



**CONTRACT OF SALE**  
**[FULL ADDRESS]**

**Vendor:** [VENDOR]

**Purchaser(s):** [PURCHASER]

# Contract of Sale of Land

Property

[FULL ADDRESS]



# Contract of Sale of Land

## IMPORTANT NOTICE TO PURCHASERS – COOLING-OFF

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

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

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

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

### EXCEPTIONS:

- the 3-day cooling-off period does not apply if:
- you bought the property at a publicly advertised auction or on the day on which the auction was held; or
  - you bought the land within 3 clear business days before publicly advertised auction was to be held; or
    - (a) you bought the land within 3 clear business days after a publicly advertised auction was held; or
    - (b) the property is used primarily for industrial or commercial purposes; or
    - (c) the property is more than 20 hectares in size and is used primarily for farming; or
    - (d) you and the vendor previously signed a contract for the sale of the same land in

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

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

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

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

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

## Approval

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

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

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# Contract of Sale of Land

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

The terms of this contract are contained in the –

- particulars of sale; and
- special conditions, if any; and
- general conditions (which are in standard form: see general condition

6.1) in that order of priority.

## SIGNING OF THIS CONTRACT

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

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

The authority of a person signing –

- under power of attorney; or
  - as director of a corporation; or
  - as agent authorised in writing by one of the parties
- must be noted beneath the signature.

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

## SIGNED BY THE PURCHASER:

..... [NAME OF PURCHASER(s)] ..... On

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

State nature of authority, if applicable: \_\_\_\_\_

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

## SIGNED BY THE VENDOR:

On

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

[NAME OF VENDOR(s)]

State nature of authority, if applicable: \_\_\_\_\_

## SIGNED BY THE VENDOR:

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

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# Particulars of Sale

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## Vendor's estate agent

Name \_\_\_\_\_

Address \_\_\_\_\_

Email \_\_\_\_\_ Ref: \_\_\_\_\_

Tel \_\_\_\_\_ Mob: \_\_\_\_\_ Fax: \_\_\_\_\_

**Vendor** \_\_\_\_\_

Address \_\_\_\_\_

ABN/ACN \_\_\_\_\_ Email: \_\_\_\_\_

## Vendor's legal practitioner or conveyancer

Name Avant Law Pty Ltd

Address Level 36, Melbourne Central Tower, 360 Elizabeth Street, Melbourne VIC 3000 Ref: [ALC REF]

Email [Avant Contact Email]@avantlaw.com.au

Tel 1800 867 113 Mob 0447 054 Fax \_\_\_\_\_

## Purchaser's estate agent

Name \_\_\_\_\_

Address \_\_\_\_\_

Email \_\_\_\_\_ Ref \_\_\_\_\_

Tel \_\_\_\_\_ Mob \_\_\_\_\_ Fax \_\_\_\_\_

## Purchaser

Name \_\_\_\_\_

Address \_\_\_\_\_

ABN/ACN \_\_\_\_\_ Email \_\_\_\_\_

## Purchaser's legal practitioner or conveyancer

Name \_\_\_\_\_

Address \_\_\_\_\_

Email \_\_\_\_\_ Ref \_\_\_\_\_

Tel \_\_\_\_\_ Mob \_\_\_\_\_ Fax \_\_\_\_\_

## Land (general conditions 7 and 13)

The land is described in the table below –

Certificate of Title reference	being lot	on plan
Volume	Folio	
Volume	Folio	
Volume	Folio	

See General Annexure Item 1

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

The land includes all improvements and fixtures.

**Property address**

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The address of the land is:

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

\$ \_\_\_\_\_ by \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_ (of \$ \_\_\_\_\_ has been paid)  
which

Deposit payable at settlement

\$ \_\_\_\_\_

**Balance**

\$ \_\_\_\_\_

**Deposit bond**

General condition 15 applies only if the box is checked

**Bank guarantee**

General condition 16 applies only if the box is checked

**GST (general condition 19)**

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

GST (if any) must be paid in addition to the price if the box is checked

This sale is a sale of land on which a 'farming business' is carried on which the parties consider meets the requirements of section 38-480 of the GST Act if the box is checked

This sale is a sale of a 'going concern' if the box is checked

The margin scheme will be used to calculate GST if the box is checked

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

is due on \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

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

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

**Lease (general condition 5.1)**

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

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

a lease for a term ending on \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_ with \_\_\_\_\_ options to renew, each of \_\_\_\_\_ years

OR

a residential tenancy for a fixed term ending on \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

OR

a periodic tenancy determinable by notice

**Terms contract (general condition 30)**

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

**Loan (general condition 20)**

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

Lender: \_\_\_\_\_  
(or another lender chosen by the purchaser)

Loan amount: no more than \$\_\_\_\_\_

Approval date: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

**Building report**

General condition 21 applies only if the box is checked

**Pest report**

General condition 22 applies only if the box is checked

## SPECIAL CONDITIONS

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### PRESENT CONDITION

- 1.1 General Conditions 4, 9, 12, 31.3, 31.4, 31.5 and 31.6 are deleted.
- 1.2 The Property is sold in its present state of repair and condition, and the Purchaser acknowledges that it relies on its own inspection of the Property.
- 1.3 The Purchaser cannot require the Vendor to effect any work or repairs to the Property prior to or after completion.
- 1.4 The Purchaser will not make any objection, requisition or claim for compensation and is not permitted to delay completion in respect of any matter arising under this clause.

### PURCHASER ACKNOWLEDGEMENT

- 2.1 Subject to any warranties set out in this Contract, the Purchaser acknowledges and agrees that:
  - 2.1.1 the Property is sold in an "**as is**" and "**where is**" basis and the Vendor gives no warranty with respect to the condition of the Property or that the Property is suitable for a particular purpose;
  - 2.1.2 the Purchaser has inspected the Property and completed its due diligence and determined that they are suitable for its purposes; and
  - 2.1.3 the Vendors have provided all information that the Purchaser has requested in relation to the Property and the Purchaser has undertaken its own due diligence in respect of the assessment of that information.
  - 2.1.4 if there is more than one purchaser, it is the Purchasers' responsibility to ensure the contract correctly records at the date of sale the proportions in which they are buying the Property ("the proportions"). If the proportions recorded in the transfer differ from those recorded in the contract, it is the Purchasers' responsibility to pay any additional stamp duty which may be assessed as a result of title variation. The Purchasers fully indemnify the Vendor, the Vendor's agent and the Vendor's legal practitioner against any claims or demands which may be made against any or all of them in relation to any additional duty payable as a result of the proportions in the transfer differing from those in the contract.  
This Special Condition will not merge on completion.

### NOTICE TO COMPLETE

- 3.1 If the Purchaser is unable or unwilling to settle by the completion date, the Vendor shall be entitled at any time after the completion date to serve a Notice to Complete making the time for completion of the essence. It is agreed by the parties to the Agreement that the period of fourteen (14) days will be sufficient time for the Purchaser served with such a Notice to comply with the Notice.

### DEFAULT EXPENSES

- 4.1 The Purchaser shall pay any cost and expense incurred by the Vendor by reason of any default of the Purchaser in the observance or performance of any of the terms and conditions of this Contract.
- 4.2 Notwithstanding anything else hereinbefore contained, the Purchaser shall pay the Vendor's Solicitor (and Mortgagee where applicable) the proper costs occasioned by the failure to settle at the appointed time where such failure is caused by the Purchaser or his/her solicitor or Mortgagee and where a settlement has to be rescheduled and takes place on a different date than that appointed. These costs shall be payable even though the Purchaser shall not be deemed to be in default under the Contract.
- 4.3 In General Condition 32 the expression "any foreseeable loss" (without limiting the generality of those words) includes:
  - (a) all legal costs and disbursements on a solicitor and own client basis;
  - (b) all bank or finance company fees or charges; and

(c) all additional interest payable to lenders, incurred by the Vendor as a result of the Purchaser failing to pay the residue of the purchase price (except where the failure has arisen because of the Vendor being in breach of this Contract) on the date fixed by this Contract for its payment.

## **ENTIRE AGREEMENT**

- 5.1 This Contract constituted the entire agreement and understanding of the parties on everything connected with the subject matter of this document and cancels or supersedes all prior agreements, understanding and negotiations between the parties in connection with the subject matter.
- 5.2 No oral explanation or information provided by any party to another party will affect the meaning or interpretation of this documents or constitute any collateral agreement, warranty or understanding between any of the parties.

## **ADDITIONAL FEES**

- 6.1 If the Purchaser requests an extension or variation to the original settlement date agreed between the parties, the Purchaser shall pay to the Vendor's legal representative the sum of \$330.00 at settlement for each approved request.
- 6.2 The Purchaser acknowledges that the Vendor will incur additional legal costs arising in the event that the Purchaser submits a nomination to the Vendor as the Vendor's legal representative will be required to re-prepare records, the State Revenue Office's stamp duty declaration and the notices of disposition. The Purchaser (or its nominee) agrees to pay the Vendor's legal costs of \$220.00 in relation to a nomination, payable at settlement.

## **AUCTION CONDITIONS**

- 7.1 If the Property is sold by public auction, the provisions of this Special Condition shall apply:
  - (a) Subject to the reserve price, the highest bidder whose bid is accepted by the auctioneer will be the Purchaser;
  - (b) The auctioneer may refuse any bid, but no bid may be retracted;
  - (c) The auctioneer may withdraw the Property from sale at any time;
  - (d) If any dispute arises concerning any bid the auctioneer must at his option either decide whose was the last bid or submit the Property again at the last undisputed bid;
  - (e) The auctioneer may determine the maximum or minimum amount by which the bidding may be advanced;
  - (f) The auctioneer may refer the bid to the Vendor at any time before the conclusion of the auction;
  - (g) The Vendor reserves the right to:
    - i. Bid personally or by an agent provided that such bid is fully disclosed as being a 'Vendor's bid'; and
    - ii. Withdraw the Property at any time before it is actually sold without disclosing the reserve price;
  - (h) The successful bidder must immediately sign the Contract of Sale on fall of the hammer. If the successful bidder fails to do so within 15 minutes after fall of the hammer, the Vendor may, without prejudice to the Vendor's rights against the successful bidder, re-offer the Property for sale to any other person; and
  - (i) If a reserve price has been set for the Property, and the Property is passed in below that reserve price, the Vendor will negotiate with the highest bidder.

## **REPRESENTATION**

- 8.1 The Purchaser acknowledges that he/she/it:
  - (a) In entering into this Contract, has relied entirely upon their own prior searches, judgment, enquiries and inspection of the subject property; and
  - (b) No representation, oral or written, or conduct or any arrangement, promise or warranty or undertaking other than as expressly contained in this Contract, has in any material way induced the Purchaser to enter this Contract.
- 8.2 The Purchaser acknowledges that June Alice Martin is a deceased and that JAN ELIZABETH KENNEDY and CATHERINE ANNE MARTIN and SUSAN KAYE MARTIN is the Executor of the deceased's will. All negotiations in respect to the deceased's former interest in the property are to be communicated directly to the Executor or their solicitor, or agent and the executor does not

possess any right to make any representation or to enter into any agreement in respect to the property in his own right. Only communications and/or agreement made directly by or with the Executor or their solicitor or agent regarding the deceased's former interest in the property is valid.

- 8.3 The property is purchased on an "as is, where is" basis, and is inclusive of any faults, defects or limitations, if any, latent and patent.
- 8.4 The Executor enters into this Contract in their capacity as Executor of the property of JUNE ALICE MARTIN (a deceased). A liability arising under or in connection with this Contract can be enforced against the Executor only to the extent to which it can be satisfied out of the property of June Alice Martin, a deceased. This limitation of the liability of the Executor applies despite any other provision of this Contract and extends to all liability and obligations of the Executor in anyway connected with any representation, warranty, conduct, omission, agreement or transaction related to this Contract.

## PLANNING SCHEMES

- 9.1 The Purchaser buys subject to any restrictions imposed by and to the provisions of the Melbourne Metropolitan Planning Scheme and any other Town Planning Acts or Schemes.

## FIRB APPROVAL

- 10.1 The Purchaser warrants that the provisions of the Foreign Acquisitions and Takeovers Act 1975 (CTH) do not require the Purchaser to obtain consent to enter this contract.
- 10.2 If there is a breach of the warranty contained in Special Condition 10.1 (whether intentional or not) the Purchaser must indemnify and compensate the Vendor for any loss, damage or cost which the Vendor incurs as result of the breach.
- 10.3 This warranty and indemnity do not merge on completion of this contract.

## ADDITIONAL CLAUSE

- 11.1 General Condition 23.4 is added "The Purchaser must provide to the Vendor's legal representative, the adjustments together with the information required by condition 23.3 via email at least seven (7) days prior to settlement."

## COMPANY

- 12.1 If the Purchaser is a Company, then the Purchaser agrees to procure the Guarantee of its Directors to the performance of the Purchaser's obligations under this Contract in the form attached to this Contract. The Purchaser shall be obliged to procure the execution of the Guarantee and deliver the same to the Agent or Solicitor for the Vendor prior to the Day of Sale. Should the Purchaser fail to procure the execution of the Guarantee as aforesaid in the time stipulated then such failure shall be deemed to be a breach of this Contract and shall entitle the Vendor to exercise all its remedies given to it under this Contract or at law.

## SUBJECT TO PROBATE

- 13.1 This sale is subject to and conditional upon the Vendors, Jan Elizabeth Kennedy and Catherine Anne Martin and Susan Kaye Martin being granted probate in the Estate of the late June Alice Martin deceased who died on 05/05/2023.
- 13.2 In the event that Probate is not granted prior to the Settlement Date, then at the sole discretion and election of the Purchaser, the Purchaser may end this Contract of Sale by notice in writing to the Vendor and this Contract of Sale shall be at an end and of no further effect and the deposit shall be refunded to the Purchaser without delay or deduction.
- 13.3 The Vendor shall be required to provide a certified copy of the Grant of Probate sealed by the supreme Court of Victoria to the Purchaser prior to the Settlement Date.

## NO LAND TAX OR WINDFALL GAINS TAX ADJUSTMENT

- 14.1 Where the Sale Price of the Property is less than \$10,000,000.00, General Condition 23 is hereby varied to the extent that there shall be no adjustments of any Land Tax or Windfall Gains Tax for the Property, and the purchaser shall not be required to make any payment or contribution to the Vendor's Land Tax or Windfall Gains Tax at settlement or otherwise.
- 14.2 For the purposes of general condition 23, the expression "periodic outgoings" does not include any amounts to which section 10G of the Sale of Land Act 1962 applies.
- 14.3 General condition 28 does not apply to any amounts to which section 10G or 10H of the Sale of Land Act 1962 applies.

**NOMINATION**

- 15.1 The purchaser may no later than 14 days before the due date for settlement nominate a substitute or additional person to take a transfer of the land.
- 15.2 If the Purchaser wishes to nominate, it must at least 10 days prior to settlement:
- deliver to the Vendor's legal practitioner a copy of a signed nomination form; and
  - shall finalise and sign any amendments to the SRO Duties Digital Form reflecting the nomination.
- 15.3 If the Purchaser nominates a substitute or additional Purchaser, the Purchaser and any Guarantor(s):
- remain personally liable for the performance of all of the Purchaser's obligations under this Contract; and
  - indemnify the Vendor against all claims, demands, interest of penalties arising from the nomination.
- 15.4 If the Purchaser nominates a substitute or additional Purchaser, and that Purchaser (nominee) is a company which is not listed on a recognised Australian Stock Exchange, then each director of the substitute or additional Purchaser (nominee) must execute the guarantee and indemnity in Annexure A at the time of the nomination and deliver it to the Vendor together with the nomination documents provided under this Special Condition.
- 15.5 If the Purchaser nominates a substitute or additional Purchaser, the parties agree that the deposit paid by the Purchaser is not refundable by the Vendor and must be adjusted between the Purchaser and the substitute or additional Purchaser.

**SUBJECT TO TENANCY**

- 15.1 The Purchaser acknowledges that the Property is currently subject to a periodic tenancy which may be terminated by the Vendor or the Tenant (**Parties**) prior to the Settlement Date listed herein (**Settlement**).
- 15.2 Should the Parties serve a notice to vacate or elect to end the tenancy, then the Purchaser will accept vacant possession of the Property, provided that the vacate date or the date that the Tenant leaves the property in accordance with any agreement between the Parties is on or before Settlement. Otherwise, the Purchaser will accept that the tenancy will end post settlement in accordance with any notice or agreement made between the Parties, provided that the agreement or notice is issued on or before settlement.
- 15.3 The Vendor warrants that it will notify the Purchaser within 5 business days of any agreement being made, or alternatively, within 5 business days of any notice to vacate being issued or received by the Vendor, advising the date that the tenancy is to come to an end and the date the Tenant is required to vacate the property.
- 15.4 The Purchaser agrees to hold harmless the Vendor and not raise any claim for compensation or delay settlement as a result of this special condition.

**SIGNED BY THE PURCHASER:****SIGNED BY THE VENDOR:**\_\_\_\_\_  
on \_\_\_\_\_\_\_\_\_\_  
on \_\_\_\_\_

## GENERAL CONDITIONS

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### **Contract Signing**

#### **1 ELECTRONIC SIGNATURE**

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

#### **2 LIABILITY OF SIGNATORY**

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

#### **3 GUARANTEE**

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

#### **4 NOMINEE**

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

#### **Title**

#### **5 ENCUMBRANCES**

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

#### **6 VENDOR WARRANTIES**

- 6.1 The vendor warrants that these general conditions 1 to 35 are identical to the general conditions 1 to 35 in the form of contract of sale of land published by the Law Institute of Victoria Limited and the Real Estate Institute of Victoria Ltd in the month and year set out the foot of this page.
- 6.2 The warranties in general conditions 6.3 and 6.4 replace the purchaser's right to make requisitions and inquiries.

- 6.3 The vendor warrants that the vendor:
- (a) has, or by the due date for settlement will have, the right to sell the land; and
  - (b) is under no legal disability; and
  - (c) is in possession of the land, either personally or through a tenant; and
  - (d) has not previously sold or granted any option to purchase, agreed to a lease or granted a pre-emptive right which is current over the land and which gives another party rights which have priority over the interest of the purchaser; and
  - (e) will at settlement be the holder of an unencumbered estate in fee simple in the land; and
  - (f) will at settlement be the unencumbered owner of any improvements, fixtures, fittings and goods sold with the land.
- 6.4 The vendor further warrants that the vendor has no knowledge of any of the following:
- (a) public rights of way over the land;
  - (b) easements over the land;
  - (c) lease or other possessory agreement affecting the land;
  - (d) notice or order directly and currently affecting the land which will not be dealt with at settlement, other than the usual rate notices and any land tax notices;
  - (e) legal proceedings which would render the sale of the land void or voidable or capable of being set aside.
- 6.5 The warranties in general conditions 6.3 and 6.4 are subject to any contrary provisions in this contract and disclosures in the section 32 statement.
- 6.6 If sections 137B and 137C of the *Building Act 1993* apply to this contract, the vendor warrants that:
- (a) all domestic building work carried out in relation to the construction by or on behalf of the vendor of the home was carried out in a proper and workmanlike manner; and
  - (b) all materials used in that domestic building work were good and suitable for the purpose for which they were used and that, unless otherwise stated in the contract, those materials were new; and
  - (c) domestic building work was carried out in accordance with all laws and legal requirements, including, without limiting the generality of this warranty, the *Building Act 1993* and regulations made under the *Building Act 1993*.
- 6.7 Words and phrases used in general condition 6.6 which are defined in the *Building Act 1993* have the same meaning in general condition 6.6.

## 7 IDENTITY OF THE LAND

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

## 8 SERVICES

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

## 9 CONSENTS

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

## 10 TRANSFER & DUTY

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

## 11 RELEASE OF SECURITY INTEREST

- 11.1 This general condition applies if any part of the property is subject to a security interest to which the *Personal Property Securities Act 2009 (Cth)* applies.
- 11.2 For the purposes of enabling the purchaser to search the Personal Property Securities Register for any security interests affecting any personal property for which the purchaser may be entitled to a release, statement, approval or correction in accordance with general condition 11.4, the purchaser may request the vendor to provide the vendor's date of birth to the purchaser. The vendor must comply with a request made by the purchaser under this condition if the purchaser makes the request at least 21 days before the due date for settlement.
- 11.3 If the purchaser is given the details of the vendor's date of birth under general condition 11.2, the purchaser must
  - (a) only use the vendor's date of birth for the purposes specified in general condition 11.2; and
  - (b) keep the date of birth of the vendor secure and confidential.
- 11.4 The vendor must ensure that at or before settlement, the purchaser receives—
  - (a) a release from the secured party releasing the property from the security interest; or
  - (b) a statement in writing in accordance with section 275(1)(b) of the *Personal Property Securities Act 2009 (Cth)* setting out that the amount or obligation that is secured is nil at settlement; or
  - (c) a written approval or correction in accordance with section 275(1)(c) of the *Personal Property Securities Act 2009 (Cth)* indicating that, on settlement, the personal property included in the contract is not or will not be property in which the security interest is granted.
- 11.5 Subject to general condition 11.6, the vendor is not obliged to ensure that the purchaser receives a release, statement, approval or correction in respect of personal property—
  - (a) that—
    - (i) the purchaser intends to use predominantly for personal, domestic or household purposes; and
    - (ii) has a market value of not more than \$5000 or, if a greater amount has been prescribed for the purposes of section 47(1) of the *Personal Property Securities Act 2009 (Cth)*, not more than that prescribed amount; or
  - (b) that is sold in the ordinary course of the vendor's business of selling personal property of that kind.
- 11.6 The vendor is obliged to ensure that the purchaser receives a release, statement, approval or correction in respect of personal property described in general condition 11.5 if—
  - (a) the personal property is of a kind that may or must be described by serial number in the Personal Property Securities Register; or
  - (b) the purchaser has actual or constructive knowledge that the sale constitutes a breach of the security agreement that provides for the security interest.
- 11.7 A release for the purposes of general condition 11.4(a) must be in writing.
- 11.8 A release for the purposes of general condition 11.4(a) must be effective in releasing the goods from the security interest and be in a form which allows the purchaser to take title to the goods free of that security interest.
- 11.9 If the purchaser receives a release under general condition 11.4(a) the purchaser must provide the vendor with a copy of the release at or as soon as practicable after settlement.
- 11.10 In addition to ensuring that a release is received under general condition 11.4(a), the vendor must ensure that at or before settlement the purchaser receives a written undertaking from a secured party to register a financing change statement to reflect that release if the property being released

includes goods of a kind that are described by serial number in the Personal Property Securities Register.

- 11.11 The purchaser must advise the vendor of any security interest that is registered on or before the day of sale on the Personal Property Securities Register, which the purchaser reasonably requires to be released, at least 21 days before the due date for settlement.
- 11.12 The vendor may delay settlement until 21 days after the purchaser advises the vendor of the security interests that the purchaser reasonably requires to be released if the purchaser does not provide an advice under general condition 11.11.
- 11.13 If settlement is delayed under general condition 11.12 the purchaser must pay the vendor—
  - (a) interest from the due date for settlement until the date on which settlement occurs or 21 days after the vendor receives the advice, whichever is the earlier; and
  - (b) any reasonable costs incurred by the vendor as a result of the delay—as though the purchaser was in default.
- 11.14 The vendor is not required to ensure that the purchaser receives a release in respect of the land. This general condition 11.14 applies despite general condition 11.1.
- 11.15 Words and phrases which are defined in the *Personal Property Securities Act 2009 (Cth)* have the same meaning in general condition 11 unless the context required otherwise.

## **12 BUILDER WARRANTY INSURANCE**

The vendor will provide any current domestic building insurance required pursuant to section 43B of the *Domestic Building Contracts Act 1995 (Vic)*, in the vendor's possession relating to the property, if requested in writing to do so at least 14 days before settlement.

## **13 GENERAL LAW LAND**

- 13.1 The vendor must complete a conversion of title in accordance with section 14 of the *Transfer of Land Act 1958* before settlement if the land is the subject of a provisional folio under section 23 of that Act.
- 13.2 The remaining provisions of this general condition 13 only apply if any part of the land is not under the operation of the *Transfer of Land Act 1958*.
- 13.3 The vendor is taken to the holder of an unencumbered estate in fee simple in the land if there is an unbroken chain of title starting at least 30 years before the day of sale proving on the face of the documents the ownership of the entire legal and equitable estate without the aid of other evidence.
- 13.4 The purchaser is entitled to inspect the vendor's chain of title on request at such place in Victoria as the vendor nominates.
- 13.5 The purchaser is taken to have accepted the vendor's title if:
  - (a) 21 days have elapsed since the day of sale; and
  - (b) the purchaser has not reasonably objected to the title or reasonably required the vendor to remedy a defect in the title.
- 13.6 The contract will be at an end if:
  - (a) the vendor gives the purchaser a notice that the vendor is unable or unwilling to satisfy the purchaser's objection or requirement and that the contract will end if the objection or requirement is not withdrawn within 14 days of the giving of the notice; and
  - (b) the objection or requirement is not withdrawn in that time.
- 13.7 If the contract ends in accordance with general condition 13.6, the deposit must be returned to the purchaser and neither party has a claim against the other in damages.
- 13.8 General condition 17.1 [settlement] should be read as if the reference to 'registered proprietor' is a reference to 'owner' in respect of that part of the land which is not under the operation of the *Transfer of Land Act 1958*.

## **Money**

### **14 DEPOSIT**

- 14.1 The purchaser must pay the deposit:
  - (a) to the vendor's licensed estate agent; or
  - (b) if there is no estate agent, to the vendor's legal practitioner or conveyancer; or

- (c) if the vendor directs, into a special purpose account in an authorised deposit-taking institution in Victoria specified by the vendor in the joint names of the purchaser and the vendor.
- 14.2 If the land sold is a lot on an unregistered plan of subdivision, the deposit:
- (a) must not exceed 10% of the price; and
  - (b) must be paid to the vendor's estate agent, legal practitioner or conveyancer and held by the estate agent, legal practitioner or conveyancer on trust for the purchaser until the registration of the plan of subdivision.
- 14.3 The stakeholder must pay the deposit and any interest to the party entitled when the deposit is released, the contract is settled, or the contract is ended.
- 14.4 The stakeholder may pay the deposit and any interest into court if it is reasonable to do so.
- 14.5 Where the purchaser is deemed by section 27(7) of the *Sale of Land Act 1962* to have given the deposit release authorisation referred to in section 27(1), the purchaser is also deemed to have accepted title in the absence of any prior express objection to title.
- 14.6 Payment of the deposit may be made or tendered:
- (a) in cash up to \$1,000 or 0.2% of the price, whichever is greater; or
  - (b) by cheque drawn on an authorised deposit-taking institution; or
  - (c) by electronic funds transfer to a recipient having the appropriate facilities for receipt. However, unless otherwise agreed:
  - (d) payment may not be made by credit card, debit card or any other financial transfer system that allows for any chargeback or funds reversal other than for fraud or mistaken payment, and
  - (e) any financial transfer or similar fees or deductions from the funds transferred, other than any fees charged by the recipient's authorised deposit-taking institution, must be paid by the remitter.
- 14.7 Payment by electronic funds transfer is made when cleared funds are received in the recipient's bank account.
- 14.8 Before the funds are electronically transferred the intended recipient must be notified in writing and given sufficient particulars to readily identify the relevant transaction.
- 14.9 As soon as the funds have been electronically transferred the intended recipient must be provided with the relevant transaction number or reference details.
- 14.10 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 *Banking Act 1959* (Cth) is in force.

## **15 DEPOSIT BOND**

- 15.1 This general condition only applies if the applicable box in the particulars of sale is checked.
- 15.2 In this general condition "deposit bond" means an irrevocable undertaking to pay on demand an amount equal to the deposit or any unpaid part of the deposit. The issuer and the form of the deposit bond must be satisfactory to the vendor. The deposit bond must have an expiry date at least 45 days after the due date for settlement.
- 15.3 The purchaser may deliver a deposit bond to the vendor's estate agent, legal practitioner or conveyancer within 7 days after the day of sale.
- 15.4 The purchaser may at least 45 days before a current deposit bond expires deliver a replacement deposit bond on the same terms and conditions.
- 15.5 Where a deposit bond is delivered, the purchaser must pay the deposit to the vendor's legal practitioner or conveyancer on the first to occur of:
- (a) settlement;
  - (b) the date that is 45 days before the deposit bond or any replacement deposit bond expires;
  - (c) the date on which this contract ends in accordance with general condition 35.2 [default not remedied] following breach by the purchaser; and
  - (d) the date on which the vendor ends this contract by accepting repudiation of it by the purchaser.
- 15.6 The vendor may claim on the deposit bond without prior notice if the purchaser defaults under this contract or repudiates this contract and the contract is ended. The amount paid by the issuer

- satisfies the obligations of the purchaser under general condition 15.5 to the extent of the payment.
- 15.7 Nothing in this general condition limits the rights of the vendor if the purchaser defaults under this contract or repudiates this contract, except as provided in general condition 15.6.
- 15.8 This general condition is subject to general condition 14.2 [deposit].

## **16 BANK GUARANTEE**

- 16.1 This general condition only applies if the applicable box in the particulars of sale is checked.
- 16.2 In this general condition:
- (a) “bank guarantee” means an unconditional and irrevocable guarantee or undertaking by a bank in a form satisfactory to the vendor to pay on demand any amount under this contract agreed in writing, and
  - (b) “bank” means an authorised deposit-taking institution under the *Banking Act 1959 (Cth)*.
- 16.3 The purchaser may deliver a bank guarantee to the vendor's legal practitioner or conveyancer.
- 16.4 The purchaser must pay the amount secured by the bank guarantee to the vendor's legal practitioner or conveyancer on the first to occur of:
- (a) settlement;
  - (b) the date that is 45 days before the bank guarantee expires;
  - (c) the date on which this contract ends in accordance with general condition 35.2 [default not remedied] following breach by the purchaser; and
  - (d) the date on which the vendor ends this contract by accepting repudiation of it by the purchaser.
- 16.5 The vendor must return the bank guarantee document to the purchaser when the purchaser pays the amount secured by the bank guarantee in accordance with general condition 16.4.
- 16.6 The vendor may claim on the bank guarantee without prior notice if the purchaser defaults under this contract or repudiates this contract and the contract is ended. The amount paid by the bank satisfies the obligations of the purchaser under general condition 16.4 to the extent of the payment.
- 16.7 Nothing in this general condition limits the rights of the vendor if the purchaser defaults under this contract or repudiates this contract except as provided in general condition 16.6.
- 16.8 This general condition is subject to general condition 14.2 [deposit].

## **17 SETTLEMENT**

- 17.1 At settlement:
- (a) the purchaser must pay the balance; and
  - (b) the vendor must:
    - (i) do all things necessary to enable the purchaser to become the registered proprietor of the land; and
    - (ii) give either vacant possession or receipt of rents and profits in accordance with the particulars of sale.
- 17.2 Where settlement is not conducted electronically, settlement must be conducted between the hours of 10.00 am and 4.00 pm unless the parties agree otherwise.
- 17.3 Where settlement is conducted electronically in accordance with the Electronic Conveyancing National Law, settlement must occur during the time available for settlement in the operating time of the settling ELNO.
- 17.3 The purchaser must pay all money other than the deposit in accordance with a written direction of the vendor or the vendor's legal practitioner or conveyancer.

## **18 ELECTRONIC SETTLEMENT**

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

- 18.2 A party must immediately give written notice if that party reasonably believes that settlement and lodgement can no longer be conducted electronically. General condition 18 ceases to apply from when such a notice is given.
- 18.3 Each party must:
- (a) be, or engage a representative who is, a subscriber for the purposes of the *Electronic Conveyancing National Law*,
  - (b) ensure that all other persons for whom that party is responsible and who are associated with this transaction are, or engage, a subscriber for the purposes of the *Electronic Conveyancing National Law*, and
  - (c) conduct the transaction in accordance with the *Electronic Conveyancing National Law*.
- 18.4 The vendor must open the electronic workspace (“workspace”) as soon as reasonably practicable and nominate a date and time for settlement. The inclusion of a specific date and time for settlement in a workspace is not of itself a promise to settle on that date or at that time. The workspace is an electronic address for the service of notices and for written communications for the purposes of any electronic transactions legislation.
- 18.5 This general condition 18.5 applies if there is more than one electronic lodgement network operator in respect of the transaction. In this general condition 18.5 “the transaction” means this sale and purchase and any associated transaction involving any of the same subscribers. To the extent that any interoperability rules governing the relationship between electronic lodgement network operators do not provide otherwise:
- (a) the electronic lodgement network operator to conduct all the financial and lodgement aspects of the transaction after the workspace locks must be one which is willing and able to conduct such aspects of the transaction in accordance with the instructions of all the subscribers in the workspaces of all the electronic lodgement network operators after the workspace locks;
  - (b) if two or more electronic lodgement network operators meet that description, one may be selected by purchaser’s incoming mortgagee having the highest priority but if there is no mortgagee of the purchaser, the vendor must make the selection.
- 18.6 Settlement occurs when the workspace records that:
- (a) there has been an exchange of funds or value between the exchange settlement account or accounts in the Reserve Bank of Australia of the relevant financial institutions or their financial settlement agents in accordance with the instructions of the parties; or
  - (b) if there is no exchange of funds or value, the documents necessary to enable the purchaser to become registered proprietor of the land have been accepted for electronic lodgement.
- 18.7 The parties must do everything reasonably necessary to effect settlement:
- (a) electronically on the next business day, or
  - (b) at the option of either party, otherwise than electronically as soon as possible –  
if, after the locking of the workspace at the nominated settlement time, settlement in accordance with general condition 18.6 has not occurred by 4.00 pm, or 6.00 pm if the nominated time for settlement is after 4.00 pm.
- 18.8 Each party must do everything reasonably necessary to assist the other party to trace and identify the recipient of any missing or mistaken payment and to recover the missing or mistaken payment.
- 18.9 The vendor must before settlement:
- (a) deliver any keys, security devices and codes (“keys”) to the estate agent named in the contract,
  - (b) direct the estate agent to give the keys to the purchaser or the purchaser’s nominee on notification of settlement by the vendor, the vendor’s subscriber or the electronic lodgement network operator;
  - (c) deliver all other physical documents and items (other than the goods sold by the contract) to which the purchaser is entitled at settlement, and any keys if not delivered to the estate agent, to the vendor’s subscriber or, if there is no vendor’s subscriber, confirm in writing to the purchaser that the vendor holds those documents, items and keys at the vendor’s address set out in the contract, and give, or direct its subscriber to give, all those documents and items and any such keys to the purchaser or the purchaser’s nominee on notification by the electronic lodgement network operator of settlement.

**19 GST**

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

**20 LOAN**

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

**21 BUILDING REPORT**

- 21.1 This general condition only applies if the applicable box in the particulars of sale is checked.
- 21.2 The purchaser may end this contract within 14 days from the day of sale if the purchaser:
- (a) obtains a written report from –

- (i) a registered building surveyor;
  - (ii) a registered building inspector;
  - (iii) a registered domestic builder; or
  - (iv) an architect,
- which is –
- (v) prepared in compliance with Australian Standard AS 4349.1-2007;
  - (vi) identifies a current defect in a structure on the land; and
- the author states is a major defect.

- (b) gives the vendor a copy of the report and a written notice ending this contract; and
- (c) is not then in default

- 21.3 All money paid must be immediately refunded to the purchaser if the contract ends in accordance with this general condition.
- 21.4 A notice under this general condition may be served on the vendor's legal practitioner, conveyancer or estate agent even if the estate agent's authority has formally expired at the time of service.
- 21.5 The registered building practitioner may inspect the property at any reasonable time for the purpose of preparing the report.

## **22 PEST REPORT**

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

## **23 ADJUSTMENTS**

- 23.1 All periodic outgoings payable by the vendor, and any rent and other income received in respect of the property must be apportioned between the parties on the settlement date and any adjustments paid and received as appropriate.
- 23.2 The periodic outgoings and rent and other income must be apportioned on the basis that 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
- 23.3 The purchaser must provide copies of all certificates and other information used to calculate the adjustments under general condition 23, if requested by the vendor.
- 23.4 For the purposes of general condition 23, the expression "periodic outgoings" does not include any amounts to which section 10G of the Sale of Land Act 1962 (Vic) applies.

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

- 24.1 Words defined or used in Subdivision 14-D of Schedule 1 to the *Taxation Administration Act 1953 (Cth)* have the same meaning in this general condition unless the context requires otherwise.
- 24.2 Every vendor under this contract is a foreign resident for the purposes of this general condition

unless the vendor gives the purchaser a clearance certificate issued by the Commissioner under section 14-220 (1) of Schedule 1 to the *Taxation Administration Act 1953 (Cth)*. The specified period in the clearance certificate must include the actual date of settlement.

- 24.3 The remaining provisions of this general condition 24 only apply if the purchaser is required to pay the Commissioner an amount in accordance with section 14-200(3) or section 14-235 of Schedule 1 to the *Taxation Administration Act 1953 (Cth)* ("the amount") because one or more of the vendors is a foreign resident, the property has or will have a market value not less than the amount set out in section 14-215 of the legislation just after the transaction, and the transaction is not excluded under section 14-215(1) of the legislation.
- 24.4 The amount is to be deducted from the vendor's entitlement to the contract consideration. The vendor must pay to the purchaser at settlement such part of the amount as is represented by non-monetary consideration.
- 24.5 The purchaser must:
  - (a) engage a legal practitioner or conveyancer ("representative") to conduct all the legal aspects of settlement, including the performance of the purchaser's obligations under the legislation and this general condition; and
  - (b) ensure that the representative does so.
- 24.6 The terms of the representative's engagement are taken to include instructions to have regard to the vendor's interests and instructions that the representative must:
  - (a) pay, or ensure payment of, the amount to the Commissioner in the manner required by the Commissioner and as soon as reasonably and practicably possible, from moneys under the control or direction of the representative in accordance with this general condition if the sale of the property settles;
  - (b) promptly provide the vendor with proof of payment; and
  - (c) otherwise comply, or ensure compliance, with this general condition; despite:
  - (d) any contrary instructions, other than from both the purchaser and the vendor; and
  - (e) any other provision in this contract to the contrary.
- 24.7 The representative is taken to have complied with the requirements of general condition 24.6 if:
  - (a) the settlement is conducted through an electronic lodgement network; and
  - (b) the amount is included in the settlement statement requiring payment to the Commissioner in respect of this transaction.
- 24.8 Any clearance certificate or document evidencing variation of the amount in accordance with section 14-235(2) of Schedule 1 to the *Taxation Administration Act 1953 (Cth)* must be given to the purchaser at least 5 business days before the due date for settlement.
- 24.9 The vendor must provide the purchaser with such information as the purchaser requires to comply with the purchaser's obligation to pay the amount in accordance with section 14-200 of Schedule 1 to the *Taxation Administration Act 1953 (Cth)*. The information must be provided within 5 business days of request by the purchaser. The vendor warrants that the information the vendor provides is true and correct.
- 24.10 The purchaser is responsible for any penalties or interest payable to the Commissioner on account of late payment of the amount.

## 25 GST WITHHOLDING

- 25.1 Words and expressions defined or used in Subdivision 14-E of Schedule 1 to the *Taxation Administration Act 1953 (Cth)* or in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* have the same meaning in this general condition unless the context requires otherwise. Words and expressions first used in this general condition and shown in italics and marked with an asterisk are defined or described in at least one of those Acts.
- 25.2 The purchaser must notify the vendor in writing of the name of the recipient of the \*supply for the purposes of section 14-255 of Schedule 1 to the *Taxation Administration Act 1953 (Cth)* at least 21 days before the due date for settlement unless the recipient is the purchaser named in the contract.
- 25.3 The vendor must at least 14 days before the due date for settlement provide the purchaser and any person nominated by the purchaser under general condition 4 with a GST withholding notice in accordance with section 14-255 of Schedule 1 to the *Taxation Administration Act 1953 (Cth)*, and must provide all information required by the purchaser or any person so nominated to confirm the accuracy of the notice.

- 25.4 The remaining provisions of this general condition 25 apply if the purchaser is or may be required to pay the Commissioner an \*amount in accordance with section 14-250 of Schedule 1 to the *Taxation Administration Act 1953 (Cth)* because the property is \*new residential premises or \*potential residential land in either case falling within the parameters of that section, and also if the sale attracts the operation of section 14-255 of the legislation. Nothing in this general condition 25 is to be taken as relieving the vendor from compliance with section 14-255.
- 25.5 The amount is to be deducted from the vendor's entitlement to the contract \*consideration and is then taken to be paid to the vendor, whether or not the vendor provides the purchaser with a GST withholding notice in accordance with section 14-255 of Schedule 1 to the *Taxation Administration Act 1953 (Cth)*. The vendor must pay to the purchaser at settlement such part of the amount as is represented by non-monetary consideration.
- 25.6 The purchaser must:
- (a) engage a legal practitioner or conveyancer ("representative") to conduct all the legal aspects of settlement, including the performance of the purchaser's obligations under the legislation and this general condition; and
  - (b) ensure that the representative does so.
- 25.7 The terms of the representative's engagement are taken to include instructions to have regard to the vendor's interests relating to the payment of the amount to the Commissioner and instructions that the representative must:
- (a) pay, or ensure payment of, the amount to the Commissioner in the manner required by the Commissioner and as soon as reasonably and practicably possible, from moneys under the control or direction of the representative in accordance with this general condition on settlement of the sale of the property;
  - (b) promptly provide the vendor with evidence of payment, including any notification or other document provided by the purchaser to the Commissioner relating to payment; and
  - (c) otherwise comply, or ensure compliance, with this general condition; despite:
  - (d) any contrary instructions, other than from both the purchaser and the vendor; and
  - (e) any other provision in this contract to the contrary.
- 25.8 The representative is taken to have complied with the requirements of general condition 25.7 if:
- (a) settlement is conducted through an electronic lodgement network; and
  - (b) the amount is included in the settlement statement requiring payment to the Commissioner in respect of this transaction.
- 25.9 The purchaser may at settlement give the vendor a bank cheque for the amount in accordance with section 16-30 (3) of Schedule 1 to the *Taxation Administration Act 1953 (Cth)*, but only if:
- (a) so agreed by the vendor in writing; and
  - (b) the settlement is not conducted through an electronic lodgement network. However, if the purchaser gives the bank cheque in accordance with this general condition 25.9, the vendor must:
  - (c) immediately after settlement provide the bank cheque to the Commissioner to pay the amount in relation to the supply; and
  - (d) give the purchaser a receipt for the bank cheque which identifies the transaction and includes particulars of the bank cheque, at the same time the purchaser gives the vendor the bank cheque.
- 25.10 A party must provide the other party with such information as the other party requires to:
- (a) decide if an amount is required to be paid or the quantum of it, or
  - (b) comply with the purchaser's obligation to pay the amount,
- in accordance with section 14-250 of Schedule 1 to the *Taxation Administration Act 1953 (Cth)*. The information must be provided within 5 business days of a written request. The party providing the information warrants that it is true and correct.
- 25.11 The vendor warrants that:
- (a) at settlement, the property is not new residential premises or potential residential land in either case falling within the parameters of section 14-250 of Schedule 1 to the *Taxation Administration Act 1953 (Cth)* if the vendor gives the purchaser a written notice under section 14-255 to the effect that the purchaser will not be required to make a payment

- under section 14-250 in respect of the supply, or fails to give a written notice as required by and within the time specified in section 14-255; and
- (b) the amount described in a written notice given by the vendor to the purchaser under section 14-255 of Schedule 1 to the *Taxation Administration Act 1953 (Cth)* is the correct amount required to be paid under section 14-250 of the legislation.
- 25.12 The purchaser is responsible for any penalties or interest payable to the Commissioner on account of non-payment or late payment of the amount, except to the extent that:
- (a) the penalties or interest arise from any failure on the part of the vendor, including breach of a warranty in general condition 25.11; or
  - (b) the purchaser has a reasonable belief that the property is neither new residential premises nor potential residential land requiring the purchaser to pay an amount to the Commissioner in accordance with section 14-250 (1) of Schedule 1 to the *Taxation Administration Act 1953 (Cth)*.
- The vendor is responsible for any penalties or interest payable to the Commissioner on account of non-payment or late payment of the amount if either exception applies.
- Transactional**
- 26 TIME & CO-OPERATION**
- 26.1 Time is of the essence of this contract.
  - 26.2 Time is extended until the next business day if the time for performing any action falls on a day which is not a business day.
  - 26.3 Each party must do all things reasonably necessary to enable this contract to proceed to settlement, and must act in a prompt and efficient manner.
  - 26.4 Any unfulfilled obligation will not merge on settlement.
- 27 SERVICE**
- 27.1 Any document required to be served by or on any party may be served by or on the legal practitioner or conveyancer for that party.
  - 27.2 A cooling off notice under section 31 of the *Sale of Land Act 1962* or a notice under general condition 20 [loan approval], 21 [building report] or 22 [pest report] may be served on the vendor's legal practitioner, conveyancer or estate agent even if the estate agent's authority has formally expired at the time of service.
  - 27.3 A document is sufficiently served:
    - (a) personally, or
    - (b) by pre-paid post, or
    - (c) in any manner authorized by law or by the Supreme Court for service of documents, including any manner authorised for service on or by a legal practitioner, whether or not the person serving or receiving the document is a legal practitioner, or
    - (d) by email.
  - 27.4 Any document properly sent by:
    - (a) express post is taken to have been served on the next business day after posting, unless proved otherwise;
    - (b) priority post is taken to have been served on the fourth business day after posting, unless proved otherwise;
    - (c) regular post is taken to have been served on the sixth business day after posting, unless proved otherwise;
    - (d) email is taken to have been served at the time of receipt within the meaning of section 13A of the *Electronic Transactions (Victoria) Act 2000*.
  - 27.5 Any written communication in the workspace of the electronic lodgement network does not constitute service of a notice other than a notice for the purposes of any electronic transactions legislation.
  - 27.8 In this contract 'document' includes 'demand' and 'notice', 'serve' includes 'give', and 'served' and 'service' have corresponding meanings.

**28 NOTICES**

- 28.1 The vendor is responsible for any notice, order, demand or levy imposing liability on the property that is issued or made before the day of sale, and does not relate to periodic outgoings.
- 28.2 The purchaser is responsible for any notice, order, demand or levy imposing liability on the property that is issued or made on or after the day of sale, and does not relate to periodic outgoings.
- 28.3 The purchaser may enter the property to comply with that responsibility where action is required before settlement.
- 28.4 General condition 28 does not apply to any amounts to which section 10G or 10H of the Sale of Land Act 1962 (Vic) applies.

**29 INSPECTION**

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

**30 TERMS CONTRACT**

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

**31 LOSS OR DAMAGE BEFORE SETTLEMENT**

- 31.1 The vendor carries the risk of loss or damage to the property until settlement.
- 31.2 The vendor must deliver the property to the purchaser at settlement in the same condition it was in on the day of sale, except for fair wear and tear.
- 31.3 The purchaser must not delay settlement because one or more of the goods is not in the condition required by general condition 31.2, but may claim compensation from the vendor after settlement.

**32 BREACH**

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

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

**Default****33 INTEREST**

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

**34 DEFAULT NOTICE**

- 34.1 A party is not entitled to exercise any rights arising from the other party's default, other than the right to receive interest and the right to sue for money owing, until the other party is given and fails to comply with a written default notice.
- 34.2 The default notice must:
  - (a) specify the particulars of the default; and
  - (b) state that it is the offended party's intention to exercise the rights arising from the default unless, within 14 days of the notice being given -
    - (i) the default is remedied; and
    - (ii) the reasonable costs incurred as a result of the default and any interest payable are paid.

**35 DEFAULT NOT REMEDIED**

- 35.1 All unpaid money under the contract becomes immediately payable to the vendor if the default has been made by the purchaser and is not remedied and the costs and interest are not paid.
- 35.2 The contract immediately ends if:
  - (a) the default notice also states that unless the default is remedied and the reasonable costs and interest are paid, the contract will be ended in accordance with this general condition; and
  - (b) the default is not remedied and the reasonable costs and interest are not paid by the end of the period of the default notice.
- 35.3 If the contract ends by a default notice given by the purchaser:
  - (a) the purchaser must be repaid any money paid under the contract and be paid any interest and reasonable costs payable under the contract; and
  - (b) all those amounts are a charge on the land until payment; and
  - (c) the purchaser may also recover any loss otherwise recoverable.
- 35.4 If the contract ends by a default notice given by the vendor or acceptance by the vendor of a repudiation by the purchaser:
  - (a) the deposit up to 10% of the price is forfeited to the vendor as the vendor's absolute property, whether the deposit has been paid or not; and
  - (b) the vendor is entitled to possession of the property; and
  - (c) in addition to any other remedy, the vendor may within one year of the contract ending either:
    - (i) retain the property and sue for damages for breach of contract; or
    - (ii) resell the property in any manner and recover any deficiency in the price on the resale and any resulting expenses by way of liquidated damages; and
  - (d) the vendor may retain any part of the price paid until the vendor's damages have been determined and may apply that money towards those damages; and
  - (e) any determination of the vendor's damages must take into account the amount forfeited to

the vendor.

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

## **ANNEXURE A**

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Guarantee and Indemnity

## GUARANTEE AND INDEMNITY

By \_\_\_\_\_ of \_\_\_\_\_

AND

By \_\_\_\_\_ of \_\_\_\_\_

(collectively '**Guarantor**')

in favour of Jan Elizabeth Kennedy and Catherine Anne Martin and Susan Kaye Martin as executor of the will of JUNE ALICE MARTIN (the '**Vendor**')

### **BACKGROUND**

- A. The Vendor proposes to enter into the attached Contract of Sale of Real Estate (the "Contract") with the Purchaser named in the Contract (the "Purchaser").
- B. In consideration of the Vendor entering into the Contract the Guarantor has agreed to guarantee the Purchaser's performance of the Contract and indemnify the Vendor in accordance with this guarantee and indemnity.

### **OPERATIVE PROVISIONS**

#### **1      Guarantee and Indemnity**

- 1.1 In consideration of the Vendor entering into this Contract at the Guarantor's request, the Guarantor:
  - (a) guarantees punctual payment of all money which the Purchaser must pay the Vendor under the Contract, including any costs which the Purchaser must pay because of any default;
  - (b) guarantees the observance and performance of any term of the Contract by the Purchaser; and
  - (c) indemnifies the Vendor and will keep the Vendor indemnified against all losses, damages, costs, charges and expenses which the Vendor may incur or suffer because of a default by the Purchaser in payment of any money or observance or performance of any of the terms of the Contract.
- 1.2 Any money payable under the Contract which may not be recoverable from the Purchaser must be paid by the Guarantor to the Vendor upon demand. The Guarantor must pay that money to the Vendor even if the Vendor knows or should have known that the money cannot be recovered from the Purchaser.
- 1.3 The Guarantor's liability will not be affected by any of the following:
  - (a) the granting of any concession to the Purchaser or to any other party;
  - (b) any compounding of the obligations of the Purchaser or any other party;
  - (c) any release or discharge of the obligations of the Purchaser or any other party from liability under the Contract;
  - (d) any change to or renewal of any securities, assets or any of the Vendor's rights;
  - (e) anything done or not done by the Vendor in exercising its rights under this contract;
  - (f) anything which might affect this Guarantee and Indemnity but for this sub-clause;
  - (g) the Vendor obtaining a judgment against the Purchaser in any Court for payment of any money owing by the Purchaser;
  - (h) the Vendor agreeing to the Purchaser making an assignment for the benefit of the Purchaser's creditors or any arrangement with creditors under the insolvency laws;
  - (i) any other person giving or failing to give the Vendor an indemnity or to guarantee the Purchaser's obligations under the contract;
  - (j) the Purchaser's liability ending for any reason;
  - (k) the invalidity of any indemnity, guarantee or security held by the Vendor in respect of the Purchaser's or the Guarantor's obligations;
  - (l) the Purchaser assigning its interest under the Contract to another person;
  - (m) any alteration or extension of the Contract and this guarantee and indemnity, whether or not the Purchaser or the Guarantor has agreed to the alteration or extension; or

- (n) any arrangement made between the Vendor and Purchaser with or without the consent of the Guarantor.
- 1.4 The Guarantor's liability extends to any money which the Purchaser has paid the Vendor and which the Vendor has repaid or been required by law to repay for any reason.
- 1.5 This guarantee and indemnity will remain in force until the Guarantor has paid the Vendor the full amount for which the Guarantor or Purchaser is liable.
- 1.6 This guarantee and indemnity continues beyond termination of the Contract and does not expire at that time.

## **2 Joint and Several Liability**

- 2.1 Where the Guarantor consists of more than one person, the obligations on the Guarantor in this guarantee and indemnity binds all of those persons jointly and each of them severally.
- 2.2 The Vendor may enforce its rights under this guarantee and indemnity and proceed against any one or more of the persons named as Guarantor in the manner, order and at the times the Vendor determines in its discretion. The Vendor is not required to enforce its rights or proceed against all of the persons named as the Guarantor.
- 2.3 A notice given by the Vendor to any one Guarantor is to be considered to have been given to all of the persons named as the Guarantor.
- 2.4 A reference to the Guarantor is a reference to all of the persons named as the Guarantor together and each of them separately.
- 2.5 This guarantee and indemnity binds each of the persons who execute it as a Guarantor even if:
  - (a) any one or more of the other persons named as a Guarantor do not execute this guarantee and indemnity; or
  - (b) execution by one or more of those other persons is or becomes void, voidable, illegal or unenforceable.

## **3 Enforceability of guarantee and indemnity**

- 3.1 The Vendor can enforce this guarantee and indemnity without first taking any action against the Purchaser.
- 3.2 This guarantee and indemnity is enforceable despite:
  - (a) any delays, acts or omissions by the Vendor; and
  - (b) the Vendor's loss of any indemnity, guarantee or security.
- 3.3 The Vendor may determine when it will enforce this guarantee and indemnity.

## **4 Bankruptcy or liquidation of Purchaser**

- 4.1 If the Purchaser is declared bankrupt or goes into liquidation, the Guarantor must not prove in any bankruptcy or liquidation in competition with the Vendor.
- 4.2 The Guarantor allows the Vendor:
  - (a) to prove for all money which the Purchaser owes the Vendor; and
  - (b) to hold a suspense account and appropriate any money received from the bankruptcy or liquidation until the Vendor has received all the money which the Purchaser owes it.
- 4.3 The Guarantor waives all its rights against the Vendor, the Purchaser and any other person or thing as far as this is necessary to give effect to this guarantee and indemnity.

## **5 Other Security**

- 5.1 This guarantee and indemnity does not affect and is not affected by any other security held or which may be held by the Vendor for any money due under the Contract.
- 5.2 Any other security held in respect of the obligations under the Contract is deemed to be collateral with this guarantee and indemnity.
- 5.3 The Guarantor will not claim the benefit of any security against the Vendor in any proceedings or seek the transfer of any security against the Vendor.

## 6 Benefit to Guarantor

6.1 The Guarantor agrees that it is benefited by the Vendor entering the Contract with the Purchaser.

## **7 Demands under Guarantee and Indemnity**

7.1 A demand made by the Vendor under this clause may be signed by the Vendor's solicitors or agents on its behalf.

8 Notices

## 8.1 All notices must be:

- (a) in legible writing and in English;
  - (b) addressed to the Guarantor at the address or facsimile number (if any) in this guarantee and indemnity or to any other address or facsimile number notified by Guarantor in writing.
  - (c) sent to the recipient by hand, prepaid post (airmail if to or from a place outside Australia) or facsimile.
  - (d) without limiting any other means by which a party may be able to prove that a notice has been received by the other party, a notice will be considered to have been received:
    - (i) if sent by hand, when left at the address of the recipient;
    - (ii) if sent by pre-paid post, 3 days (if posted within Australia to an address in Australia) or 10 days (if posted from one country to another) after the date of posting; or
    - (iii) if sent by facsimile, on receipt by the sender of an acknowledgment or transmission report generated by the sender's machine indicating that the whole facsimile was sent to the recipient's facsimile number;

but if a notice is served by hand, or is received by the recipient's facsimile 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 9.00am on the next business day.

EXECUTED AS A DEED on the \_\_\_\_\_ day of \_\_\_\_\_ 2024

**Signed sealed and delivered**  
by \_\_\_\_\_  
in the presence of: \_\_\_\_\_ )  
\_\_\_\_\_  
\_\_\_\_\_)

**Signature of witness** \_\_\_\_\_ **Signature of Guarantor** \_\_\_\_\_

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Name of witness (please print)

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**Signature of Guarantor**

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Name of witness (please print)

---

Name of witness (please print)

**Signed sealed and delivered**  
by )  
in the presence of: )

Signature of witness

**Signature of Guarantor**

---

Name of witness (please print)