

# Contract for Houses and Residential Land

Seventeenth Edition

*This document has been approved by The Real Estate Institute of Queensland Limited and the Queensland Law Society Incorporated as being suitable for the sale and purchase of houses and residential land in Queensland except for new residential property in which case the issue of GST liability must be dealt with by special condition.*

**The Seller and Buyer agree to sell and buy the Property under this contract.**

## REFERENCE SCHEDULE

Contract Date:

*If no date is inserted, the Contract Date is the date on which the last party signs the Contract*

### SELLER'S AGENT

NAME:	NGU Logan Pty Ltd t/a NGU Real Estate Logan		
ABN:	22 683 226 360	LICENCE NO:	4837756
ADDRESS:	497 Kingston Road		
SUBURB:	Kingston	STATE:	QLD POSTCODE: 4114
PHONE:	MOBILE:	FAX:	EMAIL:
07 3462 2870	0481 815 780		<a href="mailto:Rachel.h@ngurealestate.com.au">Rachel.h@ngurealestate.com.au</a>

### SELLER

NAME:	RHG Mortgage Corporation Limited ABN 48 065 912 932 (formerly RAMS Mortgage Corporation Limited ABN 48 065 912 932) as mortgagee exercising a power of sale under mortgage registered no. 710820868		ABN:	48 065 912 932
ADDRESS:	c/- POL Property Group			
	PO Box 842			
SUBURB:	Narellan	STATE:	NSW	POSTCODE: 2567
PHONE:	MOBILE:	FAX:	EMAIL:	
1300 134 442			<a href="mailto:info@polgroup.com.au">info@polgroup.com.au</a>	

NAME:				ABN:	
ADDRESS:					
SUBURB:		STATE:		POSTCODE:	
PHONE:	MOBILE:	FAX:	EMAIL:		

### SELLER'S SOLICITOR

■ or any other solicitor notified to the Buyer

NAME:	Dentons Australia		
REF:	CJT/45033374	CONTACT:	Bindi Schulz
ADDRESS:	Level 25, 10 Eagle Street		
SUBURB:	Brisbane	STATE:	QLD POSTCODE: 4000
PHONE:	MOBILE:	FAX:	EMAIL:
07 3074 1181			<a href="mailto:bindi.schulz@dentons.com">bindi.schulz@dentons.com</a>

INITIALS (Note: Initials not required if signed with Electronic Signature)

**BUYER**

NAME:				ABN:	
ADDRESS:					
SUBURB:	STATE:		POSTCODE:		
PHONE:	MOBILE:	FAX:	EMAIL:		
NAME:				ABN:	
ADDRESS:					
SUBURB:	STATE:		POSTCODE:		
PHONE:	MOBILE:	FAX:	EMAIL:		

**BUYER'S AGENT** (If applicable)

NAME:			
ABN:		LICENCE NO:	
ADDRESS:			
SUBURB:	STATE:		POSTCODE:
PHONE:	MOBILE:	FAX:	EMAIL:

**BUYER'S SOLICITOR**

■ or any other solicitor notified to the Seller

NAME:			
REF:	CONTACT:		
ADDRESS:			
SUBURB:	STATE:		POSTCODE:
PHONE:	MOBILE:	FAX:	EMAIL:

**PROPERTY**

Land:	ADDRESS:	55 Holliday Drive				
	SUBURB:	Edens Landing	STATE:	QLD	POSTCODE:	4207
		<input checked="" type="checkbox"/> Built On <input type="checkbox"/> Vacant				
Description:		Lot: 1				
		On: SP 162135				
Title Reference:		50497654				
Area:		699 sqm	■ more or less	Land sold as: <input checked="" type="checkbox"/> Freehold <input type="checkbox"/> Leasehold	■ if neither is selected, the land is treated as being Freehold	
Present Use:		Residential				
Local Government		Logan City Council				

INITIALS (Note: Initials not required if signed with Electronic Signature)

Excluded Fixtures:

Nil

Included Chattels:

Nil

#### PRICE

Deposit Holder:

Dentons Australia Limited

Deposit Holder's Trust Account:

Dentons Australia Brisbane Law Practice Trust Account

Bank: Australia and New Zealand Banking Group

BSB: 014 015

Account No: 83 758 4394

#### Cyber Warning

Cyber criminals are targeting real estate transactions by sending fraudulent electronic communications (emails) impersonating lawyers and real estate agents. **BEFORE** you pay any funds to another person or company using information that has been emailed to you or contained in this Contract, you should contact the intended recipient by telephone to verify and confirm the account details that have been provided to you.

Purchase Price:

\$

■ Unless otherwise specified in this contract, the Purchase Price includes any GST payable on the supply of the Property to the Buyer.

Deposit:

\$

(10%)

Initial Deposit payable on the day the Buyer signs this contract unless another time is specified below.

\$

Balance Deposit (if any) payable on:

Default Interest Rate:

%

■ If no figure is inserted, the Contract Rate applying at the Contract Date published by the Queensland Law Society Inc will apply.

#### FINANCE

Finance Amount:

\$

■ Unless all of "Finance Amount", "Financier" and "Finance Date" are completed, this contract is not subject to finance and clause 3 does not apply.

Financier:

Finance Date:

#### BUILDING AND/OR PEST INSPECTION DATE

Inspection Date:

Not applicable

■ If "Inspection Date" is not completed, the contract is not subject to an inspection report and clause 4.1 does not apply.

#### MATTERS AFFECTING PROPERTY

##### Title Encumbrances:

Is the Property sold subject to any Encumbrances? ☐ No ☒ Yes, listed below:

1. Rights and interests reserved to the Crown under Deed of Grant No. 10077165 (POR 27)
2. Easement in Gross no.707765873 burdening the land, council of the city of Gold Coast over Easement A on SP162135
3. Vesting no.712171674 Easement in Gross: 707765873 council of the city of Logan
4. Any statutory easements or encumbrances or rights for water, sewerage, drainage, or other utilities.
5. See special conditions 17 and 19 of Annexure A

■ **WARNING TO SELLER:** You are required to disclose all Title Encumbrances which will remain after settlement (for example, easements on your title in favour of other land and statutory easements for sewerage and drainage which may not appear on a title search). Failure to disclose these may entitle the Buyer to terminate the contract or to compensation. It is NOT sufficient to state "refer to title", "search will reveal", or similar.

INITIALS (Note: Initials not required if signed with Electronic Signature)

**Tenancies:**

TENANTS NAME: Not applicable

- If the property is sold with vacant possession from settlement, insert 'Nil'. Otherwise complete details from Residential Tenancy Agreement.

TERM AND OPTIONS: Not applicable

STARTING DATE OF TERM:

ENDING DATE OF TERM:

RENT:

BOND:

\$

\$

**Managing Agent:**

AGENCY NAME: Not applicable

PROPERTY MANAGER: Not applicable

ADDRESS:

SUBURB:

STATE:

POSTCODE:

PHONE:

FAX:

MOBILE:

EMAIL:

**POOL SAFETY****Q1.** Is there a pool on the Land or on adjacent land used in association with the Land?☐ Yes☒ No**■ WARNING TO SELLER:**

Under clause 5.3(1)(e) the Seller must provide a Pool Compliance Certificate at settlement. If there is no Pool Compliance Certificate at the Contract Date you must give a Notice of No Pool Safety Certificate to the Buyer prior to entering into this contract.

**Q2.** If the answer to Q1 is Yes, is there a Pool Compliance Certificate for the pool at the time of contract?☐ Yes☐ No**ELECTRICAL SAFETY SWITCH AND SMOKE ALARM***This section must be completed unless the Land is vacant.*

The Seller gives notice to the Buyer that an Approved Safety Switch for the General Purpose Socket Outlets is:  
(select whichever is applicable)

☒ Installed in the residence☐ Not installed in the residence

- **WARNING:** By giving false or misleading information in this section, the Seller may incur a penalty. The Seller should seek expert and qualified advice about completing this section and not rely on the Seller's Agent to complete this section.

The Seller gives notice to the Buyer that smoke alarms complying with the Smoke Alarm Requirement Provision are:  
(select whichever is applicable)

☒ Installed in the residence☐ Not installed in the residence

- **WARNING:** Under clause 7.8 the Seller must install smoke alarms complying with the Smoke Alarm Requirement Provision in any domestic dwelling on the Land. Failure to do so is an offence under the Fire and Emergency Services Act 1990.

INITIALS (Note: Initials not required if signed with Electronic Signature)

## NEIGHBOURHOOD DISPUTES (DIVIDING FENCES AND TREES) ACT 2011

The Seller gives notice to the Buyer in accordance with Section 83 of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011* that the Land:

(select whichever is applicable)

- ☒ is not affected by any application to, or an order made by, the Queensland Civil and Administrative Tribunal (QCAT) in relation to a tree on the Land or
- ☐ is affected by an application to, or an order made by, QCAT in relation to a tree on the Land, a copy of which has been given to the Buyer prior to the Buyer signing the contract.

■ **WARNING:** Failure to comply with s83 *Neighbourhood Disputes (Dividing Fences and Trees Act) 2011* by giving a copy of an order or application to the Buyer (where applicable) prior to Buyer signing the contract will entitle the Buyer to terminate the contract prior to Settlement.

## GST WITHHOLDING OBLIGATIONS

Is the Buyer registered for GST and acquiring the Land for a creditable purpose?  
(select whichever is applicable)

☐ Yes

☐ No

*[Note: An example of an acquisition for a creditable purpose would be the purchase of the Land by a building contractor, who is registered for GST, for the purposes of building a house on the Land and selling it in the ordinary course of its business.]*

The Seller gives notice to the Buyer in accordance with section 14-255(1)(a) of the Withholding Law that:

(select whichever is applicable)

- ☐ the Buyer is *not* required to make a payment under section 14-250 of the Withholding Law in relation to the supply of the Property
- ☒ the Buyer is required to make a payment under section 14-250 of the Withholding Law in relation to the supply of the Property. Under section 14-255(1) of the Withholding Law, the Seller is required to give further details prior to settlement.

■ **WARNING:** the Buyer warrants in clause 2.5(6) that this information is true and correct.

■ **WARNING:** All sellers of residential premises or potential residential land are required to complete this notice. Section 14-250 of the Withholding Law applies to the sale of 'new residential premises' or 'potential residential land' (subject to some exceptions) and requires an amount to be withheld from the Purchase Price and paid to the ATO. The Seller should seek legal advice if unsure about completing this section.

INITIALS (Note: Initials not required if signed with Electronic Signature)

## SPECIAL CONDITIONS

Annexure A – Special Conditions  
Annexure B – Guarantee and Indemnity  
Annexure C – Seller's Disclosure Statement  
Annexure D – Cooling Off Waiver Notice  
Annexure E - Execution

### SETTLEMENT

<b>SETTLEMENT DATE:</b>	30 days after the Contract Date	<ul style="list-style-type: none"> <li>■ or any later date for settlement in accordance with clauses 6.2, 6.3, 10.5, 11.4 or any other provision of this Contract.</li> </ul> <p><b>WARNING:</b> The Settlement Date as stated may change. Read clauses 6.2, 6.3, 10.5 and 11.4. If you require settlement on a particular date, seek legal advice prior to signing.</p>
<b>PLACE FOR SETTLEMENT:</b>	Dentons Brisbane, Level 25, 10 Eagle Street, Brisbane QLD 4000	<ul style="list-style-type: none"> <li>■ If Brisbane is inserted or this is not completed, this is a reference to Brisbane CBD.</li> </ul>

### SIGNATURES

The contract may be subject to a 5 business day statutory cooling-off period. A termination penalty of 0.25% of the purchase price applies if the Buyer terminates the contract during the statutory cooling-off period.  
It is recommended the Buyer obtain an independent property valuation and independent legal advice about the contract and his or her cooling-off rights, before signing.

<b>BUYER:</b> Please sign Annexure D	<b>WITNESS:</b>
<b>BUYER:</b> Please sign Annexure D	<b>WITNESS:</b>
By placing my signature above I warrant that I am the Buyer named in the Reference Schedule or authorised by the Buyer to sign.	[ <b>Note:</b> No witness is required if the Buyer signs using an Electronic Signature]
<b>SELLER:</b> Please sign Annexure D	<b>WITNESS:</b>
<b>SELLER:</b> Please sign Annexure D	<b>WITNESS:</b>
By placing my signature above I warrant that I am the Seller named in the Reference Schedule or authorised by the Seller to sign.	[ <b>Note:</b> No witness is required if the Seller signs using an Electronic Signature]

INITIALS (Note: Initials not required if signed with Electronic Signature)

# TERMS OF CONTRACT

## FOR HOUSES AND RESIDENTIAL LAND

### 1. DEFINITIONS

1.1 In this contract, terms in **bold** in the Reference Schedule have the meanings shown opposite them and unless the context otherwise requires:

- (a) **"Approved Safety Switch"** means a residual current device as defined in the *Electrical Safety Regulation 2013*;
- (b) **"ATO"** means the Australian Taxation Office;
- (c) **"ATO Clearance Certificate"** means a certificate issued under s14-220(1) of the Withholding Law which is current on the date it is given to the Buyer;
- (d) **"Balance Purchase Price"** means the Purchase Price, less the Deposit paid by the Buyer;
- (e) **"Bank"** means an authorised deposit-taking institution within the meaning of the *Banking Act 1959 (Cth)*;
- (f) **"Bond"** means a bond under the Residential Tenancies and Rooming Accommodation Act 2008;
- (g) **"Building Inspector"** means a person licensed to carry out completed residential building inspections under the *Queensland Building and Construction Commission Regulations 2003*;
- (h) **"Business Day"** means a day other than:
  - (i) a Saturday or Sunday;
  - (ii) a public holiday in the Place for Settlement; and
  - (iii) a day in the period 27 to 31 December (inclusive);
- (i) **"CGT Withholding Amount"** means the amount determined under section 14-200(3)(a) of the Withholding Law or, if a copy is provided to the Buyer prior to settlement, a lesser amount specified in a variation notice under section 14-235;
- (j) **"Contract Date"** or **"Date of Contract"** means:
  - (i) the date inserted in the Reference Schedule as the Contract Date; or
  - (ii) if no date is inserted, the date on which the last party signs this contract;
- (k) **"Court"** includes any tribunal established under statute.
- (l) **"Electronic Signature"** means an electronic method of signing that identifies the person and indicates their intention to sign the contract;
- (m) **"Encumbrances"** includes:
  - (i) unregistered encumbrances;
  - (ii) statutory encumbrances; and
  - (iii) Security Interests.
- (n) **"Essential Term"** includes, in the case of breach by:
  - (i) the Buyer: clauses 2.2, 2.5(1), 2.5(5), 5.1 and 6.1; and
  - (ii) the Seller: clauses 2.5(5), 5.1, 5.3(1)(a)-(e), 5.5 and 6.1;
 but nothing in this definition precludes a Court from finding other terms to be essential.
- (o) **"Extension Notice"** means a notice under clause 6.2(1);
- (p) **"Financial Institution"** means a Bank, building society or credit union;
- (q) **"General Purpose Socket Outlet"** means an electrical socket outlet as defined in the *Electrical Safety Regulation 2013*; **"GST"** means the goods and services tax under the GST Act;
- (r) **"GST Act"** means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and includes other GST related legislation;
- (s) **"GST Withholding Amount"** means the amount (if any) determined under section 14-250 of the Withholding Law required to be paid to the Commissioner of Taxation.

- (t) **"Improvements"** means all fixed structures on the Land and includes all items fixed to them (such as stoves, hot water systems, fixed carpets, curtains, blinds and their fittings, clothes lines, fixed satellite dishes and television antennae, in-ground plants) but does not include the Reserved Items;
- (u) **"Keys"** means keys, codes or devices in the Seller's possession or control for all locks or security systems on the Property or necessary to access the Property;
- (v) **"Outgoings"** means rates or charges on the Land by any competent authority (for example, council rates, water rates, fire service levies) but excludes land tax;
- (w) **"Pest Inspector"** means a person licensed to undertake termite inspections on completed buildings under the *Queensland Building and Construction Commission Regulations 2003*;
- (x) **"Pool Compliance Certificate"** means:
  - (i) a Pool Safety Certificate under section 231C(a) of the *Building Act 1975*; or
  - (ii) a building certificate that may be used instead of a Pool Safety Certificate under section 246AN(2) of the *Building Act 1975*; or
  - (iii) an exemption from compliance on the grounds of impracticality under section 245B of the *Building Act 1975*;
- (y) **"PPSR"** means the Personal Property Securities Register established under *Personal Property Securities Act 2009 (Cth)*;
- (z) **"Property"** means:
  - (i) the Land;
  - (ii) the Improvements; and
  - (iii) the Included Chattels;
- (aa) **"Rent"** means any periodic amount payable under the Tenancies;
- (bb) **"Reserved Items"** means the Excluded Fixtures and all chattels on the Land other than the Included Chattels;
- (cc) **"Security Interests"** means all security interests registered on the PPSR over Included Chattels and Improvements;
- (dd) **"Services"** means infrastructure for the provision of services including water, gas, electricity, telecommunications, sewerage or drainage;
- (ee) **"Smoke Alarm Requirement Provision"** has the meaning in section 104RA of the *Fire and Emergency Services Act 1990*;
- (ff) **"Transfer Documents"** means:
  - (i) the form of transfer under the *Land Title Act 1994* required to transfer title in the Land to the Buyer; and
  - (ii) any other document to be signed by the Seller necessary for stamping or registering the transfer;
- (gg) **"Transport Infrastructure"** has the meaning defined in the *Transport Infrastructure Act 1994*; and
- (hh) **"Withholding Law"** means Schedule 1 to the *Taxation Administration Act 1953 (Cth)*.

### 2. PURCHASE PRICE

#### 2.1 GST

- (1) Unless otherwise specified in this contract, the Purchase Price includes any GST payable on the supply of the Property to the Buyer.
- (2) If a party is required to make any other payment or reimbursement under this contract, that payment or reimbursement will be reduced by the amount of any input tax credits to which the other party (or the representative member for a GST group of which it is a member) is entitled.

INITIALS (Note: Initials not required if signed with Electronic Signature)



## 2.2 Deposit

- (1) The Buyer must pay the Deposit to the Deposit Holder at the times shown in the Reference Schedule. The Deposit Holder will hold the Deposit until a party becomes entitled to it.
- (2) The Buyer will be in default if it:
  - (a) does not pay the Deposit when required;
  - (b) pays the Deposit by a post-dated cheque; or
  - (c) pays the Deposit by cheque which is dishonoured on presentation.
- (3) Subject to clause 2.2(4), if the Buyer:
  - (a) effects an electronic transaction to pay all or part of the Deposit to the account of Deposit Holder on a day;
  - (b) provides written evidence to the Deposit Holder that the electronic transaction has occurred; and
  - (c) does not take any action to defer the payment to the Deposit Holder to a later day,the payment is taken to be received by the Deposit Holder on the day the Buyer effects the electronic transaction even if, because of circumstances beyond the Buyer's control, the payment to the Deposit Holder's account happens on a later day.
- (4) If the Buyer has complied with clause 2.2(3) but the Deposit Holder has not received the payment by the due date:
  - (a) the Seller may give the Buyer notice that the payment has not been received by the Deposit Holder; and
  - (b) if the payment has not been paid into the account of the Deposit Holder by 5pm on the date 2 Business Days after the Seller's notice under clause 2.2(4)(a) is given to the Buyer then clause 2.2(3) will not apply and the Buyer will be in default.
- (5) The Seller may recover from the Buyer as a liquidated debt any part of the Deposit which is not paid when required.

## 2.3 Investment of Deposit

- If:
- (1) the Deposit Holder is instructed by either the Seller or the Buyer; and
  - (2) it is lawful to do so;
- the Deposit Holder must:
- (3) invest as much of the Deposit as has been paid with any Financial Institution in an interest-bearing account in the names of the parties; and
  - (4) provide the parties' tax file numbers to the Financial Institution (if they have been supplied).

## 2.4 Entitlement to Deposit and Interest

- (1) The party entitled to receive the Deposit is:
  - (a) if this contract settles, the Seller;
  - (b) if this contract is terminated without default by the Buyer, the Buyer; and
  - (c) if this contract is terminated owing to the Buyer's default, the Seller.
- (2) The interest on the Deposit must be paid to the person who is entitled to the Deposit.
- (3) If this contract is terminated, the Buyer has no further claim once it receives the Deposit and interest, unless the termination is due to the Seller's default or breach of warranty.
- (4) The Deposit is invested at the risk of the party who is ultimately entitled to it.

## 2.5 Payment of Balance Purchase Price

- (1) On the Settlement Date, the Buyer must pay the Balance Purchase Price by bank cheque as the Seller or the Seller's Solicitor directs.
- (2) Despite any other provision of this contract, a reference to a "bank cheque" in clause 2.5:
  - (a) includes a cheque drawn by a building society or credit union on itself;
  - (b) does not include a cheque drawn by a building society or credit union on a Bank;and the Seller is not obliged to accept a cheque referred to in clause 2.5(2)(b) on the Settlement Date.
- (3) If both the following apply:
  - (a) the sale is not an excluded transaction under s14-215 of the Withholding Law; and
  - (b) the Seller has not given the Buyer on or before settlement for each person comprising the Seller either:

- (i) an ATO Clearance Certificate; or
- (ii) a variation notice under s14-235 of the Withholding Law which remains current at the Settlement Date varying the CGT Withholding Amount to nil,

then:

- (c) for clause 2.5(1), the Seller irrevocably directs the Buyer to draw a bank cheque for the CGT Withholding Amount in favour of the Commissioner of Taxation or, if the Buyer's Solicitor requests, the Buyer's Solicitor's Trust Account;
  - (d) the Buyer must lodge a Foreign Resident Capital Gains Withholding Purchaser Notification Form with the ATO for each person comprising the Buyer and give copies to the Seller with the payment reference numbers (PRN) on or before settlement;
  - (e) the Seller must return the bank cheque in paragraph (c) to the Buyer's Solicitor (or if there is no Buyer's Solicitor, the Buyer) at settlement; and
  - (f) the Buyer must pay the CGT Withholding Amount to the ATO in accordance with section 14-200 of the Withholding Law and give the Seller evidence that it has done so within 2 Business Days of settlement occurring.
- (4) For clause 2.5(3) and section 14-215 of the Withholding Law, the market value of the CGT asset is taken to be the Purchase Price less any GST included in the Purchase Price for which the Buyer is entitled to an input tax credit unless:
- (a) the Property includes items in addition to the Land and Improvements; and
  - (b) no later than 2 Business Days before the Settlement Date, the Seller gives the Buyer a valuation of the Land and Improvements prepared by a registered valuer,
- in which case the market value of the Land and Improvements will be as stated in the valuation.
- (5) If the Buyer is required to pay the GST Withholding Amount to the Commissioner of Taxation at settlement pursuant to section 14-250 of the Withholding Law:
- (a) the Seller must give the Buyer a notice in accordance with section 14-255(1) of the Withholding Law;
  - (b) prior to settlement the Buyer must lodge with the ATO:
    - (i) a *GST Property Settlement Withholding Notification* form ("Form 1"); and
    - (ii) a *GST Property Settlement Date Confirmation* form ("Form 2");
  - (c) on or before settlement, the Buyer must give the Seller copies of:
    - (i) the Form 1;
    - (ii) confirmation from the ATO that the Form 1 has been lodged specifying the Buyer's lodgement reference number and payment reference number;
    - (iii) confirmation from the ATO that the Form 2 has been lodged; and
    - (iv) a completed ATO payment slip for the Withholding Amount;
  - (d) the Seller irrevocably directs the Buyer to draw a bank cheque for the GST Withholding Amount in favour of the Commissioner of Taxation and deliver it to the Seller at settlement; and
  - (e) the Seller must pay the GST Withholding Amount to the ATO in compliance with section 14-250 of the Withholding Law promptly after settlement.
- (6) The Buyer warrants that the statements made by the Buyer in the Reference Schedule under GST Withholding Obligations are true and correct.

## 2.6 Adjustments

- (1) Rent and Outgoings must be apportioned between the parties in accordance with this clause 2.6 and any adjustments paid and received on settlement so that:
  - (a) the Seller is liable for Outgoings and is entitled to Rent up to and including the Settlement Date; and
  - (b) the Buyer is liable for Outgoings and is entitled to Rent after the Settlement Date.



- (2) Subject to clauses 2.6(3), 2.6(5) and 2.6(14), Outgoings for periods including the Settlement Date must be adjusted:
  - (a) for those paid, on the amount paid;
  - (b) for those assessed but unpaid, on the amount payable (excluding any discount); and
  - (c) for those not assessed:
    - (i) on the amount the relevant authority advises will be assessed (excluding any discount); or
    - (ii) if no advice on the assessment to be made is available, on the amount of the latest separate assessment (excluding any discount).
- (3) If there is no separate assessment of rates for the Land at the Settlement Date and the Local Government informs the Buyer that it will not apportion rates between the Buyer and the Seller, then:
  - (a) the amount of rates to be adjusted is that proportion of the assessment equal to the ratio of the area of the Land to the area of the parcel in the assessment; and
  - (b) if an assessment of rates includes charges imposed on a "per lot" basis, then the portion of those charges to be adjusted is the amount assessed divided by the number of lots in that assessment.
- (4) The Seller is liable for land tax assessed on the Land for the financial year current at the Settlement Date. If land tax is unpaid at the Settlement Date and the Queensland Revenue Office advises that it will issue a final clearance for the Land on payment of a specified amount, then the Seller irrevocably directs the Buyer to draw a bank cheque for the specified amount from the Balance Purchase Price at settlement and the Buyer must pay it promptly to the Queensland Revenue Office.
- (5) Any Outgoings assessable on the amount of water used must be adjusted on the charges that would be assessed on the total water usage for the assessment period, determined by assuming that the actual rate of usage shown by the meter reading made before settlement continues throughout the assessment period. The Buyer must obtain and pay for the meter reading.
- (6) If any Outgoings are assessed but unpaid at the Settlement Date, then the Seller irrevocably directs the Buyer to draw a bank cheque for the amount payable from the Balance Purchase Price at settlement and pay it promptly to the relevant authority. If an amount is deducted under this clause, the relevant Outgoing will be treated as paid at the Settlement Date for the purposes of clause 2.6(2).
- (7) Rent for any rental period ending on or before the Settlement Date belong to the Seller and are not adjusted at settlement.
- (8) Unpaid Rent for the rental period including both the Settlement Date and the following day ("**Current Period**") is not adjusted until it is paid.
- (9) Rent already paid for the Current Period or beyond must be adjusted at settlement.
- (10) If Rent payments are reassessed after the Settlement Date for periods including the Settlement Date, any additional Rent payment from a Tenant or refund due to a Tenant must be apportioned under clauses 2.6(7), 2.6(8) and 2.6(9).
- (11) Payments under clause 2.6(10) must be made within 14 days after notification by one party to the other but only after any additional payment from a Tenant has been received.
- (12) The cost of Bank cheques payable at settlement:
  - (a) to the Seller or its mortgagee are the responsibility of the Buyer; and
  - (b) to parties other than the Seller or its mortgagee are the responsibility of the Seller and the Seller will reimburse this cost to the Buyer as an adjustment at settlement.
- (13) The Seller is not entitled to require payment of the Balance Purchase Price by means other than Bank cheque without the consent of the Buyer.
- (14) Upon written request by the Buyer, the Seller will, before settlement, give the Buyer a written statement, supported by reasonable evidence, of –
  - (a) all Outgoings and all Rent for the Property to the extent they are not capable of discovery by search or enquiry at any office of public record or pursuant to the provisions of any statute; and

- (b) any other information which the Buyer may reasonably require for the purpose of calculating or apportioning any Outgoings or Rent under this clause 2.6.

If the Seller becomes aware of a change to the information provided the Seller will as soon as practicably provide the updated information to the Buyer.

### 3. FINANCE

- 3.1 This contract is conditional on the Buyer obtaining approval of a loan for the Finance Amount from the Financier by the Finance Date on terms satisfactory to the Buyer. The Buyer must take all reasonable steps to obtain approval.
- 3.2 The Buyer must give notice to the Seller that:
  - (1) approval has not been obtained by the Finance Date and the Buyer terminates this contract; or
  - (2) the finance condition has been either satisfied or waived by the Buyer.
- 3.3 The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 3.2 by 5pm on the Finance Date. This is the Seller's only remedy for the Buyer's failure to give notice.
- 3.4 The Seller's right under clause 3.3 is subject to the Buyer's continuing right to give written notice to the Seller of satisfaction, termination or waiver pursuant to clause 3.2.

### 4. BUILDING AND PEST INSPECTION REPORTS

- 4.1 This contract is conditional upon the Buyer obtaining a written building report from a Building Inspector and a written pest report from a Pest Inspector (which may be a single report) on the Property by the Inspection Date on terms satisfactory to the Buyer. The Buyer must take all reasonable steps to obtain the reports (subject to the right of the Buyer to elect to obtain only one of the reports).
- 4.2 The Buyer must give notice to the Seller that:
  - (a) a satisfactory Inspector's report under clause 4.1 has not been obtained by the Inspection Date and the Buyer terminates this contract. The Buyer must act reasonably; or
  - (b) clause 4.1 has been either satisfied or waived by the Buyer.
- 4.3 If the Buyer terminates this contract and the Seller asks the Buyer for a copy of the building and pest reports, the Buyer must give a copy of each report to the Seller without delay.
- 4.4 The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 4.2 by 5pm on the Inspection Date. This is the Seller's only remedy for the Buyer's failure to give notice.
- 4.5 The Seller's right under clause 4.4 is subject to the Buyer's continuing right to give written notice to the Seller of satisfaction, termination or waiver pursuant to clause 4.2.

### 5. SETTLEMENT

#### 5.1 Time and Date

- (1) Settlement must occur:
  - (a) between 9am and 4pm AEST on the Settlement Date; and
  - (b) subject to clause 5.1(2), in the Place for Settlement at the office of a solicitor, Financial Institution or settlement agent nominated by the Seller.
- (2) If the Seller has not nominated an office under clause 5.1(1)(b) or the parties have not otherwise agreed where settlement is to occur by 5pm on the date 2 Business Days before the Settlement Date, section 61(2)(c) of the *Property Law Act 1974* applies.

#### 5.2 Transfer Documents

- (1) The Transfer Documents must be prepared by the Buyer and delivered to the Seller a reasonable time before the Settlement Date.
- (2) If the Buyer pays the Seller's reasonable expenses, it may require the Seller to produce the Transfer Documents at the Queensland Revenue Office nearest the Place for Settlement for stamping before settlement.

#### 5.3 Documents and Keys at Settlement

- (1) In exchange for payment of the Balance Purchase Price, the Seller must deliver to the Buyer at settlement:
  - (a) unstamped Transfer Documents capable of immediate registration after stamping; and

- (b) any instrument necessary to release any Encumbrance over the Property in compliance with the Seller's obligation in clause 7.2; and
- (c) if requested by the Buyer not less than 2 Business Days before the Settlement Date, the Keys; and
- (d) if there are Tenancies:
  - (i) the Seller's copy of any Tenancy agreements;
  - (ii) a notice to each tenant advising of the sale in the form required by law; and
  - (iii) any notice required by law to transfer to the Buyer the Seller's interest in any Bond; and
- (e) a copy of a current Pool Compliance Certificate for each regulated pool on the Land unless:
  - (i) the Seller has done this before settlement; or
  - (ii) the Seller has given the Buyer a notice under section 28 of the *Building Regulation 2021* (Notice of No Pool Safety Certificate) before entry into this contract.

- (2) If the Keys are not required to be delivered at Settlement under clause 5.3(1)(c), the Seller must deliver the Keys to the Buyer on or before settlement. The Seller may discharge its obligation under this provision by authorising the Seller's Agent to release the Keys to the Buyer.

#### 5.4 Assignment of Covenants and Warranties

At settlement, the Seller assigns to the Buyer the benefit of all:

- (1) covenants by the tenants under the Tenancies;
  - (2) guarantees and Bonds (subject to the requirements of the *Residential Tenancies and Rooming Accommodation Act 2008*) supporting the Tenancies;
  - (3) manufacturers' warranties regarding the Included Chattels; and
  - (4) builders' warranties on the Improvements;
- to the extent they are assignable. However, the right to recover arrears of Rent is not assigned to the Buyer and section 117 of the *Property Law Act 1974* does not apply.

#### 5.5 Possession of Property and Title to Included Chattels

On the Settlement Date, in exchange for the Balance Purchase Price, the Seller must give the Buyer vacant possession of the Land and the Improvements except for the Tenancies. Title to the Included Chattels passes at settlement.

#### 5.6 Reservations

- (1) The Seller must remove the Reserved Items from the Property before settlement.
- (2) The Seller must repair at its expense any damage done to the Property in removing the Reserved Items. If the Seller fails to do so, the Buyer may repair that damage.
- (3) Any Reserved Items not removed before settlement will be considered abandoned and the Buyer may, without limiting its other rights, complete this contract and appropriate those Reserved Items or dispose of them in any way.
- (4) The Seller indemnifies the Buyer against any damages and expenses resulting from the Buyer's actions under clauses 5.6(2) or 5.6(3).

#### 5.7 Consent to Transfer of State Lease

- (1) If the Land sold is leasehold, this contract is subject to any necessary consent to the transfer of the lease to the Buyer being obtained by the Settlement Date.
- (2) The Seller must apply for the consent required as soon as possible.
- (3) The Buyer must do everything reasonably required to help obtain this consent.

### 6. TIME

#### 6.1 Time of the Essence

Time is of the essence of this contract, except regarding any agreement between the parties on a time of day for settlement.

#### 6.2 Extension of Settlement Date

- (1) Either party may, at any time up to 4pm on the Settlement Date, extend the Settlement Date by giving a notice under this clause nominating a new date for settlement which must be no later than 5 Business Days after the Scheduled Settlement Date.
- (2) The Settlement Date will be the date specified in the Extension Notice and time is of the essence in respect of this date.
- (3) More than one Extension Notice may be given under clause 6.2(1) but the new date for settlement nominated in an

Extension Notice may not be a date later than 5 Business Days after the Scheduled Settlement Date.

- (4) In this clause 6.2, "**Scheduled Settlement Date**" means the Settlement Date specified in the Reference Schedule as extended:
  - (a) by agreement of the parties; or
  - (b) under clause 6.3 or 11.4,
 but excludes any extension of the Settlement Date as a result of the operation of this clause 6.2.

#### 6.3 Delay Event

- (1) This clause 6.3 applies if a party is unable to perform a Settlement Obligation solely as a consequence of a Delay Event but does not apply where the inability is attributable to:
  - (a) damage to, destruction of or diminution in value of the Property or other property of the Seller or Buyer; or
  - (b) termination or variation of any agreement between a party and another person whether relating to the provision of finance, the release of an Encumbrance, the sale or purchase of another property or otherwise.
- (2) Time for the performance of the parties' Settlement Obligations is suspended and ceases to be of the essence of the contract and the parties are deemed not to be in breach of their Settlement Obligations.
- (3) An Affected Party must take reasonable steps to minimise the effect of the Delay Event on its ability to perform its Settlement Obligations.
- (4) When an Affected Party is no longer prevented from performing its Settlement Obligations due to the Delay Event, the Affected Party must give the other party a notice of that fact, promptly.
- (5) When the Suspension Period ends, whether notice under clause 6.3(4) has been given or not, either party may give the other party a Notice to Settle.
- (6) A Notice to Settle must be in writing and state:
  - (a) that the Suspension Period has ended;
  - (b) a date, being not less than 5 nor more than 10 Business Days after the date the Notice to Settle is given, which shall become the Settlement Date; and
  - (c) that time is of the essence.
- (7) When Notice to Settle is given, time is again of the essence of the contract.
- (8) In this clause 6.3:
  - (a) "**Affected Party**" means a party referred to in clause 6.3(1);
  - (b) "**Delay Event**" means:
    - (i) a tsunami, flood, cyclone, earthquake, bushfire or other act of nature;
    - (ii) riot, civil commotion, war, invasion or a terrorist act;
    - (iii) an imminent threat of an event in paragraphs (i) or (ii); or
    - (iv) compliance with any lawful direction or order by a Government Agency; or
    - (v) if clause 2.5 applies, the computer system operated by the ATO for the GST Withholding notifications referred to in clause 2.5(5)(c) is inoperative;
  - (c) "**Government Agency**" means the government of the Commonwealth of Australia or an Australian State, Territory or local government and includes their authorities, agencies, government owned corporations and authorised officers, courts and tribunals;
  - (d) "**Settlement Obligations**" means, in the case of the Buyer, its obligations under clauses 2.5(1), 2.5(5)(b) and (c) and 5.1(1) and, in the case of the Seller, its obligations under clauses 5.1(1), 5.3(1)(a) – (e) and 5.5;
  - (e) "**Suspension Period**" means the period during which the Affected Party (or if both the Buyer and Seller are Affected Parties, either of them) remains unable to perform a Settlement Obligation solely as a consequence of a Delay Event.

## 7. MATTERS AFFECTING THE PROPERTY

### 7.1 Title

The Land is sold subject to:

- (1) any reservations or conditions on the title or the original Deed of Grant (if freehold); or
- (2) the Conditions of the Crown Lease (if leasehold).

### 7.2 Encumbrances

The Property is sold free of all Encumbrances other than the Title Encumbrances and Tenancies.

### 7.3 Requisitions

The Buyer may not deliver any requisitions or enquiries on title.

### 7.4 Seller's Warranties

- (1) The Seller's warranties in clauses 7.4(2) and 7.4(3) apply except to the extent disclosed by the Seller to the Buyer:
  - (a) in this contract; or
  - (b) in writing before the Buyer signed this contract.
- (2) The Seller warrants that, at the Contract Date:
  - (a) there is no outstanding notice under section 246AG, 247 or 248 of the *Building Act 1975* or section 167 or 168 of the *Planning Act 2016* that affects the Property;
  - (b) the Seller has not received any communication from a competent authority that may lead to the issue of a notice referred to in clause 7.4(2)(a) or a notice or order referred to in clause 7.6(1);
  - (c) there are no current or threatened claims or proceedings which may lead to a Court order or writ of execution affecting the Property;
  - (d) there is no outstanding obligation on the Seller to give notice to the administering authority under the *Environmental Protection Act 1994* of a notifiable activity being conducted on the Land;
  - (e) the Seller is not aware of any facts or circumstances that may lead to the Land being classified as contaminated land within the meaning of the *Environmental Protection Act 1994*.
- (3) The Seller warrants that, at settlement:
  - (a) if the Land is freehold: it will be the registered owner of an estate in fee simple in the Land and will own the rest of the Property;
  - (b) if the Land is leasehold: it will be the registered lessee, the lease is not liable to forfeiture because of default under the lease, and it will own the rest of the Property;
  - (c) it will be capable of completing this contract (unless the Seller dies or becomes mentally incapable after the Contract Date); and
  - (d) there will be no unsatisfied Court order or writ of execution affecting the Property.
- (4) If the Seller breaches a warranty in clause 7.4(2) or 7.4(3), the Buyer may terminate this contract by notice to the Seller given before settlement.
- (5) The Seller does not warrant that the Present Use is lawful.

### 7.5 Survey and Mistake

- (1) The Buyer may survey the Land.
- (2) If:
  - (a) there is an error in the boundaries or area of the Land;
  - (b) there is an encroachment by structures onto or from the Land;
  - (c) there are Services that pass through the Land which do not service the Land and are not protected by any Encumbrance disclosed to the Buyer in this contract; or
  - (d) there is a mistake or omission in describing the Property or the Seller's title to it,which is material, the Buyer may terminate this contract by notice to the Seller given before settlement.
- (3) If a matter referred to in clause 7.5(2) is:
  - (a) immaterial; or
  - (b) material, but the Buyer elects to complete this contract,the Buyer's only remedy against the Seller is for compensation, but only if claimed by the Buyer in writing on or before settlement.
- (4) The Buyer may not delay settlement or withhold any part of the Balance Purchase Price because of any compensation claim under clause 7.5(3).

### 7.6 Requirements of Authorities

- (1) Any valid notice or order by any competent authority or Court requiring work to be done or money spent in relation to the Property must be fully complied with:
  - (a) if issued before the Contract Date: by the Seller before the Settlement Date unless clause 7.6(4) applies; or
  - (b) if issued on or after the Contract Date: by the Buyer unless clause 7.6(3) applies.
- (2) If the Seller fails to comply with clause 7.6(1)(a), the Buyer is entitled to claim the reasonable cost of complying with the notice or order from the Seller after settlement as a debt.
- (3) If any notice or order referred to in clause 7.6(1)(b) is required to be complied with before the Settlement Date:
  - (a) the Seller must comply with the notice or order; and
  - (b) at settlement, the Buyer must pay the reasonable costs incurred by the Seller in doing so,unless the Buyer directs the Seller not to and indemnifies the Seller against any liability incurred for failure to comply with the notice or order.
- (4) The Buyer must comply with any notice or order referred to in clause 7.6(1) which is disclosed by the Seller to the Buyer:
  - (a) in this contract; or
  - (b) in writing before the Buyer signed this contract.

### 7.7 Property Adversely Affected

- (1) If at the Contract Date:
  - (a) the Present Use is not lawful under the relevant town planning scheme;
  - (b) the Land is affected by a proposal of any competent authority to alter the dimensions of any Transport Infrastructure or locate Transport Infrastructure on the Land;
  - (c) access to the Land passes unlawfully through other land;
  - (d) any Services to the Land which pass through other land are not protected by a registered easement, building management statement or by statutory authority;
  - (e) any competent authority has issued a current notice to treat, or notice of intention to resume, regarding any part of the Land;
  - (f) there is an outstanding condition of a development approval attaching to the Land under section 73 of the *Planning Act 2016* or section 96 of the *Economic Development Queensland Act 2012* which, if complied with, would constitute a material mistake or omission in the Seller's title under clause 7.5(2)(d);
  - (g) the Property is affected by the *Queensland Heritage Act 1992* or is included in the World Heritage List;
  - (h) the Property is declared acquisition land under the *Queensland Reconstruction Authority Act 2011*;
  - (i) there is a charge against the Land under s104 of the *Foreign Acquisitions and Takeovers Act 1975*,

and that has not been disclosed in this contract, the Buyer may terminate this contract by notice to the Seller given before settlement.

- (2) If no notice is given under clause 7.7(1), the Buyer will be treated as having accepted the Property subject to all of the matters referred to in that clause.
- (3) The Seller authorises the Buyer to inspect records held by any authority, including Security Interests on the PPSR relating to the Property.

### 7.8 Compliant Smoke Alarms

- (1) The Seller must install smoke alarms in any domestic dwelling on the Land in accordance with the Smoke Alarm Requirement Provision by the Settlement Date.
- (2) If the Seller fails to comply with clause 7.8(1), the Buyer is entitled to an adjustment at settlement equal to 0.15% of the Purchase Price but only if claimed by the Buyer in writing on or before settlement. This is the Buyer's only remedy for non-compliance with clause 7.8(1).

### 7.9 Dividing Fences

Notwithstanding any provision in the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*, the Seller need not contribute to the cost of building any dividing fence between the Land and any adjoining land owned by it. The Buyer waives any right to claim contribution from the Seller.



## 8. RIGHTS AND OBLIGATIONS UNTIL SETTLEMENT

### 8.1 Risk

The Property is at the Buyer's risk from 5pm on the first Business Day after the Contract Date.

### 8.2 Access

After reasonable notice to the Seller, the Buyer and its consultants may enter the Property:

- (1) once to read any meter;
- (2) for inspections under clause 4;
- (3) once to inspect the Property before settlement;
- (4) once to value the Property before settlement; and
- (5) once to carry out an inspection for smoke alarms installed in the Property.

### 8.3 Seller's Obligations After Contract Date

- (1) The Seller must use the Property reasonably until settlement. The Seller must not do anything regarding the Property or Tenancies that may significantly alter them or result in later expense for the Buyer.
- (2) The Seller must promptly upon receiving any notice, proceeding or order that affects the Property or requires work or expenditure on the Property, give a copy to the Buyer.
- (3) Without limiting clause 8.3(1), the Seller must not without the prior written consent of the Buyer, give any notice or seek or consent to any order that affects the Property or make any agreement affecting the Property that binds the Buyer.

### 8.4 Information Regarding the Property

Upon written request of the Buyer but in any event before settlement, the Seller must give the Buyer:

- (1) copies of all documents relating to any unregistered interests in the Property;
- (2) full details of the Tenancies to allow the Buyer to properly manage the Property after settlement;
- (3) sufficient details (including the date of birth of each Seller who is an individual) to enable the Buyer to undertake a search of the PPSR;
- (4) the Local Government rate account number for the Land; and
- (5) further copies or details if those previously given cease to be complete and accurate.

### 8.5 Possession Before Settlement

If possession is given before settlement:

- (1) the Buyer must maintain the Property in substantially its condition at the date of possession, fair wear and tear excepted;
- (2) entry into possession is under a licence personal to the Buyer revocable at any time and does not:
  - (a) create a relationship of landlord and tenant; or
  - (b) waive the Buyer's rights under this contract;
- (3) the Buyer must insure the Property to the Seller's satisfaction; and
- (4) the Buyer indemnifies the Seller against any expense or damages incurred by the Seller as a result of the Buyer's possession of the Property.

## 9. PARTIES' DEFAULT

### 9.1 Seller and Buyer May Affirm or Terminate

- (1) If the Seller or Buyer, as the case may be, fails to comply with an Essential Term, or makes a fundamental breach of an intermediate term, the Seller (in the case of the Buyer's default) or the Buyer (in the case of the Seller's default) may affirm or terminate this contract under this clause.
- (2) Clause 9.1 does not limit any other right or remedy of the parties including those under this Contract or any right at law or in equity.

### 9.2 If Seller Affirms

If the Seller affirms this contract under clause 9.1, it may sue the Buyer for:

- (1) damages;
- (2) specific performance; or
- (3) damages and specific performance.

### 9.3 If Buyer Affirms

If the Buyer affirms this contract under clause 9.1, it may sue the Seller for:

- (1) damages;
- (2) specific performance; or
- (3) damages and specific performance.

### 9.4 If Seller Terminates

If the Seller terminates this contract under clause 9.1, it may do all or any of the following:

- (1) resume possession of the Property;

- (2) forfeit the Deposit and any interest earned;
- (3) sue the Buyer for damages;
- (4) resell the Property.

### 9.5 If Buyer Terminates

If the Buyer terminates this contract under clause 9.1, it may do all or any of the following:

- (1) recover the Deposit and any interest earned;
- (2) sue the Seller for damages.

### 9.6 Seller's Resale

- (1) If the Seller terminates this contract and resells the Property, the Seller may recover from the Buyer as liquidated damages:

- (a) any deficiency in price on a resale; and
- (b) its expenses connected with any repossession, any failed attempt to resell, and the resale;

provided the resale settles within 2 years of termination of this contract.

- (2) Any profit on a resale belongs to the Seller.

### 9.7 Seller's Damages

The Seller may claim damages for any loss it suffers as a result of the Buyer's default, including its legal costs on an indemnity basis and the cost of any Work or Expenditure under clause 7.6(3).

### 9.8 Buyer's Damages

The Buyer may claim damages for any loss it suffers as a result of the Seller's default, including its legal costs on an indemnity basis.

### 9.9 Interest on Late Payments

- (1) The Buyer must pay interest at the Default Rate:
  - (a) on any amount payable under this contract which is not paid when due; and
  - (b) on any judgement for money payable under this contract.
- (2) Interest continues to accrue:
  - (a) under clause 9.9(1)(a), from the date it is due until paid; and
  - (b) under clause 9.9(1)(b), from the date of judgement until paid.
- (3) Any amount payable under clause 9.9(1)(a) in respect of a period prior to settlement must be paid by the Buyer at settlement. If this contract is terminated or if any amount remains unpaid after settlement, interest continues to accrue.
- (4) Nothing in this clause affects any other rights of the Seller under this contract or at law.

## 10. GENERAL

### 10.1 Seller's Agent

The Seller's Agent is appointed as the Seller's agent to introduce a buyer.

### 10.2 Foreign Buyer Approval

The Buyer warrants that either:

- (1) the Buyer's purchase of the Property is not a notifiable action; or
- (2) the Buyer has received a no objection notification, under the *Foreign Acquisitions and Takeovers Act 1975*.

### 10.3 Duty

The Buyer must pay all duty on this contract.

### 10.4 Notices

- (1) Notices under this contract must be in writing.
- (2) Notices under this contract or notices required to be given by law may be given and received by the party's solicitor.
- (3) Notices under this contract or required to be given by law may be given by:
  - (a) delivering or posting to the other party or its solicitor; or
  - (b) sending it to the facsimile number of the other party or its solicitor stated in the Reference Schedule (or another facsimile number notified by the recipient to the sender); or
  - (c) sending it to the email address of the other party or its solicitor stated in the Reference Schedule (or another email address notified by the recipient to the sender).
- (4) Subject to clause 10.4(5), a notice given after this contract is entered into in accordance with clause 10.4(3) will be treated as given:
  - (a) 5 Business Days after posting;
  - (b) if sent by facsimile, at the time indicated on a clear transmission report; and
  - (c) if sent by email, at the time it is sent.
- (5) Notices given by facsimile, by personal delivery or by email between 5pm on a Business Day (the "first Business Day")

and 9am on the next Business Day (the "second Business Day") will be treated as given or delivered at 9am on the second Business Day.

- (6) If two or more notices are treated as given at the same time under clause 10.4(5), they will be treated as given in the order in which they were sent or delivered.
- (7) Notices or other written communications by a party's solicitor (for example, varying the Inspection Date, Finance Date or Settlement Date) will be treated as given with that party's authority.
- (8) For the purposes of clause 10.4(3)(c) and clause 12.2 the notice or information may be contained within an email, as an attachment to an email or located in an electronic repository accessible by the recipient by clicking a link in an email.

#### 10.5 Business Days

- (1) If anything is required to be done on a day that is not a Business Day, it must be done instead on the next Business Day.
- (2) If the Finance Date or Inspection Date fall on a day that is not a Business Day, then it falls on the next Business Day.
- (3) If clause 11 applies and the Settlement Date falls on a day on which both the Sydney and Melbourne offices of the Reserve Bank of Australia are closed, the Settlement Date will be taken to be the next Business Day.

#### 10.6 Rights After Settlement

Despite settlement and registration of the transfer, any term of this contract that can take effect after settlement or registration remains in force.

#### 10.7 Further Acts

If requested by the other party, each party must, at its own expense, do everything reasonably necessary to give effect to this contract.

#### 10.8 Severance

If any term or part of a term of this contract is or becomes legally ineffective, invalid or unenforceable in any jurisdiction it will be severed and the effectiveness, validity or enforceability of the remainder will not be affected.

#### 10.9 Interpretation

##### (1) Plurals and Genders

Reference to:

- (a) the singular includes the plural and the plural includes the singular;
- (b) one gender includes each other gender;
- (c) a person includes a body corporate; and
- (d) a party includes the party's executors, administrators, successors and permitted assigns.

##### (2) Parties

- (a) If a party consists of more than one person, this contract binds them jointly and each of them individually.
- (b) A party that is a trustee is bound both personally and in its capacity as a trustee.

##### (3) Statutes and Regulations

Reference to statutes includes all statutes amending, consolidating or replacing them.

##### (4) Inconsistencies

If there is any inconsistency between any provision added to this contract and the printed provisions, the added provision prevails.

##### (5) Headings

Headings are for convenience only and do not form part of this contract or affect its interpretation.

##### (6) Calculating Time

If anything is permitted or required to be done:

- (a) a number of days or Business Days before a specified date, the date by which that thing may or must be done is to be calculated excluding the specified date;

Example: if the Settlement Date falls on a Friday, 2 days before the Settlement Date is Wednesday.

- (b) "at least" a number of days or Business Days before a specified date or a clear number of days or Business Days before a specified date, the date by which that thing may or must be done is to be calculated excluding the specified date and excluding the day on which the thing may or must be done;

Example: if the Settlement Date falls on a Friday, at least 2 days before the Settlement Date or 2 clear days before the Settlement Date is Tuesday.

- (c) a number of days or Business Days after a specified date, the date by which that thing may or must be done is to be calculated excluding the specified date.

Example: if the Contract Date falls on a Monday, 2 days after the Contract Date is Wednesday.

#### 10.10 Counterparts

- (1) This contract may be executed in two or more counterparts, all of which will together be deemed to constitute one and the same contract.
- (2) A counterpart may be electronic and signed using an Electronic Signature.

### 11. ELECTRONIC SETTLEMENT

#### 11.1 Application of Clause

- (1) Clause 11 applies if the Buyer, Seller and each Financial Institution involved in the transaction agree to an Electronic Settlement using the same ELNO System and overrides any other provision of this contract to the extent of any inconsistency.
- (2) Acceptance of an invitation to an Electronic Workspace is taken to be an agreement for clause 11.1(1).
- (3) Clause 11 (except clause 11.5(3)) ceases to apply if either party gives notice under clause 11.5 that settlement will not be an Electronic Settlement.

#### 11.2 Completion of Electronic Workspace

- (1) The parties must:
  - (a) ensure that the Electronic Workspace is completed and all Electronic Conveyancing Documents and the Financial Settlement Schedule are Digitally Signed prior to settlement; and
  - (b) do everything else required in the Electronic Workspace or otherwise to enable settlement to occur on the Settlement Date.
- (2) If the parties cannot agree on a time for settlement, the time to be nominated in the Workspace is 4pm AEST.
- (3) If any part of the Purchase Price is to be paid to discharge an Outgoing:
  - (a) the Buyer may, by notice in writing to the Seller, require that the amount is paid to the Buyer's Solicitor's trust account and the Buyer is responsible for paying the amount to the relevant authority;
  - (b) for amounts to be paid to destination accounts other than the Buyer's Solicitor's trust account, the Seller must give the Buyer a copy of the current account for the Outgoing to enable the Buyer to verify the destination account details in the Financial Settlement Schedule.
- (4) If the Deposit is required to discharge any Encumbrance or pay an Outgoing at settlement:
  - (a) the Deposit Holder must, if directed by the Seller at least 2 Business Days before settlement, pay the Deposit (and any interest accrued on investment of the Deposit) less commission as clear funds to the Seller's Solicitor;
  - (b) the Buyer and the Seller authorise the Deposit Holder to make the payment in clause 11.2(4)(a);
  - (c) the Seller's Solicitor will hold the money as Deposit Holder under the Contract;
  - (d) the Seller and Buyer authorise the Seller's Solicitor to pay the money as directed by the Seller in accordance with the Financial Settlement Schedule.

#### 11.3 Electronic Settlement

- (1) Clauses 5.1(1)(b), 5.1(2) and 5.2 do not apply.
- (2) Payment of the Balance Purchase Price electronically as directed by the Seller's Solicitor in the Financial Settlement Schedule satisfies the Buyer's obligation in clause 2.5(1).
- (3) The Seller and Buyer will be taken to have complied with:
  - (a) clause 2.5(3)(c), (e) and (f); and
  - (b) clause 2.5(5)(d) and (e),
 (as applicable) if at settlement the Financial Settlement Schedule specifies payment of the relevant amount to the account nominated by the Commissioner of Taxation.
- (4) The Seller will be taken to have complied with clause 5.3(1)(b), (c), (d), and (e) if:
  - (a) in relation to documents which are suitable for Electronic Lodgement in the Land Registry at settlement, the documents are Digitally Signed within the Electronic Workspace; and

- (b) in relation to any other document or thing, the Seller's Solicitor:
  - (i) confirms in writing prior to settlement that it holds all relevant documents which are not suitable for Electronic Lodgement and all Keys (if requested under clause 5.3(1)(c)) in escrow on the terms contained in the QLS E-Conveyancing Guidelines; and
  - (ii) gives a written undertaking to send the documents and Keys (if applicable) to the Buyer or Buyer's Solicitor no later than the Business Day after settlement; and
  - (iii) if requested by the Buyer, provides copies of documents in the Seller's Solicitors possession.
- (5) A party is not in default to the extent it is prevented from complying with an obligation because the other party or the other party's Financial Institution has not done something in the Electronic Workspace.
- (6) Any rights under the contract or at law to terminate the contract may not be exercised during the time the Electronic Workspace is locked for Electronic Settlement.
- (7) Electronic Settlement is taken to occur when Financial Settlement is effected, whether or not Electronic Lodgement has occurred.

#### 11.4 Computer System Unavailable

If settlement fails and cannot occur by 4pm AEST on the Settlement Date because a computer system operated by the Land Registry, Queensland Revenue Office, Reserve Bank, a Financial Institution or the relevant ELNO System is inoperative or unavailable, neither party is in default and the Settlement Date is deemed to be the next Business Day. Time remains of the essence.

#### 11.5 Withdrawal from Electronic Settlement

- (1) Either party may elect not to proceed with an Electronic Settlement by giving written notice to the other party.
- (2) A notice under clause 11.5(1) may not be given later than 5 Business Days before the Settlement Date unless an Electronic Settlement cannot be effected because:
  - (a) the transaction is not a Qualifying Conveyancing Transaction; or
  - (b) a party's solicitor is unable to complete the transaction due to death, a loss of legal capacity or appointment of a receiver or administrator (or similar) to their legal practice or suspension of their access to the ELNO System; or
  - (c) the Buyer's or Seller's Financial Institution is unable to use the relevant ELNO System to effect Electronic Settlement.
- (3) If clause 11.5(2) applies:
  - (a) the party giving the notice must provide satisfactory evidence of the reason for the withdrawal; and
  - (b) the Settlement Date will be extended to the date 5 Business Days after the Settlement Date.

#### 11.6 Costs

Each party must pay its own fees and charges of using the relevant ELNO System for Electronic Settlement.

#### 11.7 Definitions for clause 11

In clause 11:

**"Digitally Sign"** and **"Digital Signature"** have the meaning in the ECNL.

**"ECNL"** means the Electronic Conveyancing National Law (Queensland).

**"Electronic Conveyancing Documents"** has the meaning in the *Land Title Act 1994*.

**"Electronic Lodgement"** means lodgement of a document in the Land Registry in accordance with the ECNL.

**"Electronic Settlement"** means settlement facilitated by an ELNO System.

**"Electronic Workspace"** means a shared electronic workspace within an ELNO System that allows the Buyer and Seller to effect Electronic Lodgement and Financial Settlement.

**"ELNO"** has the meaning in the ECNL.

**"ELNO System"** means a system provided by the ELNO for facilitating Financial Settlement and Electronic Lodgement.

**"Financial Settlement"** means the exchange of value between Financial Institutions facilitated by an ELNO System in accordance with the Financial Settlement Schedule.

**"Financial Settlement Schedule"** means the electronic settlement schedule within the Electronic Workspace listing the source accounts and destination accounts.

**"Qualifying Conveyancing Transaction"** means a transaction that is not excluded for Electronic Settlement by the rules issued by the relevant ELNO, Queensland Revenue Office, Land Registry, or a Financial Institution involved in the transaction.

## 12. ELECTRONIC CONTRACT AND DISCLOSURE

### 12.1 Electronic Signing

If this contract is signed by any person using an Electronic Signature, the Buyer and the Seller:

- (a) agree to enter into this contract in electronic form; and
- (b) consent to either or both parties signing the contract using an Electronic Signature.

### 12.2 Pre-contract Disclosure

The Buyer consents to the Seller's use of electronic communication to give any notice or information required by law to be given to the Buyer and which was given before the Buyer signed this contract.

## Annexure A – Special Conditions

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### 13. AMENDMENTS TO STANDARD CONTRACT

The REIQ Terms of Contract for Houses and Residential Land (Seventeenth Edition) (**Standard Conditions**) are varied as follows:

13.1 The following clauses are inserted into clause 1.1:

- (nn) **Adjoining Land** means any land adjacent or proximate to the Property.
- (oo) **Approval** means any consent, authorisation, registration, filing, lodgement, agreement, notarisation, certificate, permission, approval, licence, permit, authority or exemption from, by or with an Authority, in relation to the Property or any matter connected with the Property (including the use of the Property).
- (pp) **ATO** means the Australian Taxation Office and includes reference to the Commissioner of Taxation and Deputy Commissioner of Taxation, and vice versa, as required.
- (qq) **Authority** includes any government, any semi or local government and any statutory or public person, authority, instrumentality or body having jurisdiction over the Property, or anything in relation to it.
- (rr) **Claims** includes any and all actions, claims, notices, proceedings, judgments, demands, losses, damages, costs, charges, payments and expenses, however arising, whether present or future, unascertained, immediate, future or contingent and whether at law, in contract or in equity.
- (ss) **Confidential Information** means this Contract and its contents, the transaction contemplated by this Contract and any information provided to the Buyer by the Seller, its officers, employees, servants, agents, advisers or any other person at the direction of the Seller prior to the Buyer entering into this Contract or in accordance with this Contract and includes any letter, brochure, Disclosure Material, report or other document prepared by the Seller or the Seller's Associates or submission to potential Buyers and the Seller's intellectual property.
- (tt) **Contamination** means:
  - i. the presence in, on, over or under land (including both surface and ground water and air) of a substance (whether solid, liquid, gas, odour, heat, sound, vibration or radiation) at a concentration above the concentration at which the substance is normally or naturally present in, on, over or under land (including both surface and ground water and air) in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the Environment, and Contaminant and Contaminated have corresponding meanings; and
  - ii. without limiting paragraph (i), includes 'contamination' (as defined in the EP Act) of land (including both surface and ground water and air) by a Hazardous Contaminant or explosive ordnance.
- (uu) **Disclosure Material** means all information and materials, if any, relating in any way to the Property which have been provided or made available by the Seller or the Seller's Associates.



- (vv) **Dividing Fence** has the same meaning as in the *Neighbourhood Disputes (Dividing Fences and Trees) 2011 (Qld)*.
- (ww) **Environment** includes all components of the earth, including:
- i. land, soil, subsoil, air and water including ground water;
  - ii. any layer of the atmosphere;
  - iii. flora and fauna;
  - iv. biota and habitat;
  - v. any organic or inorganic matter and any living organism including humans;
  - vi. human made or modified structures and areas;
  - vii. the amenity of an area for human habitation;
  - viii. the health of inhabitants;
  - ix. characteristics of heritage value or of significance to Aboriginal or Torres Strait Islander people;
  - x. the aesthetic characteristics of the components of the earth, including appearance, sound, odour, taste and texture;
  - xi. ecosystems with any combinations of the above; and
  - xii. without limiting paragraphs (i) to (xii) above, includes 'environment' as that term is defined in the EP Act.
- (xx) **Environmental Harm** includes any environmental harm, material environmental harm, serious environmental harm and environmental nuisance as those terms are defined in the EP Act.
- (yy) **Environmental Laws** means any legislation or any directive, authority, permit or licence issued by any governmental or other authority relating to pollution, contamination, use of land or protection of the environment, including without limitation, the EP Act, the Nature Conservation Act 1992, the Queensland Heritage Act 1992 and the Environment Protection and Biodiversity Act 1999.
- (zz) **EP Act** means the Environmental Protection Act 1994 (Qld).
- (aaa) **Financial Matters** mean:
- i. the past, present or future value of the Property;
  - ii. as to the past, present or future economic feasibility, or viability of the Property or any business that may be conducted from the Property; and
  - iii. any financial return, income or profit that has been or may in the future be derived from the Property.
- (bbb) **Form 1** means "Form 1: GST Property Settlement Withholding Notification Form" provided on the ATO website, or any such equivalent form as notified by the ATO.
- (ccc) **Form 2** means "Form 2: GST Property Settlement Date Confirmation Form" provided on the ATO website, or any such equivalent form as notified by the ATO.

- (ddd) **GST Notice** means a written notice stating whether the Buyer is required to withhold the GST Withholding Amount in relation to the sale or supply of the Property.
- (eee) **GST Withholding Amount** means the amount required to be withheld and paid to the ATO and Commissioner of Taxation under s 14-250 of the Withholding Law;
- (fff) **GST Withholding Law** means the provisions of Schedule 1 to the Taxation Administration Act 1953 (Cth) inserted by Schedule 5 of the Treasury Laws Amendment (2018 Measures No 1) Act 2018 (Cth).
- (ggg) **Hazardous Contaminant** has the meaning given to it in the EP Act.
- (hhh) **Obligation** includes any legal, equitable, contractual, statutory or other Obligation, agreement, covenant, commitment, duty, undertaking or liability.
- (iii) **Physical Matters** mean:
- i. the condition and state of repair of the Property;
  - ii. the existence of any defects (latent or patent) affecting the Property;
  - iii. whether the Land is or may be Contaminated;
  - iv. whether the Property is affected by any use, operation or activity being conducted on or from any Adjoining Land;
  - v. the presence, extent, location and condition of any asbestos and asbestos containing material in or on the Property;
  - vi. the fitness or suitability of the Property for any use or purpose;
  - vii. the description of the Property;
  - viii. the boundaries and area of the Land;
  - ix. the location of structures purporting to be on the Land or adjoining land;
  - x. whether there are any encroachments by structures onto or from the Land;
  - xi. the services connected to or within the Property;
  - xii. whether there is any error in the boundaries or area of the Land;
  - xiii. whether any service to or from the Land passes unlawfully through other land; and
  - xiv. whether access to the Land may only be obtained by passing unlawfully through other land.
- (jjj) **Regulatory Matters** mean:
- i. the legal rights and restrictions relating to the use of the Property;
  - ii. the existence or absence of Approvals;
  - iii. the currency, conditions and requirements of Approvals;

- iv. *whether the Property or its use complies with all laws and Approvals;*
- v. *whether the Seller has complied with all Approvals;*
- vi. *whether the Seller has complied with all laws in relation to the Property;*
- vii. *how the Property and any current or future use of the Property is affected by laws or Approvals;*
- viii. *whether the Land is entered on any register or list, including a heritage register or list, the contaminated land register, the environmental management register or the register of indigenous land use agreements;*
- ix. *whether the Land is affected by a proposal of an Authority to alter the dimensions of any transport infrastructure or to locate transport infrastructure on the Land;*
- x. *whether there whether there exists any claim for an interest in the Property by any Australian Aboriginal People pursuant to the Aboriginal Land Act 1991 (Qld), the Native Title Act 1993 (Cth) or the Native Title (Queensland) Act 1993 (Qld);*
- xi. *whether an Authority has issued a notice of resumption or intended resumption in respect of the whole or part of the Land; and*
- xii. *the existence of any Work Orders or other notices, requisitions or orders issued by an Authority in relation to the Property and whether they have been complied with.*

(kkk) **Right** includes a legal, equitable, contractual, statutory or other right, power, authority, benefit, privilege, remedy, discretion or cause of action.

(III) **Seller's Associates** means:

- i. *the Seller's Agent;*
- ii. *the Seller's Solicitors; and*
- iii. *the officers, employees, advisors, consultants and agents of the Seller, the Seller's Agent and the Seller's Solicitors.*

(mmm) **Seller's Disclosure Statement** means the Form 2 disclosure statement attached to this Contract as Annexure C which contains the statements and prescribed certificates required to be given by the Seller to the buyer under Section 99 of the Property Law Act 2023 (Qld).

(nnn) **Third Party Matters** mean:

- i. *whether any mining or petroleum interests affect the Land;*
- ii. *whether there is any claim for an interest in the Land by any Aboriginal or Torres Strait Islander people; and*
- iii. *whether there are any outstanding notices, orders or agreements with respect to:*
  - 1. *a Dividing Fence between the Land and any adjoining land; or*
  - 2. *trees situated on the Land.*

(ooo) **Work Order** means any notice or order from an Authority requiring work to be done, or money spent on or in relation to the Property or any path or road adjoining the Land.

13.2 Clauses 1.1(b), 1.1(f), 1.1(j)(ii), 1.1(s), 1.1(z)(iii), 1.1(ee), 2.1, 2.2(3), 2.2(4), 2.5(4) – (5), 2.6(7) – (11), 2.6(13) – (14), 5.1(2), 5.3(1)(c) – (f), 5.4, 5.6, 5.7, 6.2, 7.4, 7.5(3), 7.5(4), 7.6, 7.7(1), 7.7(2), 7.8, 9.3, 9.5, 9.8, and 11 are deleted.

13.3 Clause 1.1(m) is deleted and replaced with the following:

*"Encumbrances is limited to encumbrances which are registered and excludes Security Interests."*

13.4 Clause 1.1(n)(i) is varied by:

(a) deleting the word "and" from between the numbers "5.1" and "6.1" and inserting ", "; and

(b) inserting ", 10.7(2), 15.5, 20, 23, 26.2, 27, 29 and 31.2" after "6.1".

13.5 Clause 1.1(n)(ii) is varied by deleting "5.3(1)(e)(ii) & (iii), 5.3(1)(f)".

13.6 Clause 1.1(v) is varied but deleting "but excludes" and inserting "and includes".

13.7 Clause 1.1(gg) is varied by inserting the words "and includes without limitation any footpath, road or railway adjoining the Property" at the end of that sentence.

13.8 In clause 2.4(3) the words ", unless the termination is due to the Seller's default or breach of warranty." are deleted and replaced with the following:

*"earned pursuant to clause 2.3, including, without limitation, any claim for costs, damages or interest (other than interest earned pursuant to clause 2.3). The Buyer accepts such monies in full and final satisfaction of all Claims against the Seller whether arising in respect of the termination of the contract or otherwise."*

13.9 Clause 2.5(1) is varied by inserting the words ", subject to the requirements of clause 36," after the words "must pay the".

13.10 The first sentence of clause 2.6(4) is deleted and replaced with the following:

*"Land tax must be adjusted on the actual or proposed assessment of land tax payable in connection with the Land that the Office of State Revenue has issued or would issue to the registered owner of the Land for the land tax year current at settlement."*

13.11 A new sentence is inserted at the end of clause 2.6(4) as follows:

*"If there is no separate assessment of land tax for the Land at the Settlement Date and the Government informs the Buyer that it will not apportion the Land Tax between the Buyer and Seller, then the amount of Land Tax to be adjusted is that proportion of the assessment equal to the ratio of the area of the Land to the area of the parcel in the assessment."*

13.12 Clause 2.6(12)(a) is deleted and replaced with the following:

*"(a) The cost of Bank cheques payable at settlement to the Seller, its mortgagee or any other party are the responsibility of the Buyer."*

13.13 Clause 5.2(1) is varied by inserting the words "*and in any event at least seven days prior to*" before the words "*the Settlement Date*" in the last line.

13.14 Clause 5.3(1) is deleted and replaced with:

*"In exchange for payment of the Balance Purchase Price and the delivery to the Seller of the items in clauses 36.2(a)(iii) and 36.2(b) and any other information the Seller reasonably requires to meet its obligations under the GST Withholding Law, the Seller must deliver to the Buyer at settlement."*

13.15 Clause 5.5 is varied by:

- (a) deleting the words "*and Title to Included Chattels*" from the heading;
- (b) deleting the word "*vacant*" on the second line; and
- (c) deleting the words "*except for the Tenancies. Title to the Included Chattels passes at settlement.*" on the fourth and fifth lines.

13.16 Clause 7.2 is deleted and replaced with the following:

**"7.2 Encumbrances**

*The Property is sold free of all Encumbrances other than the Title Encumbrances, interests registered on the plan and any administrative advice that may be recorded on any register of title in respect of the Property."*

13.17 Clause 7.5(2) is deleted and replaced with the following:

*"7.5(2) Notwithstanding anything else contained in this contract, the Seller is not liable for any:*

- (a) *error in the boundaries or area of the Land;*
  - (b) *encroachment by structures onto or from the Land;*
  - (c) *Services which pass through the Lot that do no service the Land; or*
  - (d) *mistake or omission in describing the Land or title to it,*
- whether material or immaterial."*

13.18 Clause 8.3 is deleted and replaced with the following:

**"8.3 Seller's Use of Property**

*The Seller must use the Property reasonably until settlement. However, nothing in this contract requires the Seller to maintain the Property in the same condition as it was at the time this contract was signed by the Buyer. The Seller will not be obliged or required to repair any part or parts of the Property that may have been damaged or which is/are in a state of disrepair or is/are not in good working order. No warranty is given as to the condition of the Property as at settlement."*

13.19 Clause 8.4 is deleted and replaced with the following:

**"8.4 Information Regarding the Property**

*If requested by the Buyer, the Seller may give the Buyer before settlement copies of all documents in the possession of the Seller (if any) relating to any unregistered interests in the Property".*

13.20 Clause 8.5 is varied by:

- (a) deleting the word "*and*" from the end of clause 8.5(3);

- (b) inserting the words "without limiting any other right or remedy of the Seller including those under this contract or any right at common law," at the beginning of clause 8.5(4);
- (c) deleting "." from the end of clause 8.5(4) and inserting "; and"; and
- (d) inserting new clause 8.5(5) as follows:

*"8.5(5) if this contract is terminated for any reason, then the Buyer must immediately:*

- (a) *vacate the Property, ensuring that, at the time of vacating, the Property is in the condition described in clause 8.5(1) including, without limitation, making good any damage caused in any way as a result of, or in connection with, the Buyer being in possession of and/or vacating the Property; and*
- (b) *return to the Seller any Keys in the Buyer's possession or control for all locks and security systems on the Property."*

13.21 Clause 9.1 is deleted and replaced with the following:

**"9.1 Seller May Affirm or Terminate**

*Without limiting any other right or remedy of the Seller including those under this contract or any right at common law, if the Buyer fails to comply with an Essential Term, or makes a fundamental breach of an intermediate term, the Seller may affirm or terminate this contract."*

13.22 Clause 9.6(1) is varied by deleting the words "; provided the resale settles within 2 years of termination of this contract."

13.23 Clause 10.7 is deleted and replaced with the following:

**"10.7 Further Acts**

- (1) *If the Buyer has done all that it is required to do under this contract, the Seller will do, sign and execute all deeds, schedules, acts, documents and things as may reasonably be required by the Buyer to effectively carry out and give effect to the terms and intentions of this contract.*
- (2) *The Buyer must, if requested by the Seller, at its own expense, do sign and execute all deeds, schedules, acts, documents and things as may reasonably be required by the Seller to effectively carry out and give effect to the terms and intentions of this contract."*

13.24 Clause 10.8 is deleted and replaced with:

**"10.8 Severance**

*If any term or part of a term of this contract is or becomes legally ineffective, invalid or unenforceable in any jurisdiction:*

- (1) *but is capable of being read down by a Court so that it becomes legally effective, valid and/or enforceable (as the case may be), then that term will be read down accordingly; or*
- (2) *and is not capable of being read down by a Court so that it becomes legally effective, valid and/or enforceable (as the case may be), then that term will be severed,*

*and the effectiveness, validity or enforceability of the remainder of this contract will not be affected."*

13.25 Clause 10.9 is varied by the inclusion of the following new clauses:

**"10.9(7) Entire Agreement**

*The terms and conditions set out in this contract comprise the entire agreement concluded between the parties notwithstanding any negotiations or discussions prior to it being entered into and notwithstanding anything contained in any brochure, report or other document prepared by the Seller, the Seller's Associates, any of their employees or any other person on behalf of the Seller for submission to potential buyers or others.*

**10.9(8) Governing Law**

*This contract is governed and construed in accordance with the laws of Queensland and the Courts of Queensland will have competent jurisdiction with respect to it."*

**14. ADDITIONS**

The following clauses 15 through 38 are added to the Standard Conditions and prevail to the extent of any inconsistency:

**15. Sale by Mortgagee**

15.1 The Buyer acknowledges and agrees that:

- (a) the Seller is not the registered owner of the Property;
- (b) the Seller has entered into this Contract in its capacity as mortgagee exercising power of sale pursuant to statute and its registered mortgage over the Land; and
- (c) in respect of each of the special conditions of this Contract, they are reasonably necessary in order to protect the legitimate interests of the Seller notwithstanding that they may cause a significant imbalance in the parties' rights and obligations arising under this Contract and/or may cause detriment (whether financial or otherwise) to the Buyer if they were to be applied or relied on by the Seller.

15.2 The Buyer accepts that the Seller has given all notices and done everything necessary to exercise its power of sale and the Buyer is not entitled to enquire further about those matters or about the Seller's capacity to sell.

15.3 This Contract is subject to the delivery of all notices and expiry of any notice periods necessary to enable the Seller to sell as mortgagee exercising power of sale and the Seller is not obliged to effect settlement until expiry of such notices or periods of demand. The Buyer acknowledges and agrees that, without limitation, the Seller may exercise the rights under clause 16 if required to enable delivery of any such notice and/or the expiry of any notice period.

15.4 The Seller does not have to produce a release of any Encumbrance which affects the Property and which does not have a priority over its registered mortgage.

15.5 The Buyer accepts that the Seller is entitled to exercise the powers conferred on it by this clause 15 and agrees to use its best endeavours to facilitate the Seller in its exercise of those powers.

**16. Restrictions on Sale**

16.1 If the Seller is restricted, prevented or prohibited by any means, thing or event whatsoever and howsoever arising from completing this Contract or from giving title and possession in accordance with the terms of this Contract (including, without limitation, by reason of any caveat or any injunction) then, the Seller may at any time up to and including the Settlement Date:

- (a) terminate this Contract by notice in writing to the Buyer; or



- (b) extend the Settlement Date by notice in writing to the Buyer by such period or periods of time, as the Seller may, in its absolute discretion and in addition to any other Rights of extension that the Seller may have under this Contract to do so, extend the Settlement Date by such period or periods (and on more than one occasion) not exceeding 120 days in total and the Buyer shall not be entitled to determine this Contract but is bound to settle this Contract in accordance with its terms and conditions.

- 16.2 If the Seller does give notice(s) of an extension then the Seller shall be entitled to call on the Buyer to settle on seven days written notice at any time during the extended period(s).
- 16.3 If the Seller is unable to settle this Contract and give title and possession within the extended period of time referred to in clause 16.1(b), the Seller may terminate this Contract by notice in writing to the Buyer.
- 16.4 Upon termination of this Contract pursuant to clauses 16.1(a) or 16.3, the deposit and any interest earned on its investment shall be refunded in full to the Buyer.
- 16.5 If the Seller exercises its Rights under this clause 16, then, except for statutory remedies which cannot be excluded, the Buyer shall not have any Claims under this Contract, under statute, at Law or in equity against the Seller, the Seller's Associates or any other person acting on behalf of the Seller (including, without limitation, any Claims for damages or for compensation), nor shall the Buyer be entitled to raise any requisition, withhold any monies or to refuse to effect settlement or delay settlement.

## **17. Caveats/Writs/Warrants**

- 17.1 If, at the Settlement Date, the Property is affected by a caveat or writ or warrant of execution which:
  - (a) has lapsed;
  - (b) has been lodged by, or filed for, the Buyer; or
  - (c) would not prevent registration of the Buyer's transfer,
  - (d) the Buyer must settle this Contract in any event.
- 17.2 In the case of a lapsed caveat or writ or warrant, the Seller shall allow to the Buyer an adjustment to the Balance Purchase Price equal to the amount of any lapsing fee payable to the Queensland Land Registry.
- 17.3 If, at the Settlement Date, the Property is affected by:
  - (a) a writ or warrant of execution which is not a writ or warrant of the type referred to in clause 17.1; and/or
  - (b) a caveat which is not a caveat of the type referred to in clause 17.1,then the Buyer shall accept at settlement a request for discharge of the writ or warrant or cancellation and/or withdrawal of the caveat. In that case, the Seller shall allow to the Buyer an adjustment to the balance Purchase Price of an amount equal to any registration fee payable to the Queensland Land Registry on the request.
- 17.4 If, at the Settlement Date, the Property is affected by a caveat or writ or warrant of execution which would prevent registration of the Buyer's transfer and the Seller cannot at that time produce a request for its discharge or cancellation, then the provisions of clause 16 shall apply.
- 17.5 The Buyer acknowledges that, in the circumstances identified in this clause 17, the Buyer will not obtain on settlement a transfer capable of immediate registration.

## **18. No Compensation**

If for any reason other than the wilful default of the Seller, the Seller is unable to perform any or all of its Obligations under this Contract then the Seller shall not be liable by way of damages or

compensation for any loss sustained by the Buyer from the failure of the Seller to perform any or all of its Obligations under this Contract.

**19. As is, where is sale of Property**

- 19.1 Notwithstanding anything else contained in this Contract, the Property is sold and will be accepted by the Buyer in their "as is, where is" condition (with all faults and/or defects and condition) as at settlement and on the Settlement Date. No warranty is given as to the condition of the Property as at settlement or on the Settlement Date.
- 19.2 Without limiting clause 19.1, the Buyer specifically acknowledges the provisions of this Contract and confirms that it has made its own inspection, investigation and assessment and taken its own independent advice about the matters set out in those clauses.

**20. Warranties negated**

- 20.1 The Buyer acknowledges that it has entered into this Contract after making such inspection and investigation of the Property as it has desired. The Buyer acknowledges that it has not relied on any representations or warranties of the Seller or the Seller's Associates or any other person enticing the Buyer to enter into this Contract.
- 20.2 The Buyer has inspected or has had the opportunity to inspect the Property prior to entry into this Contract and is deemed to buy with full knowledge of the state and condition of the Property as at the Settlement Date and enters into this Contract on an "as is, where is" basis.
- 20.3 The Buyer expressly acknowledges that no statement, warranty or representation, whether express or implied, has been made nor given by the Seller or the Seller's Associates, other than those expressly set out in this Contract, about:
- (a) Financial Matters;
  - (b) Physical Matters;
  - (c) Regulatory Matters;
  - (d) Third Party Matters;
  - (e) the Seller's Rights and Obligations in relation to the Property;
  - (f) the Encumbrances; or
  - (g) the accuracy, reliability or completeness of any information, including but not limited to the Disclosure Material, provided or made available by or on behalf of the Seller to the Buyer or the Buyer's advisors before the Contract Date (whether the information was given orally, electronically, in writing or by any other means).
- 20.4 The Buyer is not entitled to terminate this Contract, delay settlement, withhold any part of the balance of the Purchase Price or make any Claims against the Seller (including any claim for compensation) and the Seller disclaims all liability, direct or indirect, for any Claims (whether foreseeable or not) suffered by the Buyer, any person related to the Buyer or any financier or adviser of or to the Buyer or any other person arising out of, or in connection with:
- (a) any use or reliance by any of them on the Confidential Information;
  - (b) the existence of any of the matters referred to in this clause 20; and
  - (c) as a result of anything to do with anything identified in this Contract.
- 20.5 The Buyer indemnifies and agrees to keep indemnified the Seller against all Claims arising out of or in any way connected with any of the matters referred to in this clause 20.

## **21. Independent due diligence enquiries**

Subject to the terms of this Contract, the Buyer acknowledges and agrees that:

- (a) it has been given the opportunity to inspect and view the Disclosure Material and undertake due diligence on the Property, and it has satisfied itself in connection with the matters arising from its due diligence;
- (b) neither the Seller nor any of the Seller's Associates, warrant the accuracy, reliability or completeness of any of the Disclosure Material;
- (c) it has not relied on any material contained in the Disclosure Material as a statement or representation of fact or as to any further matter;
- (d) when entering into this Contract the Buyer relied on the following matters independently of any statements, inducements or representations made by or on behalf of the Seller or any of the Seller's Associates:
  - (i) the investigations relating to the Property made by or on behalf of the Buyer, including any dilapidation, infestation or defect (patent or latent) which may affect the Property;
  - (ii) the skill and judgment of the Buyer, its consultants and representatives; and
  - (iii) the opinions or advice obtained by the Buyer independently of the Seller or any of the Seller's Associates; and
- (e) the Buyer has made its own independent investigations or assessments about, and has relied upon the Buyer's own judgment in respect of those investigations or assessments about, each of the matters referred to, disclosed or described in clause 20.

## **22. Requirements of Authorities**

- 22.1 The Property is purchased by the Buyer subject to, and the Buyer must comply with, at its own expense, all notices, requisitions and orders issued at any time, including before the Settlement Date, pursuant to any statute or by any Authority or any court or any other body having jurisdiction over the Property necessitating the doing of work or the expenditure of money in relation to the Property or on any path or road adjoining the Property.
- 22.2 It shall be the Buyer's responsibility to obtain and comply with, at its own expense, all permissions, consents, approvals, certificates or licences required at any time, including before the Settlement Date, pursuant to any law, by any Authority or any other body having jurisdiction over the Property.
- 22.3 The Seller shall not be liable for any notices, requisitions or orders referred to in clause 22.1 nor for any permissions, consents, approvals, certificates or licences referred to in clause 22.2 not being available or not being complied with in all respects at settlement. The Buyer shall not have any Claims against the Seller under this Contract, under statute, at law or in equity in respect of such matters, including, without limitation, any claim for damages or for compensation, except for statutory remedies which cannot be excluded. The Buyer shall not be entitled to delay settlement, withhold any part of the balance of the Purchase Price or terminate this Contract on account of any such matters and shall be bound to settle this Contract in accordance with its terms and conditions.
- 22.4 If the Buyer breaches the provisions of clause 22.1, the Seller may comply with all notices, requisitions and orders referred to in clause 22.1. If the Buyer breaches the provisions of clause 22.2, the Seller may obtain and comply with all permissions, consents, approvals, certificates or licences referred to in clause 22.2.
- 22.5 The Buyer must pay on demand the Seller's costs incurred in the exercise by the Buyer of its Rights under clause 22.4. The Buyer must indemnify the Seller and hold the Seller indemnified in respect of all Claims suffered or incurred by the Seller, including, without limitation, indirect loss,

consequential loss and legal costs on a solicitor and own client basis, arising after the Settlement Date out of or in connection with any matters referred to in clauses 22.1 and 22.2.

- 22.6 For the purposes of this clause 22, orders includes any orders disclosed under section 83 of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*.

## **23. Contamination**

- 23.1 The Buyer acknowledges and accepts that:

- (a) The Seller makes no warranty that the Land, or any part of it:
  - (i) is not contaminated;
  - (ii) is not the subject of or cause of Environmental Harm or of a notifiable activity for the purposes of any Environmental Laws; or
  - (iii) complies with, or will at settlement comply with, all Environmental Laws.
- (b) The Buyer acknowledges that it has made such inspections and enquiries as it has desired to satisfy itself whether or not the Land:
  - (i) is contaminated;
  - (ii) is the subject of or cause of Environmental Harm; or
  - (iii) may be included on the Contaminated Land Register.
- (c) The Buyer acknowledges that following settlement, it shall be responsible for all clean up and remediation measures required under any present or future Environmental Laws or otherwise, whether before or after the Contract Date, in relation to the Land and/or any Adjoining Land including, without limitation, the treatment and/or remediation of any emission, leak, release, escape or discharge of waste or any other hazardous substance or Environmental Harm into or upon the Land and/or into any Adjoining Land and any restoration and/or remediation of the Land or any Adjoining Land.
- (d) The Buyer is not entitled to terminate this Contract, delay settlement or to make any Claims against the Seller and the Seller disclaims all liability, direct or indirect, for any Claims (whether foreseeable or not) suffered by the Buyer, any person related to the Buyer or any financier or adviser of or to the Buyer or any other person arising out of, or in connection with any of the matters set out in this clause 23.
- (e) The Buyer agrees that it will effect any clean up, remediation or other measures required to the Land and/or any Adjoining Land because of any Contamination or Environmental Harm or other matter referred to in this clause 23 when required by any competent Authority or any Environmental Laws whether before or after the Contract Date.
- (f) Without limiting anything in clauses 23.1(c) and 23.1(e), if the Seller:
  - (i) is required to undertake any works between the Contract Date and settlement under any present or future Environmental Laws or otherwise in relation to the treatment and/or remediation of any Contamination, emission, leak, release, escape or discharge of waste or any other hazardous substance or Environmental Harm into or upon the Land and/or into any Adjoining Land and any restoration and/or remediation of the Land or any Adjoining Land, then:
    - (A) the Seller must give to the Buyer a copy of any notice received by the Seller requiring the works to be done as soon as practicable after receiving it;
    - (B) the Buyer must undertake those works at its own cost in accordance with the notice and, in particular, the timeframes specified in such notice; and

- (C) if the Buyer does not undertake those works as required, then the Seller may, but is not obliged to, undertake the works in which event:
      - (1) the Seller shall keep the Buyer updated as to the progress and cost of the works when reasonably requested by the Buyer but not more often than every two weeks;
      - (2) the Buyer must reimburse the Seller for the cost of those works upon demand, and failing demand, at the same time that the Buyer is required to pay the Purchase Price to the Seller under this Contract; and
      - (3) if any of the works are not completed by the Seller prior to settlement, then the Buyer must complete those works after settlement at its own cost.
  - (g) The Buyer, indemnifies and agrees to keep indemnified the Seller against any and all Claims (including, without limitation, any compensation, investigation costs, clean-up costs, rehabilitation costs, remediation costs, legal costs of or required by any competent Authority on a full indemnity solicitor and own client basis and other consultants' fees) made or incurred, arising directly or indirectly from, out of or by reason of:
    - (ii) any Contamination of, or Environmental Harm to or emanating from, the Land or from any Contamination of, or Environmental Harm emanating from, any Adjoining Land; or
    - (iii) out of any other matters referred to in this clause 23.
- 23.2 Wherever used in this clause and unless defined in this Contract, terms defined in the *EP Act* shall have the meanings set out in that Act.

## **24. Chattels**

- 24.1 The Buyer acknowledges and agrees that no chattels are included in the sale of the Property.
- 24.2 The Seller may remove any chattels located on the Property at any time prior to the Settlement Date. Such chattels shall not form part of this sale.
- 24.3 If any chattels remain on the Property after the Settlement Date then it shall be the Buyer's responsibility to remove any such chattels from the Property and dispose of them at its cost and expense in all respects.
- 24.4 If any chattels remain at the property at the Settlement Date, the Buyer acknowledges and agrees that the Seller makes no warranties that title to the chattels will pass to the Buyer at settlement, that such chattels are in state of good repair or fit for purposes, are unencumbered, or not subject to the security interest of a third party. The Buyer is not entitled to terminate this Contract, delay settlement or to make any Claims against the Seller and the Seller disclaims all liability, direct or indirect, for any Claims (whether foreseeable or not) suffered by the Buyer, any person related to the Buyer or any financier or adviser of or to the Buyer or any other person arising out of, or in connection with any of the matters set out in this clause 24.

## **25. Rubbish**

The Seller may, but is not obliged to, remove any rubbish located on the Property. Any rubbish located on the Property as at settlement will be the responsibility of the Buyer to remove and dispose of at its own cost in all respects.

## **26. Guarantee and Indemnity**

- 26.1 This clause 26 applies if the Buyer is a company which is not listed on the Australian Stock Exchange or the trustee of a trust.

- 26.2 The Buyer agrees to procure the execution of a guarantee and indemnity in favour of the Seller where:
- (a) if the Buyer is a proprietary limited company having more than one director – by all directors;
  - (b) if the Buyer is a proprietary limited company with a sole director – by that director and the majority shareholder of that company;
  - (c) if the Buyer is an individual trustee – by the primary beneficiary of that trust; or
  - (d) if the Buyer is a corporate trustee – by all directors and by the primary beneficiary of that trust.

The guarantee and indemnity is to be in the form annexed to this Contract as Annexure B.

- 26.3 The Buyer warrants that, on execution of this Contract, it will be able to have each of the directors and principal shareholders execute the guarantee and indemnity in favour of the Seller.
- 26.4 Without limiting or otherwise waiving the Seller's Rights in respect of a breach by the Buyer of this clause, this Contract will be voidable at the option of the Seller, but binding on the Buyer, until the earlier of settlement or the execution by all of the directors and/or primary beneficiary, as the case may be, of the Buyer and the delivery to the Seller of the guarantee and indemnity required by clause 26.1.
- 26.5 Any stamp duty payable on the guarantee and indemnity must be paid by the Buyer and, if not paid by the Buyer, may be paid by the Seller and recovered from the Buyer on demand.

## **27. Buyer's Indemnities**

- 27.1 Without limiting or affecting, and in addition to, any other indemnity given by the Buyer under this Contract, the Buyer indemnifies and will keep indemnified the Seller against any and all Claims made or incurred, arising directly or indirectly from, out of or by reason of:
- (a) the failure of the Buyer to observe and/or fulfil any of its obligations; or
  - (b) the breach by the Buyer, whether intentionally or unintentionally, of any warranty.
- 27.2 The Buyer confirms that any indemnity given by the Buyer under this Contract:
- (a) extends to and for the benefit of the Seller's Associates; and
  - (b) survives, and will not merge on, settlement or termination or other determination of this Contract.

## **28. Buyer's Rights**

- 28.1 Notwithstanding anything else contained in this Contract, the Buyer acknowledges and agrees that:
- (a) if:
    - (i) the Seller fails to perform any or all of its obligations under this contract;
    - (ii) the obligations are Essential Terms; and
    - (iii) the Seller's failure to comply is due to the Seller's wilful default,then the Buyer may terminate this Contract in which event the Deposit and, if invested, any interest earned on investment of the Deposit, will be dealt with in accordance with clause 2.4. This will be the Buyer's only remedy; and

- (b) clauses 9.3, 9.5 and 9.8 are deleted and will not apply in any circumstance and, except for any statutory remedies which cannot be excluded:
  - (i) the Buyer will not have any Claims against the Seller under this Contract, under statute, at law or in equity;
  - (ii) without limiting clause 28.1(b)(i), the Seller will not be liable to:
    - (A) pay any monies for, including without limitation any damages or compensation; or
    - (B) do anything in satisfaction of, any Claims made or incurred by the Buyer;
  - (iii) the Buyer is not entitled to withhold any part of the Balance Purchase Price;
  - (iv) except as specified in clause 28.1(a) or otherwise expressly permitted under this contract, the Buyer is not entitled to terminate this Contract, refuse to settle, or delay settlement; and
  - (v) the Buyer is not entitled to raise any requisition or objection, for any reason, including without limitation any thing arising directly or indirectly from, out of or by reason of:
    - (vi) any of the matters set out in clauses 7.5(2), 8.3, 15 19, 20, 21, 22, 23, 24 and 25; and
    - (vii) the failure of the Seller to perform any or all of its obligations under this Contract, and, in any of those circumstances, the Buyer is bound to settle this contract in accordance with its terms and conditions.

28.2 Where the context permits or requires, a reference to the Seller in clause 28.1(b) is taken to be a reference to the Seller, the Seller's Associates and any other person acting on behalf of the Seller.

## 29. Warranty of authority

The Buyer warrants that it has full Right, power and authority to enter into this Contract and does not require the consent or approval of any other person to do so or if the consent or approval of another person is required that consent or approval has been obtained.

## 30. Trustee provisions

If the Buyer enters this Contract as the trustee of any trust (**the Trust**) then the Buyer:

- (a) warrants to the Seller that:
  - (i) the Trust is created validly and is in existence;
  - (ii) the Buyer is the sole trustee of the Trust and is appointed validly;
  - (iii) the Buyer has full and free power to enter into this Contract and to perform all the Obligations imposed upon it under this Contract; and
  - (iv) this Contract has been authorised, signed and delivered by the Buyer and is a valid, legal and binding instrument and that if any consent or approval is required to the entering into of this Contract or the performance by the Buyer of its Obligations under this Contract it has been obtained;
- (b) accepts and undertakes the personal liabilities under this Contract and the observance, performance and fulfilment of all Obligations on behalf of the Buyer;



- (c) will not prior to the satisfaction of all liabilities of the Buyer under this Contract personally and/or by the Trust exercise in its own favour any Right of indemnification, lien or charge to which it may be entitled under or in respect of the assets of the Trust;
- (d) must hold any of the assets of the Trust (which at any time are in the hands of the Buyer free of their Trust character by virtue of the exercise or purported exercise of any such Right of indemnification, lien or charge) on trust for the Seller to the extent to which any liabilities of the Buyer under this Contract have not been satisfied;
- (e) agrees that if at any time prior to the satisfaction of any liability of the Buyer under this Contract the Buyer ceases for any reason to be the sole trustee of the Trust, the Buyer will procure any new or additional trustee of the Trust to sign in favour of the Seller such agreements relating to this Contract as the Seller may reasonably require, including a provision in the same terms as those contained in this clause; and
- (f) agrees that if at any time prior to the satisfaction of any liability of the Buyer under this Contract the Trust is terminated or for any reason ceases to exist the Buyer will immediately give written notice to the Seller.

### **31. Nominations – Assignments**

- 31.1 The Buyer is not entitled to assign the benefit of this Contract or to require a transfer of the Property in favour of a nominee without the written consent of the Seller which consent may be granted, granted on conditions, or refused in the absolute discretion of the Seller.
- 31.2 The Buyer warrants to the Seller, as a fundamental term of this Contract, that it Contracts with the Seller as principal and not on behalf of any other person.

### **32. Electronic Transactions**

For the purposes of sections 11 and 12 of the *Electronic Transactions (Queensland) Act 2001* (Qld), the parties consent to information being given by electronic communication.

### **33. Waiver and consent**

- 33.1 No failure on the part of a party to exercise, or delay on its part exercising, any of the Rights or remedies provided by this Contract or by law, operates as a waiver of them. Any single or partial exercise of any of the Rights or remedies does not preclude any further or other exercise of such Right or remedy or the exercise of any other of the Rights or remedies.
- 33.2 Any waiver or consent by a party is effective only if it is in writing signed by or on behalf of that party and then only to the extent expressly stated in the writing and in the specific instance and the purpose for which it is given.

### **34. No Encumbrance**

The Buyer may not encumber the benefit of its Rights under this Contract without the Seller's prior written approval. This restriction shall not apply to the Seller, in whose case no such consent shall be required to be obtained from the Buyer.

### **35. No merger**

No clause or Obligation under this Contract which is capable of performance after the Settlement Date shall merge on settlement.

### **36. GST Withholding Law**

- 36.1 The Seller must give the Buyer a GST Notice by no later than two (2) Business Days before the Settlement Date.
- 36.2 Upon receipt of the GST Notice, and if the Buyer is required to make a payment under s14-250 of the GST Withholding Law in relation to the supply of the Property under this Contract:

- (a) prior to settlement the Buyer must:
  - (i) lodge a Form 1 with the ATO for each person comprising the Buyer;
  - (ii) lodge a Form 2 with the ATO for each person comprising the Buyer; and
  - (iii) give the Seller:
    - (A) a copy of the notification from the ATO specifying the Buyer's lodgement reference number and payment reference number;
    - (B) copies of the Form 1 and Form 2; and
    - (C) a completed ATO payment slip for the GST Withholding Amount;
- (b) the Seller irrevocably directs the Buyer to draw a bank cheque for the GST Withholding Amount in favour of the Commissioner of Taxation and deliver it to the Seller at settlement;
- (c) the Seller must forward the bank cheque for payment of the GST Withholding Amount to the ATO in accordance with s 14-250 of the GST Withholding Law as soon as practicable after settlement; and
- (d) the Buyer warrants that it will comply with all of its obligations imposed under the GST Withholding Law and pay the GST Withholding Amount by the required date.

**36.3 At settlement, the Buyer must:**

- (a) pay the Balance Purchase Price to the Seller by bank cheque; and
- (b) give the Seller at settlement the items in clause 36.2(a)(iii) and clause 36.2(b) and any other information the Seller reasonably requires to meet its obligations under the GST Withholding Law.

**36.4 Without limiting its rights under this Contract or at law, if the Buyer fails to comply with clause 36.3(b) at settlement, the Seller may, at its option, by written notice to the Buyer:**

- (a) extend the Settlement Date to the following Business Day (with time to remain of the essence); or
- (b) terminate this Contract.

**37. Goods and services tax**

**37.1 For the purposes of this clause 37 unless the context otherwise required:**

- (a) **"GST Law"** has the same meaning as in the GST Act;
- (b) **"GST"** means any tax imposed by or through the GST Act on a supply (without regard to any input tax credit);
- (c) **"Recipient"** means the Buyer;
- (d) **"Representative"** of a supplier means a representative member of a GST group to which the Seller belongs;
- (e) **"Supplier"** means the Seller;
- (f) **"Supply"** means any supply (within the meaning set out in the GST Act) by the Seller under this Contract; and
- (g) Where any other term is used in this clause which is defined in the GST Act, it will have the meaning which is set out in the GST Act.

- 37.2 Terms used in this clause that are not otherwise defined in this contract have the meanings given to them in the GST Law.
- 37.3 **GST Inclusive**
- The Price shown in this Contract includes GST. If the Seller is liable to pay GST in respect of the sale or supply of the Property, the Buyer will not be obliged to pay an additional amount for GST.
- 37.4 **Margin Scheme**
- (a) If the Seller's Supply of the Property to the Buyer under or in connection with this Contract is a taxable supply, the parties agree that the Seller will calculate GST under the margin scheme provided, and to the extent that the Seller is permitted to do so, under the GST Act;
  - (b) The Buyer acknowledges that the Buyer must not claim an input tax credit in respect of its acquisition of the Property under this Contract and the Seller is not required to give the Buyer a tax invoice.
- 37.5 Where the Supplier makes a taxable Supply to the Recipient under, or in connection with, this Contract, the Recipient must pay to the Supplier an additional amount equal to the GST payable on the Supply. The additional amount must be paid by the Recipient at the later of:
- (a) the date when any consideration for the taxable Supply is first paid or provided; or
  - (b) the date when the Supplier issues a tax invoice to the Recipient.
- 37.6 Where GST is payable under this clause on a Supply, the Supplier must give to the Recipient a tax invoice.
- 37.7 The Recipient indemnifies and will keep indemnified the Seller against any and all Claims made or incurred, arising directly or indirectly from, out of or by reason of, the imposition of GST on any Supply made by the Supplier under this Contract. The Recipient acknowledges that any amount of GST imposed on any Supply made by the Supplier to the Recipient under this Contract will constitute a loss for the purposes of this clause 37 and such loss will be payable on demand.
- 37.8 This clause 37 will not merge upon settlement, termination or other determination of this Contract and will continue for the benefit of the Seller.
- 37.9 If the liability for payment of GST in respect of a Supply under this Contract is imposed upon a Representative of the Seller, this clause will nonetheless apply and will be calculated in all respects as if the Seller was liable for the GST imposed on such Supply and entitled to input tax credits properly allocated to the making of that Supply.

### **38. Sellers Disclosure Statement**

- 38.1 The Seller discloses, and the Buyer acknowledges and agrees that:
- (a) the Buyer received the attached Seller's Disclosure Statement, signed by the Seller, prior to execution of this Contract;
  - (b) the Buyer reviewed the Seller's Disclosure Statement and carried out its own investigations on the items in the Seller's Disclosure Statement prior to entering into this Contract;
  - (c) the Buyer was satisfied with the Seller's Disclosure Statement as at the date of the Contract;
  - (d) the Buyer signed the Disclosure Statement prior to entering into this Contract;
  - (e) the information contained in the Seller's Disclosure Statement is the only information the Seller has been able to obtain relating to the Property, and, to the full extent permitted by law, the Seller makes no warranties or representations as to the completeness or accuracy of any information contained in the Seller's Disclosure Statement; and

- 38.2 The Buyer accepts that the Seller has taken all reasonable steps to provide information to relevant to the sale of the Property, and the Buyer is not relying on any other representations or warranties except as expressly set out in this Contract.

## Annexure B – Guarantee and Indemnity

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**TO:** RHG Mortgage Corporation Limited ABN 48 065 912 932 (formerly RAMS Mortgage Corporation Limited ABN 48 065 912 932) as mortgagee exercising a power of sale under mortgage registered no. 710820868 (**Seller**)

In consideration of the Seller, at the request of the directors and/or principal shareholder/s and/or beneficiaries (**Guarantor**) of the Buyer (**Buyer**) under the Contract entering into the Contract to which this Guarantee and Indemnity is attached (**Contract**) with the Buyer, the Guarantors agree to provide this Guarantee and Indemnity on the terms below.

### 1. Guarantee

The Guarantors guarantee the performance by the Buyer of all the terms of the Contract, and agrees that it will on demand pay to the Seller all monies which are due to the Seller under the Contract and will be responsible for compliance by the Buyer with all the terms of the Contract, in the same manner and to the same extent as if the Guarantors were party to the Contract.

### 2. Notice

This Guarantee and Indemnity may be enforced against the Guarantors without the Seller giving any prior notice to it or requiring the Buyer to pay any monies or remedy any default.

### 3. Continuing Security

The Guarantors agree that this is a continuing guarantee, the Guarantee and Indemnity and the obligation of the Guarantors under the Contract will be absolute and unconditional and the Guarantee and Indemnity is irrevocable and will remain in full force and effect until the Buyer's Obligations under the Contract are fully satisfied.

### 4. No Partial Discharge

This Guarantee and Indemnity will not be wholly or partially discharged by:

- (a) the payment of any monies on account of the Buyer;
- (b) any time, credit or other concession extended by the Seller to the Buyer, the Guarantor or any other person;
- (c) any compounding, compromise, release, abandonment, waiver, variation, relinquishment or renewal of any Rights of the Seller against the Buyer, the Guarantor or any other person;
- (d) the neglect or omission of the Seller to enforce any such Rights;
- (e) any other dealing, matter or thing which could or might operate to abrogate, prejudice or effect this Guarantee and Indemnity;
- (f) any discharge of the Buyer whether by operation of law or in any manner other than by full and complete performance by the Buyer of all Obligations to be performed and observed by it or the Seller's inability to recover from the Buyer (for any reason);
- (g) any Obligations of the Buyer under the Contract is avoided, set aside or otherwise rendered ineffective; or
- (h) any alteration, modification, variation or addition to the Contract.

**5. No Effect on Seller's Rights under Contract**

This Guarantee and Indemnity does not substitute any other Rights which the Seller might have under the Contract and may be enforced against the Guarantors without the Seller first having recourse to any such right.

**6. Guarantor's Warranty**

If the Guarantors are a company, it warrants that it has the full power and authority to enter into this Guarantee and Indemnity and that its Obligations are in no way diminished or controlled by any deed or instrument (including any debenture or trust deed relating to securities issued or given by the Guarantors).

**7. Principal Obligation**

This Guarantee and Indemnity is a principal security and is in addition to and not in substitution for any other security that the Seller may have with respect to the Contract and may be enforced by the Seller without recourse first being had to any such other security and without any steps or proceedings having been first taken against the Buyer.

**8. Waiver**

The Guarantors waive any of its Rights as surety or indemnifier which may at any time be inconsistent with this Guarantee and Indemnity.

**9. Enforceability**

The agreements made by the Guarantors are not conditional on the validity or enforceability of the agreement of any other person and will remain binding if any other person has not signed the Contract or the Guarantee and Indemnity.

**10. Multiple Guarantors**

Where there is more than one guarantor, the Obligations and liabilities of the Guarantors are joint and several. This Guarantee and Indemnity shall bind each of the signatories to this Guarantee and Indemnity notwithstanding that one or more of the parties named herein have not executed this Guarantee and Indemnity.

**11. Indemnity**

The Guarantors indemnify the Seller against all losses and expenses which the Seller may incur due to any breach of any of the terms of the Contract by the Buyer. The Guarantors agree that it will remain liable to the Seller under this indemnity even if the Seller has exercised any of its Rights under the Contract, the Buyer is wound up or dissolved, or any guarantee or indemnity given by the Guarantors are unenforceable in whole or in part.

**12. No Competition with Seller**

In the event of any assignment for the benefit of creditors, arrangement with creditors, winding up, receivership, administration or other action resulting in rights by creditors the Guarantors agree with the Seller that it will not prove or claim in competition with the Seller so as to diminish any distribution, dividend or payment which the Seller would be entitled to receive. If required by the Seller, the Guarantors must prove or claim in any of the above events and any amount received by the Guarantors will be held in trust for the Seller and paid on demand to the Seller in reduction of the amount owing by the Buyer or by the Guarantors.

**13. Service of Guarantor**

- (a) Any notice or document authorised or required to be given by or under the Contract shall be given in writing and sent by prepaid ordinary post or by delivery to the Guarantors at the address set out above.
- (b) Notices, requests, consents and other documents (**Notices**) shall be deemed served or given:

- (i) if personally served by being left at the address of the party to whom the Notice is given between the hours of 9.00 am and 5.00 pm on any business day, then in such case at the time the Notice is so delivered; and
- (ii) if sent by prepaid post – the second business day after the date of posting of the notice.
- (c) If a notice is given after 5.00pm on any business day and before 9.00am on the next following business day and its receipt is not acknowledged by the recipient of the notice during that period then the notice shall be deemed to have been duly served at 9.00am on the next following business day.
- (d) Any party may change its address for receipt of Notices at any time by giving notice of such change to the other party.

#### 14. Governing Law

This Guarantee and Indemnity shall be governed by the laws of the State of Queensland, and in the event of any dispute or difference arising under this Guarantee and Indemnity, the parties agree to submit to the non-exclusive jurisdiction of the Courts of the State of Queensland.

#### 15. GST

- (a) Words and phrases defined in the *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning in this Guarantee and Indemnity unless the context indicates otherwise and for the purposes of this clause 15 the following additional definitions shall apply:
  - (i) **Supplier** means the Seller (or any one or more of them);
  - (ii) **Recipient** means each and any Guarantor;
  - (iii) **GST Act** means A New Tax System (Goods and Services Tax) Act 1999 and any related tax imposition act and includes any modification, re-enactment or substituted legislation of that Act; and
  - (iv) **GST** means any tax imposed by or through the GST Act on a Taxable Supply.
- (b) If the Supplier makes a Taxable Supply under this Guarantee and Indemnity to the Recipient then the consideration payable by the Recipient to the Supplier for that Taxable Supply shall be increased by the amount of the GST payable on that Taxable Supply (taking account of any cost savings that may be available to the Supplier), which amount shall be added to and form part of the consideration payable for that Taxable Supply and be payable on demand.
- (c) Where GST is payable under this clause on a Taxable Supply, the Supplier must give to the Recipient a tax invoice.
- (d) The Recipient agrees to indemnify and to keep indemnified the Supplier in respect of any loss which the Supplier may suffer by reason of the imposition of GST on any Taxable Supply made by the Supplier under this Guarantee and Indemnity. The Recipient acknowledges that any amount of GST imposed on any Taxable Supply made by the Supplier to the Recipient under this Guarantee and Indemnity shall constitute a loss for the purposes of this clause 15 and such loss shall be payable on demand.
- (e) This clause 15 shall not merge upon termination or other determination of this Guarantee and Indemnity or the settlement of the Contract and shall enure for the benefit of the Seller.

#### 16. Enure

This Guarantee and Indemnity shall enure for the benefit of the Seller and its successors and assigns and shall be binding on the Guarantors and their personal representatives, successors and assigns. The benefit of this Guarantee and Indemnity shall not merge on settlement of the Contract

and shall continue after settlement until each and every of the Buyer's and Guarantor's covenants and agreements have been observed, performed and fulfilled.

## 17. Costs and Stamp Duty

The Guarantors shall pay to the Seller, upon demand, the Seller's costs (including legal costs on a full indemnity basis) of and incidental to the enforcement or attempted enforcement by the Seller of any of their Rights under this Guarantee and Indemnity. The Guarantors shall pay any stamp duty that may be assessed on this Guarantee and Indemnity.

## 18. Interpretation

- (a) References to a statute or legislation or to any provision of any statute or legislation shall include any modification or re-enactment of it or any statute or legislation passed in substitution for it and all regulations, by-laws and statutory instruments issued under it.
- (b) Words importing the singular shall include the plural and vice versa; words importing one gender shall include the other gender and vice versa.
- (c) A reference to a person shall be deemed to include a corporate body and vice versa.
- (d) Headings are for convenience only and shall not affect the construction or interpretation of the provisions of this Guarantee and Indemnity.
- (e) If any provision or part of this Guarantee and Indemnity shall be illegal void or otherwise unenforceable for any reason whatsoever then such provision or part, as the case may be, shall be severed from this Guarantee and Indemnity to the extent of its legality, voidness or unenforceability and such severance will not affect the operation, construction or interpretation of this Guarantee and Indemnity.
- (f) A reference to a clause is a reference to a clause of this Guarantee and Indemnity.
- (g) A reference to any document or agreement is a reference to that document or agreement as amended, novated, supplemented, varied or replaced from time to time.
- (h) Any term which is used in this Guarantee and Indemnity which is a defined term used in the agreement, shall, unless the context otherwise requires have the same meaning in this Guarantee and Indemnity.

**EXECUTED AS AN AGREEMENT** on       day of       20

**SIGNED** by the Guarantor in the presence of:

Witness

Name (printed) \_\_\_\_\_



## **Annexure C – Seller’s Disclosure Statement**

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## Annexure D – Cooling Off Waiver Notice

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### NOTICE OF WAIVER OF COOLING OFF PERIOD

#### Section 167 of Property Occupations Act 2014

**Given to:** RHG Mortgage Corporation Limited ABN 48 065 912 932 (formerly RAMS Mortgage Corporation Limited ABN 48 065 912 932) as mortgagee exercising a power of sale under mortgage registered no. 710820868

**Of:** c/- POL Property Group – PO Box 842 Narellan NSW 2567

(**“the Seller”**)

**By:**

**Of:**

(**“the Buyer”**)

In relation to the contract for the purchase of Lot 1 on Survey Plan 162135, Title Reference 50497654 being 55 Holliday Drive Edens Landing QLD 4207 (**“Contract”**), the Buyer gives the Seller notice that the Buyer waives the cooling-off period for the Contract.

#### [Use below if Buyer is a company]

**EXECUTED** by the Buyer )

in accordance with section 127(1) of )  
the *Corporations Act 2001* (Cth) by )  
authority of its directors: )

)

..... )

Signature of director )

Signature of director/company  
secretary\*

)

\*delete whichever is not applicable

.....

Name of director (block letters)

.....

Name of director/company secretary\*  
(block letters)

\*delete whichever is not applicable

[Use below if buyer is an individual]

**EXECUTED** by  
in the presence of

.....  
Signature of witness

.....  
Signature of Buyer-

.....  
Name of witness

**EXECUTED** by  
in the presence of

.....  
Signature of witness

.....  
Signature of Buyer-

.....  
Name of witness

Annexure E - Execution

NOTE

The Contract may be subject to a 5 business day statutory cooling-off period. A termination penalty of 0.25% of the purchase price applies if the Buyer terminates the Contract during the statutory cooling-off period.

It is recommended the Buyer obtain an independent property valuation and independent legal advice about the Contract and his or her cooling-off rights before signing.

SELLER:

Executed for an on behalf of RHG Mortgage Corporation Limited ABN 48 065 912 932 (formerly RAMS Mortgage Corporation Limited ABN 48 065 912 932) under power of attorney registered no 716093111 by:

Signature of Witness

Name of Witness

Name:  
Position:

Qualification of Witness

[Use below if Buyer is a company]

EXECUTED by  
  
  
  
in accordance with section 127(1) of  
the Corporations Act 2001 (Cth) by  
authority of its directors:

Signature of director/company secretary\*  
\*delete whichever is not applicable

Signature of director

Name of director/company secretary\* (block letters)  
\*delete whichever is not applicable

Name of director (block letters)

[Use below if buyer is an individual]

**EXECUTED** by  
in the presence of

.....  
Signature of witness

.....  
Signature of Buyer

.....  
Name of witness

**EXECUTED** by  
in the presence of

.....  
Signature of witness

.....  
Signature of Buyer

.....  
Name of witness