

# Contract of Sale of Land

Property: WY YUNG ACRES: Stage 1

Lot            on Proposed Plan of Subdivision No. PS905305H

Being Part of 30 CLIFTON WEST ROAD, WY YUNG VIC 3875

East Gippsland Conveyancing

Licensed Conveyancers

Licence No. 001517L

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Bairnsdale VIC 3875

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LAKES ENTRANCE VIC 3909

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# Contract of Sale of Land

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## IMPORTANT NOTICE TO PURCHASERS – COOLING-OFF

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

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

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

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

### EXCEPTIONS: the 3-day cooling-off period does not apply if:

- you bought the property at a publicly advertised auction or on the day on which the auction was held; or
- you bought the land within 3 clear business days before a publicly advertised auction was to be held; or
- you bought the land within 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 20 hectares in size and is used primarily for farming; or
- you and the vendor previously signed a contract for the sale of the same land in substantially the same terms; or
- you are an estate agent or a corporate body.

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

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

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

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

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

## Approval

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

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Like all precedent documents it does not attempt and cannot attempt to include all relevant issues or include all aspects of law or changes to the law. Users should check for any updates including changes in the law and ensure that their particular facts and circumstances are appropriately incorporated into the document to achieve the intended use.

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# Contract of Sale of Land

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

The terms of this contract are contained in the –

- particulars of sale; and
- special conditions, if any; and
- general conditions (which are in standard form: see general condition 6.1)

in that order of priority.

## SIGNING OF THIS CONTRACT

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

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

The authority of a person signing –

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

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

**SIGNED BY THE PURCHASER:** .....  
..... on ...../...../2022

**Print names(s) of person(s) signing:** .....

State nature of authority, if applicable: .....

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

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

**SIGNED BY THE VENDOR:** .....  
..... on ...../...../2022

**Print names(s) of person(s) signing:** BARRY EDGAR WOOD

State nature of authority, if applicable: DIRECTOR – WOODY GROUP PTY LTD (A.C.N. 006 445 745)

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

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# Particulars of Sale

## Vendor's estate agent

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Email: \_\_\_\_\_  
Tel: \_\_\_\_\_ Mob: \_\_\_\_\_ Fax: \_\_\_\_\_ Ref: \_\_\_\_\_

## Vendor

Name: Woody Group Pty Ltd ACN 006445745  
Address: 345 Great Alpine Road, Lucknow VIC 3875  
ABN/ACN: ACN 006445745  
Email: \_\_\_\_\_

## Vendor's legal practitioner or conveyance r

Name: East Gippsland Conveyancing  
Address: 224 Main Street, Bairnsdale VIC 3875  
PO Box 584, Lakes Entrance VIC 3909  
Email: info@egconvey.com.au  
Tel: 03 4135 2000 Mob: \_\_\_\_\_ Fax: \_\_\_\_\_ Ref: \_\_\_\_\_

## Purchaser's estate agent

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Email: \_\_\_\_\_  
Tel: \_\_\_\_\_ Mob: \_\_\_\_\_ Fax: \_\_\_\_\_ Ref: \_\_\_\_\_

## Purchaser

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
ABN/ACN: \_\_\_\_\_  
Email: \_\_\_\_\_

## Purchaser's legal practitioner or conveyancer

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Email: \_\_\_\_\_  
Tel: \_\_\_\_\_ Mob: \_\_\_\_\_ Fax: \_\_\_\_\_ Ref: \_\_\_\_\_

## Land (general conditions 7 and 13)

The land is described in the table below –

### Lot on Proposed Plan of Subdivision PS905305H and being part of the land comprised in

Certificates of Title reference				being lot	on plan
Volume	8384	Folio	152	1 & 2	TP 663976N
Volume	9565	Folio	215	2	LP 146101U

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

The land includes all improvements and fixtures.

**Property address**

The address of the land is:

**Part of 30 Clifton West Road, Wy Yung VIC 3875****Goods sold with the land** (general condition 6.3(f)) *(list or attach schedule)***Vacant land****Payment**

Price \$ .....

Deposit \$ ..... By 10% of the Price within 3 days from the signing hereof and payable to the vendor's selling agent or in the case of a private sale, to the vendor's Conveyancer's Trust Account

Balance \$ ..... Payable at settlement

**Deposit bond**☐ General condition 15 applies only if the box is checked**Bank guarantee**☐ General condition 16 applies only if the box is checked**GST** (general condition 19)

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

- ☐ GST (if any) must be paid in addition to the price if the box is checked
- ☐ This sale is a sale of land on which a 'farming business' is carried on which the parties consider meets the requirements of section 38-480 of the GST Act if the box is checked
- ☐ This sale is a sale of a 'going concern' if the box is checked
- ☒ The margin scheme will be used to calculate GST if the box is checked

**Settlement** (general conditions 17 & 26.2)**is due on 21 days after the vendor gives notice in writing to the purchaser of registration of the Plan of Subdivision.****Lease** (general condition 5.1)☐ At settlement the purchaser is entitled to vacant possession of the property unless the box is checked, in which case the property is sold subject to\*:

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

☐ a lease for a term ending on ..... / ..... /20..... with [.....] options to renew, each of [.....] years

OR

☐ a residential tenancy for a fixed term ending on ..... / ..... /20.....

OR

☐ a periodic tenancy determinable by notice**Terms contract** (general condition 30)☐ This contract is intended to be a terms contract within the meaning of the *Sale of Land Act 1962* if the box is checked. *(Reference should be made to general condition 30 and any further applicable provisions should be added as special conditions)***Loan** (general condition 20)☐ This contract is subject to a loan being approved and the following details apply if the box is checked:

Lender: .....

Loan amount: no more than .....

Approval  
date: .....

**Building report**

☐ General condition 21 applies only if the box is checked

**Pest report**

☐ General condition 22 applies only if the box is checked

## Special Conditions

**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 the last page; and
- attach additional pages if there is not enough space.

Special Conditions attached

# 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.

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## 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

- 13.2 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*.

---

## 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 lodgement of the instruments necessary to record the purchaser as registered proprietor of the land will be conducted electronically in accordance with the Electronic Conveyancing National Law. This general condition 18 has priority over any other provision of this contract to the extent of any inconsistency.
- 18.2 A party must immediately give written notice if that party reasonably believes that settlement and lodgement can no longer be conducted electronically. General condition 18 ceases to apply from when such a notice is given.
- 18.3 Each party must:
- (a) be, or engage a representative who is, a subscriber for the purposes of the Electronic Conveyancing National Law,
  - (b) ensure that all other persons for whom that party is responsible and who are associated with this transaction are, or engage, a subscriber for the purposes of the Electronic Conveyancing National Law, and

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

## 19. GST

- 19.1 The purchaser does not have to pay the vendor any amount in respect of GST in addition to the price if the particulars of sale specify that the price includes GST (if any).
- 19.2 The purchaser must pay to the vendor any GST payable by the vendor in respect of a taxable supply made under this contract in addition to the price if:
  - (a) the particulars of sale specify that GST (if any) must be paid in addition to the price; or
  - (b) GST is payable solely as a result of any action taken or intended to be taken by the purchaser after the day of sale, including a change of use; or
  - (c) the particulars of sale specify that the supply made under this contract is of land on which a 'farming business' is carried on and the supply (or part of it) does not satisfy the requirements of section 38-480 of the GST Act; or
  - (d) the particulars of sale specify that the supply made under this contract is of a going concern and the supply (or a part of it) does not satisfy the requirements of section 38-325 of the GST Act.
- 19.3 The purchaser is not obliged to pay any GST under this contract until a tax invoice has been given to the purchaser.
- 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 lodgement network; and
  - (b) the amount is included in the settlement statement requiring payment to the Commissioner in respect of this transaction.
- 24.8 Any clearance certificate or document evidencing variation of the amount in accordance with section 14-235(2) of Schedule 1 to the *Taxation Administration Act 1953 (Cth)* must be given to the purchaser at least 5 business days before the due date for settlement.
- 24.9 The vendor must provide the purchaser with such information as the purchaser requires to comply with the purchaser's obligation to pay the amount in accordance with section 14-200 of Schedule 1 to the *Taxation Administration Act 1953 (Cth)*. The information must be provided within 5 business days of request by the purchaser. The vendor warrants that the information the vendor provides is true and correct.
- 24.10 The purchaser is responsible for any penalties or interest payable to the Commissioner on account of late payment of the amount.

## 25. GST WITHHOLDING

- 25.1 Words and expressions defined or used in Subdivision 14-E of Schedule 1 to the *Taxation Administration Act 1953 (Cth)* or in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* have the same meaning in this general condition unless the context requires otherwise. Words and expressions first used in this general condition and shown in italics and marked with an asterisk are defined or described in at least one of those Acts.
- 25.2 The purchaser must notify the vendor in writing of the name of the recipient of the \*supply for the purposes of section 14-255 of Schedule 1 to the *Taxation Administration Act 1953 (Cth)* at least 21 days before the due date for settlement unless the recipient is the purchaser named in the contract.
- 25.3 The vendor must at least 14 days before the due date for settlement provide the purchaser and any person nominated by the purchaser under general condition 4 with a GST withholding notice in accordance with section 14-255 of Schedule 1 to the *Taxation Administration Act 1953 (Cth)*, and must provide all information required by the purchaser or any person so nominated to confirm the accuracy of the notice.
- 25.4 The remaining provisions of this general condition 25 apply if the purchaser is or may be required to pay the Commissioner an \*amount in accordance with section 14-250 of Schedule 1 to the *Taxation Administration Act 1953 (Cth)* because the property is \*new residential premises or \*potential residential land in either case falling within the parameters of that section, and also if the sale attracts the operation of section 14-255 of the legislation. Nothing in this general condition 25 is to be taken as relieving the vendor from compliance with section 14-255.
- 25.5 The amount is to be deducted from the vendor's entitlement to the contract \*consideration and is then taken to be paid to the vendor, whether or not the vendor provides the purchaser with a GST withholding notice in accordance with section 14-255 of Schedule 1 to the *Taxation Administration Act 1953 (Cth)*. The vendor must pay to the purchaser at settlement such part of the amount as is represented by non-monetary consideration.
- 25.6 The purchaser must:
- (a) engage a legal practitioner or conveyancer ("representative") to conduct all the legal aspects of settlement, including the performance of the purchaser's obligations under the legislation and this general condition; and
  - (b) ensure that the representative does so.

- 25.7 The terms of the representative's engagement are taken to include instructions to have regard to the vendor's interests relating to the payment of the amount to the Commissioner and instructions that the representative must:
- (a) pay, or ensure payment of, the amount to the Commissioner in the manner required by the Commissioner and as soon as reasonably and practicably possible, from moneys under the control or direction of the representative in accordance with this general condition on settlement of the sale of the property;
  - (b) promptly provide the vendor with evidence of payment, including any notification or other document provided by the purchaser to the Commissioner relating to payment; and
  - (c) otherwise comply, or ensure compliance, with this general condition;
- despite:
- (d) any contrary instructions, other than from both the purchaser and the vendor; and
  - (e) any other provision in this contract to the contrary.
- 25.8 The representative is taken to have complied with the requirements of general condition 25.7 if:
- (a) settlement is conducted through an electronic lodgement network; and
  - (b) the amount is included in the settlement statement requiring payment to the Commissioner in respect of this transaction.
- 25.9 The purchaser may at settlement give the vendor a bank cheque for the amount in accordance with section 16-30 (3) of Schedule 1 to the *Taxation Administration Act 1953 (Cth)*, but only if:
- (a) so agreed by the vendor in writing; and
  - (b) the settlement is not conducted through an electronic lodgement network.
- However, if the purchaser gives the bank cheque in accordance with this general condition 25.9, the vendor must:
- (c) immediately after settlement provide the bank cheque to the Commissioner to pay the amount in relation to the supply; and
  - (d) give the purchaser a receipt for the bank cheque which identifies the transaction and includes particulars of the bank cheque, at the same time the purchaser gives the vendor the bank cheque.
- 25.10 A party must provide the other party with such information as the other party requires to:
- (a) decide if an amount is required to be paid or the quantum of it, or
  - (b) comply with the purchaser's obligation to pay the amount,
- in accordance with section 14-250 of Schedule 1 to the *Taxation Administration Act 1953 (Cth)*. The information must be provided within 5 business days of a written request. The party providing the information warrants that it is true and correct.
- 25.11 The vendor warrants that:
- (a) at settlement, the property is not new residential premises or potential residential land in either case falling within the parameters of section 14-250 of Schedule 1 to the *Taxation Administration Act 1953 (Cth)* if the vendor gives the purchaser a written notice under section 14-255 to the effect that the purchaser will not be required to make a payment under section 14-250 in respect of the supply, or fails to give a written notice as required by and within the time specified in section 14-255; and
  - (b) the amount described in a written notice given by the vendor to the purchaser under section 14-255 of Schedule 1 to the *Taxation Administration Act 1953 (Cth)* is the correct amount required to be paid under section 14-250 of the legislation.
- 25.12 The purchaser is responsible for any penalties or interest payable to the Commissioner on account of non-payment or late payment of the amount, except to the extent that:
- (a) the penalties or interest arise from any failure on the part of the vendor, including breach of a warranty in general condition 25.11; or
  - (b) the purchaser has a reasonable belief that the property is neither new residential premises nor potential residential land requiring the purchaser to pay an amount to the Commissioner in accordance with section 14-250 (1) of Schedule 1 to the *Taxation Administration Act 1953 (Cth)*.
- The vendor is responsible for any penalties or interest payable to the Commissioner on account of non-payment or late payment of the amount if either exception applies.

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## 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.

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## **SPECIAL CONDITIONS**

### **1. Privacy**

- a) 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 transactions by either party in respect of the property.
- b) This 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 Pty 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, the estate agent for the transaction, and the parties respective financiers and their necessary agents such as land valuers. The identity and contact details for the information recipients are described in this contract and associated transaction documents, can be provided by the parties' legal practitioners or conveyancers, or may be located by internet searches.
- c) 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, Duties Act 2000, Local Government Act 1989, Owner's Corporation Act 2006 and Legislation governing utilities and services and any relevant owners corporation. Some or all of 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.
- d) 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.
- e) All or some of the entities, bodies and persons that collect the information are required to have a privacy policy. Their privacy policies provide how an individual:
  - i) May access the individual's personal information held by the entity;
  - ii) Seek correction of such information;
  - iii) May complain about a breach of the Australian Privacy Principles or registered code;And whether the entity is likely to disclose the personal information to overseas recipients. The privacy policy will identify the countries in which the recipient of the personal information is located if it is practicable to do so or otherwise make the individual aware of them.

### **2. Guarantee**

- a) If the purchaser shall be or include a company then that company will upon signing of this contract procure the execution by each of its Directors on the part of the contract intended to be held by the vendor, a Guarantee and Indemnity of the full observance and performance by the purchaser of each and every obligation of the purchaser under this contract duly executed by each and every Director in the format attached to this contract.
- b) If the purchaser nominates a company as an additional or substituted purchaser ("nominated purchaser") then that nominated purchaser shall deliver to the vendor immediately upon such nomination a Guarantee and Indemnity of the full observance and performance by the nominated purchaser of every obligation of the purchaser under this contract duly executed by each and every Director of the nominated purchaser.
- c) If the duly executed Guarantee and Indemnity referred to in this special condition is not delivered to the vendor within 7 days of demand the purchaser and / or the nominated purchaser shall be deemed to be in default under this contract.

### **3. Vendors Statement**

The purchaser acknowledges that before signing this contract or any prior contract for the land the purchaser received from the vendor a statement in accordance with Section 32 of the Sale of Land Amendment Act 2014 (Vic).

### **4. Restrictions as to use**

The property is sold subject to any restriction as to use under any order, plan, scheme, regulation or by-law made by any authority empowered by any legislation to control the use of the land. No such restriction constitutes a defect in the vendor's title or affects the validity of this contract. The purchaser must not make any requisition or objection and is not entitled to any compensation from the vendor in respect of any such restriction.

### **5. Representations**

Any representation or warranty (if any) made by the vendor or its Agent or deemed so are hereby negated unless otherwise expressed herein and the purchasers acknowledge that the purchasers have not relied upon any representation or warranty which is not expressed herein.

### **6. Goods**

The property and any goods sold by this contract shall not pass to the purchaser until payment in full of the Purchase Price.

### **7. Agency**

If the purchaser buys as Agent on behalf of an undisclosed Principal the purchaser shall remain personally liable under this contract.

### **8. Condition of property**

- a) The property and any goods are sold in their present condition and subject to any defects and subject to any notices or orders affecting the property as disclosed in the vendor's statement or otherwise.
- b) No failure of any buildings or improvements to comply with any planning or building legislation regulations or by-laws or any planning permit constitutes a defect in the vendor's title or affects the validity of this contract.

### **9. Admissions**

- a) The purchaser has inspected and accepts the property improvements and the contents thereof in their present state and condition.
- b) The vendor makes no warranty or representation:
  - i) that the land is identical with the land described in the Particulars of Sale; or
  - ii) that the property and improvements comply with all laws applicable to land and the requirements of any authority; or
  - iii) that the improvements are erected within the boundaries of the land; or
  - iv) that the improvements owned by other persons do not encroach onto the land; or
  - v) as to the condition of the property.

### **10. The purchaser may not call upon the vendor**

- a) The purchaser may not call upon the vendor to:
  - i) amend title; or
  - ii) rectify any failure to comply with a law applicable to the land or a requirement of any authority; or
  - iii) relocate any improvements not erected within the boundaries of the land; or
  - iv) remove or relocate any improvements owned by other persons which encroach onto the land; or
  - v) do any work to the property; or
  - vi) bear the cost of doing so.

### **11. Services**

The purchaser shall be responsible to pay for any fees charged by any service provider for electricity, water, sewerage, gas (if available) and telephone for the actual connection of such service to the property.

### **12. Fencing boundaries**

The parties to this contract acknowledge and agree that should any fencing be found not to be on its correct boundary, or that any give and take fences exist, or that there are any

encroachments by or upon the property, or that any boundaries of the property are not fenced, or that any fence is not functional or is in need of repair, the vendor is not liable to make any compensation in respect thereof, or to erect or contribute to the expense of the erection of any new or replacement fencing on its correct line, or any repair or otherwise.

### **13. Foreign Acquisitions and Takeovers Act**

The purchaser warrants:

- a) that the purchaser is ordinarily a resident in Australia, or;
- b) that the purchaser is not a corporation, business or trust in which there is a substantial foreign interest within the meaning of the Foreign Acquisitions and Takeovers Act 1975 (*Cth*), and
- c) that the provisions of the Foreign Acquisitions and Takeovers Regulations 1989 (*Cth*) requiring the obtaining of consent by the purchaser for this transaction do not apply.
- d) In the event of there being a breach of the warranty contained in this special condition, whether deliberate or unintentionally, the purchaser agrees to indemnify and to compensate the vendor in respect of any loss, damage, expense, penalty, fine or legal costs which may be incurred by the vendor as a consequence thereof, and such warranty and this Indemnity shall not merge on completion of this contract.

### **14. Non Merger**

Any term of this contract that remains to be performed or is capable of having effect after the date of settlement will not merge on transfer of the property but will continue to have full force and effect.

### **15. Plan of Subdivision**

- 15.1 The Land is a lot or lots on proposed Plan of Subdivision 905305H (**Plan of Subdivision**) which at the Day of Sale has not been registered.
- 15.2 This contract is subject to and conditional upon registration of the Plan of Subdivision by not later than two (2) years after the Day of Sale (**Registration Date**). If the Plan of Subdivision is not registered by the Registration Date, the vendor or the purchaser may at any time after that date but before the Plan of Subdivision is registered terminate this contract by notice in writing to the other party provided that the purchaser cannot exercise this right whilst it is in default under this contract. If the contract is so terminated the deposit will be refunded to the purchaser and neither party will have any claim against the other arising from or out of the termination of the contract or the failure of the vendor to procure registration of the Plan of Subdivision.
- 15.3 This contract is subject to and conditional upon the vendor undertaking all works in accordance with Planning Permit 475/2020/P issued by the East Gippsland Shire and obtaining certification and registration of the Plan of Subdivision at the expense of the vendor by the Registration Date. Nothing in this special condition will be taken to require the vendor to carry out, manage, or arrange the carrying out of domestic building work as defined within the meaning of the *Domestic Building Contracts Act 1995 (Vic)*.
- 15.4 If the Plan of Subdivision is not registered by the Registration Date:-
  - a) If the vendor wishes to rescind this contract then:
    - i) the vendor will give the purchaser at least 28 days notice in writing to that effect; and
    - ii) if the purchaser consents to the contract being rescinded; then
    - iii) all moneys paid under this contract will be refunded to the purchaser; and
    - iv) neither party will have any action, right claim or demand against the other under this contract or arising from or out of the rescission of this contract including the failure of the vendor to procure registration of the Plan of Subdivision.
  - b) The purchaser will have the right to rescind this contract by giving notice in writing to that effect to the vendor prior to the Plan of Subdivision being registered whereby all moneys paid under this contract will be refunded to the purchaser and, neither party will have any action, right claim or demand against the other under this contract or arising from or out of the rescission of this contract including the failure of the vendor to procure registration of the Plan of Subdivision.
- 15.5 If Section 10F of the Sale of Land Act 1962 (Vic) (**Sale of Land Act**) is in effect, the vendor notifies the purchaser that:
  - a) The vendor is required to give notice of a proposed rescission of the contract under special condition 15.4(a); and
  - b) the purchaser has the right to consent to the proposed rescission of the contract but is not obliged to consent; and

- c) the vendor has the right to apply to the Victorian Supreme Court for an order permitting the vendor to rescind the contract; and
  - d) the Victorian Supreme Court may make an order permitting the rescission of the contract if satisfied that making the order is just and equitable in all the circumstances.
- 15.6 Amendments and alterations
- a) Subject to Sections 9AC and 9AH of the Sale of Land Act, the vendor reserves the right to make any alterations to the Plan of Subdivision that:
    - i) May be necessary to :
      - comply with the requirements of the Planning Permit;
      - accord with surveying practice;
      - alter the Plan so that the land in the Plan is developed in stages; and
      - comply with any requirement, recommendation or requisition of an Authority or a consultant to the vendor or a combination of them; and
    - ii) in the opinion of the vendor are required for the development, use, occupation, proper management or adequate servicing of the land comprised in the Plan of Subdivision or any part of it.
  - b) The purchaser acknowledges and agrees that section 10(1) of the Sale of Land Act does not apply to this contract in respect of:
    - i) any alterations to the Plan of Subdivision made by the vendor pursuant to special condition 15.6(a) ; and
    - ii) the final location of any easement shown on the Plan of Subdivision.
  - c) The purchaser will accept the Land sold as described on the Plan of Subdivision as ultimately registered notwithstanding that there may be minor variations or discrepancies between the Lot or Lots sold and the Lot or Lots on the registered Plan of Subdivision.
  - d) The purchaser agrees not to make any objection, requisition, claim against the vendor or exercise any of the purchaser's rights because of:
    - i) Any amendment or alteration to the Plan of Subdivision (including alterations to the lot entitlement or lot liability attributed to the property) which does not materially or detrimentally affect the purchaser;
    - ii) Any alleged misdescription of the Land or deficiency in its area or measurements;
    - iii) Any renumbering of stages or lots on the Plan of Subdivision;
    - iv) any minor variation between the Land as inspected by the purchaser and the Land shown on the Plan of Subdivision as registered; or
    - v) any minor alteration as to the number, size or location of any lot on the Plan of Subdivision other than the Land.

## **16. Caveat or Priority Notice**

- 16.1 The purchaser must not lodge or cause or allow any person claiming through it or acting on its behalf to lodge on the purchaser's behalf any caveat or priority notice in relation to the land prior to the registration of the Plan of Subdivision.
- 16.2 The purchaser acknowledges that this special condition is an essential term of the contract, breach of which (without prejudice) to any other rights that the vendor may have with respect of the breach will entitle the vendor to make a claim for damages which the purchaser must pay on demand as the damages suffered by the vendor up to the date of which the caveat or priority notice is withdrawn.
- 16.3 The purchaser appoints the vendor as its attorney to withdraw such caveat or signing a withdrawal of such caveat. This appointment survives the rescission or termination of this contract by either party.

## **17. Disclosure of Surface Level Works**

- 17.1 The parties acknowledge no surface level works have been undertaken at the date hereof but may be undertaken on the development of the Land. The vendor will notify the purchaser pursuant to section 9AB of the Sale of Land Act of details of all works affecting the natural surface level of the land sold or any land abutting the land sold in the same subdivision as the land sold which:
  - a) Will be carried out on that land before the certification of the Plan of Subdivision; or
  - b) Are to be carried out upon the details being made known to the vendor.
- 17.2 The purchaser will not make any requisition nor claim any compensation nor claim any set off nor rescind this contract for any works affecting the natural surface level of the property or any land abutting it or any variations or alterations to those works, particulars of which have been disclosed to the purchaser.

- 17.3 The purchaser further acknowledges and agrees that in calculating the amount of any fill provided to the property any amount of topsoil removed from the property prior to filling and regrading and replaced thereafter shall not be included in such calculation.
- 17.4 the purchaser indemnifies the vendor against any claim made by any person in respect of subdivisional works. This condition shall not merge on the transfer of the land sold. The vendor and its employees, agents and consultants may commence or complete the subdivisional works after settlement of this contract.
- 17.5 The Purchaser acknowledges that some parts of the land in the Plan of Subdivision may be subject to fill. The Purchaser buys subject to any such fill and shall not in any way object thereto, make any requisitions or claim any compensation arising from there being fill on the land.

## **18. Staged Development**

- 18.1 The purchaser acknowledges that the:
  - a) land forms part of the Wy Yung Acres development of the land in the Plan of Subdivision and any surrounding land to be developed by the vendor which will occur in stages;
  - b) development of the land may occur in stages with the effect that some parts of the development of the land may not be completed at the same time or in fact prior to the date some purchasers of the development may be required to settle and the purchaser must not at any time, including after the settlement due date:
    - i) object to the carrying out of any works on the development of the land including the development of a subsequent stage, by any party;
    - ii) object to the dust, noise or other discomforts that may arise during the course of completion of the development including the development of any subsequent stage; and
    - iii) Exercise any rights or institute or prosecute any action or proceeding for injunction or damages arising out of, connected with or consequent upon the completion of these works or the dust and noise and other discomforts which might arise from them.
  - c) Vendor who is, or who is entitled to be, registered proprietor of any of the land in the Plan of Subdivision reserves the right in its absolute discretion to develop or to refrain from developing any subsequent stage. The vendor gives notice to the purchaser that the vendor or the vendor's successor in title may, at any time in future:
    - i) Subdivide any part of the land in a subsequent stage of the Plan of Subdivision **(Subsequent Stage Land)**.
    - ii) Carry out or permit the carrying out of building works on the Subsequent Stage Land; and
    - iii) Construct or cause to be constructed improvements including, without limitation, structures, buildings, roads, footpaths and access-ways over any part of parts of the Subsequent Stage Land.
    - iv) Apply to relevant authorities for any approval required to develop the Subsequent Stage Land; or
    - v) Refrain from doing all of these things; and
  - d) Vendor cannot and does not give any assurances as at the day of sale as to:
    - i) The timetable for carrying out the development of the land in the Plan of Subdivision **(Development)**;
    - ii) The nature of the development(including the number of lots or types of uses);
    - iii) The manner in which the Development will be carried out.
  - e) The purchaser must (whether before or after the Settlement due date) do all things and execute all documents as may be reasonably required by the vendor to give effect to provisions of this special condition 18.
  - f) The purchaser covenants with the vendor that it will not, nor cause anybody on its behalf either directly or indirectly hinder, delay, impede, object or prevent the vendor exercising their rights as set out in special condition 18 or exercise any other rights of the purchaser as against the vendor.
  - g) The purchaser will indemnify and keep indemnified the vendor against all claim, damages and costs for which the vendor may suffer due to a breach of special condition 18. The purchaser agrees that the indemnity will not merge on completion.

## **19. Encumbrances**

- 19.1 The purchaser buys the land sold subject to any applicable law including, without limitation, the requirements of any planning scheme.
- 19.2 The purchaser:
  - a) admits that the land is sold subject to the provisions of the *Subdivision Act 1988 (Vic)*; and



- b) buys the land sold subject to all easements and encumbrances affecting the land sold including:
- All registered and any unregistered and implied easements, covenants and restrictive covenants (if any) including those disclosed in the vendor's statement;
  - Any easements and restrictions created by the Plan of Subdivision;
  - Requirements of any Planning Permit affecting the land sold;
  - The provisions of any agreement which the vendor may be required to enter into with any responsible authority in relation to the Plan of Subdivision including but not limited to an agreement under Section 173 of the Planning and Environment Act 1987 (as amended from time to time) (**Section 173**);
  - Any other restrictions or Additional Restrictions as outlined in special condition 19.3.

19.3 Additional Restrictions

19.3.1 For the purposes of this contract Additional Restrictions means and includes all easements, encumbrances, rights, privileges, restrictions on use, covenants, dedications of land, agreements (including any agreement entered into under Section 173 and the Memorandum of Common Provisions, lease, licences, other occupation rights and arrangements relating to all or part of the land comprised in the Development including those:

- Required by any government or any public, statutory, governmental, semi-governmental, local governmental, municipal or judiciary 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 (**Authority**).
- Required by a condition of any permit, licence, consent, certificate or other approval obtained or required to be obtained from an Authority in relation to the Development, any lot on the Plan of Subdivision.
- Reasonably required for the Development in the reasonable opinion of the vendor.
- Necessary to satisfy 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 land sold, the use of the land sold, or the Development (**Requirement**) irrespective of whether the Requirement is addressed to the vendor, the purchaser or any other person or party.
- Required by any provider of any service or utility to the land sold.

19.3.2 The purchaser acknowledges that as at the day of sale and the Settlement due date not all of the Additional Restrictions may have been entered into granted or finalized. 19.3.3 The vendor can enter into, grant or finalise any Additional Restrictions on or after the day of sale.

19.3.4 The vendor does not however give any assurance:

- a) as to the nature of the Additional Restriction;
- b) that it will proceed, and may refrain from proceeding with, any Additional Restriction; and
- c) when any Additional Restriction will be entered into, granted or finalized.

19.3.5 Within 5 business days after receipt of a request from the vendor, the purchaser must execute any acknowledgement or covenant required by the vendor under which the purchaser :

- a) agrees to accept and observe an Additional Restriction;
- b) acknowledges that the Additional Restriction runs with the relevant land.

19.3.6 Subject to the purchaser's rights under the Sale of Land Act, the purchaser will not exercise any of its rights by reason of the existence, granting, entering into or imposition of any Additional Restriction.

**20. State of the Property**

21.1 The purchaser agrees that after the Settlement due date the purchaser must:

- a) Keep the land sold neat and tidy;
- b) Promptly remove rubbish and debris;
- c) Keep the grass cut;
- d) Not dump nor permit to be dumped any rubbish, debris or fill onto any nature strip, or any other land in the Plan of Subdivision;

20.2 If the purchaser fails to comply with special condition 20.1, the vendor may give the purchaser a notice requiring the purchaser to remedy the breach within 5 business days. If the purchaser fails to comply with such notice the purchaser authorizes the

vendor to remedy the breach, and if necessary enter the land sold to do so and dispose of any items, rubbish or debris as the vendor thinks fit without being liable to the purchaser in any way and the purchaser agrees to pay to the vendor on demand all costs and expenses incurred by the vendor in so doing. The vendor or its agents may enter the land sold at any time after the Settlement due date without creating liability for trespass or otherwise, to maintain, slash or mow the land without receiving authority from the purchaser, where in the vendor's reasonable opinion it is necessary to do so.

**21. Environmental Matters**

- 21.1 The purchaser acknowledges that it has inspected the land and has purchased the land in its present state whether or not there is contaminant on the land. The purchaser shall not be entitled to make an objection, requisition or claim any compensation or refuse or delay settlement because of the presence of any contaminant on the land.
- 21.2 The purchaser acknowledges that the vendor nor its agents make no representation or warranty as to the land being free of contaminant.
- 21.3 The purchaser releases and discharges the vendor and its authorised representatives and agents from and against all claims, suits, demands and actions of every description whatsoever and whenever occurring which the purchaser has, may have or may accrue in the future or which but for the execution of this contract, this purchaser would or might have had against the vendor for any liability (including without limitation, for all general, specific, foreseeable or unforeseeable or consequential damages) as a result of the presence of a contaminant in, on, or under the land sold and from and against all claims for costs and expenses in respect of such claims, suits, demands or actions and further the purchaser indemnifies the vendor in relation to same.
- 21.4 For the purpose of this special condition and this contract, contaminant shall mean a solid, liquid, gas, odour, temperature, sound, vibration or radiation or substance which makes or may make the land:
  - a) unfit or unsafe for occupation by humans or animals;
  - b) degraded in its capacity to support life;
  - c) otherwise environmentally degraded; or
  - d) not comply with any Environmental Laws or regulations.

**22. Vendor's right to terminate**

- 22.1 If any requirement imposed by any Authority for the Plan of Subdivision is in the opinion of the vendor (acting reasonably) too onerous to perform or accept, the vendor may elect to terminate this contract by notice in writing to the purchaser. If the vendor gives the notice under this special condition, this contract will be at an end and all moneys paid by the purchaser shall be refunded.
- 22.2 Special condition 22.1 is for the benefit of the vendor only, and only the vendor may give notice under it or waive the benefit of it.
- 22.3 If this contract is terminated or rescinded by the vendor under this special condition 22, neither party will have any right to compensation or damages against the other party as a result of the termination or rescission.

**23. Fencing and Crossovers**

- 23.1 The parties agree and acknowledge that the vendor shall provide post and wire fencing to the sides and rear boundaries only of the property prior to settlement.
- 23.2 The purchaser agrees and acknowledges that all property entry driveway crossovers shall be constructed with low profile drive-over concrete endwalls/ backwalls of a style similar or equal to Everhard Industries Concrete Sloped Headwalls (Specification Sheet attached). It is further agreed and acknowledged that this special condition shall not merge on the completion of this Contract.

## **24. Outgoings**

- 24.1 General condition 23 does not apply to this contract in relation to any rates, taxes, assessments, insurance premiums or other outgoings (**Outgoings**) which are not separately assessed at Settlement in relation to the Land.
- 24.2 If the Land is not separately assessed in respect of any Outgoings, then the apportionment or adjustment of those Outgoings assessed in respect of the Land will be determined by calculating the proportion which the area of the Land bears to the total area for all the lots included in the assessment and on the basis that such outgoings will or have been paid by the vendor.
- 24.3 Adjustment of rates, charges and like Outgoings at Settlement will be made on the basis that the purchaser accepts the sole responsibility for all and any supplementary rates or charges and like outgoings which may be levied after Settlement and the vendor will not be obliged to adjust or be liable for any part thereof.
- 24.4 No money will be withheld from the vendor at Settlement from the price payable under this contract on account of any Outgoings which are unpaid at Settlement. The vendor undertakes to pay such Outgoings by the date on which they are due.
- 24.5 Despite any other provision of this contract the parties agree that:
- a) For the purpose of adjustment of land tax the relevant assessments for land tax include any effected on 31 December preceding the Settlement due date together with any subsequent assessments which include the land sold (**Land Tax Assessment**); and
  - b) Land tax will be adjusted :
    - i) Based on the proportional land tax stated on the Land Tax Assessment; and
    - ii) On the basis that the amount to be apportioned between them is the proportion of the proportional land tax equal to the proportion which the surface area of the land sold bears to the surface area of the land that is subject to the proportional land tax stated on the Land Tax Assessment; and
    - iii) Between the parties on the Settlement due date, on the basis of each party allowing their proportionate share over the rating year of the Settlement due date, unless special condition 24.6 applies.
- 24.6 The purchaser acknowledges and agrees that if settlement was due to take place on or prior to 31 December in a calendar year and as a consequence of any delay in Settlement caused or contributed to by the purchaser, the date on which settlement takes place is in a later calendar year, the purchaser will be liable for the whole of the vendor's land tax liability (on a proportionate basis) for the Land for:
- a) the period between the date on which Settlement was due under this contract and the date on which Settlement in fact takes place; and
  - b) the calendar year in which Settlement takes place;
- and must be adjusted in the vendor's favour at Settlement.
- 24.7 If, at Settlement, the assessment for any Outgoings has not been issued to or received by the vendor:
- a) the vendor may make a reasonable estimate of those Outgoings and any adjustment must be made on the basis of that estimate; or
  - b) the vendor may determine the reasonable basis for adjustment (which may include that there is no adjustment made);

in which case the parties must adjust or re-adjust those Outgoings (as the case may be) upon receipt of the assessment by the vendor.

## **25 Stamp Duty**

- 25.1. The vendor must procure that the vendor's representative has initiated the Duties Form and invited the purchaser or the purchaser's representative to complete the Duties Form no later than 5 business days prior to the Settlement due date.
- 25.2. The purchaser must procure that the purchaser's representative has completed the Duties Form to the vendor's satisfaction so that the Duties Form is ready for signing by the parties no later than 3 business days prior to the Settlement due date.
- 25.3. If the purchaser has not completed the Duties Form as required by special condition 25.2:
- a) the vendor is not obliged to complete this contract;
  - b) the purchaser is deemed to have defaulted in payment of the balance of the price; and

- c) the purchaser must pay interest from the settlement date,  
until the expiry of 3 business days after the purchaser has completed the Duties Form.

- 25.4. Notwithstanding anything contained in this contract, the vendor does not make warranty or representation as to the amount of stamp duty which shall be payable on the transfer of the Land and the Purchaser acknowledges that the purchaser releases the vendor from any Claim in that respect and the purchaser shall be liable for all stamp duty assessed in relation to that transfer and shall keep the vendor indemnified at all times against all liabilities, claims, proceedings and penalties whatsoever under the *Duties Act 2000* relating to this contract.
- 25.5. The purchaser must not withhold or delay payment of, or demand a reduction in the price; and delay or refuse to settle or complete the purchase pursuant to this contract, or make any claim for compensation against the vendor, because of any matter referred to in or contemplated by this special condition.

**26. Restrictions and Building Envelope (if any)**

- 26.1 The purchaser acknowledges that a restrictive covenant (**Restrictions**) and/or building envelope (**Building Envelope**) as contained within the current version of the Plan of Subdivision and/or set out in special condition 26.2, will encumber the Land. The purchaser further acknowledges that the vendor may elect or be required by the Registrar of Titles (or any other statutory body) to remove all or part of the Restrictions from the Plan of Subdivision, and have the Restrictions registered over the Certificate of Title for the Land, via Memorandum of Common Provisions (**MCP**), as part of the Transfer of Land instrument registered at settlement.
- 26.2 Subject to special condition 26.1, the following shall form the Restrictions and encumber the Land sold:  
"The transferees with the intention that the benefit of this covenant shall be attached to and run at law and in equity with Lots 1 – 36 inclusive on Plan of Subdivision 905305H and that the burden of this covenant shall be annexed to and run at law and in equity with the lot hereby transferred (**the Land**) does hereby for themselves, their heirs, executors, administrators and transferees and other registered proprietors for the time being of the land hereby transferred and as a separate covenant, covenants with the transferor and the registered proprietor or proprietors for the time being all of every other lot on Plan of Subdivision 905305H other than the lot hereby transferred that the transferee, their heirs, executors, administrator and transferees will not at any time:-
- a) Build, construct or erect or cause to be built, constructed or erected or remain on the Land or any part thereof more than one dwelling house;
  - b) erect, place, permit, license or authorise on the Land any relocated dwelling or outbuilding or any dwelling or outbuilding moved from other land;
  - c) build, construct or erect or cause to be built constructed or erected or remain on the Land or any part thereof any:
    - i) dwelling unless such dwelling has a minimum floor area of 160 square meters within the outer walls, calculated by excluding the area of any verandah, pergola, terrace, eaves, carport, garage or outbuildings; and
    - ii) outbuilding/s having a total maximum floor area greater than the total floor area of the dwelling, garage or carport provided such garage or carport are built under the same roofline as the dwelling; and
    - iii) such dwelling, garage, carport, outbuildings or other structures shall:
      - a. be constructed with new materials; and
      - b. have a roof of slate, clay tile, cement tile or colourbond material; and
      - c. not be constructed of unpainted or exposed metal, nor be constructed of more than 10% Hardiplank, cement sheet or like material, except for the purpose of eave lining and infills and which must also be painted or finished in a permanent coating.
  - d) Live on the Land, occupy or allow occupation of the Land prior to completion of construction of a dwelling and the issue of an Occupancy Permit for any such dwelling;
  - e) Further subdivide the land so as to create an additional lot;
  - f) Conduct or allow the conduct of any commercial or business activity on the Land;
  - g) Store or site, or allow to be stored or sited on a lot any caravan, boat or other leisure vehicle, other than for personal use;
  - h) Store or site, or allow to be stored or sited on a lot any commercial motor vehicle having a registered carrying capacity of more than 1 tonne, or any heavy machinery or equipment unless within an approved building or screened from view from any road reserve by a structure that is in line with or behind the most forward line of the building abutting any road reserve;

AND IT IS INTENDED that the above covenant shall appear as an encumbrance on the Certificate of Title to the Land hereby transferred and shall run with the Land hereby transferred."

- 26.3 Special condition 26.2 will not apply if the vendor advises the purchaser in writing that the Restrictions will be included in the Plan of Subdivision.
- 26.4 If the Restrictions must be registered by a MCP, the purchaser:
- a) Acknowledges that pursuant to the Restrictions and Plan of Subdivision, any dwelling constructed on the Land must comply with the Building Envelope (if any) and Restrictions.
  - b) Acknowledges that the Land is subject to the provisions of the Restrictions and the Building Envelope (if any).
  - c) will not object to any Restrictions being secured by a MCP as opposed to being described and annotated in the Plan of Subdivision.
  - d) Acknowledges that as at the Day of Sale, the Restrictions and the Building Envelope (if any) may not have been entered into, granted or finalised. The purchaser must accept and observe any amendment to the Restrictions and the Building Envelope (if any);
  - e) Must not do anything or allow anything to be done on the Land before registration of the Plan of Subdivision which would not be allowed under any Restrictions and the Building Envelope (if any) which will be created upon registration of the Plan of Subdivision; and
  - f) Must not do anything or allow anything to be done on the Land before taking or procuring a Transfer of the Land, which would be a breach of the terms of the Restrictions and the Building Envelope (if any).
- 26.5 The purchaser will not make any claim against the vendor or purport to terminate this contract based on any matter arising in relation to the Restrictions and Building Envelope (if any).

## GUARANTEE

TO: The withinnamed and described vendor (**Vendor**)

In consideration of the Vendor having at the request of the person whose name address and description are set forth in the Schedule below (**Guarantor**) agreed to sell the land described in this Contract of Sale of Land (**Contract**) to the withinnamed purchaser (**Purchaser**) the Guarantor GUARANTEES to the Vendor the due and punctual payment by the Purchaser of the purchase money and interest payable thereon as detailed in this Contract and all other moneys that are payable or may become payable pursuant thereto (**Moneys Hereby Secured**) AND ALSO the due performance and observance by the Purchaser of all and singular the covenants provisions and stipulations contained or implied in this Contract and on the part of the Purchaser to be performed and observed AND THE GUARANTOR EXPRESSLY ACKNOWLEDGES AND DECLARES that it has examined this Contract and has access to a copy thereof and further that this Guarantee is given upon and subject to the following conditions:

1. The Vendor shall have the fullest liberty without affecting this Guarantee to postpone for any time and from time to time the exercise of all or any of the powers rights authorities and discretions conferred by this Contract on it and to exercise the same at any time and in any manner and either to enforce or forbear to enforce the covenants for payment of the moneys owing or any other covenants contained or implied in this Contract or any other remedies or securities available to the Vendor and the Guarantor shall not be released by any exercise by the Vendor of its liberty with reference to the matters aforesaid or any of them or by any time being given to the Purchaser or by any other thing whatsoever which by Contract or any other remedies or securities available to operation of law would but for this provision have the effect of so releasing the Guarantor.
2. This Guarantee shall be a continuing Guarantee and shall not be considered as wholly discharged by the payment at any time hereafter of any part of the Moneys Hereby Secured or by any settlement of account, intervening payment or by any other matter or thing whatsoever except the payment by the Purchaser of the whole of the purchase price, interest and other moneys payable by the Purchasers under this Contract.
3. This Guarantee shall not be determined by the liquidation of the Guarantor and shall bind the successors or assignees of the Guarantor.
4. This Guarantee shall not be affected or prejudiced by any variation or modification of the terms of this Contract except that the Contract as varied or modified shall thereafter be deemed to be the Contract of Sale referred to in this Guarantee or by the transfer or partial transfer of any part of the land to the Purchaser pursuant to the terms thereof.
5. This Guarantee shall not affect or be affected by any or any further security now or hereafter taken by the Vendor or by any loss by the Vendor of such collateral or other security or otherwise any of the moneys at any time owing under this Contract to the Vendor or by any laches or mistake on the part of the Vendor.
6. This Guarantee and Indemnity shall at all times be valid and enforceable against the Guarantor notwithstanding:
  - a) That the contract for the repayment of the Moneys Hereby Secured is void or cannot be legally enforced against the Purchaser for reasons arising out of an act, omission, state or condition of the Purchaser.
  - b) That the Purchaser was prohibited (whether expressly or by implication) by law contract or otherwise from entering into this Contract or was without the capacity or under some legal disability in respect thereof;
  - c) That the Vendor had or ought to have had knowledge of any matters referred to in sub-paragraph b) of this clause.
7. Until the Vendor has received all moneys payable to it under this Contract the Guarantor shall not be entitled on any grounds whatsoever to claim the benefit of any security for the time

being held by the Vendor or either directly or indirectly to claim or receive the benefit of any dividend or payment on the winding up of the Purchaser and in the event of the Purchaser going into liquidation or assigning its assets for the benefit of its creditors or making a deed or arrangement or a composition in satisfaction of its debts or a scheme of arrangement of its affairs the Guarantor shall not be entitled to prove or claim in the liquidation of the Purchaser in competition with the Vendor so as to diminish any dividend or payment which but for such proof the Vendor would be entitled to receive out of such winding up and the receipt of any dividend or other payment which the Vendor may receive from such winding up shall not prejudice the right of the Vendor to recover from the Guarantor to the full amount of this Guarantee the moneys due to the Vendor. The Guarantor further covenants with the Vendor after the Purchaser shall have gone into liquidation to pay to the Vendor all sums of money received by the Guarantor for credit of any account of the Purchaser and for which the Guarantor may in any liquidation or official management of the Purchaser be obliged to account or may in its discretion so account.

8. Any demand or notice to be made upon the Guarantor by or on behalf of the Vendor hereunder shall be deemed to be duly made if the same be in writing and signed by a Director of the Vendor or by any Solicitor purporting to act for the Vendor or by any other person duly authorised by the Directors of the Vendor to make such demand on behalf of the Vendor and the same may be left at or sent through the post in a prepaid registered letter addressed to the Guarantor at its address as hereinbefore provided.
9. The Guarantor shall be deemed to be jointly and severally liable with the Purchaser (in lieu of being merely a surety for it) for the payment of the purchase moneys interest and all other moneys if any payable pursuant to this Contract in the performance of the obligations contained and it shall not be necessary for the Vendor to make any claim or demand on or to take any action or proceedings against the Purchaser before calling on the Guarantor to pay the moneys or to carry out and perform the obligations herein contained.
10. This Guarantee shall enure for the benefit of the Vendor and its successors and transferees.
11. For the consideration aforesaid and as a separate and coverable covenant the Guarantor HEREBY AGREES to indemnify the Vendor not only by reason of the non-payment by the Purchaser of all moneys payable or that may become payable under this Contract but also in respect of all costs charges and expenses whatsoever which the Vendor may incur by reason of any default on the part of the Purchaser in relation to this Contract.
12. Notwithstanding anything else contained (but subject to clause 6(a) and 11) the Guarantor shall not be liable, in any circumstances whatsoever, for any amount whatsoever in excess of the amount for which the Purchaser shall be liable under this Contract and upon payment to the Vendor of all moneys payable as aforesaid under this Contract and any moneys payable under clause 6(a) and 11 (if any) whether by the Purchaser or by the Guarantor or otherwise then this Guarantee shall be at an end and the Guarantor shall be forever freed and discharged from all of its provisions.

## SCHEDULE

Vendor: WOODY GROUP PTY LTD ACN: 006 445 745

Purchaser:

Guarantor:

IN WITNESS whereof the said Guarantors have set their hands and seals

this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ .

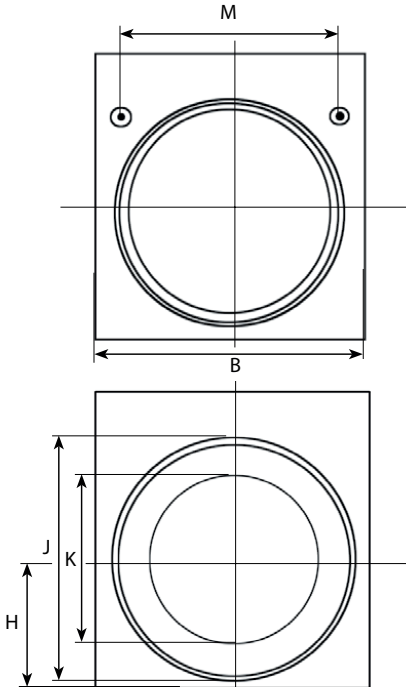
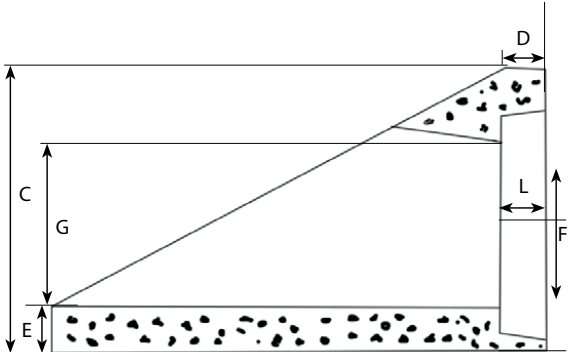
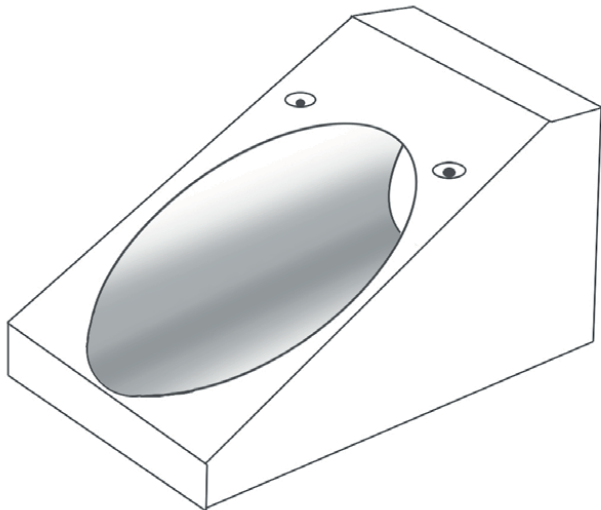
SIGNED SEALED AND DELIVERED by the said )

Guarantors in Victoria in the presence of: )

EVERHARD Safe-Slope Headwalls provide a constant sloped front to permit the contact face to be blended into embankments. This helps to protect vehicles and slashers from damage caused by falling into the space produced by the vertical face of standard Winged and Apron front Headwalls.

The table shows detailed dimensions for the range of Safe-Slope Head Walls. Each type has the same sized opening in the sloped front face, tapering back to the rear. The tapered socket in the rear is different for each pipe, which allows varying diameters of pipes to be inserted from the rear and set with the invert of the pipe level. When packed and sealed with mortar or suitable compounds, this allows free draining in either direction. Pipes with thinner walls than the design standard may be supported with mass concrete.

The connection into the socket should be sealed to prevent erosion of the backfill by stormwater.



**J** - maximum pipe o.d.  
**K** - pipe NB

Product Code	Description	Weight Kg	Dimensions (mm)												
			Nom Pipe	A	B	C	D	E	F	G	H	J	K	L	M
64015	Sloped headwall (DMR style) suit RCP 300	580	300	1200	650	775	90	124	349	450 ø	274	400	300	100	550
64016	Sloped headwall (DMR style) suit RCP 375	560	375	1200	650	775	90	124	349	450 ø	311	476	375	100	550
64017	Sloped headwall (DMR style) suit RCP 450	545	450	1200	650	775	90	124	349	450 ø	349	580	450	100	550
Maroochy Shire Precast Concrete Headwall (tombstone) to suit RCP 300 and RCP 375 also available. Refer to pricelist.															