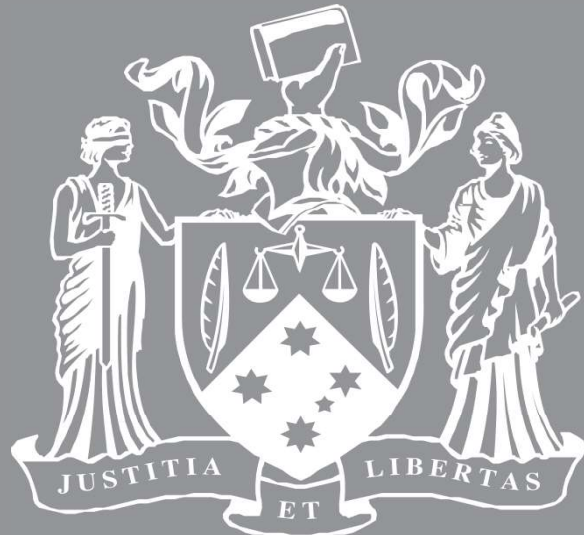


Contract of Sale of Land

**Property: 139-141 MAIN STREET, 44A BAILEY STREET &
44B BAILEY STREET BAIRNSDALE 3875**



Contract of sale of land

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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*.

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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

WARNING: YOU SHOULD CONSIDER THE EFFECT (IF ANY) THAT THE WINDFALL GAINS TAX MAY HAVE ON THE SALE OF LAND UNDER THIS CONTRACT.

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 (which are in standard form: see general condition 6.1)

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/...../20.....

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

State nature of authority, if 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/...../20.....

Print name(s) of person(s) signing: THELMA MARGARET COMBEN.....
.....

State nature of authority, if applicable:

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

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Particulars of sale

Vendor's estate agent

Name: **KING & HEATH FIRST NATIONAL REAL ESTATE**
Address: 125 Main Street, Bairnsdale, VIC 3875
Email: chris.martin@kingheath.com.au
Tel: 5152 3311 Mob: 0419 559 508 Ref: Chris Martin

Vendor

Name: **THELMA MARGARET COMBEN**
ABN/ACN:
Address: 1:10/1 Brewer Road, Brighton East, VIC 3187

Vendor's legal practitioner or conveyancer

Name: **ROTMAN & MORRIS**
Address: 429 South Road, Bentleigh Victoria 3204
Email: amy@rotmanmorris.com.au
Tel :03 9532 1500 Ref: AC:242438

Purchaser

Name:
ABN/ACN:
Address:
Email:

Purchaser's legal practitioner or conveyancer

Name:
Address:
Email:
Tel: Ref:

Land (general conditions 7 and 13)

The land is described in the table below –

Certificate of Title reference	being lot	on plan
Volume 8034 Folio 761	1	TP824321W

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: **139-141 MAIN STREET, BAIRNSDALE 3875, 44A & 44B BAILEY STREET
BAIRNSDALE 3875**

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

All fixed floor coverings, electric light fittings & any window furnishings excluding Tenant's installations, fixtures and fittings as per attached Lease documents

Payment

Price \$

Deposit \$ by / / 20..... (of which \$ has been paid)

Balance \$ payable at settlement

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 conditions 17 & 26.2)

is due on / /20.....

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)*

- the 3 leases inc. further sub lease of 44B Bailey Street Bairnsdale Notice of Rent Review for 139-141 Main Street Bairnsdale dated 27th August 2024 and Option Notice for 44B Bailey Street Bairnsdale dated 27th August 2024 as attached

Loan (general condition 20)

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

Lender:

Loan amount: no more than \$ Approval date: 21 days from the day of sale

Building report

- General condition 21 applies only if the box is checked

Pest report

- General condition 22 applies only if the box is checked

GUARANTEE

We,
of
and
of

(hereinafter called "the Guarantors") in consideration of the within-named Vendor selling to the within-named Purchaser at our request the land described in the within Contract at the price and upon the terms and conditions therein set forth **DO HEREBY** for ourselves and our respective executors and administrators **JOINTLY AND SEVERALLY** guarantee and covenant with the said Vendor that if at any time default shall be made in the payment of the deposit or residue of purchase money or interest or other moneys payable by the Purchaser to the Vendor under the within Contract or in the performance or observance of any term or condition of the within Contract to be performed and observed by the Purchaser, we will forthwith on demand by the Vendor, pay to the Vendor the whole of such deposit, residue of purchase money, interest or other moneys which shall then be due and payable to the Vendor and will keep the Vendor indemnified against all loss of purchase money, interest and other moneys payable under the within Contract and all losses, costs, charges and expenses whatsoever which the Vendor may incur by reason of any default aforesaid on the part of the Purchaser.

This guarantee shall be a continuing guarantee and shall not be released by any neglect or forbearance on the part of the Vendor in enforcing payment of any of the moneys payable under the within Contract or the performance or observance of any of the agreements, obligations or conditions under the within Contract or by time being given to the Purchaser for any such payment, performance or observance or by any other thing which under the law relating to sureties would, but for this provision, have the effect of releasing us, our executors or administrators.

AS WITNESS our hands and seals this day of Two Thousand and Twenty Four

SIGNED SEALED AND DELIVERED by

the said

in the presence of:

SIGNED SEALED AND DELIVERED by

the said

in the presence of:

Special conditions

AMENDMENT AND DELETION OF GENERAL CONDITIONS

1. The parties agree that the following General Conditions do not apply to this Contract:
3,4,9,12,14.3(b),15,16,19.5(c), 31.4, 31.5, 31.6, 32 & 35
2. These Special Conditions take priority over any General Conditions in this Contract
3. The parties agree that the following General Conditions are to be amended:
 - (i) 7 - A new sub-clause 7.3 shall be added as follows:
"7.3 - The Purchaser admits that the land as offered for sale and inspected is identical with the Land described in the Certificate of Title reference in the Particulars of Sale."
 - (ii) General Condition 11.5(c) shall be added as follows:
"(c) that was registered by a Mortgagee on the Certificate of Title and a Discharge of Mortgage is provided at settlement."
 - (iii) General Condition 19.3 is replaced with the following:
"19.3 - If the Purchaser is obliged to pay an amount for GST in accordance with General Condition 19.2, the Purchaser is not obliged to pay the GST included in the price, or the additional amount payable for GST, until a tax invoice has been provided."
 - (iv) General Condition 20.2(c) shall be amended as follows:
"(c) serves written notice on the Vendor's legal practitioner ending the Contract together with written evidence or rejection or non-approval of the loan, and;"
 - (v) General Condition 23.1 is amended to include the following after the first sentence:
"For the purposes of General Condition 23, the expression "periodic outgoings" does not include any amounts to which section 10G of the *Sale of Land Act* 1962 applies"
 - (vi) General Condition 23.3 is replaced with the following:
"23.3 - The Purchaser must update all certificates and provide copies of all certificates and other information used to calculate the adjustments under General Condition 23 and Special Condition 10(iii)."
 - (vii) General Condition 27.2 is replaced with the following:
"A cooling off notice under section 31 of the *Sale of Land Act* 1962 or a notice under General Conditions 20,21 or 22 must be served on the Vendor's legal practitioner
 - (xiii) General Condition 28.2 is amended to read as follows:
"28.2 The Purchaser is responsible for any notice, order, demand, levy or Windfall Gains Tax imposing liability on the property that is issued or made on or after the day of sale, and does not relate to periodic outgoings, and the Purchaser shall indemnify the Vendor in relation thereto".
 - (ix) General Condition 28 does not apply to any amounts to which Section 10G or 10H of the *Sale of Land Act* 1962 applies.
 - (x) The words "and including" are deleted from General Condition 29.
 - (xi) General Condition 35 is replaced with the following:
"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 costs and interest are paid, the contract will be ended in accordance with this General Condition; and

- (b) the default is not remedied and costs and interest are not paid by the end of the period of the default notice, in the case of the Vendor's 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
- 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 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."

4. PURCHASER'S DEFAULT

- a) In the event that the Purchaser breaches this contract, in addition to the Purchaser's obligation to pay to the Vendor on demand:
 - i) compensation for any reasonably foreseeable loss to the Vendor resulting from the breach; and
 - ii) any interest due to the Vendor under this contract as a result of the breach
- b) The Vendor gives notice to the Purchaser that in the event that the Purchaser fails to complete settlement on the settlement date referred to in the Particulars of Sale, the Vendor may incur the following additional expenses and losses from the settlement date until the later of actual settlement occurring or rescission of the contract, which amounts shall be paid by the Purchaser as liquidated damages:
 - (i) the Vendor's costs of obtaining finance to complete the purchase of another property and interest payable on such finance
 - (ii) interest on any mortgage or loan payable by the Vendor from the settlement date
 - (iii) accommodation and/or storage costs incurred by the Vendor
 - (iv) additional solicitor/client costs incurred by the Vendor and any re-settlement or re-booking fees any costs, penalties or forfeited deposits incurred by the Vendor for failing to complete the Vendor's settlement of another property.
- c) In General Condition 33 replace the words "2% per annum" with the words "5% per annum".

5. GUARANTEE

If the Purchaser shall be or include a Company, the signatory or signatories warrant that they have authority to sign this Contract on behalf of the Company. In addition, the Company will simultaneously with the execution of this Contract, ensure that each of its Directors sign the Guarantee annexed to this Contract. If the duly executed Guarantee is not delivered to the Vendor or the Vendor's legal practitioner by no later than seven (7) days from the Day of Sale, the Purchaser will be deemed to be in default under this Contract, and the Contract will be voidable at the discretion of the Vendor.

6. PURCHASER'S ACKNOWLEDGEMENTS

- (a) It is hereby agreed between the parties that there are no conditions, warranties or other terms affecting the sale other than those contained in this Contract and section 32 statement. The Purchaser shall not be entitled to rely on any information, representation, promise or warranty made by the Vendor, its authorised representative or agent unless it is included in this Contract. The Purchaser has purchased the land and improvements and Goods as a result of the Purchaser's own inspection or enquiries and in its present condition and state of repair and subject to all faults and defects, both latent and/or patent, and the Vendor is under no liability or obligation to the Purchaser to carry out any repairs or improvements, delay settlement or make any claim whatsoever against the Vendor. The Vendor does not warrant that any appliance, fixture, fitting or Good will be in working order at settlement.
- (b) The Purchaser acknowledges that:
- (i) Any improvements on the land may be subject to or require compliance with building, planning or municipal legislation, regulations and rules etc. Any failure to comply with any one or more of these requirements will not, and will not be deemed to, constitute a defect in the Vendor's title or create any past, present or future obligation of the Vendor, and the Purchaser must not make any requisition, or claim any compensation from the Vendor in relation to any such matter or require the Vendor to comply with any notice or regulation and the Purchaser acquires the property in its present condition and subject to any notices or orders that presently exist on the property hereby sold.
 - (ii) The Purchaser accepts the Land and any improvement thereon subject to all existing planning restrictions, schemes and overlays affecting the property pursuant to the provisions of any Act, environment planning instrument or deemed environment planning instrument or resolution of any council made or which may hereafter be made and in particular any planning permits in relation to the property hereby sold or any neighboring property and the Purchaser shall take title subject to and shall not make any requisition, objection or claim for compensation in respect of the zoning or rezoning of the property or any part or parts thereof or any area within which the property or any part thereof is or are situated pursuant to the provisions of any Act, environmental planning instrument or deemed environment planning instrument or resolution of any council made or which may hereafter be made or which is otherwise applicable to the property or any part or parts thereof or any area within which the property or any part or parts thereof is or are situated
 - (iii) The Purchaser shall not be entitled to claim any damages or compensation or to delay settlement due to:
 - i) the state or cleanliness of the property or the surrounding area;
 - ii) the state of any lawns, trees, shrubs or garden beds;
 - iii) the Vendor or any Tenant leaving any item or thing;
and the Purchaser shall not be entitled to require the Vendor to remove any item or thing after settlement;
 - (iv) The Purchaser purchases the property subject to any easements and encumbrances affecting the property (both express and implied);
 - (v) If the Purchaser or any Guarantor under the Guarantee becomes insolvent at any time prior to settlement, then without prejudice to the Vendor's other rights and remedies, the Vendor may at any time after being notified of any insolvency, end this Contract by notice to the Purchaser;
 - (vi) If there is a swimming pool or spa on the property, the Purchaser will make their own enquiries with Council. The Purchaser shall at its own cost and expense comply with any relevant legislation or regulations including but not limited to complying with Australian Standards and shall indemnify the Vendor from and against the responsibility for registration or compliance with any such requirement from the Day of Sale;
 - (vii) The Vendor makes no representation whatsoever in regard to contamination or asbestos on the property hereby sold. The Vendor has made no enquiries in relation to contamination of the property or asbestos and the Purchaser shall satisfy itself as

to all matters pertaining to contamination and any asbestos and after making all investigations as the Purchaser deems appropriate. The Vendor shall not be obliged to undertake any works of whatsoever nature in regard to the property as a consequence of any contamination or asbestos and the Purchaser buys the property in its present condition and after having made all enquiries to satisfy itself in relation thereto. The Purchaser hereby indemnifies the Vendor from and against all actions claims suits and demands made brought or issued against the Vendor in any way relating to any contamination or asbestos affecting the property and any works that may be required in relation thereto;

- (viii) The Vendor makes no representation or gives any warranty whatsoever in respect of any solar panels installed on the property hereby sold including but not limited to their condition, state of repair, fitness for purpose or any benefits arising from the electricity generated by any solar panels, save that they are owned by the Vendor and are not encumbered in any way. The Purchaser acknowledges that any current arrangements with any energy supplier shall cease on settlement;
- (ix) The Vendor only has knowledge of the warranties in General Condition 6.4 if they have been communicated to the Vendor in writing.

7. FOREIGN INVESTMENT REVIEW BOARD

The Purchaser or any nominee warrants to the Vendor that the acquisition of the property by the Purchaser and any nominee do not fall within the scope of the Foreign Acquisitions and Takeovers Act 1975 or any other legislation or regulations and the Purchaser and any nominee do not require Foreign Investment Review Board approval to purchase the property and the Purchaser and any nominee shall indemnify the Vendor in relation thereto.

8. STAMP DUTY

- (i) The Purchaser acknowledges that the Vendor does not make any warranty as to the amount of duty which shall be assessed and payable in respect of the transfer of the property and the Purchaser will be liable for all duty assessed in relation to that Transfer whether assessed at the present value of the property hereby sold or otherwise. The Purchaser acknowledges that it has relied on its own independent enquiries and advice on all duty matters and shall not make any claim against the Vendor in relation thereto. The Vendor shall be entitled to amend any estimates provided for the value of the property as at the date hereof if required to do so or in order to comply with the provisions of the Duties Act 2000 or any State Revenue Office ruling and the Purchaser shall have no claim for compensation against the Vendor or its agent, or any reduction of the purchase price or right to avoid the Contract in the event that the estimates are amended. This Special Condition will not merge on settlement.
- (ii) If there is more than one Purchaser, it is the Purchasers' responsibility to ensure that the Contract correctly records at the Day of Sale the proportions in which they are purchasing the property. If the proportions recorded in the Transfer differ from those recorded in the Contract, it is the Purchasers' responsibility to pay any additional duty which may be assessed as a result of the variation. The Purchasers fully indemnify the Vendor, the Vendor's agent and the Vendor's legal practitioner against any claims or demands which may be made against any or all of them in relation to any additional duty payable as a result of the proportions in the Transfer differing from those in the contract. This Special Condition will not merge on settlement.

9. NOMINATION

The Purchaser may nominate an additional or substitute Purchaser subject to the following:

- (i) The named Purchaser is not in default pursuant to this Contract.
- (ii) The named Purchaser and any Guarantor remain personally liable for the due performance of all the Purchaser's obligations pursuant to this Contract.
- (iii) Written notice by way of Sale of Real Estate Nomination Form is provided to the Vendor's legal practitioner at least 14 days prior to Settlement.
- (iv) The nominated Purchaser complies with Special Condition 7.
- (v) In the event that the nominated Purchaser nominates a Company or Trust, the Directors of the

Company or the primary beneficiaries of the Trust must execute a Guarantee in the same format as attached to this Contract and provide such Guarantee to the Vendor's legal practitioner together with the nomination form at least 14 days prior to Settlement.

- (vi) In the event that the Purchaser provides the nomination document to the Vendor's legal practitioner less than 14 days prior to settlement, the Purchaser will pay the Vendor's legal costs of \$495.00.

10. ADJUSTMENT OF OUTGOINGS

- (i) In addition to General Condition 23, all such rates, levies, Owners Corporation charges and other outgoings must be adjusted between the Vendor and Purchaser on the basis that they have been paid.
- (ii) In the case of a Contract entered into with a sale price of \$10,000,000.00 or more, and in the absence of a separate land tax assessment for the property hereby sold, the amount of land tax to be adjusted between the Vendor and Purchaser shall be that proportion which the lot liability of the lot hereby sold bears to the total lot liability of all the lots on the Plan of Subdivision
- (iii) A Statement of Adjustments of rates and outgoings between the Vendor and the Purchaser as at the settlement date shall be delivered to the Vendor's legal practitioner at least seven (7) days before the settlement date. The Vendor shall not be obliged to complete this Contract and the Purchaser shall be deemed to have made default in payment of the Balance of the purchase price and shall pay interest from the settlement date until the expiration of such period of seven (7) days where the Statement of Adjustments is not delivered in accordance with this Special Condition.

11. PUBLIC AUCTION

In the event that this property is sold at public auction then the following general rules for the conduct of the auction apply in accordance with the Sale of Land (Public Auctions) Regulations 2014:

- (i) The auctioneer may make one or more bids on behalf of the Vendor of the land at any time during the auction
- (ii) The auctioneer may refuse any bid
- (iii) The auctioneer may determine the amount by which the bidding is to be advanced
- (iv) The auctioneer may withdraw the property from sale at any time
- (v) The auctioneer may refer a bid to the Vendor at any time before the conclusion of the auction
- (vi) In the event of a dispute concerning a bid, the auctioneer may re-submit the property for sale at the last undisputed bid or start the bidding again
- (vii) The auctioneer must not accept any bid or offer for a property that is made after the property has been knocked down to the successful bidder, unless the Vendor or successful bidder at the auction refuses to sign the Contract of Sale following the auction
- (viii) If a reserve price has been set for the property and the property is passed in below that reserve price, the Vendor will first negotiate with the highest bidder for the purchase of the property.

12. LEASES

- 12.1 The Purchaser acknowledges having inspected the copies of the Leases referred to in the Particulars of Sale and being aware of their contents and effect.
- 12.2 The Vendor may before the settlement date:
 - 12.2.1 consent on terms set out in any existing Lease to an assignment or transfer of the Lease;
 - 12.2.2 enter into a variation of any Lease but only with the consent or request of the Purchaser;
 - 12.2.3 if permitted under a Lease, consent on the terms set out in the Lease to the grant of an underlease or other inferior right of occupancy;
 - 12.2.4 enforce a Lease;
 - 12.2.5 terminate a lease where a Tenant defaults;
 - 12.2.6 accept a surrender of a Lease but only with the consent of the Purchaser;
 - 12.2.7 carry out rent reviews under a Lease but only with the consent of the Purchaser;but the Vendor must first obtain the Purchaser's consent to any of the matters set out in

- paragraphs 12.2.1 to 12.2.6 inclusive.
- 12.2.8 any rent review affecting a Lease of the property that has the effect of altering the Rent payable after the settlement date, shall require the consent of the Purchaser, and the Vendor grants to the Purchaser the exclusive right to make any representations to a Valuer in connection with any rent valuation provided that a copy of any such representations made shall be provided immediately to the Vendor.
- 12.3 Notwithstanding anything else contained in this Contract the Vendor does not warrant that, at the settlement date:
- 12.3.1 any Lease will be in existence;
 - 12.3.2 any Tenant will be in possession of the premises the subject of any Lease;
 - 12.3.3 any Tenant will not be in breach of any Lease or ;
 - 12.3.4 any Lease will be enforceable or legally binding;
 - 12.3.5 a change of Tenant under any Lease;
 - 12.3.6 any Tenant giving up possession or any right of occupation or stating intention to do so;
 - 12.3.7 a breach or potential breach of any Lease;
- 12.4 In consideration of the Purchaser paying the purchase price under this Contract the Vendor as from the settlement date as beneficial owner assigns to the Purchaser all its right title and interest in any guarantees of any Lease.

13. TENANT ARREARS (IF ANY)

If at the settlement date there are any arrears of rent or other moneys owing by any Tenant of any part of the Property, the right to receipt of those arrears will remain with the Vendor, and Section 141 of the Property Law Act will not apply in respect of those arrears. The Vendor may take such action as it deems expedient to recover such arrears, and subject to the Vendor providing any indemnity to the Purchaser, may in the name of the Purchaser institute proceedings and do all such acts and things as it considers necessary to recover all or any part of such arrears. The Purchaser will do all such things as may be reasonably necessary to assist the Vendor in the recovery of any such arrears provided that the Vendor pays the Purchaser's reasonable costs and expenses of doing so. The parties hereby agree that in the event of any such arrears, there will be no adjustment against the Vendor on Settlement.

14. The parties hereto hereby agree that those outgoings that are payable by the Tenant pursuant to the terms of any Lease shall not be adjusted between the Vendor and the Purchaser on the settlement date, notwithstanding that those outgoings may not have been paid at the time of settlement. There will be no deduction made at settlement for any outgoings that are outstanding to any authority which have not been paid at the time of settlement.
15. On the settlement date the Vendor shall give to the Purchaser all lease documentation it has in its possession, if requested by the Purchaser in writing.
16. If the Vendor does not have the original of any Lease documentation or Bank Guarantee for any security deposit, then the Vendor :
- 16.1 is not required to deliver those documents to the Purchaser;
 - 16.2 may choose to deliver a copy of those documents to the Purchaser

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*.
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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.