

# Contract of sale of land

**Property:** 33 SULLIVAN STREET, TOWONG 3707



© Copyright August 2019

# Contract of sale of land

© Copyright August 2019

## IMPORTANT NOTICE TO PURCHASERS – COOLING-OFF

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

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

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

You are entitled to a refund of all the money you paid EXCEPT for \$100 or 0.2% of the purchase price (whichever is more) if you end the contract in this way.

### EXCEPTIONS: the 3-day cooling-off period does not apply if:

- you bought the property at a publicly advertised auction or on the day on which the auction was held; or
- you bought the land within 3 clear business days before a publicly advertised auction was to be held; or
- you bought the land within 3 clear business days after a publicly advertised auction was held; or
- the property is used primarily for industrial or commercial purposes; or
- the property is more than 20 hectares in size and is used primarily for farming; or
- you and the vendor previously signed a contract for the sale of the same land in substantially the same terms; or
- you are an estate agent or a corporate body.

## NOTICE TO PURCHASERS OF PROPERTY OFF-THE-PLAN

### Off-the-plan sales (Section 9AA(1A) of the *Sale of Land Act 1962*)

You may negotiate with the vendor about the amount of the deposit moneys payable under the contract of sale, up to 10 per cent of the purchase price.

A substantial period of time may elapse between the day on which you sign the contract of sale and the day on which you become the registered proprietor of the lot.

The value of the lot may change between the day on which you sign the contract of sale of that lot and the day on which you become the registered proprietor

## Approval

This contract is approved as a standard form of contract under section 53A of the *Estate Agents Act 1980* by the Law Institute of Victoria Limited. The Law Institute of Victoria Limited is authorised to approve this form under the *Legal Profession Uniform Law Application Act 2014*.

## Copyright

This document is published by the Law Institute of Victoria Limited and the Real Estate Institute of Victoria Ltd and is copyright. It may only be reproduced in accordance with an agreement with the Law Institute of Victoria Limited and the Real Estate Institute of Victoria Ltd for each specific transaction that is authorised. Any person who has purchased a paper copy of this document may only copy it for the purpose of documenting a specific transaction for the sale of a particular property.

## Disclaimer

This document is a precedent intended for users with the knowledge, skill and qualifications required to use the precedent to create a document suitable for the transaction.

Like all precedent documents it does not attempt and cannot attempt to include all relevant issues or include all aspects of law or changes to the law. Users should check for any updates including changes in the law and ensure that their particular facts and circumstances are appropriately incorporated into the document to achieve the intended use.

To the maximum extent permitted by law, the Law Institute of Victoria Limited and the Real Estate Institute of Victoria Ltd and their respective contractors and agents are not liable in any way for any loss or damage (including special, indirect or consequential loss and including loss of business profits), arising out of or in connection with this document or its use.

**WARNING TO ESTATE AGENTS**  
**DO NOT USE THIS CONTRACT FOR SALES OF 'OFF THE PLAN' PROPERTIES**  
**UNLESS IT HAS BEEN PREPARED BY A LEGAL PRACTITIONER**

© Copyright August 2019

# Contract of sale of land

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

The terms of this contract are contained in the -

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

in that order of priority

## SIGNING OF THIS CONTRACT

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

Purchasers should ensure that they have received a section 32 statement from the vendor before signing this contract. In this contract, "section 32 statement" means the statement required to be given by a vendor under section 32 of the Sale of Land Act 1962.

The authority of a person signing -

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

must be noted beneath the signature.

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

**SIGNED BY THE PURCHASER:**

on

**Print name(s) of person(s) signing:**

State nature of authority, if applicable:

Not Applicable

**SIGNED BY THE PURCHASER:**

on

**Print name(s) of person(s) signing:**

State nature of authority, if applicable:

Not Applicable

This offer will lapse unless accepted within [ ] clear business days (3 clear business days if none specified) In this contract, "business day" has the same meaning as in section 30 of the *Sale of Land Act 1962*

**SIGNED BY THE VENDOR:**

on

**Print name(s) of person(s) signing:**

Maxine Gayle Brockfield

State nature of authority, if applicable:

Not Applicable

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

# Table of contents

Particulars of sale

Special conditions

General conditions

1. ELECTRONIC SIGNATURE
2. LIABILITY OF SIGNATORY
3. GUARANTEE
4. NOMINEE
5. ENCUMBRANCES
6. VENDOR WARRANTIES
7. IDENTITY OF THE LAND
8. SERVICES
9. CONSENTS
10. TRANSFER AND DUTY
11. RELEASE OF SECURITY INTEREST
12. BUILDER WARRANTY INSURANCE
13. GENERAL LAW LAND
14. DEPOSIT
15. DEPOSIT BOND
16. BANK GUARANTEE
17. SETTLEMENT
18. ELECTRONIC SETTLEMENT
19. GST
20. LOAN
21. BUILDING REPORT
22. PEST REPORT
23. ADJUSTMENTS
24. FOREIGN RESIDENT CAPITAL GAINS WITHHOLDING
25. GST WITHHOLDING
26. TIME & CO-OPERATION
27. SERVICE
28. NOTICES
29. INSPECTION
30. TERMS CONTRACT
31. LOSS OR DAMAGE BEFORE SETTLEMENT
32. BREACH
33. INTEREST
34. DEFAULT NOTICE
35. DEFAULT NOT REMEDIED

**Particulars of sale****Vendor's estate agent**

Name: Costello Rural Pty Ltd t/as Costello Rural (ABN 22 634 293 002)  
Address: 64 Hanson Street, Corryong, VIC, 3707  
Email: rentals@costellorural.com.au  
Tel: 02 6076 2054 Mob: Fax: Ref:

**Vendor**

Name: Maxine Gayle Brockfield  
Address: 33 Sullivan Street, Towong, VIC, 3707  
ABN/ACN:  
Email: mg007brockfield@gmail.com

**Vendor's legal practitioner or conveyancer**

Name: Duly Served Legal & Consulting  
Address: 122 Hume Street, Wodonga VIC 3690  
Email: deculhane@dulysserved.com.au  
Tel: 0488 600 560 Mob: Fax: Ref:

**Purchaser's estate agent**

Name:  
Address:  
Email:  
Tel: Mob: Fax: Ref:

**Purchaser**

Name:  
Address:  
ABN/ACN:  
Email:

**Purchaser**

Name:  
Address:  
ABN/ACN:  
Email:

**Purchaser's legal practitioner or conveyancer**

Name:   
Address:   
Email:   
Tel:  Fax:  DX:  Ref:

**Land** (general conditions 7 and 13)

The land is described in the table below -

Certificate of Title reference	being lot	on plan
Volume: <input type="text"/> 09481 Folio: <input type="text"/> 716	<input type="text"/>	<input type="text"/>

If no title or plan references are recorded in the table, the land is as described in the section 32 statement or the register search statement and the document referred to as the diagram location in the register search statement attached to the section 32 statement  
The land includes all improvements and fixtures.

**Property address**

The address of the land is:  33 SULLIVAN STREET, TOWONG 3707

**Goods sold with the land** (general condition 6.3(f)) (list or attach schedule)

Fixed floor covering, light fittings, and window furnishings

**Payment**

Price:   
Deposit  by  (of which \$  has been paid)  
Balance  payable at settlement

**Deposit bond**

☐ General condition 15 applies only if the box is checked

**Bank guarantee**

☐ General condition 16 applies only if the box is checked

**GST** (general condition 19)

Subject to general condition 19.2, the price includes GST (if any), unless the next box is checked

- ☐ GST (if any) must be paid in addition to the price if the box is checked
- ☐ This sale is a sale of land on which a 'farming business' is carried on which the parties consider meets the requirements of section 38-480 of the GST Act if the box is checked
- ☐ This sale is a sale of a 'going concern' if the box is checked
- ☐ The margin scheme will be used to calculate GST if the box is checked

**Settlement** (general condition 17 & 26.2)

is due on

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

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

**Lease** (general condition 5.1)

☒ At settlement the purchaser is entitled to vacant possession of the property unless the box is checked, in which case the property is sold subject to\*:

(\*only one of the boxes below should be checked after carefully reading any applicable lease or tenancy document)

☐ a lease for a term ending on  with  options to renew, each of  years

OR

☒ a residential tenancy for a fixed term ending on  20/01/2021

OR

☐ a periodic tenancy determinable by notice

**Terms contract** (general condition 30)

☐ This contract is intended to be a terms contract within the meaning of the Sale of Land Act 1962 if the box is checked. *(Reference should be made to general condition 30 and any further applicable provisions should be added as special conditions)*

**Loan** (general condition 20)

☐ This contract is subject to a loan being approved and the following details apply if the box is checked:

Lender:

(or another lender chosen by the purchaser)

Loan amount: no more than \$  Approval date:

**Building report**

☐ General condition 21 applies only if the box is checked

**Pest report**

☐ General condition 22 applies only if the box is checked

## Special Conditions

**Instructions:** *It is recommended that when adding further special conditions:*

- *each special condition is numbered;*
- *the parties initial each page containing special conditions;*
- *a line is drawn through any blank space remaining on the last page; and*
- *attach additional pages if there is not enough space*

33 SULLIVAN STREET, TOWONG 3707



---

## SPECIAL CONDITIONS

### 1. Disclosure:

The Purchaser acknowledges that prior to the signing of this contract or any other document relating to this sale which is or is intended to be legally binding, they received from the Vendor's agent a statement containing particulars specified in and otherwise complying with section 51 of the *Estate Agents Act 1980* (Vic) if applicable, a statement pursuant to section 32 of the *Sale of Land Act 1962* (Vic) and a copy of this contract.

### 2. Identity of the land:

An omission or mistake in the description, measurements or area of the land does not invalidate the sale and the Purchaser cannot make any objection or claim for compensation for any alleged mis-description of the property or any deficiency in its area or measurements; or require the Vendor to amend title or pay any cost of amending title.

### 3. Property – Purchaser acknowledgements

#### 3.1 The Purchaser acknowledges that they are purchasing the property:

- (a) As a result of their own enquiries and inspection and are not relying upon any representation made by the Vendor or any other person on the Vendor's behalf;
- (b) In its present condition and state of repair;
- (c) Subject to all defects latent and patent;
- (d) Subject to any infestations and dilapidation;
- (e) Subject to all existing water, sewerage, drainage and plumbing services and connections in respect of the property;
- (f) Subject to any non-compliance, that is disclosed herein, with the *Local Government Act 1989* (Vic) or any Ordinance under that Act in respect of any building on the land.

#### 3.2 The Purchaser agrees not to seek to terminate rescind or make any objection requisition or claim for compensation arising out of any of the matters covered by this clause.

### 4. No warranty as to use:

The Purchasers must satisfy themselves as to the effect on the property of any environmental planning scheme or other statutory or other requirement. The Vendor gives no warranty as to the conditions relating to the use of the property by the Purchaser or any other party. The Purchasers must satisfy themselves as to the use of the property and all consents required for such use for the Purchaser's purposes. The Purchaser may not delay settlement nor make any requisition, objection or claim for compensation nor have any right of rescission or termination in relation to these matters.

### 5. Whole agreement:

#### 5.1 This contract comprises the whole of the agreement between the parties and it is expressly agreed that no other covenants or promises are implied into this contract or arise between the parties pursuant to any collateral or other agreement, whether oral or in writing. The Purchaser acknowledges and agrees that there are no conditions, warranties, or other terms of affecting this sale other than those embodied in the Contract and that:

- (a) No information, representation, comment, opinion or warranty by the Vendor, the Vendor's agent's or the Vendor's legal representative was supplied or made with the intention or knowledge that the information would be relied upon by the Purchaser, and no information, representation, comment, opinion or warranty has in fact been so relied upon by the Purchaser.
- (b) The Vendor has not, nor has anyone on the Vendor's behalf, made any representation or warranty as to the fitness of the Property for any particular purpose or that any structures comply with current or any particular building regulations, and the Purchaser expressly

- 
- releases the Vendor, the Vendors agent, and the Vendors legal represent from any claims or demands in respect thereof.
- (c) The property together with any improvements is purchased by the Purchaser as a result of the independent exercise of the Purchasers own skill and judgement after due inspection and investigation in its present condition and state of repair, with all existing known and latent defects, infestations, contamination and dilapidation. And further that the Vendor is not required to carry out any repairs, alterations, improvements, compliance works or any other works of similar nature to the Property.
  - (d) The Property is sold subject to any restrictions imposed by law, statutory regulation, bylaws, or any authority with power under legislation to control the use of land. Any such restriction shall not constitute a defect in title or affect the validity of this Contract, and the Purchaser shall not make any requisition or objection or claim to be entitled to compensation or damages from the Vendor in respect thereof.

## **6. Acceptance of title:**

### **6.1 Foreign resident capital gains withholding:**

- (a) Words defined or used in Subdivision 14-D of Schedule 1 to the *Taxation Administration Act 1953* (Cth) have the same meaning this Special Condition unless the context requires otherwise.
- (b) Every Vendor under this contract is a foreign resident for the purposes of this Special Condition unless the Vendor gives the Purchaser a special clearance certificate issued by the Commissioner under section 14-200 (1) of Schedule to the *Taxation Administration Act 1953* (Cth). The specified period in the clearance certificate must include the actual date of settlement.
- (c) This Special Condition only applies if the Purchaser is required to pay the Commissioner an amount in accordance with section 14-200(3) or section 14-235 of Schedule I to the *Taxation Administration Act 1953* (Cth) ("the amount") because one or more of the Vendors is a foreign resident, the property is or will have a market value of \$750,000 or more just after the transaction, and the transaction is not excluded under section 14-215(1) of Schedule 1 to the *Taxation Administration Act 1953* (Cth).
- (d) The amount is to be deducted from the Vendor's entitlement to the contract consideration. The Vendor must pay to the Purchaser at settlement such part of the amount as is represented by non-monetary consideration.
- (e) The Purchaser must:
  - (i) engage a legal practitioner or conveyancer ("representative") to conduct all legal aspects of settlement, including the performance of the Purchaser's obligations in this Special Condition; and
  - (ii) ensure that the representative does so.
- (f) The terms of the representative's engagement are taken to include instructions to have regard to the Vendor's interests and instructions that the representative must pay or ensure payment of the amount to the Commissioner as:
  - (i) the settlement is conducted through the electronic conveyancing system operated by Property Exchange Australia Ltd ("PEXA") or any other electronic conveyancing system agreed by the parties; and
  - (ii) the amount is included in the settlement statement requiring payment to the Commissioner in respect of this transaction.
- (g) Any clearance certificate or document evidencing variation of the amount in accordance with section 14-253(2) of Schedule 1 to the *Taxation Administration Act 1953* (Cth) must be given to the Purchaser at least 1 business day before the due date for settlement.
- (h) The Vendor warrants that the information the Vendor provides is true and correct.

- 
- (i) The Purchaser is responsible for any penalties or interest payable to the Commissioner because of late payment of the amount.

## **7. GST withholding:**

- 7.1 In this Special Condition, section references are to Schedule 1 of the *Taxation Administration Act 1953* (Cth) as amended by *Treasury Laws Amendment (2018 Measures No.1) Act 2018* (Cth) and asterisked terms have the same meanings as when used in that schedule.
- 7.2 If section 14-255(1) applies to the supply of the property, the Vendor must give the Purchaser the written notice required by that section at least seven days before settlement.
- 7.3. If section 14-250 requires the recipient of supply to withhold an amount ('withholding sum') from the consideration payable to the Vendor and pay it to the Commissioner, the Purchaser must:
  - (a) complete and lodge such online notification forms as the Commissioner may require enabling payment of the withholding sum and;
  - (b) at settlement, comply with section 16-30(3) by giving the Vendor a bank cheque payable to the Commissioner for the withholding sum or;
  - (c) on the settlement date or within such further period (if any) as may be allowed by the Commissioner, pay the withholding sum to the Commissioner, except where the Purchaser has complied with sub-paragraph b. or settlement has occurred using an electronic lodgement network operator, the Purchaser must provide the Vendor with evidence of payment of the withholding sum as soon as practicable after payment.
- 7.4. If the Purchaser gives to the Vendor at settlement a bank cheque payable to the Commissioner for the withholding sum, the Vendor must, on the settlement date or within such further period (if any) as may be allowed by the Commissioner, pay the bank cheque to the Commissioner.
- 7.5. An amount withheld and paid as required by section 14-250 or applied as described in section 16-30(3) is treated as having been paid to the Vendor.
- 7.6. Except as expressly set out in this Special Condition, the rights and obligations of the parties under this contract including, without restriction, any obligation of the Vendor to apply the margin scheme, are unchanged.

## **8. Electronic Conveyancing:**

- 8.1 This Special Condition applies if the Vendor elects for the Settlement and lodgement to be conducted electronically in accordance with Electronic Conveyancing National Law. The Vendor may their sole discretion elect for settlement and lodgement to be conducted electronically, by notice in writing to the Purchaser and/or their representative, within 10 days prior to the settlement date. Such notice may be via an invitation from the Electronic Network Operator or by separate email. Upon receipt of notice the Purchaser agrees to do all things necessary to give effect to an electronic settlement, including but not limited to:
  - (a) Immediately notify their financier and all other persons or parties associated with their settlement, that settlement will be conducted electronically; and
  - (b) Ensuring that all settlement parties engage and authorised subscriber for the purposes of Electronic Conveyancing National Law. The Purchaser will accept any invitation sent via the Electronic Network Operator; and
  - (c) Adjusting in favour of the Vendor at settlement any fee, charged by the Electronic Network Operator to affect an electronic settlement of which is agreed between the parties that is an essential term of the contract and failure to comply is agreed that the Purchaser is in default of this contract; and
  - (d) Varying any conditions to this contract to affect an electronic settlement; and

- 
- (e) Complying with any requirements of the Electronic Conveyancing National Law and the Electronic Network Operator and any other authority requirements which are necessary to effect settlement of this transaction and the lodgement of the instruments necessary to record the Purchaser as the registered proprietor of the land.
  - (f) When the Vendor has given written notice of intention to complete settlement electronically, the Purchaser must conduct settlement and lodgement electronically, must accept the Vendors invitation, and/or, in the event that they cannot settle electronically, for whatever reason, they are deemed in default. Further, the Purchaser must immediately notify the Vendors' representative in writing, via email (within 10 business days of the day of sale) of their intention to complete settlement either electronically or paper based.

**8.2 Consequence: -**

Should the Purchaser fail to supply such written notification within 10 business days from the day of sale, relating to their ability to conclude settlement either electronically or by a paper-based settlement it is agreed that the Purchaser will be conducting settlement in an electronic format.

Notwithstanding notification from the Purchaser, if settlement is completed in a paper format; the Purchaser shall be deemed in default under the contract and shall be required to pay the Vendors' representative a non-electronic settlement fee of \$220.00 to attend settlement at the location determined by the Vendors Representative. The Vendor reserves the right to accept late requests to settle electronically, however an administration fee of \$220.00 will be paid by the Purchaser, to the Vendors representative on settlement, should such demand be made by the Vendor.

- 8.3 Settlement of this contract shall occur when the workspace records that the exchange of the balance of funds due under this contract has been paid in accordance with the instructions of the Vendors' representative has occurred and/or the document necessary to enable the Purchaser to become the registered proprietor of the land have been accepted for electronic lodgement.
- 8.4 It is further agreed that in the event that an error occurs, all parties must do everything reasonably necessary to assist the other party to trace and identify the recipient of any mistaken payment and to recover the mistaken payment and the Vendor shall retain an equitable interest in the land hereby sold until all mistaken payment have been recovered including but not limited to any interest, penalties, costs and all other money due to the Vendor has been paid in full.
- 8.5 It is further agreed that if an error occurs, all parties must do everything reasonably necessary to assist the other party to trace and identify the recipient of any mistaken payment and to recover the mistaken payment and the Vendor shall retain an equitable interest in the land hereby sold until all mistaken payment have been recovered including but not limited to any interest, penalties, costs and all other money due to the Vendor has been paid in full.

**9. Duties online:**

- 9.1 The Purchaser via email, will receive an invitation to complete the Purchaser's obligation with the Duties online form/s generated by the State Revenue Office portal for the completion of Duties Online obligations of the parties to this contract. The Vendor will endeavour to do complete this invitation at least 3 business days prior to settlement.
- 9.2 Where the Vendor has initiated the invitation to the Purchaser via the online portal and such invitation was initiated 10 business days prior to settlement, the Purchaser must, within 5 business days prior to settlement, complete the Purchaser's obligations and sign the online form. The State Revenue office portal indicates the date in which the form was completed by the purchase. Such date noted, will be deemed as the date of completion by the Purchaser. Failure by the Purchaser to complete 9.2, the Purchaser will be in default of this contract. Such failure, may inhibit the Vendors ability to sign and complete the Vendors obligation with the State Revenue office of Victoria, in this regard prior to Settlement.

- 
- 9.3 In the event that the Purchaser fails to comply with Special Condition 9.2, the Vendor will be able to delay settlement by up to 5 business days from the date noted on the State Revenue Office portal that the form has been signed by the Purchaser.

**10. Deposit:**

- 10.1 All deposit monies paid hereunder shall be held and applied in accordance with the provisions of the *Sale of Land (Deposits) Act 1980* (Vic).

10.2 Payments:

Unless the contract specifies 'Deposit Bond' or 'Bank Guarantee' in the particulars of sale, then it does not form part of this contract and will not constitute payment of the deposit under the terms of this contract. The Purchaser must make written application to the Vendors representative should the Purchaser wish to have a 'deposit bond' or 'bank guarantee' form part of this contract. The Vendors representative (excludes any agent) shall have the sole discretion to accept or reject such application. Should the Vendors' representative accept any request, then General Conditions 14.1 will include the following Special Condition:

- (a) Deposit Money shall be paid by the Purchaser either by a Cash Payment or by a Deposit Guarantee; or
- (b) Bond approved by the Vendor's Conveyancer.

- 10.3 Should the deposit be paid by way of a Deposit Guarantee or Bond, it shall be held by the Vendor's Conveyancer in accordance with the following Special Conditions headed Deposit Bond.

Deposit Bond:

- (a) In this Contract, the word 'Bond' means any Deposit Bond issued to the Vendor at the request of the Purchaser any authorised provider (the "Guarantor").
- (b) The delivery of the Bond no later than the time the Deposit is required to be paid under this Contract to the person ("Deposit Holder") nominated in this Contract to hold the Deposit as Stakeholder shall, to the extent of the amount guaranteed under the Bond, be deemed to be payment of the Deposit in accordance with this Contract.
- (c) On completion of this Contract, the Purchaser shall pay to the Vendor, in addition to all other moneys payable under this Contract, the amount stipulated in this Bond, either by way of Cash or unendorsed Cheque drawn by an authorised deposit-taking Institution within the meaning of the *Banking Act 1959* (Cth).
- (d) If the Vendor serves on the Purchaser a Default Notice, then to the extent that the Guarantor under the Bond has not already paid the amount, the Purchaser shall forthwith pay the Deposit ( or so much thereof as has not been paid) to the Deposit Holder.
- (e) The Vendor acknowledges that payment by the Guarantor under the Bond shall, to the extent of the amount paid, satisfy the Purchaser's obligation to pay the Deposit under the previous paragraph.

**11. Purchasers Warranties:**

- 11.1 The Purchaser warrants to the Vendor that it is empowered to enter this Contract and can do so without consent from any other person or has already obtained that consent.

- 11.2 The Purchaser warrants to the Vendor that it is not prohibited by or under any law including without limitation the *Foreign Acquisitions and Takeovers Act 1975* (Cth) from entering into or competing this Contract.

- 
- 11.3 The Purchaser warrants to the Vendor that it enters into this Contract in reliance on its own inspection of and enquiries relating to the Property and does not enter into this Contract on the basis of the information contained in the Vendors' Statement.

## **12. Nomination:**

Any Provision in this Contract enabling the right of nomination shall not be exercised by the Purchaser unless from the time of signing of this contract he/she provides the Vendor or the Vendors Conveyancer or agents with the identity of the any undisclosed Purchaser and undertakes to provide documented evidence of his intention to purchase the subject property with or on behalf of any other Purchasers not less than 14 days prior to the settlement date. Failure by the Purchasers to forward such documented evidence will result in the contract being able to be extended by up to a 14 day period from the settlement date. In such instance the Vendor can exercise such right and charge the Purchaser the interest penalty at the rate set out in Special Condition 16 of this contract. Any nomination under this contract must be in writing and executed by the named Purchaser and the substitute or additional Purchaser and be accompanied by a copy of the statutory declaration made by the named Purchaser for stamp duty purposes.

## **13. COVID-19 (Corona Virus Disease):**

- 13.1 The Parties agree that should the Australian or Victorian Governments' require a party to be:

- (a) quarantined or to be in self-isolation; or
- (b) needs to care for an immediate family member of their household who is directly affected by COVID-19 and who is quarantined or in self-isolation,

due to COVID-19, then should the settlement date fall within the quarantine or self-isolation period, then the affected party must notify the other party's conveyancer/solicitor by notice in writing of the period of quarantine or self-isolation as soon as practicable.

- 13.2 If settlement is delayed in accordance with this Special Condition, neither party will have any claim against the other in respect of any damages, including but not limited to fees, penalty interest, costs or expenses incurred as a result of the delay in settlement and neither party can issue a Notice of Default until such time as the person/s affected have been medically cleared by a medical practitioner and permitted to leave quarantine or self-isolation.
- 13.3 The party seeking to benefit from this Special Condition must provide evidence of the need for quarantine or self-isolation within 24 hours of diagnosis, where the delay, or is likely to delay, settlement under this contract.
- 13.4 Settlement shall take place 7 days after the date on which the affected person/s are permitted to leave quarantine or self-isolation.
- 13.5 It is an essential term under this contract that if the Vendor is seeking to benefit from this Special Condition, the Vendor shall thoroughly disinfect the property not less than 24 hours prior to settlement. For clarity, thoroughly disinfect includes, but is not limited to, vacuuming all carpets, washing with disinfectant all hard surface floors, cleaning air conditioning filters, and using a disinfectant product to clean all surface areas, including door handles, light switches, hard surfaces, remote controls, windows, and appliances.

## **14. Residential Lease:**

- 14.1 In this Contract:

**Lease** means the residential lease, a copy of which is attached to this Contract and marked 'Annexure A';

**Settlement Date** means the date on which settlement actually occurs as opposed to the date that settlement is due as set out in the Particulars of Sale; and

**Tenant** means the tenant named in the Lease, its assignee or the person entitled to exclusive possession of the land pursuant to the Lease.

- 
- 14.2 The Purchaser must not make any objections or requisition or claim for compensation by reason of anything contained in the Lease. The Purchaser acknowledges having inspected and approved the Lease and agrees to take title subject to the Lease.
- 14.3 After the Settlement Date, the Purchaser must observe the landlord's covenants under the Lease and the Purchaser agrees to indemnify and keep indemnified the Vendor from and against all loss or damage the Vendor may suffer as a result of the Purchaser failing to do so, in the absence of negligence on the part of the Vendor.
- 14.4 On the Settlement Date, the Vendor must hand to the Purchaser the Lessor's copy of the Lease, which will be satisfied by the delivery of a photocopy of the Lease.
- 14.5 The Purchaser acknowledges that fixtures, fittings, plant and equipment on the property may have been installed by or on behalf of the Tenant and that the Tenant may have rights under the Lease or otherwise at law to remove them. The Purchaser must not make any objection, requisition or claim for compensation or damages in relation to any such fixtures, fittings, plant or equipment or their identity.
- 14.6 Any provision of this Special Condition which is capable of taking effect after the Settlement Date does not merge on completion and continues to have full force and effect, irrespective of whether this Contract expressly provides this is the case.
- 14.7 Rent and all other money paid or payable by the Tenant under the Lease (**Rent**) must be apportioned between the Vendor and the Purchaser on the Settlement Date, in the following manner:
- (a) the Vendor is entitled to all Rent in respect of the period up to and including the Settlement Date and the Purchaser is entitled to all Rent in respect of the period after that date;
  - (b) if Rent has been paid in respect of a period expiring after the Settlement Date, the Vendor must on the Settlement Date pay to the Purchaser a proportion of the Rent equal to the proportion that the number of days remaining in the period after the Settlement Date bears to the total number of days in the period;
  - (c) if after the Settlement Date the Purchaser receives Rent in respect of a period the whole or part of which occurred on or prior to the Settlement Date, then the Purchaser must pay the Vendor the Rent or as the case may be, a proportion equal to the proportion that the number of days in the period prior to and including the Settlement Date bears to the total number of days in the period;
  - (d) if the Lease provides for payment by the Tenant of provisional amounts pending subsequent adjustments between the landlord and the Tenant, each provisional amount must be adjusted between the Vendor and the Purchaser on the Settlement Date as if it were the actual amount payable. The Purchaser must notify the Vendor when the appropriate final adjustment is subsequently made between the Purchaser and the Tenant in relation to the amount and any further adjustment necessary between the Vendor and the Purchaser must be made by payment by one party to the other immediately; and
  - (e) if the Tenant is in arrears with respect to the payment of Rent at the Settlement Date, the right to receipt of recovery of those arrears that relate to the period prior to the Settlement Date, will remain with the Vendor and Section 141 of the *Property Law Act 1958* (Vic) will not apply in respect of those arrears. The Vendor may commence or continue legal proceedings against the Tenant after the Settlement Date for the recovery of all or part of the arrears. The Purchaser agrees to allow and irrevocably authorises the Vendor to commence or continue proceedings at the Vendor's expense and if necessary in the name of the Purchaser, and the Purchaser must do all such acts and things as the Vendor considers necessary to recover all or any part of the arrears.
- 14.8 The Purchaser must not require the Vendor to pay, adjust or deduct any rates, taxes, land taxes, assessments or other outgoings for the Property that are normally payable by the Tenant under the Lease (or which the Tenant must reimburse the Landlord for under the

---

Lease) for the relevant current or any previous rating period (including arrears), which are unpaid as of the settlement date and/or due and payable after settlement (**Outgoings**).

- 14.9 the Purchaser agrees to indemnify the Vendor and keep the Vendor indemnified against any liability for any Outgoings in respect of Special Condition 14. This Special Condition 14.9 does not merge on completion of this Contract and continues to operate for the benefit of the Vendor.

**15. Transfer of Water Rights:**

- 15.1 The Vendor has the following Water Entitlements and Licences:

Goulburn-Murray Water  
Sullivan Street Pumping Syndicate with a licence to take and use water from an unregulated river or stream or dam for use on the land

Works licence ID: WLE012352  
Extraction share: 0.10  
Expiry 30 June 2031

- 15.2 This Contract is not subject to or conditional upon the transfer of the Water Entitlements.
- 15.3 The Purchaser warrants that the Purchaser examined the Entitlements before the Day of Sale and satisfied itself on all matters contained in the Entitlements, including all matters concerning the transfer of the Water Entitlements to the Purchaser.
- 15.4 The Vendor will sign all documents and do all reasonable things to assist the Purchaser to apply for a transfer of the Water Entitlements, at the Purchaser's cost and expense.
- 15.5 The Purchaser acknowledges the Vendor makes no representation or warranty as to:
- (a) Whether one or more (or all) of the Water Entitlements are transferrable to the Purchaser;
  - (b) The volume of water allocated to the Water Entitlements;
  - (c) Any adverse effect to any water allocation as a result of the Vendor having carryover water; and
  - (d) The Water Entitlements, including without limitation, the quality of the water, any bore, pump or casing, whether or on what the terms the Entitlements are transferred, and the existence or otherwise of a groundwater or drainage management plan.
  - (e) Any effect (if any) the Transfer of Water Entitlements will have with respect to Stamp Duty on the Transfer of Land.
- 15.6 Any fees paid by the Vendor in relation to the Water Entitlements must be apportioned between the parties at settlement and included in the statement of adjustments prepared under General Condition 15.
- 15.7 The Vendor makes no warranty or representations as to the Stamp Duty consequences of the Transfer of the Water Entitlements. And the Purchaser will be liable for any Stamp Duty liability (if any) with respect to the transfer of the Water Entitlements.
- 15.8 The Purchaser indemnifies the Vendor against all claims, demands, actions, costs, judgements and expenses that may be brought against the Vendor or which the Vendor may pay, sustain or incur because of the Purchaser failing to comply with its obligations under the Entitlements on and from the settlement date.
- 16. Default:**
- 16.1 If the Purchaser defaults in payment of any money due under this Contract then without prejudice to any other rights of the Vendor, interest at the rate of 2% higher than the rate for the time being fixed under the *Penalty Interest Rates Act 1983* (Vic) calculated daily and



---

computed upon the money overdue during the period of default, must be paid by the Purchaser to the Vendor on demand without the necessity for any notice in writing. The exercise of the Vendor's rights hereunder shall be without prejudice to any other rights powers and remedies of the Vendor under this Contract or otherwise. If the Purchaser does not pay the deposit by the due date, or part thereof, the Purchaser will be liable for any cost by the Vendors' representative in pursuing the non-payment of such from the due date, in addition to any default costs charged by the Vendors' representatives and/or retained solicitor. The Purchaser agrees that any claim under this contract is a foreseeable loss to the Vendor.

16.2 The Vendor further gives notice to the Purchaser that in the event that the Purchaser fails to complete the Purchase of the Property on the date specified in the Contract between the Vendor and the Purchaser ("the Contract") for the payment of the residue as defined in the Contract ("the Due Date") the Vendor will or may suffer the following losses and expenses which the Purchaser shall be required to pay to the Vendor in addition to the interest payable in accordance with the terms of the Contract:

- (a) All costs associated with obtaining bridging finance to complete the Vendor's purchase of another property, and interest charged on such bridging finance.
- (b) Interest payable by the Vendor under any existing Mortgage over the property calculated from the Due Date.
- (c) Accommodation expenses necessarily incurred by the Vendor
- (d) Additional costs and expenses as between the Vendor's representative and the Vendor plus any legal costs.
- (e) Penalties payable by the Vendor to a third party through any delay in completion of the Vendor's purchase.
- (f) If settlement does not occur on the due date and or, at the agreed time, then as a result the settlement is rescheduled for any reason that is not the Vendors fault, or if settlement is delayed by more than 30 minutes, the Purchaser will pay on demand, a reschedule fee of two hundred and twenty dollars, per reschedule of time and or date of settlement, in addition to any default notice issued by the Vendors representative.

16.3 If applicable, the financial institution costs or any other third-party costs associated with attending to a delayed or changed settlement time and or date, will be borne by the Purchaser.

16.4 In the event that settlement time is disputed for any reason, all parties agree that the last lot of written correspondence sent by the Vendors representative, will be deemed to be the agreed time for settlement.

16.5 The Purchaser will pay to the Vendor on settlement the sum of \$88.00 dollars for any finance and or deposit extension request. Such cost is to cover the Vendors' representative for the additional work completed for such request by the Purchaser. It will be payable on settlement regardless of whether any such request is granted or not, by the Vendors' representative and will be shown in the final adjustments.

**17. Notice:**

All correspondence must via email transmission to the Vendors representative. No correspondence is to be transmitted via any electronic settlement portal or by fax. No notice, message, document or the like is deemed served nor notified to the Vendor if sent via this method. The Vendor is not obliged to acknowledge nor respond to any transmission via any electronic settlement portal. In the event that the Vendor replies to any such transmission it is not deemed as acceptance of service nor notification to the Vendor. Failure to comply with the above forms of Notice amount to default and the Purchaser hereby agrees they are in default of this contract.

**18. Miscellaneous:**

18.1 If the Purchaser consists of more than one person each of them are jointly and severally bound by this Contract.

- 
- 18.2 Unless inconsistent with the context words involving gender include all genders and the neuter and words importing the singular number include the plural and vice versa.
- 18.3 The Purchaser acknowledges that should this contract be subject to finance of any description, as is noted on the Particulars of Sale in this contract, then General Condition 20.1 is to be deleted and the following sentence is to be inserted; "serves written notice ending the contract on the Vendors representative on or by 5.00pm on the approval date". In addition, such notice MUST:
- (a) Be provided to the Vendors Representative by email means only;
  - (b) Be generated only from an approved lending institution;
  - (c) Be signed and dated by the authorised representative of such approved lending institution;
  - (d) Not be issued by a mortgage broker, loan originator or similar;
  - (e) Be on a formal letter head from the approved lending institution that the loan application was applied to.
- 18.4 It is further agreed between the parties that:
- (a) Any Failure to comply will Special Condition 18.3 above will not constitute an end to this contract when subject to Finance approval or the like.
  - (c) In the event finance decline is advised to the Vendors representative in accordance with Special Condition 18.4. then the Vendor allows such formal decline letter in accordance with Special Conditions 18.3. to be provided within 3 business days of the Purchaser or their representative advising that finance has been declined. Such letter must be dated as of or before the date of notification to the Vendors representative.
- 18.5 The Purchaser must and agrees to provide a copy of all certificates purchased by them or obtained in any shape or form, to complete any adjustments. Such searches & or certificates submitted, must have an issue date by the relevant authority, or organisation, issuing such search or certificate of not more than 21 days, prior, to the settlement date.
- The date of issue on the relevant search or certificate will be accepted as the date issued by such authority or organisation. Adjustments and searches or certificates must be submitted to the Vendor's representative at least 3 business days prior, to the settlement date, but only, via email transmission.
- Failure to comply with the condition: -
- The Vendor will not be obliged to provide cheque directions, up to 3 business days after the Purchaser has complied with this condition. The Purchaser agrees that they will be in default of this contract and the Vendor will be entitled to delay settlement by up to a further three business days after receipt of adjustments and searches or certificates in full at the Purchaser's expense.
- An administration fee of \$220.00 will be charged to the Purchaser for failing to comply with this condition in addition to any default notice cost issued. Further to the above:
- Should any search or certificate relied upon by the Purchaser as part of the adjustment submission, not be purchased by the Purchaser from the relevant authority or organisation, then its agreed that, for any part of the adjustments that was obtained, but not purchased, to complete the adjustments, the Purchaser will forfeit any ability to re adjust after settlement has been completed. This condition will not merge on settlement. obtained, but not purchased, to complete the adjustments, the Purchaser will forfeit any ability to re-adjust after settlement has been completed. This condition will not merge on settlement.
- 18.6 If the Purchaser is a Company not listed on a recognised Australian Stock Exchange then the Company agrees that it will procure at least one of its Director's to sign a 'Guarantee' and attach to this Contract simultaneously with the Company's execution of this contract. The

---

Directors of the Purchaser Company (if any) shall guarantee the payment of the purchase money and any other moneys payable under this contract by the Purchaser and the performance and observance by the Purchaser the terms, covenants and conditions to be performed and observed by the Purchaser under this contract. The Purchaser will be deemed in default for noncompliance of this condition.

- 14.8 The laws of the State of Victoria apply to this contract and the parties submit to the exclusive jurisdiction of the courts and tribunals of the State of Victoria.

END OF SPECIAL CONDITIONS

# General conditions

## Contract signing

### 1. ELECTRONIC SIGNATURE

- 1.1 In this general condition "electronic signature" means a digital signature or a visual representation of a person's handwritten signature or mark which is placed on a physical or electronic copy of this contract by electronic or mechanical means, and "electronically signed" has a corresponding meaning.
- 1.2 The parties' consent to this contract being signed by or on behalf of a party by an electronic signature.
- 1.3 Where this contract is electronically signed by or on behalf of a party, the party warrants and agrees that the electronic signature has been used to identify the person signing and to indicate that the party intends to be bound by the electronic signature.
- 1.4 This contract may be electronically signed in any number of counterparts which together will constitute the one document.
- 1.5 Each party consents to the exchange of counterparts of this contract by delivery by email or such other electronic means as may be agreed in writing.
- 1.6 Each party must upon request promptly deliver a physical counterpart of this contract with the handwritten signature or signatures of the party and all written evidence of the authority of a person signing on their behalf, but a failure to comply with the request does not affect the validity of this contract.

### 2. LIABILITY OF SIGNATORY

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

### 3. GUARANTEE

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

### 4. NOMINEE

The purchaser may no later than 14 days before the due date for settlement nominate a substitute or additional person to take a transfer of the land, but the named purchaser remains personally liable for the due performance of all the purchaser's obligations under this contract.

---

## Title

### 5. ENCUMBRANCES

- 5.1 The purchaser buys the property subject to:
  - (a) any encumbrance shown in the section 32 statement other than mortgages or caveats; and
  - (b) any reservations, exceptions and conditions in the crown grant; and
  - (c) any lease or tenancy referred to in the particulars of sale.
- 5.2 The purchaser indemnifies the vendor against all obligations under any lease or tenancy that are to be performed by the landlord after settlement.

### 6. VENDOR WARRANTIES

- 6.1 The vendor warrants that these general conditions 1 to 35 are identical to the general conditions 1 to 35 in the form of contract of sale of land published by the Law Institute of Victoria Limited and the Real Estate Institute of Victoria Ltd in the month and year set out at the foot of this page.
- 6.2 The warranties in general conditions 6.3 and 6.4 replace the purchaser's right to make requisitions and inquiries.
- 6.3 The vendor warrants that the vendor:
  - (a) has, or by the due date for settlement will have, the right to sell the land; and
  - (b) is under no legal disability; and
  - (c) is in possession of the land, either personally or through a tenant; and
  - (d) has not previously sold or granted any option to purchase, agreed to a lease or granted a pre-emptive right which is current over the land and which gives another party rights which have priority over the interest of the purchaser; and
  - (e) will at settlement be the holder of an unencumbered estate in fee simple in the land; and
  - (f) will at settlement be the unencumbered owner of any improvements, fixtures, fittings and goods sold with the land.

- 6.4 The vendor further warrants that the vendor has no knowledge of any of the following:
- (a) public rights of way over the land;
  - (b) easements over the land;
  - (c) lease or other possessory agreement affecting the land;
  - (d) notice or order directly and currently affecting the land which will not be dealt with at settlement, other than the usual rate notices and any land tax notices;
  - (e) legal proceedings which would render the sale of the land void or voidable or capable of being set aside.
- 6.5 The warranties in general conditions 6.3 and 6.4 are subject to any contrary provisions in this contract and disclosures in the section 32 statement.
- 6.6 If sections 137B and 137C of the *Building Act* 1993 apply to this contract, the vendor warrants that:
- (a) all domestic building work carried out in relation to the construction by or on behalf of the vendor of the home was carried out in a proper and workmanlike manner; and
  - (b) all materials used in that domestic building work were good and suitable for the purpose for which they were used and that, unless otherwise stated in the contract, those materials were new; and
  - (c) domestic building work was carried out in accordance with all laws and legal requirements, including, without limiting the generality of this warranty, the *Building Act* 1993 and regulations made under the *Building Act* 1993.
- 6.7 Words and phrases used in general condition 6.6 which are defined in the *Building Act* 1993 have the same meaning in general condition 6.6.

## 7. IDENTITY OF THE LAND

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

## 8. SERVICES

- 8.1 The vendor does not represent that the services are adequate for the purchaser's proposed use of the property and the vendor advises the purchaser to make appropriate inquiries. The condition of the services may change between the day of sale and settlement and the vendor does not promise that the services will be in the same condition at settlement as they were on the day of sale.
- 8.2 The purchaser is responsible for the connection of all services to the property after settlement and the payment of any associated cost.

## 9. CONSENTS

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

## 10. TRANSFER & DUTY

- 10.1 The purchaser must prepare and deliver to the vendor at least 7 days before the due date for settlement any paper transfer of land document which is necessary for this transaction. The delivery of the transfer of land document is not acceptance of title.
- 10.2 The vendor must promptly initiate the Duties on Line or other form required by the State Revenue Office in respect of this transaction, and both parties must co-operate to complete it as soon as practicable.

## 11. RELEASE OF SECURITY INTEREST

- 11.1 This general condition applies if any part of the property is subject to a security interest to which the *Personal Property Securities Act* 2009 (Cth) applies.
- 11.2 For the purposes of enabling the purchaser to search the Personal Property Securities Register for any security interests affecting any personal property for which the purchaser may be entitled to a release, statement, approval or correction in accordance with general condition 11.4, the purchaser may request the vendor to provide the vendor's date of birth to the purchaser. The vendor must comply with a request made by the purchaser under this condition if the purchaser makes the request at least 21 days before the due date for settlement.
- 11.3 If the purchaser is given the details of the vendor's date of birth under general condition 11.2, the purchaser must
- (a) only use the vendor's date of birth for the purposes specified in general condition 11.2; and
  - (b) keep the date of birth of the vendor secure and confidential.

- 11.4 The vendor must ensure that at or before settlement, the purchaser receives—
- (a) a release from the secured party releasing the property from the security interest; or
  - (b) a statement in writing in accordance with section 275(1)(b) of the *Personal Property Securities Act 2009* (Cth) setting out that the amount or obligation that is secured is nil at settlement; or
  - (c) a written approval or correction in accordance with section 275(1)(c) of the *Personal Property Securities Act 2009* (Cth) indicating that, on settlement, the personal property included in the contract is not or will not be property in which the security interest is granted.
- 11.5 Subject to general condition 11.6, the vendor is not obliged to ensure that the purchaser receives a release, statement, approval or correction in respect of personal property—
- (a) that—
    - (i) the purchaser intends to use predominantly for personal, domestic or household purposes; and
    - (ii) has a market value of not more than \$5000 or, if a greater amount has been prescribed for the purposes of section 47(1) of the *Personal Property Securities Act 2009* (Cth), not more than that prescribed amount; or
  - (b) that is sold in the ordinary course of the vendor's business of selling personal property of that kind.
- 11.6 The vendor is obliged to ensure that the purchaser receives a release, statement, approval or correction in respect of personal property described in general condition 11.5 if—
- (a) the personal property is of a kind that may or must be described by serial number in the Personal Property Securities Register; or
  - (b) the purchaser has actual or constructive knowledge that the sale constitutes a breach of the security agreement that provides for the security interest.
- 11.7 A release for the purposes of general condition 11.4(a) must be in writing.
- 11.8 A release for the purposes of general condition 11.4(a) must be effective in releasing the goods from the security interest and be in a form which allows the purchaser to take title to the goods free of that security interest.
- 11.9 If the purchaser receives a release under general condition 11.4(a) the purchaser must provide the vendor with a copy of the release at or as soon as practicable after settlement.
- 11.10 In addition to ensuring that a release is received under general condition 11.4(a), the vendor must ensure that at or before settlement the purchaser receives a written undertaking from a secured party to register a financing change statement to reflect that release if the property being released includes goods of a kind that are described by serial number in the Personal Property Securities Register.
- 11.11 The purchaser must advise the vendor of any security interest that is registered on or before the day of sale on the Personal Property Securities Register, which the purchaser reasonably requires to be released, at least 21 days before the due date for settlement.
- 11.12 The vendor may delay settlement until 21 days after the purchaser advises the vendor of the security interests that the purchaser reasonably requires to be released if the purchaser does not provide an advice under general condition 11.11.
- 11.13 If settlement is delayed under general condition 11.12 the purchaser must pay the vendor—
- (a) interest from the due date for settlement until the date on which settlement occurs or 21 days after the vendor receives the advice, whichever is the earlier; and
  - (b) any reasonable costs incurred by the vendor as a result of the delay—
- as though the purchaser was in default.
- 11.14 The vendor is not required to ensure that the purchaser receives a release in respect of the land. This general condition 11.14 applies despite general condition 11.1.
- 11.15 Words and phrases which are defined in the *Personal Property Securities Act 2009* (Cth) have the same meaning in general condition 11 unless the context requires otherwise.

## 12. BUILDER WARRANTY INSURANCE

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

## 13. GENERAL LAW LAND

- 13.1 The vendor must complete a conversion of title in accordance with section 14 of the *Transfer of Land Act 1958* before settlement if the land is the subject of a provisional folio under section 23 of that Act.
- 13.2 The remaining provisions of this general condition 13 only apply if any part of the land is not under the operation of the *Transfer of Land Act 1958*.

- 13.3 The vendor is taken to be the holder of an unencumbered estate in fee simple in the land if there is an unbroken chain of title starting at least 30 years before the day of sale proving on the face of the documents the ownership of the entire legal and equitable estate without the aid of other evidence.
- 13.4 The purchaser is entitled to inspect the vendor's chain of title on request at such place in Victoria as the vendor nominates.
- 13.5 The purchaser is taken to have accepted the vendor's title if:
- (a) 21 days have elapsed since the day of sale; and
  - (b) the purchaser has not reasonably objected to the title or reasonably required the vendor to remedy a defect in the title.
- 13.6 The contract will be at an end if:
- (a) the vendor gives the purchaser a notice that the vendor is unable or unwilling to satisfy the purchaser's objection or requirement and that the contract will end if the objection or requirement is not withdrawn within 14 days of the giving of the notice; and
  - (b) the objection or requirement is not withdrawn in that time.
- 13.7 If the contract ends in accordance with general condition 13.6, the deposit must be returned to the purchaser and neither party has a claim against the other in damages.
- 13.8 General condition 17.1 [settlement] should be read as if the reference to 'registered proprietor' is a reference to 'owner' in respect of that part of the land which is not under the operation of the *Transfer of Land Act 1958*.
- 

## Money

### 14. DEPOSIT

- 14.1 The purchaser must pay the deposit:
- (a) to the vendor's licensed estate agent; or
  - (b) if there is no estate agent, to the vendor's legal practitioner or conveyancer; or
  - (c) if the vendor directs, into a special purpose account in an authorised deposit-taking institution in Victoria specified by the vendor in the joint names of the purchaser and the vendor.
- 14.2 If the land sold is a lot on an unregistered plan of subdivision, the deposit:
- (a) must not exceed 10% of the price; and
  - (b) must be paid to the vendor's estate agent, legal practitioner or conveyancer and held by the estate agent, legal practitioner or conveyancer on trust for the purchaser until the registration of the plan of subdivision.
- 14.3 The deposit must be released to the vendor if:
- (a) the vendor provides particulars, to the satisfaction of the purchaser, that either:
    - (i) there are no debts secured against the property; or
    - (ii) if there are any debts, the total amount of those debts together with any amounts to be withheld in accordance with general conditions 24 and 25 does not exceed 80% of the sale price; and
  - (b) at least 28 days have elapsed since the particulars were given to the purchaser under paragraph (a); and
  - (c) all conditions of section 27 of the *Sale of Land Act 1962* have been satisfied.
- 14.4 The stakeholder must pay the deposit and any interest to the party entitled when the deposit is released, the contract is settled, or the contract is ended.
- 14.5 The stakeholder may pay the deposit and any interest into court if it is reasonable to do so.
- 14.6 Where the purchaser is deemed by section 27(7) of the *Sale of Land Act 1962* to have given the deposit release authorisation referred to in section 27(1), the purchaser is also deemed to have accepted title in the absence of any prior express objection to title.
- 14.7 Payment of the deposit may be made or tendered:
- (a) in cash up to \$1,000 or 0.2% of the price, whichever is greater; or
  - (b) by cheque drawn on an authorised deposit-taking institution; or
  - (c) by electronic funds transfer to a recipient having the appropriate facilities for receipt.
- However, unless otherwise agreed:

- (d) payment may not be made by credit card, debit card or any other financial transfer system that allows for any chargeback or funds reversal other than for fraud or mistaken payment, and
- (e) any financial transfer or similar fees or deductions from the funds transferred, other than any fees charged by the recipient's authorised deposit-taking institution, must be paid by the remitter.

- 14.8 Payment by electronic funds transfer is made when cleared funds are received in the recipient's bank account.
- 14.9 Before the funds are electronically transferred the intended recipient must be notified in writing and given sufficient particulars to readily identify the relevant transaction.
- 14.10 As soon as the funds have been electronically transferred the intended recipient must be provided with the relevant transaction number or reference details.
- 14.11 For the purpose of this general condition 'authorised deposit-taking institution' means a body corporate for which an authority under section 9(3) of the *Banking Act 1959* (Cth) is in force.

## 15. DEPOSIT BOND

- 15.1 This general condition only applies if the applicable box in the particulars of sale is checked.
- 15.2 In this general condition "deposit bond" means an irrevocable undertaking to pay on demand an amount equal to the deposit or any unpaid part of the deposit. The issuer and the form of the deposit bond must be satisfactory to the vendor. The deposit bond must have an expiry date at least 45 days after the due date for settlement.
- 15.3 The purchaser may deliver a deposit bond to the vendor's estate agent, legal practitioner or conveyancer within 7 days after the day of sale.
- 15.4 The purchaser may at least 45 days before a current deposit bond expires deliver a replacement deposit bond on the same terms and conditions.
- 15.5 Where a deposit bond is delivered, the purchaser must pay the deposit to the vendor's legal practitioner or conveyancer on the first to occur of:
  - (a) settlement;
  - (b) the date that is 45 days before the deposit bond or any replacement deposit bond expires;
  - (c) the date on which this contract ends in accordance with general condition 35.2 [default not remedied] following breach by the purchaser; and
  - (d) the date on which the vendor ends this contract by accepting repudiation of it by the purchaser.
- 15.6 The vendor may claim on the deposit bond without prior notice if the purchaser defaults under this contract or repudiates this contract and the contract is ended. The amount paid by the issuer satisfies the obligations of the purchaser under general condition 15.5 to the extent of the payment.
- 15.7 Nothing in this general condition limits the rights of the vendor if the purchaser defaults under this contract or repudiates this contract, except as provided in general condition 15.6.
- 15.8 This general condition is subject to general condition 14.2 [deposit].

## 16. BANK GUARANTEE

- 16.1 This general condition only applies if the applicable box in the particulars of sale is checked.
- 16.2 In this general condition:
  - (a) "bank guarantee" means an unconditional and irrevocable guarantee or undertaking by a bank in a form satisfactory to the vendor to pay on demand any amount under this contract agreed in writing, and
  - (b) "bank" means an authorised deposit-taking institution under the *Banking Act 1959* (Cth).
- 16.3 The purchaser may deliver a bank guarantee to the vendor's legal practitioner or conveyancer.
- 16.4 The purchaser must pay the amount secured by the bank guarantee to the vendor's legal practitioner or conveyancer on the first to occur of:
  - (a) settlement;
  - (b) the date that is 45 days before the bank guarantee expires;
  - (c) the date on which this contract ends in accordance with general condition 35.2 [default not remedied] following breach by the purchaser; and
  - (d) the date on which the vendor ends this contract by accepting repudiation of it by the purchaser.
- 16.5 The vendor must return the bank guarantee document to the purchaser when the purchaser pays the amount secured by the bank guarantee in accordance with general condition 16.4.
- 16.6 The vendor may claim on the bank guarantee without prior notice if the purchaser defaults under this contract or repudiates this contract and the contract is ended. The amount paid by the bank satisfies the obligations of the purchaser under general condition 16.4 to the extent of the payment.



16.7 Nothing in this general condition limits the rights of the vendor if the purchaser defaults under this contract or repudiates this contract except as provided in general condition 16.6.

16.8 This general condition is subject to general condition 14.2 [deposit].

## 17. SETTLEMENT

17.1 At settlement:

- (a) the purchaser must pay the balance; and
- (b) the vendor must:
  - (i) do all things necessary to enable the purchaser to become the registered proprietor of the land; and
  - (ii) give either vacant possession or receipt of rents and profits in accordance with the particulars of sale.

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

17.3 The purchaser must pay all money other than the deposit in accordance with a written direction of the vendor or the vendor's legal practitioner or conveyancer.

## 18. ELECTRONIC SETTLEMENT

18.1 Settlement and lodgement of the instruments necessary to record the purchaser as registered proprietor of the land will be conducted electronically in accordance with the Electronic Conveyancing National Law. This general condition 18 has priority over any other provision of this contract to the extent of any inconsistency.

18.2 A party must immediately give written notice if that party reasonably believes that settlement and lodgement can no longer be conducted electronically. General condition 18 ceases to apply from when such a notice is given.

18.3 Each party must:

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

18.4 The vendor must open the electronic workspace ("workspace") as soon as reasonably practicable and nominate a date and time for settlement. The inclusion of a specific date and time for settlement in a workspace is not of itself a promise to settle on that date or at that time. The workspace is an electronic address for the service of notices and for written communications for the purposes of any electronic transactions legislation.

18.5 This general condition 18.5 applies if there is more than one electronic lodgement network operator in respect of the transaction. In this general condition 18.5 "the transaction" means this sale and purchase and any associated transaction involving any of the same subscribers.

To the extent that any interoperability rules governing the relationship between electronic lodgement network operators do not provide otherwise:

- (a) the electronic lodgement network operator to conduct all the financial and lodgement aspects of the transaction after the workspace locks must be one which is willing and able to conduct such aspects of the transaction in accordance with the instructions of all the subscribers in the workspaces of all the electronic lodgement network operators after the workspace locks;
- (b) if two or more electronic lodgement network operators meet that description, one may be selected by purchaser's incoming mortgagee having the highest priority but if there is no mortgagee of the purchaser, the vendor must make the selection.

18.6 Settlement occurs when the workspace records that:

- (a) there has been an exchange of funds or value between the exchange settlement account or accounts in the Reserve Bank of Australia of the relevant financial institutions or their financial settlement agents in accordance with the instructions of the parties; or
- (b) if there is no exchange of funds or value, the documents necessary to enable the purchaser to become registered proprietor of the land have been accepted for electronic lodgement.

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

- (a) electronically on the next business day, or
- (b) at the option of either party, otherwise than electronically as soon as possible –

if, after the locking of the workspace at the nominated settlement time, settlement in accordance with general condition 18.6 has not occurred by 4.00 pm, or 6.00 pm if the nominated time for settlement is after 4.00 pm.

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

18.9 The vendor must before settlement:

- (a) deliver any keys, security devices and codes ("keys") to the estate agent named in the contract,
- (b) direct the estate agent to give the keys to the purchaser or the purchaser's nominee on notification of settlement by the vendor, the vendor's subscriber or the electronic lodgement network operator;

- (c) deliver all other physical documents and items (other than the goods sold by the contract) to which the purchaser is entitled at settlement, and any keys if not delivered to the estate agent, to the vendor's subscriber or, if there is no vendor's subscriber, confirm in writing to the purchaser that the vendor holds those documents, items and keys at the vendor's address set out in the contract, and

give, or direct its subscriber to give, all those documents and items and any such keys to the purchaser or the purchaser's nominee on notification by the electronic lodgement network operator of settlement.

## 19. GST

- 19.1 The purchaser does not have to pay the vendor any amount in respect of GST in addition to the price if the particulars of sale specify that the price includes GST (if any).
- 19.2 The purchaser must pay to the vendor any GST payable by the vendor in respect of a taxable supply made under this contract in addition to the price if:
  - (a) the particulars of sale specify that GST (if any) must be paid in addition to the price; or
  - (b) GST is payable solely as a result of any action taken or intended to be taken by the purchaser after the day of sale, including a change of use; or
  - (c) the particulars of sale specify that the supply made under this contract is of land on which a 'farming business' is carried on and the supply (or part of it) does not satisfy the requirements of section 38-480 of the GST Act; or
  - (d) the particulars of sale specify that the supply made under this contract is of a going concern and the supply (or a part of it) does not satisfy the requirements of section 38-325 of the GST Act.
- 19.3 The purchaser is not obliged to pay any GST under this contract until a tax invoice has been given to the purchaser, unless the margin scheme applies.
- 19.4 If the particulars of sale specify that the supply made under this contract is of land on which a 'farming business' is carried on:
  - (a) the vendor warrants that the property is land on which a farming business has been carried on for the period of 5 years preceding the date of supply; and
  - (b) the purchaser warrants that the purchaser intends that a farming business will be carried on after settlement on the property.
- 19.5 If the particulars of sale specify that the supply made under this contract is a 'going concern':
  - (a) the parties agree that this contract is for the supply of a going concern; and
  - (b) the purchaser warrants that the purchaser is, or prior to settlement will be, registered for GST; and
  - (c) the vendor warrants that the vendor will carry on the going concern until the date of supply.
- 19.6 If the particulars of sale specify that the supply made under this contract is a 'margin scheme' supply, the parties agree that the margin scheme applies to this contract.
- 19.7 In this general condition:
  - (a) 'GST Act' means *A New Tax System (Goods and Services Tax) Act 1999* (Cth); and
  - (b) 'GST' includes penalties and interest.

## 20. LOAN

- 20.1 If the particulars of sale specify that this contract is subject to a loan being approved, this contract is subject to the lender approving the loan on the security of the property by the approval date or any later date allowed by the vendor.
- 20.2 The purchaser may end the contract if the loan is not approved by the approval date, but only if the purchaser:
  - (a) immediately applied for the loan; and
  - (b) did everything reasonably required to obtain approval of the loan; and
  - (c) serves written notice ending the contract, together with written evidence of rejection or non-approval of the loan, on the vendor within 2 clear business days after the approval date or any later date allowed by the vendor; and
  - (d) is not in default under any other condition of this contract when the notice is given.
- 20.3 All money must be immediately refunded to the purchaser if the contract is ended.

## 21. BUILDING REPORT

- 21.1 This general condition only applies if the applicable box in the particulars of sale is checked.
- 21.2 The purchaser may end this contract within 14 days from the day of sale if the purchaser:
  - (a) obtains a written report from a registered building practitioner or architect which discloses a current defect in a structure on the land and designates it as a major building defect;
  - (b) gives the vendor a copy of the report and a written notice ending this contract; and
  - (c) is not then in default.
- 21.3 All money paid must be immediately refunded to the purchaser if the contract ends in accordance with this general condition.

- 21.4 A notice under this general condition may be served on the vendor's legal practitioner, conveyancer or estate agent even if the estate agent's authority has formally expired at the time of service.
- 21.5 The registered building practitioner may inspect the property at any reasonable time for the purpose of preparing the report.

## **22. PEST REPORT**

- 22.1 This general condition only applies if the applicable box in the particulars of sale is checked.
- 22.2 The purchaser may end this contract within 14 days from the day of sale if the purchaser:
- (a) obtains a written report from a pest control operator licensed under Victorian law which discloses a current pest infestation on the land and designates it as a major infestation affecting the structure of a building on the land;
  - (b) gives the vendor a copy of the report and a written notice ending this contract; and
  - (c) is not then in default.
- 22.3 All money paid must be immediately refunded to the purchaser if the contract ends in accordance with this general condition.
- 22.4 A notice under this general condition may be served on the vendor's legal practitioner, conveyancer or estate agent even if the estate agent's authority has formally expired at the time of service.
- 22.5 The pest control operator may inspect the property at any reasonable time for the purpose of preparing the report.

## **23. ADJUSTMENTS**

- 23.1 All periodic outgoings payable by the vendor, and any rent and other income received in respect of the property must be apportioned between the parties on the settlement date and any adjustments paid and received as appropriate.
- 23.2 The periodic outgoings and rent and other income must be apportioned on the following basis:
- (a) the vendor is liable for the periodic outgoings and entitled to the rent and other income up to and including the day of settlement; and
  - (b) the land is treated as the only land of which the vendor is owner (as defined in the *Land Tax Act 2005*); and
  - (c) the vendor is taken to own the land as a resident Australian beneficial owner; and
  - (d) any personal statutory benefit available to each party is disregarded in calculating apportionment.
- 23.3 The purchaser must provide copies of all certificates and other information used to calculate the adjustments under general condition 23, if requested by the vendor.

## **24. FOREIGN RESIDENT CAPITAL GAINS WITHHOLDING**

- 24.1 Words defined or used in Subdivision 14-D of Schedule 1 to the *Taxation Administration Act 1953* (Cth) have the same meaning in this general condition unless the context requires otherwise.
- 24.2 Every vendor under this contract is a foreign resident for the purposes of this general condition unless the vendor gives the purchaser a clearance certificate issued by the Commissioner under section 14-220 (1) of Schedule 1 to the *Taxation Administration Act 1953* (Cth). The specified period in the clearance certificate must include the actual date of settlement.
- 24.3 The remaining provisions of this general condition 24 only apply if the purchaser is required to pay the Commissioner an amount in accordance with section 14-200(3) or section 14-235 of Schedule 1 to the *Taxation Administration Act 1953* (Cth) ("the amount") because one or more of the vendors is a foreign resident, the property has or will have a market value not less than the amount set out in section 14-215 of the legislation just after the transaction, and the transaction is not excluded under section 14-215(1) of the legislation.
- 24.4 The amount is to be deducted from the vendor's entitlement to the contract consideration. The vendor must pay to the purchaser at settlement such part of the amount as is represented by non-monetary consideration.
- 24.5 The purchaser must:
- (a) engage a legal practitioner or conveyancer ("representative") to conduct all the legal aspects of settlement, including the performance of the purchaser's obligations under the legislation and this general condition; and
  - (b) ensure that the representative does so.
- 24.6 The terms of the representative's engagement are taken to include instructions to have regard to the vendor's interests and instructions that the representative must:
- (a) pay, or ensure payment of, the amount to the Commissioner in the manner required by the Commissioner and as soon as reasonably and practicably possible, from moneys under the control or direction of the representative in accordance with this general condition if the sale of the property settles;
  - (b) promptly provide the vendor with proof of payment; and
  - (c) otherwise comply, or ensure compliance, with this general condition;
- despite:
- (d) any contrary instructions, other than from both the purchaser and the vendor; and
  - (e) any other provision in this contract to the contrary.
- 24.7 The representative is taken to have complied with the requirements of general condition 24.6 if:
- (a) the settlement is conducted through an electronic lodgement network; and

- (b) the amount is included in the settlement statement requiring payment to the Commissioner in respect of this transaction.
- 24.8 Any clearance certificate or document evidencing variation of the amount in accordance with section 14-235(2) of Schedule 1 to the *Taxation Administration Act 1953* (Cth) must be given to the purchaser at least 5 business days before the due date for settlement.
- 24.9 The vendor must provide the purchaser with such information as the purchaser requires to comply with the purchaser's obligation to pay the amount in accordance with section 14-200 of Schedule 1 to the *Taxation Administration Act 1953* (Cth). The information must be provided within 5 business days of request by the purchaser. The vendor warrants that the information the vendor provides is true and correct.
- 24.10 The purchaser is responsible for any penalties or interest payable to the Commissioner on account of late payment of the amount.

## 25. GST WITHHOLDING

- 25.1 Words and expressions defined or used in Subdivision 14-E of Schedule 1 to the *Taxation Administration Act 1953* (Cth) or in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this general condition unless the context requires otherwise. Words and expressions first used in this general condition and shown in italics and marked with an asterisk are defined or described in at least one of those Acts.
- 25.2 The purchaser must notify the vendor in writing of the name of the recipient of the \*supply for the purposes of section 14-255 of Schedule 1 to the *Taxation Administration Act 1953* (Cth) at least 21 days before the due date for settlement unless the recipient is the purchaser named in the contract.
- 25.3 The vendor must at least 14 days before the due date for settlement provide the purchaser and any person nominated by the purchaser under general condition 4 with a GST withholding notice in accordance with section 14-255 of Schedule 1 to the *Taxation Administration Act 1953* (Cth), and must provide all information required by the purchaser or any person so nominated to confirm the accuracy of the notice.
- 25.4 The remaining provisions of this general condition 25 apply if the purchaser is or may be required to pay the Commissioner an \*amount in accordance with section 14-250 of Schedule 1 to the *Taxation Administration Act 1953* (Cth) because the property is \*new residential premises or \*potential residential land in either case falling within the parameters of that section, and also if the sale attracts the operation of section 14-255 of the legislation. Nothing in this general condition 25 is to be taken as relieving the vendor from compliance with section 14-255.
- 25.5 The amount is to be deducted from the vendor's entitlement to the contract \*consideration and is then taken to be paid to the vendor, whether or not the vendor provides the purchaser with a GST withholding notice in accordance with section 14-255 of Schedule 1 to the *Taxation Administration Act 1953* (Cth). The vendor must pay to the purchaser at settlement such part of the amount as is represented by non-monetary consideration.
- 25.6 The purchaser must:
  - (a) engage a legal practitioner or conveyancer ("representative") to conduct all the legal aspects of settlement, including the performance of the purchaser's obligations under the legislation and this general condition; and
  - (b) ensure that the representative does so.
- 25.7 The terms of the representative's engagement are taken to include instructions to have regard to the vendor's interests relating to the payment of the amount to the Commissioner and instructions that the representative must:
  - (a) pay, or ensure payment of, the amount to the Commissioner in the manner required by the Commissioner and as soon as reasonably and practicably possible, from moneys under the control or direction of the representative in accordance with this general condition on settlement of the sale of the property;
  - (b) promptly provide the vendor with evidence of payment, including any notification or other document provided by the purchaser to the Commissioner relating to payment; and
  - (c) otherwise comply, or ensure compliance, with this general condition;
 despite:
  - (d) any contrary instructions, other than from both the purchaser and the vendor; and
  - (e) any other provision in this contract to the contrary.
- 25.8 The representative is taken to have complied with the requirements of general condition 25.7 if:
  - (a) settlement is conducted through an electronic lodgement network; and
  - (b) the amount is included in the settlement statement requiring payment to the Commissioner in respect of this transaction.
- 25.9 The purchaser may at settlement give the vendor a bank cheque for the amount in accordance with section 16-30 (3) of Schedule 1 to the *Taxation Administration Act 1953* (Cth), but only if:
  - (a) so agreed by the vendor in writing; and
  - (b) the settlement is not conducted through an electronic lodgement network.
 However, if the purchaser gives the bank cheque in accordance with this general condition 25.9, the vendor must:
  - (c) immediately after settlement provide the bank cheque to the Commissioner to pay the amount in relation to the supply; and

- (d) give the purchaser a receipt for the bank cheque which identifies the transaction and includes particulars of the bank cheque, at the same time the purchaser gives the vendor the bank cheque.
- 25.10 A party must provide the other party with such information as the other party requires to:
- (a) decide if an amount is required to be paid or the quantum of it, or
  - (b) comply with the purchaser's obligation to pay the amount,
- in accordance with section 14-250 of Schedule 1 to the *Taxation Administration Act 1953* (Cth). The information must be provided within 5 business days of a written request. The party providing the information warrants that it is true and correct.
- 25.11 The vendor warrants that:
- (a) at settlement, the property is not new residential premises or potential residential land in either case falling within the parameters of section 14-250 of Schedule 1 to the *Taxation Administration Act 1953* (Cth) if the vendor gives the purchaser a written notice under section 14-255 to the effect that the purchaser will not be required to make a payment under section 14-250 in respect of the supply, or fails to give a written notice as required by and within the time specified in section 14-255; and
  - (b) the amount described in a written notice given by the vendor to the purchaser under section 14-255 of Schedule 1 to the *Taxation Administration Act 1953* (Cth) is the correct amount required to be paid under section 14-250 of the legislation.
- 25.12 The purchaser is responsible for any penalties or interest payable to the Commissioner on account of non-payment or late payment of the amount, except to the extent that:
- (a) the penalties or interest arise from any failure on the part of the vendor, including breach of a warranty in general condition 25.11; or
  - (b) the purchaser has a reasonable belief that the property is neither new residential premises nor potential residential land requiring the purchaser to pay an amount to the Commissioner in accordance with section 14-250 (1) of Schedule 1 to the *Taxation Administration Act 1953* (Cth).
- The vendor is responsible for any penalties or interest payable to the Commissioner on account of non-payment or late payment of the amount if either exception applies.

## Transactional

### 26. TIME & CO OPERATION

- 26.1 Time is of the essence of this contract.
- 26.2 Time is extended until the next business day if the time for performing any action falls on a day which is not a business day.
- 26.3 Each party must do all things reasonably necessary to enable this contract to proceed to settlement, and must act in a prompt and efficient manner.
- 26.4 Any unfulfilled obligation will not merge on settlement.

### 27. SERVICE

- 27.1 Any document required to be served by or on any party may be served by or on the legal practitioner or conveyancer for that party.
- 27.2 A cooling off notice under section 31 of the *Sale of Land Act 1962* or a notice under general condition 20 [loan approval], 21 [building report] or 22 [pest report] may be served on the vendor's legal practitioner, conveyancer or estate agent even if the estate agent's authority has formally expired at the time of service.
- 27.3 A document is sufficiently served:
  - (a) personally, or
  - (b) by pre-paid post, or
  - (c) in any manner authorized by law or by the Supreme Court for service of documents, including any manner authorised for service on or by a legal practitioner, whether or not the person serving or receiving the document is a legal practitioner, or
  - (d) by email.
- 27.4 Any document properly sent by:
  - (a) express post is taken to have been served on the next business day after posting, unless proved otherwise;
  - (b) priority post is taken to have been served on the fourth business day after posting, unless proved otherwise;
  - (c) regular post is taken to have been served on the sixth business day after posting, unless proved otherwise;
  - (d) email is taken to have been served at the time of receipt within the meaning of section 13A of the *Electronic Transactions (Victoria) Act 2000*.
- 27.5 In this contract 'document' includes 'demand' and 'notice', 'serve' includes 'give', and 'served' and 'service' have corresponding meanings.



## 28. NOTICES

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

## 29. INSPECTION

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

## 30. TERMS CONTRACT

- 30.1 If this is a 'terms contract' as defined in the *Sale of Land Act 1962*:
- (a) any mortgage affecting the land sold must be discharged as to that land before the purchaser becomes entitled to possession or to the receipt of rents and profits unless the vendor satisfies section 29M of the *Sale of Land Act 1962*; and
  - (b) the deposit and all other money payable under the contract (other than any money payable in excess of the amount required to so discharge the mortgage) must be paid to a legal practitioner or conveyancer or a licensed estate agent to be applied in or towards discharging the mortgage.
- 30.2 While any money remains owing each of the following applies:
- (a) the purchaser must maintain full damage and destruction insurance of the property and public risk insurance noting all parties having an insurable interest with an insurer approved in writing by the vendor;
  - (b) the purchaser must deliver copies of the signed insurance application forms, the policies and the insurance receipts to the vendor not less than 10 days before taking possession of the property or becoming entitled to receipt of the rents and profits;
  - (c) the purchaser must deliver copies of any amendments to the policies and the insurance receipts on each amendment or renewal as evidence of the status of the policies from time to time;
  - (d) the vendor may pay any renewal premiums or take out the insurance if the purchaser fails to meet these obligations;
  - (e) insurance costs paid by the vendor under paragraph (d) must be refunded by the purchaser on demand without affecting the vendor's other rights under this contract;
  - (f) the purchaser must maintain and operate the property in good repair (fair wear and tear excepted) and keep the property safe, lawful, structurally sound, weatherproof and free from contaminations and dangerous substances;
  - (g) the property must not be altered in any way without the written consent of the vendor which must not be unreasonably refused or delayed;
  - (h) the purchaser must observe all obligations that affect owners or occupiers of land;
  - (i) the vendor and/or other person authorised by the vendor may enter the property at any reasonable time to inspect it on giving 7 days written notice, but not more than twice in a year.

## 31. LOSS OR DAMAGE BEFORE SETTLEMENT

- 31.1 The vendor carries the risk of loss or damage to the property until settlement.
- 31.2 The vendor must deliver the property to the purchaser at settlement in the same condition it was in on the day of sale, except for fair wear and tear.
- 31.3 The purchaser must not delay settlement because one or more of the goods is not in the condition required by general condition 31.2, but may claim compensation from the vendor after settlement.
- 31.4 The purchaser may nominate an amount not exceeding \$5,000 to be held by a stakeholder to be appointed by the parties if the property is not in the condition required by general condition 31.2 at settlement.
- 31.5 The nominated amount may be deducted from the amount due to the vendor at settlement and paid to the stakeholder, but only if the purchaser also pays an amount equal to the nominated amount to the stakeholder.
- 31.6 The stakeholder must pay the amounts referred to in general condition 31.5 in accordance with the determination of the dispute, including any order for payment of the costs of the resolution of the dispute.

## 32. BREACH

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

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

## Default

### 33. INTEREST

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

### 34. DEFAULT NOTICE

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

34.2 The default notice must:

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

### 35. DEFAULT NOT REMEDIED

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

35.2 The contract immediately ends if:

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

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

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

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

- (a) the deposit up to 10% of the price is forfeited to the vendor as the vendor's absolute property, whether the deposit has been paid or not; and
- (b) the vendor is entitled to possession of the property; and
- (c) in addition to any other remedy, the vendor may within one year of the contract ending either:
  - (i) retain the property and sue for damages for breach of contract; or
  - (ii) resell the property in any manner and recover any deficiency in the price on the resale and any resulting expenses by way of liquidated damages; and
- (d) the vendor may retain any part of the price paid until the vendor's damages have been determined and may apply that money towards those damages; and
- (e) any determination of the vendor's damages must take into account the amount forfeited to the vendor.

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

---