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Property & Commercial Law

Contract of Sale of Land

Property: Apartment 15, 42 Porter Street, Prahran

Sustain Able 8 Pty Ltd (ACN 636 136 331)

Vendor

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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 three (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 three (3) clear business days **before** a publicly advertised auction was to be held; or
- you bought the land within three (3) clear business days **after** a publicly advertised auction was held; or
- the property is used primarily for industrial or commercial purposes; or
- the property is more than twenty (20) hectares in size and is used primarily for farming; or
- you and the vendor have previously signed a contract for the sale of the same land in substantially the same terms; or
- you are an estate agent or 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 monies payable under the contract of sale, up to ten percent (10%) 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 for sale of that lot and the day on which you become the registered proprietor.

Property Address

The land and goods, together with any improvements and fixtures known as

Apartment 15, 42 Porter Street, Prahran VIC 3181

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**

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)

and in that order of priority.

* 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*.

August 2019 Revision

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 (also known as a “Vendor Statement”) from the vendor before signing this contract.

In this contract, “section 32 statement” means the statement required to be given by a vendor under section 32 of the *Sale of Land Act 1962*.

The authority of a person signing -

- under power of attorney; or
- as director of a corporation; or
- as agent authorised in writing by one of the parties –

must be noted beneath the signature.

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

SIGNED BY THE PURCHASER _____ on ____ / ____ / 20__

Print name(s) of person(s) signing

State nature of authority if applicable (e.g. “director”, “attorney under power of attorney”)

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

In this contract, “business day” has the same meaning as in section 30 of the *Sale of Land Act 1962*.

SIGNED BY THE VENDOR _____ on ____ / ____ / 20__

Print name(s) of person(s) signing

Jennifer Elisabeth Brand

State nature of authority if applicable (e.g. “director”, “attorney under power of attorney”)

Director

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

Particulars of Sale

Vendor's Estate Agent

Name: Viva Property
Address: 575 Elizabeth Street, Melbourne VIC 3000
Telephone: 03 9373 6868
Mobile: 0402 000 497
Fax: 03
Reference: Zeno Kobica
Email: zenok@vivaproperty.com.au

Vendor

Name: Sustain Able 8 Pty Ltd
Address: c/- Level 12, 60 Albert Road, South Melbourne VIC 3205
ABN/ACN: 636 136 331

Vendors' Legal Practitioner

Name: Held Lawyers
Office Address: Level 1, 48 Glenferrie Road, Malvern VIC 3144
Postal Address: P.O. Box 467, Malvern VIC 3144
Telephone: 03 9509 0710
Fax: 03 9500 0805
Reference: SUST0001-001
Email: info@heldlawyers.com

Purchaser

Name:
Address:
ABN/ACN:
Telephone:
Email:

Purchaser's Legal Practitioner or Conveyancer

Name:
Address:
Telephone:
Fax:
Reference:
Email:

Property Address

Address: The land and goods together with any improvements and fixtures known as
Apartment 15, 42 Porter Street, Prahran VIC 3181

Land (general conditions 7 and 13)

The land (which includes all improvements and fixtures) is

- described in the table below -

Certificate of Title reference	being lot	on plan
Volume 11344 Folio 968	15	<p>Plan of Subdivision PS 632276 G, Crown Portion 40 (part), Parish of Prahran</p> <p>being all of the land enclosed by continuous lines described in Certificate of Title Volume 11344 Folio 968 and shown on the map of the land shown on Plan of Subdivision PS 632276 G, together with:</p> <ul style="list-style-type: none"> - the encumbrances/easements affecting the land referred to on the said map, including those pursuant to:- <ul style="list-style-type: none"> • Section 98, Transfer of Land Act 1958 (Vic) • Sections 12(2) & 24, Subdivision Act 1988 (Vic) - Agreement in Dealing AJ 248386 Q - Additional Owners Corporation Information in Dealing OC 013901 M <p>and an undivided share in the common property for the time being shown on the map of the land shown on Plan of Subdivision PS 632276 G.</p>

or

- if no title or plan references are recorded in the table, is as described in the Section 32 Statement or the Register Search Statement and the document, or part of a document, referred to as the “diagram location” in the Register Search Statement as attached to the Section 32 Statement (which identifies the land and its location)

Goods sold with the Land (general condition 6.3(f)) (List or attach schedule)

All fixed floor coverings, window furnishings, drapes and light fittings

Payment

Price	\$				
Deposit	\$		by	/	/20 (of which \$ has been paid)
Balance	\$		payable at settlement		

Deposit Bond

General Condition 15 applies only if the words ‘**deposit bond**’ appear in this box:

Not applicable

Bank Guarantee

General Condition 16 applies only if the words ‘**bank guarantee**’ appear in this box:

Not applicable

GST

Subject to General Condition 19.2, **the price includes GST (if any)** unless the words ‘**plus GST**’ appear in the next box.

GST (if any) must be paid in addition to the price if 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 the requirements of section 38-480 of the GST Act then add the words '**farming business**' in this box:

Not applicable

If this sale is a sale of a 'going concern' then add the words '**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 conditions 17 & 26.2)

is due on _____ / _____ /20_____

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 fourteenth (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 words '**subject to lease**' appear in this box, in which case refer to general condition 5.1:

Not applicable

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

Terms Contract (general condition 30)

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 30 and add any further provisions by way of special conditions:

Not applicable

Loan (general condition 20)

This contract is subject to a loan being approved and the following details apply if the words '**subject to loan approval**' appear in this box:

Not applicable

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

Lender: _____ (or another lender chosen by the purchaser)

Loan Amount: \$ _____ (no more than)

Approval Date: _____ / _____ /20_____

Building Report

General Condition 21 applies only if the words '**building report**' appear in this box:

Not applicable

Pest Report

General Condition 22 applies only if the words '**pest report**' appear in this box:

Not applicable

Special Conditions

This contract does not include any special conditions unless the words **‘special conditions’** appear in this box:

Special Conditions

Instructions:

It is recommended that when adding 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 this page; and
- attach additional pages if there is not enough space and number pages accordingly (e.g. 4a, 4b, 4c, etc.).

If the contract is subject to **‘special conditions’**, then particulars of the Special Conditions are **attached**.

Special Conditions

I. Definitions and Interpretations

I.1 Definitions

In these special conditions:

Act means the *Subdivision Act 1988* (Vic).

Approval means any permit, licence, consent, certificate or other approval obtained or required to be obtained from a Relevant Authority in relation to the Land.

Authority means any government or any public, statutory, governmental, semi-governmental, municipal or judicial body, entity or authority and includes a Minister of the Crown (in any right), and any person, body, entity or authority exercising a power pursuant to an Act of Parliament.

Building Permit means any building permit or other authorisation under the Planning Scheme or legislation required to carry out building works to the property.

Building Works means building works carried out to the property.

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

Claim means any and all claims, actions, disputes, differences, demands, proceedings, accounts, interest, costs (whether or not the subject of a court order), Loss, expenses and debts or liabilities of any kind (including those which are prospective or contingent and those the amount of which is not ascertained) of whatever nature and however arising.

Commissioner means the Australian Taxation Commissioner.

Completion means settlement of the sale of the Property pursuant to this Contract.

Contract means this contract and includes all enclosures and annexures.

Contract Date means the date on which the Vendor executes the Contract being acceptance of the Purchaser's offer by way of the Purchaser's earlier execution of the Contract.

Deposit means an amount equal to the proportion of the purchase price that is set out as the deposit in the Particulars of Sale and includes any interest.

DOL means the Victorian State Revenue on-line duties form for land transfers system.

DOL online duties form means the Victorian State Revenue all-in-one on-line duties form for land transfers.

eCT means Electronic Certificate of Title.

EFT means Electronic Funds Transfer.

Electronic Conveyancing National Law has the meaning given to that expression in the *Electronic Conveyancing (Adoption of National Law) Act 2013* (Vic) (as amended).

FIRB means the Foreign Investment Review Board.

General Conditions are the conditions set out in Part I of the Law Institute of Victoria standard form of contract prescribed by the *Estate Agents (Contracts) Regulations 2008* (Vic).

Goods means the goods (if any) as described in the particulars of sale being the goods sold pursuant to this Contract.

Guarantee means the guarantee and indemnity annexed at schedule I.

GST means GST within the meaning of the GST Law and includes penalties and interest.

GST Law has the meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended).

Hazardous Materials includes:

- (a) all hazardous substances and any pollutant or contaminant defined as such in (or for the purposes of) any Federal, State or local statute, law, ordinance, Rule or regulation, regulating or imposing a liability or standards of conduct concerning any such substance or material; and
- (b) all waste.

Insolvency Event means:

- (a) in the case of a natural person, if that person:
 - (i) becomes bankrupt;
 - (ii) assigns the person's estate; or
 - (iii) enters into a deed of arrangement or composition for the benefit of creditors.
- (b) in the case of a corporation, if that corporation:
 - (i) goes into liquidation (including provisional liquidation) other than a voluntary liquidation for the purposes of reconstruction or reorganisation;
 - (ii) is wound up or dissolved or has an application made for its winding up or dissolution;
 - (iii) enters into a scheme or arrangement with or makes an assignment for the benefit of its creditors or any class or classes of them;
 - (iv) is placed under official management;
 - (v) has an agent in possession or a receiver and/or manager or an administrator appointed to the whole or any substantial part of its assets; or
 - (vi) has an inspector or investigator appointed under the *Corporations Act 2001* (Cth).

Interest means the interest (if any) that accrues on the Deposit less the taxes, charges and fees charged on, or attracted by, the Deposit or by the interest earned on it including any tax deducted because of a failure by the Purchaser to supply a tax file number.

Land means the land as described in the Particulars of Sale being the land sold pursuant to this Contract.

Law means any law (including principles of law or equity established by decisions of courts) that applies in Victoria, and any rule, regulation, ordinance, order, by-law, local law, statutory instrument, control, restriction, direction or notice made under a law by any Authority.

Lease or Licence means:

- (a) any lease or licence referred to in the Particulars of Sale;
- (b) any disclosure statement issued in respect of any lease or licence referred to in the Particulars of Sale.

Loss means any loss (including loss of profit and loss of expected profit), claim, action, liability, proceeding, summons, demand, notice, damage, death, personal injury, suit, judgment, injunction, order, decree, cost, charge, expense, outgoing, payment, damages, diminution in value or deficiency of any kind or character which a party pays, suffers or incurs or is liable for including:

- (a) liabilities on account of any tax of any nature whatsoever;
- (b) interest and other amounts payable to third parties;
- (c) legal (on a full indemnity basis) and other expenses reasonably incurred in connection with investigating or defending any claim or action, whether or not resulting in any liability;
- (d) amounts paid in settlement of any claim or action; and
- (e) consequential loss and damage (irrespective of its nature or occurrence).

Nominee means the person or persons the purchaser may nominate as a substitute or additional person to take a transfer of the land.

pCT means Paper Certificate of Title.

Plan means any plan of subdivision referred to in the Particulars of Sale or Vendor's Statement and/or attached to the Vendor's Statement;

Planning Permit means any planning permit or other authorisation under the Planning Scheme or the *Planning and Environment Act 1987* (Vic) required to use or develop the Land.

Planning Scheme means the local municipal authority's Planning Scheme.

Property means the Land and the Goods.

Property Controls means all existing and future planning, environmental, building and similar controls relating to the use or development of the Property, including (as applicable) the Planning Scheme and any Planning Permit.

Purchaser means the purchaser specified in the particulars of sale.

Purchaser Rights means:

- (a) making requisitions;
- (b) claiming compensation;
- (c) rescinding or purporting to rescind;
- (d) calling on the Vendor to amend title or to bear any cost of doing so;
- (e) delaying settlement;
- (f) avoiding any of its obligations; and
- (g) making any other Claim,

under this Contract.

Registrar means the Registrar of Titles of Victoria.

Relevant Authority includes the local municipal authority, Heritage Victoria, the Environment Protection Authority and any governmental, municipal, statutory, public or other authority having jurisdiction over or in relation to the Property.

Requirement means any notice, order, direction, requirement, statute, ordinance, proclamation, regulation, scheme, permit, by-law or other regulatory requirement, present or future, affecting or relating to the Property or the use of the Property, irrespective of whether the Requirement is addressed to the Vendor, the Purchaser or any other person.

Settlement Date means the date on which the balance of the purchase price must be paid.

SMSF means self-managed superannuation fund.

SRO Settlement Statement means the document titled "Settlement Statement" arising out of the Victorian State Revenue DOL online duties form process.

Takeovers Act means the *Foreign Acquisition & Takeovers Act 1975 (Cth)*.

Transferee Statement means the Purchaser's statement arising out of the Victorian State Revenue DOL online duties form process.

Transferor Statement means the Vendor's statement arising out of the Victorian State Revenue DOL online duties form process.

Utilities means water, recycled water, sewerage, drainage, gas, electricity, telecommunications and other like services and includes all installations, pipes, wires, fibre optic cables, mains, manholes, vents, connections and machinery relating to those services.

Vendor means the vendor specified in the particulars of sale.

Vendor's Agent for the purposes of the cooling-off provisions referred to in this Contract and made under either:-

- (a) Section 31 of the *Sale of Land Act 1962* (Vic) or
- (b) a notice under General Condition 14.2 (ending the Contract if the loan is not approved)

includes the Vendor's Legal Practitioner, Vendor's Conveyancer and also the Vendor's real estate agent (where appointed pursuant to signed REIV authority) even if the estate agent's authority has formally expired at the time of service.

Vendor's Statement means a statement made under section 32 of the *Sale of Land Act 1962* (Vic). A copy of the Vendor's Statement for this Contract is attached.

1.2 Interpretation

In this Contract:

- (a) a reference to:
 - (i) any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any statutory instrument issued under, that legislation or legislative provision;
 - (ii) the singular includes the plural and vice versa;
 - (iii) an individual or person includes a corporation, firm, authority, government or government authority and vice versa;
 - (iv) any gender includes the other genders;
 - (v) a party to this Contract includes that party's executives, administrators, successors and permitted assigns; and
 - (vi) a condition, annexure or schedule is a reference to a condition, annexure or schedule of this Contract.
- (b) including and singular expressions are not words of limitation;
- (c) headings are for convenience and reference only and do not affect the meaning or interpretation of this Contract; and
- (d) if the whole of any part of a provision of this Contract is invalid or unenforceable, the validity or enforceability of the remaining provisions will not be affected.

1.3 Any obligation on the part of two or more persons under this Contract binds all of them jointly and each of them severally, unless expressed to be only several.

1.4 The obligations imposed and the benefits conferred under this Contract on each of the parties are binding upon and endure for the benefit of the respective parties and each of their respective successors in title, legal personal representatives and permitted assigns.

1.5 Any reference to "Days" shall mean a reference to business days, and does not include a Saturday, Sunday or bank holiday.

1.6 If an act must be done on a specified day, which is not a Business Day, the act must be done on the Business Day immediately after that specified day.

2. Amendments to General Conditions

2.1 The Purchaser and the Vendor agree that if there is:

- (a) any inconsistency between the provisions of the General Conditions and Special Conditions then, except in the case of manifest error, to the extent of any inconsistency the provisions of the Special Conditions shall prevail and have priority; and
- (b) any inconsistency between this special condition and any other special condition then, except in the case of manifest error, to the extent of any inconsistency the provisions of any other special conditions shall prevail and have priority over this special condition.

2.2 Without limiting the specific provisions of any other special condition, the General Conditions are amended as set out in this special condition 1.

2.3 The General Conditions (**GC**) are amended as follows:

General Condition	Heading	Variation	Details
GC3	Guarantee	Replace	<p>Delete existing clause and replace with the following clauses as GC3.1 to 3.2:</p> <p>“3.1 If the purchaser is a company other than a public company or if the purchaser nominates a substitute transferee or additional transferee which is a company other than a public company, the purchaser must procure the immediate execution of a guarantee and indemnity <u>in the form attached to this Contract</u> by:</p> <ul style="list-style-type: none">(a) each of its directors; and/or(b) a listed company of which the purchaser is a subsidiary, <p>and the parties agree that either the Purchaser shall re-imburse the Vendor for its additional costs incurred at the request of the Purchaser or the nominee shall pay the Vendor for its additional costs incurred at the request of the nominee, at a fee of <u>\$350.00 per director</u> which is due and payable immediately by the Named Purchaser, the substituted transferee, nominee and/or additional transferee to the Vendor’s Solicitors and is <u>to be delivered with each forms</u>, representing re-imburement of the reasonable costs (including GST) that will be incurred by the vendor in relation to that guarantee and indemnity) and immediately deliver it, together with current ASIC company and PPSR searches of any company to which this clause applies to the Vendor</p> ”

			<p>together with the executed contract. The parties further agree that if the Purchaser requests a copy of a bill for the above lump sum re-imbursement, the Vendor's Solicitors will only be required to provide a bill showing sufficient detail by way of general description of the work undertaken, and are therefore not required to also provide an itemised bill.</p> <p>(c) the parties agree that the Vendor is not obliged to accept the nomination until the requirements of this General Condition are first met by the Named Purchaser, the substituted transferee, nominee and/or additional transferee (as the case may be).</p> <p>3.2 If the duly executed Guarantee and Indemnity and ASIC company and PPSR searches referred to in GC3.1 are not delivered to the Vendor or the Vendor's Solicitors within fourteen (14) days of the Contract Date, the Purchaser will be deemed to be in default under this Contract."</p>
GC4	Nominee	Replace	<p>Delete existing clause and replace with the following clauses as GC4.1 to 4.4:</p> <p>"4.1 The purchaser may nominate a substitute or additional person or persons to take a transfer of the land ("Nominee"), but the named purchaser remains personally liable for the due performance of all the purchaser's obligations under this contract.</p> <p>4.2 The purchaser shall not be entitled to nominate while there is any subsisting default.</p> <p>4.3 Any nomination must be made:</p> <p>(a) within fourteen (14) days of the Contract Date; or</p> <p>(b) where the Contract is for a period of thirty (30) days or less, at least ten (10) days before the Settlement Date.</p> <p>4.4 If the purchaser wishes to nominate it must deliver to the Vendor's Solicitor:</p> <p>(a) an original nomination notice <u>in the form attached to this Contract</u>, executed by the nominee and the purchaser;</p> <p>(b) a true copy of the duly signed nominee statutory declaration required by the State Revenue Office;</p>

			<p>(c) a Deed under seal in which each Nominee jointly and severally confirms to the vendor that they will comply with all the purchaser's obligations under this Contract, including without limitation any that are capable of having effect after completion of this Contract, and under which each jointly and severally guarantees and indemnifies the vendor in terms identical to every guarantee and indemnity given, or to be given by the purchaser under this Contract. This Deed is to be in the form or to the effect of the nomination notice in the form attached to this Contract, executed by each Nominee and the purchaser; and</p> <p>(d) the parties agree that either the Purchaser shall re-imburse the Vendor for its additional costs incurred at the request of the Purchaser or any Nominee shall pay the Vendor for its additional costs incurred at the request of any Nominee, at a fee of \$450.00 which is due and payable immediately by the Named Purchaser and/or Nominee to the Vendor's Solicitors and is <u>to be delivered with the forms</u>, representing re-imbursement by the Purchaser or payment by the Nominee of the reasonable costs (including GST) that will be incurred by the Vendor in relation to that nomination. The parties further agree that if the Purchaser or Nominee requests a copy of a bill for the above lump sum re-imbursement, the Vendor's Solicitors will only be required to provide a bill showing sufficient detail by way of general description of the work undertaken, and are therefore not required to also provide an itemised bill.</p> <p>(e) the parties agree that the Vendor is not obliged to accept the nomination until the requirements of this General Condition are first met by the Named Purchaser and/or Nominee.</p> <p>4.5 The purchaser and/or Nominee warrant that if in the circumstances the <i>Duties Act 2000</i> (Vic) requires the written authority of the Nominee for the purchaser to enter into the transaction on behalf of the Nominee, that such an authority was in existence at the time this original Contract was entered into."</p>
GC5	Encumbrances	Replace	Change the reference from "lease or tenancy" to "lease, tenancy or licence".
GC6.1	Vendor	Replace	Delete existing clause and replace with the

	Warranties		<p>following clause:</p> <p>“The vendor warrants that <u>other than as amended by special conditions</u>, these general conditions 1 to 35 are identical to the general conditions 1 to 35 in the form of contract of land published by the Law Institute of Victoria Limited and the Real Estate Institute of Victoria Ltd in the month and year set out at the foot of the front page of this Contract of Sale of Land.”</p>
GC9	Consents	Addition	<p>Amend existing clause by inserting the following sentence at the end of GC9:</p> <p>“The Purchaser must pay to the Vendor on demand on an indemnity basis all costs and expenses incurred by the Vendor in respect of any consent or request that the Purchaser seeks from or makes of the Vendor in respect of this Contract or the Property. The Vendor is not obliged to so act unless and until it is first paid its reasonably estimated costs of so doing.”</p>
GC10	Transfer and Duty	Replace	<p>Delete existing clause and replace with the following clause:</p> <p><u>“10.1 Transfer of Land</u></p> <p>For any paper transfer of land document which is necessary for this transaction:</p> <p>(a) The transfer of land document must be prepared by the Purchaser and delivered to the Vendor at least ten (10) days before the due date for settlement as initially contracted.</p> <p>(b) The delivery of the transfer of land document is not acceptance of title.</p> <p>(c) In the event that the transfer of land is not delivered as required under General Condition 10.1 –</p> <p>(i) the Vendor shall not be obligated to complete this Contract of Sale until the expiration of ten (10) business days from the date of such delivery; and</p> <p>(ii) the Purchaser will be deemed to have defaulted in payment of the balance of the price if the transfer of land document is not delivered as required by this general condition. The default will be deemed to commence on the settlement date as initially contracted and terminate (ten) 10 days after the date on which the Vendor receives the</p>

			<p>transfer of land document.</p> <p>10.2 <u>Assessment of Duty documents</u></p> <p>(a) The Vendor must promptly and no less than seven (7) business days prior to the due date for settlement as initially contracted –</p> <ul style="list-style-type: none"> (i) initiate the DOL online duties form and/or any other form required by the State Revenue Office in respect of this transaction; and (ii) invite the Purchaser to join the DOL online duties form and/or any other form required by the State Revenue Office in respect of this transaction. <p>(b) The Purchaser must promptly accept the Vendor's invitation to join the DOL online duties form and/or any other form required by the State Revenue Office in respect of this transaction within the earlier of –</p> <ul style="list-style-type: none"> (i) three (3) business days of receipt of such invitation; or (ii) the settlement date as initially contracted. <p>(c) The Vendor must prepare any document required for assessment of duty in respect of 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 (where applicable) at least three (3) business days before the due date for settlement as initially contracted.</p> <p>(d) In the event that the Vendor's invitation to the Purchaser to join the DOL online duties form and/or any other form required by the State Revenue Office in respect of this transaction is not accepted as required under General Condition 10 –</p> <ul style="list-style-type: none"> (i) the Vendor shall not be obligated to complete this Contract of Sale until the expiration of three (3) business days from the date of such acceptance; and (ii) the Purchaser will be deemed to have defaulted in payment of the balance of the price if the Purchaser does not accept the Vendor's invitation to join the DOL online duties form and/or any other form required by the State Revenue Office in respect of this
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			<p>transaction as required by this general condition. The default will be deemed to commence on the settlement date as initially contracted and terminate (ten) 10 days after the date on which the Vendor receives the Purchaser's acceptance to join the DOL online duties form and/or any other form required by the State Revenue Office in respect of this transaction.</p> <p>(e) Notwithstanding anything to the contrary in this Contract, once the Vendor has invited the Purchaser to join the DOL online duties form and/or any other form required by the State Revenue Office in respect of this transaction, the Vendor shall be taken to have complied with the requirements of General Conditions 10.2(a) and 10.2(c) and be deemed ready, willing and able to settle and therefore not in breach of any of its obligations under this Contract, regardless of any subsequent request by the Purchaser to amend the Transferor Statement, and -</p> <p>(i) the Vendor shall not be obligated to amend the Transferor Statement until the expiration of three (3) business days from the date of any such subsequent request by the Purchaser to amend the Transferor Statement; and</p> <p>(ii) in addition to and without affecting GC10.2(e)(i) and (iii), the parties agree that the Purchaser shall re-imburse the Vendor for its additional costs incurred <u>for each such request</u> by the Purchaser, where the Vendor amends the Transferor Statement at a fee to the purchaser of \$450.00 which is due and payable immediately by the Named Purchaser, the substituted transferee and/or additional transferee to the Vendor's Solicitors but otherwise payable at settlement if it proceeds on the due date for settlement, by the Named Purchaser, the substituted transferee and/or additional transferee to the Vendor's Solicitors, representing the reasonable costs (including GST) that will be incurred by the Vendor in relation to amending the Transferor Statement. The parties agree that the Vendor can rely on this statement and its contents as being true and correct. The parties</p>
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			<p>further agree that if the Purchaser requests a copy of a bill for the above lump sum re-imbursement, the Vendor's Solicitors will only be required to provide a bill showing sufficient detail by way of general description of the work undertaken, and are therefore not required to also provide an itemised bill; and</p> <p>(iii) the Purchaser will be deemed to have defaulted in payment of the balance of the price if within three (3) business days from the date of any such subsequent request by the Purchaser to amend the Transferor Statement the Purchaser does confirm in writing to the Vendor that an SRO Settlement Statement has issued. The default will be deemed to commence on the settlement date as initially contracted and terminate (ten) 10 days after the date on which the Vendor receives the written Purchaser's confirmation that an SRO Settlement Statement has issued.</p> <p>(f) The parties must co-operate to complete the DOL online duties form and/or any other form required by the State Revenue Office in respect of this transaction as soon as practicable."</p>
GCII	Release of Security Interest	Addition	<p>Amend existing clause and replace with the following clause:</p> <p>"11.16 For the purposes of General Condition 11, the parties agree that -</p> <p>(a) in respect of each and every item of personal property sold by the vendor to the purchaser pursuant to this contract the vendor has no obligation to -</p> <p>(i) ensure that the purchaser receives a release, statement, approval or correction;</p> <p>(ii) lodge a financing change statement;</p> <p>where the secured party is a mortgagee in relation to the land.</p> <p>(b) in respect of each and every item of personal property sold by the vendor to the purchaser pursuant to this contract -</p> <p>(i) the purchaser intends to use it predominantly for personal, domestic</p>

			<p>or household purposes; and</p> <p>(ii) no individual item has a market value of more than \$5,000;</p> <p>(c) the purchaser shall not make any objection, refuse to settle or otherwise claim any compensation for any alleged failure by the vendor in respect of the vendor's obligations (if any) under General Condition 11;</p> <p>(d) "Market Value" means the value of personal property as inspected, not the replacement value;</p> <p>(e) "Property" means land and any personal property sold by the vendor to the purchaser pursuant to this contract."</p>
GC14.3(a)	Deposit	Replace	<p>Delete existing first line of paragraph and replace with the following line:</p> <p>(a) the vendor provides particulars, to the reasonable satisfaction of the purchaser, that either-</p>
GC17.1(b)(i)	Settlement	Replace	<p>Delete existing sub-paragraph and replace with the following sub-paragraph:</p> <p>"provide all title documents necessary to enable the purchaser to become the registered proprietor of the land; and"</p>
GC17.3	Settlement	Addition	<p>Amend existing clause by inserting the following sentences at the end of GC17.3:</p> <p>"A settlement which occurs after 4.00 p.m. will, unless the vendor agrees otherwise, be treated as having occurred at 4.00 a.m. on the next day which is not a Saturday, Sunday or proclaimed public holiday in the State of Victoria.</p> <p>If settlement takes place after 4.00 p.m., then the Purchaser is deemed to be in default until the next business day."</p>
GC19.2	GST	Addition	<p>Amend existing clause by inserting the following sentence at the end of GC19.2:</p> <p>"The Purchaser must pay any amount that it is required to pay under this clause in full and without deduction, set-off, withholding or counterclaim."</p>
GC19.7(c)	GST	Addition	<p>Add the following new paragraph at the end of GC19.7 as GC19.7(c):</p>

			(c) any term used in this General Condition has the meaning given in the GST Act.”
GCI9.8 to 19.9	GST	Addition	<p>Add the following new sub-clauses at the end of the general condition as GCI9.8 to 19.9:</p> <p>“19.8 Despite any other provision of this Contract, if either party is required to reimburse to the other any costs, expenses or other amounts (or the part) that the other party has incurred in connection with this Contract, the amount to be reimbursed must be reduced by any part of that amount which is recoverable by the other party by way of input tax credit, partial input tax credit or other like set-off.</p> <p>19.9 The amount recoverable on account of GST under this general condition by the vendor will include any fines, penalties, interest and other charges incurred as a consequence of late payment or other default by the purchaser under this general condition.”</p>
GC20	Loan	Replace	<p>Delete existing clause and replace with the following clauses as GC20.1 to 20.5:</p> <p>“20.1 If the particulars of sale specify that this Contract is subject to a loan being approved, the Contract is subject to the lender approving the loan on the security of the Property by the approval date in the particulars of sale or any later date allowed by the vendor.</p> <p>20.2 The approval date is extended to any later date requested by the Purchaser in writing, provided that the Purchaser makes that request before the approval date in the particulars of sale.</p> <p>20.3 The Vendor may reject the Purchaser’s request for an extended approval date in writing at any time after receipt of the Purchaser’s written request, in which case the approval date is the later of the approval date in the particulars of sale or two (2) business days after the Purchaser receives the Vendor’s rejection.</p> <p>20.4 The Purchaser may end the Contract of the loan is not approved by the approval date but only if the Purchaser:</p> <p>(a) immediately applied for the loan; and</p> <p>(b) did everything reasonably required to obtain</p>

			<p>approval of the loan; and</p> <p>(c) serves written notice ending the contract, together with written evidence of rejection or non-approval of the loan, on the vendor within two (2) clear business days after the approval date or any later date allowed by the vendor; and</p> <p>(d) is not in default under any condition of this contract when the notice is given.</p> <p>20.5 All money must be immediately refunded to the Purchaser if the Contract is ended in accordance with General Condition 20.4.”</p>
GC21.2	Building Report	Replace	Change the reference from “fourteen (14) days” to “seven (7) days”.
GC22.2	Pest Report	Replace	Change the reference from “fourteen (14) days” to “seven (7) days”.
GC23	Adjustments	Addition	<p>Amend existing clause by inserting the following definitions:</p> <p>“Certificates” means proof in the form of a copy of all current certificates from the relevant authorities and any other information used to prepare, calculate and verify the adjustments in the Statement of Adjustments and Settlement Statement.</p> <p>“Statement of Adjustments and Settlement Statement” means a statement to be prepared by the Purchaser setting out in a form customarily used in good conveyancing practice in the State of Victoria:</p> <p>(a) the adjustments to be made to the Price in accordance with this Contract, including without limitation the adjustments to be made in relation to rates, taxes, other outgoings of the Property (including an adjustment to be made for any non-recurrent charges on the land where the charge arose prior to the date of sale), registration and other similar fees if applicable, and the interest and other amounts (if any) payable by the Named Purchaser, the substituted transferee and/or additional transferee in addition to/subtraction from the Price, and rents and other profits of the Property if appropriate;</p> <p>(b) details of the Deposit, the Residue, the adjustments referred to above, and the balance then payable at settlement.”</p>
GC23.4 to	Adjustments	Addition	Add the following new sub-clauses at the end of

23.8			<p>the general condition as GC23.4 to 23.8:</p> <p>“23.4 The purchaser must provide to the Vendor or the Vendor’s Solicitor a Statement of Adjustments and Settlement Statement together with copies of all Certificates and other information used to calculate the adjustments under General Condition 23 at least three (3) clear business days before the earlier of the date:</p> <ul style="list-style-type: none"> (a) the Residue is required to be paid under this Contract; or (b) the Purchaser becomes entitled to possession or receipt of the rents and profits of the Property. <p>23.5 In the event that the Statement of Adjustments and Settlement Statement or copies of all Certificates and other information used to calculate the adjustments under General Condition 23 are not delivered to the Vendor or the Vendor’s Solicitor as required above:</p> <ul style="list-style-type: none"> (a) the Vendor shall not be obligated to complete this Contract of Sale until the expiration of three (3) clear business days from the date of such delivery; (b) the Purchaser shall be deemed to have made default in the payment of the residue of purchase price, such default being deemed to commence on that date when delivery of the Statement of Adjustments and Settlement Statement should have been delivered by, and terminate upon the expiry of (3) clear business days from the date upon which the Statement of Adjustments and Settlement Statement or copies of all Certificates and other information used to calculate the adjustments under General Condition 23 are received by the Vendor or the Vendor’s Solicitor; (c) in addition to and without affecting GC23.5(a) and (b), the parties agree that the Purchaser shall re-imburse the Vendor for its additional costs incurred at the request of the Purchaser, where the Vendor prepares a Statement of Adjustments and Settlement Statement at a fee to the purchaser of \$450.00 <u>plus</u> the cost of obtaining all Certificates and other information used to calculate the adjustments under General Condition 23 Certificates which is due and
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			<p>payable immediately by the Named Purchaser, the substituted transferee and/or additional transferee to the Vendor's Solicitors but otherwise payable at settlement if it proceeds on the due date for settlement, by the Named Purchaser, the substituted transferee and/or additional transferee to the Vendor's Solicitors, representing the reasonable costs (including GST) that will be incurred by the Vendor in relation to preparing that statement. The parties agree that the Vendor can rely on this statement and its contents as being true and correct. The parties further agree that if the Purchaser requests a copy of a bill for the above lump sum reimbursement, the Vendor's Solicitors will only be required to provide a bill showing sufficient detail by way of general description of the work undertaken, and are therefore not required to also provide an itemised bill.</p> <p>23.6 The Purchaser undertakes that at settlement, where applicable:</p> <ul style="list-style-type: none"> (a) there will be produced for the inspection of the Vendor and/or the Vendor's Solicitor, bank cheques made payable to the relevant authorities in respect of unpaid outgoings; and (b) the bank cheques referred to above shall be forwarded to the relevant authorities within ten (10) clear business days of the settlement date. <p>23.7 Within three (3) calendar months of completion of the Contract, a party may give notice to the other that a mathematical mistake occurred in calculation of an amount paid under this Contract, or that there has been a change to the amount owing to the relevant Authority after settlement due to the Corona virus COVID-19.</p> <p>If that notice is given, then the parties agree that the mistake must be corrected or change amended forthwith and the appropriate amount must be paid by one party to the other forthwith.</p> <p>This condition creates rights and remedies in addition to those that may otherwise exist as a result of a mathematical mistake or change by the relevant authority.</p> <p>23.8 For the purpose of this general condition "Certificate" means a current certificate issued by the relevant authority or</p>
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			institution, and where applicable as required by Section 32 of the <i>Sale of Land Act 1962</i> (Vic), and in any event the lesser of no more than ninety (90) days from the date of issue or commencement of the next relevant rating period.”
GC24.10	Foreign Resident Capital Gains Withholding	Replace	<p>Delete existing sub-clause GC24.10 and replace with the following new sub-clause GC24.10:</p> <p>“24.10 The Purchaser:</p> <ul style="list-style-type: none"> (a) must provide the Vendor or its representative with a copy of the Purchaser Payment Notification from the Commissioner at least five (5) business days before the due date for settlement. The failure to do so is the breach of a fundamental term of the Contract. The Vendor is not required to settle until five (5) business days after receipt of the Purchaser Payment Notification. (b) must provide its representative with a copy of the Purchaser Payment Notification from the Commissioner at least five (5) business days before the due date for settlement. (c) must authorise its representative to hold the amount either in its trust account or by bank cheque payable to the Commissioner pending settlement, and provide evidence of the authority to the Vendor or its representative at least five (5) business days before the due date for settlement. (d) is responsible for any penalties or interest payable to the Commissioner on account of late payment of the account, together with the Vendor’s associated legal costs. <p>This General Condition 24 will not merge on settlement of this Contract, and will continue thereafter in full force and effect.”</p>
GC25.13	GST Withholding	Addition	<p>Add the following new sub-clause at the end of the general condition as GC25.13:</p> <p>“25.13 This General Condition 25 will not merge on settlement of this Contract, and will continue thereafter in full force and effect.”</p>
GC27.1	Service	Replace	<p>Delete existing sub-clause GC27.1 and replace with the following new sub-clause GC27.1:</p> <p>“27.1 Any document required to be served by or</p>

			<p>on any party:</p> <p>(a) must be in writing; and</p> <p>(b) may be served by or on the Legal Practitioner or Conveyancer for that party.”</p>
GC28	Notices	Replace	<p>Delete existing clause and replace with the following clauses as GC28.1 to 28.3:</p> <p>“28.1 The Vendor is responsible for any notice, order, demand or levy imposing liability on the property (including any resolution, notice, order, demand or levy made or issued by an owners corporation) that is issued or made before the day of sale and does not relate to periodic outgoings.</p> <p>28.2 The Purchaser is responsible for any notice, order, demand or levy imposing liability on the property (including any resolution, notice, order, demand or levy made or issued by an owners corporation) that is issued or made on or after the day of sale and does not relate to periodic outgoings.</p> <p>28.3 The Purchaser may enter the property on reasonable times and following prior written notice to the vendor to comply with that responsibility where action is required before settlement. The Purchaser must use its reasonable endeavours not to disrupt the use and occupation of the property by the vendor and indemnifies the Vendor for any loss or damage suffered by the vendor as a consequence of the purchaser exercising its rights under this general condition.”</p>
GC31.4 to 31.6	Loss or damage before settlement	Delete	Delete existing clauses GC 31.4 to 31.6.
GC32.1 to 32.2	Breach	Replace	<p>Delete existing clause and replace with the following clauses as GC32.1 to 32.2:</p> <p>“32.1 A party who breaches this contract must pay to the other party on demand:</p> <p>(a) compensation for any reasonably foreseeable loss to the other party resulting from the breach; and</p> <p>(b) any interest due under this contract as a result of the breach.</p> <p>32.2 The Purchaser acknowledges that without limitation the following items are included within the definition of “a reasonably</p>

			<p>foreseeable loss”:</p> <ul style="list-style-type: none"> (a) all costs associated with bridging finance to complete the Vendor's purchase of another property, including interest charged on such bridging finance; (b) expenses payable by the Vendor under any existing loans secured over the property or other property of the Vendor; (c) accommodation expenses incurred by the Vendor; (d) the Vendor's legal costs and expenses as between solicitor and own client incurred due to the breach, including an initial fee of \$750.00 <u>per breach</u> which is due and payable immediately by the Named Purchaser, the substituted transferee and/or additional transferee to the Vendor's Solicitors, representing the reasonable costs (including GST) that will be incurred by the Vendor in relation to the breach (including preparation of a default notice). The parties further agree that if the Purchaser requests a copy of a bill for the above lump sum re-imbursement, the Vendor's Solicitors will only be required to provide a bill showing sufficient detail by way of general description of the work undertaken, and are therefore not required to also provide an itemised bill; (e) penalties and any other expenses payable by the vendor due to any delay in completion of the purchase of another property, and (f) if the default results in settlement being delayed until after 31 December in any calendar year, any additional land tax incurred by the Vendor as a result of the land being included in the Vendor's land tax assessment for the next calendar year.”
GC33	Interest	Replace	Change the reference from “2%” to “4%”.
GC33	Interest	Addition	<p>Amend existing clause by inserting the following sentence at the end of the general condition:</p> <p>“Interest shall be calculated including all days - business days, Saturdays, Sundays and bank holidays.”</p>
GC35.4(a)	Default not remedied	Replace	<p>Delete existing paragraph and replace with the following paragraph:</p> <p>“an amount equal to ten percent (10%) of the price is forfeited to the vendor as the vendor's</p>

			absolute property, whether the amount has been paid or not; and”
GC35.6	Default not remedied	Addition	Add the following new sub-clause at the end of GC35 as GC35.6: “35.6 Unless the price includes GST, the reference to “the price” in this GC35 refers to the price plus any GST payable on the price.”

3. **Electronic Certificate of Title (eCT)**

- 3.1 The Purchaser cannot object to an eCT being provided at settlement.
- 3.2 Where an eCT is being provided at settlement, the Purchaser must settle on the due date and in accordance with the terms of the Contract.
- 3.3 If the Purchaser wishes the party in control of the eCT to *nominate to paper instrument* for settlement, the Purchaser must request the nomination in writing via the Vendor no later than fourteen (14) business days prior to the due date for settlement. If the Vendor receives such request less than fourteen (14) business days prior to the due date for settlement, the Purchaser acknowledges that the Vendor shall not be obligated to complete this Contract of Sale until the expiration of three (3) clear business days from the later of either the due date for settlement or receipt of written advice that there has been nomination; and in either case the Purchaser shall be deemed to have made default under the Contract.
- 3.4 The Purchaser acknowledges that the Vendor makes no warranty that the party in control of the eCT will *nominate to paper instrument*.
- 3.5 The Purchaser agrees to indemnify and keep indemnified the Vendor against all liabilities, claims, proceedings and penalties whatsoever arising under this Clause.

4. **Stamp Duty**

4.1 **Indemnity**

The Purchaser agrees to indemnify and keep indemnified the Vendor against all liabilities, claims, proceedings and penalties whatsoever under the *Duties Act 2000* (Vic) relating to the Contract and/or Instrument of Transfer or Conveyance of the property.

4.2 **Unequal Interests**

In addition to Special Condition 4.1 above, if there is more than one purchaser, it is the Purchaser’s responsibility to ensure the Contract correctly records at the Day of Sale the proportions in which they are buying the Property (“the Proportions”).

If the Proportions recorded in the Instrument of Transfer or Conveyance of the property differ from those recorded in the Contract, it is the Purchaser’s sole responsibility to pay any additional duty which may be assessed as a result of the variation.

The Purchasers agree to indemnify and keep indemnified the Vendor against all liabilities, claims, proceedings and penalties whatsoever under the *Duties Act 2000* (Vic) relating to any additional duty payable; as a result of the proportions in the Instrument of Transfer or Conveyance of the property differing from those in the Contract.

5. Encumbrances

5.1 Subject to all Laws

The Purchaser buys the Property subject to any applicable Law including, without limitation, any Act, order, regulation, restriction or condition imposed upon the land by or with the Authority of any government or semi-governmental or judicial entity or authority including without limitation the local Council's Planning Scheme or any other Scheme and any Approval.

5.2 Planning

The property is sold subject to any restriction as to user under any order, plan, scheme, regulation or by-law contained in or made pursuant to the provisions of any legislation. No such restriction shall constitute a defect in the Vendor's title.

5.3 Building Regulations

The Purchaser acknowledges that any improvements on the property comply with the Victorian Building Regulations, Council by-laws, relevant Statutes and any regulations thereunder, including the *Building Control Act 1981* (Vic), the *House Contracts Guarantee Act 1987* (Vic), the *Building Act 1993* (Vic) and the *Domestic Building Contracts and Tribunal Act 1995* (Vic). No such failure to comply shall constitute a defect in the Vendor's title.

5.4 Easements

The Purchaser:

- (a) admits that the Property is sold subject to the provisions of the Act; and
- (b) buys the Property subject to all easements and encumbrances affecting the Property including those created or implied by the Act or any Approval.

The Purchaser must not exercise any of the Purchaser Rights including delaying settlement in relation to any other matter referred to in this Special Condition 6.4.

5.5 Certificate of Occupancy

The Purchaser agrees that the Vendor is not obliged to provide a Certificate of Occupancy in respect of the property sold.

5.6 Owners Corporations Act and Regulations

The unit is sold and the Purchaser buys the unit and shall take title thereto subject to the provisions of the *Owners Corporations Act 2006* (Vic) (as amended) and the *Owners Corporations Regulations 2007* in general and in particular the following matters:

- (a) the unit entitlement and unit liability and all other matters endorsed on the Plan as it is registered;
- (b) the easements in favour of or affecting a unit by virtue of the *Owners Corporations Act 2006* (Vic) (as amended);
- (c) the Regulations of the Owners Corporation contained in the *Owners Corporations Regulations 2007* as amended or supplemented if applicable from time to time;

- (d) the Special Rules of the Owners Corporation a copy of that which is presently applicable or proposed which is annexed to the Vendor's Statement attached hereto (but which the Vendor expressly reserves the right to procure addition to or amendment of);
- (e) the rights created by the *Owners Corporations Act 2006* (Vic) (as amended);
- (f) the creation by the Owners Corporation of rights to the exclusive use and occupation of any part or parts of the common property; and
- (g) the Vendor's entitlement to procure the Owners Corporation to grant a lease or licence in respect of any part of the common property, including car park space(s) without obtaining the Purchaser's consent.

5.7 Existing Mortgage

If the particulars of sale provide that the Purchaser is taking over an existing mortgage:

- (a) the Purchaser assumes liability for the mortgage; and
- (b) the price is satisfied to the extent of any mortgage money owing at settlement; and
- (c) the Vendor must treat any payment made by the Purchaser under the mortgage as a payment made to the Vendor under this Contract.

5.8 Lease or Licence

The Purchaser acknowledges that:

5.8.1 Acknowledgments

- (a) the property is sold subject to any lease or licence referred to in the particulars of sale or otherwise attached to the sale documentation;
- (b) the Purchaser has been given the opportunity to inspect copies of all lease or licence documents;
- (c) until settlement, the Vendor for its own benefit may, but is not obliged to:-
 - (i) take proceedings to recover any moneys owing under any lease or licence document and subject to Special Condition 5.8.1(c)(ii) do anything which the Vendor considers necessary or convenient for the proper management of the property or any other part of the building which is the subject of a lease or licence document;
 - (ii) with the Purchaser's consent, which shall not be unreasonably withheld, and will be deemed to have been given if the Purchaser does not respond in writing rejecting such request within seven (7) days of receipt, obtain vacant possession or take any other action substantially affecting rights or obligations under the lease or licence documents which the Vendor believes to be necessary or convenient; and
 - (iii) with the Purchaser's consent, which shall not be unreasonably withheld, enter into an agreement with any other party to the lease or licence documents to vary the terms of the lease or licence documents.

5.8.2 No warranty or claim

- (a) the Vendor gives no warranties as to the validity or enforceability of the lease or licence documents or as to the ability of any party to the lease or licence documents (other than the Vendor) being in a position to meet their obligations or commitments under the lease or licence documents;
- (b) the Purchaser will not make any requisition or claim any compensation by reason of:-
 - (i) anything contained in the lease or licence documents;
 - (ii) any of the lease or licence documents not being stamped or executed
 - (iii) any of the lease or licence documents not being notified to the Office of the Victorian Small Business Commissioner;
 - (iv) a mortgagee not having consented to a lease or licence document;
 - (v) any expiration or termination of any lease or licence document or abandonment of any leased or licensed premises by any tenant under a lease document or occupier under a licence document; or
 - (vi) any original lease or licence document being lost or unavailable.

5.8.3 Payments under Lease or Licence documents and apportionment

- (a) the following apportionments will be made for moneys paid or payable to the Vendor under the lease or licence documents of rent, licence fees, rates, taxes, outgoings, operating and other expenses (for the purposes of this special condition referred to as "lease or licence payments"):-
 - (i) lease or licence payments will be apportioned at settlement, the Vendor being entitled to up to and including the settlement date and the Purchaser from the day after settlement;
 - (ii) where lease or licence payments are calculated on a periodical basis, adjustments for the relevant period must be calculated on a daily basis;
 - (iii) lease or licence payments made by a tenant or licensee in advance must be apportioned at settlement; and
 - (iv) lease or licence payments which are payable for any period including the settlement date but remain unpaid at settlement will not be apportioned at settlement but will be apportioned between the parties when received by either party.
- (b) if lease or licence payments are reassessed after settlement, including where tenant has made payments on the basis of an estimated amount and the actual amount is subsequently determined in respect of a period including the settlement date, any additional payment received from the tenant or any refund owed to the tenant must be apportioned between the Vendor and the Purchaser in accordance with Special Condition 5.8.3(a);

- (c) any apportionments required to be made by the Vendor or the Purchaser as a consequence of any apportionment pursuant to this Special Condition 5.8.3 must be made by a party within thirty (30) days of receipt of a written demand from the other party provided that payment is required until the payment to which the adjustment is based is actually paid; and
- (d) the parties agree to cooperate and to act promptly and reasonably to facilitate any necessary reassessments or apportionments of lease or licence payments after settlement.

5.8.4 Recovery rights and indemnities

- (a) the Vendor retains all rights to recover lease or licence payments and commence proceedings against tenants and/or licensees after settlement in respect of lease or licence payments payable up to and including the settlement date;
- (b) the debts due from tenants and/or licensees to the Vendor in respect of lease or licence payments payable before settlement are not included in the sale and shall not vest in the Purchaser at settlement;
- (c) in the event that the Purchaser receives any lease or licence payment with respect to any rent or licence fee which is attributable to any period prior to and/or including the settlement date, then the Purchaser must immediately make payment of that amount to the Vendor. The Vendor's right to recover such amount shall continue and shall not be merged with settlement of the sale of the property;
- (d) it is intended that this Special Condition 8.8 shall have effect despite section 141(1) of the *Property Law Act 1958* (Vic). Despite section 141(1) the Purchaser acquires any rights under section 141(2) to recover any rent or licence fees payable by tenants and/or licensees up to and including the settlement date, the Purchaser declares such rights on trust for the Vendor and must exercise its rights for the benefit of the Vendor at the Vendor's reasonable cost;
- (e) after settlement, the Purchaser must observe and perform all obligations of the Vendor in contained or implied in the lease or licence documents or by operation of law and the Purchaser hereby indemnifies and will keep the Vendor indemnified against all claims, actions, damages, costs and expenses which the Vendor may at any time incur or suffer as a result of any breach of those obligations by the Purchaser or any successor or assignee of the Purchaser after settlement.

6. Property Controls

6.1 The Purchaser:

- (a) accepts the Property:
 - (i) with all Property Controls and Approvals; and
 - (ii) in its present condition and state of repair with all existing patent and latent defects (including fill), infestations, contamination, pollution, damage, disrepair or dilapidation and any non-compliance with any Property Controls or Approvals;

- (b) acknowledges that the Vendor has been or may be in the course of carrying out infrastructure and other works on the land and that the land may be filled, raised, levelled, compacted or cut;
- (c) acknowledges that the decision to purchase the Property was based on the Purchaser's own investigations and that no representations or warranties were made by or on behalf of the Vendor as to any of the matters referred to in special condition (a) or the condition of the Property, including:
 - (i) the merchantability, quality or fitness for any purpose of the property;
 - (ii) the freedom of the property from defects, infestations, contamination, pollution, damage, disrepair or dilapidation;

“Defects, infestations, contamination, pollution, damage, disrepair or dilapidation” includes, without limitation, any substance or other thing which may materially diminish the value of the Property or which may make its use or the use of neighbouring land unsafe or unfit for humans or animals or which may reduce the capacity of any land to support plant life.
 - (iii) the use to which the property can lawfully be put;
 - (iv) whether development of any description may be carried out on the property; or
 - (v) whether the improvements have been built or placed on the land in accordance with each approval required by law.
- (d) shall not exercise any Purchaser Rights in relation to any of the matters referred to in this Special Condition 6 and agrees that those matters do not affect the Vendor's title to the Property.

6.2 The Purchaser assumes full responsibility for compliance with each applicable Property Control and Approval in so far as they relate to the Property as from the Settlement Date and must at its own expense comply with the requirements of each competent authority for the abatement of any defects, infestations, contamination, pollution, damage, disrepair or dilapidation or the clean up or an environmental audit (or any combination of them) of the property and keep the Vendor indemnified at all times against the cost of doing so and against all Claims arising out of a failure to comply with a Property Control or a breach of or failure to obtain an Approval as from the Settlement Date.

7. Utilities

7.1 The Purchaser acknowledges that the Property is sold subject to all Utilities (if any) affecting the Property.

7.2 The Purchaser shall not exercise any Purchaser Rights by reason of:

- (a) the nature, location, availability or non-availability of any Utilities;
- (b) any Utility which is a joint service with any other land or building;
- (c) any Utility servicing the Property or any other property passing through, under or over the Property whether subject to a registered easement or otherwise; or

- (d) if, as a result of the presence of Utilities on the Property, any Authority or any other person or property has the benefit of any right or easement over the Property in respect of Utilities.

7.3 The Purchaser acknowledges that the Utilities referred to in the Vendor's Statement as being available to the Property may be laid outside the boundary of the Property and it will be the responsibility of the Purchaser to connect those Utilities to the Property, including payment of any connection fee.

8. Hazardous Materials

On and from the Settlement Date, the Purchaser:

8.1 assumes full responsibility for the presence of Hazardous Materials on the Property and anything incidental to them, including compliance with all relevant legislation, all Property Controls and the requirements of any Relevant Authority in respect of them;

8.2 agrees to keep the Vendor indemnified against:

- (a) the responsibility referred to in Special Condition 8.1; and
- (b) all Claims, resulting in any way from the existence of Hazardous Materials on or emanating from the Property, including actions based on injury to any person or property; and

8.3 waives all Purchaser Rights in relation to any of the matters referred to in this special condition and agrees that those matters do not affect the Vendor's title to the Property.

9. Goods

Any Goods on the property and being the property of the Vendor are included in the sale, however the property therein shall not pass until payment in full of the purchase price.

10. FIRB Approval

The Purchaser warrants to the Vendor, as an essential term of this Contract, that the acquisition of the Property by the Purchaser does not fall within the scope of the *Takeovers Act* and is not examinable by FIRB and agrees that if the warranty in this Special Condition 10 is breached, the Purchaser will indemnify the Vendor against any Claims which the Vendor suffers as a direct or indirect result of a breach of that warranty.

11. Insolvency Event

If an Insolvency Event occurs in relation to the Purchaser or any guarantor under the Guarantee at any time prior to the Settlement Date, the Purchaser shall be deemed to have committed a default under this Contract and the Vendor may at any time thereafter exercise any of its rights in accordance with this Contract, including rescission.

12. Acknowledgements

The Purchaser acknowledges:

12.1 having received from the Vendor or the Vendor's Agent:

- (a) the Vendor's Statement executed by the Vendor;
- (b) a copy of this Contract;
- (c) if there is a Vendor's agent, a statement pursuant to Section 51 of the *Estate Agents Act 1980* (Vic); and
- (d) if the property is affected by the provisions of the *Domestic Building Contracts and Tribunal Act 1995* (Vic.), documentation pursuant to Section 137B.

12.2 that the Purchaser has read and understood those documents (including all attachments); and

12.3 that no promise with respect to the obtaining of a loan of money to defray some or all of the cost of the purchase price has been made by or on behalf of any estate agent representing the Vendor.

13. No Warranties

13.1 The Purchaser acknowledges that it:

- (a) has made all the enquiries with Authorities that a prudent and careful person would make before entering into this Contract;
- (b) enters into this Contract on the basis of its inspection and the enquiries it has carried out, and relying on its own judgment; and
- (c) has not relied, and does not rely, on any representation or warranty of any nature made by or on behalf of the Vendor, the Vendor's solicitors or the Vendor's Agent other than those expressly set out in this Contract.

14. Whole Agreement

The covenants provisions terms and agreements contained in this Contract expressly or by statutory implication cover and comprise the whole of the agreement between the parties and the parties expressly agree and declare that no further or other covenants agreements provisions or terms will be deemed to be implied in this Contract or to arise between the parties by way of collateral or other agreement by reason of any promise representation warranty or undertaking given or made by either party to the other on or before the execution of this Contract and the existence of any such implication or collateral or other agreement is hereby expressly negated. This condition shall enure for the benefit of the Vendor and its servants, agents and employees.

15. Non-Merger

Any provision of this Contract which binds the Purchaser and which is capable of taking effect after completion of this Contract, including without limitation the Named Purchaser, the substituted Purchaser and/or additional Purchaser's agreements, acknowledgments, releases, undertakings, warranties and indemnities, will not merge on settlement of this Contract, and will continue thereafter in full force and effect.

16. Giving effect to the Contract

The parties agree to forthwith sign all documents and to do all things reasonably required to give full effect to the transactions recorded in the Contract.

17. Severability

The parties agree that as far as is possible, this Contract is to be construed so as not to be void, voidable, unenforceable or illegal, but if any part of this Contract is void, voidable, unenforceable or illegal by operation of any law, then the offending part of this Contract as far as is possible is to be read down to the extent necessary to ensure that it is not invalid, unenforceable or illegal, but if it cannot be so read down, then it is to be deemed severed without affecting the remainder of this Contract, which will continue to apply with full force and effect as amended.

18. Waiver

The parties agree that a waiver by any party of breach of any provision in this Contract, or any rights arising under the Contract is not effective unless that waiver is in writing, and is signed by the party granting the waiver or its solicitor. No waiver will vitiate the remainder of this Contract, which will continue to apply with full force and effect, nor will it prevent the exercise of any other provision or part of this Contract or any other right arising under it.

19. Privacy

19.1 Each party consents to the other party (and their Legal Practitioner or Conveyancer named in this Contract of Sale) collecting, storing and disclosing any information. This consent is limited to the information only being used to process and complete this transaction, and any contemporaneous finance transaction by either party in respect of the Property.

19.2 The disclosure may only be made to the extent necessary to conduct those transactions, and to necessary persons such as the other party, the other party's Legal Practitioner or Conveyancer, the Commissioner, Property Exchange Australia Ltd or any other electronic conveyancing network operator agreed by the parties; regulatory, taxing, registration and municipal authorities, utility and service providers, the Property's owners corporation, any the parties respective financiers and their necessary agents such as land valuers. The identity and contact details of the information recipients are described in this Contract of Sale and associated transaction documents, can be provided by the parties' Legal Practitioners or Conveyancers, or may be located by internet searches.

19.3 Recipients collecting the information under legislative authority limit the use of the information to those legislative purposes, but those purposes may include maintaining publicly searchable registers and indexes. The legislative authority for those recipients includes the *Income Tax Assessment Act 1997* (Cth), *Taxation Administration Act 1953* (Cth), *Electronic Conveyancing National Law*, *Transfer of Land Act 1958* (Vic), *Duties Act 2000* (Vic), *Local Government Act 1989* (Vic), *Owners Corporation Act 2006* (Vic) (all as amended from time to time), and legislation governing utilities and services and any relevant owners corporation. Some or all those recipients are required to disclose the information to other entities, bodies or persons by law or to provide the utilities and services or to fulfil their purposes.

19.4 The failure to provide required information may result in the transaction not proceeding. The transaction not proceeding may result in the party responsible being liable for damages and contractual and other consequential liabilities.

20. Australian Consumer Law

20.1 The parties agree that this Contract is not a standard form contract within the meaning of the Australian Consumer Law established under the *Competition and Consumer Act 2010* (Cth) or its regulations.

20.2 The Purchaser acknowledges and agrees that:

- (a) before signing this Contract, the Purchaser has:-
 - (i) received, or has had the opportunity to receive, independent advice considered relevant to the Purchaser, including legal advice; and
 - (ii) negotiated, or has had the opportunity to negotiate, the terms of this Contract; and
- (b) the rights given to the Vendor under this Contract are reasonably necessary to protect the legitimate interests of the Vendor.

21. Sale by SMSF Trustee

Not Applicable

Special Condition 21 applies, if the box is marked “SMSF Trustee”.

21.1 The Vendor warrants that it is the beneficial owner of the Property, and that the registered proprietor holds the Property as its custodian, subject to a mortgage in favour of [LENDER].

21.2 Despite any provision in this Contract, the Purchaser agrees that:

- (a) At completion the Purchaser must accept from the Vendor a transfer of the title to the Property from the registered proprietor to the Purchaser; and
- (b) The Vendor’s obligation under this Contract to transfer title to the Property to the Purchaser is satisfied if at completion the Vendor delivers to the Purchaser the transfer to which Special Condition 16.2(a) refers.

22. Deposit Release Statement

If a copy of the signed Deposit Release Statement is attached at Annexure B, the Purchaser acknowledges that the Vendor has given the Purchaser a notice in writing setting out the particulars specified in section 27(3)(a) & (c) (as appropriate) of the *Sale of Land Act 1962* on the day of sale (**Deposit Release Statement**).

23. Due Diligence Checklist

The *Sale of Land Act 1962* (Vic.) provides that the Vendor or the Vendor’s licensed estate agent must make a prescribed due diligence checklist available to purchasers before offering land for sale that is vacant residential land or land on which there is a residence. The due diligence checklist is not required to be provided with, or attached to, either this Contract or the vendor statement, but the checklist may be attached as a matter of convenience.

24. Sale by Auction

Not Applicable

Special Condition 24 applies, if the box is marked “Sale by Auction”.

The property is offered for sale by public auction, subject to the Vendor’s reserve price.

The Rules for the conduct of the auction shall be as set out in Schedule I to the *Sale of Land Regulations* 2014 or any rules prescribed by regulation which modify or replace those Rules.

25. Owners Corporation Certificate

Not Applicable

Special Condition 25 applies, if the box is marked “Owners Corporation Certificate”.

25.1 The Purchaser may end this Contract within fourteen (14) days from the day of sale if the Vendor:

- (a) has not provided the Purchaser with a current Owners Corporation Certificate in accordance with Section 32F of the ***Sale of Land Act*** 1962 (Vic); and
- (b) the Purchaser is not then in default.

25.2 All money paid must be immediately refunded to the Purchaser if the Contract ends in accordance with this Special Condition 25.

25.3 A notice under this Special Condition 25 may be served on the Vendor’s Legal Practitioner, Vendor’s Conveyancer or the Vendor’s real estate agent (where appointed pursuant to signed REIV authority) even if the estate agent’s authority has formally expired at the time of service.

26. Swimming Pool

Not Applicable

Special Condition 26 applies, if the box is marked “Swimming Pool”.

26.1 The Purchaser acknowledges that in the event a swimming pool or spa is on the Land:

- (a) That the Vendor has, or will take all reasonable steps required to comply with the provisions of legislation, including the *Building Act* 1993 (Vic), *Building Regulation* 1994 (Vic), and *Building Amendment (Swimming Pool and Spa) Regulations* 2019 (Vic), whereby property owners are required to -
 - (i) register their pool and spa with their local council; and
 - (ii) have the pool or spa inspected by an appropriately qualified building inspector and issued with a certificate of compliance; and
 - (iii) have the pool or spa safety barrier inspected once every four years.
- (b) The Vendor has provided all complete and legible copies of paperwork available to it issued pursuant to the regulations, together with other relevant paperwork.

26.2 The Purchaser is solely responsible for and is required at its sole expense following settlement to bringing the pool or spa into a compliant state comply with the provisions of legislation, including the *Building Act* 1993 (Vic), *Building Regulation* 1994 (Vic), and *Building Amendment (Swimming Pool and Spa) Regulations* 2019 (Vic), including being liable for the costs of an inspection and having works done to bring the pool or spa into compliance.

- 26.3 The Purchaser waives all Purchaser Rights in relation to any of the matters referred to in this special condition and agrees that those matters do not affect the Vendor's title to the Property.
- 26.4 The Purchaser agrees that the Vendor has no liability for and hereby indemnifies and will keep the Vendor indemnified at all times against the cost of bringing the pool or spa into a compliant state following settlement.
- 26.5 This Special Condition 26 will not merge on settlement of this Contract, and will continue thereafter in full force and effect.

Schedule I Guarantee

Guarantee and Indemnity

To: Sustain Able 8 Pty Ltd
 c/- Level 12, 60 Albert Road, South Melbourne VIC 3205

By: the guarantors named in the schedule (**Guarantors**)

In consideration of your entering into the attached contract of sale (**Contract**) with the purchaser named in the schedule (**Purchaser**) at our request, we the Guarantors jointly and severally **guarantee and indemnify** you as follows:

1. The Guarantors will pay you on demand by you all amounts payable under the Contract which are not paid by the Purchaser within the time prescribed in the Contract for payment whether or not demand for those amounts has been made by you on the Purchaser.
2. The Guarantors will observe and perform on demand by you all covenants and obligations binding the Purchaser with which the Purchaser has failed to comply within the time prescribed in the Contract, whether or not demand for such observance or performance has been made by you on the Purchaser.
3. You may without affecting this guarantee and indemnity:
 - 3.1 grant time or other indulgence to or compound or compromise with or release the Purchaser or any person or corporation who is liable jointly with the Guarantors or either of them in respect of any other guarantee or security; or
 - 3.2 release part with abandon vary relinquish or renew in whole or in part any security document of title asset or right held by you.
4. All amounts you receive from the Purchaser, including any dividends upon the liquidation of the Purchaser or from any other person or corporation or from the realization or enforcement of any security capable of being applied by you in reduction of the indebtedness of the Purchaser will be regarded for all purposes as payment in gross without any right on the part of the Guarantors to stand in your place or claim the benefit of any amounts so received, until the Guarantors have paid the total indebtedness of the Purchaser.
5. If the Purchaser is liquidated, the Guarantors authorise you to prove for all moneys which the Purchaser has paid under this Contract and to retain and to carry to a suspense account and appropriate at your discretion any dividends received until you have been paid in full in respect of the Purchaser's indebtedness to you. The Guarantors in your favour waive all rights against you and the Purchaser and any other person or corporation estates and assets so far as necessary to give effect to anything contained in this guarantee and indemnity.
6. Your remedies against the Guarantors are not affected by any security held or taken by you in relation to the Purchaser's indebtedness being void or defective or informal.
7. The Guarantors indemnify you against any loss you may suffer as a result of:
 - 7.1 the Purchaser exceeding its powers or going into liquidation; and
 - 7.2 interest ceasing to accrue and be payable after the Purchaser goes into liquidation.

8. All demands and notices under this guarantee must be made in writing signed by you or by any director, manager or secretary of you and (in addition to any other mode of service permitted by law) may be served on the Guarantors by prepaid registered letter addressed to their last known addresses in Victoria. Any notice served by post will be deemed to have been served the next business day after the date of posting.
9. As a separate and severable covenant, the Guarantors agree to indemnify you:
- 9.1 against the non-payment by the Purchaser of any amounts due under the Contract (including interest due on overdue instalments or principal); and
- 9.2 in respect of all costs, charges and expenses you incur as a result of any default on the part of the Purchaser under the Contract.
10. This guarantee and indemnity will not be terminated by the death of any of us and will bind our respective legal personal representatives and will endure for the benefit of you and your successors and assigns.
11. In this guarantee and indemnity, 'Guarantors' means the guarantors or any of them and where the context permits refers to the Guarantors jointly and severally.

Schedule

Purchaser

Name in full (please print)

Usual Address (please print)

Guarantors

Name in full (please print)

Usual Address (please print)

Name in full (please print)

Usual Address (please print)

Executed as a Deed

Dated: / /20

Signed sealed and delivered by

in the presence of:

Signature

Signature of Witness

Name of Witness in full

Signed sealed and delivered by

in the presence of:

Signature of Witness

Name of Witness in full

Signature

Schedule 2 Nomination Agreement

Sale of Real Estate Nomination Form

Relating to a Contract between:

Vendor: Sustain Able 8 Pty Ltd
 c/- Level 12, 60 Albert Road, South Melbourne VIC 3205

ACN/ABN: 636 136 331

Purchaser:
 and/or Nominee

ACN/ABN:

Property: **Apartment 15, 42 Porter Street, Prahran VIC 3181**

Nominee:

ACN/ABN:

Guarantor(s):

The Property is expressed as sold to the Purchaser 'and/or Nominee' (or words to like effect). Under the conditions of the Contract, the Purchaser nominates the Nominee as substitute/additional transferee to take a transfer or conveyance of the Property [in substitution for/addition to] the Purchaser.

The Purchaser and the Nominee acknowledge that, from the date of this nomination, they will be jointly and severally liable for:

1. the due performance of the Purchaser's obligations under the Contract; and
2. payment of any expenses resulting from this nomination (including any duty).

The Guarantor acknowledges that the nomination of the Nominee does not vitiate the Guarantor's obligations.

The Purchaser and the Nominee warrant to the Vendor that the Nominee is not obliged by the *Foreign Acquisition and Takeovers Act 1975* (Cth) to furnish notice to the Treasurer of its intention to acquire an interest in the Property.

Dated: / /20

Purchaser

Signature

Name in full (please print)

Usual Address (please print)

Nominee(s)

Signature

Name in full (please print)

Usual Address (please print)

Signature

Name in full (please print)

Usual Address (please print)

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General conditions

Contract signing

1. ELECTRONIC SIGNATURE

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

2. LIABILITY OF SIGNATORY

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

3. GUARANTEE

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

4. NOMINEE

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

Title

5. ENCUMBRANCES

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

6. VENDOR WARRANTIES

- 6.1 The vendor warrants that these general conditions 1 to 35 are identical to the general conditions 1 to 35 in the form of contract of sale of land published by the Law Institute of Victoria Limited and the Real Estate Institute of Victoria Ltd in the month and year set out at the foot of this page.
- 6.2 The warranties in general conditions 6.3 and 6.4 replace the purchaser's right to make requisitions and inquiries.
- 6.3 The vendor warrants that the vendor:
 - (a) has, or by the due date for settlement will have, the right to sell the land; and
 - (b) is under no legal disability; and
 - (c) is in possession of the land, either personally or through a tenant; and
 - (d) has not previously sold or granted any option to purchase, agreed to a lease or granted a pre-emptive right which is current over the land and which gives another party rights which have priority over the interest of the purchaser; and
 - (e) will at settlement be the holder of an unencumbered estate in fee simple in the land; and
 - (f) will at settlement be the unencumbered owner of any improvements, fixtures, fittings and goods sold with the land.

- 6.4 The vendor further warrants that the vendor has no knowledge of any of the following:
- (a) public rights of way over the land;
 - (b) easements over the land;
 - (c) lease or other possessory agreement affecting the land;
 - (d) notice or order directly and currently affecting the land which will not be dealt with at settlement, other than the usual rate notices and any land tax notices;
 - (e) legal proceedings which would render the sale of the land void or voidable or capable of being set aside.
- 6.5 The warranties in general conditions 6.3 and 6.4 are subject to any contrary provisions in this contract and disclosures in the section 32 statement.
- 6.6 If sections 137B and 137C of the *Building Act* 1993 apply to this contract, the vendor warrants that:
- (a) all domestic building work carried out in relation to the construction by or on behalf of the vendor of the home was carried out in a proper and workmanlike manner; and
 - (b) all materials used in that domestic building work were good and suitable for the purpose for which they were used and that, unless otherwise stated in the contract, those materials were new; and
 - (c) domestic building work was carried out in accordance with all laws and legal requirements, including, without limiting the generality of this warranty, the *Building Act* 1993 and regulations made under the *Building Act* 1993.
- 6.7 Words and phrases used in general condition 6.6 which are defined in the *Building Act* 1993 have the same meaning in general condition 6.6.

7. IDENTITY OF THE LAND

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

8. SERVICES

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

9. CONSENTS

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

10. TRANSFER & DUTY

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

11. RELEASE OF SECURITY INTEREST

- 11.1 This general condition applies if any part of the property is subject to a security interest to which the *Personal Property Securities Act* 2009 (Cth) applies.
- 11.2 For the purposes of enabling the purchaser to search the Personal Property Securities Register for any security interests affecting any personal property for which the purchaser may be entitled to a release, statement, approval or correction in accordance with general condition 11.4, the purchaser may request the vendor to provide the vendor's date of birth to the purchaser. The vendor must comply with a request made by the purchaser under this condition if the purchaser makes the request at least 21 days before the due date for settlement.
- 11.3 If the purchaser is given the details of the vendor's date of birth under general condition 11.2, the purchaser must
- (a) only use the vendor's date of birth for the purposes specified in general condition 11.2; and
 - (b) keep the date of birth of the vendor secure and confidential.

- 11.4 The vendor must ensure that at or before settlement, the purchaser receives—
- (a) a release from the secured party releasing the property from the security interest; or
 - (b) a statement in writing in accordance with section 275(1)(b) of the *Personal Property Securities Act 2009* (Cth) setting out that the amount or obligation that is secured is nil at settlement; or
 - (c) a written approval or correction in accordance with section 275(1)(c) of the *Personal Property Securities Act 2009* (Cth) indicating that, on settlement, the personal property included in the contract is not or will not be property in which the security interest is granted.
- 11.5 Subject to general condition 11.6, the vendor is not obliged to ensure that the purchaser receives a release, statement, approval or correction in respect of personal property—
- (a) that—
 - (i) the purchaser intends to use predominantly for personal, domestic or household purposes; and
 - (ii) has a market value of not more than \$5000 or, if a greater amount has been prescribed for the purposes of section 47(1) of the *Personal Property Securities Act 2009* (Cth), not more than that prescribed amount; or
 - (b) that is sold in the ordinary course of the vendor's business of selling personal property of that kind.
- 11.6 The vendor is obliged to ensure that the purchaser receives a release, statement, approval or correction in respect of personal property described in general condition 11.5 if—
- (a) the personal property is of a kind that may or must be described by serial number in the Personal Property Securities Register; or
 - (b) the purchaser has actual or constructive knowledge that the sale constitutes a breach of the security agreement that provides for the security interest.
- 11.7 A release for the purposes of general condition 11.4(a) must be in writing.
- 11.8 A release for the purposes of general condition 11.4(a) must be effective in releasing the goods from the security interest and be in a form which allows the purchaser to take title to the goods free of that security interest.
- 11.9 If the purchaser receives a release under general condition 11.4(a) the purchaser must provide the vendor with a copy of the release at or as soon as practicable after settlement.
- 11.10 In addition to ensuring that a release is received under general condition 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.
- 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 1.14 applies despite general condition 11.1.
- 11.15 Words and phrases which are defined in the *Personal Property Securities Act 2009* (Cth) have the same meaning in general condition 11 unless the context requires otherwise.

12. BUILDER WARRANTY INSURANCE

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

13. GENERAL LAW LAND

- 13.1 The vendor must complete a conversion of title in accordance with section 14 of the *Transfer of Land Act 1958* before settlement if the land is the subject of a provisional folio under section 223 of that Act.
- 13.2 The remaining provisions of this general condition 13 only apply if any part of the land is not under the operation of the *Transfer of Land Act 1958*.

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

14. DEPOSIT

- 14.1 The purchaser must pay the deposit:
- (a) to the vendor's licensed estate agent; or
 - (b) if there is no estate agent, to the vendor's legal practitioner or conveyancer; or
 - (c) if the vendor directs, into a special purpose account in an authorised deposit-taking institution in Victoria specified by the vendor in the joint names of the purchaser and the vendor.
- 14.2 If the land sold is a lot on an unregistered plan of subdivision, the deposit:
- (a) must not exceed 10% of the price; and
 - (b) must be paid to the vendor's estate agent, legal practitioner or conveyancer and held by the estate agent, legal practitioner or conveyancer on trust for the purchaser until the registration of the plan of subdivision.
- 14.3 The deposit must be released to the vendor if:
- (a) the vendor provides particulars, to the satisfaction of the purchaser, that either-
 - (i) there are no debts secured against the property; or
 - (ii) if there are any debts, the total amount of those debts together with any amounts to be withheld in accordance with general conditions 24 and 25 does not exceed 80% of the sale price; and
 - (b) at least 28 days have elapsed since the particulars were given to the purchaser under paragraph (a); and
 - (c) all conditions of section 27 of the *Sale of Land Act 1962* have been satisfied.
- 14.4 The stakeholder must pay the deposit and any interest to the party entitled when the deposit is released, the contract is settled, or the contract is ended.
- 14.5 The stakeholder may pay the deposit and any interest into court if it is reasonable to do so.
- 14.6 Where the purchaser is deemed by section 27(7) of the *Sale of Land Act 1962* to have given the deposit release authorisation referred to in section 27(1), the purchaser is also deemed to have accepted title in the absence of any prior express objection to title.
- 14.7 Payment of the deposit may be made or tendered:
- (a) in cash up to \$1,000 or 0.2% of the price, whichever is greater; or
 - (b) by cheque drawn on an authorised deposit-taking institution; or
 - (c) by electronic funds transfer to a recipient having the appropriate facilities for receipt.
- However, unless otherwise agreed:

- (d) payment may not be made by credit card, debit card or any other financial transfer system that allows for any chargeback or funds reversal other than for fraud or mistaken payment, and
 - (e) any financial transfer or similar fees or deductions from the funds transferred, other than any fees charged by the recipient's authorised deposit-taking institution, must be paid by the remitter.
- 14.8 Payment by electronic funds transfer is made when cleared funds are received in the recipient's bank account.
- 14.9 Before the funds are electronically transferred the intended recipient must be notified in writing and given sufficient particulars to readily identify the relevant transaction.
- 14.10 As soon as the funds have been electronically transferred the intended recipient must be provided with the relevant transaction number or reference details.
- 14.11 For the purpose of this general condition 'authorised deposit-taking institution' means a body corporate for which an authority under section 9(3) of the *Banking Act 1959* (Cth) is in force.

15. DEPOSIT BOND

- 15.1 This general condition only applies if the applicable box in the particulars of sale is checked.
- 15.2 In this general condition "deposit bond" means an irrevocable undertaking to pay on demand an amount equal to the deposit or any unpaid part of the deposit. The issuer and the form of the deposit bond must be satisfactory to the vendor. The deposit bond must have an expiry date at least 45 days after the due date for settlement.
- 15.3 The purchaser may deliver a deposit bond to the vendor's estate agent, legal practitioner or conveyancer within 7 days after the day of sale.
- 15.4 The purchaser may at least 45 days before a current deposit bond expires deliver a replacement deposit bond on the same terms and conditions.
- 15.5 Where a deposit bond is delivered, the purchaser must pay the deposit to the vendor's legal practitioner or conveyancer on the first to occur of:
- (a) settlement;
 - (b) the date that is 45 days before the deposit bond or any replacement deposit bond expires;
 - (c) the date on which this contract ends in accordance with general condition 35.2 [default not remedied] following breach by the purchaser; and
 - (d) the date on which the vendor ends this contract by accepting repudiation of it by the purchaser.
- 15.6 The vendor may claim on the deposit bond without prior notice if the purchaser defaults under this contract or repudiates this contract and the contract is ended. The amount paid by the issuer satisfies the obligations of the purchaser under general condition 15.5 to the extent of the payment.
- 15.7 Nothing in this general condition limits the rights of the vendor if the purchaser defaults under this contract or repudiates this contract, except as provided in general condition 15.6.
- 15.8 This general condition is subject to general condition 14.2 [deposit].

16. BANK GUARANTEE

- 16.1 This general condition only applies if the applicable box in the particulars of sale is checked.
- 16.2 In this general condition:
- (a) "bank guarantee" means an unconditional and irrevocable guarantee or undertaking by a bank in a form satisfactory to the vendor to pay on demand any amount under this contract agreed in writing, and
 - (b) "bank" means an authorised deposit-taking institution under the *Banking Act 1959* (Cth).
- 16.3 The purchaser may deliver a bank guarantee to the vendor's legal practitioner or conveyancer.
- 16.4 The purchaser must pay the amount secured by the bank guarantee to the vendor's legal practitioner or conveyancer on the first to occur of:
- (a) settlement;
 - (b) the date that is 45 days before the bank guarantee expires;
 - (c) the date on which this contract ends in accordance with general condition 35.2 [default not remedied] following breach by the purchaser; and
 - (d) the date on which the vendor ends this contract by accepting repudiation of it by the purchaser.
- 16.5 The vendor must return the bank guarantee document to the purchaser when the purchaser pays the amount secured by the bank guarantee in accordance with general condition 16.4.
- 16.6 The vendor may claim on the bank guarantee without prior notice if the purchaser defaults under this contract or repudiates this contract and the contract is ended. The amount paid by the bank satisfies the obligations of the purchaser under general condition 16.4 to the extent of the payment.

16.7 Nothing in this general condition limits the rights of the vendor if the purchaser defaults under this contract or repudiates this contract except as provided in general condition 16.6.

16.8 This general condition is subject to general condition 14.2 [deposit].

17. SETTLEMENT

17.1 At settlement:

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

17.2 Settlement must be conducted between the hours of 10.00 am and 4.00 pm unless the parties agree otherwise.

17.3 The purchaser must pay all money other than the deposit in accordance with a written direction of the vendor or the vendor's legal practitioner or conveyancer.

18. ELECTRONIC SETTLEMENT

18.1 Settlement and lodgment 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 lodgment 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 lodgment 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 lodgment network operators do not provide otherwise:

- (a) the electronic lodgment network operator to conduct all the financial and lodgment 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 lodgment network operators after the workspace locks;
- (b) if two or more electronic lodgment 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 lodgment.

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 lodgment 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 lodgment 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.
- 19.4 If the particulars of sale specify that the supply made under this contract is of land on which a 'farming business' is carried on:
 - (a) the vendor warrants that the property is land on which a farming business has been carried on for the period of 5 years preceding the date of supply; and
 - (b) the purchaser warrants that the purchaser intends that a farming business will be carried on after settlement on the property.
- 19.5 If the particulars of sale specify that the supply made under this contract is a 'going concern':
 - (a) the parties agree that this contract is for the supply of a going concern; and
 - (b) the purchaser warrants that the purchaser is, or prior to settlement will be, registered for GST; and
 - (c) the vendor warrants that the vendor will carry on the going concern until the date of supply.
- 19.6 If the particulars of sale specify that the supply made under this contract is a 'margin scheme' supply, the parties agree that the margin scheme applies to this contract.
- 19.7 In this general condition:
 - (a) 'GST Act' means *A New Tax System (Goods and Services Tax) Act 1999* (Cth); and
 - (b) 'GST' includes penalties and interest.

20. LOAN

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

21. BUILDING REPORT

- 21.1 This general condition only applies if the applicable box in the particulars of sale is checked.
- 21.2 The purchaser may end this contract within 14 days from the day of sale if the purchaser:
 - (a) obtains a written report from a registered building practitioner or architect which discloses a current defect in a structure on the land and designates it as a major building defect;
 - (b) gives the vendor a copy of the report and a written notice ending this contract; and
 - (c) is not then in default.
- 21.3 All money paid must be immediately refunded to the purchaser if the contract ends in accordance with this general condition.

- 21.4 A notice under this general condition may be served on the vendor's legal practitioner, conveyancer or estate agent even if the estate agent's authority has formally expired at the time of service.
- 21.5 The registered building practitioner may inspect the property at any reasonable time for the purpose of preparing the report.

22. PEST REPORT

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

23. ADJUSTMENTS

- 23.1 All periodic outgoings payable by the vendor, and any rent and other income received in respect of the property must be apportioned between the parties on the settlement date and any adjustments paid and received as appropriate.
- 23.2 The periodic outgoings and rent and other income must be apportioned on the following basis:
- (a) the vendor is liable for the periodic outgoings and entitled to the rent and other income up to and including the day of settlement; and
 - (b) the land is treated as the only land of which the vendor is owner (as defined in the *Land Tax Act 2005*); and
 - (c) the vendor is taken to own the land as a resident Australian beneficial owner; and
 - (d) any personal statutory benefit available to each party is disregarded in calculating apportionment.
- 23.3 The purchaser must provide copies of all certificates and other information used to calculate the adjustments under general condition 23, if requested by the vendor.

24. FOREIGN RESIDENT CAPITAL GAINS WITHHOLDING

- 24.1 Words defined or used in Subdivision 14-D of Schedule 1 to the *Taxation Administration Act 1953* (Cth) have the same meaning in this general condition unless the context requires otherwise.
- 24.2 Every vendor under this contract is a foreign resident for the purposes of this general condition unless the vendor gives the purchaser a clearance certificate issued by the Commissioner under section 14-220 (1) of Schedule 1 to the *Taxation Administration Act 1953* (Cth). The specified period in the clearance certificate must include the actual date of settlement.
- 24.3 The remaining provisions of this general condition 24 only apply if the purchaser is required to pay the Commissioner an amount in accordance with section 14-200(3) or section 14-235 of Schedule 1 to the *Taxation Administration Act 1953* (Cth) ("the amount") because one or more of the vendors is a foreign resident, the property has or will have a market value not less than the amount set out in section 14-215 of the legislation just after the transaction, and the transaction is not excluded under section 14-215(1) of the legislation.
- 24.4 The amount is to be deducted from the vendor's entitlement to the contract consideration. The vendor must pay to the purchaser at settlement such part of the amount as is represented by non-monetary consideration.
- 24.5 The purchaser must:
- (a) engage a legal practitioner or conveyancer ("representative") to conduct all the legal aspects of settlement, including the performance of the purchaser's obligations under the legislation and this general condition; and
 - (b) ensure that the representative does so.
- 24.6 The terms of the representative's engagement are taken to include instructions to have regard to the vendor's interests and instructions that the representative must:
- (a) pay, or ensure payment of, the amount to the Commissioner in the manner required by the Commissioner and as soon as reasonably and practicably possible, from moneys under the control or direction of the representative in accordance with this general condition if the sale of the property settles;
 - (b) promptly provide the vendor with proof of payment; and
 - (c) otherwise comply, or ensure compliance, with this general condition;
- despite:
- (d) any contrary instructions, other than from both the purchaser and the vendor; and
 - (e) any other provision in this contract to the contrary.
- 24.7 The representative is taken to have complied with the requirements of general condition 24.6 if:
- (a) the settlement is conducted through an electronic lodgment 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 lodgment 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 lodgment network.
 However, if the purchaser gives the bank cheque in accordance with this general condition 25.9, the vendor must:
 - (c) immediately after settlement provide the bank cheque to the Commissioner to pay the amount in relation to the supply; and

- (d) give the purchaser a receipt for the bank cheque which identifies the transaction and includes particulars of the bank cheque, at the same time the purchaser gives the vendor the bank cheque.
- 25.10 A party must provide the other party with such information as the other party requires to:
- (a) decide if an amount is required to be paid or the quantum of it, or
 - (b) comply with the purchaser's obligation to pay the amount,
- in accordance with section 14-250 of Schedule 1 to the *Taxation Administration Act 1953* (Cth). The information must be provided within 5 business days of a written request. The party providing the information warrants that it is true and correct.
- 25.11 The vendor warrants that:
- (a) at settlement, the property is not new residential premises or potential residential land in either case falling within the parameters of section 14-250 of Schedule 1 to the *Taxation Administration Act 1953* (Cth) if the vendor gives the purchaser a written notice under section 14-255 to the effect that the purchaser will not be required to make a payment under section 14-250 in respect of the supply, or fails to give a written notice as required by and within the time specified in section 14-255; and
 - (b) the amount described in a written notice given by the vendor to the purchaser under section 14-255 of Schedule 1 to the *Taxation Administration Act 1953* (Cth) is the correct amount required to be paid under section 14-250 of the legislation.
- 25.12 The purchaser is responsible for any penalties or interest payable to the Commissioner on account of non-payment or late payment of the amount, except to the extent that:
- (a) the penalties or interest arise from any failure on the part of the vendor, including breach of a warranty in general condition 25.11; or
 - (b) the purchaser has a reasonable belief that the property is neither new residential premises nor potential residential land requiring the purchaser to pay an amount to the Commissioner in accordance with section 14-250 (1) of Schedule 1 to the *Taxation Administration Act 1953* (Cth).
- The vendor is responsible for any penalties or interest payable to the Commissioner on account of non-payment or late payment of the amount if either exception applies.

Transactional

26. TIME & CO OPERATION

- 26.1 Time is of the essence of this contract.
- 26.2 Time is extended until the next business day if the time for performing any action falls on a day which is not a business day.
- 26.3 Each party must do all things reasonably necessary to enable this contract to proceed to settlement, and must act in a prompt and efficient manner.
- 26.4 Any unfulfilled obligation will not merge on settlement.

27. SERVICE

- 27.1 Any document required to be served by or on any party may be served by or on the legal practitioner or conveyancer for that party.
- 27.2 A cooling off notice under section 31 of the *Sale of Land Act 1962* or a notice under general condition 20 [loan approval], 21 [building report] or 22 [pest report] may be served on the vendor's legal practitioner, conveyancer or estate agent even if the estate agent's authority has formally expired at the time of service.
- 27.3 A document is sufficiently served:
- (a) personally, or
 - (b) by pre-paid post, or
 - (c) in any manner authorized by law or by the Supreme Court for service of documents, including any manner authorised for service on or by a legal practitioner, whether or not the person serving or receiving the document is a legal practitioner, or
 - (d) by email.
- 27.4 Any document properly sent by:
- (a) express post is taken to have been served on the next business day after posting, unless proved otherwise;
 - (b) priority post is taken to have been served on the fourth business day after posting, unless proved otherwise;
 - (c) regular post is taken to have been served on the sixth business day after posting, unless proved otherwise;
 - (d) email is taken to have been served at the time of receipt within the meaning of section 13A of the *Electronic Transactions (Victoria) Act 2000*.
- 27.5 In this contract 'document' includes 'demand' and 'notice', 'serve' includes 'give', and 'served' and 'service' have corresponding meanings.

28. NOTICES

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

29. INSPECTION

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

30. TERMS CONTRACT

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

31. LOSS OR DAMAGE BEFORE SETTLEMENT

- 31.1 The vendor carries the risk of loss or damage to the property until settlement.
- 31.2 The vendor must deliver the property to the purchaser at settlement in the same condition it was in on the day of sale, except for fair wear and tear.
- 31.3 The purchaser must not delay settlement because one or more of the goods is not in the condition required by general condition 31.2, but may claim compensation from the vendor after settlement.
- 31.4 The purchaser may nominate an amount not exceeding \$5,000 to be held by a stakeholder to be appointed by the parties if the property is not in the condition required by general condition 31.2 at settlement.
- 31.5 The nominated amount may be deducted from the amount due to the vendor at settlement and paid to the stakeholder, but only if the purchaser also pays an amount equal to the nominated amount to the stakeholder.
- 31.6 The stakeholder must pay the amounts referred to in general condition 31.5 in accordance with the determination of the dispute, including any order for payment of the costs of the resolution of the dispute.

32. BREACH

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

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

Default

33. INTEREST

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

34. DEFAULT NOTICE

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

34.2 The default notice must:

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

35. DEFAULT NOT REMEDIED

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

35.2 The contract immediately ends if:

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

35.3 If the contract ends by a default notice given by the purchaser:

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

35.4 If the contract ends by a default notice given by the vendor:

- (a) the deposit up to 10% of the price is forfeited to the vendor as the vendor's absolute property, whether the deposit has been paid or not; and
- (b) the vendor is entitled to possession of the property; and
- (c) in addition to any other remedy, the vendor may within one year of the contract ending either:
 - (i) retain the property and sue for damages for breach of contract; or
 - (ii) resell the property in any manner and recover any deficiency in the price on the resale and any resulting expenses by way of liquidated damages; and
- (d) the vendor may retain any part of the price paid until the vendor's damages have been determined and may apply that money towards those damages; and
- (e) any determination of the vendor's damages must take into account the amount forfeited to the vendor.

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