2011 General Conditions

JOINT FORM OF GENERAL CONDITIONS FOR THE SALE OF LAND

The Law Society of Western Australia
The voice of the legal profession in Western Australia

REIWA
Real Estate Institute of Western Australia

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1 Deposit

1.1 Payment

Subject to clause 1.3, the Buyer must pay the Deposit to:

(a) the Seller Agent; or

(b) the Seller Representative; or

(c) if the Seller has not appointed a Seller Agent or a Seller Representative, then to the Seller.

1.2 Deposit Holder - Stakeholder

(a) Subject to this clause, where the Deposit is paid to a Deposit Holder, the Deposit Holder must hold the Deposit as stakeholder.

(b) Where a Party contends that:

(1) the Contract has been terminated; and

(2) that Party is entitled to payment of the Deposit,

the following provisions of this clause apply.

(c) The Deposit Claimant must:

(1) serve on the Deposit Holder and the Deposit Respondent the Deposit Holder Notice; and

(2) provide proof to the Deposit Holder of the service of the Deposit Holder Notice on the Deposit Respondent.

(d) Unless the Deposit Respondent serves a Notice on the Deposit Holder under subclause (e) within the time specified in subclause (e), the Deposit Holder must after:

(1) the expiry of 8 Business Days after the last to occur of service of the Deposit Holder Notice on the Deposit Respondent and the Deposit Holder; and

(2) the Deposit Holder has received proof as required by subclause (c) that the Deposit Holder Notice has been served on the Deposit Respondent,

pay to the Deposit Claimant the Deposit.

(e) The Deposit Respondent may, within 5 Business Days after service on the Deposit Respondent of the Deposit Holder Notice, serve a Notice on the Deposit Holder and the Deposit Claimant:

(1) stating that the Deposit Respondent disputes that the Deposit Claimant is entitled to receive the Deposit; and

(2) specifying the reasons why the Deposit Respondent contends that the Deposit Claimant is not entitled to receive the Deposit.

(f) If the Deposit Respondent serves a Notice on the Deposit Holder and the Deposit Claimant under subclause (e):

(1) it is appropriate that the Deposit Holder obtain legal advice as to the action to be taken by the Deposit Holder; and

(2) the Deposit Holder may:

(A) institute interpleader proceedings in a court; and

(B) deduct from the Deposit the legal cost and expense incurred by the Deposit Holder in connection with the interpleader proceedings.

(g) Each Party:

(1) directs the Deposit Holder to comply; and

(2) releases the Deposit Holder from liability for complying,

with the provisions of this clause.

(h) Payment by the Deposit Holder of the Deposit in accordance with subclause (d) or subclause (f)(2) discharges the Deposit Holder from any further liability in respect to the Deposit.

(i) The failure by a Party to serve a Deposit Holder Notice or a Notice under subclause (e):

(1) does not affect; and

(2) will not be treated as a waiver of,

any right as between the Parties.

(j) In this clause, a reference to the Deposit includes:

(1) any money in addition to the Deposit, paid to the Deposit Holder by the Buyer in accordance with the Contract; and

(2) interest on the Deposit or on any other money specified in subclause (1) invested by the Deposit Holder with a Deposit Financial Institution.

1.3 Deposit - Strata Lot

(a) Where the Contract relates to the sale of a proposed Strata Lot in a proposed Strata Scheme, the Deposit must be paid to and held by a solicitor, Real Estate Agent or Settlement Agent in accordance with Section 70 of the Strata Titles Act until registration of the Strata Plan.

(b) On the registration of the Strata Plan in respect to the proposed Strata Lot, the Deposit will be treated as:

(1) being held in accordance with; and

(2) subject to the provisions of,

clause 1.2.

1.4 Notice of non-payment

If :

(a) the Buyer does not pay the Deposit in full as required by the Contract; or

(b) the Buyer pays the Deposit by cheque and that cheque is dishonoured on presentation,

the Seller may give the Buyer a Notice requiring the Deposit to be paid or the cheque to be honoured within 48 hours of service of the Notice.

1.5 Termination for non-payment

(a) If a Notice under clause 1.4 is not complied with:

(1) the Buyer is in default; and

(2) the Seller may terminate the Contract by giving notice of termination to the Buyer.

(b) The provisions of clause 23.1 do not apply where clause 1.4 and this clause apply.

1.6 Terms Contract and other right

Clause 1.4 and 1.5 do not:

(a) apply if the Contract is a Terms Contract; or

(b) limit any other right of the Seller.

1.7 Direction to Deposit Holder

Subject to clause 1.10, unless each Party otherwise agrees in writing, a Party is not entitled to direct the Deposit Holder to pay the Deposit to any person before the earlier of:

(a) the Possession Date; and

(b) Settlement.

1.8 Investment of Deposit

Clause 1.7 does not prevent the Deposit Holder paying the Deposit into a trust account with a Deposit Financial Institution in the name of the Deposit Holder.

1.9 Interest on Deposit

(a) Subject to clause 24.8, if the Deposit is invested by the Deposit Holder in an interest bearing account with a Deposit Financial Institution in accordance with clause 1.8, the Buyer is entitled to the interest, less:

(1) any fees or charges payable to the Financial Institution in respect to the lodgement and withdrawal of the Deposit; and

(2) any other amount required to be deducted by the Financial Institution under the Income Tax Act.

(b) Where the Buyer is entitled to interest on the Deposit, the Buyer is not entitled to any interest earned on the Deposit until Settlement unless otherwise specified in the Contract.

1.10 Payment of Deposit on Settlement

Subject to clause 24 and to section 70 of the Strata Titles Act, each Party authorises the Deposit Holder to pay the Deposit:

(a) to the Seller at Settlement; or

(b) to the Seller Representative before Settlement, but only for the purpose of enabling Settlement to occur.

1.11 Deduction from Deposit

The Seller irrevocably authorises the Deposit Holder to deduct from the Deposit before it is paid to the Seller or the Seller Representative:

(a) the selling fee payable to the Seller Agent; and

(b) all proper expenses payable by the Seller to the Seller Agent in connection with the sale of the Property.

2 Encumbrance

2.1 Noted Encumbrance

The Seller sells the Property free of any Encumbrance except for:

(a) a Specified Encumbrance; and

(b) where the Land is a Strata Lot - interests and notifications specified in clause 10.8.

2.2 Easement, restrictive covenant benefit

If the Land is entitled to the benefit of a right over other land:

(a) that benefit is not an Encumbrance; and

(b) the Land will be sold and transferred with that benefit.

2.3 Rate Encumbrance - Unpaid Rate Outgoing

(a) Where at Settlement the Land is subject to a Rate Encumbrance which arises from an Unpaid Rate Outgoing, that Rate Encumbrance will not be treated as an Encumbrance where:

(1) the Seller Representative has, not later than 3 Business Days before the Settlement Date, provided a written undertaking to the Buyer Representative to:

(A) deduct from the settlement proceeds due to; or

(B) otherwise hold in trust on behalf of;

the Seller an amount equal to the amount required to pay each Unpaid Rate Outgoing; and

(C) pay that amount to the relevant Authority immediately following Settlement; or

(2) the Buyer Representative has, not later than 3 Business Days before the Settlement Date, provided a written undertaking to the Seller Representative that the Buyer Representative will:

(A) hold money in trust from the Buyer at Settlement equal to the amount which is required to pay each Unpaid Rate Outgoing; and

(B) pay to the relevant Authority immediately following Settlement, each Unpaid Rate Outgoing.

(b) Where subclause (a)(1) applies, the Seller will be treated as having given an irrevocable authority and direction to the Seller Representative:

(1) if applicable, to withhold the amount specified in subclause (a)(1) at Settlement; and

(2) to pay each Unpaid Rate Outgoing to the relevant Authority immediately after Settlement.

(c) Where subclause (a)(2) applies, the Buyer will be treated as having given an irrevocable authority and direction to the Buyer Representative to pay each Unpaid Rate Outgoing to the relevant Authority immediately after Settlement.

2.4 Rate Encumbrance - Future Rate Outgoing

(a) Where at Settlement the Land will be subject to a Rate Encumbrance arising from a Future Rate Outgoing, the Rate Encumbrance will not be treated as an Encumbrance where the following apply.

(1) The Seller Representative has, not later than 3 Business Days before the Settlement Date, provided a written undertaking to the Buyer Representative that at Settlement, the Seller Representative will:

(A) hold in trust from the Seller an amount, which must be specified in that undertaking, sufficient to pay the proportion of the Future Rate Outgoing which is payable by the Seller; and

(B) immediately after the assessment of the Future Rate Outgoing, pay the Seller's proportion of the Future Rate Outgoing to the relevant Authority.

(2) The Buyer Representative has, not later than 3 Business Days before the Settlement Date, provided a written undertaking to the Seller Representative that at Settlement, the Buyer Representative will:

(A) hold in trust an amount specified by the Buyer Representative in that undertaking, which is sufficient to pay the proportion of the Future Rate Assessment payable by the Buyer; and

(B) immediately after the assessment of the Future Rate Outgoing, pay the Buyer's proportion of the Future Rate Outgoing to the relevant Authority.

(b) Where there is a dispute as to the amount to be held by the Seller Representative and the Buyer Representative in accordance with subclause (a), that dispute will be determined by the Seller Agent.

(c) Where there is no Seller Agent, the amount to be held by the Seller Representative and the Buyer Representative will be determined by a Real Estate Agent appointed by the Buyer.

(d) If the dispute is determined by the Seller Agent or a Real Estate Agent, the following will apply.

(1) The Seller Agent or the Real Estate Agent will act as an expert and not as an arbitrator.

(2) The determination of the Seller Agent or the Real Estate Agent will be final and binding on the Seller and the Buyer.

(3) If any cost is payable to the Seller Agent or a Real Estate Agent, for determining a dispute, as specified in subclause (b) and (c), that cost will be paid by the Buyer and the Seller in equal shares.

(e) Where subclause (a)(1) applies, the Seller will be treated as having given to the Seller Representative an irrevocable authority and direction to hold and apply the relevant money in the manner specified in subclause (a)(1).

(f) Where subclause (a)(2) applies, the Buyer will be treated as having given to the Buyer Representative an irrevocable authority and direction to hold and apply the relevant money in the manner specified in subclause (a)(2).

2.5 Easement, restrictive covenant, Title Restriction or Memorial

If at the Contract Date the Land is subject to:

(a) an easement; or

(b) a restrictive covenant; or

(c) a Title Restriction; or

(d) a Memorial,

which is not a Specified Encumbrance, clauses 2.6 to 2.9 will apply.

2.6 Land sold subject to easement or restrictive covenant

If the Land is subject to an easement or a restrictive covenant which is not a Specified Encumbrance, and:

(a) the Land is not vacant land; and

(b) the Land:

(1) includes a residence or other principal building which was being used for a purpose before the Contract Date which the Buyer would reasonably, on the Contract Date, be expected to continue; or

(2) was being used on the Contract Date for a purpose which the Buyer would reasonably be expected to continue after Settlement,

and the easement or restrictive covenant does not unreasonably affect the use specified in subclause (1) or (2):

(3) the Land will be treated as being sold subject to the easement or restrictive covenant; and

(4) the Buyer will have no right to terminate the Contract or to defer or delay Settlement as a result of the easement or restrictive covenant.

2.7 Land sold subject to Title Restriction

(a) If:

(1) the Land is subject to a Title Restriction; and

(2) the Title Restriction is not a Specified Encumbrance,

subclauses (b) and (c) will apply.

(b) If:

(1) the Land is vacant land; and

(2) the Buyer:

(A) was aware; or

(B) should reasonably have been aware,

of the Title Restriction or the effect of the Title Restriction, before the Contract Date; and

(3) the Title Restriction does not:

(A) unreasonably affect the proposed use of the Property by the Buyer; or

(B) materially affect the value of the Property,

the Buyer will be treated as having agreed to buy the Property subject to the Title Restriction and the Buyer will have no right to terminate the Contract or defer or delay Settlement as a result of the Title Restriction.

(c) If:

(1) the Land is not vacant land; and

(2) the Land:

(A) includes a residence or other principal building which was used for a purpose before the Contract Date, which use the Buyer would reasonably be expected to continue after Settlement; or

(B) was being used on the Contract Date for a purpose which the Buyer would reasonably be expected to continue after the Contract Date; and

(3) the Buyer:

(A) was aware; or

(B) reasonably should have been aware,

of the Title Restriction or the effect of the Title Restriction before the Contract Date; and

(4) the Title Restriction does not unreasonably affect the use of the Land for the purposes specified in subclause (2),

the Land will be treated as having been sold subject to the Title Restriction and the Buyer will have no right to terminate the Contract or defer or delay Settlement as a result of the Title Restriction.

2.8 Land sold subject to Remediated Site Memorial

(a) If the Land is a Remediated Site; and

(1) a Remediated Site Memorial has been lodged against the Certificate of Title to the Land; and

(2) the Remediated Site Memorial is not a Specified Encumbrance,

subclauses (b), and (c) apply.

(b) If:

(1) the Land is vacant land;

(2) the Remediated Site Memorial is not a Specified Encumbrance; and

(3) the Restricted Use does not:

(A) unreasonably affect the proposed use of the Property by the Buyer; or

(B) materially affect the value of the Property,

the Buyer will be treated as having agreed to buy the Property subject to the Restricted Use and the Remediated Site Memorial and the Buyer will have no right to terminate the Contract or defer or delay Settlement as a result of the Restricted Use or the Remediated Site Memorial.

(c) If:

(1) the Land is not vacant land; and

(2) the Land:

(A) includes a residence or other principal building which was used for a purpose before the Contract Date which use the Buyer would reasonably be expected to continue after Settlement; or

(B) was being used on the Contract Date for a purpose which the Buyer would reasonably be expected to continue after the Contract Date; and

(3) the Restricted Use does not unreasonably affect the use of the Land for the purpose specified in subclause (2),

the Land will be treated as having been sold subject to the Remediated

Site Memorial and the Buyer will have no right to terminate the Contract or defer or delay Settlement as a result of the Restricted Use or the Remediated Site Memorial.

2.9 Buyer right to terminate

(a) If:

(1) the Land is subject to an easement, a restrictive covenant, a Memorial or Title Restriction which is not a Specified Encumbrance; and

(2) the Land is not treated as being sold subject to the easement, restrictive covenant, Memorial or Title Restriction in accordance with clause 2.6 to 2.8,

the Buyer will be entitled at any time up to 3 Business Days before the Settlement Date to terminate the Contract by giving Notice to the Seller of termination of the Contract.

(b) If the Buyer fails to exercise the right to terminate within 3 Business Days before the Settlement Date in accordance with subclause (a), the Buyer loses the right to terminate under the Contract and at general law.

(c) If the Buyer terminates the Contract in accordance with subclause (a), the following will apply.

(1) The Deposit and any other money paid by the Buyer under the Contract must be promptly repaid to the Buyer.

(2) If the Deposit has been invested by the Deposit Holder in accordance with clause 1.9, the Buyer will be entitled to the interest on the Deposit.

(3) If any other money has been paid to the Deposit Holder by the Buyer, and invested by the Deposit Holder with a Deposit Financial Institution, the Buyer will be entitled to the interest on that other money.

(4) Subject to subclause (1) to (3), no Party will have any claim or right of action against the other arising from the termination, except in respect to any matter which arose before the termination.

3 Settlement

3.1 Preparation of Transfer

The Buyer must arrange for the Transfer to be prepared.

3.2 Delivery to Seller

The Buyer must:

(a) sign the Transfer; and

(b) deliver the Transfer to the Seller or the Seller Representative a reasonable time before the Settlement Date.

3.3 Duty and Stamp Duty

(a) Subject to subclause (e) to (m) the Buyer must arrange for:

(1) Duty to be paid on the Contract; and

(2) the Transfer to be Duty Endorsed,

before the Transfer is delivered to the Seller.

(b) Following the delivery of the Transfer to the Seller or the Seller Representative in accordance with clause 3.2(b), the Seller must within a reasonable time sign the Transfer pending Settlement.

(c) The Buyer must, on request by the Seller, made not later than 20 Business Days after Settlement or after the Possession Date, provide to the Seller:

(1) an original of the Contract Duty Endorsed; or

(2) a photocopy of the Contract showing an endorsement as specified in subclause (1),

to enable the Seller to arrange for a duplicate of the Contract held by the Seller to be Duty Endorsed.

(d) Where:

(1) the Buyer provides to the Seller an original copy of the Contract Duty Endorsed; and

(2) the Buyer requests the return of the Contract specified in subclause (1),

the Seller must, immediately after a duplicate of the Contract held by the Seller has been Duty Endorsed return the copy of the Contract to the Buyer.

(e) Subject to subclause (f) to (m), the Buyer Representative may make a request in writing to the Seller Representative that:

(1) the Seller sign the Transfer; and

(2) the Seller Representative return the Transfer to the Buyer Representative,

without payment by the Buyer of Duty on the Contract, and without the Transfer being Duty Endorsed to be held by the Buyer Representative solely for:

(3) payment by the Buyer of Duty on the Contract before Settlement and the Transfer being Duty Endorsed before and for the purpose of Settlement;

or

(4) the payment of Duty where the Duty is to be assessed and paid through Revenue Online and the provision of a Certificate of Duty at Settlement.

(f) The Seller will have no obligation to comply with a request by the Buyer Representative in accordance with subclause (e).

(g) A request by the Buyer Representative in accordance with subclause (e), must be accompanied by:

(1) an Assessment of Duty payable on the Contract issued by State Revenue;

or

(2) where Duty is to be assessed and paid through Revenue Online in accordance with subclause (l) and (m), a Transaction Summary.

(h) If the Seller agrees to provide the Transfer to the Buyer Representative, in accordance with subclause (e):

(1) the Seller Representative must provide the Transfer signed by the Seller to the Buyer Representative; and

(2) the Buyer will be treated as having given unconditional undertakings to the Seller and the Seller Representative as follows.

(A) The Buyer Representative will hold the Transfer solely for the purpose of payment of Duty on the Contract, and for the Transfer to be Duty Endorsed for the purposes of Settlement.

(B) The Buyer Representative must immediately following a direction in writing by the Seller or the Seller Representative, deliver the Transfer to the Seller or the Seller Representative whether or not the Transfer has been Duty Endorsed.

(i) The Buyer unconditionally and irrevocably:

(1) directs; and

(2) will be treated as having directed,

the Buyer Representative to comply with the provisions of subclause (h)(2)(A) and (h)(2)(B) and in particular, to comply immediately with a direction by the Seller or the Seller Representative, made in accordance with subclause (h)(2)(B).

(j) Where the Seller or the Seller Representative has provided the Transfer to the Buyer Representative in accordance with subclause (e) and (h), the provision of the Transfer to the Buyer Representative will be without prejudice to any right of the Seller arising from any of the following.

(1) Any claim the Seller has or may have against the Buyer, under clause 4 arising from a delay in Settlement.

(2) Without affecting subclause (1), any default by the Buyer under the Contract.

(k) Where the Contract is liable to be assessed in respect to Stamp Duty, the Buyer must:

(1) arrange for an assessment of Stamp Duty on the Contract;

(2) pay the Stamp Duty on the Contract; and

(3) arrange endorsement by State Revenue of the Transfer to the effect that Stamp Duty has been paid on the Contract,

before the Transfer is delivered to the Seller.

(l) Where the Buyer Representative:

(1) is registered for Revenue Online; and

(2) has elected to have Duty on the Contract assessed and paid through Revenue Online,

the provisions of subclause (e) to (j) and (m) will apply.

(m) Where subclause (l) applies, the following will apply.

(1) The Buyer Representative must advise the Seller or the Seller Representative that the Buyer Representative has elected to have Duty on the Contract assessed and paid through Revenue Online.

(2) The Buyer Representative must, within 5 Business Days after the Transaction Summary is generated, provide a copy of the Transaction Summary to the Seller or the Seller Representative.

(3) On Settlement the Buyer Representative must provide to the Seller Representative a copy of the Certificate of Duty.

3.4 Place for Settlement

(a) Where the Contract specifies the time and place for Settlement, Settlement must take place at the time and place specified.

(b) Where the Contract does not specify the time for Settlement, the Buyer must specify the time for Settlement which must be during normal business hours on a Business Day.

(c) Where the place for Settlement is not specified in the Contract, the Buyer must specify the place for Settlement which must be in the Perth CBD.

3.5 Completion of Settlement

Each Party must complete Settlement on :

(a) the date for Settlement specified in the Contract; or

(b) if no date for Settlement is specified in the Contract, the later of :

(1) the Business Day which is 25 Business Days after the Contract Date; and

(2) if the Contract is subject to a condition which, if not satisfied, will result in:

(A) termination of the Contract; or

(B) a Party being entitled to terminate the Contract,

the Business Day which is 15 Business Days after the date on which the last of each condition specified in this subclause is satisfied.

3.6 Terms Contract

Clause 3.5(b) does not apply if the Contract is a Terms Contract.

3.7 Balance of purchase price

The Buyer must on Settlement pay:

(a) to the Seller; or

(b) to any other person as the Seller or the Seller Representative has directed in writing not later than 2 Business Days before the Settlement Date,

by 1 or more bank cheques the balance of the Purchase Price and:

(c) any other money payable by the Buyer at Settlement;

(d) less any deductions allowed under the Contract.

3.8 More than 3 Bank Cheques

If the Seller requires the Buyer to provide more than 3 Bank Cheques at Settlement, the Seller must pay to the Buyer at Settlement the bank fees incurred by the Buyer in order to obtain more than 3 bank cheques.

3.9 Settlement Cheque dishonoured

If a cheque provided by the Buyer at Settlement is dishonoured on presentation, the Buyer:

(a) is in default; and

(b) remains liable to pay to the Seller the amount of the cheque, together with interest on that amount at the Prescribed Rate:

(1) from and including the Settlement Date;

(2) to but excluding the date on which the Buyer pays that amount with interest to the Seller.

3.10 Seller obligation on Settlement

(a) The Seller must at Settlement give the Buyer the following:

(1) subject to clause 3.11, the Duplicate Certificate of Title for the Land.

(2) the Transfer signed by the Seller.

(3) each other document, including:

(A) any transfer executed by a third party;

(B) every application, declaration and other document,

necessary to enable the Buyer to become the registered proprietor of the Land free of any Encumbrance, other than:

(C) an Encumbrance specified in clause 2.1(a) and 2.1(b); and

(D) if applicable, an Encumbrance subject to which the Land will be transferred in accordance with clause 2.

(4) all other documentation required to be delivered on Settlement including:

(A) any discharge or withdrawal of an Encumbrance which is required to be withdrawn or discharged on Settlement;

(B) subject to subclause (5), the documentation specified in clause 6.9 and 11.2.

(5) Where:

(A) possession of the Property has been given to the Buyer before Settlement; and

(B) the Seller has delivered the documentation specified in clause 6.9 to the Buyer on or after possession and before Settlement,

the Seller has no obligation to deliver the documentation specified in clause 6.9 to the Buyer at Settlement.

(b) Where the Seller is required to deliver to the Buyer on Settlement a document as specified in subclause (3)(A), (3)(B) and (4)(B), the Seller must deliver to the Buyer a true copy of that document not later than 3 Business Days before the Settlement Date.

(c) If the Seller is unable to transfer the Land to the Buyer free of Encumbrances, other than an Encumbrance specified in clause 2:

(1) the Seller will be treated as being in default; and

(2) subject to clauses 23 and 24, the Buyer will be entitled to exercise every right of the Buyer arising from that default.

3.11 No duplicate Certificate of Title

If a Duplicate Certificate of Title for the Land has not issued in accordance with Section 48B(1)(a) of the Transfer of Land Act, the Seller will not be obliged to give the Duplicate Certificate of Title for the Land to the Buyer on Settlement under clause 3.10.

4 Delay in Settlement

4.1 Buyer delay

(a) If for any reason not attributable to the Seller, Settlement is not completed within 3 Business Days after the Settlement Date, the Buyer must pay to the Seller at Settlement interest on:

(1) the balance of the Purchase Price; and

(2) any other money payable at Settlement.

(b) The right of the Seller to interest under this clause is in addition to the entitlement of the Seller to Rent under clause 6.6.

4.2 Seller delay

If for any reason attributable to the Seller, Settlement is not completed within 3 Business Days after the Settlement Date the Seller must allow to the Buyer at Settlement, as a deduction from the Purchase Price, compensation on:

(a) the balance of the Purchase Price; and

(b) any other money payable at Settlement.

4.3 Interest or compensation

Interest payable under clause 4.1 and compensation allowable under clause 4.2 is to be calculated:

(a) at the Prescribed Rate ; and

(b) from and including the Settlement Date to but excluding the date on which Settlement occurs,

and will be treated as being in full satisfaction of any claim the Party claiming interest or compensation has against the other Party as a result of the delay in Settlement.

4.4 Seller ready, willing and able

(a) If the Seller is not ready, willing, and able to complete Settlement on the Settlement Date, the Seller is not entitled to interest under clause 4.1 until:

(1) the Seller is ready, willing, and able to complete Settlement; and

(2) the Seller has given Notice of that fact to the Buyer.

(b) If a Notice is given in accordance with subclause (a) within 3 Business Days after the Settlement Date, interest will be calculated and payable from and including the Settlement Date to but excluding the date on which Settlement occurs.

(c) If a Notice is given in accordance with subclause (a), after the period specified in subclause (b), interest will be calculated and payable from and including the day on which the Notice is given up to but excluding the date on which Settlement occurs.

4.5 Buyer ready, willing and able

(a) If the Buyer is not ready, willing, and able to complete Settlement on the Settlement Date the Buyer is not entitled to compensation under clause 4.2 until:

(1) the Buyer is ready, willing, and able to complete Settlement; and

(2) the Buyer has given Notice of that fact to the Seller.

(b) If a Notice is given in accordance with subclause (a) within 3 Business Days after the Settlement Date, compensation will be calculated and payable from and including the Settlement Date to but excluding the date on which Settlement occurs.

(c) If a Notice is given in accordance with subclause (a) after the period specified in subclause (b), compensation will be calculated from and including the day on which the Notice is given up to but excluding the date on which Settlement occurs.

4.6 Dispute - interest or compensation

(a) Where:

(1) the Interest Party claims that the Interest Default Party is liable to pay interest or compensation under clause 4.1 to 4.5; and

(2) the Interest Default Party disputes the entitlement of the Interest Party to the interest or compensation,

the following will apply.

(b) Subject to subclause (h), and if the Interest Party requires the Interest Default Party to pay interest or compensation under clause 4.1 to 4.5 at Settlement, the Interest Party must not later than 2 Business Days before Settlement serve an Interest Notice on the Interest Default Party setting out:

(1) the basis on which the claim for interest or compensation is made; and

(2) the amount claimed, which may include an amount to be calculated on a daily basis.

(c) The Interest Default Party must pay the Interest Amount on Settlement to:

(1) the Representative of the Interest Party; or

(2) if the Interest Party has not appointed a Representative, then to the Representative of the Interest Default Party; or

(3) if subclause (1) and (2) do not apply, then to the Interest Party,

to be held by the Representative or the Interest Party subject to and for the purposes specified in this clause.

(d) On the day which is 20 Business Days after Settlement, unless:

(1) the dispute has been resolved between the Parties; or

(2) court proceedings are Instituted by a Party to determine the dispute,

the Representative who holds the Interest Amount must pay the Interest Amount to the Interest Party or, if applicable, the Interest Party may retain the Interest Amount.

(e) If:

(1) court proceedings are Instituted by a Party as specified in subclause (d); or

(2) an agreement is reached between the Interest Party and the Interest Default Party with regard to the dispute,

the Representative who holds the Interest Amount or, if applicable, the Interest Party must pay the Interest Amount, as applicable:

(A) as determined in accordance with the court proceedings; or

(B) in accordance with the agreement between the Parties.

(f) If the Interest Default Party disputes the entitlement of the Interest Party to interest or compensation under clause 4.1 to 4.5:

(1) that dispute does not affect the obligations of the Parties to proceed to Settlement; and

(2) subject to the obligation of the Interest Default Party to pay the Interest Amount on Settlement in accordance with this clause, the Parties must proceed to Settlement.

(g) Each Party authorises a Representative who holds the Interest Amount under this clause to:

(1) pay; and

(2) otherwise deal with,

the Interest Amount as specified in this clause.

(h) The provisions of this clause do not affect the right of the Interest Party after Settlement to claim and if appropriate, institute proceedings against the Buyer to recover an amount of interest or compensation as specified in clauses 4.1 to 4.5.

4.7 Restriction on right in case of court proceeding

(a) The right of a Party under this clause to interest or compensation will cease as at and with effect from and including the date on which court proceedings are Instituted by a Party for:

(1) specific performance of the Contract; or

(2) a declaration that the Contract:

(A) has been terminated;

(B) remains valid and enforceable; or

(3) any other order or declaration to the same or similar effect to an order or declaration as specified in subclause (1) or (2); or

(4) other relief based on the Contract having been terminated.

(b) It is the intention of the Parties that where there is a delay in respect to Settlement:

(1) compensation should be paid; and

(2) interest payable at the Prescribed Rate for the period of the delay represents the best estimate that the Parties can give as to the damages sustained arising from the delay.

(c) Where court proceedings are Instituted by a Party in accordance with subclause (a), nothing in this clause or in the Contract:

(1) restricts, limits or prejudices the entitlement of a Party to claim interest under an Act or by way of damages or compensation; or

(2) limits or otherwise affects the discretion of the court.

4.8 Right not affected

The right of a Party under this clause does not affect the right of a Party under clause 24.

5 Inspection

5.1 Right to inspect

(a) Subject to clause 5.2 and subclause (b):

(1) the Buyer is entitled to inspect the Property; and

(2) the Seller must grant access to the Property to enable the Buyer to inspect the Property,

on 1 occasion within 5 Business Days before the Settlement Date or the Possession Date.

(b) The Buyer:

(1) may be accompanied by 2 persons on an inspection; and

(2) where the Buyer is a corporation, the reference in this clause and in clause 5.2 to the Buyer means a reference to a director, secretary or officer of the corporation or any other person nominated by the corporation.

5.2 Time for inspection

(a) Subject to subclause (b), if the Buyer wishes to inspect the Property as specified in clause 5.1, the Buyer and the Seller must agree the date and time for the inspection.

(b) If it is not possible for the Buyer and the Seller to reach agreement as specified in subclause (a), the Buyer may by not less than 1 Business Day's Notice to the Seller or the Seller Agent specify the date and time for the inspection.

(c) The inspection must be:

(1) on a Business Day; and

(2) at a time between 9.00am and 4.00pm.

(d) Where the Buyer serves Notice under subclause (b) which complies with subclause (c), the Seller must permit the Buyer to inspect the Property at the time and on the date specified in that Notice.

6 Possession and Rent

6.1 Entitlement to possession

(a) Subject to clauses 6.2 and 6.3, and if the Buyer is not in default, the Buyer is entitled to possession of the Property on:

(1) the date for possession specified in the Contract; or

(2) if no date for possession is specified in the Contract, the earlier of:

(A) the date the Buyer is given possession; and

(B) Settlement.

(b) Without affecting the right of the Buyer on possession, where the Property is not sold subject to a Lease, and subject to clause 6.3:

(1) the Buyer is entitled to vacant possession of the Property; and

(2) the Seller must remove from the Property, before possession, all vehicles, rubbish and chattels, other than the Property Chattels.

6.2 Early possession

If the Buyer is entitled to, or is given possession of the Property before Settlement, clauses 14.6 to 14.9 apply until Settlement.

6.3 Principal residence - limited occupation right

(a) If immediately before Settlement, the Seller occupies the Property as the Seller's principal place of residence, the Seller may, subject to clause 6.4 remain in occupation of the Property until 12 noon on the day immediately following Settlement.

(b) If subclause (a) applies, and the Seller remains in occupation of the Property in accordance with subclause (a):

(1) the Seller must entirely vacate the Property at or before 12 noon on the day immediately following Settlement; and

(2) the Buyer will be entitled to possession and the Seller must give possession of the Property to the Buyer at 12 noon on the day immediately following Settlement.

6.4 Damage to Property

If clause 6.3 applies:

(a) the Seller will be responsible to the Buyer for damage caused to the Property between:

(1) Settlement; and

(2) possession of the Property being given to the Buyer under clause 6.3; and

(b) if damage is caused to the Property between Settlement and possession the Seller must pay to the Buyer the cost of repairing the damage immediately on request by the Buyer.

6.5 Keys and security devices

(a) Subject to the provisions of this clause, the Seller must deliver to the Buyer on Settlement or on possession, the Access Device.

(b) Where clause 6.3 applies, the Seller must, at the time of, and on possession, deliver to the Buyer the Access Device.

(c) Where agreed by the Buyer, the Access Device may be delivered to and held by the Seller Agent for delivery to the Buyer following, as applicable, Settlement or possession.

(d) Where subclause (c) applies the Seller:

(1) must deliver the Access Device to the Seller Agent at a time sufficient to enable the Seller Agent to comply with subclause (c); and

(2) will be treated as having authorised and directed the Seller Agent to deliver the Access Device to the Buyer in accordance with subclause (c).

6.6 Rent

(a) The Seller is entitled to all Rent up to and including the earlier of:

(1) the Possession Date; and

(2) Settlement.

(b) The Buyer is entitled to all Rent from and including the day after the earlier of :

(1) the Possession Date; and

(2) Settlement.

6.7 Rent paid before Settlement

(a) The Seller must pay to the Buyer at Settlement or on possession any Rent:

(1) to which the Buyer is entitled under clause 6.6; and

(2) which was paid to the Seller before Settlement or possession.

(b) The Seller is not obliged to pay to the Buyer:

(1) on Settlement; or

(2) if applicable, on possession,

any Rent which was payable by a Tenant under a Lease but is unpaid on Settlement or, if applicable, possession.

6.8 Rent received after Settlement

If after Settlement either Party is paid Rent to which the other Party is entitled, the Party receiving the money must pay the money to the Party entitled to it as soon as reasonably possible.

6.9 General provisions where property leased

Where the Property is at Settlement or, on possession, subject to a Lease,

the following will apply.

(a) The Seller must deliver to the Buyer on the earlier of Settlement or possession, the following.

(1) Where the Lease is in writing, an original or true copy of the Lease showing signing by the parties.

(2) Where the Lease is liable to be assessed for Stamp Duty or Duty, the original or a true copy of the Lease delivered by the Seller to the Buyer under subclause (1), must show:

(A) payment of Stamp Duty; or if applicable

(B) that the Lease has been Duty Endorsed.

(3) Where the Lease is an oral lease or tenancy agreement, a written memorandum setting out all relevant details applicable to the Lease which are applicable on Settlement or possession.

(4) A statement which shows:

(A) the Rent payable for the Rent Period during which Settlement occurs or possession is given to the Buyer; and

(B) the amount paid by the Tenant before Settlement or possession in respect to the Rent Period specified in subclause (A).

(5) The Property Condition Report where a Property Condition Report has been prepared in respect to the premises the subject of the Lease.

(6) Where the Tenant has provided a Tenant Bond under the Lease, the Tenant Bond and any interest which has accrued on the Tenant Bond:

(A) by payment of a Bank Cheque in favour of the Buyer for the amount of the Tenant Bond; or

(B) by the provision of documentation which will effect the transfer of, or the Seller's rights in respect to, the Tenant Bond to the Buyer.

(7) A Notice signed by the Seller or the Seller Representative, addressed to each Tenant, in a form reasonably determined by the Seller:

(A) in which the Seller notifies the Tenant of the sale of the Property to the Buyer; and

(B) which directs the Tenant to pay all Rent as from Settlement or possession to the Buyer or as otherwise directed by the Buyer in writing.

(b) Subject to clause 6.8, where, as at the Settlement Date or on the Possession Date, Rent was due to the Seller and has not been paid by the Tenant, the following apply.

(1) The Buyer assigns to the Seller the unpaid Rent.

(2) The Buyer will immediately on request by the Seller sign:

(A) a deed of assignment of that unpaid Rent in favour of the Seller; and

(B) a notice to the Tenant of the assignment,

which deed and notice of assignment must be prepared by the Seller at the expense of the Seller.

(3) The Seller may institute proceedings against the Tenant for the unpaid Rent.

(c) Where a person has:

(1) guaranteed the obligations of the Tenant under the Lease; and

(2) executed the Lease as a guarantor,

the Seller will, unless the guarantee specifies otherwise, be treated as having assigned to the Buyer the benefit of that guarantee.

(d) Where a person has:

(1) guaranteed the obligations of the Tenant under the Lease; and

(2) executed a guarantee document which is not included in the Lease,

the Seller must deliver that guarantee document to the Buyer at the time specified in subclause (a) and, unless the guarantee document otherwise specifies, the Seller will be treated as having assigned the benefit of the guarantee to the Buyer.

(e) Where subclause (d) applies and the guarantee document is liable to be assessed for Stamp Duty or Duty, the original or a true copy of the guarantee document delivered by the Seller to the Buyer under subclause (d) must show:

(1) payment of Stamp Duty; or if applicable

(2) that the guarantee document has been Duty Endorsed.

(f) Where a guarantee as incorporated in a lease or guarantee document provides that the guarantee is not capable of assignment, except with the approval of the guarantor, the Seller must on request by the Buyer cooperate with the Buyer in requesting the guarantor to grant approval for the assignment of the guarantee to the Buyer.

(g) Any fee payable to a guarantor in accordance with subclause (f), must be paid by the Buyer.

6.10 Lease Provisions apply

Clauses 6.6 to 6.9 inclusive will apply where the Contract provides that the Property is sold subject to the Lease.

7 Outgoing

7.1 Seller and Buyer obligation

(a) Subject to this clause, the Seller must pay each Outgoing payable up to and including the earlier of :

(1) the Possession Date; and

(2) Settlement.

(b) The Buyer must pay each Outgoing payable from and including the day after the earlier of:

(1) the Possession Date; and

(2) Settlement.

7.2 Apportionment

An Outgoing payable under clause 7.1 must be apportioned and any amount payable by one Party to the other must be paid:

(a) at Settlement; or

(b) where the Contract is a Terms Contract, on the Possession Date; or

(c) at a later time agreed by the Parties in writing.

7.3 Buyer not liable for Land Tax

The Buyer is not liable to pay any amount on account of Land Tax where the Property is at the Possession Date or on Settlement, a residence which is capable of being used as a residence and for no other purpose.

7.4 Settlement Date 30 June

(a) Where:

(1) the Settlement Date is before or on 30 June; and

(2) Settlement does not occur before 5 pm on 30 June for a reason attributable to the Buyer,

the Buyer must pay to the Seller any Land Tax assessed in respect to the Land as at midnight on 30 June calculated as if the Land is the only land owned by the Seller.

(b) If:

(1) the Settlement Date is before or on 30 June;

(2) a separate Certificate of Title for the Land has been issued before 1 June;

(3) the Seller has given a Notice to the Buyer not later than 15 Business Days before the Settlement Date, that:

(A) the Seller is the registered proprietor of land other than the Land; and

(B) the Land and that other land are liable to Land Tax; and

(4) Settlement does not occur before 5:00pm on 30 June for a reason attributable to the Buyer,

the Buyer must pay to the Seller at Settlement the Land Tax assessed in respect to the Land for the Financial Year which commences on 1 July following the date specified in subclause (1).

(c) Subject to clause (d) the Notice as specified in subclause (b)(3):

(1) may, subject to the Contract Date being before 1 June, be incorporated in the Contract; and

(2) where the Notice is incorporated in the Contract in accordance with subclause (1), that Notice will be treated as having been given in accordance with subclause (b)(3).

(d) The provisions of subclause (c) do not apply unless before 1 June:

(1) a separate Certificate of Title for the Land has issued; and

(2) the Buyer has been given Notice by the Seller of the issue of that separate Certificate of Title for the Land.

7.5 Land Tax - Subdivided Land

(a) Where on Settlement or the Possession Date:

(1) the Property is not a residence as described in clause 7.3; and

(2) the Land is the subject of a subdivision after the commencement of the Financial Year in which the Possession Date or Settlement occurs,

Land Tax will be apportioned as specified in subclause (b).

(b) Where subclause (a) applies, Land Tax will be apportioned and payable as an Outgoing in accordance with clauses 7.1 and 7.2 on the basis that the Land Tax payable in respect to the Land is:

(1) the same proportion as the area of the Land bears to the total area of the Subdivision Land; and

(2) the Subdivision Land is the only land owned by the Seller.

7.6 Land Tax general

(a) Where clause 7.3 applies, the Seller must pay all Land Tax assessed in respect to the Property.

(b) Except as provided in clause 7.3, and subject to clauses 7.4 and 7.5 Land Tax must be apportioned:

(1) as an Outgoing and paid as provided in clauses 7.1 and 7.2; and

(2) otherwise on the basis that the Land is the only land owned by the Seller.

8 Risk

8.1 Passing of risk

Despite any rule of law or equity to the contrary, risk relating to the Property passes from the Seller to the Buyer at the time when the:

(a) Purchase Price is paid in full; or

(b) Buyer becomes entitled to possession of the Property; or

(c) Buyer is given possession of the Property;

whichever first occurs.

8.2 Damage or destruction

(a) If the Property includes a building or other improvement which is:

(1) destroyed; or

(2) partially damaged,

before Settlement, subclause (b) will apply.

(b) If:

(1) the building is a residence and is made substantially uninhabitable; or

(2) in any other case, a building or other improvement is made substantially unusable for the current use as at the Contract Date;

clauses 8.3 to 8.7 will apply.

8.3 Notice of damage or destruction

The Seller must, immediately following the damage or destruction referred to in clause 8.2, give Notice to the Buyer specifying the following.

(a) Full particulars of the damage or destruction.

(b) That the Buyer may, within 15 Business Days of service of the Notice terminate the Contract.

(c) That it is desirable for the Buyer to obtain legal advice following service of the Notice.

8.4 Right of Buyer to terminate

The Buyer may, within 15 Business Days of the service of Notice under clause 8.3, give Notice to the Seller that the Buyer has elected to terminate the Contract.

8.5 Right of Seller to terminate

If:

(a) clause 8.2 applies;

(b) the Seller has insured the building or permanent improvement specified in clause 8.2 against damage or destruction;

(c) the Seller within 5 Business Days after the damage or destruction specified in clause 8.2, notifies the insurer of a claim for the loss arising from the damage or destruction;

(d) the Seller in notifying the claim in accordance with subclause (c), makes a request to the insurer that the insurer make a cash payment to the Seller in respect to the loss; and

(e) the insurer has not within 10 Business Days after notification or the lodgment of the claim by the Seller, whichever is the later, agreed in writing to provide a cash payment to the Seller to compensate the Seller for the loss,

the Seller may within 15 Business Days of the service after the Notice in accordance with clause 8.3, by Notice to the Buyer or the Buyer Representative, terminate the Contract.

8.6 Termination

(a) If:

(1) the Buyer gives a Notice to the Seller in accordance with clause 8.4; or

(2) the Seller gives a Notice to the Buyer in accordance with clause 8.5,

the provisions of subclause (b) will apply.

(b) Where subclause (a) applies, the following will apply.

(1) Subject to this subclause the Contract is terminated as from and including the date of service of that Notice.

(2) The Deposit and any other money paid by the Buyer under the Contract, must be promptly repaid to the Buyer.

(3) If the Deposit has been invested by the Deposit Holder in accordance with clause 1.9, the Buyer will be entitled to the interest on the Deposit.

(4) If any other money has been paid to the Deposit Holder by the Buyer, and invested by the Deposit Holder with a Deposit Financial Institution, the Buyer will be entitled to the interest on that other money.

(5) Subject to subclauses (2) to (4), no Party will have any claim or right of action against the other arising from the termination, except in respect to any matter which arose before the termination.

8.7 Right of Buyer to proceed

If the Buyer, within 15 Business Days of the service of Notice under clause 8.3:

(a) gives Notice to the Seller that the Buyer intends to proceed with the Contract; or

(b) does not give a Notice under subclause (a) or clause 8.4,

the Contract will unless the Seller has given a Notice to the Buyer in accordance with clause 8.5, remain valid and enforceable, but clause 8.8 and 8.9 will apply.

8.8 Reduction of Purchase Price

If clause 8.7 applies, the following will apply.

(a) The Purchase Price will be reduced by the amount of the reduction in value of the Property following the damage or destruction.

(b) The amount of the reduction of the Purchase Price will, subject to this clause, be the amount which is agreed in writing between the Seller and the Buyer within 30 Business Days of the date of service of the Notice under clause 8.3.

(c) If the reduction of the Purchase Price is not agreed in writing between the Seller and the Buyer, the amount of the reduction of the Purchase Price must, subject to subclause (d), be determined by arbitration in accordance with clause 25.1.

(d) Even if:

(1) the period specified in subclause (b) has expired; and

(2) arbitration proceedings have commenced under subclause (c),

the Buyer and the Seller may at any time agree in writing the amount of the reduction of the Purchase Price.

8.9 Variation of Settlement Date

If the Contract proceeds in accordance with clause 8.7 the Settlement Date is the date which is 10 Business Days after the amount of the reduction of the Purchase Price has been:

(a) agreed between the Buyer and the Seller; or

(b) determined by arbitration.

9 Seller Representation and Warranty

9.1 Contract Date - Possession Date - and Settlement

Except as otherwise disclosed in writing by the Seller to the Buyer before the Contract Date, the Seller represents and warrants to the Buyer as at the Contract Date and as at the earlier of possession and Settlement as follows.

(a) The Seller does not know of any of the following.

(1) Any demand, order, requisition or requirement relating to the Property which:

(A) has been made by an Authority and remains current; or

(B) which an Authority proposes to make.

(2) Any proposal by an Authority:

(A) for the realignment, widening or alteration of the level of any road adjoining the Land; and

(B) which would be likely to materially affect the Land or the use of it.

(3) Any obligation to pay money to an Authority in respect of:

(A) work performed or to be performed; or

(B) expenses incurred or to be incurred,

by an Authority in relation to the Land.

(4) Except in relation to a Strata Lot, any sewer, drain, pipe, cable or other installation passing through the Land to provide services to other land.

(5) Any obligation to:

(A) construct or repair; or

(B) contribute towards the cost of construction or repair of,

a dividing fence between the Land and any adjoining land whether arising under the Dividing Fences Act 1961 or otherwise.

(6) Any encroachment on the Land by a building or other structure on adjoining land.

(b) No building or other structure on the Land encroaches on adjoining land.

(c) As far as the Seller is aware, each dividing fence and wall is on the boundary of the Land.

(d) The Seller:

(1) has good title to the Property Chattels; and

(2) is, or will be:

(A) the sole owner of the Property Chattels; and

(B) except as otherwise specified in the Contract, the Property Chattels will be free of any Encumbrance.

(e) Subject to clause 6.1(b), the Property will be in the same state and condition it was in immediately before the Contract Date.

(f) As far as the Seller is aware:

(1) no person has any right arising from adverse possession;

(2) no public right of way or easement has been acquired by enjoyment or use; and

(3) no mining lease or licence has been issued under any Act,

in respect to the Land.

9.2 Contract Date

Except as otherwise disclosed in writing by the Seller to the Buyer before the Contract Date, the Seller represents and warrants to the Buyer as at the Contract Date as follows.

(a) The Seller:
  (1) has not received a notice of resumption of; and
  (2) does not know of any intention to resume,
  the Land by an Authority.
(b) The use of the Property is lawful.

10 Strata title

10.1 When this clause applies
This clause applies where the Land is a Strata Lot.

10.2 Representation and Warranty
Except to the extent disclosed in writing by the Seller to the Buyer before the Contract Date, or as otherwise specified in the Contract, the Seller represents and warrants to the Buyer at the Contract Date and at the date of Settlement as follows.
(a) The Seller has paid:
  (1) each Strata Contribution levied by the Strata Company in respect of the Strata Lot except for any Strata Contribution which is to be apportioned under clause 7.2 or 10.6;
  (2) all other money due to the Strata Company in consideration of any right or privilege granted by the Strata Company in respect of the Strata Lot;
  (3) all money due to the Strata Company for:
    (A) work carried out by the Strata Company in relation to the Strata Lot; or
    (B) the provision by the Strata Company of an amenity or service to the Strata Lot or to the proprietor or occupier of the Strata Lot;
  (4) any other money due by the Seller to the Strata Company; and
  (5) all interest due to the Strata Company on the money specified in subclauses (1), (2), (3) and (4).
(b) No administrator of the Strata Company has been appointed.
(c) Except for anything:
  (1) apparent on an inspection of the Strata Lot and the parcel of which it forms part; or
  (2) registered or recorded on the Strata Plan; or
  (3) specified in the Strata Company by-laws,
  the Seller does not know of anything which will materially affect the Buyer's use or enjoyment of the Strata Lot or of the common property comprised in the Strata Scheme.
(d) The Seller does not know of any proposal or application to terminate the Strata Scheme.
(e) The Seller does not know of any current, proposed or pending proceeding or application in relation to the:
  (1) Strata Scheme;
  (2) Strata Company; or
  (3) Strata Lot,
  in a court or tribunal.
(f) The Seller does not know of any judgment or order of the State Administrative Tribunal, a court, or the Strata Title Referee in respect to the:
  (1) Strata Company;
  (2) Strata Scheme; or
  (3) Strata Lot,
  which has not been satisfied or complied with.
(g) Other than changes recorded on the Strata Plan, no change to the Strata Company by-laws has been:
  (1) voted on by the Strata Company; or
  (2) ordered by a court or tribunal.
(h) No money is owing to the Strata Company for work carried out by the Strata Company in relation to the Strata Lot.
(i) The Seller does not know of any change which:
  (1) has been made; or
  (2) is proposed,
  to the by-laws of the Strata Company other than changes recorded on the Strata Plan.
(j) The Seller does not know of any action taken or any proposal to :
  (1) vary the schedule of unit entitlement recorded on the Strata Plan;
  (2) grant, vary or surrender any easement or restrictive covenant affecting the Strata Lot or any other part of the parcel;
  (3) transfer, lease, licence or resume any part of the Strata Lot or the common property;
  (4) take a lease of land outside the parcel;
  (5) obtain, vary or surrender a lease of land outside the parcel; or
  (6) obtain an expenditure approval under section 47(3) of the Strata Titles Act.
(k) The Seller does not know of any proposal by the Strata Company to pass any resolution which will:
  (1) adversely affect the use and enjoyment by the Buyer of the Strata Lot or of the common property; or
  (2) increase any Outgoing in respect to the Strata Lot.
(l) The information disclosed in the Strata Regulations Form 28 provided to the Buyer by or on behalf of the Seller is correct.
(m) The Seller does not know of any fact or circumstance which may result in:
  (1) proceedings in the State Administrative Tribunal; or
  (2) proceedings before a Court,
  being instituted against the registered proprietor of the Strata Lot in respect to any matter relating to:
    (A) the common property;
    (B) the Strata Lot; or
    (C) any action or liability arising under, or referred to in, section 33 of the Strata Titles Act.

10.3 Indemnity by Seller and right of Buyer
(a) Except for a matter in respect to which the Buyer has agreed in writing to be bound the Seller indemnifies and agrees to indemnify the Buyer against any Loss the Buyer may suffer or incur as a result of a breach by the Seller of a representation or warranty in clause 10.2:
  (1) as the registered proprietor of the Strata Lot; and
  (2) which arises from a fact or circumstance which occurs before the earlier of the Possession Date or Settlement.
(b) The right of the Buyer to terminate the Contract under Part V of the Strata Titles Act:
  (1) does not affect; and
  (2) is in addition to every other right of the Buyer arising from the default of the Seller under the Contract.

10.4 Voting
On and from the Contract Date until the Buyer becomes registered as the proprietor of the Strata Lot the following will apply.
(a) The Seller must:
  (1) immediately notify the Buyer if the Seller becomes aware of any proposal for members of the Strata Company to vote on a resolution in respect to the Strata Company; and
  (2) provide a copy of the proposed resolution to the Buyer.
(b) The Seller must, if required by the Buyer by Notice, vote in the manner directed by the Buyer in respect to any resolution proposed to be passed by the members of the Strata Company.
(c) If a section 47(3) Strata Notice is given to each proprietor in the Strata Scheme the following provisions apply.
  (1) The Seller must immediately give Notice to the Buyer of:
    (A) the Section 47(3) Strata Notice;
    (B) the date of service of the Section 47(3) Strata Notice; and
  attach to the Notice from the Seller a copy of the Section 47(3) Strata Notice.
  (2) The Buyer may, following the service of the Notice under subclause (1), serve a Notice on the Seller directing the Seller to notify the council of the Strata Company that the Seller objects to the expenditure specified in the Section 47(3) Strata Notice.
  (3) Where the Buyer gives a Notice to the Seller in accordance with subclause (2), the Seller must immediately notify the council of the Strata Company that the Seller objects to the expenditure specified in the Section 47(3) Strata Notice.
(d) The Seller must not and must ensure that any mortgagee of the Strata Lot does not, without the prior approval in writing of the Buyer:
  (1) propose; or
  (2) vote in favour of,
  any resolution of the Strata Company.
(e) The Seller must ensure that any mortgagee of the Strata Lot does not, without the prior approval in writing of the Buyer, vote in favour of any proposed expenditure referred to in a Section 47(3) Strata Notice.

10.5 Strata company application
(a) Subject to subclause (b), the Seller authorises the Buyer and the Representative of the Buyer to make application to the Strata Company in respect to the:
  (1) information;
  (2) documents to be inspected; and
  (3) certificates,
  specified in Section 43 of the Strata Titles Act.
(b) Subject to the Strata Company requiring payment, the Buyer must pay to the Strata Company the fee prescribed by the Strata Regulations in connection with any application made in accordance with subclause (a).

10.6 Apportionment of Strata Special Contribution
(a) This clause applies where, on or before the Settlement Date, the Strata Company has levied a Strata Special Contribution in respect to the Strata Lot.

(b) If an instalment of a Strata Special Contribution is payable in a Financial Year before the Financial Year in which the Settlement Date occurs, the Seller will be solely responsible for payment of that instalment.

(c) If:

(1) the whole of the Strata Special Contribution; or

(2) an instalment of the Strata Special Contribution, is payable in the Financial Year in which the Settlement Date occurs, the whole of the Strata Special Contribution or that instalment of the Strata Special Contribution will be apportioned between the Seller and the Buyer as if the Strata Special Contribution is an Outgoing for the purposes of clauses 7.1 and 7.2.

(d) If any instalment of the Strata Special Contribution is payable in a Financial Year after the Financial Year in which the Settlement Date occurs, the Buyer will be solely responsible for payment of that instalment.

(e) If after the Settlement Date and in a Financial Year in which the Settlement Date occurs, a Strata Special Contribution is levied:

(1) there will be no adjustment of that Strata Special Contribution; and

(2) the Buyer will be solely liable for and must pay the Special Strata Contribution applicable to the Strata Lot.

10.7 Property included

(a) The Property includes:

(1) the share of the Seller in the common property comprised in the Strata Plan; and

(2) the benefit of any lease, licence, right or special privilege in respect to the common property and which is granted to the proprietor of the Strata Lot and which attaches to the Strata Lot.

(b) The Property is sold subject to every lease, licence, right or special privilege granted to a third party in respect of the common property.

10.8 Interests notified

Without affecting any other provision of this clause the Seller sells the Land subject to the interests registered and notifications recorded on the Strata Plan on the Contract Date.

11 Electricity/Underground Power

11.1 Land not connected to electricity supply

If before the Contract Date the Land has not been connected to the electricity supply the Buyer will be responsible at the Buyer's expense for the connection of the Land to the electricity supply.

11.2 Electricity Scheme Agreement

(a) This clause will apply if, on the Contract Date:

(1) the Property has been connected to the electricity supply under the Electricity Extension Scheme; and

(2) the Seller is a party to the Electricity Scheme Agreement in relation to the Property.

(b) The Seller must, a reasonable time before the Settlement Date, arrange for Western Power to prepare and then deliver to the Buyer the standard form Western Power documentation under which:

(1) the Seller is released from obligation under the Electricity Scheme Agreement; and

(2) the Buyer becomes liable for all obligations under the Electricity Scheme Agreement.

(c) The documentation specified in subclause (b) must be executed as appropriate by the Seller and the Buyer not later than 3 Business Days before the Settlement Date.

(d) The Seller must, before Settlement, pay to Western Power each:

(1) capital contribution; and

(2) electricity supply and other charge,

payable to Western Power under the Electricity Scheme Agreement up to the Settlement Date and provide evidence to the Buyer at Settlement of compliance with this subclause.

(e) The Seller, if entitled to a refund of part or all of the capital contributions paid under the Electricity Scheme Agreement waives absolutely all right to receive a refund of any capital contribution which may become payable by Western Power in the future.

(f) If there is any refund of any capital contribution paid to Western Power under the Electricity Scheme Agreement that refund of capital contribution will belong absolutely to the Buyer.

(g) The Seller must deliver the documentation specified in subclause (b) and (c) to the Buyer on Settlement.

(h) Immediately following Settlement the Buyer must lodge the documentation specified in subclause (b) and (c) with Western Power.

11.3 Cost of Electricity Scheme Agreement documentation

The Seller must pay all legal and other costs incurred in preparing the documentation specified in clause 11.2.

11.4 Underground power

If before the Contract Date an Authority has determined that underground power will be installed or, underground power has been installed:

(a) in the area within which the Land is situated; and

(b) the Land is required to be, or has been connected to the underground power supply,

clauses 11.5 and 11.6 will apply.

11.5 Underground power rate payable by Buyer

If:

(a) clause 11.4 applies; and

(b) the Authority has not before the Contract Date prescribed:

(1) an Underground Power Rate; and

(2) the manner in which the Underground Power Rate must be paid,

the Buyer will be responsible for payment of the Underground Power Rate.

11.6 Underground power rate payable by Seller

(a) If:

(1) clause 11.4 applies; and

(2) the Authority has before the Contract Date prescribed:

(A) an Underground Power Rate; and

(B) the manner of payment of the Underground Power Rate,

subclause (b) applies.

(b) Where subclause (a) applies, the Seller must:

(1) before Settlement pay the Underground Power Rate to the Authority and provide proof of payment before or at Settlement; or

(2) on Settlement:

(A) pay the Underground Power Rate to the Buyer on the basis that the Buyer will then be responsible for payment of the Underground Power Rate to the Authority; or

(B) secure payment of the Underground Power Rate in a manner acceptable to the Buyer.

12 Sewer/Septic Tank

12.1 Property connected

(a) If on the Contract Date:

(1) the Land is connected to a Water Corporation sewer; but

(2) any amount remains unpaid or will become payable after Settlement for that connection (whether under a Water Corporation loan agreement or otherwise),

the Seller must pay that amount:

(A) to the Water Corporation before Settlement and provide evidence of payment to the Buyer at Settlement; or

(B) to the Buyer at Settlement.

(b) If the amount as specified in subclause (a) is paid to the Buyer at Settlement, the Buyer must pay that amount to the Water Corporation immediately following Settlement.

(c) If the amount as specified in subclause (a) is paid to the Buyer Representative at Settlement:

(1) the Buyer Representative must pay that amount to the Water Corporation immediately following Settlement; and

(2) the Buyer irrevocably authorises and directs the Buyer Representative to pay the relevant amount to the Water Corporation in accordance with subclause (c)(1).

12.2 Land not connected

If on the Contract Date:

(a) the Land is not connected to a Water Corporation sewer; and

(b) whether or not the Water Corporation has issued a notice requiring the Land to be connected to a Water Corporation sewer,

the Buyer will be solely responsible for the connection of the Land to a Water Corporation sewer.

12.3 Decommissioning of Septic Tank

If on the Contract Date:

(a) there is a septic tank on the Land; and

(b) the septic tank has not been decommissioned,

the Buyer will be solely responsible for decommissioning the septic tank.

13 Subdivision

13.1 When this clause applies

(a) Subject to subclause (b), and except as otherwise provided, this clause applies only if the Land is not a Lot at the Contract Date.

(b) Where the Land is a Proposed Strata Lot only clauses 13.6, 13.8 and 13.9 apply.

13.2 Contract conditional

(a) The Contract is conditional on the following.

(1) An application for the subdivision of the Lot from the Original Land being lodged with the Planning Commission within 3 months after the Contract Date.

(2) The Planning Commission granting approval for the subdivision of

the Lot from the Original Land within 6 months after the Contract Date, or any longer period as specified in:

(A) the Contract;

(B) a subsequent agreement in writing between the Parties.

(b) Subject to clause 13.5 where the Planning Commission grants approval for subdivision subject to a condition, the Planning Commission will be treated as having granted approval for subdivision for the purposes of subclause (a).

(c) Where a condition specified in subclause (b) is not satisfied on or before the relevant date specified in subclause (a), the Contract terminates:

(1) at midnight on the date when the relevant period in subclause (a) expires; and

(2) without the requirement for either Party to give to the other a Notice of Termination.

13.3 Further condition for subdivision

(a) The Contract is also conditional on the following.

(1) The Planning Commission endorsing approval on a Subdivision Plan within 12 months after approval for subdivision by the Planning Commission.

(2) The Subdivision Plan being In Order for Dealing within 3 months after the date of endorsement of approval by the Planning Commission in accordance with subclause (1).

(b) Each period specified in subclause (a) will, if applicable, be extended as specified in:

(1) the Contract; or

(2) a subsequent agreement in writing between the Parties.

13.4 Application and Subdivision Plan

(a) The Seller must, if the Seller has not already done so, lodge an application with the Planning Commission for the subdivision of the Subdivision Lot, from the Original Land, within 15 Business Days after the Contract Date.

(b) Following the lodgment of the application in accordance with subclause (a), the Seller must use reasonable endeavours to:

(1) obtain the approval of the Planning Commission to the subdivision of the Subdivision Lot from the Original Land; and

(2) subject to the approval of the Planning Commission to the subdivision, arrange for preparation of a Subdivision Plan including the Subdivision Lot, and for the Subdivision Plan to be:

(A) lodged at Landgate; and

(B) endorsed as In Order for Dealing,

as soon as practicable.

(c) Following the determination of the application for subdivision by the Planning Commission, the Seller must, within 10 Business Days after:

(1) the approval of the Planning Commission for subdivision; or

(2) the refusal of the Planning Commission to grant approval for subdivision,

give Notice to the Buyer of the determination of the Planning Commission and provide a copy of the determination of the Planning Commission to the Buyer.

(d) The Seller must also on request by the Buyer:

(1) advise the Buyer of progress relating to the application to the Planning Commission for subdivision; and

(2) provide to the Buyer a copy of the determination of the Planning Commission in respect to an application for subdivision unless the Seller has already done so.

13.5 Unacceptable condition or requirement imposed by Planning Commission

(a) If the Planning Commission grants approval for the subdivision of the Lot from the Original Land subject to a condition or requirement which either the Seller or the Buyer, acting reasonably:

(1) is unwilling to comply with; or

(2) considers to be prejudicial,

the Party who:

(A) would be bound to comply with the condition or requirement; or

(B) is prejudiced by the condition or requirement,

may within 15 Business Days of being notified of the condition or requirement, elect by Notice to the other Party to terminate the Contract.

(b) The reference in subclause (a) to a condition or requirement of the Planning Commission includes a condition or requirement imposed by the Planning Commission that is subject to the satisfaction of a condition or requirement of an Authority other than the Planning Commission.

(c) If subclause (b) applies, the provisions of subclause (a) will apply to the condition or requirement imposed by the other Authority.

(d) Subject to subclause (a) where subclause (c) applies the following will apply.

(1) The Seller must use reasonable endeavours to obtain the approval of the other Authority.

(2) If the other Authority imposes a condition or requirement, the Seller must within 10 Business Days of being notified of the condition or requirement:

(A) give Notice to the Buyer of the condition or requirement of the Authority; and

(B) provide a copy of the condition or requirement to the Buyer.

(e) The Seller must on request by the Buyer:

(1) advise the Buyer of progress relating to the satisfaction of a condition or requirement imposed by the other Authority; and

(2) provide to the Buyer a copy of the condition or requirement of the other Authority unless the Seller has already done so.

13.6 Proposed Strata Lot

Where the Subdivision Lot is a Proposed Lot on a Strata Plan, the Seller must use best endeavours to arrange for the Subdivision Plan, being a Strata Plan, to be registered at Landgate within the period specified or referred to in Section 70(4) of the Strata Titles Act.

13.7 Termination of Contract

(a) If either condition specified in clause 13.3(a) is not satisfied within the time specified in clause 13.3, the Contract terminates at midnight at the end of the last day of the period specified in clause 13.3:

(1) without the requirement for notice by either Party to the other; and

(2) subclause (c) then applies.

(b) If Notice terminating the Contract has been given under clause 13.5:

(1) the Contract terminates on the date of service of the Notice; and

(2) subclause (c) then applies.

(c) Where subclause (a) or (b) applies, the following apply.

(1) The Deposit and any other money paid by the Buyer under the Contract, must be promptly repaid to the Buyer.

(2) If the Deposit has been invested by the Deposit Holder in accordance with clause 1.9, the Buyer will be entitled to the interest on the Deposit.

(3) If any other money has been paid to the Deposit Holder by the Buyer, and invested by the Deposit Holder with a Deposit Financial Institution, the Buyer will be entitled to the interest on that other money.

(4) Subject to subclause (1) to (3), no Party will have any claim or right of action against the other arising from the termination, except in respect to any matter which arose before the termination.

13.8 Strata Lot - obligation to construct development

If the Contract includes an obligation for the Seller to construct a building or other permanent improvement in connection with the sale of a Proposed Strata Lot to the Buyer, the Seller must:

(a) undertake the construction of the building or permanent improvement:

(1) in a proper and workmanlike manner; and

(2) in accordance with any plans or specifications which are attached to, or incorporated in the Contract; and

(b) where on the Contract Date construction has not commenced, commence construction as soon as practicable after the Contract Date or on any date specified in the Contract and following commencement of construction, cause:

(1) construction to proceed; and

(2) the construction of the building or other permanent improvement to be completed,

as soon as practicable after commencement of construction.

13.9 Issue of title - Settlement Date

(a) As soon as practicable after the Subdivision Plan is In Order for Dealing, the Seller must:

(1) apply for, and arrange for the issue of a separate Certificate of Title for the Subdivision Lot; and

(2) notify the Buyer in writing, as soon as practicable after a separate Certificate of Title has been issued for the Subdivision Lot.

(b) Unless otherwise provided in the Contract, the Settlement Date will be the date which is:

(1) 15 Business Days after the Seller notifies the Buyer that a separate Certificate of Title has issued for the Subdivision Lot; or

(2) where:

(A) the Buyer is aware that a separate Certificate of Title has been issued for the Lot; and

(B) the Buyer has notified the Seller that the Buyer is aware that a separate Certificate of Title has issued for the Lot,

15 Business Days after the Buyer has so notified the Seller.

14 Terms contract

14.1 When this clause applies

This clause applies only if the Contract is a Terms Contract.

14.2 Right to pay Purchase Price

Subject to the Buyer giving not less than 10 Business Days prior notice in writing to the Seller, the Buyer may pay the full balance of the Purchase

Price at any time earlier than the time for payment specified in the Contract.

14.3 Right to pay instalment of Purchase Price

(a) Subject to subclauses (b) and (c) the Buyer may, at any time, pay to the Seller part of the Purchase Price outstanding.

(b) Unless a payment in accordance with subclause (a) is the whole of the balance of the Purchase Price outstanding, any payment made in accordance with subclause (a), must be in the sum of $1,000, or a multiple of $1,000.

(c) Any payment made in accordance with this clause will:

(1) be treated as payment of the last instalment or instalments of the Purchase Price due under the Contract; and

(2) not affect the obligation of the Buyer to pay the next instalment of the Purchase Price on the due date for payment.

14.4 Obligation to pay balance of Purchase Price

(a) If the Buyer fails:

(1) to pay any instalment of the Purchase Price due under the Contract, on the due date for payment; and

(2) to pay the instalment specified in subclause (1), within the time specified in a Notice served on the Buyer under subclause (b),

the whole of the balance of the Purchase Price, and all other money due under the Contract, will immediately become due and payable by the Buyer to the Seller.

(b) If the Buyer has failed to pay an instalment of the Purchase Price on the due date the Seller may serve Notice on the Buyer. The Notice must:

(1) specify particulars of the instalment of the Purchase Price which has not been paid on the due date; and

(2) require the Buyer to pay the instalment specified in subclause (b)(1) within the time specified in the Notice being not less than 10 Business Days after the service of the Notice.

14.5 Right to pay mortgagee

(a) If the Land is subject to a mortgage, the following will apply.

(b) Subject to subclause (c), the Buyer may pay any instalment of the Purchase Price due under the Contract, to the mortgagee under the mortgage, in reduction of the amount owed under the mortgage.

(c) The Buyer must give Notice to the Seller of any payment made by the Buyer in accordance with subclause (b).

(d) An amount paid by the Buyer under subclause (b) will be treated as payment of the instalment of the Purchase Price next due to be paid by the Buyer under the Contract.

(e) The Seller authorises the Buyer to:

(1) obtain information from the mortgagee as to the amount owed under the mortgage; and

(2) pay any amount to the mortgagee, in reduction of the amount owing under the mortgage.

(f) The Seller authorises the mortgagee to:

(1) provide any information requested by the Buyer; and

(2) accept any amount paid by the Buyer in reduction of the account owing under the mortgage.

14.6 Insurance

(a) The Buyer must as from and including the Possession Date take out and maintain with an insurer authorised to operate under the Insurance Act in the names of:

(1) the Buyer;

(2) the Seller; and

(3) any mortgagee of the Land,

for their respective rights and interests, the insurance specified in subclause (b).

(b) The insurance required to be taken out and maintained under subclause (a) is as follows.

(1) Insurance in respect to each building and other permanent improvement on the Land for full replacement value against damage or destruction by fire, storm, tempest, earthquake and any other risk as reasonably determined by the Seller of which Notice is given to the Buyer.

(2) Public liability insurance in respect to:

(A) the death or injury of a natural person; or

(B) damage to or destruction of property of other persons,

in respect of any one incident, in the sum of $20 million or any greater amount reasonably required by the Seller.

(c) The Buyer must:

(1) provide to the Seller a copy of each policy of insurance taken out in accordance with subclause (a) and (b);

(2) not alter or vary the insurance taken out under subclause (a) and (b), without prior written notification to the Seller and in the event of the substitution or variation of any insurance taken out, comply with the provisions of subclauses (a), (b) and (c)(1); and

(3) provide proof to the Seller that the insurance is current.

(d) If the Buyer fails to:

(1) take out insurance as required under subclauses (a) and (b); or

(2) provide proof to the Seller that the insurance is current,

the Seller may, without notice to the Buyer, and without being obliged to do so, take out and maintain the insurance required in accordance with subclauses (a) and (b).

(e) If the Seller takes out and maintains insurance in accordance with subclause (d) the Buyer must pay to the Seller on demand:

(1) all cost incurred by the Seller in taking out and maintaining the insurance; and

(2) interest, on that amount at the Prescribed Rate, from the date each cost was incurred, up to and including the date on which each cost, together with interest, is repaid to the Seller.

(f) The rights of the Seller under subclause (d) do not affect the rights of the Seller arising on default, and in particular, under clause 24.

14.7 Insurance - Strata Lot

(a) The provisions of clause 14.6 will not apply where:

(1) the Property is a Strata Lot; and

(2) the Buyer provides proof to the Seller that as at possession, the Strata Company has taken out and is maintaining insurance in respect to each risk and for the liability specified in clause 14.6(b).

(b) Where subclause (a) applies, the Buyer must:

(1) if required by the Seller, immediately provide to the Seller a copy of each policy of insurance taken out by the Strata Company;

(2) if the insurance taken out by the Strata Company is altered or varied, provide to the Seller details of the altered or varied insurance immediately the Buyer becomes aware of the alteration or variation, and in particular, provide details of any substitute insurance taken out by the Strata Company; and

(3) provide proof to the Seller that the Strata Company insurance is current.

(c) The Seller may, by Notice to the Buyer, require that the Buyer take out insurance which:

(1) is additional to the insurance taken out by the Strata Company;

(2) is specified in the Notice from the Seller to the Buyer; and

(3) provides additional insurance in respect to each risk and the liability specified in clause 14.6(b).

(d) If the Seller gives notice to the Buyer under subclause (c):

(1) the Buyer must take out and maintain the additional insurance; and

(2) the provisions of clause 14.6 will apply to the additional insurance.

14.8 Application of insurance proceeds

(a) If, arising from an incident, money becomes payable under the insurance taken out and maintained under this clause subclauses (b) and (c) will apply.

(b) The Buyer must:

(1) subject to any requirement of a mortgagee, where a mortgage is registered over the Land; and

(2) at the option of the Seller,

apply insurance proceeds arising from damage or destruction of a building or permanent improvement on the Land in:

(A) repair, reinstatement or replacement of that building or permanent improvement; or

(B) as a payment towards, or in full payment of the Purchase Price then outstanding.

(c) The Buyer must apply any proceeds of a claim arising from public risk insurance as required, by:

(1) the insurer; or

(2) the Seller, acting reasonably.

(d) Where the Property is a Strata Lot:

(1) insurance in respect to the Property is covered by insurance taken out by the Strata Company; and

(2) arising from an incident money becomes payable under insurance taken out and maintained by the Strata Company,

the insurance proceeds must be applied as required by the Strata Company or otherwise in accordance with the Strata Titles Act.

14.9 General obligation - Property and Land

From and including the date the Buyer is given possession of the Property the Buyer must:

(a) not:

(1) demolish, alter or add to any building or permanent improvement which forms part of the Property; or

(2) remove from or add any soil or other material to the Land,

except with the prior written approval of the Seller, which approval must not be unreasonably withheld;

(b) keep the Property in good repair, having regard to the condition of the Property at the Possession Date;

(c) promptly pay all Outgoings;

(d) comply with the requirements of all laws, and with:
  (1) any lease or licence of the Land from the State; and
  (2) in the case of a Strata Lot - any lease, licence or agreement, and every by law applicable to that Strata Lot; and

(e) if the Property is, or includes a farm or cultivated Land:
  (1) maintain the farm; and
  (2) cultivate that Land,
  in accordance with the best practice usually followed in the district in which the Land is situated.

14.10 Default - Seller may remedy

(a) If the Buyer is in default of an obligation under clause 14.9, the following will apply.

(b) Subject to subclause (c), the Seller may, without:
  (1) being obliged to do so; and
  (2) any obligation to give any further notice to the Buyer,
  remedy that default.

(c) Except in the case of an emergency when this subclause will not apply, the Seller may not exercise a right under subclause (b) unless:
  (1) the Seller has served Notice on the Buyer:
    (A) specifying the default of the Buyer; and
    (B) requiring the Buyer to remedy the default within the reasonable time specified in the notice being not less than 10 Business Days after the service of the notice; and
  (2) the Buyer fails to remedy the default within the time specified in the Notice.

(d) For the purpose of exercising the right of the Seller under subclause (b) the Seller may enter on the Land:
  (1) at a reasonable time except in the case of an emergency when the Seller may enter at any time; and
  (2) with or without contractors and other persons,
  to undertake any relevant or necessary work.

(e) The Buyer must pay to the Seller on demand each cost incurred by the Seller to remedy a default of the Buyer together with interest on each cost at the Prescribed Rate:
  (1) from and including the date on which payment is made by the Seller; and
  (2) up to but excluding the date on which the relevant amount, together with interest, is paid to the Seller.

(f) The rights of the Seller under subclause (b):
  (1) do not affect any other right of the Seller arising from the default of the Buyer; and
  (2) in particular, do not affect the rights of the Seller under clause 24.

14.11 Delivery of Transfer and title

(a) Subject to subclause (b) and clause 3.10, on payment by the Buyer of all money owing to the Seller under the Contract, including any interest, the Seller must deliver to the Buyer the documentation specified in clause 3.10(a):
  (1) at the time specified in the Contract; or
  (2) if no time is specified, on the day which is 15 Business Days after the Seller receives payment in full of the balance of the Purchase Price and other money due under the Contract.

(b) Clauses 3.1 to 3.3 will apply in respect to the preparation of the Transfer and matters concerning Duty and Stamp Duty.

(c) The documentation specified in subclause (a) must be delivered to the Buyer at:
  (1) the place and time agreed between the Seller and the Buyer; and
  (2) if not agreed in accordance with subclause (1), then:
    (A) on the day which is a Business Day; and
    (B) at the time between 9.00am and 5.00pm; and
    (C) at the place within the Perth CBD,
    specified by Notice from the Buyer to the Seller given not less than 3 Business Days before the date specified in subclause (a).

15 Error or Misdescription

15.1 Meaning of error or misdescription

An error or misdescription of the Property means an error or misdescription in the Contract relating to:

(a) a physical structure or physical feature of the Property;

(b) a boundary of the Property; or

(c) the area of the Land.

15.2 No termination or delay in Settlement

Subject to this clause, an error or misdescription of the Property in the Contract will not:

(a) entitle the Buyer to terminate the Contract; or

(b) result in any right for the Buyer to delay Settlement.

15.3 Claim for compensation by Buyer

Where the Buyer claims:

(a) there has been an error or misdescription of the Property in the Contract; and

(b) to be entitled to compensation,

the Buyer must give to the Seller a Notice which specifies the basis of the claim and compensation required by the Buyer not later than 10 Business Days after the Buyer has been given possession of the Property.

15.4 Claim for compensation lost

If the Buyer fails to give a Notice in accordance with clause 15.3, any right of the Buyer to claim compensation arising from an error or misdescription of the Property in the Contract will cease to apply.

15.5 Determination of claim and compensation

Where the Buyer serves a Notice under clause 15.3, unless otherwise agreed in writing between the Seller and the Buyer within 15 Business Days of service of the Notice, any issue between the Seller and the Buyer as to:

(a) whether there is an error or misdescription of the Property in the Contract; or

(b) the amount of compensation payable by the Seller to the Buyer,

must be determined by arbitration under clause 25.1.

16 No Requisition on title

16.1 Land - freehold land

This clause only applies if the Land is freehold land.

16.2 No requisition or objection

(a) The Buyer is not entitled to give a requisition or objection to the Seller in respect to:
  (1) the title of the Seller in respect to the Land; or
  (2) the Property.

(b) The Seller is not obliged to provide a response to a requisition or objection by the Buyer in respect to:
  (1) the title of the Seller in respect to the Land; and
  (2) the Property.

17 Cost and duty

17.1 Legal and other cost

The parties must pay their own legal and other cost and expense in connection with:

(a) the Contract; and

(b) Settlement.

17.2 Duty and Stamp Duty

The Buyer must pay Duty and, if applicable, Stamp Duty on the Contract and the Transfer.

17.3 Registration fee

The Buyer must pay the registration fee payable on the Transfer.

17.4 Default cost

(a) A Party in default under the Contract must pay to the other Party all cost and expense incurred by the other Party arising from the default.

(b) Cost and expense specified in subclause (a) which has been determined before Settlement must be paid on Settlement.

(c) If some or all of the cost and expense specified in subclause (a) is not paid on Settlement that cost and expense must be paid, after Settlement, on demand by the Party entitled to payment.

(d) A Party may not refuse to complete Settlement because :
  (1) a Party liable; or
  (2) alleged to be liable,
  to pay cost and expense under this clause does not pay that cost and expense at Settlement.

18 GST

18.1 Purchase Price does not include GST

Unless otherwise expressly provided in the Contract, the Buyer is not required to pay to the Seller any amount in addition to the Purchase Price for GST.

18.2 Margin Scheme

Unless otherwise expressly provided in the Contract, the Seller must not apply the Margin Scheme in respect to the sale of the Property.

18.3 GST to be paid on Purchase Price

(a) If the Contract provides that GST must be paid in addition to the Purchase Price, the following provisions will apply.

(b) On Settlement:
  (1) the Buyer must in addition to the Purchase Price pay the GST on the Purchase Price and any other consideration payable under the Contract; and
  (2) the Seller must provide a Tax Invoice to the Buyer.

18.4 GST on damages

(a) If:

(1) a Successful Party becomes entitled to damages as a result of default under the Contract; and

(2) the Successful Party is liable to pay GST on the damages,

the Payment Party must pay to the Successful Party the GST payable by the Successful Party on the damages at the same time as the Payment Party must pay the damages to the Successful Party.

(b) If subclause (a) applies, the Successful Party must, on payment of the damages, provide a Tax Invoice to the Payment Party.

(c) The provisions of the clause apply whether or not GST is payable on the Purchase Price.

19 Depreciation and Capital Works Deduction

19.1 Price of Depreciating Asset in Contract

Where:

(a) a Depreciating Asset forms part of the Property; and

(b) the price of that Depreciating Asset has been specified in the Contract,

the price of the Depreciating Asset as specified in the Contract will be the sale price of that Depreciating Asset for the purposes of the Income Tax Act.

19.2 Price of Depreciating Asset not specified in Contract

Where:

(a) a Depreciating Asset forms part of the Property; and

(b) the price of the Depreciating Asset has not been specified in the Contract,

the sale price of that Depreciating Asset for the purposes of the Income Tax Act will be the adjustable value of that Depreciating Asset for the purposes of the Income Tax Act as determined at Settlement.

19.3 Capital Works Deduction

(a) If the Property includes capital works which give rise to a Capital Works Deduction the Seller must give the Buyer a written notification within 20 Business Days of Settlement specifying the information necessary to enable the Buyer to claim any remaining Capital Works Deduction.

(b) The written notification under subclause (a) must comply with Section 262A (4AJA) of the Income Tax Act.

20 Registration of Transfer

20.1 Registration

No later than 3 Business Days after Settlement, the Buyer must lodge :

(a) the Transfer; and

(b) every other document required to enable the Transfer to be registered at Landgate

and must then use best endeavours to ensure that the Transfer is registered as soon as possible.

20.2 Seller to cooperate

(a) The Seller must immediately do everything reasonably requested by the Buyer to enable the Transfer to be accepted and registered at Landgate.

(b) The Seller must, on request by the Buyer not later than 3 Business Days before Settlement, give to the Buyer a written undertaking in favour of the Buyer, or the Buyer's mortgagee, to comply with subclause (a).

20.3 Landgate requisition

(a) If a requisition notice is issued by Landgate relating to the registration of :

(1) the Transfer; or

(2) in respect of any other document which is lodged for registration with the Transfer,

the Seller and the Buyer must immediately do everything reasonably necessary to satisfy the requirements of the requisition notice.

(b) Where a requisition notice is issued by Landgate in respect to a document prepared by or on behalf of the Seller, the Seller must, not later than 3 Business Days before the time for payment prescribed by Landgate:

(1) pay to the Buyer the fee required by Landgate in respect to that requisition notice; or

(2) pay direct to Landgate the fee required by Landgate in respect to that requisition notice and provide a copy of the receipt for the payment issued by Landgate to the Buyer.

(c) Where the requisition notice issued by Landgate relates to a document prepared by or on behalf of the Buyer, the Buyer must pay to Landgate the fee required by Landgate in respect to the requisition notice issued in respect to that document by Landgate not later than 3 Business Days before the time for payment prescribed by Landgate.

21 Notice

21.1 Requirements for Notice

A Notice to be given under the Contract must be:

(a) in writing; and

(b) in the English language; and

(c) signed by the Party giving it or that Party's Representative.

21.2 Service generally

Subject to clauses 21.3 to 21.6 a Notice will be treated as having been duly given to a Party if served:

(a) on a Party which is not a company

(1) by delivering the Notice to the Party personally; or

(2) by posting the Notice to the Party at the Party's address specified in the Contract; and

(b) on a Party which is a company

(1) by delivering the Notice to the company at its registered office;

(2) by posting the Notice to the company at its address specified in the Contract or at its registered office; or

(3) in accordance with Section 109X of the Corporations Act.

21.3 Service - Representative

If a Representative acts for a Party:

(a) a Notice served on that Representative in accordance with this clause will be treated for all purposes as if the Notice had been served on that Party; and

(b) a Notice given by that Representative in accordance with this clause will be treated for all purposes as if the Notice had been given by that Party.

21.4 Service by facsimile

(a) If a facsimile number is specified in the Contract or by a Party or a Representative as the facsimile number of that Party or Representative, then:

(1) a Notice to the relevant Party or the Representative may be transmitted by facsimile to specified facsimile number; and

(2) a Notice transmitted by facsimile will be treated as served:

(A) on the day on which it is transmitted but if it is transmitted after 4.00pm or on a day which is not a Business Day it will be treated as having been served on the next Business Day; and

(B) when the facsimile machine which transmits the Notice prints an acknowledgment that every page comprising that Notice has been transmitted to the specified facsimile number.

(b) Where:

(1) a Party has a Representative; and

(2) the Representative or Party includes in correspondence to the other Party or the Representative of the other Party, details of the facsimile number of that Party or Representative,

the facsimile number so specified will, subject to subclause (c):

(3) be treated as the facsimile for that Party or the Representative of that Party; and

(4) the provisions of subclause (a) will apply as if that facsimile number is specified in the Contract, or has been specified by a Party or the Representative of that Party as the facsimile number of that Party or Representative.

(c) Subclause (b) will not apply where a Party or Representative specified in subclause (b), gives Notice to the other Party or the Representative of that other Party that the facsimile number specified in the correspondence is not the facsimile number of the Party or Representative.

21.5 Service when Notice posted

A Notice which has been posted will be treated as served on the third Business Day after the date on which the Notice is posted.

21.6 Change of address

(a) A Party may by Notice to each other Party change:

(1) the Representative of that Party;

(2) the address of that Party; or

(3) the address of that Party's Representative; or

(4) a specified facsimile number.

(b) Where a Notice is given under subclause (a) each subsequent Notice to the Party concerned must be served as applicable

(1) on the new Representative of the Party, and

(2) at any new address or specified facsimile number.

22 Time of Essence

Subject to clause 23, time is of the essence in relation to the provisions of the Contract.

23 Default Notice

23.1 Requirement for Default Notice

Neither Party may terminate the Contract as a result of the other Party's default nor may the Seller forfeit any money paid by the Buyer or retake possession of the Property because of the default of the Buyer, unless :

(a) the Non Default Party gives a Default Notice to the Default Party; and

(b) the Default Party fails to remedy the default within the time required under the Default Notice.

23.2 No limit on right to issue further Notice

The giving of a Default Notice under clause 23.1 does not prevent the Non Default Party from giving a further Default Notice.

23.3 No Default Notice required for repudiation

Clause 23.1 does not apply if the Default Party repudiates the Contract.

24 Default

24.1 Buyer Default

If the Buyer :

(a) is:

(1) in default under the Contract; and

(2) has failed to comply with a Default Notice; or

(b) repudiates the Contract,

the Seller has each right in clause 24.2, in addition to any other right or remedy of the Seller.

24.2 Seller right on default or repudiation

If clause 24.1 applies, the Seller may:

(a) affirm the Contract and sue the Buyer for damages for default;

(b) affirm the Contract and sue the Buyer for:

(1) specific performance of the Contract; and

(2) damages for default in addition to or instead of specific performance;

(c) subject to clause 23.1, retake possession of the Property;

(d) subject to clause 23.1 terminate the Contract by Notice to the Buyer, but only if the Default Notice given under clause 23.1 includes a statement that if the default is not remedied within the time specified in the Default Notice the Contract may be terminated; or

(e) where the Buyer repudiates the Contract, terminate the Contract by Notice to the Buyer.

24.3 Further Seller right on termination

If the Seller terminates the Contract under clause 24.2(d) or 24.2(e), the Seller may, subject to the further provisions of this clause, elect to exercise any one or more of the following.

(a) Forfeit the Deposit.

(b) Sue the Buyer for damages for default.

(c) Resell the Property.

24.4 Deposit exceeds 10% of Purchase Price

If the Deposit exceeds 10% of the Purchase Price:

(a) the Seller may under clause 24.3 forfeit only that part of the Deposit which does not exceed 10% of the Purchase Price; and

(b) any money paid by the Buyer in excess of 10% of the Purchase Price, is to be treated as a payment of an Instalment for the purposes of this clause only.

24.5 Resale

If the Seller resells the Property in accordance with clause 24.3(c) :

(a) the Seller is not required to give notice of the resale to the Buyer; and

(b) the Seller has the discretion, acting reasonably, to determine the manner of resale and the terms and conditions applicable to the resale.

24.6 Resale within 12 months

If:

(a) Settlement of the resale of the Property occurs within 12 months after the Seller terminates the Contract; and

(b) after taking into account the costs and expenses of the resale and the amount of the Deposit which has been forfeited,

the amount held by the Seller:

(c) is less than the Purchase Price, the Buyer must pay to the Seller, as liquidated damages, the difference between the amount held by the Seller and the Purchase Price; or

(d) exceeds the Purchase Price, the excess belongs to the Seller.

24.7 Terms Contract

If :

(a) the Contract is a Terms Contract; and

(b) there is a surplus in accordance with clause 24.6(d); and

(c) the Buyer had possession of the Property for more than 12 months before the termination of the Contract,

the Seller must pay the surplus to the Buyer, without interest.

24.8 Interest to Seller

Whether or not Settlement of the resale occurs within 12 months after the Seller terminates the Contract, any interest:

(a) accrued on the Deposit; or

(b) on any Instalment paid by the Buyer,

belongs to the Seller.

24.9 Instalment

If the Seller:

(a) terminates the Contract; and

(b) holds an Instalment,

the Seller may hold the Instalment pending:

(1) a resale of the Property; or

(2) determination of a claim for damages.

24.10 Sale within 12 months

If:

(a) the Seller holds an Instalment in accordance with clause 24.9; and

(b) resells the Property within 12 months of termination of the Contract,

the Seller may apply the whole or part of the Instalment to liquidated damages determined in accordance with clause 24.6.

24.11 Payment after 12 months

Subject to clauses 24.10 and 24.12, the Seller must pay to the Buyer, without interest any Instalment held by the Seller after 12 months following the termination of the Contract.

24.12 Finalisation of proceedings

If :

(a) the Seller has instituted proceedings against the Buyer for damages, following termination of the Contract; and

(b) the action for damages has not been finalised within 12 months following the termination of the Contract,

the Seller may hold any Instalment pending the final determination of the action for damages against the Buyer.

24.13 Payment after finalisation

After determination of the action for damages the Seller :

(a) may apply the whole or part of the Instalment toward any judgment for damages and costs awarded by the Court; but

(b) must pay any surplus, after application of the Instalment toward the judgment and costs, to the Buyer, without interest.

24.14 Seller default

If the Seller:

(a) is:

(1) in default under the Contract; and

(2) has failed to comply with a Default Notice; or

(b) repudiates the Contract,

the Buyer has each right in clause 24.15, in addition to any other right and remedy of the Buyer.

24.15 Buyer right on default or repudiation

If clause 24.14 applies, the Buyer may:

(a) affirm the Contract and sue the Seller for damages for default;

(b) affirm the Contract and sue the Seller for:

(1) specific performance of the Contract; or

(2) damages for default in addition to or instead of specific performance;

(c) subject to clause 23.1, terminate the Contract by Notice to the Seller, but only if the Default Notice given under clause 23.1 includes a statement that if the Default is not remedied within the time specified in the Default Notice, the Contract may be terminated; or

(d) where the Seller repudiates the Contract, terminate the Contract by Notice to the Seller.

24.16 Further Buyer right on termination

(a) If the Buyer terminates the Contract under clause 24.15(c) or 24.15(d), the following will apply.

(b) The Deposit, and any other money paid by the Buyer under the Contract, must be promptly repaid to the Buyer.

(c) Where the Deposit and any other money paid under the Contract by the Buyer has been paid to the Seller, the Seller must promptly repay the Deposit and, if applicable, that other money to the Buyer.

(d) If the Deposit has been invested with a Deposit Financial Institution in accordance with clause 1.9, the Buyer will be entitled to the interest earned on the Deposit.

(e) If any other money paid by the Buyer under the Contract to the Deposit Holder in addition to the Deposit has been invested by the Deposit Holder with a Deposit Financial Institution, the Buyer will be entitled to the interest on that other money invested.

(f) Except for any money paid to the Deposit Holder by the Buyer under the Contract, the Seller must, on demand, pay to the Buyer interest on any money paid by the Buyer under the Contract at the Prescribed Rate, calculated:

(1) from and including the date of payment by the Buyer; and

(2) up to, but excluding the date on which the money is repaid to the Buyer.

24.17 Legal cost on termination

Where the Termination Party terminates the Contract as a result of:

(a) the default of; or

(b) the repudiation by,

the Terminated Party, the Terminated Party must pay to the Termination Party all legal costs incurred by the Termination Party in respect to the termination of the Contract arising from the default of the Terminated Party or the repudiation of the Contract by the Terminated Party.

24.18 Rule in Bain v Fothergill excluded

The rule of law known as the rule in Bain v Fothergill, which limits the damages recoverable from a Seller incapable of making good title, does not apply to the Contract.

25 General

25.1 Arbitration

If anything in relation to the Contract is to be determined by arbitration, the following apply.

(a) The arbitrator is to be a person jointly appointed by the parties, or, if they cannot agree, by the President of the Real Estate Institute of Western Australia (Inc) at the request of either party.

(b) The Commercial Arbitration Act 1985 (WA) applies.

(c) A Party may be represented by a Legal Practitioner at any arbitration proceedings.

25.2 Contract takes priority

If there is a provision in the Contract which is inconsistent with a provision of this document, the provision in the Contract takes priority to the extent necessary to remove the inconsistency.

25.3 No merger

Insofar as any obligation under the Contract remains to be complied with after Settlement, that obligation and the relevant provisions relating to that obligation will survive Settlement and continue to be enforceable despite Settlement having taken place.

26 Definition and interpretation

26.1 Definition

In this document, unless the context otherwise requires, the following words and expressions have the following meanings.

AccessDevice means:

(a) each key and security device which enables access to the Property; and

(b) written details of each code which applies in respect to:

(1) any security system applicable to; or

(2) which enables access to,

the Property.

Act means an act of Parliament.

Assessment means an assessment issued by State Revenue of the amount of Duty payable on the Contract.

Authority means any governmental, statutory or other public body or authority including a local government.

BankCheque means a cheque drawn on itself by a Financial Institution.

Business Day means any day except a Saturday, Sunday or public holiday in Western Australia.

Buyer means each person so specified in the Contract.

Capital Works Deduction means a deduction allowed under Division 43 of the Income Tax Act.

Certificate of Duty means the State Revenue Certificate of payment of Duty generated through Revenue Online.

Certificate of Title means the original Certificate of Title for the Land held by Landgate.

Commissioner of State Revenue means the Commissioner of State Revenue specified in section 6 of the Taxation Administration Act 2002 (WA).

Contaminated Sites Act means the Contaminated Sites Act 2003 (WA).

Contaminated Site Memorial means a Memorial lodged against a Certificate of Title for the Land recording that the Land is a Remediated Site.

Contract means the contract between the Seller and the Buyer in which this document is incorporated and includes this document.

Contract Date means the date on which the last Party to sign the Contract signs it.

Corporations Act means the Corporations Act 2001 (Commonwealth).

Crown Reservation means any of:

(a) a reservation as defined in Section 3(1) of the Land Administration Act;

(b) a covenant registered in accordance with Section 15 of the Land Administration Act;

(c) a limitation, interest, encumbrance or notification recorded on a transfer of crown land in fee simple in accordance with the Land Administration Act; and

(d) a reservation or clause contained in the Crown Grant of the Land.

Default Notice means a notice which :

(a) specifies the default of a Party under the Contract;

(b) requires the Party in default to remedy the default:

(c) within 10 Business Days after the date the notice is duly given or:

(d) within any longer period specified in the Notice; or

(e) if the Contract is a Terms Contract, within the time specified in Section 6(2) of the Sale of Land Act.

Default Party means a Party who the Non Default Party contends is in default under the Contract.

Deposit means money paid or payable under the Contract, as a deposit.

Deposit Claimant means a Party who issues a Deposit Holder Notice.

Deposit Financial Institution means a Financial Institution with which, if applicable:

(a) the Seller Agent is authorised to invest trust money in accordance with the Real Estate Act;

(b) the Seller Representative, being a Legal Practitioner, is authorised to invest trust moneys in accordance with the Legal Practitioners Act; and

(c) the Seller Representative, being a Settlement Agent, is authorised to invest trust moneys in accordance with the Settlement Agents Act.

Deposit Holder means as applicable:

(a) the Seller Agent or the Seller Representative to whom the Deposit is paid; and

(b) where clause 1.3(b) applies - the solicitor, Real Estate Agent or Settlement Agent who holds the Deposit.

Deposit Holder Notice means a Notice from the Deposit Claimant that:

(a) specifies the Contract has been terminated;

(b) states the basis on which it is contended that the Contract has been terminated;

(c) states that the Deposit Holder is required to pay the Deposit to the Deposit Claimant; and

(d) that if the Deposit Respondent disputes that:

(1) the Contract has been terminated; or

(2) the Deposit should be paid to the Deposit Claimant,

states that the Deposit Respondent must give Notice to the Deposit Claimant and the Deposit Holder within 5 Business Days of service of the Deposit Holder Notice as specified in clause 1.2.

Deposit Respondent means the party who is not the Deposit Claimant.

Depreciating Asset means an asset as defined in the Income Tax Act, except for an asset which attracts a Capital Works Deduction.

Depreciable Item means an item which is subject to depreciation under the Income Tax Act.

Dollars and **$** means Australian dollars.

Duplicate Certificate of Title means the duplicate of the Certificate of Title for the Land issued by Landgate.

Dutiable Value has the same meaning as dutiable value in section 9 of the Duties Act.

Duties Act means the Duties Act 2008 (WA).

Duty means duty payable under the Duties Act.

Duty Endorsed means an endorsement that:

(a) Duty has been paid on the Contract or the Transfer; or

(b) if applicable, the Contract and the Transfer are exempt from Duty,

and in particular has the same meaning as duty endorsed as defined in the Duties Act.

Electricity Extension Scheme means the scheme established by Western Power known as the Contributory Extension Scheme under which Western Power agreed to construct an extension to the electricity supply to supply electricity to the Property.

Electricity Scheme Agreement means:

(a) the agreement entered into with Western Power under which electricity was provided to the Property under the Electricity Extension Scheme; and

(b) includes, if applicable, the agreement between the Seller and Western Power under which the Seller assumed the obligations of a former owner of the Property under an agreement as specified in subclause (a).

Encumbrance means a mortgage, easement, restrictive covenant, Title Restriction, caveat, Memorial and Rate Encumbrance and includes any right and interest which a person has in relation to the Property.

Financial Institution means a financial institution as defined in Section 3 of the Cheques Act 1986 (Commonwealth).

Financial Year means each period commencing on 1 July in a year and ending on 30 June in the next succeeding year.

Future Rate Outgoing means an Outgoing:

(a) in respect to the Land; and

(b) for which, as at Settlement an assessment has not been issued by an Authority in respect to the Financial Year where an Outgoing is liable to be adjusted at Settlement under the Contract.

GST means the goods and services tax payable under the GST Act

GST Act means A New Tax System (Goods and Services Tax) Act 1999 (Commonwealth)

In Order for Dealing means that the Subdivision Plan has been initialled by an Inspector:

(a) as being in order for dealing; and

(b) in particular, as in order to enable the issue of a separate Certificate of Title for the Lot.

Income Tax Act means:

(a) the Income Tax Assessment Act 1936 (Commonwealth); and

(b) the Income Tax Assessment Act 1997 (Commonwealth).

Inspector means an officer of Landgate authorised to sign a Subdivision Plan as being In Order for Dealing.

Instalment means any money paid by the Buyer under the Contract in excess of the Deposit.

Instituted means in relation to court proceedings, that:

(a) a Party has commenced proceedings in a court; and

(b) the originating process which commences those proceedings, has been served on the other Party.

Insurance Act means the Insurance Act 1973 (Commonwealth).

Interest Amount means the amount specified in the Interest Notice.

Interest Notice means a notice from the Interest Party to the Interest Default Party in which the Interest Party claims interest or compensation from the Interest Default Party under clause 4.6.

Interest Party means a party who claims to be entitled to interest or compensation under clause 4.1 to 4.5.

Interest Default Party means the party who the Interest Party claims is liable to pay interest or compensation under clause 4.1 to 4.5.

Land means the land which the Seller has agreed to sell to the Buyer including all improvements and other fixed improvements on that land.

Land AdministrationAct means the Land Administration Act 1997 (WA).

Landgate means the Western Australian Land Information Authority established under the Western Australian Land Authority Act 1992 (WA).

Land Tax means land tax payable under the Land Tax Act and includes, where applicable, Metropolitan Region Improvement Tax.

Land Tax Act means the Land Tax Act 2002 (WA).

Lease means a lease or tenancy agreement in respect to the Property.

Legal Practitioner means an Australian legal practitioner as defined in the Legal Profession Act.

Legal Profession Act means the Legal Profession Act 2008 (WA).

Loss means a claim, judgement, order, financial loss, damages and costs.

Lot has the same meaning as the definition of lot in the Planning and Development Act.

Margin Scheme means the scheme described in Division 75 of the GST Act as the margin scheme.

Memorial means a Memorial lodged under an Act.

Metropolitan Region Improvement Tax means Metropolitan Region Improvement Tax as defined in the Metropolitan Region Improvement Tax Act 1959 (WA).

Non Default Party means a Party who contends that another Party is in default under the Contract.

Notice means a notice as specified in clause 21.1.

Original Land means the land of which the Lot forms part.

Outgoing means :

(a) all rates, taxes, charges (including fixed charges) and other similar expenses payable in relation to the Property (whether periodically or not); and

(b) if the Land or any part is a Strata Lot:

  (1) each Strata Contribution; and

  (2) any money payable periodically under a lease, licence or other agreement referred to in clause 10.7,.

but does not include a tax specified in the Income Tax Act, GST, Duty and Stamp Duty

Party means, as the case requires, either the Seller or the Buyer, or both the Seller and the Buyer.

Payment Party means the Party who is liable to pay damages or other money to the Successful Party arising from default under the Contract.

Perth CBD means the area in or adjoining the City of Perth bounded by Riverside Drive, the Mitchell Freeway, Roe Street, Fitzgerald Street, Newcastle Street, Lord Street, Wellington Street and Plain Street, including both sides of each street or road.

Planning and Development Act means the Planning and Development Act 2005 (WA).

Planning Commission means the Western Australian Planning Commission.

Possession Date means the date the Buyer is entitled to possession under clause 6.1.

Prescribed Rate means 9% per annum calculated on a daily basis.

Property means the Land and the Property Chattels.

Property Chattels means all items of property, except the Land and anything which forms part of the Land, which the Seller has agreed to sell to the Buyer under the Contract.

Property Condition Report means a report prepared by a Real Estate Agent or other person which records the condition of the premises the subject of a Lease:

(a) as at the date of commencement of that Lease; or

(b) at any time after the commencement of the Lease.

Proposed Strata Lot means a lot on a Strata Plan which on the Contract Date has not been registered at Landgate.

Purchase Price means the price payable for Property stipulated in the Contract.

Rate Encumbrance means a charge:

(a) created over the Land by an Act; and

(b) which:

  (1) arises from an Unpaid Rate Outgoing; or

  (2) will arise from a Future Rate Outgoing.

Real Estate Act means the Real Estate and Business Agents Act 1978 (WA).

Real Estate Agent means a person who is:

(a) defined in the Real Estate Act as a real estate agent; and

(b) is licensed as a real estate agent under the Real Estate Act.

Remediated Site means the Land has been classified under the Contaminated Sites Act as "remediated for restricted use".

Remediated Site Memorial means a Memorial lodged against the Land under the Contaminated Sites Act which classifies the Land under the Contaminated Sites Act as:
"remediated for restricted use".

Rent means rent and other money payable by a Tenant under a Lease.

Rent Period means each period under the Lease in respect to which the Tenant is required to pay Rent.

Representative means a person who is either a Legal Practitioner or a Settlement Agent and who has been appointed to act for a party in relation to Settlement.

Restricted Use means the restriction on the use of the Land imposed under the Contaminated Sites Act.

Revenue Online also known as ROL means the system developed by State Revenue which enables Duty to be assessed and paid electronically.

Sale of Land Act means the Sale of Land Act 1970 (WA).

Section 47(3) Strata Notice means a notice concerning the purpose of and the amount of expenditure proposed for the Strata Company as specified in Section 47(3) of the Strata Titles Act.

Seller means each person so specified in the Contract.

Seller Agent means a Real Estate Agent appointed to act on behalf of the Seller in respect to the sale of the Property.

Settlement means the completion of the sale and purchase of the Property in accordance with clause 3.

Settlement Agent means a person licensed as a settlement agent under the Settlement Agents Act.

Settlement Agents Act means the Settlement Agents Act 1981 (WA).

Settlement Date means the date each Party must complete Settlement:

(a) under clause 3.5; and

(b) any other relevant provision of this document or of the Contract.

Specified Encumbrance means an Encumbrance specified in the Contract subject to which the Property will be transferred.

Stamp Act means the Stamp Act 1921 (WA).

Stamp Duty means stamp duty assessed and payable under the Stamp Act.

State means the State of Western Australia.

State Administrative Tribunal means the Tribunal known as the State Administrative Tribunal established by the State Administrative Tribunal Act 2004 (WA).

State Revenue means the office established by the Commissioner of State Revenue and known as the Office of State Revenue.

Strata Company means the strata company as defined in the Strata Titles Act which applies in respect to the Strata Lot.

Strata Contribution means:

(a) a Strata Regular Contribution; and

(b) a Strata Special Contribution.

Strata Lot means the lot as defined in the Strata Titles Act the subject of the Contract.

Strata Plan means a strata plan or survey-strata plan as defined in the Strata Titles Act where:

(a) in the case of a Strata Lot, the strata plan or survey-strata plan has been registered at Landgate; or

(b) in the case of a Proposed Strata Lot, the strata plan or survey-strata plan has not been registered at Landgate.

Strata Regular Contribution means the normal and regular contribution levied by the Strata Company under Section 36(1)(a) of the Strata Titles Act

to the registered proprietor in respect of the Strata Lot in relation to:

(a) the control and management of the common property;

(b) the payment of any premiums of insurance; and

(c) the discharge of any other obligation of the Strata Company.

Strata Regulations means the Strata Titles General Regulations 1996.

Strata Scheme means the strata scheme as defined in the Strata Titles Act which applies in respect to the lots and common property which form part of the Strata Plan.

Strata Special Contribution means a contribution levied by the Strata Company under Section 36(2) of the Strata Titles Act in respect to the registered proprietor of the Strata Lot for a reserve fund for the purpose of accumulating funds to meet:

(a) contingent expenses other than those of a routine nature; and

(b) other major expenses of the Strata Company likely to arise in the future.

Strata Title Referee means the referee as specified in the Strata Titles Act before the coming into operation of:

(a) the State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 (WA); and

(c) the State Administrative Tribunal Act 2004 (WA).

Strata Titles Act means the Strata Titles Act 1985 (WA)

Subdivision Lot means the Land which is not a Lot as defined in the Planning and Development Act or a Proposed Strata Lot and which is:

(a) the subject of the Contract; and

(b) described in the Contract.

Subdivision Land means the land which at the commencement of the Financial Year in which the Possession Date or Settlement occurs:

(a) includes the Land; and

(b) from which, following subdivision, the Land is created as a separate Lot.

Subdivision Plan means a deposited plan which includes the Lot including if applicable, a Strata Plan which includes the Proposed Strata Lot.

Successful Party means the party who is entitled to damages or other money from another party arising from default under the Contract.

Tax Invoice includes any document or record treated by the Commissioner of Taxation for GST purposes:

(a) as a tax invoice; or

(b) as a document entitling a recipient to an input tax credit.

Tenant means a person who is a tenant or lessee under a Lease.

Tenant Bond means:

(a) money paid by the Tenant as a bond in respect to each obligation of the Tenant under a Lease; and

(b) any other security provided by the Tenant under a Lease as security for each obligation of the Tenant under the Lease.

Terminated Party means the Seller or the Buyer who is not the Termination Party.

Termination Party means the Seller or the Buyer who has terminated the Contract as a result of the default of the Terminated Party under the Contract or the repudiation by the Terminated Party of the Contract.

Terms Contract means a terms contract as defined in the Sale of Land Act.

Title Notification means:

(a) any notification under Section 70A of the Transfer of Land Act; or

(b) any notification under Section 165 of the Planning and Development Act,

and which applies in respect to the Land.

Title Restriction means a Crown Reservation and a Title Notification.

Transaction Summary means the summary generated through Revenue Online which specifies:

(a) the date the Contract was lodged on Revenue Online;

(b) the Dutiable Value;

(c) the date of assessment; and

(d) the Duty assessed.

Transfer means the instrument required to transfer the Land to the Buyer in a form acceptable for registration by Landgate, subject to signing by all parties.

Transfer of Land Act means the Transfer of Land Act 1893 (WA).

Underground Power Rate means the charge, rate or other payment required from the owner of the Property by an Authority in relation to the provision of underground power.

Unpaid Rate Outgoing means an Outgoing in respect to the Land which, as at Settlement, is:

(a) the subject of an assessment by an Authority; and

(b) unpaid,

and is required to be adjusted under the Contract in relation to the Financial Year in which Settlement takes place.

Water Corporation means the statutory body corporate established under the Water Corporation Act 1995 (WA).

Western Power means the statutory body corporate known as Western Power established under the Electricity Corporation Act 1994 (WA).

26.2 Strata Titles Act

Words which:

(a) are not defined in clause 26.1; but

(b) are defined in the Strata Titles Act,

have the meaning given in the Strata Titles Act.

26.3 GST Act

Words which:

(a) are not defined in clause 26.1; but

(b) are defined in the GST Act,

have the meaning given in the GST Act.

26.4 Citation - 2011 General Conditions

This Joint Form of General Conditions for the Sale of Land 2011 Revision may be cited as the "2011 General Conditions".

26.5 Interpretation

In this document and the Contract, unless the context otherwise requires, the following applies.

(a) The Seller and the Buyer must:

(1) each comply with each obligation of the Seller and the Buyer under the Contract; and

(2) not assign or transfer the Contract or any right under the Contract to a third party without the prior written consent of the other.

(b) Subject to subclause (a), each reference to the Seller and the Buyer includes as applicable:

(1) the successors of a company or corporation; and

(2) each legal personal representative of the Seller and the Buyer.

(c) Reference to an Authority includes a reference to:

(1) an officer of that Authority; and

(2) any other Authority and any officer of that other Authority,

which performs the same or a similar function to the Authority.

(d) Reference to a thing includes the whole and any part of that thing.

(e) Reference to the singular includes the plural and vice versa.

(f) Headings to clauses will not affect the interpretation of the Contract or this document.

(g) Where the Buyer or the Seller and any other person who is a Party consists of more than one person, then each of the two or more persons are liable both jointly and severally.

(h) Reference to a person includes reference to:

(1) a natural person;

(2) a company; and

(3) a body corporate constituted under any Act.

(i) If something must be done by or on a day which is not a Business Day, the day by or on which that thing must be done is the next Business Day.

(j) Where a period of time is required to be calculated from or after a specific day, or after or from a day on which a specific event occurs, that day must not be included in the period.

(k) Where a period of time is expressed to expire on or continue until a specified date, that date is included in the period.

(l) All warranties and representations continue to have effect after Settlement.

(m) Reference to being entitled to possession of the Property includes being entitled to Rent from the Property.

(n) Reference to a document being signed or to a Party being obliged to sign a document, will be treated as requiring that the document be:

(1) executed by a company or body corporate; or

(2) signed by a natural person,

in a manner which is:

(3) legally effective; and

(4) if the document is required to be registered by Landgate, then in a manner acceptable for registration.

(o) Reference to an Act includes any change to that Act or, if the Act is repealed, the Act:

(1) replacing it; and

(2) all subsidiary legislation under that Act.

(p) Reference to a clause is a reference to a clause in this document.

(q) Reference to a subclause is a reference to a subclause in which the reference occurs.

JOINT FORM

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