

# CONTRACT OF SALE OF REAL ESTATE

Part 1 of the standard form of contract prescribed by the Estate Agents (Contracts) Regulations 2008

**Property address: 20 Bridge Way, Mildura Victoria 3500**

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.

**SIGNED BY THE PURCHASER:** ..... on ...../...../20.....

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

**SIGNED BY THE PURCHASER:** ..... on ...../...../20.....

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

This offer will lapse unless accepted within [ ] clear business days (3 clear business days if none specified)

**SIGNED BY THE VENDOR:** ..... on ...../...../20.....

**Print name(s) of person(s) signing: Richard Peter Vandenberg**

**Sole Director and Company Secretary of Richie Holdings Pty Ltd ACN 114 488 336**

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

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

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

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

A substantial period of time may elapse between the day on which you sign

the contract of sale and the day on which you become the registered proprietor of the lot.

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

# Particulars of sale

## Vendor's estate agent

Name: FIRST NATIONAL REAL ESTATE – COLLIE & TIERNEY

Address: 67 LIME AVENUE, MILDURA VICTORIA 3500

Email: [blove@ctfnre.com.au](mailto:blove@ctfnre.com.au)

Tel: (03) 5023 9937      Mob: 0418 372 756      Fax: (03) 5021 1213      Ref: Brenton Love

## Vendor

Name: RICHIE HOLDINGS PTY LTD ACN 114 488 336

## Vendor's conveyancer

Name: L & M DI MEDIO PTY LTD trading as **At Call Conveyancing Services**

Address: PO Box 8251, CAMBERWELL NORTH VICTORIA 3124

Email: [melissa@atcallconveyancing.com.au](mailto:melissa@atcallconveyancing.com.au)

Tel: 0490 911 968      Fax: N/A      DX: N/A      Ref: MFD:202004439

## Purchaser

Name: .....

Address: .....

ABN/ACN: .....

## Purchaser's legal practitioner

Name: .....

Address: .....

Email: .....

Tel:                      Fax:                      DX:                      Ref:

## Land (general conditions 3 and 9)

The land is described in the table below –

Certificates of Title reference	being Lot	on Plan of Subdivision
Volume 11074      Folio 024	Lot 21	613558D
Volume 11033      Folio 982	Lot 115M	544424J
Volume 11033      Folio 983	Lot 116M	544424J

OR

described in the copy of the Register Search Statement and the document or part document referred to as the diagram location in the Register Search Statement, as attached to the section 32 statement if no title or plan references are recorded in the table above or as described in the section 32 statement if the land is general law land.

## Property address

The address of the land is: 20 BRIDGE WAY, MILDURA VICTORIA 3500

**Goods sold with the land** (general condition 2.3(f)) (list or attach schedule)  
All fixed floor coverings, electric light fittings and window furnishings as inspected

**Payment** (general condition 11)

Price \$  
Deposit \$ ..... by ..... / ..... / 20.....  
Balance \$ .....payable at settlement

**GST** (general condition 13)

The price includes GST (if any) unless the words '**plus GST**' appear in this box

**Not applicable**

If this sale is a sale of land on which a 'farming business' is carried on which the parties consider meets requirements of section 38-480 of the GST Act or of a 'going concern' then add the words '**farming business**' or '**going concern**' in this box

**Not applicable**

If the margin scheme will be used to calculate GST then add the words '**margin scheme**' in this box

**Not applicable**

**Settlement** (general condition 10)

is due on ..... / ..... / .....

**Lease** (general condition 1.1)

At settlement the Purchaser is entitled to vacant possession of the Property unless the words '**subject to lease**' appear in this box in which case refer to general condition 1.1.

**Not applicable**

If '**subject to lease**' then particulars of the lease are:

**Terms contract** (general condition 23)

If this contract is intended to be a terms contract within the meaning of the *Sale of Land Act 1962* then add the words '**terms contract**' in this box and refer to general condition 23 and add any further provisions by way of special conditions.

**Not applicable**

**Loan** (general condition 14)

The following details apply if this contract is subject to a loan being approved.

Lender: .....

Loan amount: \$ ..... Approval date: ..... / ..... /20.....

This contract does not include any special conditions unless the words '**special conditions**' appear in this box.

**special conditions**

# Special Conditions

**A SPECIAL CONDITION OPERATES IF THE BOX NEXT TO IT IS TICKED OR THE PARTIES OTHERWISE AGREE IN WRITING.**

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

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

## 1. INTERPRETATION

### 1.1 Definitions

In this Contract, capitalised terms have the meaning given to them in the Particulars of Sale and, unless the context otherwise requires:

Business Day	means a day on which Banks are open for general banking business in Melbourne, excluding Saturdays, Sundays and public holidays.
Consideration	has the meaning given by section 9-15 of GST Law.
Contract	means this Contract of Sale of Real Estate and includes the Annexures and Schedules to this Contract.
Government Agency	means: a government or government department or other government body; (a) a governmental, semi-governmental or judicial person; or (b) a person (whether autonomous or not) who is charged with the administration of a Law.
Hazardous Materials	includes all hazardous substances and all material, pollutants and contaminants defined as such in and for the purposes of any Law regulating or imposing liability or standards of conduct concerning any substance or material.
Insolvency Event	if the Purchaser is a natural person means: (a) the Purchaser dies; or (b) the Purchaser commits an act of bankruptcy as described in section 40 of the <i>Bankruptcy Act 1966</i> (Cth), and, in this definition only, the word Purchaser includes the Guarantor.
Interest Rate	means a rate of <b>4 per cent</b> higher than the rate for the time being fixed under section 2 of the <i>Penalty Interest Rates Act 1983</i> (Vic).
Law	means any Law, act, ordinance, regulation, by-law, order or proclamation and includes the requirements of any municipal or statutory body or of any permit or approval affecting the Property.
Object	means to make any claim against the Vendor (before or after the Settlement Date), to seek to withhold all or part of the Price, raise any objection, requisition, rescind or terminate this Contract or seek to delay or avoid completion of this Contract.
Outgoings	means all outgoings in relation to the Property including all rates, taxes, assessments and insurance premiums
Particulars of Sale	means the Particulars of Sale contained in this Contract

## 1.2 Rules for interpreting this Contract

In this Contract, unless the context requires otherwise:

- (a) A reference to:
  - (i) an authority, organisation, association, society or other body (**organisation**) which ceases to exist or is reconstituted, renamed or replaced or any of whose powers or functions are transferred to any other entity body authority or group takes effect as a reference to the entity, body, authority or group established or constituted to replace or succeed the organisation or to assume its powers or functions;
  - (ii) a reference to **A\$, \$A, dollar** or **\$** is a reference to Australian currency;
  - (iii) a document, agreement or a provision of a document or agreement is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (iv) a party to this Contract or to any other document includes a substitute or a permitted assign of that party, provided the substitution or assignment complies with this Contract or the relevant document and is effective under applicable Law;
  - (v) any thing includes all or any part of it; and
  - (vi) a party's liability to pay GST includes the liability of a member of a GST group in which that party is also a member.
- (b) The singular includes the plural and vice versa.
- (c) Words denoting any gender include all genders.
- (d) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (e) Headings are for convenience and do not affect interpretation.
- (f) If an example is given of a thing or concept (such as by saying it includes something else), the example does not limit the scope of that thing or concept.
- (g) The word **person** includes:
  - (i) any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity; and
  - (ii) any executor, administrator or successor in Law of that person.
- (h) The word **agreement** includes an undertaking or other binding arrangement or understanding whether or not in writing.
- (i) The words **corporation, subsidiary, holding company** and **related body corporate** have the same meanings as in the Corporations Act.
- (j) A reference to a party, Special Condition, paragraph, Schedule, Item or Annexure is a reference to a party, Special Condition, paragraph, Schedule, Item or Annexure to or of this Contract.
- (k) A reference to a time is a reference to Australian Eastern Time.
- (l) A reference to writing includes any method of representing words, figures or symbols in a permanent and visible form.
- (m) A reference to any legislation or to any provision of any legislation includes:
  - (i) any modification or re-enactment of the legislation;
  - (ii) any legislative provisions substituted for, and all legislation, statutory instruments and regulations issued under, the legislation or provision; and
  - (iii) where relevant, corresponding Law in any Australian State or Territory.
- (n) Any payment of money by one party to another must be made in Australian currency.
- (o) If the day on or by which an act, matter or thing is to be done is a day other than a Business Day, the act, matter or thing must be done on the preceding Business Day.
- (p) If a Special Condition of this Contract is inconsistent with a Schedule or Annexure of this Contract, the Special Condition prevails to the extent of the inconsistency.
- (q) Each payment due under this Contract must be made by bank cheque, unless prior consent from the Vendor has been obtained.

## 1.3 Amendment

This Contract may only be varied in writing, signed by the parties.

## 1.4 Waiver

- (a) A right may only be waived in writing, signed by the party giving the waiver.
- (b) No other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right.
- (c) A waiver of a right on one or more occasion does not operate as a waiver of that right if it arises again.
- (d) The exercise of all or part of a right does not prevent any further exercise of that right or of any other right.

## 1.5 Multiple parties

If a party to this Contract is made up of more than one person, or a term is used in this Contract to refer to more than one party:

- (a) an obligation of those persons is joint and several;
- (b) a right of those persons is held by them severally; and
- (c) any other reference to that party or that term is a reference to each of those persons separately, so that (for example) a representation, warranty or undertaking is given by each of them separately.

**1.6 Entire contract**

- (a) The Purchaser acknowledges that:
  - (i) no information, representation or warranty provided or made by the Vendor or the Vendor's Real Estate Agent of the Vendor's conveyancer was provided or made with the intention or knowledge that it would be relied on by the Purchaser and that it has not relied on any information, representation or warranty;
  - (ii) in entering into this Contract, the Purchaser has relied entirely on the Purchaser's own inspection of and searches and enquiries in connection with the Property; and
  - (iii) to the extent permissible by Law, the Vendor is not liable to the Purchaser as a result of or in connection with any information, representation or warranty having been provided or made by or on behalf of the Vendor.
- (b) Nothing in this **Special Condition 1.6** affects any express warranty in this Contract.
- (c) This Contract constitutes the entire agreement between the parties for the sale and purchase of the Property and supersedes all previous negotiations and agreements in relation to the transaction.

**1.7 No merger**

Unless otherwise expressly provided no provision of this Contract merges on or by virtue of settlement.

**1.8 Giving effect to this Contract**

Each party must do anything (including execute any document) and must ensure that its employees and agents do anything (including execute any document), that any other party may reasonably require to give full effect to this Contract.

**1.9 No commission for introducing agent**

The Vendor is not liable for any commission or expenses payable to any agent or broker (other than the Vendor's Estate Agent) who introduces the Purchaser to the Property, or who has any other connection with the Purchaser or the Property.

**2. GENERAL CONDITIONS**



The Vendor and the Purchaser agree that **General Conditions 7, 9 and 26** do not apply to this Contract of Sale.

**3. ACCEPTANCE OF TITLE**



**General Condition 12.4** is added:

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

**4. FOREIGN RESIDENT CAPITAL GAINS WITHHOLDING**



- 4.1 Words defined or used in Subdivision 14-D of Schedule 1 to the *Taxation Administration Act 1953 (Cth)* have the same meaning in this special condition unless the context requires otherwise.
- 4.2 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 Schedule 1 to the *Taxation Administration Act 1953 (Cth)*. The specified period in the clearance certificate must include the actual date of settlement.
- 4.3 This special condition only applies if the Purchaser is required to pay the Commissioner an amount in accordance with section 14-200(3) or section 14-235 of Schedule 1 to the *Taxation Administration Act 1953 (Cth)* ("the amount") because one or more of the Vendors is a foreign resident, the Property is or will have a market value 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.
- 4.4 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.

- 4.5 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.
- 4.6 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.
- 4.7 The representative is taken to have complied with the obligations in **Special Condition 4.6** 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.
- 4.8 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.
- 4.9 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.
- 4.10 The Purchaser is responsible for any penalties or interest payable to the Commissioner on account of late payment of the amount.

## 5. ELECTRONIC CONVEYANCING

EC

Settlement and lodgement will be conducted electronically in accordance with the Electronic Conveyancing National Law and **Special Condition 5** applies, if the box is marked “EC”

- 5.1 This special condition has priority over any other provision to the extent of any inconsistency. This special condition applies if the contract of sale specifies, or the parties subsequently agree in writing, that 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*.
- 5.2 A party must immediately give written notice if that party reasonably believes that settlement and lodgement can no longer be conducted electronically. **Special Condition 5** ceases to apply from when such a notice is given.
- 5.3 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*.
- 5.4 The Vendor must open the Electronic Workspace (“workspace”) as soon as reasonably practicable. The workspace is an electronic address for the service of notices and for written communications for the purposes of any electronic transactions legislation.

- 5.5 The Vendor must nominate a time of the day for locking of the workspace at least 7 days before the due date for settlement.
- 5.6 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.
- 5.7 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 5.6** has not occurred by 4.00 pm, or 6.00 pm if the nominated time for settlement is after 4.00 pm.
- 5.8 Each party must do everything reasonably necessary to assist the other party to trace and identify the recipient of any mistaken payment and to recover the mistaken payment.
- 5.9 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
  - (d) direct the Vendor’s subscriber to give (or, if there is no Vendor’s subscriber, give) all those documents and items, and any such keys, to the Purchaser or the Purchaser’s nominee on notification of settlement by the Electronic Network Operator.
- 5.10 The Vendor must, at least 7 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**.

## 6. ENCUMBRANCES, IDENTITY OF LAND, PLANNING & OTHER RESTRICTIONS



### 6.1 Encumbrances

The Purchaser buys the Property subject to the encumbrances set out in attached the Vendor Statement.

### 6.2 Reservations and Conditions in the Crown Grant

The Property sold is purchased subject to the reservations, exceptions and conditions (if any) contained in the Crown Grant.

### 6.3 Limitation of Purchaser’s rights

The Purchaser has inspected and accepts the Property in its present condition. The Purchaser is not entitled to call on the Vendor to:

- (a) amend title;
- (b) rectify any failure to comply with a Law applicable to the Property or a requirement of any Government Agency;
- (c) relocate any improvements not erected within the boundaries of the Property; and
- (d) remove or relocate any improvements owned by other persons which encroach on to the Property

or bear the cost of doing so.

### 6.4 No Warranty or representation

The Vendor makes no warranty or representation:

- (a) that the Property is identical with the Land described in the Particulars of Sale;
- (b) that the Property complies with all Laws applicable to the Property and the requirements of any Government Agency;
- (c) that the improvements are erected within the boundaries of the Property;
- (d) that improvements owned by other persons do not encroach on to the Property;
- (e) as to the condition of the Property; or
- (f) that the Property may be used for any particular purpose.

## 6.5 Waiver

The Purchaser is not entitled to Object or require the Vendor to take any action for:

- (a) any mis description of the Property or inaccuracy in its area or measurements;
- (b) any failure to comply with a Law applicable to the Property or a requirement of any Government Agency;
- (c) any improvements not being erected within the boundaries of the Property;
- (d) any improvements owned by other persons encroaching on to the Property; and
- (e) the condition of the Property.

## 6.6 Purchaser buys subject

The Purchaser buys the Property subject to:

- (a) all Laws affecting the Property;
- (b) all restrictions or conditions affecting or imposed on the Property or its use;
- (c) all easements, covenants or similar encumbrances;
- (d) all rights of or claims by any Government Agency;
- (e) conditions imposed in the planning permits for the Property; and
- (f) the applicable planning scheme,

and the Purchaser must not Object or require the Vendor to take any action in connection with these matters or in connection with any defect or non-compliance of the Property with respect to these matters.

## 7. DEPOSIT



### Payment of Deposit

The Purchaser must, as a fundamental term of this Contract, pay the Deposit to the Vendor's conveyancer or Vendor's Estate Agent by way of unendorsed cheque on the Day of Sale

## 8. LOSS OR DAMAGE TO PROPERTY



### 8.1 Vendor carries risk

The Vendor carries the risk of loss or damage to the Property until the Settlement Date.

### 8.2 Condition of Property

The Vendor must deliver the Property to the Purchaser on the Settlement Date in the same condition as it was in as at the Day of Sale.

## 9. NOMINATION, ASSIGNMENT & CHANGE IN CONTROL



### 9.1 Nomination of nominee Purchaser

If this Contract provides that the Property is sold to the Purchaser "and/or nominee" (or similar words), the Purchaser may, at least **10 Business Days** before the Settlement Date, nominate a substitute or additional Purchaser, but the Purchaser remains personally liable for the due performance of all the Purchaser's obligations under this Contract.

### 9.2 Conditions of nomination

The Purchaser is not entitled to exercise its rights under **Special Condition 9.1**, without the consent of the Vendor, unless the Purchaser:

- (a) is not and has not been in default under this Contract;
- (b) delivers to the Vendor a nomination form properly completed with the relevant particulars and executed by the Purchaser and the nominee Purchaser;
- (c) if the nominee Purchaser is or includes a corporation, delivers to the Vendor a Guarantee and Indemnity in the same form contained in **Annexure 1** executed by:

- (i) the directors;
- (ii) the shareholders; and
- (iii) the holding company,

of the corporation.

### 9.3 Assignment

Except as may be permitted under this **Special Condition 9**, the Purchaser must not assign, dispose of or deal with the whole or any part of its interest in this Contract, nor seek to nominate or substitute a third party as the Purchaser under this Contract except with the prior written consent of the Vendor, which the Vendor may grant, refuse or grant subject to conditions in the absolute discretion of the Vendor.

### 9.4 Change of control

A change in the shareholding altering the effective control of the Purchaser (if a corporation) or the Guarantor will be deemed to be an assignment of this Contract and require the consent of the Vendor under **Special Condition 9.3**.

## 10. TRANSFER

### 10.1 Purchaser to deliver transfer

The Purchaser must deliver the transfer executed by the Purchaser to the Vendor's conveyancer no later than **10 Business Days** before the Settlement Date which Instrument of Transfer referred to in **General Condition 6**.

The Purchaser undertakes to the Vendor that, pending registration by the Registrar of Titles of the Transfer of Land to the Purchaser, the Purchaser will not do, cause or allow to be done anything on the land that may or shall be in contravention of the covenant to be included in the said transfer by reason of this **Special Condition 10.1**.

### 10.2 Failure to deliver transfer on time

If the Purchaser fails to deliver the transfer in accordance with **Special Condition 10.1**, then, without prejudice to the Vendor's other rights:

- (a) the Vendor may complete this Contract at any time between the Settlement Date and the date which is **10 Business Days** after the Purchaser delivers the transfer; and
- (b) the Purchaser must pay the costs of default contemplated under **Special Condition 14** including interest at the Interest Rate on the Balance for the period from the Settlement Date until this Contract is completed.

## 11. NO RELEASE OF PPSR

11.1 The Vendor is not required to provide on settlement, in relation to the Property, a release of the Property from any PPSR registration over the registered proprietors.

11.2 The Purchaser cannot object to or make any claim against the Vendor if the Vendor does not provide at settlement a release of Property from any PPSR registration over the registered proprietors.

## 12. ADJUSTMENTS

### 12.1 Not Separately Assessed

Further to **General Condition 15**, if the Property is not separately assessed in respect of any outgoing then for the purpose of adjustments, those outgoing will be apportioned to the Property in the same proportion the area of the Property bears to the total area for which the outgoing are assessed.

### 12.2 Outgoings

- (a) All Outgoings will be paid by the Vendor up to the Settlement Date and will be apportioned between the Vendor and Purchaser as at the Settlement Date.
- (b) The Purchaser must prepare and deliver a statement of adjustments of the Outgoings to the Vendor's conveyancer at least **3 Business Days** prior to the Settlement Date.
- (c) The Balance will be adjusted by the apportionment of Outgoings in **Special Condition 12.2(a)**.

### 12.3 Purchaser assumes liability from Day of Sale

- (a) The Purchaser must comply with all notices or orders relating to the Property (other than those referring to Outgoings) which are made or issued on or after the Day of Sale.
- (b) The Purchaser is entitled to enter on the Property (without being deemed to have accepted title) at any reasonable time prior to the Settlement Date on reasonable notice to the Vendor for the purpose of complying with any notice or order which the Purchaser is required to comply with before the Settlement Date.

### 12.4 Purchaser breach

If, as a result of a breach of this Contract by the Purchaser, the Property is registered in the name of the Vendor at midnight on 31 December following the due date for payment of balance of purchase money, land tax will be adjusted on the basis that the Purchaser pays all of the land tax assessed, charged and levied on the Vendor in respect of the Property after the due date for payment of balance of purchase money.

## 13. SETTLEMENT

### 13.1 Purchaser must pay balance

The Purchaser must pay the balance by 3.00 pm on the Settlement Date. If the Purchaser fails to pay the balance by 4.00 pm on the Settlement Date or any later date on which the Purchaser tenders the balance, then:

- (a) the Vendor may complete this Contract on the following Business Day; and
- (b) the Purchaser must pay the costs of default contemplated under **Special Condition 14.1** including interest at the Interest Rate on the balance for the period from the Settlement Date until this Contract is completed.

### 13.2 Place of settlement

Settlement will take place at the offices of the Vendor's conveyancer or as the Vendor's conveyancer directs.

## 14. BREACH, COSTS OF DEFAULT & DEFAULT INTEREST

### 14.1 Costs of default

Without limiting the Vendor's rights under this Contract or at Law, if the Purchaser defaults in performance of any obligation under this Contract, the Purchaser must pay on demand:

- (a) all costs and expenses incurred by the Vendor as a result of the default including:
  - (i) costs and disbursements on the higher of the conveyancer/own client or full indemnity basis;
  - (ii) interest, discount on bills and borrowing expenses which exceed the interest paid to the Vendor under **Special Condition 14.2**; and
  - (iii) the cost of obtaining bridging finance or other credit accommodation to complete the Vendor's purchase of another Property, and interest, charges, fees, commissions and other expenses (including legal fees) charged on the bridging finance or other credit accommodation
- (b) interest as provided for under **Special Condition 14.2**; and
- (c) any other money payable under this Contract,

all of which are added to the Price.

### 14.2 Liability to pay interest

If the Purchaser defaults in payment of any money under this Contract that party must pay interest at the Interest Rate calculated on the money overdue during the period of default.

### 14.3 Unpaid interest capitalised

Interest not paid when due for payment may be capitalised on the first day of each month. Interest is payable on capitalised interest at the Interest Rate.

## 15. RESCISSION

### 15.1 Time is of the essence

Time is of the essence of this Contract. If either party defaults under this Contract (with the exception of **Special Condition 14.1**) the party not in default must not exercise any of its rights arising out of the default other than the right to sue for money, then owing until:

- (a) that party has served the defaulting party with a written notice specifying:
  - (i) the default;
  - (ii) its intention to exercise its rights if the default is not remedied and the costs, interest and other money specified in **Special Condition 14.1** are not paid within **14 days** of service of the notice; and
- (b) the defaulting party fails to comply with the notice.

### 15.2 Forfeit

Where the Contract is rescinded, and the notice is given by:

- (a) the Purchaser, the Vendor must repay any money paid by the Purchaser with interest and costs (if any) payable under this Contract;
- (b) the Vendor, the Deposit will be forfeited to the Vendor and the Vendor may recover possession of the Property and within one year of the date of rescission either:
  - (i) retain the Property and sue for damages for breach of Contract; or
  - (ii) re-sell the Property and recover any deficiency in the Price on the re-sale and any resulting expenses by way of liquidated damages.

## 16. NOTICES

A notice, consent, approval, request or demand in connection with this Contract:

- (a) must be in writing and in English;
- (b) must be signed by the party giving it or that party's authorised officer;
- (c) must be left at or posted by prepaid post (airmail, if posted outside Australia) to the address for notices of the addressee, or the addressee's conveyancer/solicitor specified in the Particulars of Sale, or if the addressee notifies another address for receipt of documents, then at or to that address;
- (d) is taken to be received:
  - (i) if hand delivered, on delivery unless it is delivered on a day which is not a Business Day or after 4:30 pm on a Business Day in which case it is deemed to have been served at 9:30 am on the next Business Day following the date of delivery;
  - (ii) if posted in Australia, on the third Business Day after posting;
  - (iii) if posted outside Australia, on the seventh Business Day after posting; or
  - (iv) if sent by facsimile, when the machine sending the facsimile generates a report showing that the total number of pages of the facsimile were successfully sent to the facsimile number of the addressee unless it is sent by facsimile on a day which is not a Business Day or after 4:30 pm on a Business Day in which case it is deemed to have been served at 9:30 am on the next Business Day following the date of sending; and
- (e) unless a later date is specified in it, takes effect on the date it is taken to be received.

## 17. PURCHASER'S ACKNOWLEDGMENTS AND WARRANTIES

### 17.1 Vendor Statement

The Purchaser acknowledges that:

- (a) the Purchaser received the Vendor Statement before paying any money or signing any document in relation to the sale of the Property; and
- (b) neither the Vendor nor any person on behalf of the Vendor has made any promise to the Purchaser, or to any agent of the Purchaser, about obtaining a loan to defray some or all of the Price.

### 17.2 Capacity of Purchaser

If the Purchaser is or includes a corporation, the Purchaser represents and warrants to the Vendor that:

- (a) the Purchaser has power to enter into and observe its obligations under this Contract;
- (b) the Purchaser has in full force and effect the authorisations necessary to enter this Contract, observe obligations under this Contract and allow them to be enforced;

- (c) the Purchaser's obligations under this Contract are valid and binding and are enforceable against it in accordance with their terms;
- (d) this Contract does not contravene:
  - (i) the Purchaser's constituent documents;
  - (ii) any Law, regulation or official directive binding on the Purchaser; or
  - (iii) any of its obligations or undertakings by which it or any of its assets are bound; and
- (e) this Contract does not cause a limitation on its powers or the powers of its directors to be exceeded.

### 17.3 Indemnity

- (a) The Purchaser indemnifies the Vendor for all claims incurred or suffered directly or indirectly by the Vendor caused or contributed to by the Purchaser's:
  - (i) breach of any warranty under this Contract; and
  - (ii) failure to comply with this Contract including liability incurred under another contract of sale.
- (b) The Purchaser indemnifies the Vendor against all claims arising under the *Duties Act 2000 (Vic)* in relation to this Contract, any transfer of the Property and/or any nomination by the Purchaser under **Special Condition 9.1**.
- (c) Each indemnity in this Contract is a continuing obligation, separate and independent from the other obligations of the Purchaser and survives termination of this Contract.
- (d) It is not necessary for the Vendor to incur expense or make payment before enforcing a right of indemnity conferred by this Contract.

## 18. PURCHASER'S APPLICATIONS



### 18.1 Purchaser may make application

At any time between the Day of Sale and the Settlement Date, the Purchaser may at its own expense make applications to any appropriate authority for all necessary approvals permits and/or other consents for the Purchaser's proposed use and development of the Property.

### 18.2 Vendor to sign authority

The Vendor will, on the request of and at the cost in all respects of the Purchaser, sign an application made by the Purchaser under **Special Condition 18.1** or any written authority or letter of support reasonably required for such application.

### 18.3 Purchaser's indemnity

The Purchaser indemnifies the Vendor against all Claims arising from the Vendor signing a document under **Special Condition 18.2**.

## 19. GST WITHHOLDING TAX



**19.1** 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 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.

**19.2** This Special Condition applies if the Purchaser is 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 Special Condition is to be taken as relieving the Vendor from compliance with section 14-255.

**19.3** 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 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.

**19.4** 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 in this Special Condition; and
- (b) ensure that the representative does so.

**19.5** 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.

**19.6** The representative is taken to have complied with the requirements of **Special Condition 19.5** 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.

**19.7** 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 settlement system described in **Special Condition 19.6**.

However, if the Purchaser gives the bank cheque in accordance with this **Special Condition 19.7**, 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.

**19.8** At least 14 days before the due date for settlement, the Vendor must provide to the Purchaser a notice which complies in all respects with section 14-255(1) of Schedule 1 to the *Taxation Administration Act 1953 (Cth)* ("notice").

**19.9** 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 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.

**19.10** 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.

**19.11** 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 **19.10**; or
- (b) the Purchaser's reasonable belief that the Property is neither a 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.

## **20. AUCTION CONDITIONS**



If the Property is sold by public auction, the rules for the conduction of the public auction shall be as set out in Schedule 1 of the Sale of Land (Public Auction) Regulations 2014 and the following 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 may at his/her operation either decide who's 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 a 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";
  - ii. withdraw the Property at any time before it is actually sold without disclosing the reserve price.
- (h) The successful bidder must immediately on the fall of the hammer sign this Contract. If the successful bidder fails to do so within 15 minutes the Vendor may, without prejudice to the Vendor's rights against the successful bidder, re-offer the Property for sale to any other person.
- (i) If a reserve price has been set for the Property and the Property is passed in below that reserve price, the Vendor will first negotiate with the highest bidder for the purchase price.

# General Conditions

## 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 mis description 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 Property 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 10.00am and 4.00pm 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 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 conveyancer and held by the 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 conveyancer; or
  - (b) in accordance with a written direction of the Vendor or the Vendor's 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 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 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.

## ANNEXURE 1

### GUARANTEE & INDEMNITY

This Guarantee and Indemnity is made pursuant to the following Contract of Sale:

Vendor: RICHIE HOLDINGS PTY LTD ACN 114 488 336

Purchaser(s):

Property: 20 BRIDGE WAY, MILDURA VICTORIA 3500

Date of Contract:

I/We ..... of .....

and

..... of .....

(hereinafter called the “**Guarantors**”) IN CONSIDERATION of the within named Vendor(s) selling to the within named Purchaser(s) at our request the land described in the within Contract for the price and upon the terms and conditions therein set forth DO HEREBY for ourselves and our respective executors and administrators JOINTLY AND SEVERALLY COVENANT with the said Vendor(s) and their assigns that if at any time default shall be made in payment of the deposit or residue of purchase money or interest or other monies payable by the Purchaser(s) to the Vendor(s) under the within Contract or in the performance or observance of any term or condition of the within Contract to be performed or observed by the Purchaser(s) we will forthwith on demand by the Vendor(s) pay to the Vendor(s) the whole of such deposit residue of purchase money interest or other monies which shall then be due and payable to the Vendor(s) and hereby indemnify and agree to keep the Vendor(s) indemnified against all loss of purchase money interest and other monies payable under the within Contract and all losses costs charges and expenses whatsoever which the Vendor(s) may incur by reason of any default as aforesaid on the part of the Purchaser(s). This Guarantee and Indemnity shall be a continuing Guarantee and Indemnity and shall not be released by:

- (a) any neglect or forbearance on the part of the Vendor(s) in enforcing payment of any of the monies payable under the within Contract;
- (b) the performance or observance of any of the agreements obligations or conditions under the within Contract;
- (c) by time being given to the Purchaser(s) for any such payment performance or observance;
- (d) by reason of the Vendor assigning its rights under the said contract;
- (e) by any other thing which under the law relating to sureties would but for this provision have the effect of releasing us our executors or administrators.

The Guarantors and Vendor acknowledge that:

- (a) “GST” means any goods and services tax within the meaning of *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* amended.
- (b) any amount payable by the Guarantor under this Guarantee is on a GST exclusive basis.
- (c) the Guarantor must pay to the Vendor, in the performance of its obligations under the Guarantee, an additional amount equal to the GST payable by the Vendor in relation to any sums comprising the total indebtedness, such amount being in addition to any other monies payable under this Guarantee.

IN WITNESS our hands and seals the                      day of

**SIGNED SEALED AND DELIVERED** by the said )  
in the presence of: )

.....

.....  
Witness

**SIGNED SEALED AND DELIVERED** by the said )  
in the presence of: )

.....

.....  
Witness

DRAFT