

FORM 2

Estate Agents Act 1980

CONTRACT OF SALE OF REAL ESTATE -GENERAL CONDITIONS

Part 2 of the standard form of contract prescribed by the Estate Agents (Contracts) Regulations 2008

TITLE

1. Encumbrances

1.1 The purchaser buys the property subject to:

- (a) any encumbrance shown in the Vendor's Statement other than mortgages or caveats; and
- (b) any reservations in the crown grant.
- (c) any lease referred to in the particulars of sale.

1.2 The purchaser indemnifies the vendor against all obligations under any lease that are to be performed by the landlord after settlement.

2. Vendor warranties

2.1 The vendor warrants that **except where shown as amended** these general conditions 1 to 28 are identical to the general conditions 1 to 28 in the standard form of contract of sale of real estate prescribed by the **Estate Agents (Contracts) Regulations 2008** for the purposes of section 53A of the **Estate Agents Act 1980**.

2.2 The warranties in general conditions 2.3 and 2.4 replace the purchaser's right to make requisitions and inquiries.

2.3 The vendor warrants that the vendor:

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

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

- (a) public rights of way over the land;
- (b) easements over the land;

- (c) lease or other possessory agreement affecting the land;
 - (d) notice or order affecting the land which will not be dealt with at settlement, other than the usual rate notices and any land tax notices;
 - (e) legal proceedings which would render the sale of the land void or voidable or capable of being set aside.
- 2.5 The warranties in general conditions 2.3 and 2.4 are subject to any contrary provisions in this contract and disclosures in the Vendor's Statement.
- (a) all domestic building work carried out in relation to the construction by or on behalf of the vendor of the home was carried out in a proper and workmanlike manner; and
 - (b) all materials used in that domestic building work were good and suitable for the purpose for which they were used and that, unless otherwise stated in the contract, those materials were new; and
 - (c) domestic building work was carried out in accordance with all laws and legal requirements, including, without limiting the generality of this warranty, the Building Act 1993 and regulations made under the Building Act 1993.
- 2.7 Words and phrases used in general condition 2.6 which are defined in the Building Act 1993 have the same meaning in general condition 2.6.

3. Identity of the land

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

4. Services

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

5. Consents

The vendor must obtain any necessary consent or licence required for the sale. The contract

will be at an end and all money paid must be refunded if any necessary consent or licence is not obtained by settlement.

6. Transfer

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

7. Release of security interest

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

7.2 Subject to general conditions 7.3 and 7.4, the vendor must ensure that at or before settlement, the purchaser receives—

- (a) a release from the secured party releasing the security interest in respect of the property; 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 the due date for 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 the due date for settlement, the personal property included in the contract is not or will not be property in which the security interest is granted— if the security interest is registered in the Personal Properties Securities Register.

7.3 The vendor is not obliged to ensure that the purchaser receives a release, statement, approval or correction in respect of any personal property that is sold in the ordinary course of the vendor's business of selling personal property of that kind unless, in the case of goods that may or must be described by a serial number in the Personal Properties Securities Register, the purchaser advises the vendor at least 21 days before the due date for settlement that the goods are to be held as inventory.

7.4 The vendor is not obliged to ensure that the purchaser receives a release, statement, approval or correction in respect of any personal property that—

- (a) is not described by serial number in the Personal Property Securities register; and
- (b) is predominantly used for personal, domestic or household purposes; and
- (c) has a market value of not more than \$5,000 or, if a greater amount has been prescribed for the purposes of section 47(1) of the Personal Property Securities Act 2009 (Cth), not more than that prescribed amount.

7.5 A release for the purposes of general condition 7.2(a) must be in writing and in a form published by the Law Institute of Victoria, Law Council of Australia or the Australian Bankers Association.

- 7.6 If the purchaser receives a release under general condition 7.2(a), the purchaser must provide the vendor with a copy of the release at or as soon as practicable after settlement.
- 7.7 In addition to ensuring a release is received under general condition 7.2(a), the vendor must ensure that at or before settlement, the purchaser receives a written undertaking from a secured party to register a financing change statement to reflect that release if the property being released includes goods of a kind that are described by serial number in the Personal Property Securities Register.
- 7.8 The purchaser must advise the vendor of any security interest that the purchaser reasonably requires to be released at least 21 days before the due date for settlement
- 7.9 If the purchaser does not provide an advice under general condition 7.8, 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.
- 7.10 If settlement is delayed under general condition 7.9, 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.
- 7.11 Words and phrases used in general condition 7 which are defined in the Personal Property Securities Act 2009 (Cth) have the same meaning in general condition 7.

8. Builder warranty insurance

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

9. General law land

- 9.1 This general condition only applies if any part of the land is not under the operation of the Transfer of Land Act 1958.
- 9.2 The vendor is taken to be the holder of an unencumbered estate in fee simple in the land if there is an unbroken chain of title starting at least 30 years before the day of sale proving on the face of the documents the ownership of the entire legal and equitable estate without the aid of other evidence.
- 9.3 The purchaser is entitled to inspect the vendor's chain of title on request at such place in Victoria as the vendor nominates.
- 9.4 The purchaser is taken to have accepted the vendor's title if:
- (a) 21 days have elapsed since the day of sale; and

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

9.5 The contract will be at an end if:

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

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

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

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

10. MONEY

10. Settlement

10.1 At settlement:

- (a) the purchaser must pay the balance; and

- (b) the vendor must:

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

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

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

11. Payment

11.1 The purchaser must pay the deposit:

- (a) to the vendor's licensed estate agent; or
- (b) if there is no estate agent, to the vendor's legal practitioner or conveyancer; or
- (c) if the vendor directs, into a special purpose account in an authorised deposit-taking institution in Victoria specified by the vendor in the joint names of the purchaser and the vendor.

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

- (a) must not exceed 10% of the price; and
- (b) must be paid to the vendor's estate agent, legal practitioner or conveyancer and held by the estate agent, legal practitioner or conveyancer on trust for the purchaser until the registration of the plan of subdivision.

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

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

11.4 At settlement, payments may be made or tendered:

- (a) in cash; or
- (b) by cheque drawn on an authorised deposit-taking institution; or
- (c) if the parties agree, by electronically transferring the payment in the form of cleared funds.

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

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

12. Stakeholding

12.1 The deposit must be released to the vendor if:

- (a) the vendor provides particulars, to the satisfaction of the purchaser, that either-
 - (i) there are no debts secured against the property; or
 - (ii) if there are any debts, the total amount of those debts do not exceed 80% of the sale price; and
- (b) at least 28 days have elapsed since the particulars were given to the purchaser
Under paragraph (a) and
- (c) all conditions of section 27 of the Sale of Land Act 1962 have been satisfied.

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

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

13. GST

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

- (a) solely as a result of any action taken or intended to be taken by the purchaser after the day of sale, including a change of use; or
- (b) if the particulars of sale specify that the supply made under this contract is a farming business and the supply (or a part of it) does not satisfy the requirements of section 38-480 of the GST Act; or
- (c) if the particulars of sale specify that the supply made under this contract is of a going concern and the supply (or a part of it) does not satisfy the requirements of section 38-325 of the GST Act.

13.2 The purchaser must pay to the vendor any GST payable by the vendor in respect of a taxable supply made under this contract in addition to the price if the particulars of sale specify that the price is 'plus GST'.

13.3 If the purchaser is liable to pay GST, the purchaser is not required to make payment until provided with a tax invoice, unless the margin scheme applies.

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

- (a) the vendor warrants that the property is land on which a farming business has been carried on for the period of 5 years preceding the date of supply; and
- (b) the purchaser warrants that the purchaser intends that a farming business will be carried on after settlement on the property.

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

- (a) the parties agree that this contract is for the supply of a going concern; and
- (b) the purchaser warrants that the purchaser is, or prior to settlement will be, registered for GST; and
- (c) the vendor warrants that the vendor will carry on the going concern until the date of supply.

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

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

13.8 In this general condition:

- (a) 'GST Act' means A New Tax System (Goods and Services Tax) Act 1999 (Cth); and

(b) 'GST' includes penalties and interest.

14. Loan

14.1 If the particulars of sale specify that this contract is subject to a loan being, approved, this contract is subject to the lender approving the loan on the security of the property by the approval date or any later date allowed by the vendor.

14.2 The purchaser may end the contract if the loan is not approved by the approval date, but only if the purchaser:

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

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

15. Adjustments

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

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

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

TRANSACTIONAL

16. Time

16.1 Time is of the essence of this contract.

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

17. Service

17.1 Any document sent by post is taken to have been served on the next business day after posting, unless proved otherwise.

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

(a) personally; or

(b) by pre-paid post; or

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

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

18. Nominee

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

19. Liability of signatory

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

20. Guarantee

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

21. Notices

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

22. Inspection

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

23. Terms contract

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

- (a) any mortgage affecting the land sold must be discharged as to that land before the purchaser becomes entitled to possession or to the receipt of rents and profits unless the vendor satisfies section 29M of the Sale of Land Act 1962; and
- (b) the deposit and all other money payable under the contract (other than any money payable in excess of the amount required to so discharge the mortgage) must be paid to a legal practitioner or conveyancer or a licensed estate agent to be applied in or towards discharging the mortgage.

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

- (a) the purchaser must maintain full damage and destruction insurance of the property and public risk insurance noting all parties having an insurable interest with an insurer approved in writing by the vendor;
- (b) the purchaser must deliver copies of the signed insurance application forms, the policies and the insurance receipts to the vendor not less than 10 days before taking possession of the property or becoming entitled to receipt of the rents and profits;
- (c) the purchaser must deliver copies of any amendments to the policies and the insurance receipts on each amendment or renewal as evidence of the status of the policies from time to time;
- (d) the vendor may pay any renewal premiums or take out the insurance if the purchaser fails to meet these obligations;
- (e) insurance costs paid by the vendor under paragraph (d) must be refunded by the purchaser on demand without affecting the vendor's other rights under this contract.
- (f) the purchaser must maintain and operate the property in good repair (fair wear and tear excepted) and keep the property safe, lawful, structurally sound, weatherproof and free from contaminations and dangerous substances;
- (g) the property must not be altered in any way without the written consent of the vendor which must not be unreasonably refused or delayed;
- (h) the purchaser must observe all obligations that affect owners or occupiers of land;
- (i) the vendor and/or other person authorised by the vendor may enter the property at any reasonable time to inspect it on giving 7 days written notice, but not more than twice in a year.

24. Loss or damage before settlement

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

- 24.2 The vendor must deliver the property to the purchaser at settlement in the same condition it was in on the day of sale, except for fair wear and tear.
- 24.3 The purchaser must not delay settlement because one or more of the goods is not in the condition required by general condition 24.2, but may claim compensation from the vendor after settlement.
- 24.4 The purchaser may nominate an amount not exceeding \$5,000 to be held by a stakeholder to be appointed by the parties if the property is not in the condition required by general condition 24.2 at settlement.
- 24.5 The nominated amount may be deducted from the amount due to the vendor at settlement and paid to the stakeholder, but only if the purchaser also pays an amount equal to the nominated amount to the stakeholder.
- 24.6 The stakeholder must pay the amounts referred to in general condition 24.5 in accordance with the determination of the dispute, including any order for payment of the costs of the resolution of the dispute.

25. Breach

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

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

26. Interest

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

27. Default notice

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

27.2 The Default notice must:

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

28 Default not remedied

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

28.2 The contract immediately ends if;

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

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

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

- (a) the deposit up to 10% of the price is forfeited to the vendor as the vendor's absolute property, where 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 and deficiency in the price on the resale and any resulting expenses by way of liquidated damages; and
- (d) the vendor may retain any part of the price paid until the vendor's damages have been determined and may apply that money towards those damages; and
- (e) any determination of the vendor's damages must take into account the amount forfeited to the vendor.

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

Special Conditions

1. Security interest

General condition 7 is deleted and replaced by the following:

7. RELEASE OF SECURITY INTEREST

- 7.1 This general condition applies if any part of the property is subject to a security interest to which the personal property Securities Act 2009 (Cth) applies.
- 7.2 The vendor must advise the purchaser of the vendor's date of birth solely for the purpose of enabling the purchaser to search the Personal Properties Securities Register for any security interests affecting any personal property for which the purchaser is entitled to a release statement, approval or correction in accordance with general condition 7.3 However the Vendor is only required to so advise if the purchase makes the request at least 21 days before the due date for settlement. The purchaser must keep the vendor's date of birth secure and confidential.
- 7.3 The vendor must ensure that at or before settlement, the purchaser receives-
- (a) A release from the secured party releasing the property from the security interest; or
 - (b) A statement in writing in accordance with section 275(1) (b) of the personal property securities Act 2009 (Cth) setting out that the amount or obligation that is secured is nil at settlement; or
 - (c) A written approval or correction in accordance with section 275(1) (c) of the personal property securities Act 2009 (Cth) indicating that, on settlement, the personal property included in the contract is not or will not be property in which the security interest is granted.
- 7.4 The vendor is not obliged to ensure that the purchaser receives a release, statement, approval or Correction in respect of personal property that
- (a) (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 purposes of section 47(1) of the personal property securities Act 2009 (Cth), not more than that prescribed amount or
 - (b) Is sold in the ordinary course of the vendor's business of selling personal property of that kind unless:
 - (c) The personal property is of a kind that the regulations provide may or must be described by Serial number in the Personal Property Securities Register; or
 - (d) the purchaser has actual or constructive knowledge that the sale constitutes a breach of the security agreement that provides for the security interest.
- 7.5 A release for the purposes of general condition 7.3(a) must be in writing. The release must be effective in releasing the goods from the security interest and be in a form which allows the purchaser to take title to the goods free of that security interest.
- 7.6 The purchaser must provide the vendor with a copy of the release under general condition 7.3(a) at or as soon as practicable after settlement.
- 7.7 The vendor must also 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 in addition to ensuring a release is received under general condition 7.3(a) if the property being released includes goods of a kind that are described by serial number in the Personal Property Securities Register.
- 7.8 The purchaser must advise the vendor of any security interest that is registered on or before the day of sale on the Personal Property Securities Register, which the purchaser reasonably requires to be released at least 21 days before the due date for settlement. 7.9 The vendor may delay settlement until 21 days after the purchaser advises the vendor of the security interests that the purchaser reasonably requires to be released if the purchaser does not provide an advice under general condition 7.8.
- 7.10 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; and
 - (c) As though the purchaser was in default- If settlement is delayed under general condition 7.9.
- 7.11 The vendor is not required to ensure that the purchaser receives a release in respect of the land. This General condition 7.11 applies despite general condition 7.1.
- 7.12 Words and phrases which are defined in the Personal Property Securities Act 2009 (Cth) have the same meaning in general condition 7 unless the context requires otherwise.

2. GST:

2.1 – GST farming business

General condition 13.1(b) is deleted and replaced by the following:

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

2.2 – GST farming business

General condition 13.4 is deleted and replaced by the following:

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 year 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.

3. Services:

3.1 - Service

General condition 17.1 is deleted and replaced by the following:

Any document sent by -

- (a) Post is taken to have been served on the next business day after posting, unless proved otherwise; -
- (b) Email is taken to have been served at the time of receipt as provided in section 13A of the Electronic transactions (Victoria) Act 2000.

3.2 - **Service**

General condition 17.2 is deleted and replaced by the following:

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

- (a) Personally; or
- (b) By pre-paid post; or
- (c) In any manner authorized by law or the Supreme Court for service of documents, including any manner authorised for service on or by a legal practitioner; or
- (d) By Email.

4. **Nomination:**

General Condition 18 is deleted and replaced by the following:

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

5. **Acceptance of Title:**

General condition 12.4 is added:

Where the purchaser is deemed by section 27(7) of the Sale of Land Act 1962 to have given the deposit release authorization 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.

6. **Plan of Subdivision and Identity of Land:**

- 6.1 The Purchaser acknowledges and agrees that the Land is identical with the Lot bearing the same number on the Plan of Subdivision when registered, and if the Land is not identical, then the Purchaser waives the Purchaser's entitlements to seek compensation for such variation.
- 6.2 The Vendor may make any amendments and alterations to the Plan of Subdivision which are necessary to obtain the certification or registration of the Plan of Subdivision or which the Vendor considers to be reasonably necessary.
- 6.3 The Vendor will notify the Purchaser within a reasonable time of any variation or alteration to the Plan of Subdivision, which, in the Vendor's reasonable opinion, materially and detrimentally affects the Purchaser.
- 6.4 Subject to the Purchaser's rights under the Sale of Land Act 1962, the Purchaser will not object or claim any compensation because of

- (a) Any amendment or alteration to the Plan of Subdivision which does not materially and detrimentally affect the Purchaser.
- (b) Any alleged misdescription of the Land or deficiency in its area or measurements;
- (c) Any re-numbering of Lots on the Plan of Subdivision;
- (d) Any consolidation of Lots on the Plan of Subdivision;
- (e) Any alteration to the Lot entitlement and the Lot Liability as set out in the Plan of subdivision;
- (f) Any alteration to Lots other than the Lot purchased under this Contract or any alteration to the number of Lots on the Plan of Subdivision;
- (g) Any loss of amenity caused by the incomplete development of the Land in the Plan of Subdivision on Settlement;
- (h) Any alteration that does not affect the Lot;
- (i) Any matter or thing or intention of the Vendor disclosed or referred to in this Contract, And nor will the Purchaser call upon the Vendor to amend title or pay all or any part of the cost of doing so.

6.5 For the purposes of this Special Condition, the Purchaser agrees that an alteration to the proposed Plan of Subdivision which results in a change to the area of the Land hereby sold of less than 5 % is a minor variation of discrepancy and does not materially or detrimentally affect the Purchaser.

6.6 Notwithstanding the forgoing, if the Purchaser is entitled to make a claim or if the Purchaser is entitled to rescind this Contract pursuant to Section 9AC of the Sale of Land Act in relation to the amendment to the Plan of Subdivision, it must exercise any such right within 14 days of being advised of the proposed amendment by the Vendor.

6.7 Restriction affecting the Land is not a defect in the Vendor's title and does not affect the validity of this Contract.

7. Conditions precedent to settlement:

7.1 This Contract is subject to and conditional upon the Plan of Subdivision being registered by the Registrar before the end of the Registration Period.

7.2 If the Plan of Subdivision is not registered before the End of the Registration Period, either the Vendor or the Purchaser may, at any time after the end of the Registration Period but only before the Plan of Subdivision is registered, terminate this Contract by Written notice served on the other.

7.3 If this Contract is terminated under Special Condition 7.2:

- a) Any money paid by the Purchaser on account of the price will be refunded to the Purchaser (less All bank & government charges, fees and taxes) and the Purchaser will not be entitled to any compensation from the Vendor for any losses, costs, fees or other expenses paid or incurred by the Purchaser in relation to this Contract; and
- b) The Purchaser will not be entitled to any Compensation from the Vendor in respect of any losses, costs, fees or other expenses paid or incurred by the Purchaser in relation to this Contract.

7.4 Subject to the Purchaser's rights under the *Sale of Land Act 1962*, the Purchaser will not object or claim any compensation because of anything connected with registration of or failure to obtain registration of the Plan of Subdivision.

8. Matters to which Land is subject :

8.1 The Purchaser buys the Land subject to:

- (a) The encumbrances shown in the Vendor's Statement, including those that may be created or come into existence after the Day of Sale;
- (b) The provisions of the *Sub division Act 1988*;
- (c) Any easements (whether express or implied) affecting the Land by virtue of any Act;
- (d) The Lot entitlements and Lot Liability set out in the Plan of Subdivision; and
- (e) Any Restrictions imposed on the Land by:
 - (i) Any Act, order, regulation, by-law or Planning scheme affecting the Land; or
 - (ii) Any governmental semi-governmental or judicial entity.
- (f) Any easement or other right held or claimed by any statutory authority or supply authority or company.

8.1.1 The Purchaser will not object or claim any compensation because of anything contemplated by or occurring pursuant to Special Condition 8.

9. Vendor's rights to create further Encumbrances and Restrictions :

9.1 The Purchaser acknowledges and agrees that as at the Day of Sale and the Settlement Date not all of the additional encumbrances may have been entered into, granted or finalised.

9.2 Subject to the Purchaser's rights under section 9AC of The *Sale of Land Act 1962*, the Vendor can enter into, grant or finalise any Additional Encumbrances on or after the Day of Sale, to ensure the provision of services to the Land or other Lots on the Plan of Subdivision, to enable certification or registration of the Plan of Subdivision, where necessary for the Development and proper functioning of the site or to better comply with this Contract.

9.3 The Vendor does not however give any assurance:

- (a) As to the nature of the Additional Encumbrances;
- (b) That it will proceed, and may refrain from Proceeding with, any Additional encumbrances; and
- (c) When any Additional Encumbrances will be Entered into, granted or finalised.

9.4 The Purchaser must execute any acknowledgement, covenant, transfer of the land, easements or covenants required by the Vendor under which the Purchaser:

- (a) Agrees to accept and observe an Additional Encumbrances; and
- (b) Acknowledges that the Additional Encumbrances Runs with the relevant Land.

- 9.5 If, for any reason, a Restriction or Additional Encumbrances cannot be registered, the Purchaser will enter into a deed with the Vendor on the same terms As the Restriction.
- 9.6 Subject to the Purchaser's rights under the *Sale of Land Act 1962*, the Purchaser will not object or Claim any Compensation because of anything contemplated by or occurring pursuant to Special Condition 9.3.

10. Location of Easements :

- 10.1 The Purchaser agrees that section 10(1) of the *Sale of Land Act 1962* will not apply in Respect to the final location of any easements shown on the Plan of Subdivision.
- 10.2 For the purposes of section 9AB of the *Sale of Land Act 1962*, the Purchaser acknowledges and agrees that:
- (a) in any construction on the land contained in the Plan of Subdivision, the Vendor may carry out Works that will affect the natural surface level of the land including:
 - (i) Excavation Works relating to the Land Arising out of filling and/or raising and/or Leveling the Land;
 - (ii) The removal of waste from the Land and Any remediation works required to satisfy EPA requirements and the requirements of any other Authority;
 - (iii) The installation of services; and road works and drainage works;
 - (iv) Landfills works; and construction of retaining walls.
 - (b) The Vendor may be directed by the municipal authority or a public authority to carry out Works which will affect the natural surface Levels of the Land or the balance of the land in the Plan of Subdivision after the day of sale; and
 - (c) In constructing Works on the Land, the Vendor may carry out works which will affect the natural surface level of that land.

11.Purchaser Not to Lodge Caveat :

- 11.1 The Purchaser must not lodge (nor have lodged on its behalf) nor allow any person claiming an interest through the Purchaser to lodge any caveat in relation To the Land, which will delay or prevent registration of the Plan of Subdivision.
- 11.2 If the Purchaser lodges (or allows to be lodged on the Purchaser's behalf), or a person claiming through the Purchaser lodges, a caveat which delays or prevents registration of the Plan of Subdivision, the Purchaser must immediately or receipt of written notice from the Vendor or the Vendor's solicitors, withdraw the caveat or have that caveat withdrawn, at the Purchaser's cost.
- 11.3 The Purchaser appoints the Vendor's solicitors as its attorney for the purpose of withdrawing any such caveat or signing a withdrawal of such caveat. The Purchaser must pay all costs and expenses (including any legal costs on a solicitor client basis) incurred by the Vendor as a result of any default by the Purchaser under this Special Condition.

- 11.4 If the Purchaser enters into an agreement of the type described in Special Condition 15, that agreement must contain provisions on the same terms as contained in this Special Condition (with all necessary changes).
- 11.5 The Purchaser acknowledges that this is an essential term of this Contract and a breach of this Special Condition will cause damage to the Vendor. The Purchaser indemnifies the Vendor for any Claims, loss, damage, cost and expense, which the Vendor may incur as a result of the Purchaser's breach of this Special Condition.

12. Deposit and Payment :

- 12.1 The deposit monies paid or payable under this Contract must not exceed 10 percent of the Purchase Price. The Deposit must be paid to the Vendor's Agent named in This Contract, to be held on trust for the Purchaser held in the agent trust account until the Registration of the Plan of Subdivision.

13. Bank Guarantee

- 13.1 The Vendor may accept a Bank Guarantee from the Purchaser instead of actual payment of the deposit or any part of the deposit. The combined Bank Guarantee amount and cash deposit amount (if any) paid or payable under this Contract must not exceed 10 per cent of the Purchase Price.
- 13.2 If the Vendor agrees to accept a Bank Guarantee, the Purchaser must deliver it to the Vendor's legal practitioner on the Day of Sale for an amount equal to The deposit. For the avoidance of doubt, the Vendor's Agent is not authorized to hold the Bank Guarantee.
- 13.3 If the Purchaser complies with Special Condition 13.2, The Purchaser must pay the Deposit in cleared funds to the Vendor's legal practitioner on the first to occur of:
 - (a) The Settlement Date;
 - (b) The date that is 30 days before the Bank Guarantee expires;
 - (c) Any earlier date on which:
 - (i) The Vendor would be entitled to the Release of Deposit to It having regard to the provisions of this contract and section 27 of the *Sale of Land Act 1962*;
 - (ii) The Vendor rescinds or otherwise Terminates this Contract for breach by The Purchaser; or
 - (iii) The Bank Guarantee becomes ineffective.
- 13.4 If the Purchaser breaches Special Condition 13.3 and 13.4 (time being of the essence), the Purchaser will be in default under this Contract and without limiting the Vendor's rights the Vendor's legal practitioner (but in no circumstances the Vendor) is irrevocably authorized to draw on the Bank Guarantee if one has been provided.
- 13.5 Any Bank Guarantee provided under this Special Condition 13.1 will be held on trust by the Vendor's legal practitioner pursuant to the provisions of the *Sale of Land Act 1962* as if the bank guarantee was cash until registration of the Plan of Subdivision.
- 13.6 Any moneys paid by the bank pursuant to Special Condition 13.5 must be dealt with by the Vendor's legal practitioner and in accordance with special condition 12.1 and otherwise the *Sale of Land Act 1962*. For the avoidance of doubt, this Special Condition takes precedence over anything else in this Special Condition.

14.Default :

- 14.1 The Purchaser must pay any and all costs and expenses incurred by the Vendor due to the purchaser's failure to comply with its obligations under this Contract including but not limited to:
- (a) The cost of obtaining any bridging finance and The interest charged on such bridging finance;
 - (b) Interest payable by the Vendor under any existing mortgage over the Land calculated from the settlement date to the date on which settlement is effected;
 - (c) Legal costs and expenses on a full indemnity basis;
 - (d) Penalties, costs and damages payable by the Vendor;
 - (e) Interest calculated in accordance with this Contract; and
 - (f) Consequential loss and damage suffered by the Vendor.

15.Transfer of Title :

- 15.1 The Purchaser acknowledges that the Contract of Sale is conditional upon the completion of the agreement entered into by the Vendor and the registered proprietor.
- 15.2 The Purchaser acknowledges and agrees that the Vendor, has the right and power to sell the Land pursuant to section 32(3) (b) of the *Sale of Land Act (1962)* (and that this Special Condition is incorporated in to the Vendor's Statement mutatis mutandis.
- 15.3 The Purchaser will not object or Claim any compensation because of anything contemplated in Special Condition10.

16. Stamp Duty: Purchasers Buying Unequal Interests :

- 16.1 If there is more than one purchaser, it is the Purchasers' responsibility to ensure this Contract Correctly records at the Day of Sale the proportions in which they are buying the land ("the Proportions").
- 16.2 If the Proportions recorded in the Transfer differ from those recorded in this Contract, it is the Purchasers' Responsibility to pay any additional duty which may be assessed as a result of the variation.
- 16.3 The Purchasers fully indemnify the Vendor, the Vendor's agent and the Vendor's legal practitioners against any Claims 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 this Contract.
- 16.4 This Special Condition 16 will not merge on settlement of this Contract and each indemnity given continues after settlement. The Vendor can enforce any indemnity before incurring any cost or expense.

17.Adjustments

- 17.1 All Outgoings in respect of the Land will be adjusted between the Vendor and the Purchaser on the basis that they have been paid (even if they have not been paid) as from the Day of Sale.
- 17.2 The Purchaser is responsible for all unpaid Outgoings accruing as and from the Settlement Date which were not adjusted or payable by the Vendor under this Special Condition.
- 17.3 If the Land is not separately rated, then the Purchaser Must adjust that outgoing on the basis that it has been Paid and the outgoing will be apportioned between the Vendor and Purchaser in the same proportion as the lot Liability of the Land bears to the total lot liability on the Plan, land tax will be

adjusted to include the Vendor's proportion able liability in respect of the Lots on the Plan of Subdivision pursuant to SpecialCondition12.4.

- 17.4 The Purchaser acknowledges that the State Revenue Office may group all the lots in the Plan of Subdivision and assess land tax against the Vendor in respect of the Land based upon the aggregate of the unimproved Proportion able liability values of each Lot in the Plan of Subdivision. If, no land tax is assessable in relation to the Land, the Purchaser will pay to the State Revenue Office or reimburse the Vendor for land tax on the Land Calculated by using the following formula:

$$A = L \times U$$

T

Where:

A= land tax pay able by the Purchase in respect Of the Land

L= land tax on a proportion able liability basis Assessed in relation to all lots in the Plan

U= lot liability of the Land T= total lot liability of all lots in the Plan of Subdivision.

- 17.5 If a separate assessment for the same period of outgoings issues in respect of the Lot, then the Purchaser will be responsible for this assessment in full without any adjustment, together with any Outgoing liability accrued under Special Condition 17.3.
- 17.6 The Vendor will pay the outgoings when they are due to be paid and the Purchaser shall not require any outgoing to be paid on an earlier date.
- 17.7 Where the land tax has been assessed and is due prior to Settlement Date, the Purchaser will accept evidence of payment of an assessment which includes the Land, as proof of the Vendor having discharged its obligation To pay land tax for the Land.
- 17.8 An adjustment statement must be delivered by the Purchaser's solicitor to the Vendor's solicitor at least 5 Business Days before the Settlement Date. If the Purchaser fails to deliver an adjustment statement to the Vendor's solicitor on time, then without prejudice to any of the Vendor's other rights:
- (a) The Vendor may complete this Contract at any time between the date for payment of the Balance and the date which is 5 Business Days after the purchaser delivers the adjustment Statement;
 - (b) The Purchaser must pay interest and costs calculated under the default provisions of this Contract on the Balance for the period from the date for payment of the Balance until the Contract is completed.

18. Title to Issue :

- 18.1 If, on the settlement date, the certificate of title for the Land:
- (a) Has not issued; or
 - (b) Is not available from the Land Registry, the Purchaser must accept an order to register the instrument of transfer of the Land endorsed on that instrument or transfer by the Vendor's Solicitors.
- 18.2 If, after the Settlement Date, the certificate of title for the Land issues from the Land Registry to the Vendor or The Vendor's Solicitors, the Vendor will arrange for the certificate of title to be delivered to the Purchaser's Solicitors.

19. Site Works and Access :

19.1 The Purchaser acknowledges and agrees that:

- (a) Not all of the lots on the Plan of Subdivision may be sold before Settlement Date;
- (b) Some Lots may be incomplete on the Settlement Date;
- (c) There will be continuing surveying, engineering and construction works on the land in the development (Ongoing Works) and a Builder may need access to the Land to reasonably carry out the Ongoing Works after Settlement Date; and
- (d) A Builder may be obliged to carry out rectification and repair works after Settlement Date to the Land or to dwellings constructed on other lots in the Plan of Subdivision (Repair Works) and may need access to the Land to carry out those works.

19.2 The Purchaser must provide any Builder and the Vendor (and their contractors and agents) with access to the Land after the Settlement Date to carry out Repair Works and ongoing Works, and the Purchaser grants a right of access for this purpose.

19.3 The Vendor may conduct marketing activities in or about the Building and the Land generally for the marketing of unsold Lots involving (among other things) placing signs and other marketing material on Lots (except the Lots sold under this Contract) and using Lots for display purposes (Marketing Activities) after the Settlement Date.

19.4 The Purchaser will not delay the Settlement Date or delay payment of the Balance or Object to, make any requisition, make any Claims or seek compensation from the Vendor or any Builder or any other person due to:

- (a) incomplete Works in and around the Land after The Settlement Date;
- (b) Any nuisance, dust, noise or other inconvenience associated with any ongoing works or repair works conducted in or around the building after the Settlement Date;
- (c) Any loss of amenity caused by ongoing Works or the Repair Works carried out after the Settlement Date;
- (d) Any access rights exercised by the Vendor or any Builder;
- (e) Any inconvenience, nuisance, noise, dust, vibration or loss of amenity that may result from the access rights;
- (f) The Marketing Activities and any inconvenience that may result from them.

19.5 The Purchaser undertakes to the Vendor that it will not object, institute or commence proceedings of any kind for injunctions, damages or other remedies in anyway related to:

- (a) Further works that any Builder engaged by the Vendor may carry out associated with the development after the Settlement Date; or
- (b) Dust, noise or other discomforts which may arise or emanate from properties in or around the development.

19.6 If the Purchaser sells the Land while the Vendor remains the owner or occupier of any part of the Development, the Purchaser must ensure that its successors in title confer upon any Builder and Vendor the respective rights conferred on them by the Purchaser in this Special Condition.

19.7 The Purchaser acknowledges that the Vendor may in its discretion subdivide the Land in stages under section 37 of the *Subdivision Act 1988*.

19.8 For so long as the Vendor is registered or entitled to be Registered as the proprietor of any one or more Lots on the Plan of Subdivision, the Purchaser must not erect nor cause or allow to be erected on or about the Land Any sign age or advertising material for the sale or lease of the Land (or any other Lot) without the Vendor's prior written consent. The Purchaser authorizes the Vendor to remove at the Purchaser's cost any signs and advertising material erected on the Land in breach of this Special Condition.

19.9 This Special Condition 19 does not merge on settlement and will continue in full force and effect.

20. Resale :

- 20.1 The Purchaser must not sell, gift, transfer, assign, Mortgage or otherwise encumber or in any other way What so ever deal with the Land or the Lot or any part There of or any of the Purchaser's rights or interest in or Under this Contract:
- (a) before the Settlement Date without the prior written consent of the Vendor (which may be given or refused in its absolute discretion);
 - (b) To any person(recipient)or if the Purchaser is a proprietary company, allow a controlling interest in the issued capital of the company to be disposed of, or create any trust affecting the property unless the sale contract contains a condition in the form or to the effect of this condition similarly binding the recipient and any subsequent recipient.
- 20.2 The Purchaser agrees that, subject to Special Condition 20, any contract of sale for the re-sale of the lot will provide that the sub-purchaser will be bound to the terms and conditions of this Contract.
- 20.3 The Purchaser will not Object or Claim any Compensation because of anything contemplated by or occurring pursuant to Special Condition 20.

21. Environmental Indemnity :

- 21.1 The Purchaser accepts the condition of the Land including, without limitation, the presence of any Contaminant or Substance in, on, under or emanating from the Land.
- 21.2 The Purchaser acknowledges that the Vendor makes no representation or warranty about compliance of the Land with Environmental Law.
- 21.3 The Purchaser must not Object or claim for compensation because of:
- (a) The use, presence or escape of any Contaminant r Substance on or from the Land; or
 - (b) The physical condition of the Land, including the soil, groundwater and sub – surface or any contamination of them:
 - (i) Renders the Land unsuitable or unfit for any use or development; or
 - (ii) Renders the Land, the Vendor, the Purchaser, the owner, or the occupier liable for any Claim or requirement imposed by any person, competent body or authority or under any legislation whether now or at any time in the future.
- 21.4 From the Day of Sale, the Purchaser will assume all liability and responsibility for any Contaminant or Substance in, on, under or emanating from the Land or any process or facility undertaken on the Land at any time whether before or after the Day of Sale ,and the purchaser will be liable for and releases the Vendor from all liability and indemnifies the Vendor against:
- (a) any Claim for the use, presence, removal, storage ,disposal or escape of any contaminant or Substance on or from the Land; or
 - (b) Any requirement imposed by any Authority or legislation:
 - (i) For the use, presence or escape of any Contaminant or Substance on or from the Land, or
 - (ii) Requiring the remediation of the Land; or
 - (iii) Requiring the removal of any Contaminant or Substance from the Land; or
 - (iv) Requiring any works or treatment or activity to be carried out on the Land; or

(v) to remediate any other notices onto, above or into which a Contaminant or Substance has travelled from and through the Land.

- 21.5 The Purchaser indemnifies and will keep the Vendor indemnified against any Claim which the Vendor suffers, incurs or becomes liable for with respect to the presence of any Contaminant Substance which may give rise to or become a Contaminant brought or Allowed on, emitted on or from or incorporated in on, under or emanating from the Land at any time.
- 21.6 The Purchaser must comply with any notice or order relating to the Land made or issued under any laws relating to the Environment.
- 21.7 This Special Condition 27 will not merge on settlement of this Contract and each indemnity given continues after settlement. The Vendor can enforce any indemnity before incurring any cost or expense.

22. Guarantees and Joint Purchasers :

- 22.1 If the Purchaser is or includes a corporation that is not listed on the Australian Stock Exchange:
- a) Where that corporation is not a wholly owned Subsidiary of a corporation that is listed on the Australian Stock Exchange, the Purchaser must cause the Guarantee and Indemnity to be executed by all directors of the Purchaser corporation on the Day of Sale or within such period after the Day of Sale as the Vendor may allow; or
 - b) Where that corporation is a wholly owned subsidiary of a corporation listed on the Australian Stock Exchange, the Purchaser must cause the Guarantee and Indemnity to be executed by the listed corporation on the Day of Sale or within such period after the Day of Sale As the Vendor may allow.
- 22.2 Despite anything else in this Contract, if there is more than one purchaser, this contract will bind all of them jointly and each of them severally.
- 22.3 If the Purchaser **does not comply with this Special Condition, the Vendor may rescind the Contract.**
- 22.4 If any of the aforesaid representations are false or the signatory breaches any one or more of them, the signatory shall be personally liable for the due performance of the Purchaser's obligations under the Contract.

23. Nomination :

- 23.1 Notwithstanding General Condition 23, the Purchaser May nominate an additional or substitute Purchaser if this Contract specifies that the Land is sold to the Purchaser "and/or Nominee".
- 23.2 The Purchaser must make the nomination and notify the Vendor of the nomination no later than 28 days after the Day of Sale, by delivering a copy of all documentation to the Vendor, required to effect the nomination.
- 23.3 The Vendor is not obliged to accept the nomination if it is made after 28 days after the Day of Sale but if the Vendor does accept the nomination in such a case:
- (a) the Vendor is not obliged to settle until 60 days after the date that the Purchaser notifies the Vendor of the nomination; and
 - (b) if Settlement takes place after the Settlement Date because of the preceding paragraph the Purchaser is deemed to be in

default in the payment of the balance of the Price from the Settlement Date until the date that Settlement is effected.

- 23.4 The Purchaser remains liable under this Contract even if an additional or substitute purchaser is nominated.
- 23.5 The Purchaser indemnifies and keeps the Vendor indemnified against any and all Claims, outgoing or payments which the Vendor suffers, incurs or is liable for with respect to stamp duty payable in relation to this Contract and the nomination of any additional or substituted purchaser or purchasers.
- 23.6 The Purchaser and each additional or substitute Purchaser unconditionally and irrevocably guarantees to the Vendor each of the Purchaser and substitute purchasers' obligations under this Contract including the payment of any Balance of the Price, any other amounts payable under this Contract and the performance of the obligations under this Contract by the Purchaser and any additional or substitute purchaser.

24.Foreign Purchaser :

- 24.1 The Purchaser warrants that (if necessary) before entering into this Contract it has obtained Foreign Investment Review Board approval to purchase the Land on the terms of this Contract.
- 24.2 The Purchaser indemnifies and keeps the Vendor indemnified against any and all Claims, which the Vendor suffers, incurs or is liable for as a result of the Purchaser's breach of its warranty in this Special Condition.

25.GST :

- 25.1 In this Special Condition 25, except where the contrary intention appears, expressions used in this special condition, and not otherwise defined in special condition 34, have the meanings given to them in the Act.
- 25.2 The Purchaser must not make any Claim because of any matter contained in this Special Condition 25.
- 25.3 To the extent the margin scheme may be applied, the parties have agreed to adopt the margin scheme in relation to the supply of the Property, unless the Vendor serves notice on the Purchaser before settlement advising that the margin scheme will not be applied.
- 25.4 Except in respect of the Price, the consideration payable by a party for a taxable supply made by the other party under this Contract represents the GST exclusive value of the taxable supply.
- 25.5 If this Contract requires a party to pay for, reimburse, Or contribute to any expense or liability (**Reimbursable Expense**) incurred by the other party to a third party, The amount to be paid, reimbursed or contributed will Be the amount of the Reimbursable Expense (inclusive of GST) less the amount of any input tax credit to which the other party is entitled (if any) in respect of the Reimburse able Expense.

26.Confidentiality :

- 26.1 Subject to Special Condition 26.2, the existence and Terms of this Contract (and all related documents and information made available to any party for the purpose of entering in to this Contractor in the course of the performance of this Contract) must be kept

confidential and must not be disclosed to any other person without the written consent of the other parties.

26.2 Special Condition 26.1 shall not apply in the following circumstances:

- (a) Any disclosure required by law;
- (b) Disclosure to solicitors, barristers or other professional advisers under a Duty of confidentiality;
- (c) A disclosure to bankers or other financial institutions of the party, to the extent required for the purpose of raising funds or maintaining compliance with credit arrangements, if those persons undertake to keep information disclosed confidential;
- (d) A disclosure in connection with the ongoing Management and operation of the Land and the development; or
- (e) A disclosure of any information which is a matter of public record.
except as required by law or the requirements of any Authority, all press releases and other public announcements relating to the transactions dealt with by the Contract must be in terms agreed in writing by The parties.

27. Vendor's right to terminate :

27.1 If

- a) any requirement imposed by an Authority for the Plan of Subdivision is in the opinion of the Vendor (acting reasonably) too onerous to perform or accept; and
- b) At any time and for any reason the Vendor (acting reasonably) determines that the Proposed Plan of Subdivision will not proceed; The Vendor may elect to terminate this Contract by notice in writing to the Purchaser. If the Vendor Gives notice under this clause 27, this Contract will be at an end and any monies paid will be refunded To the Purchaser.

28. Vendor rights to assign, charge, mortgage, novate or deal with the Lot:

- 28.1 If prior to the Settlement Date, party other than the Vendor is or becomes registered proprietor of the Land Or the Vendor's rights under this contract are assigned to another party then, upon receipt of a notice of assignment from the Vendor, the Purchaser must perform any obligations imposed upon the Purchaser under this contract in favor of the party who is or becomes registered proprietor of the Land or to whom the Vendor's rights under this contract are assigned. The Purchaser must not make a Claim, enquiry, Requisition or demand in respect of any of the matters Set out in this Special Condition.
- 28.2 In consideration of the Purchaser agreeing to enter In to this Contract, if at any time the Vendor (in its sole and unfettered discretion) directs the Purchaser in writing to do so, the Purchaser shall execute:
 - (a) a deed in the form prepared by the Vendor Novating this Contract to a third party;
 - (b) a vendor's statement for the Land in the form Prepared by the third party.
- 28.3 If this Contract of Sale is novated to a third party, the Purchaser:
 - (a) Must within 30 days of being requested to do so, Do whatever is necessary to give that third party The benefit of the Bank Guarantee provided by the

purchaser under Special Condition 13 including if necessary delivering a new replacement Bank Guarantee in favour of the third-party; and
(b) Will not object or claim any compensation because of anything Contemplated by or occurring pursuant to this Special Condition.

28.4 If the Purchaser breaches Special Condition the Purchaser must immediately pay the deposit in cleared funds to the Vendor's solicitors.

29. Notices :

29.1 All communications between the parties about this Contract must be in legible writing and in English delivered by hand or sent by post or facsimile or electronic mail **to the address of the addressee as set out in this Contract or to the other address as the addressee may from time to time have notified for the purposes of this Special condition.**

29.2 Communications are taken to have been received:

- (a) If delivered by hand ,on the day of delivery;
- (b) If sent by post, two Business Days after posting exclusive of the day of posting;
- (c) If sent by facsimile, at the time of transmission or, if the time of transmission is not during the addressee's normal business hours, at 9.30am on the next Business Day; and
- (d) If sent by electronic mail, upon entry into the Information systems of the recipient.

29.3 In proving service:

- (a) By delivery by hand, it is necessary only to Produce a receipt for the communication signed By or on behalf of the addressee;
- (b) By post, it is necessary only to prove that the communication was contained in an envelope which was duly addressed and posted in accordance with this special condition;
- (c) By facsimile, it is necessary only to produce the sender's copy bearing the Addressee's Answer back; and
- (d) By electronic mail, it is necessary only to produce an acknowledgement or receipt that the communication has been received by the recipient's information system. But if a notice is served by hand, or is received by the recipient's facsimile or email on a day that is not a business day, or after 5.00pm on a business day, the notice will be considered to have been received by the recipient at 9.00 am on the next business day.

29.3 The Vendor may at any time prior to Settlement, sell, mortgage, and assignor charge any of its rights, privileges, benefits or obligations under this Contractor all or part of the Land without reference to the Purchaser.

30. Capacity :

30.1 If the Purchaser:

- (a) Being an individual:
 - (i) Dies; or
 - (ii) becomes incapable of managing the Purchaser's affairs; or
- (b) Being a company:
 - (i) Resolves to go in to liquidation;
 - (ii) Has an application for its winding up presented and not withdrawn within 30 days of its presentation;

(iii) Enters into any scheme of arrangement with its creditors under the relevant provisions of the *Corporations Act 2001* (Cth) or any similar legislation; or

(iv) Has a liquidator, provisional liquidator, receiver, receiver and manager or administrator appointed, the Purchaser will be taken to have repudiated its obligations under this Contract and the Vendor may, without limiting in any way the Vendor's other rights or remedies, accept such repudiation and rescind this Contract at any time before Settlement in which case the provisions of General Condition 28.4 will apply, and the parties shall hereby each appoint the other as their lawful attorney for this purpose and absolve the stakeholder from any liability for complying with such notice.

30.2 If the Purchaser is buying the Land as trustee of a trust (**Trust**) then the Purchaser:

(a) Must not do anything to prejudice any right of indemnity the Purchaser may have under the trust;

(b) Warrants that the Purchaser has power under the Trust to enter in to this contract;

(c) is personally liable under this Contract;

(d) Warrants that the Purchaser has a right of Indemnity under the trust; and

(e) Must not allow the variation of the Trust or the advance or distribution of capital of the Trust or resettlement of any property belonging to the Trust.

31. Waiver :

31.1 A party's failure to insist another party perform any obligation under this contract is not a waiver of that party's right:

(a) to insist the other party perform, or to claim Damages for breach of, that obligation; or

(b) to insist the other party performs any other obligation, unless the waiving party acknowledges the waiver in writing.

31.2 Fencing

31.2 Vendors Contribution.

While the Vendor remains registered or entitled to be registered as the proprietor of any Lot or other land adjoining the boundaries of the Land, the parties agree that the Vendor's contribution to the cost of constructing any dividing fence shall be \$1.00.

32 Representations, Warranties, Acknowledgements and Indemnities:

32.1 This Contract contains the entire agreement between The parties as at the Day of Sale.

32.2 The Purchaser acknowledges and agrees that:

(a) In entering in to this Contract, the Purchaser has not relied on any warranty or representation made by or any other conduct of the Vendor or any person on behalf of the Vendor, except as set out in this Contractor in legislation;

(b) The Purchaser is relying entirely upon its own Enquiries with respect to:

(i) The fitness or suitability for any particular Purpose of the Land;

(ii) The Purchaser's obligations and rights under this Contract; and

(iii) Any financial return the Purchaser may Make from the Land.

- 32.3 The covenant provisions, terms and agreements contained in this Contract expressly or by statutory implication cover and comprise the whole of the agreement between the parties and the parties expressly agree and declare that no further or other covenants agreements provisions or terms shall be deemed to be implied in this Contract or to arise between the parties by way of collateral or other agreement by reason of any promise representation warranty or undertaking given or made by either party to the other on or before the execution of this Contract and the existence of any such implication or collateral or other agreement is hereby expressly negated, notwithstanding any negotiations or discussions held or documents signed or brochures and plans produced prior to the Day of Sale. 27.4 Subject to any provision to the contrary in this Contract the Purchaser shall indemnify and keep indemnified the Vendor against all Claims of any nature whatsoever which the Vendor may suffer, sustain or incur in connection with or relating to any liability, Claims, how so ever arising made or incurred on or subsequent to the Settlement Date or from events or occurrences happening or arising on or subsequent to the Settlement Date out of or in respect to the Land or any act, matter or thing occurring thereon.
- 32.5 The Purchaser acknowledges that prior to execution of this Contract and any document relating to this sale, the Purchaser received a statement in writing under section 32 of the *Sale of Land Act* 1962 from the Vendor, which complies with the requirements of Section 32 of the *Sale of Land Act* 1962. The Purchaser warrants that it will not Object about any matter included in the **Vendor's Statement**.
- 32.6 The Purchaser may inspect the condition of the Land in accordance with General Condition 22 only after making an appointment with the Vendor or the Vendor's agent, but not more than once.
- 32.7 Each party to this Contract shall execute and deliver all Such documents, instruments and writings and shall do or procure to be done all such acts and things necessary or desirable or reasonable to give effect to this Contract.
- 32.8 Any provision of this Contract, which is capable of, Taking effect after completion of this Contract, shall not merge on completion but rather shall continue in full force and effect.

32. General Condition :

33.1 General Condition:

- (a) 5, 7, 8, 11.1(b), 15.2, 20, 24.4, 24.5 and 24.6 are deleted and do not apply to this Contract;
- (b) 1.1(a) is deleted and replaced with 'any encumbrance (including but not limited to all registered and unregistered restrictions, easements (including implied and statutory easements), including those disclosed in the Vendor's Statement, and any encumbrances referred to in or arising out of any Special Condition in the Contract, other than mortgages or caveats';
- (c) 1.1(b) is amended by inserting 'exceptions, conditions and restrictions' after the word 'reservations'.
- (d) 2.3 and 2.4 merge on the Settlement date;
- (e) 3 is amended by inserting a further General Condition 3.3 as follows 'The Purchaser admits that the Land as offered for sale and inspected by the Purchaser is identical with that described in the Particulars of Sale.';

- (f) 11.1 (a) is deleted and replaced with 'either to the vendor's licensed estate agent, legal practitioner or conveyancer.
- (g) 11.2 (b)(i) is deleted and replaced with 'to the vendor's legal practitioner and held by the legal practitioner on trust for the purchaser until the registration of the plan of subdivision;
or';
- (h) 11.5 is amended to by adding the words 'an Australian owned bank that is' after the word 'means' on the second line;
- (i) 11.6 is amended to delete the word "three" and Insert the word "seven" after the words "on up to" on the first line;
- (j) 17.2 is amended to delete the words 'demand, notice, or' after the word 'Any' on the first line;
- (k) 24.3 is amended to remove the words 'but may claim compensation from the Vendor after settlement' after the number '24.2,' on the third line;
- (l) 25 is amended to remove the word 'party' after The word 'A' on the first line and replaced it with 'Purchaser'; and the following is added at the end of the condition: 'The Purchaser acknowledges that the following items constitute' a reasonably foreseeable loss:
- (c) all costs associated with bridging finance To complete the vendor's purchase of another property;
- (d) expenses payable by the vendor under Any existing loans secured over the Property or other property of the vendor;
- (c) accommodation expenses incurred by The vendor;
- (e) the vendor's legal costs and expenses as Between solicitor and client incurred due To the breach, including the cost of Issuing any default notice agreed at \$650 Plus GST;
- (f) any commission or other expenses Claimed by the Vendor's Agents or other Representing relating to sale of the Land; and
- (g) penalties and any other expenses payable By the vendor due to any delay in Completion of the purchase of another property."
- (m) 26 is amended by substituting "2" with "4".
- (n) 28.4(a) is amended to remove the word 'up' after the word 'deposit' on the first line and substitute it with the word 'equal'; and
- (o) 28.4(c) is amended to remove the words 'one year' after the word 'within' on the second Line and substitute it with the words 'two years'.
- 33.2 The Purchaser acknowledges that the General Conditions have been modified as contemplated in the Special Conditions, and in the event of any Inconsistency between the General Conditions and the Special Conditions, the Special Conditions will prevail to The extent of any such inconsistency.

33. Definitions and Interpretation :

33.1 In this Contract the following words have these Meanings unless the context provides otherwise:

Additional Encumbrances means any easements, encumbrances, licences, occupational rights, covenants, grants or create other like rights or restrictions (including, without limitation, positive covenants under agreements pursuant to section 173 of the *Planning and Environment Act 1987*.

Authority means any Commonwealth, state, regional and local government or other regulatory authority, body or agency, and any court or tribunal or statutory corporation or any employee or agent of any of them.

Bank Guarantee means an unconditional and irrevocable guarantee or undertaking by a Bank, subject to the terms of this Contract and in favor of the Vendor's solicitor with an expiry date (if any) at least 60 days after the expiry of the Registration Period or such other date authorized by the Vendor in writing and is in a form satisfactory to the Vendor and the Vendor's financier and includes any replacement bank guarantee that is accepted by the Vendor.

Builder means a person who is registered as a builder under the *Building Act 1993* (Vic).

Building Surveyor means the building surveyor appointed by the Vendor (if any) to inspect the works.

Business Day means any day which is not a Saturday, Sunday or a proclaimed public holiday in the State of Victoria;

Claim means any claim, action, demand, proceeding, judgment, damage, loss (including consequential loss), charge, outgoing, payment, cost, expense or liability however incurred or suffered or brought or made or recovered against any person however arising (whether or not presently ascertained, immediate, future or contingent or in the nature of incidental, special, exemplary or consequential damages) including, but not limited to loss of profits or revenue, interference with business operations or loss of tenants, lenders investors or buyers or inability to use the Land.

Contaminant means a solid, liquid, gas, odor, electric or magnetic field or Substance or property of any Substance which makes or may make the Land unsafe, unfit or harmful for habitation or occupation by any person or caused a damage to the Land or does not satisfy the contamination criteria or standards published or adopted by the relevant environmental Authority and Contamination has the same meaning.

Contract means this contract of sale and includes all enclosures and annexure.

Development means the proposed use and development of the project which incorporates the improvements as they relate to the Land and surrounding and shown on the Plan of Subdivision.

Development Activities means any work carried out or intended to be carried out by the Vendor or any Builder or any other party to complete any Works on the development (including:

- (a) The subdivision of land forming part of the development;
- (b) Any form of demolition work, building work and work ancillary or associated with the building

work or installation of infrastructure including services to the Development; and
(c) Any form of landscaping work or work ancillary to or associated with landscaping work on the development.

Environment includes the air, water, groundwater, sub strata and the ground.

Environmental Law means a law regulating the Environment, including, without limitation, to the extent applicable, any law about the use of land, planning, heritage, pollution of air or water ,noise, soil or ground water contamination nor pollution, chemicals, use of dangerous goods, asbestos, building regulation, public and occupational health and safety, fire and safety, or the enforcement or administration of those laws whether that law arises under statute or the Common law or under any permit, notice, decree, order or directive of any Authority or otherwise.

General Conditions means the standard form of contract prescribed by the *Estate Agents (Contracts) Regulations 2008*.

Guarantee and Indemnity means guarantee and indemnity included in annexure A to this Contract.

Interest means the interest (if any) that accrues on the Deposit less the taxes, charges and fees charged on, or attracted by, the deposit or by the interest earned on it.

Land means the land sold pursuant to this Contract.

Lot or Lots means a lot or lots on the Plan of Subdivision.

Object means to make any Claim against the Vendor (before or after the Settlement Date) to seek to withhold all or part of the Price, raise any objection, requisition, rescind or terminate this Contract or seek to delay, or avoid Settlement of this Contract;

Outgoings means all rates, taxes, assessments, land tax, levies, fire insurance premiums, insurance premiums or other expenses levied in respect of the Land;

Permit means any planning, building or heritage permit issued or to be issued by the Council or other relevant authority and includes any amendments or variations thereof;

Plan of Subdivision means the proposed plan of subdivision no. PS711708P and PS711709M a copy of which is included in the Vendor's Statement, and includes the Restrictions noted on the Plan of Subdivision and any amendments or alterations made to the Plan of Subdivision.

Planning Permission means the planning Permit for the use, development and subdivision of the Development contemplated by this Contract and as varied by the vendor under this Contract. Planning Permission includes all endorsements, consents, approvals and requirements under:

- (a) A Permit;
- (b) An approval for the Development by the relevant Authority;
- (c) The Subdivision Act. to the Vendor's satisfaction (in its so leaned unfettered discretion).

Planning Permission Date means the date that the Plan of Subdivision is registered.

Property means the property including the Land sold pursuant to this Contract.

Registration Period means the date being 24 months after the Day of Sale.

Registrar means the Registrar of Titles of Victoria.

Regulations mean the Owners Corporation Regulations 2007.

Restriction means a restriction or encumbrance created in accordance with Special Condition 4 or as noted or registered on the Plan of Subdivision and/or title.

Substance includes without limitation any form of organic or inorganic matter whether in solid, liquid or gaseous form including without limitation any asbestos.

Vendor's Solicitors means ~~Solicitors~~.

Vendor's Statement means the statement given by the Vendor under section 32 of the Sale of Land Act 1962, a copy of which is annexed to this Contract.

Works means all building and construction works in or around the development.

34.2 In this Contract, unless the context requires otherwise:

- (a) A reference to any legislation or legislative Provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any statutory instrument issued under, that legislation or legislative provision;
- (b) The singular include the plural and vice versa;
- (c) A reference to an individual or person includes a corporation, firm, authority, government or Governmental authority and vice versa;
- (d) A reference to any gender includes all genders;
- (e) A reference to a party to this Contract includes that party's executors, administrators, Successors and permitted assigns;
- (f) A reference to a condition, annexure or schedule is a reference to a condition, annexure or Schedule of this Contract;
- (g) Where time in the Contract is relevant, time Remains the essence of this Contract despite any waiver given or indulgence granted by the Vendor to the Purchaser; and
- (h) "including" and similar expressions are not words of limitation.

34.3 In this Contract, headings are for convenience of Reference only and do not affect interpretation.

34.4 If a provision of this Contract are judged void or voidable, invalid unenforceable or illegal but would not be void, voidable, invalid, unenforceable or illegal if it were read down and it is capable of being read down, by a Court of competent jurisdiction including, but not limited to, due to the operation of the *Trade Practices Amendment (Australian Consumer Law) Act (No. 1) 2010 (Cth)* or the *Fair Trading Amendment (Unfair Contract Terms) Act 2010 (Vic)*, then the provision must Be read down. If, despite being read down, a provision is still void, voidable, unenforceable or illegal and the provision would not be void,

voidable, invalid, unenforceable or illegal if words were severed, then those words must be severed. In any other case, the whole provision must be severed. If any event under this Special Condition occurs, then the remainder of this Contract continues in full force and effect.

GUARANTEE:

The Guarantors

This Guarantee is entered in to by :

I / We,

of

Guarantee and indemnity

(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 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 or 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 thirteen

SIGNED SEALED AND DELIVERED)
By the said)

SIGNED SEALED AND DELIVERED)
by the said)

