

Dated

2020

Vernon Francis Tucker and

Sally Jane Tucker

(Vendor)

Contract of Sale

Sale – 380 Pembertons Road, Vite Vite, Victoria 3325

Peter L Cohen

Lawyer

Level 10, West Tower

608 St Kilda Road, Melbourne, Vic., 3004

8685 8868 | 0414 608 608

peter@pcohen.com.au

Ref. 20-178

CONTRACT OF SALE OF REAL ESTATE

Property address: 380 Pembertons Road, Vite Vite, Victoria 3325

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

The terms of this contract are contained in the:

- particulars of sale; and
 - special conditions, if any; and
 - general conditions,
- in that order of priority.

SIGNING OF THIS CONTRACT

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

Purchasers should ensure that, prior to signing this contract, they have received:

- a copy of the section 32 statement required to be given by a vendor under section 32 of the **Sale of Land Act 1962** in accordance with Division 2 of Part II of that Act; and
- a copy of the full terms of this contract.

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.

Where the vendor or the purchaser is a company registered under the *Corporations Act 2001* (Cth) ("the Act"), then that company executes this contract in accordance with Section 127 of the Act.

SIGNED BY THE PURCHASER: on / / 2020

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).

SIGNED BY THE VENDOR: on / / 2020

Print name(s) of person(s) signing: Vernon Francis Tucker and Sally Jane Tucker

State nature of authority, if applicable: N/A

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

IMPORTANT NOTICE TO PURCHASERS

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

PARTICULARS OF SALE

Vendor's estate agent	Name: Elders Rural Services Australia Ltd (ACN 004 045 121) Address: 100 Manifold Street, Camperdown, Victoria 3260 Phone: 5593 7500 Email: Rob.Rickard@elders.com.au Ref. Mr. Rob Rickard									
Vendor	Name: Vernon Francis Tucker and Sally Jane Tucker Address: 380 Pembertons Road, Vite Vite, Victoria 3325									
Vendor's legal practitioner	Name: Peter L Cohen Address: Level 10, West Tower 608 St Kilda Road, Melbourne, Victoria 3004 Phone: 8685 8868 Email: ramon@pcohen.com.au Ref. Mr. Ramon Jimenez									
Purchaser	Name: Address:									
Purchaser's legal practitioner or conveyancer	Name: Address: Phone: Email: Ref.									
Land [GC 3 & 9]	The land is— described in the table below— <table border="1" style="width: 100%; margin-top: 10px;"> <thead> <tr> <th style="width: 50%;">Certificate of Title references</th> <th style="width: 20%;">being lots</th> <th style="width: 30%;">on plan</th> </tr> </thead> <tbody> <tr> <td>Volume 10356 Folio 922</td> <td style="text-align: center;">2</td> <td>PS408017K</td> </tr> <tr> <td>Volume 8220 Folio 484</td> <td style="text-align: center;">6</td> <td>LP007980</td> </tr> </tbody> </table> The land includes all improvements and fixtures.	Certificate of Title references	being lots	on plan	Volume 10356 Folio 922	2	PS408017K	Volume 8220 Folio 484	6	LP007980
Certificate of Title references	being lots	on plan								
Volume 10356 Folio 922	2	PS408017K								
Volume 8220 Folio 484	6	LP007980								
Property address	380 Pembertons Road, Vite Vite, Victoria 3325									
Goods sold with the land [GC 2.3(f)]	All fixed floor coverings, electric light fittings, blinds, television antenna, dishwasher, two air conditioners, two electric water pumps, shearing plants, one 50 ton silo, one 40 ton silo, one 30 ton silo and one flat bottom silo. For the avoidance of any doubt, any goods not listed above are not sold with the land including, but not limited to, small gates and movable pens from chicken paddock, 6000 swim spa, airwell water pump feeding from Emu Creek, 10 ton silo, retractable clothes line, fountain in centre of lawn, 22,500 litre poly tank connected to the woolshed and all garden art, statues and furniture.									

SPECIAL CONDITIONS (“SC”)

The following special conditions apply to this Contract.

1. Interpretation

- 1.1. If there is any inconsistency between these special conditions and the general conditions, these special conditions shall prevail.
- 1.2. In this Contract, unless the context otherwise requires:
 - (a) **Excluded Rights** means the rights to:
 - (i) avoid this Contract;
 - (ii) make any requisition or enquiry;
 - (iii) withhold any part of or require any adjustment of the price;
 - (iv) require any part of the price to be retained;
 - (v) require the vendor to do any act, matter or thing;
 - (vi) require the vendor to amend title;
 - (vii) require the vendor to pay any money or bear any costs;
 - (viii) require the vendor to indemnify any person; and
 - (ix) claim any compensation.
 - (b) **section 32 statement** means a statement required to be given by a vendor under section 32 of the *Sale of Land Act 1962* in accordance with Division 2 of Part II of that Act;
 - (c) Headings are for convenience only and do not affect the interpretation of this Contract;
 - (d) Any agreement, representation, covenant and warranty:
 - (i) given by two or more persons binds them jointly and each of them severally; and
 - (ii) in favour of two or more persons is for the benefit of them jointly and each of them severally;
 - (e) Waiver by the vendor:
 - (i) of any breach or default in the performance by the purchaser of the purchaser’s obligations under this Contract; or
 - (ii) of the failure, refusal or neglect by the vendor to exercise any of the vendor’s rights, powers or entitlements; or
 - (iii) to insist upon strict compliance with the performance by the purchaser of any of the purchaser’s obligations under this Contract;

does not constitute a waiver of any of the provisions of this Contract with respect to any subsequent or continuing breach or waiver by the vendor of its rights at any time to require strict compliance with such provisions notwithstanding any rule of law or equity to the contrary;

- (f) A power or right of the vendor may only be waived in writing signed by the vendor and time shall be of the essence of this Contract notwithstanding any act or omission on the part of the vendor; and
- (g) A reference to any statute, rule or regulation includes any amendment, modification, consolidation or reprint of it and of any statute, rule or regulation replacing it.

1.3. Any provision of this Contract in favour or for the benefit of the vendor which is capable of taking effect after Settlement has been effected shall not merge on completion but shall continue in full force and effect including, but not limited to, any indemnity by the purchaser in favour of the vendor.

2. Amendment to General Conditions

The general conditions ("GC") are amended as follows:

GC no.	Amendment
1.1	New sub-condition (aa) is added as follows: “(aa) all registered and unregistered and implied easements, covenants, encumbrances (other than mortgages or caveats), restrictions and restrictive covenants (if any); and”
3	New sub-condition 3.3 is added as follows: “3.3 The purchaser admits that the land as offered for sale and inspected by him is identical with that described in the Certificate(s) of Title specified in the Particulars of Sale.”
7.11	The word “Properties” is replaced with “Property”.
11	Replaced with: “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.

	<p>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.</p> <p>11.4 Payments may be made or tendered: (a) by bank cheque being a cheque drawn by an authorised deposit-taking institution on itself (“bank cheque”); or (b) by electronic funds transfer to a recipient having the appropriate facilities for receipt. However, unless otherwise agreed: (c) 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 (d) 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.</p> <p>11.5 At settlement, the purchaser must pay the fees on up to eight bank cheques. If the vendor requests any additional bank cheques, the vendor must reimburse the purchaser for the fees incurred.</p> <p>11.6 Payment by electronic funds transfer is made when cleared funds are received in the recipient’s bank account.</p> <p>11.7 Before the funds are electronically transferred the intended recipient must be notified in writing and given sufficient particulars to readily identify the relevant transaction.</p> <p>11.8 As soon as the funds have been electronically transferred the intended recipient must be provided with the relevant transaction number or reference details.</p> <p>11.9 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.</p> <p>11.10 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 <i>Banking Act 1959</i> (Cth) is in force.”</p>
12	<p>New sub-condition 12.4 is added as follows:</p> <p>“12.4 Where the purchaser is deemed by section 27(7) of the <i>Sale of Land Act 1962</i> 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.”</p>
13	<p>General condition 13.3 is replaced with the following:</p> <p>“13.3 If the vendor makes a taxable supply under this contract (that is not a margin scheme supply) and: (a) the price includes GST; or (b) the purchaser is obliged to pay an amount for GST in addition to the price (because the price is “plus GST” or under general condition 13.1(a), (b) or (c)),</p>

	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.”
15	<p>New sub-conditions 15.3, 15.4 and 15.5 are added as follows:</p> <p>“15.3 The purchaser must provide copies of all certificates and other information used to calculate the adjustments under general condition 15.1, if requested by the vendor.</p> <p>15.4 Notwithstanding general condition 15.2, where the vendor is assessed for land tax at the trust surcharge rate, then the land tax must be apportioned on the amount of land tax that would be payable on a single ownership basis but calculated at the trust surcharge rate.</p> <p>15.5 If any periodic outgoings in respect of the land are assessed, or re-assessed, after Settlement and which would have been apportioned between the vendor and purchaser at Settlement pursuant to general condition 15.1, the vendor reserves the right to re-adjust such outgoings and the purchaser must pay to the vendor upon demand the purchaser’s share of such outgoings. This general condition will not merge on completion.”</p>
17	<p>Replaced with:</p> <p>“17. Service</p> <p>17.1 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.</p> <p>17.2 A document being a cooling off notice under section 31 of the Sale of Land Act 1962 or a notice under general condition 14.2 (ending the contract if the loan is not approved) 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.</p> <p>17.3 A document is sufficiently served:</p> <p>(a) personally, or</p> <p>(b) by pre-paid post, or</p> <p>(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</p> <p>(d) by email.</p> <p>17.4 Any document properly sent by:</p> <p>(a) express post is taken to have been served on the next business day after posting, unless proved otherwise;</p> <p>(b) priority post is taken to have been served on the fourth business day after posting, unless proved otherwise;</p> <p>(c) regular post is taken to have been served on the sixth business day after posting, unless proved otherwise;</p> <p>(d) email is taken to have been served at the time of receipt within the meaning of section 13A of the <i>Electronic Transactions (Victoria) Act 2000</i>.</p>

	<p>17.5 The expression 'document' includes 'demand' and 'notice', and 'service' includes 'give' in this contract.</p> <p>17.6 In proving service on the purchaser: (a) if delivered by hand, it is necessary only to produce a receipt for the communication signed by or on behalf of the addressee; (b) if sent 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 general condition; and (c) if by email, it is necessary only to produce a copy of the email printed from the sender's computer or other device confirming that the email was sent. This general condition does not limit the ways in which service may be proved."</p>
18	<p>Replaced with:</p> <p>"18. Nominee</p> <p>The purchaser may nominate a substitute or additional transferee, but the named purchaser remains personally liable for the due performance of all the purchaser's obligations under this contract. Any nomination must be made at least 14 days before the settlement date. The purchaser can exercise the right of nomination by giving the vendor a nomination form executed by the nominee and the purchaser."</p>
19	<p>Replaced with:</p> <p>"19. Liability of signatory</p> <p>Any signatory for a company or other incorporated 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 company or incorporated purchaser."</p>
20	<p>Replaced with:</p> <p>"20. Guarantee</p> <p>20.1 If the purchaser or any one of the purchasers is a company or other incorporated body, the person who signs this Contract on behalf of that purchaser: (a) must sign the guarantee annexed to these special conditions ("the guarantee") at the same time as he signs this Contract; and (b) must procure all directors of that purchaser to sign the guarantee.</p> <p>20.2 If the purchaser nominates a substitute or additional purchaser under general condition 18 and that substitute or additional purchaser is a company or other incorporated body, then the purchaser must procure all the directors of that substitute or additional purchaser to sign the guarantee annexed to these special conditions at the same time as the purchaser makes the nomination."</p>
21	<p>Replaced with:</p> <p>"21. Notices</p>

	<p>21.1 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.</p> <p>21.2 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 and the purchaser hereby indemnifies, and will keep indemnified, the vendor in relation thereto. This general condition will not merge on completion.</p> <p>21.3 The purchaser may enter the property to comply with that responsibility where action is required before settlement.”</p>
24.4 to 24.6 (inclusive)	Deleted.
25	<p>New paragraph added at the end of the Condition:</p> <p>“The purchaser acknowledges that the following items constitute ‘a reasonably foreseeable loss’:</p> <p>(i) interest, expenses and penalties payable by the vendor under:</p> <p>(A) any loan secured over the property; and</p> <p>(B) any other loan that would have been repaid using the monies that were not paid by the purchaser on the due date for payment;</p> <p>(ii) 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 \$500.00 plus GST for each notice and otherwise such costs are to be calculated in accordance with the Practitioner Remuneration Order published 1 January, 2020;</p> <p>(iii) any commission or other expenses claimed by the vendor’s estate agent or any other person relating to the sale of the property; and</p> <p>(iv) penalties and any other expenses payable by the vendor due to any delay in completion of the purchase of another property.”</p>
28.4(a)	The words “the deposit up” are replaced with “an amount equal”.
28.4(d)	The words “save for an amount equal to 10% of the price that is forfeited to the vendor as the vendor’s absolute property” are inserted after the word “damages” in the last line.

3. Purchaser’s Acknowledgments

The purchaser acknowledges and agrees that:

- 3.1. there are no conditions, warranties, agreements or representations other than those set out in this Contract;
- 3.2. all collateral or other agreements and all previous negotiations, representations, promises, warranties, undertakings and statements (if any) whether express or implied as to the subject matter hereof, the land and the intentions of either party are recorded in this Contract and otherwise are excluded and may not be relied upon by the purchaser as a basis for any cause of action whatsoever against the vendor, its servants or agents;

- 3.3. the price is for the sale of the land and improvements to the purchaser in their existing physical condition as inspected by the purchaser prior to signing this Contract;
- 3.4. the property is sold subject to any restriction as to user under any order, plan, scheme, regulation or by-law pursuant to any legislation and no such restriction (if any) constitutes a defect in the vendor's Title;
- 3.5. works that may require permits, approvals or inspections may have been carried out on the land without obtaining such permits, approvals or inspections and action may be taken by the Council or any other competent authority in the future in respect of any such works resulting in a cost or liability to the purchaser and the purchaser hereby indemnifies, and will keep indemnified, the vendor from and in respect of any claim cost suit action or demand whatsoever that is brought by any competent authority after the day of sale in respect of such works;
- 3.6. there may be latent or patent defects or deficiencies in the land, or the improvements on the land, whether as to their suitability for occupation or otherwise;
- 3.7. there may be contamination on the land or on adjoining land; and
- 3.8. there may be goods, rubbish or debris on the land at or after Settlement;

and the purchaser is not entitled to exercise any Excluded Rights in respect of any of the abovementioned matters.

4. Purchaser Buying Unequal Interests

- 4.1. If there is more than one purchaser, the purchasers must ensure that this Contract correctly records at the Day of Sale the proportion in which they are purchasing the land.
- 4.2. If the transferees specified in the Transfer of Land differ from those recorded in this Contract it is the responsibility of the purchasers to pay any additional duty that may be assessed as a result of the difference.
- 4.3. The purchasers and any guarantor of the obligations of the purchasers hereunder (as is testified by their execution of the guarantee annexed to these special conditions) hereby indemnify, and will keep indemnified, the vendor, the vendor's estate agent and the vendor's legal practitioner or conveyancer against any claim or demand that may be made against all or any of them for any additional duty payable as a result of the proportions in the Transfer of Land differing from those in this Contract. This special condition will not merge on completion.

5. Owners Corporation

If the land is subject to an Owners Corporation, the purchaser acknowledges and agrees that the purchaser buys subject to:

- 5.1. the provisions of the *Owners Corporation Act 2006*;
- 5.2. the Model Rules of an Owners Corporation, and any applicable Special Rules of the Owners Corporation, copies of which are attached to the section 32 statement;
- 5.3. all easements, encumbrances, rights and restrictions whether express or implied by the *Subdivision Act 1988*;
- 5.4. the lot entitlement and lot liability set out on the plan of subdivision;

- 5.5. the Statement of Advice and Information for Prospective Purchasers and Lot Owners a copy of which is attached to the section 32 statement;
- 5.6. the Owners Corporation Certificate under Section 151(4)(b) of the *Owners Corporation Act 2006* attached to the section 32 statement;
- 5.7. the fact that the Owners Corporation may be non-functioning as at the day of sale; and
- 5.8. that fact that there may be latent or patent defects (including contamination) in or on the common property which may or may not require rectification works to be borne by the Owners Corporation and ultimately its members,

and the purchaser is not entitled to exercise any Excluded Rights in respect of any of the abovementioned matters.

6. Growth Areas Infrastructure Contribution

If there is a Growth Areas Infrastructure Contribution payable in relation to the property hereby sold, the purchaser is responsible to pay the same and hereby indemnifies the vendor for the amount payable. This special condition will not merge on completion.

7. Foreign Investment Review Board Approval

- 7.1. In the event that the purchaser is a foreign resident or a non-resident of Australia or is otherwise required to obtain approval to enter into this Contract the purchaser hereby warrants that it has where required by law obtained the approval of the Treasurer of the Commonwealth and of the Reserve Bank of Australia in relation to any funding or in the case of the Treasurer has received a statement of non-objection by the Treasurer or submits herewith evidence that the Treasurer has ceased to be empowered to make an order under Part 11 of the *Foreign Acquisitions and Takeovers Act 1975* (Cth).
- 7.2. The purchaser further acknowledges that in the event that this warranty in special condition 7.1 is untrue in any respect the purchaser hereby indemnifies, and will keep indemnified, the vendor against any loss which the vendor suffers as a result of the vendor having relied on this warranty when entering into this Contract including any consequential loss. This special condition will not merge on completion.

8. Electronic Conveyancing

- 8.1. 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 special condition 8 has priority over any other provision to the extent of any inconsistency.
- 8.2. A party must immediately give written notice if that party reasonably believes that settlement and lodgement can no longer be conducted electronically. This special condition 8 ceases to apply from when such a notice is given.
- 8.3. 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*.
- 8.4. The vendor must open the Electronic Workspace (“workspace”) as soon as reasonably practicable. The inclusion of a specific date for settlement in a workspace is not of itself a promise to settle on that date. The workspace is an electronic address for the service of notices and for written communications for the purposes of any electronic transactions legislation.
- 8.5. The vendor must nominate a time of the day for locking of the workspace at least seven days before the due date for settlement.
- 8.6. Settlement occurs when the workspace records that:
- (a) the exchange of funds or value between financial institutions in accordance with the instructions of the parties has occurred; 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.
- 8.7. 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 special condition 8.6 has not occurred by 4:00 pm, or 6:00 pm if the nominated time for settlement is after 4:00 pm.
- 8.8. 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.
- 8.9. 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 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 Network Operator of settlement.
- 8.10. The vendor must, at least seven days before the due date for settlement, provide the original of any document required to be prepared by the vendor in accordance with general condition 6.

9. Foreign Resident Capital Gains Withholding

- 9.1. In this special condition 9:
- (a) **Legislation** means Schedule 1 to the *Taxation Administration Act 1953* (Cth); and
 - (b) Words defined or used in Subdivision 14-D of the Legislation have the same meaning in this special condition unless the context requires otherwise.
- 9.2. Every vendor under this contract is a foreign resident for the purposes of this special condition unless the vendor gives the purchaser a clearance certificate issued by the Commissioner under section 14-220(1) of the Legislation. The specified period in the clearance certificate must include the actual date of settlement.
- 9.3. This special condition 9 only applies if the purchaser is required to pay the Commissioner an amount in accordance with section 14-200(3) or section 14-235 of the Legislation (“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.
- 9.4. 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.
- 9.5. 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 special condition; and
 - (b) ensure that the representative does so.
- 9.6. 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 special 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 special 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.
- 9.7. The representative is taken to have complied with the requirements of special condition 9.6 if:
- (a) the settlement is conducted through the electronic conveyancing system operated by Property Exchange Australia Ltd or any other electronic conveyancing system agreed by the parties; and

- (b) the amount is included in the settlement statement requiring payment to the Commissioner in respect of this transaction.
- 9.8. Any clearance certificate or document evidencing variation of the amount in accordance with section 14-235(2) of the Legislation must be given to the purchaser at least five business days before the due date for settlement.
- 9.9. 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 the Legislation. The information must be provided within five business days of request by the purchaser. The vendor warrants that the information the vendor provides is true and correct.
- 9.10. The purchaser is responsible for any penalties or interest payable to the Commissioner on account of late payment of the amount.
- 9.11. This special condition 9 will not merge on completion.

10. GST Withholding

- 10.1. In this special condition 10:
 - (a) **Legislation** means Schedule 1 to the *Taxation Administration Act 1953* (Cth); and
 - (b) Words and expressions defined or used in Subdivision 14-E of the Legislation or in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this special condition unless the context requires otherwise. Words and expressions first used in this special condition and shown in italics and marked with an asterisk are defined or described in at least one of those Acts.
- 10.2. This special condition 10 applies if the purchaser is required to pay the Commissioner an **amount* in accordance with section 14-250 of the Legislation 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, and also if the sale attracts the operation of section 14-255 of the Legislation. Nothing in this special condition 10 is to be taken as relieving the vendor from compliance with section 14-255 of the Legislation.
- 10.3. 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 the Legislation. The vendor must pay to the purchaser at settlement such part of the amount as is represented by non-monetary consideration.
- 10.4. 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 special condition 10; and
 - (b) ensure that the representative does so.
- 10.5. 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 special condition 10 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 special condition 10;

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.

10.6. The representative is taken to have complied with the requirements of special condition 10.5 if:

- (a) settlement is conducted through the electronic conveyancing system operated by Property Exchange Australia Ltd or any other electronic conveyancing system agreed by the parties; and
- (b) the amount is included in the settlement statement requiring payment to the Commissioner in respect of this transaction.

10.7. The purchaser may at settlement give the vendor a bank cheque for the amount in accordance with section 16-30 (3) of the Legislation, but only if:

- (a) so agreed by the vendor in writing; and
- (b) the settlement is not conducted through an electronic settlement system described in special condition 10.6.

However, if the purchaser gives the bank cheque in accordance with this special condition 10.7, 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.

10.8. The vendor must provide the purchaser with a GST withholding notice in accordance with section 14-255 of the Legislation at least 14 days before the due date for settlement.

10.9. 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 obligations to pay the amount, in accordance with section 14-250 of the Legislation.

The information must be provided within five business days of a written request. The party providing the information warrants that it is true and correct.

10.10. The vendor warrants that:

- (a) at settlement, the property is not new residential premises or potential residential land and in either case falling within the parameters of section 14-250 of the Legislation if the vendor gives the purchaser a written notice under section 14-255 of the Legislation to the effect that the purchaser will not be required to make a payment under section 14-250 of the Legislation in respect of the supply, or
- (b) fails to give a written notice as required by and within the time specified in section 14-255 of the Legislation; and the amount described in a written notice given by the vendor to the purchaser under section 14-255 of the Legislation is the correct amount required to be paid under section 14-250 of the Legislation.

10.11. 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 the vendor's failure, including breach of a warranty in special condition 10.10; or
- (b) the purchaser's 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 the Legislation.

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.

10.12. This special condition 10 will not merge on completion.

11. Sale by Auction

11.1. The property is offered for sale by auction subject to the Vendors' reserve price.

11.2. The auction will be conducted in accordance with the applicable Rules set out in the *Sale of Land (Public Auctions) Regulations 2014* or any rules prescribed by regulation which modify or replace those Rules.

12. Agricultural Licence

12.1. The vendor has the non-exclusive right to use two strips of Crown land adjacent to the land sold hereunder pursuant to Agricultural Licence number 2004005 ("the licence") issued under the *Land Act 1958*.

12.2. The vendor and the purchaser agree that the licence will be transferred to the purchaser after settlement.

12.3. The transfer of licence document must be prepared by the purchaser, signed by the purchaser and delivered to the vendor at least 14 days before settlement.

12.4. The transfer of licence document countersigned by the vendor will be given by the vendor to the purchaser at settlement.

12.5. The licence fee paid by the vendor covering the period from 1 October, 1998 to 1 October, 2097 will be adjusted between the vendor and the purchaser at settlement in accordance with general condition 15 of this contract.

- 12.6. The purchaser must submit the transfer of licence document for registration immediately following receipt of same and must pay any fees charged for registration of the transfer.
- 12.7. The purchaser hereby indemnifies, and will keep indemnified, the vendor in respect of any claim, suit or action relating to, or touching upon, the licence which is made or brought against the vendor after settlement. This indemnity will not merge on completion and is enforceable by the vendor against the purchaser after settlement.
- 12.8. The purchaser acknowledges that the transfer of the licence is not an automatic process and is subject to the approval of the Department of Environment, Land, Water & Planning. The purchaser will not make any claim against the vendor in the event that the transfer of the licence is not approved.

DEED OF GUARANTEE

To: The Vendor(s) named and described in the Contract of Sale to which this Deed is annexed.

1. **IN CONSIDERATION** of you at the request of the guarantor named and described in the Schedule hereto ("the Guarantor") entering into the Contract of Sale to which this guarantee is annexed ("the Contract") to sell the land therein described to the party or parties therein named and described as the purchaser ("the Purchaser") on condition that we should enter into and execute this Deed of Guarantee, **WE HEREBY GUARANTEE**:
 - (a) the due and punctual payment to you or as you direct by the Purchaser of all money payable or to become payable to you under the Contract; and
 - (b) the due and punctual performance and observance by the Purchaser of all the terms and conditions contained in the Contract and on the part of the Purchaser to be performed and observed.

2. We **HEREBY DECLARE AND AGREE** that unless inconsistent with the context or the subject matter of this Deed:
 - (a) this guarantee shall be a continuing guarantee binding upon the Guarantor;
 - (b) the Guarantor's liability hereunder shall not be discharged, diminished or impaired by reason of the death or bankruptcy of the Guarantor or by any time or indulgence granted by you to the Purchaser; and
 - (c) you may without affecting the liability of the Guarantor grant time or other indulgence or concession to or compound or compromise with the Purchaser.

3. We further **HEREBY DECLARE AND AGREE** that unless inconsistent with the context or the subject matter of this Deed:
 - (a) the expression "the Guarantor" shall be deemed to mean and include the Guarantor personally and his heirs, executors, administrators and legal personal representatives;
 - (b) where the Guarantor is comprised of two or more persons, every reference to the Guarantor shall be deemed to mean and include them jointly and each of them severally;
 - (c) the singular includes the plural and vice versa;
 - (d) any one gender includes the other gender; and
 - (e) words importing persons include companies and vice versa.

SCHEDULE

Guarantor:
of
and
of

Executed by the Guarantor as a Deed Poll on the day of 2020.

Signed Sealed and Delivered by the said)
.....)
in the presence of:)

.....
Signature of Witness

.....
Full name of Witness

Signed Sealed and Delivered by the said)
.....)
in the presence of:)

.....
Signature of Witness

.....
Full name of Witness

FORM 2

Estate Agents Act 1980

Regulation 5(a)

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 section 32 statement other than mortgages or caveats; and
 - (b) any reservations in the crown grant; and
 - (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.
- 1.3 In this general condition 'section 32 statement' means a statement required to be given by a vendor under section 32 of the **Sale of Land Act 1962** in accordance with Division 2 of Part II of that Act.

2. Vendor warranties

- 2.1 The vendor warrants that 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 section 32 statement required to be given by the vendor under section 32 of the **Sale of Land Act 1962** in accordance with Division 2 of Part II of that Act.
- 2.6 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**.
- 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 3 days before settlement.

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 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 7.4, 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.
- 7.3 If the purchaser is given the details of the vendor's date of birth under condition 7.2, the purchaser must—
- (a) only use the vendor's date of birth for the purposes specified in condition 7.2; and
 - (b) keep the date of birth of the vendor secure and confidential.
- 7.4 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.
- 7.5 Subject to general condition 7.6, 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.
- 7.6 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 7.5 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.
- 7.7 A release for the purposes of general condition 7.4(a) must be in writing.
- 7.8 A release for the purposes of general condition 7.4(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.
- 7.9 If the purchaser receives a release under general condition 7.4(a) the purchaser must provide the vendor with a copy of the release at or as soon as practicable after settlement.
- 7.10 In addition to ensuring that a release is received under general condition 7.4(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.

- 7.11 The purchaser must advise the vendor of any security interest that is registered on or before the day of sale on the Personal Properties Securities Register, which the purchaser reasonably requires to be released, at least 21 days before the due date for settlement.
- 7.12 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 7.11.
- 7.13 If settlement is delayed under general condition 7.12 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.
- 7.14 The vendor is not required to ensure that the purchaser receives a release in respect of the land. This general condition 7.14 applies despite general condition 7.1.
- 7.15 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.

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'.

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 a.m. 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 section 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 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.
- 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 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
 - (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 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.
- 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—
- (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 within the meaning of section 13A of the **Electronic Transactions (Victoria) Act 2000**.
- 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 for service of documents, including any manner authorised for service on or by a legal practitioner; or
 - (d) by email.

17.3 This 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 transferee, 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 a 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 until settlement.
- 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.

DEFAULT

26. 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 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 given 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 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.

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