the *adjustment date* –
- 14.4.1 only if land tax has been paid or is payable for the year (whether by the vendor or by a predecessor in title) and this contract says that land tax is adjustable;
- 14.4.2 by adjusting the amount that would have been payable if at the start of the year –
- the person who owned the land owned no other land;
  - the land was not subject to a special trust or owned by a non-concessional company; and
  - if the land (or part of it) had no separate taxable value, by calculating its separate taxable value on a proportional area basis.
- 14.5 If any other amount that is adjustable under this contract relates partly to the land and partly to other land, the *parties* must adjust it on a proportional area basis.
- 14.6 Normally, the vendor can direct the purchaser to produce a *settlement cheque* on completion to pay an amount adjustable under this contract and if so –
- 14.6.1 the amount is to be treated as if it were paid; and
- 14.6.2 the *cheque* must be forwarded to the payee immediately after completion (by the purchaser if the *cheque* relates only to the *property* or by the vendor in any other case).
- 14.7 If on completion the last bill for a water, sewerage or drainage usage charge is for a period ending before the *adjustment date*, the vendor is liable for an amount calculated by dividing the bill by the number of days in the period then multiplying by the number of unbilled days up to and including the *adjustment date*.



- 14.8 The vendor is liable for any amount recoverable for work started on or before the contract date on the *property* or any adjoining footpath or road.

## 15 Date for completion

The *parties* must complete by the date for completion and, if they do not, a *party* can serve a notice to complete if that *party* is otherwise entitled to do so.

## 16 Completion

### • Vendor

- 16.1 On completion the vendor must give the purchaser any *document of title* that relates only to the *property*.  
 16.2 If on completion the vendor has possession or control of a *document of title* that relates also to other property, the vendor must produce it as and where necessary.  
 16.3 *Normally*, on completion the vendor must cause the legal title to the *property* (being an estate in fee simple) to pass to the purchaser free of any mortgage or other interest, subject to any necessary registration.  
 16.4 The legal title to the *property* does not pass before completion.  
 16.5 If the vendor gives the purchaser a document (other than the transfer) that needs to be lodged for registration, the vendor must pay the lodgment fee to the purchaser.  
 16.6 If a *party* serves a land tax certificate showing a charge on any of the land, by completion the vendor must do all things and pay all money required so that the charge is no longer effective against the land.

### • Purchaser

- 16.7 On completion the purchaser must pay to the vendor, by cash (up to \$2,000) or *settlement cheque* –  
 16.7.1 the price less any:  
     • deposit paid;  
     • *FRCGW remittance* payable;  
     • *GSTRW payment*; and  
     • amount payable by the vendor to the purchaser under this contract; and  
 16.7.2 any other amount payable by the purchaser under this contract.  
 16.8 If the vendor requires more than 5 *settlement cheques*, the vendor must pay \$10 for each extra *cheque*.  
 16.9 If any of the deposit is not covered by a bond or guarantee, on completion the purchaser must give the vendor an order signed by the purchaser authorising the *deposit holder* to account to the vendor for the deposit.  
 16.10 On completion the deposit belongs to the vendor.  
 • **Place for completion**  
 16.11 *Normally*, the *parties* must complete at the completion address, which is –  
 16.11.1 if a special completion address is stated in this contract - that address; or  
 16.11.2 if none is stated, but a first mortgagee is disclosed in this contract and the mortgagee would usually discharge the mortgage at a particular place - that place; or  
 16.11.3 in any other case - the vendor's *solicitor's* address stated in this contract.  
 16.12 The vendor by reasonable notice can require completion at another place, if it is in NSW, but the vendor must pay the purchaser's additional expenses, including any agency or mortgagee fee.  
 16.13 If the purchaser requests completion at a place that is not the completion address, and the vendor agrees, the purchaser must pay the vendor's additional expenses, including any agency or mortgagee fee.

## 17 Possession

- 17.1 *Normally*, the vendor must give the purchaser vacant possession of the *property* on completion.  
 17.2 The vendor does not have to give vacant possession if –  
 17.2.1 the contract says that the sale is subject to existing tenancies; and  
 17.2.2 the contract discloses the provisions of the tenancy (for example, by attaching a copy of the lease and any relevant memorandum or variation).  
 17.3 *Normally*, the purchaser can claim compensation (before or after completion) or *rescind* if any of the land is affected by a protected tenancy (a tenancy affected by Schedule 2, Part 7 of the Residential Tenancies Act 2010).

## 18 Possession before completion

- 18.1 This clause applies only if the vendor gives the purchaser possession of the *property* before completion.  
 18.2 The purchaser must not before completion –  
 18.2.1 let or part with possession of any of the *property*;  
 18.2.2 make any change or structural alteration or addition to the *property*; or  
 18.2.3 contravene any agreement between the *parties* or any direction, document, *legislation*, notice or order affecting the *property*.  
 18.3 The purchaser must until completion –  
 18.3.1 keep the *property* in good condition and repair having regard to its condition at the giving of possession; and  
 18.3.2 allow the vendor or the vendor's authorised representative to enter and inspect it at all reasonable times.

- 18.4 The risk as to damage to the *property* passes to the purchaser immediately after the purchaser enters into possession.
- 18.5 If the purchaser does not comply with this clause, then without affecting any other right of the vendor –
- 18.5.1 the vendor can before completion, without notice, remedy the non-compliance; and
- 18.5.2 if the vendor pays the expense of doing this, the purchaser must pay it to the vendor with interest at the rate prescribed under s101 Civil Procedure Act 2005.
- 18.6 If this contract is *rescinded* or *terminated* the purchaser must immediately vacate the *property*.
- 18.7 If the *parties* or their *solicitors* on their behalf do not agree in writing to a fee or rent, none is payable.

## 19 Rescission of contract

- 19.1 If this contract expressly gives a *party* a right to *rescind*, the *party* can exercise the right –
- 19.1.1 only by *serving* a notice before completion; and
- 19.1.2 in spite of any making of a claim or *requisition*, any attempt to satisfy a claim or *requisition*, any arbitration, litigation, mediation or negotiation or any giving or taking of possession.
- 19.2 *Normally*, if a *party* exercises a right to *rescind* expressly given by this contract or any *legislation* –
- 19.2.1 the deposit and any other money paid by the purchaser under this contract must be refunded;
- 19.2.2 a *party* can claim for a reasonable adjustment if the purchaser has been in possession;
- 19.2.3 a *party* can claim for damages, costs or expenses arising out of a breach of this contract; and
- 19.2.4 a *party* will not otherwise be liable to pay the other *party* any damages, costs or expenses.

## 20 Miscellaneous

- 20.1 The *parties* acknowledge that anything stated in this contract to be attached ~~was~~ attached to this contract by the vendor before the purchaser signed it and is part of this contract.
- 20.2 Anything attached to this contract is part of this contract.
- 20.3 An area, bearing or dimension in this contract is only approximate.
- 20.4 If a *party* consists of 2 or more persons, this contract benefits and binds them separately and together.
- 20.5 A *party's solicitor* can receive any amount payable to the *party* under this contract or direct in writing that it is to be paid to another person.
- 20.6 A document under or relating to this contract is –
- 20.6.1 signed by a *party* if it is signed by the *party* or the *party's solicitor* (apart from a direction under clause 4.3);
- 20.6.2 served if it is served by the *party* or the *party's solicitor*;
- 20.6.3 served if it is served on the *party's solicitor*, even if the *party* has died or any of them has died;
- 20.6.4 served if it is served in any manner provided in s170 of the Conveyancing Act 1919;
- 20.6.5 served if it is sent by email or fax to the *party's solicitor*, unless in either case it is not received;
- 20.6.6 served on a person if it (or a copy of it) comes into the possession of the person; and
- 20.6.7 served at the earliest time it is served, if it is served more than once.
- 20.7 An obligation to pay an expense of another *party* of doing something is an obligation to pay –
- 20.7.1 if the *party* does the thing personally - the reasonable cost of getting someone else to do it; or
- 20.7.2 if the *party* pays someone else to do the thing - the amount paid, to the extent it is reasonable.
- 20.8 Rights under clauses 11, 13, 14, 17, 24, 30 and 31 continue after completion, whether or not other rights continue.
- 20.9 The vendor does not promise, represent or state that the purchaser has any cooling off rights.
- 20.10 The vendor does not promise, represent or state that any attached survey report is accurate or current.
- 20.11 A reference to any *legislation* (including any percentage or rate specified in *legislation*) is also a reference to any corresponding later *legislation*.
- 20.12 Each *party* must do whatever is necessary after completion to carry out the *party's* obligations under this contract.
- 20.13 Neither taking possession nor *serving* a transfer of itself implies acceptance of the *property* or the title.
- 20.14 The details and information provided in this contract (for example, on pages 1 - 3) are, to the extent of each *party's* knowledge, true, and are part of this contract.
- 20.15 Where this contract provides for choices, a choice in BLOCK CAPITALS applies unless a different choice is marked.

## 21 Time limits in these provisions

- 21.1 If the time for something to be done or to happen is not stated in these provisions, it is a reasonable time.
- 21.2 If there are conflicting times for something to be done or to happen, the latest of those times applies.
- 21.3 The time for one thing to be done or to happen does not extend the time for another thing to be done or to happen.
- 21.4 If the time for something to be done or to happen is the 29th, 30th or 31st day of a month, and the day does not exist, the time is instead the last day of the month.
- 21.5 If the time for something to be done or to happen is a day that is not a *business day*, the time is extended to the next *business day*, except in the case of clauses 2 and 3.2.
- 21.6 *Normally*, the time by which something must be done is fixed but not essential.

**22 Foreign Acquisitions and Takeovers Act 1975**

- 22.1 The purchaser promises that the Commonwealth Treasurer cannot prohibit and has not prohibited the transfer under the Foreign Acquisitions and Takeovers Act 1975.
- 22.2 This promise is essential and a breach of it entitles the vendor to *terminate*.

**23 Strata or community title****• Definitions and modifications**

- 23.1 This clause applies only if the land (or part of it) is a lot in a strata, neighbourhood, precinct or community scheme (or on completion is to be a lot in a scheme of that kind).
- 23.2 In this contract –
- 23.2.1 'change', in relation to a scheme, means –
- a registered or registrable change from by-laws set out in this contract;
  - a change from a development or management contract or statement set out in this contract; or
  - a change in the boundaries of common property;
- 23.2.2 'common property' includes association property for the scheme or any higher scheme;
- 23.2.3 'contribution' includes an amount payable under a by-law;
- 23.2.4 'information certificate' includes a certificate under s184 Strata Schemes Management Act 2015 and s26 Community Land Management Act 1989;
- 23.2.5 'information notice' includes a strata information notice under s22 Strata Schemes Management Act 2015 and a notice under s47 Community Land Management Act 1989;
- 23.2.6 'normal expenses', in relation to an owners corporation for a scheme, means normal operating expenses usually payable from the administrative fund of an owners corporation for a scheme of the same kind;
- 23.2.7 'owners corporation' means the owners corporation or the association for the scheme or any higher scheme;
- 23.2.8 'the property' includes any interest in common property for the scheme associated with the lot; and
- 23.2.9 'special expenses', in relation to an owners corporation, means its actual, contingent or expected expenses, except to the extent they are –
- normal expenses;
  - due to fair wear and tear;
  - disclosed in this contract; or
  - covered by moneys held in the capital works fund.
- 23.3 Clauses 11, 14.8 and 18.4 do not apply to an obligation of the owners corporation, or to property insurable by it.
- 23.4 Clauses 14.4.2 and 14.5 apply but on a unit entitlement basis instead of an area basis.
- Adjustments and liability for expenses**
- 23.5 The parties must adjust under clause 14.1 –
- 23.5.1 a regular periodic contribution;
- 23.5.2 a contribution which is not a regular periodic contribution but is disclosed in this contract; and
- 23.5.3 on a unit entitlement basis, any amount paid by the vendor for a normal expense of the owners corporation to the extent the owners corporation has not paid the amount to the vendor.
- 23.6 If a contribution is not a regular periodic contribution and is not disclosed in this contract –
- 23.6.1 the vendor is liable for it if it was determined on or before the contract date, even if it is payable by instalments; and
- 23.6.2 the purchaser is liable for all contributions determined after the contract date.
- 23.7 The vendor must pay or allow to the purchaser on completion the amount of any unpaid contributions for which the vendor is liable under clause 23.6.1.
- 23.8 Normally, the purchaser cannot make a claim or *requisition* or *rescind* or *terminate* in respect of –
- 23.8.1 an existing or future actual, contingent or expected expense of the owners corporation;
- 23.8.2 a proportional unit entitlement of the lot or a relevant lot or former lot, apart from a claim under clause 6; or
- 23.8.3 a past or future change in the scheme or a higher scheme.
- 23.9 However, the purchaser can *rescind* if –
- 23.9.1 the special expenses of the owners corporation at the later of the contract date and the creation of the owners corporation when calculated on a unit entitlement basis (and, if more than one lot or a higher scheme is involved, added together), less any contribution paid by the vendor, are more than 1% of the price;
- 23.9.2 in the case of the lot or a relevant lot or former lot in a higher scheme, a proportional unit entitlement for the lot is disclosed in this contract but the lot has a different proportional unit entitlement at the contract date or at any time before completion;
- 23.9.3 a change before the contract date or before completion in the scheme or a higher scheme materially prejudices the purchaser and is not disclosed in this contract; or

- 23.9.4 a resolution is passed by the owners corporation before the contract date or before completion to give to the owners in the scheme for their consideration a strata renewal plan that has not lapsed at the contract date and there is not attached to this contract a strata renewal proposal or the strata renewal plan.

• **Notices, certificates and inspections**

- 23.10 The purchaser must give the vendor 2 copies of an information notice addressed to the owners corporation and signed by the purchaser.
- 23.11 The vendor must complete and sign 1 copy of the notice and give it to the purchaser on completion.
- 23.12 Each *party* can sign and give the notice as agent for the other.
- 23.13 The vendor must *serve* an information certificate issued after the contract date in relation to the lot, the scheme or any higher scheme at least 7 days before the date for completion.
- 23.14 The purchaser does not have to complete earlier than 7 days after *service* of the certificate and clause 21.3 does not apply to this provision. On completion the purchaser must pay the vendor the prescribed fee for the certificate.
- 23.15 The vendor authorises the purchaser to apply for the purchaser's own certificate.
- 23.16 The vendor authorises the purchaser to apply for and make an inspection of any record or other document in the custody or control of the owners corporation or relating to the scheme or any higher scheme.

• **Meetings of the owners corporation**

- 23.17 If a general meeting of the owners corporation is convened before completion –
- 23.17.1 if the vendor receives notice of it, the vendor must immediately notify the purchaser of it; and
- 23.17.2 after the expiry of any cooling off period, the purchaser can require the vendor to appoint the purchaser (or the purchaser's nominee) to exercise any voting rights of the vendor in respect of the lot at the meeting.

**24 Tenancies**

- 24.1 If a tenant has not made a payment for a period preceding or current at the *adjustment date* –
- 24.1.1 for the purposes of clause 14.2, the amount is to be treated as if it were paid; and
- 24.1.2 the purchaser assigns the debt to the vendor on completion and will if required give a further assignment at the vendor's expense.
- 24.2 If a tenant has paid in advance of the *adjustment date* any periodic payment in addition to rent, it must be adjusted as if it were rent for the period to which it relates.
- 24.3 If the *property* is to be subject to a tenancy on completion or is subject to a tenancy on completion –
- 24.3.1 the vendor authorises the purchaser to have any accounting records relating to the tenancy inspected and audited and to have any other document relating to the tenancy inspected;
- 24.3.2 the vendor must *serve* any information about the tenancy reasonably requested by the purchaser before or after completion; and
- 24.3.3 *normally*, the purchaser can claim compensation (before or after completion) if –
- a disclosure statement required by the Retail Leases Act 1994 was not given when required;
  - such a statement contained information that was materially false or misleading;
  - a provision of the lease is not enforceable because of a non-disclosure in such a statement; or
  - the lease was entered into in contravention of the Retail Leases Act 1994.
- 24.4 If the *property* is subject to a tenancy on completion –
- 24.4.1 the vendor must allow or transfer –
- any remaining bond money or any other security against the tenant's default (to the extent the security is transferable);
  - any money in a fund established under the lease for a purpose and compensation for any money in the fund or interest earned by the fund that has been applied for any other purpose; and
  - any money paid by the tenant for a purpose that has not been applied for that purpose and compensation for any of the money that has been applied for any other purpose;
- 24.4.2 if the security is not transferable, each *party* must do everything reasonable to cause a replacement security to issue for the benefit of the purchaser and the vendor must hold the original security on trust for the benefit of the purchaser until the replacement security issues;
- 24.4.3 the vendor must give to the purchaser –
- a proper notice of the transfer (an attornment notice) addressed to the tenant;
  - any certificate given under the Retail Leases Act 1994 in relation to the tenancy;
  - a copy of any disclosure statement given under the Retail Leases Act 1994;
  - a copy of any document served on the tenant under the lease and written details of its service, if the document concerns the rights of the landlord or the tenant after completion; and
  - any document served by the tenant under the lease and written details of its service, if the document concerns the rights of the landlord or the tenant after completion;
- 24.4.4 the vendor must comply with any obligation to the tenant under the lease, to the extent it is to be complied with by completion; and

- 24.4.5 the purchaser must comply with any obligation to the tenant under the lease, to the extent that the obligation is disclosed in this contract and is to be complied with after completion.

## **25 Qualified title, limited title and old system title**

- 25.1 This clause applies only if the land (or part of it) –
- 25.1.1 is under qualified, limited or old system title; or
  - 25.1.2 on completion is to be under one of those titles.
- 25.2 The vendor must serve a proper abstract of title *within 7 days* after the contract date.
- 25.3 If an abstract of title or part of an abstract of title is attached to this contract or has been lent by the vendor to the purchaser before the contract date, the abstract or part is *served* on the contract date.
- 25.4 An abstract of title can be or include a list of documents, events and facts arranged (apart from a will or codicil) in date order, if the list in respect of each document –
- 25.4.1 shows its date, general nature, names of parties and any registration number; and
  - 25.4.2 has attached a legible photocopy of it or of an official or registration copy of it.
- 25.5 An abstract of title –
- 25.5.1 must start with a good root of title (if the good root of title must be at least 30 years old, this means 30 years old at the contract date);
  - 25.5.2 in the case of a leasehold interest, must include an abstract of the lease and any higher lease;
  - 25.5.3 *normally*, need not include a Crown grant; and
  - 25.5.4 need not include anything evidenced by the Register kept under the Real Property Act 1900.
- 25.6 In the case of land under old system title –
- 25.6.1 in this contract 'transfer' means conveyance;
  - 25.6.2 the purchaser does not have to serve the form of transfer until after the vendor has served a proper abstract of title; and
  - 25.6.3 each vendor must give proper covenants for title as regards that vendor's interest.
- 25.7 In the case of land under limited title but not under qualified title –
- 25.7.1 *normally*, the abstract of title need not include any document which does not show the location, area or dimensions of the land (for example, by including a metes and bounds description or a plan of the land);
  - 25.7.2 clause 25.7.1 does not apply to a document which is the good root of title; and
  - 25.7.3 the vendor does not have to provide an abstract if this contract contains a delimitation plan (whether in registrable form or not).
- 25.8 The vendor must give a proper covenant to produce where relevant.
- 25.9 The vendor does not have to produce or covenant to produce a document that is not in the possession of the vendor or a mortgagee.
- 25.10 If the vendor is unable to produce an original document in the chain of title, the purchaser will accept a photocopy from the Registrar-General of the registration copy of that document.
- ## **26 Crown purchase money**
- 26.1 This clause applies only if purchase money is payable to the Crown, whether or not due for payment.
- 26.2 The vendor is liable for the money, except to the extent this contract says the purchaser is liable for it.
- 26.3 To the extent the vendor is liable for it, the vendor is liable for any interest until completion.
- 26.4 To the extent the purchaser is liable for it, the *parties* must adjust any interest under clause 14.1.
- ## **27 Consent to transfer**
- 27.1 This clause applies only if the land (or part of it) cannot be transferred without consent under *legislation* or a *planning agreement*.
- 27.2 The purchaser must properly complete and then serve the purchaser's part of an application for consent to transfer of the land (or part of it) *within 7 days* after the contract date.
- 27.3 The vendor must apply for consent *within 7 days* after *service* of the purchaser's part.
- 27.4 If consent is refused, either *party* can *rescind*.
- 27.5 If consent is given subject to one or more conditions that will substantially disadvantage a *party*, then that *party* can *rescind within 7 days* after receipt by or *service* upon the *party* of written notice of the conditions.
- 27.6 If consent is not given or refused –
- 27.6.1 *within 42 days* after the purchaser serves the purchaser's part of the application, the purchaser can *rescind*; or
  - 27.6.2 *within 30 days* after the application is made, either *party* can *rescind*.
- 27.7 Each period in clause 27.6 becomes 90 days if the land (or part of it) is –
- 27.7.1 under a *planning agreement*; or
  - 27.7.2 in the Western Division.
- 27.8 If the land (or part of it) is described as a lot in an unregistered plan, each time in clause 27.6 becomes the later of the time and 35 days after creation of a separate folio for the lot.
- 27.9 The date for completion becomes the later of the date for completion and 14 days after *service* of the notice granting consent to transfer.

**28 Unregistered plan**

- 28.1 This clause applies only if some of the land is described as a lot in an unregistered plan.
- 28.2 The vendor must do everything reasonable to have the plan registered *within* 6 months after the contract date, with or without any minor alteration to the plan or any document to be lodged with the plan validly required or made under *legislation*.
- 28.3 If the plan is not registered *within* that time and in that manner –
- 28.3.1 the purchaser can *rescind*; and
- 28.3.2 the vendor can *rescind*, but only if the vendor has complied with clause 28.2 and with any *legislation* governing the rescission.
- 28.4 Either *party* can *serve* notice of the registration of the plan and every relevant lot and plan number.
- 28.5 The date for completion becomes the later of the date for completion and 21 days after *service* of the notice.
- 28.6 Clauses 28.2 and 28.3 apply to another plan that is to be registered before the plan is registered.

**29 Conditional contract**

- 29.1 This clause applies only if a provision says this contract or completion is conditional on an event.
- 29.2 If the time for the event to happen is not stated, the time is 42 days after the contract date.
- 29.3 If this contract says the provision is for the benefit of a *party*, then it benefits only that *party*.
- 29.4 If anything is necessary to make the event happen, each *party* must do whatever is reasonably necessary to cause the event to happen.
- 29.5 A *party* can *rescind* under this clause only if the *party* has substantially complied with clause 29.4.
- 29.6 If the event involves an approval and the approval is given subject to a condition that will substantially disadvantage a *party* who has the benefit of the provision, the *party* can *rescind* *within* 7 days after either *party* *serves* notice of the condition.
- 29.7 If the *parties* can lawfully complete without the event happening –
- 29.7.1 if the event does not happen *within* the time for it to happen, a *party* who has the benefit of the provision can *rescind* *within* 7 days after the end of that time;
- 29.7.2 if the event involves an approval and an application for the approval is refused, a *party* who has the benefit of the provision can *rescind* *within* 7 days after either *party* *serves* notice of the refusal; and
- 29.7.3 the date for completion becomes the later of the date for completion and 21 days after the earliest of –
- either *party* *serving* notice of the event happening;
  - every *party* who has the benefit of the provision *serving* notice waiving the provision; or
  - the end of the time for the event to happen.
- 29.8 If the *parties* cannot lawfully complete without the event happening –
- 29.8.1 if the event does not happen *within* the time for it to happen, either *party* can *rescind*;
- 29.8.2 if the event involves an approval and an application for the approval is refused, either *party* can *rescind*;
- 29.8.3 the date for completion becomes the later of the date for completion and 21 days after either *party* *serves* notice of the event happening.
- 29.9 A *party* cannot *rescind* under clauses 29.7 or 29.8 after the event happens.

**30 Electronic transaction**

- 30.1 This *Conveyancing Transaction* is to be conducted as an *electronic transaction* if –
- 30.1.1 this contract says that it is an *electronic transaction*;
- 30.1.2 the *parties* otherwise agree that it is to be conducted as an *electronic transaction*; or
- 30.1.3 the *conveyancing rules* require it to be conducted as an *electronic transaction*.
- 30.2 However, this *Conveyancing Transaction* is not to be conducted as an *electronic transaction* –
- 30.2.1 if the land is not *electronically tradeable* or the transfer is not eligible to be lodged electronically; or
- 30.2.2 if, at any time after the *effective date*, but at least 14 days before the date for completion, a *party* *serves* a notice stating a valid reason why it cannot be conducted as an *electronic transaction*.
- 30.3 If, because of clause 30.2.2, this *Conveyancing Transaction* is not to be conducted as an *electronic transaction* –
- 30.3.1 each *party* must –
- bear equally any disbursements or fees; and
  - otherwise bear that *party's* own costs;
- incurred because this *Conveyancing Transaction* was to be conducted as an *electronic transaction*; and
- 30.3.2 if a *party* has paid all of a disbursement or fee which, by reason of this clause, is to be borne equally by the *parties*, that amount must be adjusted under clause 14.2.
- 30.4 If this *Conveyancing Transaction* is to be conducted as an *electronic transaction* –
- 30.4.1 to the extent that any other provision of this contract is inconsistent with this clause, the provisions of this clause prevail;

- 30.4.2 normally, words and phrases used in this clause 30 (italicised and in Title Case, such as *Electronic Workspace* and *Lodgment Case*) have the same meaning which they have in the *participation rules*;
- 30.4.3 the *parties* must conduct the *electronic transaction* –
- in accordance with the *participation rules* and the *ECNL*; and
  - using the nominated *ELN*, unless the *parties* otherwise agree;
- 30.4.4 a *party* must pay the fees and charges payable by that *party* to the *ELNO* and the *Land Registry* as a result of this transaction being an *electronic transaction*;
- 30.4.5 any communication from one *party* to another *party* in the *Electronic Workspace* made –
- after the *effective date*; and
  - before the receipt of a notice given under clause 30.2.2;
- is taken to have been received by that *party* at the time determined by s13A of the *Electronic Transactions Act 2000*; and
- 30.4.6 a document which is an *electronic document* is served as soon as it is first *Digitally Signed* in the *Electronic Workspace* on behalf of the *party* required to serve it.
- 30.5 Normally, the vendor must *within 7 days of the effective date* –
- 30.5.1 create an *Electronic Workspace*;
- 30.5.2 populate the *Electronic Workspace* with *title data*, the date for completion and, if applicable, *mortgagee details*; and
- 30.5.3 invite the purchaser and any *discharging mortgagee* to the *Electronic Workspace*.
- 30.6 If the vendor has not created an *Electronic Workspace* in accordance with clause 30.5, the purchaser may create an *Electronic Workspace*. If the purchaser creates the *Electronic Workspace* the purchaser must –
- 30.6.1 populate the *Electronic Workspace* with *title data*;
- 30.6.2 create and populate an *electronic transfer*;
- 30.6.3 populate the *Electronic Workspace* with the date for completion and a nominated *completion time*; and
- 30.6.4 invite the vendor and any *incoming mortgagee* to join the *Electronic Workspace*.
- 30.7 Normally, *within 7 days of receiving an invitation from the vendor to join the Electronic Workspace*, the purchaser must –
- 30.7.1 join the *Electronic Workspace*;
- 30.7.2 create and populate an *electronic transfer*;
- 30.7.3 invite any *incoming mortgagee* to join the *Electronic Workspace*; and
- 30.7.4 populate the *Electronic Workspace* with a nominated *completion time*.
- 30.8 If the purchaser has created the *Electronic Workspace* the vendor must *within 7 days of being invited to the Electronic Workspace* –
- 30.8.1 join the *Electronic Workspace*;
- 30.8.2 populate the *Electronic Workspace* with *mortgagee details*, if applicable; and
- 30.8.3 invite any *discharging mortgagee* to join the *Electronic Workspace*.
- 30.9 To complete the financial settlement schedule in the *Electronic Workspace* –
- 30.9.1 the purchaser must provide the vendor with *adjustment figures* at least *2 business days* before the date for completion;
- 30.9.2 the vendor must confirm the *adjustment figures* at least *1 business day* before the date for completion; and
- 30.9.3 if the purchaser must make a *GSTRW payment* or an *FRCGW remittance*, the purchaser must populate the *Electronic Workspace* with the payment details for the *GSTRW payment* or *FRCGW remittance* payable to the Deputy Commissioner of Taxation at least *2 business days* before the date for completion.
- 30.10 Before completion, the *parties* must ensure that –
- 30.10.1 all *electronic documents* which a *party* must *Digitally Sign* to complete the *electronic transaction* are populated and *Digitally Signed*;
- 30.10.2 all certifications required by the *ECNL* are properly given; and
- 30.10.3 they do everything else in the *Electronic Workspace* which that *party* must do to enable the *electronic transaction* to proceed to completion.
- 30.11 If completion takes place in the *Electronic Workspace* –
- 30.11.1 payment electronically on completion of the price in accordance with clause 16.7 is taken to be payment by a single *settlement cheque*;
- 30.11.2 the completion address in clause 16.11 is the *Electronic Workspace*; and
- 30.11.3 clauses 13.13.2 to 13.13.4, 16.8, 16.12, 16.13 and 31.2.2 to 31.2.4 do not apply.
- 30.12 If the computer systems of any of the *Land Registry*, the *ELNO* or the Reserve Bank of Australia are inoperative for any reason at the *completion time* agreed by the *parties*, a failure to complete this contract for that reason is not a default under this contract on the part of either *party*.

- 30.13 If the computer systems of the *Land Registry* are inoperative for any reason at the *completion time* agreed by the *parties*, and the *parties* choose that financial settlement is to occur despite this, then on financial settlement occurring –
- 30.13.1 all *electronic documents Digitally Signed* by the vendor, the *certificate of title* and any discharge of mortgage, withdrawal of caveat or other *electronic document* forming part of the *Lodgment Case* for the *electronic transaction* shall be taken to have been unconditionally and irrevocably delivered to the purchaser or the purchaser's mortgagee at the time of financial settlement together with the right to deal with the land comprised in the *certificate of title*; and
- 30.13.2 the vendor shall be taken to have no legal or equitable interest in the *property*.
- 30.14 A party who holds a *certificate of title* must act in accordance with any *Prescribed Requirement* in relation to the *certificate of title* but if there is no *Prescribed Requirement*, the vendor must serve the *certificate of title* after completion.
- 30.15 If the *parties* do not agree about the delivery before completion of one or more documents or things that cannot be delivered through the *Electronic Workspace*, the *party* required to deliver the documents or things –
- 30.15.1 holds them on completion in escrow for the benefit of; and
- 30.15.2 must immediately after completion deliver the documents or things to, or as directed by; the *party* entitled to them.
- 30.16 In this clause 30, these terms (in any form) mean –
- |                                 |   |
|---------------------------------|---|
| <i>adjustment figures</i>       | details of the adjustments to be made to the price under clause 14;   |
| <i>certificate of title</i>     | the paper duplicate of the folio of the register for the land which exists immediately prior to completion and, if more than one, refers to each such paper duplicate;  |
| <i>completion time</i>          | the time of day on the date for completion when the <i>electronic transaction</i> is to be settled;   |
| <i>conveyancing rules</i>       | the rules made under s12E of the Real Property Act 1900;  |
| <i>discharging mortgagee</i>    | any discharging mortgagee, chargee, covenant chargee or caveator whose provision of a <i>Digitally Signed</i> discharge of mortgage, discharge of charge or withdrawal of caveat is required in order for unencumbered title to the <i>property</i> to be transferred to the purchaser; |
| <i>ECNL</i>                     | the Electronic Conveyancing National Law (NSW);   |
| <i>effective date</i>           | the date on which the <i>Conveyancing Transaction</i> is agreed to be an <i>electronic transaction</i> under clause 30.1.2 or, if clauses 30.1.1 or 30.1.3 apply, the contract date;  |
| <i>electronic document</i>      | a dealing as defined in the Real Property Act 1900 which may be created and <i>Digitally Signed</i> in an <i>Electronic Workspace</i> ;   |
| <i>electronic transfer</i>      | a transfer of land under the Real Property Act 1900 for the <i>property</i> to be prepared and <i>Digitally Signed</i> in the <i>Electronic Workspace</i> established for the purposes of the <i>parties'</i> <i>Conveyancing Transaction</i> ;   |
| <i>electronic transaction</i>   | a <i>Conveyancing Transaction</i> to be conducted for the <i>parties</i> by their legal representatives as <i>Subscribers</i> using an <i>ELN</i> and in accordance with the <i>ECNL</i> and the <i>participation rules</i> ;   |
| <i>electronically tradeable</i> | a land title that is Electronically Tradeable as that term is defined in the <i>conveyancing rules</i> ;  |
| <i>incoming mortgagee</i>       | any mortgagee who is to provide finance to the purchaser on the security of the <i>property</i> and to enable the purchaser to pay the whole or part of the price;  |
| <i>mortgagee details</i>        | the details which a <i>party</i> to the <i>electronic transaction</i> must provide about any <i>discharging mortgagee</i> of the <i>property</i> as at completion;  |
| <i>participation rules</i>      | the participation rules as determined by the <i>ECNL</i> ;  |
| <i>populate</i>                 | to complete data fields in the <i>Electronic Workspace</i> ; and  |
| <i>title data</i>               | the details of the title to the <i>property</i> made available to the <i>Electronic Workspace</i> by the <i>Land Registry</i> .   |

### 31 Foreign Resident Capital Gains Withholding

- 31.1 This clause applies only if –
- 31.1.1 the sale is not an excluded transaction within the meaning of s14-215 of Schedule 1 to the *TA Act*; and
- 31.1.2 a *clearance certificate* in respect of every vendor is not attached to this contract.
- 31.2 The purchaser must –
- 31.2.1 at least 5 days before the date for completion, serve evidence of submission of a purchaser payment notification to the Australian Taxation Office by the purchaser or, if a direction under clause 4.3 has been served, by the transferee named in the transfer served with that direction;
- 31.2.2 produce on completion a *settlement cheque* for the *FRCGW remittance* payable to the Deputy Commissioner of Taxation;
- 31.2.3 forward the *settlement cheque* to the payee immediately after completion; and
- 31.2.4 serve evidence of receipt of payment of the *FRCGW remittance*.



- 31.3 The vendor cannot refuse to complete if the purchaser complies with clauses 31.2.1 and 31.2.2.
- 31.4 If the vendor *serves* any *clearance certificate* or *variation*, the purchaser does not have to complete earlier than 7 days after that *service* and clause 21.3 does not apply to this provision.
- 31.5 If the vendor *serves* in respect of every vendor either a *clearance certificate* or a *variation* to 0.00 percent, clauses 31.2 and 31.3 do not apply.
- 32 Residential off the plan contract**
- 32.1 This clause applies if this contract is an off the plan contract within the meaning of Division 10 of Part 4 of the Conveyancing Act 1919 (the Division).
- 32.2 No provision of this contract has the effect of excluding, modifying or restricting the operation of the Division.
- 32.3 If the purchaser makes a claim for compensation under the terms prescribed by clause 6A of the Conveyancing (Sale of Land) Regulation 2017 –
- 32.3.1 the purchaser cannot make a claim under this contract about the same subject matter, including a claim under clauses 6 or 7; and
- 32.3.2 the claim for compensation is not a claim under this contract.
- 32.4 This clause does not apply to a contract made before the commencement of the amendments to the Division under the Conveyancing Legislation Amendment Act 2018.

26 Frenchs Forest Road East FRENCHS FOREST NSW 2086

## ADDITIONAL CLAUSES

### 33 Definitions and Interpretation

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#### 33.1 Definitions

In addition to the definitions in clause 1 of the Standard Contract the following words used in these Additional Clauses are defined as follows:

**"Additional Clauses"** means these Additional Clauses which are attached to, and form part of, this Contract.

**"Adverse Affection"** has the meaning given in the Regulation.

**"Approval"** includes any approval, authorisation, permit, licence, consent, clearance, certification, exemption or similar which is required to be obtained or issued from an Authority or any other person because that Authority or person has jurisdiction over or any interest or connection with the Property.

**"ATO"** means the Commissioner of Taxation.

**"Authority"** means an authority having jurisdiction over the Property (including its occupation, use or development) including any government, statutory body, corporation or service provider.

**"Building Certificate"** means a certificate issued in accordance with sections 6.24-6.26 of the *Environmental Planning and Assessment Act 1979* (NSW).

**"Claim"** means any claim, notice, demand, action, proceeding, litigation, investigation or judgment, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

**"Clearance Certificate"** means a certificate issued by the ATO pursuant to section 14-220 of Schedule 1 of the TAA that must be:

- (a) in respect of the Vendor (and if the Vendor consists of more than one party, a separate certificate in respect of each party); and
- (b) valid and cover a period that includes the Contract Date.

**"Completion"** means the date upon which the receipt of the rents and profits of the Property is provided, the title for the Property is accepted by the Purchaser and the Price is paid to the Vendor.

**"Completion Date"** means the due date for completion stated or referred to on the front page of the Standard Contract.

**"Consideration"** has the meaning given by section 195-1 of the GST Act.

**"Contract"** means this contract of sale which consists of the Standard Contract and the Additional Clauses including any schedules or attachments.

**"Contract Date"** means the date of this Contract as shown on the front page of the Standard Contract.

**"Controller"** means, in relation to a party's property:

- (a) a receiver or receiver and manager of that property; or

- (b) anyone else who (whether or not as agent for that party) is in possession, or has control of that property to enforce an Encumbrance.

**"Conveyancing Act"** means the *Conveyancing Act 1919* (NSW).

**"Corporations Act"** means the *Corporations Act 2001* (Cth).

**"Cost"** means any cost, charge, expense, outgoing, payment, fee, liability or penalty of any kind including legal and professional fees.

**"Default Rate"** means a rate of 12%.

**"Development Consent"** means development consent DA2018/1597.

**"Development Consent Documents"** means:

- (a) Architectural Plan A-010 - Site Plan – Rev C dated 17/07/2019 prepared by BKA Architecture;
- (b) Architectural Plan A-050 - Demolition + Excavation Plan dated 17/07/2019 prepared by BKA Architecture;
- (c) Architectural Plan A-100 - Ground Floor Plan – Rev D dated 7/08/2019 prepared by BKA Architecture;
- (d) Architectural Plan A-101 - First Floor Plan – Rev C dated 17/07/2019 prepared by BKA Architecture;
- (e) Architectural Plan A-102 - Basement Level Plan– Rev D dated 7/08/2019 prepared by BKA Architecture;
- (f) Architectural Plan A-103 - Roof Plan– Rev C dated 17/07/2019 prepared by BKA Architecture;
- (g) Architectural Plan A-200 - South-North Elevation – Rev D dated 7/08/2019 prepared by BKA Architecture;
- (h) Architectural Plan A-201 - West East Elevation - Rev D dated 7/08/2019 prepared by BKA Architecture;
- (i) Architectural Plan A-300 Sections – Rev C dated 17/07/2019 prepared by BKA Architecture;
- (j) Architectural Plan A-450 Finishes Board – Rev D dated 7/08/2019 prepared by BKA Architecture;
- (k) Boarding House Plan of Management dated 9 August 2019 prepared by BKA Architecture;
- (l) 18032 Rev B – Swept Path Analysis dated 17 July 2019 prepared by Transport and Traffic Planning Associates;
- (m) E23728.G01\_Rev 1 – Geotechnical Desktop Study Report dated 12 April 2019 prepared by EI Australia;
- (n) Access Design Assessment Report dated 19 September 2019 prepared by Design Confidence;
- (o) Landscape Plan Sheet 1 of 5 – Site Analysis – Rev F dated 12/07/2019 prepared by Conzept Landscape Architects;
- (p) Landscape Plan Sheet 2 of 5 – Landscape Plan – Rev F dated 12/07/2019 prepared by Conzept Landscape Architects;
- (q) Landscape Plan Sheet 3 of 5 – Details - Rev B dated 06/09/2018 prepared by Conzept Landscape Architects;

- (r) Landscape Plan Sheet 4 of 5 – Details – Rev D dated 12/07/2019 prepared by Conzept Landscape Architects;
- (s) Landscape Plan Sheet 5 of 5 – Specification – Rev C dated 13/08/2018 prepared by Conzept Landscape Architects;

**"Development Consultants"** means:

- (a) BKA Architecture of Suite 1.04 77 Dunning Ave, Rosebery NSW 2018;
- (b) Transport and Traffic Planning Associates of Suite 502, Level 5, 282 Victoria Avenue, Chatswood, NSW 2067;
- (c) El Australia of Suite 6.01, 55 Miller Street, Pyrmont 2009;
- (d) Design Confidence (Sydney) Pty Limited of Shop 2, 35 Buckingham Street, Surry Hills NSW 2010; and
- (e) Conzept Landscape Architects of suite 101/506 Miller St, Cammeray NSW 2062

**"Disclosed Documents"** means all documents or other information disclosed or referred to in this Contract or provided to the Purchaser or its agents or advisors on behalf of the Vendor by its agents or advisors or any other third party and includes:

- (a) the Development Consent Documents;
- (b) all documents available from a publicly accessible search; and
- (c) all documents available through the website <https://eservices.northernbeaches.nsw.gov.au/ePlanning/live/Public/XC.Track/SeArchApplication.aspx?id=1568831>

**"Encumbrance"** means any mortgage, lien, hypothecation, charge, security interest, bill of sale, caveat, pledge, claim, trust arrangement, preferential right, right of set-off, title retention or other form of encumbrance.

**"Financing Change Statement"** has the meaning given in the PPSA.

**"FIRB Act"** means the *Foreign Acquisitions and Takeovers Act 1975* (Cth).

**"FIRB Approval"** means advice in writing that the Treasurer has no objection to the acquisition of the Property by the Purchaser pursuant to the provisions of the FIRB Act.

**"Government Agency"** means:

- (a) a government or government department;
- (b) a governmental, semi-governmental, regulatory or judicial entity or authority; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

**"GST"** has the meaning given by section 195-1 of the GST Act.

**"GST Act"** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**"GST Amount"** means the amount of GST payable in respect of a Taxable Supply under, or in connection with, this Contract.

**"GST Rate"** means the GST rate from time to time provided for in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), which rate is 10% at the Contract Date.

**"Guarantee"** has the meaning given in Additional Clause 49.2(a).

**"Guarantor"** means the parties detailed as guarantors on the front page of the Standard Contract.

**"Incentive"** includes any incentive payments, Rent free periods, fit out contributions, Rent reductions, works or other inducements or waivers the Vendor has agreed to provide or perform for the Tenant as an inducement for the Tenant to enter into a Lease.

**"Indemnity"** has the meaning given in Additional Clause 49.2(a).

**"Input Taxed"** has the meaning given by section 195-1 of the GST Act.

**"Insolvency Event"** means the occurrence of any of the following events in relation to any person:

- (a) it becomes insolvent as defined in the Corporations Act, states that it is insolvent or is presumed to be insolvent under an applicable Law;
- (b) it is wound up, dissolved or declared bankrupt or takes, or tries to take, advantage of Part X of the *Bankruptcy Act 1966* (Cth);
- (c) it becomes an insolvent under administration as defined in the Corporations Act;
- (d) a liquidator, provisional liquidator, Controller, administrator, trustee for creditors, trustee in bankruptcy or other similar person is appointed to, or takes possession or control of, any or all of its assets or undertaking;
- (e) it enters into or becomes subject to:
  - (i) any arrangement or composition with one or more of its creditors or any assignment for the benefit of one or more of its creditors; or
  - (ii) any re-organisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;
- (f) an application or order is made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken which is preparatory to or could result in any of (b), (c), (d) or (e) above;
- (g) it is taken, under section 459F(1) of the Corporations Act, to have failed to comply with a statutory demand;
- (h) it suspends payment of its debts, ceases or threatens to cease to carry on all or a material part of its business or becomes unable to pay its debts when they fall due;
- (i) any matter relating to it becomes subject to an investigation under the *Australian Securities and Investments Commission Act 2001* (Cth) or the Corporations Act;
- (j) it dies or ceases to be of legal capacity or is otherwise incapable of managing its own affairs; or
- (k) anything occurs which has a substantially similar effect to any of the events listed in the other paragraphs of this definition or any action is taken that is preparatory to or could result in any of those events.

**"Law"** means any law whether that law arises under statute or common law or pursuant to any act, statutory instrument, regulation, order, ordinance, rule, by-law, proclamation, control, permit, approval, licence, notice or directive of any Authority or otherwise and includes any law relating to or affecting the Property or its occupation, use or development.

**"Lease"** means the lease detailed in **Schedule 1** as it may be dealt with in accordance with this Contract.

**"Loss"** means any loss, damage (including death or injury) or Cost of any kind.

**"NSW LRS"** means NSW Land Registry Services or any successor body to the NSW Land Registry Services.

**"Outgoings"** means all outgoings and operating expenses relating to the Property including rates, taxes, assessments, levies, including owners corporation levies and levies under the *Parking Space Levy Act 2009* (NSW), and land tax.

**"Payment"** means any Consideration (except the GST Amount) payable or to be provided by a party to any other party under or in connection with this Contract including, but not limited to, the Price.

**"Personal Property"** has the meaning given in the PPSA.

**"Post Completion Period"** means any period after (but not including) the day of Completion.

**"PPN (CGT)"** means the approved form for purchaser payment notification, issued by the ATO pursuant to section 16-140 of Schedule 1 of the TAA.

**"PPSA"** means the *Personal Property Securities Act 2009* (Cth).

**"PPS Register"** means the Personal Property Securities Register established under section 147 of the PPSA.

**"Pre Completion Period"** means any period prior to (and, where relevant, including) the day of Completion.

**"Price"** means the purchase price shown on the front page of the Standard Contract.

**"Recoverable Outgoing"** means any Outgoing (other than a Tenant Direct Expense) that is recoverable by the Vendor (as lessor) from the Tenant.

**"Regulation"** means the *Conveyancing (Sale of Land) Regulation 2017* (NSW).

**"Rent"** means the rent payable by the Tenant under the Lease.

**"Rental Bond"** means, if applicable, any bond held by the Rental Bond Board in respect of the Lease.

**"Rental Bond Board"** means the Rental Bond Board administered by NSW Fair Trading.

**"Rental Bond Transfer Form"** means the form required to notify the Rental Bond Board of the transfer of the Vendor's interest in the Rental Bond.

**"Residential Premises"** has the meaning given by section 195-1 of the GST Act.

**"Secured Party"** has the meaning given in the PPSA.

**"Security Interest"** has the meaning given in the PPSA.

**"SI List"** has the meaning given in Additional Clause 48(a).

**"Standard Contract"** means the standard form of contract for sale of land 2019 edition prepared by The Law Society of New South Wales and The Real Estate Institute of New South Wales.

**"Supply"** has the meaning given by section 195-1 of the GST Act.

**"TAA"** means the *Taxation Administration Act 1953* (Cth).

**"Taxable Supply"** has the meaning given by section 195-1 of the GST Act.

**"Tax Invoice"** has the meaning given by section 195-1 of the GST Act.

**"Tenant"** means the tenant under the Lease.

**"Tenant Direct Expense"** means any Outgoing:

- (a) that is payable by the Tenant direct to the assessing entity or Authority; or
- (b) that the Vendor (as lessor) has required the Tenant to pay direct to the assessing entity or Authority,

and which the Vendor (as lessor) has not paid.

**"Treasurer"** means the Treasurer of the Commonwealth of Australia.

**"Vendor GST Withholding Notice"** means the vendor notice issued to the Purchaser pursuant to section 14-255(1) of Schedule 1 of the TAA and that is attached to, and forms part of, this Contract, (or, where applicable, any subsequent notice issued by the Vendor that replaces and supersedes an earlier vendor notice).

**"WHT (CGT)"** means any amount payable pursuant to section 14-200 of Schedule 1 of the TAA.

**"WHT (CGT) Amount"** means the amount of WHT (CGT) payable by the Purchaser in respect of its acquisition of the Property from the Vendor pursuant to this Contract.

### **33.2 Interpretation**

In this Contract, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) words denoting any gender include all genders;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a party, clause, paragraph, schedule or attachment is a reference to a party, clause, paragraph, schedule or attachment to, or of, this Contract;
- (e) a reference to this Contract includes the Standard Contract, the Additional Clauses and any schedules or attachments;
- (f) headings are for convenience and do not affect interpretation;
- (g) if there is more than one person named as Purchaser then the provisions of this Contract bind those persons jointly and severally;
- (h) a reference to "\$", "A\$" or "dollar" is a reference to Australian currency;
- (i) a reference to a time is a reference to Australian Eastern Standard Time or Australian Eastern Daylight Time, whichever is appropriate;
- (j) a reference to a party includes its executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (k) words and expressions denoting natural persons include bodies corporate, partnerships, associations, firms, governments and governmental authorities and agencies and vice versa;

- (l) a reference to any legislation or to any provision of any legislation includes:
  - (i) any modification, re-enactment or replacement of the legislation; and
  - (ii) all legislation, statutory instruments and regulations issued under the legislation or provision;
- (m) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Contract or any part of it; and
- (n) the words "including", "for example", "such as" or other similar expressions (in any form) are not words of limitation; and
- (o) reference to a party's liability to pay GST includes the liability of a member of a GST group in which that party is also a member.
- (p) terms described on pages 1 and 2 of the Standard Contract or defined in clause 1 of the Standard Contract:
  - (i) have the same meanings when used in this Contract unless inconsistent with defined terms in Additional Clause 33.1 and whether or not in italics; and
  - (ii) are capitalised when used in these Additional Clauses; and
- (q) If there is any inconsistency between the Standard Contract and the Additional Clauses, the Additional Clauses prevail to the extent of any inconsistency.

### 33.3 Rights and powers subject to statute

The parties acknowledge that:

- (a) the exercise of a right or power under this Contract, including a right to terminate, may from time to time be subject to a statutory stay, limitation or restriction, including under Parts 5.1, 5.2 and/or 5.3A of the Corporations Act; and
- (b) they must make their own searches, investigations, enquiries and evaluations in relation to any exercise or proposed exercise of a right or power under this Contract.

## 34 Amendments to Standard Contract

Clauses 1 to 29 (inclusive) in the Standard Contract are amended as follows:

### (a) Clause 1 - Definitions

- (i) In the definition of "adjustment date" the word "completion" is deleted and replaced with the words "Completion Date";
- (ii) The definition of "bank" is deleted and replaced with:
 

<i>"bank</i>	<i>a corporation authorised by law to carry on the general business of banking in Australia;"</i>
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- (iii) The definition of clearance certificate is deleted;
- (iv) The definition of "FRCGW percentage" is deleted;
- (v) The following words are added at the end of the definition of *requisition*:  
"and which is not prohibited or restricted under any provision of this contract;"
- (vi) The definition of "remittance amount" is deleted;
- (vii) The definition of "RW payment" is deleted;



- (viii) The definition of "RW rate" is deleted; and
- (ix) The definition of "TA Act" is deleted.
- (b) **Clause 2 - Deposit and other payments before completion**
  - (i) Clause 2.4: The words "by giving cash (up to \$2,000) or" are deleted from this clause.
  - (ii) Clause 2.5: The second sentence is deleted from this clause.
  - (iii) Clause 2.9: This clause is deleted and replaced with:  

"The depositholder must invest the Deposit (at the risk of the parties who become entitled to it) with a bank in an interest bearing account in NSW, payable at call, with interest to be reinvested. Interest earned on the investment of the deposit belongs to the vendor unless this contract is rescinded by the purchaser as a consequence of a default by the vendor in which case it belongs to the purchaser."
- (c) **Clause 7 - Claims by purchaser**
  - (i) Clause 7.1.1: This clause is deleted and replaced with:  

"7.1.1 Deleted;"
  - (ii) Clause 7.1.3: The words "14 days" are deleted and replaced with the words "7 days".
- (d) **Clause 8 - Vendor's rights and obligations**
  - (i) Clause 8.1.1: The words ", on reasonable grounds," are deleted.
  - (ii) Clause 8.1.2: The words "and those grounds" are deleted.
  - (iii) Clause 8.1.3: The words "14 days" are deleted and replaced with the words "7 days".
  - (iv) Clause 8.2.2 is deleted and replaced with:  

"8.2.2 Deleted;"
- (e) **Clause 10 - Restrictions on rights of purchaser**
  - (i) Clause 10.1: The words "or ask the vendor to take any action or incur any Cost or delay completion" are added after the word "requisition" in this clause.
  - (ii) Clause 10.1.8: The word "substance" is deleted and replaced with the word "existence".
  - (iii) Clause 10.1.9: The word "substance" is deleted and replaced with the word "existence".
  - (iv) Clause 10.2: The words "or delay completion" are added after the word "rescind" in this clause.
- (f) **Clause 13 - Goods and Services Tax (GST)**  

This clause is deleted and replaced with:  

"13 Deleted;"
- (g) **Clause 14 - Adjustments**
  - (i) Clause 14.1: The words "rates, water, sewerage and drainage service and usage charges, land tax and all other periodic outgoings" are deleted from this clause and replaced by the words "Outgoings".
  - (ii) Clause 14.4: The words "must not adjust surcharge land tax (as defined in the Land Tax Act 1956) but" are deleted.

- (iii) Clause 14.4.1: The words "and this contract says that land tax is adjustable" are deleted.
- (iv) Clause 14.4.2: The words "the person who owned the land owned no other land;" are deleted.
- (v) Clause 14.4.2: The words "the land was not subject to a special trust or owned by a non-concessional company; and" are deleted.
- (vi) Clause 14.4.3: The following is added as a new clause 14.4.3:  
"14.4.3 on a multiple holding basis."

(h) **Clause 16 - Completion**

- (i) Clause 16.5: The words ", plus another 20% of that fee" are deleted.
- (ii) Clause 16.6: The words "not less than 7 days before the Completion Date" are added after the word "if" in this clause.
- (iii) Clause 16.7: The words "cash (up to \$2,000) or" are deleted.
- (iv) Clause 16.7.1: The words "remittance amount payable" are deleted and replaced with:
  - (A) "if Additional Clause 54.3(a) applies, the WHT (CGT) Amount; and".
- (v) Clause 16.7.1: The words "RW payment; and" are deleted.
- (vi) Clause 16.8: This clause is deleted and replaced with:  
"16.8 Deleted;"
- (vii) Clause 16.12: The words ", unless the nominated place is within the city of Sydney" are added at the end of this clause.

(i) **Clause 20 - Miscellaneous**

- (i) Clause 20.6.5: The words ", unless it is not received" are deleted and replaced with the words "on the day of transmission unless the email or facsimile is transmitted on a day which is not a business day or after 5.00 pm on a business day in which case the document is deemed to have been served at 9.00 am on the next business day following the date of transmission."
- (ii) Clause 20.6.6: The word "and" is removed from the end of this clause and added at the end of clause 20.6.7.
- (iii) Clause 20.10: The words "survey report" are deleted and replaced with the words "Disclosed Document".

(j) **Clause 22 - Foreign Acquisitions and Takeovers Act 1975**

This clause is deleted and replaced with:  
"22 Deleted;"

(k) **Clause 23 - Strata or community title**

- (i) Clause 23.5.2: The words "in this contract" are deleted and replaced with the words "before the Completion Date".
- (ii) Clause 23.6: This clause is deleted and replaced with:  
"23.6 Deleted;"
- (iii) Clause 23.7: This clause is deleted and replaced with:  
"23.7 Deleted;"

- (iv) Clause 23.9: This clause is deleted and replaced with:  
"23.9 Deleted;"
- (v) Clauses 23.13: The words "7 days" are deleted and replaced with the words "3 days" in this clause.
- (vi) Clause 23.14: The words "7 days" are deleted and replaced with the words "3 days" in this clause.
- (vii) Clause 23.17: This clause is deleted and replaced with:  
"23.17 Deleted;"
- (l) **Clause 24 - Tenancies**  
This clause is deleted and replaced with:  
"24 Deleted;"
- (m) **Clause 25 - Qualified title, limited title and old system title**  
This clause is deleted and replaced with:  
"25 Deleted;"
- (n) **Clause 26 - Crown purchase money**  
This clause is deleted and replaced with:  
"26 Deleted;"
- (o) **Clause 27 - Consent to transfer**  
This clause is deleted and replaced with:  
"27 Deleted;"
- Clause 28 - Unregistered plan**  
This clause is deleted and replaced with:  
"28 Deleted;"
- (p) **Clause 29 - Conditional contract**  
This clause is deleted and replaced with:  
"29 Deleted;"
- (q) **Clause 30.15 - Electronic transaction**  
The following is added at the end of clause 30.15:  
*"The parties agree that:*  
30.15.3 *the order referred to in clause 16.9 ("Order on the Agent") must be delivered by the purchaser to the vendor by being uploaded into*

*the Electronic Workspace prior to Completion, to be held by the Vendor in escrow pending Completion;*

30.15.4 *the Order on the Agent is released from escrow to the Vendor on Completion and the Vendor is at liberty to deliver the Order on the Agent to the Depositholder; and*

30.15.5 *the Vendor is not required to complete until an Order on the Agent, which is satisfactory to the Vendor,, acting reasonably, is uploaded into the Electronic Workspace pursuant to clause 13.5.3."*

(r) **Clause 31 - Foreign Resident Capital Gains Withholding**

This clause is deleted and replaced with:

"31 Deleted."

(s) **Clause 32 – Residential off the plan contract**

This clause is deleted and replaced with:

"32 Deleted;"

## **35 Identity**

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### **35.1 Purchaser admits**

The Purchaser admits that:

- (a) the Property as inspected by it is identical with the Property described on the front page of the Standard Contract;
- (b) any structure, fence, wall or improvement is located on or inside the title boundary to the Land;
- (c) improvements located on adjoining properties do not encroach on to the Land; and
- (d) any improvements on the Land comply with all Laws.

### **35.2 No requisitions etc.**

The Purchaser must not:

- (a) make any requisition, objection or Claim;
  - (b) ask the Vendor to take any action or incur any Cost; or
  - (c) delay Completion or rescind or terminate this Contract,
- because of any matter, or any failure of the Property to comply in any respect with any matter referred to in Additional Clause 35.1.

## **36 Laws**

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### **36.1 Laws affecting the Property and its use**

- (a) The Property is sold subject to all Laws affecting the Property, its use and development.
- (b) No Law constitutes a defect in the Vendor's title or affects the validity of this Contract.

### **36.2 No requisitions etc.**

The Purchaser must not:

- (a) make any requisition, objection or Claim;

- (b) ask the Vendor to take any action or incur any Cost; or
- (c) delay Completion or rescind or terminate this Contract,

because of any matter, or any failure of the Property to comply in any respect with any matter, referred to in Additional Clause 36.1.

### **36.3 Purchaser's risk**

The Purchaser:

- (a) is responsible for remedying, at its own Cost, any failure of the Property to comply on and from the Contract Date with any Laws affecting the Property; and
- (b) indemnifies the Vendor in respect of all Claims and Loss which the Vendor may incur or may become liable for as a result of the Purchaser's failure to remedy any such failure.

## **37 Condition of Property**

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### **37.1 No warranty or representation**

The Vendor makes no warranty or representation about:

- (a) the Property;
- (b) the condition or state of repair, including as to structural soundness, of the Property;
- (c) the suitability for use of the Property and the potential for future development of the Property;
- (d) the value and exact nature of the Property; or
- (e) the present and future economic viability of the Property,

and the Purchaser relies on its own enquiries, inspection and knowledge in this respect.

### **37.2 Unregistered easements**

The Purchaser acknowledges that:

- (a) sewers, drains or other services may be laid outside registered easements; and
- (b) the Property may be subject to unregistered easements in relation to pipes, connections or structures of service supply authorities or others which may not have been disclosed to the Vendor and which may not be apparent from inspection of the Property.

### **37.3 No requisition etc.**

The Purchaser must not:

- (a) make any requisition, objection or Claim,
- (b) ask the Vendor to take any action or incur any Cost,
- (c) delay Completion or rescind or terminate this Contract; or
- (d) withhold any money,

because of or in connection with:

- (e) any matter referred to in Additional Clauses 37.1 or 37.2;
- (f) any dilapidation, infestation, defect (latent or patent) or mechanical breakdown which may affect the Property before Completion;

- (g) the roof or surface water drainage from the Property being connected to a sewerage service;
- (h) there being or not being an easement or other right in respect of a service referred to in clause 10.1 of the Standard Contract;
- (i) any sewerage service passing through the Property;
- (j) any improvements erected over a sewerage service or easement;
- (k) the presence in or on the Property of asbestos or other hazardous substances;
- (l) the condition or existence, non-existence or inadequacy of services;
- (m) the means of or lack of access to the Property;
- (n) the present or future expenses associated with the ownership and operation of the Property;
- (o) whether there are any notices or orders by any Authority, including a notice or order requiring work to be done or money spent in connection with the Property;
- (p) the availability, existence or otherwise of an Approval;
- (q) anything in connection with the Property which is disclosed or referred to in this Contract;
- (r) any proposal for the Property or any surrounding area;
- (s) the availability or otherwise of any agreement or consent from any Tenant;
- (t) any rights relating to the Property;
- (u) the existence or absence of any manufacturer or supplier warranties for any plant, equipment or other thing included in the sale of the Property; and
- (v) the zoning and planning restrictions (including all planning Approvals) on and in respect of the Property and the use to which the Property may be put and the development of the Property.

## **38 Building Certificate**

### **38.1 No Building Certificate**

- (a) The Purchaser acknowledges that the Vendor does not have a Building Certificate for the Property.
- (b) The Vendor does not authorise the Purchaser to have the Property inspected for the purpose of obtaining a Building Certificate.
- (c) The Purchaser agrees not to apply to any Authority for a Building Certificate for the Property.

### **38.2 No requisitions etc.**

The Purchaser must not:

- (a) make any requisition, objection or Claim;
  - (b) ask the Vendor to take any action or incur any Cost: or
  - (c) delay Completion or rescind or terminate this Contract,
- because there is no Building Certificate in respect of the Property.

### **38.3 Indemnity**

The Purchaser indemnifies the Vendor against all Claims and Loss which the Vendor may incur or may become liable for as a result of a breach by the Purchaser of this Additional Clause 38.

## **39 Estate Agent warranty**

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- (a) The Purchaser warrants to the Vendor that it has not been introduced to this sale directly or indirectly by any estate agent or other person who may be entitled to claim commission from the Vendor in respect of this sale other than the Vendor's agent specified on the front page of the Standard Contract (if any).
- (b) The Purchaser indemnifies the Vendor in respect of all Claims and Loss which the Vendor may incur or may become liable for as a result of a breach by the Purchaser of the warranty contained in Additional Clause 39(a).

## **40 Whole contract**

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### **40.1 Entire Agreement**

This Contract constitutes the entire agreement between the parties in relation to the Property or its purchase.

### **40.2 Conditions not in Contract**

Any promise, condition, representation, information or warranty relating to or leading up to this transaction which has been provided or made by or on behalf of the Vendor which is not set out or expressly referred to in this Contract is expressly negated and withdrawn.

## **41 Waiver**

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### **41.1 Failure to exercise power or right**

The failure, delay or omission by the Vendor to exercise any power or right under this Contract does not operate as a waiver of that power or right.

### **41.2 Single or partial exercise**

The single or partial exercise by the Vendor of any power or right under this Contract does not preclude any other or future exercise of that, or any other power or right, under this Contract.

### **41.3 No waiver of Purchaser's obligations**

The Purchaser's obligations under this Contract are not waived, diminished, varied, prejudiced or otherwise affected by any time or indulgence allowed or granted by the Vendor to the Purchaser, or by any acceptance by the Vendor of payments tendered by the Purchaser otherwise than in accordance with this Contract.

### **41.4 Waiver to be in writing**

Waiver of any power or right under this Contract:

- (a) must be in writing signed by the party entitled to the benefit of that power or right; and
- (b) is effective only to the extent set out in that written waiver.

## **42 Scope of indemnities**

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- (a) Each indemnity given by the Purchaser in this Contract:
  - (i) is a continuing obligation;
  - (ii) constitutes an obligation of the Purchaser that is separate and independent from its other obligations under this Contract; and
  - (iii) will survive termination or expiry of this Contract, and Completion.
- (b) The Vendor is not required to incur any expense or make any payment before enforcing a right of indemnity under this Contract.

## **43 Merger**

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The conditions of this Contract do not merge on Completion. Each condition will continue in force for as long as necessary to give effect to it.

## **44 Default**

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### **44.1 Default interest**

If Completion does not occur in accordance with this Contract on the Completion Date the Purchaser must pay to the Vendor on Completion, interest calculated on the unpaid balance of the Price at the Default Rate on a daily basis from but not including the Completion Date up to and including the date on which this Contract is actually completed.

### **44.2 Default Costs**

If the Purchaser breaches this Contract, the Purchaser must pay or reimburse the Vendor on demand all Costs which the Vendor may incur or may become liable for as a result of the breach. This includes:

- (a) interest, penalties, fees, charges and discount fees payable by the Vendor to a mortgagee or chargee of the Property;
- (b) the Cost of obtaining bridging finance or other credit accommodation to complete the Vendor's purchase of another property and interest, penalties, fees, charges and other expenses charged on that bridging finance or other credit accommodation;
- (c) penalties and other expenses payable by the Vendor through any delay in completion of the Vendor's purchase of another property; and
- (d) the Vendor's proper legal costs and disbursements including those of, and incidental to, the preparation and service of a notice to complete,

and the Purchaser acknowledges that each of these Costs are reasonable costs and expenses arising out of the Purchaser's non-compliance with this Contract for the purpose of clause 9.3.1.

### **44.3 Notice to Complete**

Without limiting any of the Vendor's rights in Additional Clause 44.2 to recover actual Costs which the Vendor may incur or may become liable for, the parties agree that an amount of \$550.00 (inclusive of GST) is a reasonable estimate of the Vendor's proper legal costs and disbursements of and incidental to the preparation and service of a notice to complete.



## **45 Deposit**

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- (a) Each party must, within 7 days after the Contract Date, notify the depositholder in writing of its tax file number.
- (b) Each party authorises the depositholder to give its tax file number to the Bank with which the Deposit is to be invested.
- (c) The depositholder need not invest the Deposit if it is not given the tax file number of both parties.

## **46 Stamp Duty**

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The Purchaser must:

- (a) pay all stamp duty payable in respect of this Contract; and
- (b) stamp this Contract in accordance with the provisions of the *Duties Act 1997* (NSW) and all other applicable Laws.

## **47 Completion**

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### **47.1 Time for Completion**

- (a) Completion must take place between the hours of 10.00 am and 3.00 pm unless the parties agree otherwise.
- (b) Completion after 3.00 pm on any day is deemed to take place on the next Business Day.
- (c) Subject to Additional Clause 47.1(a) the parties must use all reasonable endeavours to agree a mutually convenient time for Completion to occur. If they cannot agree, the Vendor may nominate a time for Completion by written notice to the Purchaser.

### **47.2 Notice to complete**

- (a) If Completion does not occur in accordance with this Contract on the Completion Date the party not in default may serve a notice to complete.
- (b) The parties agree that the period of at least 14 days stated in the notice to complete is considered by them to be reasonable and sufficient to render time for Completion essential.

## **48 Security Interests**

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- (a) At least 15 Business Days before the Completion Date the Purchaser must provide the Vendor with a list of all Security Interests in respect of the Property registered on the PPS Register which it reasonably requires must be released on Completion ("**SI List**").
- (b) If the Purchaser, or its lawyer, does not comply with Additional Clause 48(a) or the SI List supplied is incomplete as at the date it is issued to the Vendor and the Vendor is unable to complete this Contract as a result of the existence of a Security Interest which the Purchaser failed to list then:
  - (i) the Vendor may complete this Contract at any time on or between the Completion Date and 15 Business Days from the date on which it receives the complete SI List; and

- (ii) the Purchaser is deemed to have defaulted in payment of the balance of the Price and must pay interest on this amount under Additional Clause 44.1 from the Completion Date until the expiry of the period of 15 Business Days from delivery of the complete SI List.
- (c) If a Security Interest is registered on the PPS Register in respect of the Property after the date on which the Purchaser issues the SI List the Vendor may, if it is unable to obtain the documentation required by Additional Clauses 48(d) and 48(e) by the Completion Date, delay Completion until the day which is 2 Business Days after the date on which the Vendor notifies the Purchaser that it is able to comply with Additional Clauses 48(d) and 48(e) in respect of that Security Interest. No interest will be payable by the Purchaser under Additional Clause 44.1 in respect of a delay to Completion pursuant to this Additional Clause 48(c).
- (d) At Completion the Vendor must ensure that the Purchaser receives either:
  - (i) a written release from the Secured Party of each of the Security Interests listed on the SI List or referred to in Additional Clause 48(c), in a form published by the Law Society of New South Wales, Law Council of Australia or the Australian Bankers Association (amended appropriately, if required, to reflect a partial release of security);
  - (ii) a statement in writing in accordance with section 275(1) of the PPSA setting out that the amounts or obligations that are secured by the Security Interests listed on the SI List or referred to in Additional Clause 48(c) are nil at the Completion Date; or
  - (iii) a written approval or correction in accordance with section 275(1)(c) of the PPSA indicating that on the Completion Date, the Personal Property included in this Contract is not or will not be property in which any of the Security Interests listed on the SI List or referred to in Additional Clause 48(c), are granted.
- (e) At Completion the Vendor must, in addition to ensuring a release pursuant to Additional Clause 48(d)(i), ensure that 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 PPS Register.
- (f) The Vendor is not obliged to ensure that the Purchaser receives a release, statement, approval or correction in respect of any Personal Property that is sold in the ordinary course of the Vendor's business of selling Personal Property of that kind unless, in the case of goods that may or must be described by a serial number in the PPS Register, the Purchaser advises the Vendor at least 15 Business Days before the Completion Date that the goods are to be held as inventory.
- (g) The Vendor is not obliged to ensure that the Purchaser receives a release, statement, approval or correction in respect of any Personal Property that:
  - (i) is not described by serial number in the PPS Register; and
  - (ii) is predominantly used for personal, domestic or household purposes; and
  - (iii) has a market value of not more than \$5,000 or, if a greater amount has been prescribed for the purposes of section 47(1) of the PPSA, not more than the prescribed amount.
- (h) If the Purchaser receives a release under Additional Clause 48(d)(i), the Purchaser must provide the Vendor with a copy of that release at Completion.

## 49 Guarantee and Indemnity

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### 49.1 Guarantee and Indemnity

In consideration of the Vendor selling to the Purchaser at its request the Property for the Price and upon the terms and conditions of this Contract for itself and its executor and administrator, the Guarantor (and if there is more than one of them the Guarantors jointly and severally):

- (a) guarantees to the Vendor the due and punctual payment, performance and observance by the Purchaser of all of its liabilities and obligations to the Vendor under or in connection with the Contract whether monetary or non-monetary, present or future, actual or contingent ("**Guaranteed Obligations**"); and
- (b) as a separate and additional obligation, indemnifies the Vendor against all Claims and Loss which the Vendor may incur or may become liable for as a result of:
  - (i) any default by the Purchaser in the payment, performance and observance of the Guaranteed Obligations or the Contract;
  - (ii) the preservation or enforcement of the Vendor's rights as a result of the occurrence of an Insolvency Event with respect to the Purchaser including, without limitation, obtaining advice or any form of assistance in this regard; and
  - (iii) the Guaranteed Obligations, the Contract or any part of them being or becoming illegal, void, voidable or unenforceable.

### 49.2 Nature of the Guarantee

The Guarantor acknowledges that:

- (a) its obligations under the guarantee in Additional Clause 49.1(a) ("**Guarantee**") and the indemnity in Additional Clause 49.1(b) ("**Indemnity**") are principal obligations that will not be treated as ancillary or collateral to any other right or obligation and are continuous, absolute, unconditional and irrevocable;
- (b) its liability under the Guarantee and Indemnity extends to and will not be affected by any circumstance, act, omission or thing which, but for this provision might otherwise affect it at law or in equity including:
  - (i) the delay or failure by the Vendor to exercise any of its rights, powers or remedies conferred on it by law or this Contract including any remedy it may have against the Purchaser;
  - (ii) the variation, (including a variation which alters, increases or extends the duration of, the Guaranteed Obligations) of any provision of this Contract or any other agreement relating to any of the Guaranteed Obligations;
  - (iii) the grant to the Purchaser or the Guarantor of any time, waiver or other indulgence or concession;
  - (iv) the failure by the Vendor to give notice to the Guarantor of any default by the Purchaser under this Contract, or to disclose any other thing in relation to its affairs with the Purchaser;
  - (v) this Contract, the Guaranteed Obligations, the Guarantee, the Indemnity or any other agreement, being or becoming in whole or in part illegal, void, voidable or unenforceable; and
  - (vi) the occurrence of any other circumstance, act, omission or thing, regardless of whether the Guarantor is aware of or consents to any of these matters; and

- (c) the Indemnity:
  - (i) is a continuing obligation;
  - (ii) constitutes an obligation of the Guarantor that is separate and independent from its other obligations under this Contract; and
  - (iii) will survive termination or expiry of this Contract and Completion; and
- (d) the Vendor is not required to incur any expense or make any payment before enforcing a right of indemnity under the indemnity.

#### **49.3 Continuing Obligations**

The Guarantee and the Indemnity are separate and continuing obligations of the Guarantor and will remain in full force and effect (despite any payment or the occurrence of any other thing) until:

- (a) the Guaranteed Obligations have been irrevocably paid and performed in full; and
- (b) a formal discharge is given by the Vendor to the Guarantor.

#### **49.4 Payment to Vendor**

The Guarantor must pay any money payable under the Guarantee or the Indemnity on demand without deduction, set-off, counterclaim or withholding to, or as directed by, the Vendor.

#### **49.5 More than one Guarantor**

Where the Guarantor consists of more than one party:

- (a) the term Guarantor in this Additional Clause 49.5(b) refers to each of them and to all of them;
- (b) the Vendor may enforce the Guarantee and/or the Indemnity against all or any of them without in any way releasing or affecting the liability of, or any rights the Vendor may have against, any such other person;
- (c) any notice may be served on all of the Guarantors by serving any one of them; and
- (d) the Guarantee and the Indemnity remain binding on the other Guarantors even if:
  - (i) another Guarantor failed to execute this Contract or the execution is invalid, forged or otherwise improper;
  - (ii) the Guarantee and/or the Indemnity is not binding on any other Guarantor; or
  - (iii) the Vendor releases any Guarantor from liability under the Guarantee and/or Indemnity.

#### **49.6 Essential term**

This Additional Clause 49 is an essential term of this Contract.

### **50 Lease**

#### **50.1 Property subject to Lease**

- (a) Lease
  - (i) The Property is sold subject to, and with the benefit of, the Lease.
  - (ii) The Purchaser acknowledges that:
    - (A) any extract, schedule or summary of the Lease in this Contract may be incorrect or incomplete; and

- (B) before entering into this Contract it inspected a copy of the Lease, and is deemed to have full notice of the contents of the Lease and relies upon its own inspection in this respect.
- (iii) The Vendor makes no warranty or representation that:
  - (A) the Lease is valid or enforceable;
  - (B) any mortgagee has consented to the Lease;
  - (C) the Lease will be in force at Completion;
  - (D) the Tenant will not be in default on or prior to Completion;
  - (E) the Tenant will be in occupation of the Premises as at Completion;
  - (F) it has in its possession or control the original or counterpart of the Lease; or
  - (G) any Incentive or Rent rebate under the Lease has been paid or performed by the Vendor.
- (b) **No requisition etc.**  
 The Purchaser must not:
  - (i) make any requisition, objection or Claim;
  - (ii) ask the Vendor to take any action or incur any Cost; or
  - (iii) delay Completion or rescind or terminate this Contract,
 because of any matter referred to in Additional Clause 50.1 or arising from, or in relation to, the Lease.
- (c) **Management**  
 Until Completion the Vendor may do all things which may be necessary or ancillary to the proper management of the Property. This includes:
  - (i) calling on any Lease security;
  - (ii) taking proceedings under the Lease to secure payment of any outstanding money or obtain vacant possession; and
  - (iii) settling or compromising with the Tenant any Rent and/or other sum payable by the Tenant for any period expiring before Completion,
 without requiring any consent from the Purchaser.
- (d) **Purchaser to observe and perform**  
 The Purchaser:
  - (i) must, on and from the day of Completion, observe and perform all the obligations of the landlord contained and implied in the Lease including:
    - (A) the provision of any Incentives due to be provided as and from Completion;
    - (B) any options for renewals; and
    - (C) any rights of refusal, and
  - (ii) indemnifies the Vendor against all Claims and Loss which the Vendor may incur or may become liable for as a result of the Purchaser's failure to duly observe and perform the obligations set out in Additional Clause 50.1(d)(i).

## 50.2 Notice of Attornment

On Completion, the Vendor must give the Purchaser a proper notice of transfer addressed to the Tenant.

### 50.3 Rental Bond

- (a) The Vendor must deliver to the Purchaser at Completion a Rental Bond Transfer Form executed by the Vendor or its agent.
- (b) With effect from Completion the Purchaser:
  - (i) indemnifies the Vendor from and against all Claims and Loss which the Vendor may incur or may become liable for in relation to the Rental Bond; and
  - (ii) must take over and assume all of the liability of the Vendor in respect of the Rental Bond.

### 50.4 Deed of Covenant

- (a) In this Additional Clause:
  - (i) **"Deed of Covenant"** means a deed between a purchaser of the Property and a Covenantee (or a deed poll by a purchaser of the Property in favour of a Covenantee); and
  - (ii) **"Covenantee"** means a third party.
- (b) If the Lease (or any document relating to the Property) requires that the Vendor procure that a purchaser of the Property enter into a Deed of Covenant then:
  - (i) if requested by the Vendor, the Purchaser must enter into a Deed of Covenant and provide the executed Deed of Covenant in triplicate to the Vendor;
  - (ii) at least 5 Business Days prior to the Completion Date the Vendor may prepare and deliver to the Purchaser, the Deed of Covenant in triplicate;
  - (iii) at or prior to Completion, the Purchaser must deliver the executed Deed of Covenant, in triplicate, to the Vendor;
  - (iv) if applicable, the Vendor will provide the Purchaser with its original part of the Deed of Covenant executed by the Covenantee as soon as reasonably practicable after receiving it from the Covenantee;
  - (v) Completion is not subject to or conditional upon the Covenantee's execution of the Deed of Covenant by Completion, or at all; and
  - (vi) the provisions of this clause 50.4 do not merge on Completion.

## 51 Adjustments

### 51.1 Rent

#### (a) Entitlement to Rent

The Vendor is entitled to all Rent in respect of a Pre Completion Period including the date of Completion, and the Purchaser is entitled to all Rent in respect of a Post Completion Period.

#### (b) Adjustment of paid Rent

Rent that has been paid in advance to the Vendor in respect of a Post Completion Period must be adjusted on Completion in accordance with the principles set out in clause 14 and Additional Clauses 51.1(a) and 51.3.

#### (c) Allowance for unpaid Rent

An allowance in the Vendor's favour and in accordance with the principles set out in clause 14 and Additional Clauses 51.1(a) and 51.3 must be made on Completion for Rent that is due but unpaid in respect of a Pre Completion Period.

## **51.2 Outgoings**

### **(a) Liability for Outgoings**

Subject to Additional Clause 51.2(c) the Vendor must pay all Outgoings payable by the Vendor in respect of a Pre Completion Period and the Purchaser must pay all Outgoings payable in respect of a Post Completion Period.

### **(b) Allowance for Paid Outgoings**

An allowance in the Vendor's favour and in accordance with the principles set out in Additional Clauses 51.2(a) and 51.3 must be made on Completion for Outgoings that have been paid in advance by the Vendor in respect of a Post Completion Period.

### **(c) Allowance for unpaid Outgoings**

(i) Subject to Additional Clause 51.2(c)(ii), if there are Outgoings that are due but unpaid by the Vendor in respect of a Pre Completion Period then, on Completion:

(A) the Vendor must pay the amount due; or

(B) an allowance in the Purchaser's favour and in accordance with the principles set out in clause 14, and Additional Clauses 51.2(a) and 51.3 must be made.

(ii) The Vendor is not required to pay any amount and no allowance is to be made under Additional Clause 51.2(c)(i) for a Tenant Direct Expense that is due but unpaid in respect of a Pre Completion Period.

### **(d) Allowance for unpaid Recoverable Outgoings**

An allowance in the Vendor's favour and in accordance with the principles set out in Additional Clause 51.3 must be made on Completion for amounts relating to Recoverable Outgoings that are due to the Vendor but unpaid by the Tenant in respect of a Pre Completion Period.

## **51.3 General principles**

- (a) **(Period of apportionment)** An apportionment must be made in respect of the period to which the amount relates, for example, an annual fee must be adjusted on an annual basis and a monthly fee must be adjusted on a monthly basis.
- (b) **(Apportion on a "paid" basis)** Except where expressly provided otherwise, an Outgoing must be apportioned between the Vendor and the Purchaser on Completion on the basis that the relevant Outgoing has been paid by the Vendor for the whole of the current period for which the assessment relates irrespective of whether it has actually been paid.
- (c) **(Recovered amounts)** If a party recovers or receives an amount which it is not entitled to under this Additional Clause 51 that party must pay that amount (less the reasonable Costs incurred in its recovery) to the other party within 5 Business Days of receipt.
- (d) **(Disregard statutory benefit)** Any personal statutory benefit available to any party must be disregarded when calculating an apportionment.
- (e) **(Outgoings which have not yet been assessed)** If at Completion the amount of any Outgoing has not been assessed by the relevant Authority:
- (i) the Vendor must, subject to any adjustment payable by the Purchaser and to any rights of appeal that the Vendor may have to the relevant Authority, attend to the payment of the Outgoing when notice of assessment has been received by the Vendor within the time provided in the assessment notice;

- (ii) the Vendor may, at its option, require the Purchaser to adjust at Completion an amount that the Vendor, acting reasonably, considers to be an appropriate estimate of the unassessed Outgoing for the relevant period. As soon as possible after the assessment of the Outgoing the parties must make any necessary re-adjustment between themselves; and
  - (iii) the Purchaser is not entitled to deduct from, or delay the payment of, any part of the Price on the basis that an Outgoing has not been assessed at Completion.
- (f) **(Outgoings assessed but not due for payment at Completion)** If at Completion an Outgoing has been assessed on the Property but is not due for payment:
- (i) the Purchaser is not entitled to deduct from or delay the payment of any part of the Price on the basis that such Outgoing has not been paid; and
  - (ii) the Vendor must pay the Outgoing within the time provided in the assessment notice/at Completion; and
  - (iii) at Completion the parties must adjust the full assessed amount on a paid basis.

#### **51.4 Land Tax**

- (a) If, at Completion, the Property is subject to a charge for land tax, the Purchaser must accept the Vendor's undertaking (which is deemed to be constituted by this Additional Clause 51.4) to (subject to any rights of appeal or necessary adjustment pursuant to this Contract) pay the land tax assessed against the Property and clause 16.6 of the Standard Contract does not apply.
- (b) The Purchaser must not:
- (i) make any requisition, objection or Claim;
  - (ii) ask the Vendor to take any action or incur any Cost; or
  - (iii) delay Completion, or rescind or terminate this Contract,
- because the Property is subject to a charge for land tax at Completion.

#### **51.5 Assignment**

The Purchaser assigns to the Vendor its right to recover Rent and Outgoings which relates to any period prior to, and including, Completion.

### **52 Foreign Acquisitions And Takeovers Act 1975**

#### **52.1 Purchaser's warranty**

The Purchaser warrants that FIRB Approval is not required for the purchase of the Property by the Purchaser, or that if it is required the Purchaser has obtained that approval, or will obtain that approval, by the Completion Date.

#### **52.2 Purchaser's indemnity**

- (a) The Purchaser acknowledges that the Vendor is relying on the Purchaser's warranty contained in Additional Clause 52.1.
- (b) The Purchaser indemnifies the Vendor against all Claims and Loss including any consequential loss which the Vendor may incur or may become liable for as a consequence of the Vendor having relied upon the Purchaser's warranty when entering into this Contract.



### **52.3 Right to terminate**

If the Purchaser breaches the warranty in Additional Clause 52.1 the Purchaser is in default under this Contract in an essential respect and the Vendor can terminate this Contract by serving a notice on the Purchaser and, without limitation, the Deposit paid by the Purchaser will be forfeited to the Vendor as its absolute property.

## **53 Goods and Services Tax**

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### **53.1 Application of GST**

#### **(a) Payments exclusive of GST**

The Vendor and the Purchaser acknowledge that each Payment specified in this Contract is exclusive of GST.

#### **(b) Residential Premises**

- (i) The Vendor and the Purchaser agree that as at the Contract Date the Property is Residential Premises to be used predominantly for residential accommodation.
- (ii) The Vendor and the Purchaser agree that the Supply of the Property by the Vendor to the Purchaser under this Contract is Input Taxed.

#### **(c) If GST applies**

The subsequent provisions of this Additional Clause 53 apply if:

- (i) the ATO determines that the Supply of the Property by the Vendor to the Purchaser under this Contract is not an Input Taxed Supply of Residential Premises; or
- (ii) a party makes a Supply to another party under, or in connection with, this Contract which is not part of the Supply referred to in Additional Clause 53.1(b) and which is a Taxable Supply.

#### **(d) Recovery of GST**

If any Payment, or part of any Payment, is made to a party for or in connection with a Taxable Supply, that party is also entitled to recover from the party making the Payment, or any part of the Payment, the GST Amount calculated by multiplying the Payment, or the relevant part of the Payment, by the GST Rate.

#### **(e) Payment of GST Amount**

The GST Amount is due:

- (i) if Additional Clause 53.1(c) applies and the determination is made before Completion, at the same time as the Payment for the relevant Taxable Supply is required to be made under this Contract provided that a Tax Invoice has been issued in respect of the relevant Taxable Supply;
- (ii) if Additional Clause 53.1(c) applies and the determination is made after Completion, within 7 days of the issue of a Tax Invoice in respect of the relevant Taxable Supply; or
- (iii) if Additional Clause 53.1(c) applies, at the same time as the Payment for the relevant Taxable Supply is required to be made under this Contract provided that a Tax Invoice has been issued in respect of the relevant Taxable Supply.

#### **(f) Liability for penalties**

Any penalties or interest imposed by the ATO as a result of it determining that the Supplies made by Vendor to the Purchaser under, or in connection with, this

Contract do not constitute an Input Taxed Supply of Residential Premises will be met by the Purchaser.

(g) **Purchaser indemnity**

The Purchaser indemnifies the Vendor against all penalties and interest imposed by the ATO.

(h) **No merger**

A party's right to recover the GST Amount from the other party does not merge on Completion.

**53.2 Purchaser acknowledgement - GST Withholding Tax**

The Purchaser acknowledges receipt of the Vendor GST Withholding Notice and agrees that it is not required to make a payment to the ATO under section 14-250 of Schedule 1 of the TAA in respect of the Supply of the Property made under or pursuant to this Contract.

## **54 Withholding Tax (CGT)**

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**54.1 Application**

The provisions of Additional Clauses 54.2 and 54.3 apply unless:

- (a) the Vendor has provided to the Purchaser a Clearance Certificate on or before Completion; or
- (b) the Purchaser is not, for any other reason, required to pay WHT (CGT) to the ATO in respect of the Purchaser's acquisition of the Property from the Vendor pursuant to this Contract.

**54.2 PPN (CGT)**

- (a) The Purchaser must:

- (i) complete a PPN (CGT) that must be approved by the Vendor prior to lodgement, such approval not to be unreasonably withheld or delayed;
- (ii) lodge the approved PPN (CGT) with the ATO prior to Completion; and
- (iii) give a copy of the lodged PPN (CGT) (together with evidence to the Vendor's reasonable satisfaction of lodgement) to the Vendor on or before Completion.

**54.3 Right to withhold**

- (a) If the Purchaser has complied with Additional Clause 54.2(a) then, subject to complying with Additional Clause 54.3(b), the Purchaser may deduct the WHT (CGT) Amount from the amount due to the Vendor at Completion.
- (b) If the Purchaser makes a deduction pursuant to Additional Clause 54.3(a), the Purchaser must:
  - (i) remit the WHT (CGT) Amount to the ATO on Completion in accordance with its obligations under the TAA; and
  - (ii) on Completion, provide to the Vendor, evidence or other assurances to the Vendor's reasonable satisfaction, that the WHT (CGT) Amount has been paid.
- (c) The Purchaser indemnifies the Vendor from and against all Claims and Loss which the Vendor may incur or may become liable for arising from the Purchaser's failure to comply with its obligations in this Additional Clause 54.

## **55 General**

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### **55.1 Severability**

If any provision of this Contract is illegal or unenforceable, then the provision must be read down so as to give it as much effect as possible. If it is not possible to give the provision any effect at all, then it must be severed from the rest of the Contract.

### **55.2 Further assurance**

Each party must do or cause to be done all things necessary or reasonably desirable to give full effect to this Contract and the transactions contemplated by it (including, but not limited to, the execution of documents).

### **55.3 Payments under this Contract**

- (a) Despite any other provision of this Contract, any payment due under this Contract may, if the parties agree, be made by electronically transferring the payment.
- (b) A payment by electronic transfer will be deemed to be received when the monies are received in the recipients account in the form of cleared funds.

### **55.4 Signatories**

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 a default by a proprietary limited company purchaser.

### **55.5 Counterparts**

This Contract may be executed in any number of counterparts and all counterparts taken together will constitute one instrument.

## **56 Insolvency**

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If:

- (a) an Insolvency Event occurs in relation to the Purchaser (or a Guarantor) unless the event occurs as part of a solvent reconstruction, amalgamation, merger or consolidation that has been approved in writing by the Vendor; or
- (b) the Purchaser entered into this Contract in its capacity as the trustee of a trust, and then ceases to be the trustee of that trust,

then the Purchaser is in default under this Contract in an essential respect and the Vendor can terminate this Contract by serving a notice on the Purchaser.

## **57 Inclusions and Exclusions**

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### **57.1 Inclusions**

- (a) The Inclusions are sold in their condition on the Contract Date (subject to fair wear and tear).
- (b) If any of the Inclusions are not in this condition at Completion, the Purchaser is only entitled to compensation from the Vendor.
- (c) The Purchaser admits that it has inspected the Inclusions and will not:
  - (i) ask the Vendor to take any action or incur any Cost; or
  - (ii) delay Completion or rescind or terminate this Contract, because of any matter relating to the Inclusions.

- (d) The Vendor makes no warranty or representation as to the condition, or fitness for purpose, of the Inclusions, or any compliance or non-compliance of the Inclusions with any Law.

## 57.2 Excluded items

- (a) The Purchaser acknowledges that the Exclusions are not sold under this Contract and may but are not required to be removed by the Vendor prior to Completion. The Vendor gives no warranty regarding the ownership of any Exclusions located in the Property at Completion.
- (b) The Purchaser must not:
- (i) make any requisition, objection or Claim;
  - (ii) ask the Vendor to take any action or incur any Cost; or
  - (iii) delay Completion, or rescind or terminate this Contract,
- because the Vendor removes the Exclusions from the Property prior to Completion provided that the Vendor takes reasonable care in doing so and minimises (to the extent reasonably practicable) any damage caused by the removal of the Exclusions.
- (c) The Vendor is not liable for any Costs incurred by the Purchaser or for which the Purchaser may become liable in removing any Exclusions from the Property nor is the Vendor required to reinstate or make good any damage done to the Property by the Purchaser in removing the Exclusions from the Property.

## 58 Warranties as to capacity

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### 58.1 General warranties

Subject to Additional Clause 58.3 the Purchaser represents and warrants that, as at the Contract Date and Completion:

- (a) **(power)** it has full legal capacity and power to:
- (i) own property; and
  - (ii) enter into and perform its obligations under this Contract;
- (b) **(authorisations)** it has taken all action required, and obtained or been granted all consents, approvals, permissions and authorisations, whether internal or external, necessary to enable it to enter into, and perform its obligations under, this Contract;
- (c) **(binding obligations)** this Contract constitutes a valid and legally binding obligation of it in accordance with its terms; and
- (d) **(no insolvency event)** it is not subject to an Insolvency Event.

### 58.2 Trustee warranties

If the Purchaser is entering into this Contract as the trustee of any trust or settlement, then, subject to Additional Clause 58.3, the Purchaser further represents and warrants that, as at the Contract Date and Completion:

- (a) **(status)** the trust is duly constituted under relevant Laws and no action has been taken or proposed to terminate the trust;
- (b) **(power)** it has full legal capacity and power under the trust deed to enter into and perform its obligations under this Contract;
- (c) **(sole trustee)** it is the sole trustee of the trust and no action has been taken or proposed to remove it as trustee of the trust or to appoint an additional trustee;

- (d) **(no contravention)** the execution, delivery and performance of this Contract will not contravene:
  - (i) any Law, regulation, order, judgment or decree of any Government Agency which is binding on it or any of the assets of the trust;
  - (ii) the trust deed or any provision of the Purchaser's constitution or equivalent documents; or
  - (iii) any agreement, undertaking or instrument which is binding on it or any part of the assets of the trust;
- (e) **(no litigation)** no litigation, arbitration, mediation, conciliation, criminal or administrative proceedings are current, pending or (to its knowledge after due inquiry) threatened which, if adversely determined, could have a material adverse effect on its ability to perform its obligations under this Contract;
- (f) **(indemnity)** subject to any limitations in the trust deed it has the right to be fully indemnified out of the assets of the trust in respect of its obligations under this Contract and that right has not been restricted or limited in any way;
- (g) **(adequacy of trust assets)** the assets of the trust are and will continue to be sufficient to satisfy that right of indemnity in full and all other obligations in respect of which the Purchaser has a right to be indemnified out of the assets of the trust;
- (h) **(no default)** it is not in default and has never been in default of any obligation under the trust deed and its directors and other officers have complied with their obligations in respect of the trust;
- (i) **(priority)** the Vendor's rights under this Contract rank in priority to the interests of the beneficiaries under the trust;
- (j) **(benefit)** it enters into this Contract as part of the due and proper administration of the trust and for the benefit of the beneficiaries of the trust; and
- (k) **(disclosure of terms)** true and complete copies of the trust deed and all other documents relating to the trust have been provided to the Vendor and disclose all of the terms of the trust.

### **58.3 No breach**

- (a) Despite anything in Additional Clauses 58.1 and 58.2 the Purchaser is not in breach of the warranties contained in Additional Clauses 58.1 or 58.2 in respect of any matters which have been disclosed to the Vendor.
- (b) The Vendor acknowledges that:
  - (i) the Purchaser is not liable for any inaccuracy in or breach of any of the warranties given by the purchaser under this Contract, if the inaccuracy or breach or the facts giving rise to the inaccuracy or breach is evidenced in the information which has been given to the Vendor; and
  - (ii) the liability of the Purchaser for any claim under the warranties given by the Purchaser under this Contract, will be reduced or extinguished to the extent that the claim has arisen from any act or omission by the Vendor.

## **59 Development Consent**

### **59.1 Development Consent Documents**

- (a) On Completion the Vendor must give to the Purchaser the Development Consent Documents held by the Vendor.
- (b) The Vendor warrants that the Development Consultants have been paid in full for the Development Consent Documents.

- (c) The Vendor is not required to provide the Purchaser with any document in relation to the Development Consent or the Development Consent Documents not held by the Vendor nor is the Vendor required to produce or create any document in regard to the Development Consent or the Development Consent Documents, not held by the Vendor.

#### **59.2 Development Consent Documents**

- (a) The Vendor consents to the Purchaser engaging the Development Consultants following Completion.
- (b) This clause 59.2 does not require the Vendor to pay any sum or incur any Costs or incur any legal obligations.

#### **59.3 No warranty or representation**

The Vendor makes no representation or warranty to the Purchaser about the:

- (a) nature;
  - (b) effect;
  - (c) validity; or
  - (d) effectiveness,
- of the Development Consent.

#### **59.4 No requisitions etc**

The Purchaser will not:

- (a) make any requisition, objection or Claim;
- (b) ask the Vendor to take any action or incur any Cost; or
- (c) delay Completion,
- (d) because of the any matter relating to the nature, effect, validity, effectiveness or otherwise of the Development Consent or this clause.

### **60 Disclosed Documents**

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#### **60.1 Purchaser acknowledgement**

The Purchaser acknowledges and warrants to the Vendor that:

- (a) copies of the Disclosed Documents were inspected by it prior to it entering into this Contract;
- (b) it has made its own assessment and enquiries in relation to the Disclosed Documents;
- (c) it has not entered into this Contract in reliance upon any of the Disclosed Documents or upon any matter or thing referred to in any of the Disclosed Documents;
- (d) it is aware of, and made its own enquiries in relation to, any Adverse Affectations, if any, noted or disclosed in those Disclosed Documents;
- (e) it has inspected and accepts the Property and the condition of the Property;
- (f) it has not relied on any information, representation, letter, documentation or arrangement (including, without limitation, the Disclosed Documents) or other conduct as adding to or amending this Contract and that this Contract constitutes the only agreement between the Vendor and the Purchaser;

- (g) in entering this Contract it has not relied upon any warranty (other than an express warranty contained in this Contract), representation, statement or information made or provided by or on behalf of the Vendor (including, without limitation, the Disclosed Documents) except as are expressly provided in this Contract;
- (h) it relied entirely upon its own enquiries and inspection in relation to the Property in entering into this Contract;
- (i) the Vendor is not liable as a result of any information, statement, warranty (other than an express warranty contained in this Contract), representation (express or implied), letter, document or arrangement (including, without limitation, the Disclosed Documents) or any conduct provided, made or done by or on behalf of the Vendor;
- (j) subject to any Law to the contrary, all terms, conditions, warranties and statements, whether express, implied, written, oral, collateral, statutory or otherwise, are excluded and the Vendor disclaims all liability in relation to these to the maximum extent permitted by law;
- (k) it has had the opportunity to make and has made reasonable enquiries in relation to all matters material to it and satisfied itself in relation to the matters arising from those investigations;
- (l) none of the Vendor, its related corporations or any of their respective associated companies, businesses, advisers, partners, directors, officers or employees have made any representations or warranties express or implied, as to the accuracy, currency, reliability or completeness of information provided to the Purchaser (including information in the Disclosed Documents) by or on behalf of the Vendor;
- (m) the Vendor has provided the Purchaser with the opportunity to inspect the Property and to conduct its own inquiries about the Property before the Purchaser entered into this Contract; and
- (n) it has caused satisfactory inspection of the Property and matters and documents relating to them to be carried out and the purchaser shall make no requisition or objection, claim for compensation and shall not refuse or delay payment of the Price in respect of the condition, state of repair, suitability, quality, viability, profitability or potential of the Property.

## **60.2 No warranty or representation**

The Vendor makes no warranty or representation:

- (a) as to the accuracy or completeness of the Disclosed Documents;
- (b) that it has complied with any of the matters contained or referred to in the Disclosed Documents;
- (c) that it holds any title (whether encumbered or unencumbered) to, or any rights under, any of the Disclosed Documents; or
- (d) that it has in its possession or control all originals or counterparts of the Disclosed Documents.

## **60.3 Adverse Affectations**

- (a) If the Vendor does not disclose an Adverse Affectation the Purchaser's only remedy for a breach of a warranty prescribed by the Regulation is the remedy prescribed by that Regulation.
- (b) Clause 19.2.3 of the Standard Contract does not apply.

#### **60.4 No requisitions etc**

The Purchaser must not:

- (a) make any requisition, objection or Claim;
- (b) ask the Vendor to take any action or incur any Cost; or
- (c) delay Completion or rescind or terminate this Contract,

because of any matter referred to in Additional Clauses 60.1 or 60.3 or any matter or thing referred to in any of the Disclosed Documents including any Adverse Affectation.



## SCHEDULE 1 LEASE

## **SCHEDULE 1 LEASE**

**Standard form** from 30 October 2016

# Residential tenancy agreement



**Fair  
Trading**

**Landlord Name (1):**

Twinfly Investments Pty Ltd

**Landlord Name (2):**

Address for service of notices (can be an agent's address):

3/14 Frenchs Forest Road  
Frenchs Forest NSW

Postcode: 2086

Telephone number (of landlord or agent): 9452 3444

**Tenant's Name (1):**

John Bell

**Tenant's Name (2):**

**Tenant's Name (3):**

Add all other tenants here:

Address for service of notices (if different to address of premises):

Postcode:

Telephone number/s: 0474 524 105

**Landlord's agent:**

Skyline Real Estate

Address for service of notices:

3/14 Frenchs Forest Road  
Frenchs Forest NSW

Postcode: 2086

Telephone number/s: 9452 3444

**Premises:**

(a) location

26 Frenchs Forest Road, Frenchs Forest NSW 2086

(b) inclusions

*Insert inclusions, for example a common parking space or furniture provided. Attach a separate list if necessary.*

**Term:**

The term of this agreement is 6 weeks/months/years, For a fixed term agreement insert the term. Otherwise leave blank or write 'periodic'

starting on 01/08/2019 and ending on 01/02/2020

**Rent:** \$ 800.00 a week ☒ fortnight ☐ payable in advance starting on 01/08/2019

The method by which the rent must be paid:

(a) to \_\_\_\_\_ at \_\_\_\_\_

by cash or cheque, or

(b) into the following account, or any other account nominated by the landlord:

BSB number: 182 222 account number: 30 444 1363

account name: Skyline Real Estate Rent Trust Account

payment reference: 100076, or

(c) as follows: \_\_\_\_\_

*Note: The landlord or landlord's agent must permit the tenant to pay the rent by at least one means for which the tenant does not incur a cost (other than bank or other account fees usually payable for the tenant's transactions) (see clause 4.1) and that is reasonably available to the tenant.*

**RENTAL BOND** [Cross out if there is not going to be a bond]:

A rental bond of \$ 3,200.00 must be paid by the tenant on signing this agreement. The amount of the rental bond must not be more than 4 weeks rent.

**IMPORTANT INFORMATION**

**Maximum number of occupants**

No more than 4 persons may ordinarily live in the premises at any one time.

**Urgent repairs**

Nominated tradespeople for urgent repairs

Electrical repairs: Multisparx Electrical Telephone: 0438 207 870

Plumbing repairs: Dee Why Plumbers Telephone: 0408 265 798

Other repairs: \_\_\_\_\_ Telephone: \_\_\_\_\_

**Water usage**

Will the tenant be required to pay separately for water usage?



Yes



No

If yes, see clauses 11 and 12.

**Strata by-laws**

Are there any strata or community scheme by-laws applicable to the residential premises? ☐ Yes



No

If yes, see clause 35.

**Condition report**

A condition report relating to the condition of the premises must be completed by or on behalf of the landlord before or when this agreement is signed.

**Tenancy laws**

The *Residential Tenancies Act 2010* and the *Residential Tenancies Regulation 2010* apply to this agreement. Both the landlord and the tenant must comply with these laws.