

Warning statement

Property Agents and Motor Dealers Act 2000 - Chapter 11

This form is effective from 1 October 2010.

Department of **Employment, Economic
Development and Innovation**

Instructions

This form is to be attached to a proposed relevant contract of sale for residential property to be read and signed by a proposed buyer **BEFORE** the proposed buyer signs the proposed relevant contract.

The seller or seller's agent must give the proposed buyer a clear statement directing the buyer's attention to the proposed relevant contract and to this warning statement before the proposed buyer signs the proposed relevant contract. Failure to give the proposed buyer a clear statement may give the buyer a right to terminate the contract under section 370 within 90 days of receiving a copy of the relevant contract unless settlement occurs earlier.

Property address

Note: If no street address is applicable, use lot and plan information to identify the property

Street name and number

Suburb State Postcode

WARNING

DO NOT sign the proposed relevant contract for the above property until you have read and understood ALL SECTIONS of this form. DO NOT sign if you feel pressured.

The relevant contract is subject to a five (5) business day cooling-off period. You may terminate this contract during the cooling-off period. However, the seller may deduct a termination penalty of up to 0.25% of the purchase price from the deposit.

You should obtain independent:

- **legal advice** See note 1
- **valuation** See note 2

Cooling-off period

What is the cooling-off period?

The cooling-off period is five (5) business days, during which you can change your mind about purchasing this property. Use this time to seek independent legal advice and an independent valuation of the property.

When does the cooling-off period start?

Your cooling-off period starts on the day you receive a copy of the completed relevant contract from the seller or seller's agent. The proposed contract becomes a relevant contract when both parties have signed. In any dispute about the commencement of the cooling-off period, it will be up to the seller to prove the buyer received a copy of the relevant contract. If you receive a copy of the relevant contract on a day other than a business day, the cooling-off period commences on the first business day after you receive a copy of the relevant contract.

When does the cooling-off period end?

Your cooling-off period ends at 5.00pm on the fifth business day after the cooling-off period started. A business day is a day other than a Saturday, Sunday or public holiday.

Can I waive or shorten the cooling-off period?

Yes, but only if you engage an independent lawyer who must give you a lawyer's certificate explaining the purpose and nature of the certificate. You should seek advice from your lawyer about the effect of waiving or shortening your cooling-off period. If you are waiving the cooling-off period, the lawyer's certificate must be given to the seller or seller's agent before you and the seller enter into the relevant contract.



The Real Estate Institute of Queensland

Accredited Agency

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Contract For Houses and Residential Land

Eighth Edition

This document has been approved by The Real Estate Institute of Queensland Limited and the Queensland Law Society Incorporated as being suitable for the sale and purchase of houses and residential land in Queensland except for new residential property in which case the issue of GST liability must be dealt with by special condition.

The Seller and Buyer agree to sell and buy the Property under this contract Reference Schedule

Contract Date :

Agent: PETER WALLMER ATF WALLMER FAMILY TRUST IN CONJ WITH SOLONE PTY TY LTD T/AS RE/MAX UNITED VISION .

ABN: 89766839337 Licence Number: 3060223
Address: 828 OLD CLEVELAND RD , CARINA QLD 4152
Telephone: 07 38431355 Facsimile: 07 3843 1351 Mobile: 0411 334 646
Email: unitedvisionqld @remax.com.au

Parties

Seller:

ABN: Email:
Address: Facsimile: Mobile:
Telephone: Facsimile: Mobile:

Seller's Solicitor :

[or any other solicitor notified to the Buyer]

ABN: Ref:
Address: Facsimile: Mobile:
Telephone: Facsimile: Mobile:
Email:

Buyer:

ABN: Email:
Address: Facsimile: Mobile:
Telephone: Facsimile: Mobile:

Buyer's Solicitor :

[or any other solicitor notified to the Seller]

ABN: Ref:
Address: Facsimile: Mobile:
Telephone: Facsimile: Mobile:
Email:

Property

Land: Address:

Built on

Description: Lot:

on:

County: Stanley Parish:
Title Reference: Area: [more or less]
Land sold as: Freehold

Present Use : Residential **Local Government : BRISBANE CITY COUNCIL**



Property - Excluded Fixtures :
Continued

Included Chattels :

Matters Affecting Property

Title Encumbrances : Nil

[If the Property is sold free from Title Encumbrances insert "Nil"]
[If the Property is sold subject to Title Encumbrances, they must be described]

Tenancies :

Tenant's Name:

Term and Options:

Starting Date of Term:

Ending Date of Term:

Rent:

Bond:

Managing Agent :

Address:

Telephone:

Email:

Facsimile:

Mobile:

Price

Deposit Holder : RE/MAX UNITED VISION TRUST ACCOUNT

[Unless otherwise specified in this contract, the Purchase Price includes any GST payable on the supply of the Property to the Buyer]

Purchase Price : \$

Deposit : \$
\$

Initial Deposit payable when Buyer signs this contract
Balance Deposit (if any) payable on: **ACCEPTANCE BY SELLER**

Default Interest Rate : % [If no figure is inserted, the Contract Rate published by the Queensland Law Society Inc will apply]

Finance

Finance Amount : \$

[Unless all of "Finance Amount", "Financier" and "Finance Date" are completed, this contract is not subject to finance and clause 3 does not apply]

Financier :

Finance Date :

Building and/or Pest Inspection Date

Inspection Date :

[If not completed, the contract is not subject to an inspection report and clause 4 does not apply]

Pool Safety

Q1. Is there a pool on the Land or on adjacent land used in association with the Land?

- Yes
- No Clause 4.7 of this contract does not apply

Q2. If the answer to Q1 is Yes, is there a Pool Safety Certificate for the pool at the time of contract?

- Yes Clause 5.3(1)(e) applies
- No Clause 4.7 applies (except where this contract is formed on a sale by auction)

If there is a pool on the Land and Q 2 is not completed then clause 4.7 applies.

Q3. If the answer to Q2 is No, has a Notice of no pool safety certificate been given prior to contract?

- Yes
- No

Note: this is an obligation of the Seller under Section 16 of the Building Regulation 2006

Pool Safety Inspection Date :

[WARNING TO SELLER: Failure to comply with the Pool Safety Requirements is an offence with substantial penalties.]

[WARNING TO BUYER; If the Buyer does not receive a Pool Safety Certificate at settlement, the Buyer becomes responsible at its cost to obtain a Pool Safety Certificate within 90 days after settlement. The Buyer can also become liable to pay any costs of rectification necessary to comply with the Pool Safety Requirements to obtain a pool safety certificate. The Buyer commits an offence and can be liable to substantial penalties if the Buyer fails to comply with this requirement.]

[Clause 4.7(2) applies except where this contract is formed on a sale by auction]

Electrical Safety Switch and Smoke Alarm

This section must be completed unless the Land is vacant

The Seller gives notice to the Buyer that an Approved Safety Switch for the General Purpose Socket Outlets is:

- *installed in the residence
 - *not installed in the residence
- * Mark whichever is applicable*

The Seller gives notice to the Buyer that a Compliant Smoke Alarm(s) is/are:

- *installed in the residence
 - *not installed in the residence
- * Mark whichever is applicable*

[WARNING: By giving false or misleading information in this section, the Seller may incur a penalty. The Seller should seek expert and qualified advice about completing this section and not rely on the Seller's Agent to complete this section]

[WARNING: Failure to install a Compliant Smoke Alarm is an offence under the Fire and Rescue Service Act 1990]

Special Conditions

Settlement

Settlement Date : 30 DAYS FROM CONTRACT DATE

[or the next Business Day if that is not a Business Day in the Place for Settlement]

Place for Settlement : Brisbane

[If Brisbane is inserted this is a reference to Brisbane CBD]

Signing

.....
Seller

.....
Witness

.....
Buyer

.....
Witness

Deposit Holder

.....
[Who acknowledges having received the Initial Deposit and agrees to hold that amount and any Balance Deposit when received as Deposit Holder for the parties as provided in the Contract]

Terms of Contract

For Houses and Residential Land

1. Definitions

1.1 In this contract:

- (1) terms in **bold** in the Reference Schedule have the meanings shown opposite them; and
- (2) unless the context otherwise indicates:
 - (a) **“Approved Safety Switch”** means a residual current device as defined in the *Electrical Safety Regulation 2002*;
 - (b) **“Balance Purchase Price”** means the Purchase Price, less the Deposit, adjusted under clauses 2.6(2) and 2.6(13);
 - (c) **“Bank”** means:
 - (i) a bank as defined by section 5 of the *Banking Act 1959* of the Commonwealth; or
 - (ii) a bank constituted under a law of a state;
 - (d) **“Bond”** means a bond under the *Residential Tenancies and Rooming Accommodation Act 2008*;
 - (e) **“Building Act”** means the *Building Act 1975* as amended.
 - (f) **“Business Day”** means a week day other than a public holiday in the Place for Settlement;
 - (g) **“Compliant Smoke Alarm”** means a smoke alarm complying with sections 104RB (2) or (4) of the *Fire and Rescue Service Act 1990*;
 - (h) **“Contract Date”** or **“Date of Contract”** means the date inserted in the Reference Schedule;
 - (i) **“Court”** includes any tribunal established under statute.
 - (j) **“Encumbrances”** includes unregistered and statutory encumbrances;
 - (k) **“Essential Term”** includes, in the case of breach by:
 - (i) the Buyer: clauses 2.2, 2.5(1), 5.1 and 6.1; and
 - (ii) the Seller: clauses 5.1, 5.3(1)(a)-(c), 5.3(1)(d)(ii) & (iii), 5.3(1)(e), 5.5 and 6.1;
 but nothing in this definition precludes a Court from finding other terms to be essential.
 - (l) **“Financial Institution”** means a Bank, building society or credit union;
 - (m) **“General Purpose Socket Outlet”** means an electrical socket outlet as defined in the *Electrical Safety Regulation 2002*;
 - (n) **“GST”** means the goods and services tax under the *GST Act*;
 - (o) **“GST Act”** means *A New Tax System (Goods and Services Tax) Act* and includes other GST related legislation;
 - (p) **“Improvements”** means fixed structures on the Land and includes all items fixed to them (such as stoves, hot water systems, fixed carpets, curtains, blinds and their fittings, clothes lines, fixed satellite dishes and television antennae, in-ground plants) but does not include the Reserved Items;
 - (q) **“Keys”** means keys, codes or devices in the Seller’s possession for all locks or security systems on the Property;
 - (r) **“Notice of no pool safety certificate”** means the Form 36 under the *Building Regulation 2006* to the effect that there is no Pool Safety Certificate issued for the Land;
 - (s) **“Outgoings”** means:
 - (i) rates or charges on the Land by any competent authority (for example, council rates, water rates, fire service levies); and
 - (ii) land tax;
 - (t) **“Pool Safety Requirements”** means the requirements for pool safety contained in the *Building Act 1975* and *Building Regulation 2006*;
 - (u) **“Pool Safety Certificate”** means either:
 - (i) a certificate of compliance; or
 - (ii) an exemption from compliance; issued in accordance with the Pool Safety Requirements;
 - (v) **“Pool Safety Inspection Date”** means the Pool Safety Inspection Date inserted in the Reference Schedule. If no date is inserted in the Reference Schedule, the Pool Safety Inspection Date is taken to be the earlier of the following:
 - (i) the Inspection Date for the Building and/or Pest Inspection; or
 - (ii) 2 Business Days before the Settlement Date;
 - (w) **“Pool Safety Inspector”** means a person licensed or authorised under the *Building Act 1975* and *Building Regulation 2006* to issue a Pool Safety Certificate;
 - (x) **“Property”** means:
 - (i) the Land;
 - (ii) the Improvements; and
 - (iii) the Included Chattels;
 - (y) **“Rent”** means any periodic amount payable under the Tenancies;
 - (z) **“Reserved Items”** means the Excluded Fixtures and all chattels on the Land other than the Included Chattels;
 - (aa) **“Transfer Documents”** means:
 - (i) the form of transfer under the *Land Title Act 1994* required to transfer title in the Land to the Buyer; and
 - (ii) any other document to be signed by the Seller necessary for stamping or registering the transfer; and
 - (bb) **“Transport Infrastructure”** has the meaning defined in the *Transport Infrastructure Act 1994*.

2. Purchase Price

2.1 GST

Unless otherwise specified in this contract, the Purchase Price includes any GST payable on the supply of the Property to the Buyer.

2.2 Deposit

- (1) The Buyer must pay the Deposit to the Deposit Holder at the times shown in the Reference Schedule. The Deposit Holder will hold the Deposit until a party becomes entitled to it.

- (2) The Buyer will be in default if it:
 - (a) does not pay the Deposit when required;
 - (b) pays the Deposit by a post-dated cheque; or
 - (c) pays the Deposit by cheque which is dishonoured on presentation.
- (3) The Seller may recover from the Buyer as a liquidated debt any part of the Deposit which is not paid when required.

2.3 Investment of Deposit

- If:
- (1) the Deposit Holder is instructed by either the Seller or the Buyer; and
 - (2) it is lawful to do so;
- the Deposit Holder must:
- (3) invest as much of the Deposit as has been paid with any Financial Institution in an interest-bearing account in the names of the parties; and
 - (4) provide the parties' tax file numbers to the Financial Institution (if they have been supplied).

2.4 Entitlement to Deposit and Interest

- (1) The party entitled to receive the Deposit is:
 - (a) if this contract settles, the Seller;
 - (b) if this contract is terminated without default by the Buyer, the Buyer; and
 - (c) if this contract is terminated owing to the Buyer's default, the Seller.
- (2) The interest on the Deposit must be paid to the person who is entitled to the Deposit.
- (3) If this contract is terminated, the Buyer has no further claim once it receives the Deposit and interest, unless the termination is due to the Seller's default or breach of warranty.
- (4) The Deposit is invested at the risk of the party who is ultimately entitled to it.

2.5 Payment of Balance Purchase Price

- (1) On the Settlement Date, the Buyer must pay the Balance Purchase Price by Bank cheque as the Seller directs.
- (2) Despite any other provision of this contract, a reference to a "Bank cheque" in clause 2.5(1):
 - (a) includes a cheque drawn by a building society or credit union on itself;
 - (b) does not include a cheque drawn by a building society or credit union on a Bank;

and the Seller is not obliged to accept a cheque referred to in clause 2.5(2)(b) on the Settlement Date.

2.6 Adjustments to Balance Purchase Price

- (1) The Seller is liable for Outgoings and is entitled to Rent up to and including the Settlement Date. The Buyer is liable for Outgoings and is entitled to Rent after the Settlement Date.
- (2) Subject to clauses 2.6(3), 2.6(4), 2.6(5) and 2.6(6), Outgoings for periods including the Settlement Date must be adjusted:
 - (a) for those paid, on the amount paid;
 - (b) for those assessed but unpaid, on the amount payable (excluding any discount); and
 - (c) for those not assessed:
 - (i) on the amount the relevant authority advises will be assessed (excluding any discount);
 - or

- (ii) if no advice on the assessment to be made is available, on the amount of the latest assessment (excluding any discount).
- (3) If there is no separate assessment of rates for the Land at the Settlement Date and the Local Government informs the Buyer that it will not apportion rates between the Buyer and the Seller, then:
 - (a) the amount of rates to be adjusted is that proportion of the assessment equal to the ratio of the area of the Land to the area of the parcel in the assessment; and
 - (b) if an assessment of rates includes charges imposed on a "per lot" basis, then the portion of those charges to be adjusted is the amount assessed divided by the number of lots in that assessment.
- (4) Land tax must be adjusted:
 - (a) on the assessment that the Office of State Revenue would issue for the land tax year current at the Settlement Date if the Seller was one natural person resident in Queensland and the Land was the Seller's only land; or
 - (b) based on the assumptions in clause 2.6(4)(a), if there is no separate unimproved value for the Land, on a notional unimproved value equal to:

$$\begin{array}{l} \text{Unimproved value of} \\ \text{the parcel that} \\ \text{includes the Land} \\ \text{under } \textit{Valuation of} \\ \textit{Land Act 1944} \end{array} \times \frac{\text{Area of Land}}{\text{Area of the parcel}}$$

- (5) If land tax is unpaid at the Settlement Date and the Office of State Revenue advises that it will issue a final clearance for the Land on payment of a specified amount, then the Buyer may deduct the specified amount from the Balance Purchase Price at settlement and must pay it promptly to the Office of State Revenue. If an amount is deducted under this clause, then land tax will be treated as paid at the Settlement Date for the purposes of clause 2.6(2).
- (6) Any Outgoings assessable on the amount of water used must be adjusted on the charges that would be assessed on the total water usage for the assessment period, determined by assuming that the actual rate of usage shown by the meter reading made before settlement continues throughout the assessment period. The Buyer must obtain and pay for the meter reading.
- (7) If any Outgoings are assessed but unpaid at the Settlement Date, then the Buyer may deduct the amount payable from the Balance Purchase Price at settlement and pay it promptly to the relevant authority. If an amount is deducted under this clause, the relevant Outgoing will be treated as paid at the Settlement Date for the purposes of clause 2.6(2).
- (8) Arrears of Rent for any rental period ending on or before the Settlement Date belong to the Seller and are not adjusted at settlement.
- (9) Unpaid Rent for the rental period including both the Settlement Date and the following day ("**Current Period**") is not adjusted until it is paid.

- (10) Rent already paid for the Current Period or beyond must be adjusted at settlement.
- (11) If Rent payments are reassessed after the Settlement Date for periods including the Settlement Date, any additional Rent payment from a Tenant or refund due to a Tenant must be apportioned under clauses 2.6(8), 2.6(9) and 2.6(10).
- (12) Payments under clause 2.6(11) must be made within 14 days after notification by one party to the other but only after any additional payment from a Tenant has been received.
- (13) The cost of Bank cheques payable at settlement:
 - (a) to the Seller or its mortgagee are the responsibility of the Buyer; and
 - (b) to parties other than the Seller or its mortgagee are the responsibility of the Seller.

3. Finance

3.1 This contract is conditional on the Buyer obtaining approval of a loan for the Finance Amount from the Financier by the Finance Date on terms satisfactory to the Buyer. The Buyer must take all reasonable steps to obtain approval.

3.2 The Buyer must give notice to the Seller that:

- (1) approval has not been obtained by the Finance Date and the Buyer terminates this contract; or
- (2) the finance condition has been either satisfied or waived by the Buyer.

3.3 The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 3.2 by 5pm on the Finance Date. This is the Seller's only remedy for the Buyer's failure to give notice.

3.4 The Seller's right under clause 3.3 is subject to the Buyer's continuing right to terminate this contract under clause 3.2(1) or waive the benefit of this clause 3 by giving written notice to the Seller of the waiver.

4. Building and Pest Inspection Reports and Pool Safety

4.1 Building and Pest Inspection

This contract is conditional upon the Buyer obtaining a written building report from a building inspector and a written pest report from a pest inspector (which may be a single report) on the Property by the Inspection Date on terms satisfactory to the Buyer. The Buyer must take all reasonable steps to obtain the reports (subject to the right of the Buyer to elect to obtain only one of the reports).

4.2 The Buyer must give notice to the Seller that:

- (1) a satisfactory inspector's report under clause 4.1 has not been obtained by the Inspection Date and the Buyer terminates this contract. The Buyer must act reasonably; or
- (2) clause 4.1 has been either satisfied or waived by the Buyer.

4.3 If the Buyer terminates this contract and the Seller asks the Buyer for a copy of the building and pest reports, the Buyer must give a copy of each report to the Seller without delay.

4.4 The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 4.2 by 5pm on the Inspection Date. This is the Seller's only remedy for the Buyer's failure to give notice.

4.5 The Seller's right under clause 4.4 is subject to the Buyer's continuing right to terminate this contract under clause 4.2(1) or waive the benefit of this clause 4 by giving written notice to the Seller of the waiver.

4.6 If required under the *Queensland Building Services Authority Act 1991*, an inspector referred to in clause 4.1 must hold a current licence under that Act.

4.7 Pool Safety

- (1) This clause 4.7 applies if:
 - (a) there is a pool on the Land and the answer to Q2 of the Reference Schedule is No or Q2 is not completed; and
 - (b) this contract was not formed on a sale by auction.
- (2) This contract is conditional upon the Buyer obtaining from a Pool Safety Inspector by the Pool Safety Inspection Date:
 - (a) confirmation that the Pool Safety Requirements have been met and the issue of a Pool Safety Certificate; or
 - (b) confirmation of the works required before a Pool Safety Certificate can be issued.
- (3) The Buyer must give notice to the Seller on or before the Pool Safety Inspection Date that:
 - (a) a Pool Safety Inspector has issued a Pool Safety Certificate in which case neither the Buyer nor the Seller have any further rights under this clause 4.7; or
 - (b) a Pool Safety Inspector has not issued a Pool Safety Certificate and the Buyer terminates this contract. The Buyer must act reasonably; or
 - (c) the Buyer waives the benefit of this clause 4.7 and elects to proceed to settlement notwithstanding that there is no Pool Safety Certificate.
- (4) The Buyer's right to terminate this contract or waive the benefit of this clause 4.7 ends on the earlier of:
 - (a) a Pool Safety Certificate being issued; or
 - (b) settlement occurring.
- (5) The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 4.7(3) by 5pm on the Pool Safety Inspection Date. This is the Seller's only remedy for the Buyer's failure to give notice.
- (6) The Seller's right under clause 4.7(5) is subject to the Buyer's continuing right to terminate this contract or waive the benefit of this clause 4.7 by giving written notice to the Seller of the waiver.
- (7) If the Buyer terminates this contract in accordance with clause 4.7(3)(b), and the Seller asks the Buyer for a copy of the pool safety inspection report, the Buyer must give a copy of the report to the Seller without delay.
- (8) For the purpose of this clause 4.7, "**formed on a sale by auction**" means formed on sale by auction—
 - (a) directly on the fall of the hammer, by outcry; or
 - (b) directly at the end of another similar type of competition for purchase.

5. Settlement

5.1 Time and Date

- (1) Settlement must occur between 9am and 5pm on the Settlement Date.
- (2) If the parties do not agree on where settlement is to occur, it must take place in the Place for Settlement at the office of a solicitor or Financial Institution nominated by the Seller, or, if the Seller does not make a nomination, at the land registry office in or nearest to the Place for Settlement.

5.2 Transfer Documents

- (1) The Transfer Documents must be prepared by the Buyer's Solicitor and delivered to the Seller a reasonable time before the Settlement Date.
- (2) If the Buyer pays the Seller's reasonable expenses, it may require the Seller to produce the Transfer Documents at the Office of State Revenue nearest the Place for Settlement for stamping before settlement.

5.3 Documents and Keys at Settlement

- (1) In exchange for payment of the Balance Purchase Price, the Seller must deliver to the Buyer at settlement:
 - (a) any instrument of title for the Land required to register the transfer to the Buyer; and
 - (b) unstamped Transfer Documents capable of immediate registration after stamping; and
 - (c) if requested, the Keys in the Seller's or the Seller's Agent's possession or control for all locks and security systems on the Property; and
 - (d) if there are Tenancies:
 - (i) the Seller's copy of any Tenancy agreements;
 - (ii) a notice to each tenant advising of the sale in the form required by law; and
 - (iii) any notice required by law to transfer to the Buyer the Seller's interest in any Bond; and
 - (e) if the answer to Q2 in the Reference Schedule is Yes, a copy of a current Pool Safety Certificate, if not already provided to the Buyer.
- (2) If the instrument of title for the Land also relates to other land, the Seller need not deliver it to the Buyer, but the Seller must make arrangements satisfactory to the Buyer to produce it for registration of the transfer.
- (3) If the Keys are not delivered at Settlement under clause 5.3(1)(c), the Seller must deliver the Keys to the Buyer. The Seller may discharge its obligation under this provision by authorising the Seller's Agent to release the Keys to the Buyer.

5.4 Assignment of Covenants and Warranties

At settlement, the Seller assigns to the Buyer the benefit of all:

- (1) covenants by the tenants under the Tenancies;
- (2) guarantees and Bonds (subject to the requirements of the *Residential Tenancies and Rooming Accommodation Act 2008*) supporting the Tenancies;
- (3) manufacturers' warranties regarding the Included Chattels; and
- (4) builders' warranties on the Improvements; to the extent they are assignable. However, the right to recover arrears of Rent is not assigned to the Buyer and section 117 of the *Property Law Act 1974* does not apply.

5.5 Possession of Property and Title to Included Chattels

On the Settlement Date, in exchange for the Balance Purchase Price, the Seller must give the Buyer vacant possession of the Land and the Improvements except for the Tenancies. Title to the Included Chattels passes at settlement.

5.6 Reservations

- (1) The Seller must remove the Reserved Items from the Property before the Settlement Date.

- (2) The Seller must repair at its expense any damage done to the Property in removing the Reserved Items. If the Seller fails to do so, the Buyer may repair that damage.
- (3) Any Reserved Items not removed before settlement will be considered abandoned and the Buyer may, without limiting its other rights, complete this contract and appropriate those Reserved Items or dispose of them in any way.
- (4) The Seller indemnifies the Buyer against any damages and expenses resulting from the Buyer's actions under clauses 5.6(2) or 5.6(3).

5.7 Consent to Transfer

- (1) If the Land sold is leasehold, this contract is subject to any necessary consent to the transfer of the lease to the Buyer being obtained by the Settlement Date.
- (2) The Seller must apply for the consent required as soon as possible.
- (3) The Buyer must do everything reasonably required to help obtain this consent.

6. Time

6.1 Time is of the essence of this contract, except regarding any agreement between the parties on a time of day for settlement.

7. Matters Affecting the Property

7.1 Title

The Land is sold subject to:

- (1) any reservations or conditions on the title or the original Deed of Grant (if freehold); or
- (2) the Conditions of the Crown Lease (if leasehold).

7.2 Encumbrances

The Property is sold free of all Encumbrances other than the Title Encumbrances and Tenancies.

7.3 Requisitions

The Buyer may not deliver any requisitions or enquiries on title.

7.4 Seller's Warranties

- (1) The Seller warrants that at settlement:
 - (a) if the Land is freehold: it will be the registered owner of an estate in fee simple in the Land and will own the rest of the Property;
 - (b) if the Land is leasehold: it will be the registered lessee, the lease is not liable to forfeiture because of default under the lease, and it will own the rest of the Property;
 - (c) it will be capable of completing this contract (unless the Seller dies or becomes mentally incapable after the Contract Date); and
 - (d) there will be no unsatisfied judgment, order or writ affecting the Property.
- (2) The Seller warrants that at the Contract Date and at settlement there are no current or threatened claims, notices or proceedings that may lead to a judgment, order or writ affecting the Property.
- (3) (a) The Seller warrants that, except as disclosed in this contract or a notice given by the Seller to the Buyer under the *Environmental Protection Act 1994* ("EPA"), at the Contract Date:

- (i) there is no outstanding obligation on the Seller to give notice to the administering authority under EPA of notifiable activity being conducted on the Land; and
 - (ii) the Seller is not aware of any facts or circumstances that may lead to the Land being classified as contaminated land within the meaning of EPA.
- (b) If the Seller breaches a warranty in clause 7.4(3)(a), the Buyer may:
- (i) terminate this contract by notice in writing to the Seller given within 2 Business Days before the Settlement Date; or
 - (ii) complete this contract and claim compensation, but only if the Buyer claims it in writing before the Settlement Date.
- (4) If a warranty in clause 7.4(1) or clause 7.4(2) is not correct, the Buyer may terminate this contract by notice to the Seller.
- (5) The Seller does not warrant that the Present Use is lawful.

7.5 Survey and Mistake

- (1) The Buyer may survey the Land.
- (2) If there is:
- (a) an error in the boundaries or area of the Land;
 - (b) an encroachment by structures onto or from the Land; or
 - (c) a mistake or omission in describing the Property or the Seller's title to it;
- which is:
- (d) immaterial; or
 - (e) material, but the Buyer elects to complete this contract; the Buyer's only remedy against the Seller is for compensation, but only if claimed by the Buyer in writing on or before settlement.
- (3) The Buyer may not delay settlement or withhold any part of the Balance Purchase Price because of any compensation claim under clause 7.5(2).
- (4) If there is a material error, encroachment or mistake, the Buyer may terminate this contract before settlement.

7.6 Requirements of Authorities

- (1) Any valid notice or order by any competent authority or Court requiring work to be done or money spent in relation to the Property ("**Work or Expenditure**") must be fully complied with:
- (a) if issued before the Contract Date, by the Seller before the Settlement Date;
 - (b) if issued on or after the Contract Date, by the Buyer.
- (2) If any Work or Expenditure that is the Seller's responsibility under clause 7.6(1)(a) is not done before the Settlement Date, the Buyer is entitled to claim the reasonable cost of work done by the Buyer in accordance with the notice or order referred to in clause 7.6(1) from the Seller after settlement as a debt.

- (3) Any Work or Expenditure that is the Buyer's responsibility under clause 7.6(1)(b), which is required to be done before the Settlement Date, must be done by the Seller unless the Buyer directs the Seller not to and indemnifies the Seller against any liability for not carrying out the work. If the Seller does the work, or spends the money, the reasonable cost of that Work or Expenditure must be added to the Balance Purchase Price.
- (4) The Buyer may terminate this contract by notice to the Seller if there is an outstanding notice at the Contract Date under sections 246AG, 247 or 248 of the *Building Act 1975* or sections 588 or 590 of the *Sustainable Planning Act 2009* that affects the Property.

7.7 Property Adversely Affected

- (1) If at the Contract Date:
- (a) the Present Use is not lawful under the relevant town planning scheme;
 - (b) the Land is affected by a proposal of any competent authority to alter the dimensions of any Transport Infrastructure or locate Transport Infrastructure on the Land;
 - (c) access or any service to the Land passes unlawfully through other land;
 - (d) any competent authority has issued a current notice to treat, or notice of intention to resume, regarding any part of the Land; or
 - (e) the Property is affected by the *Queensland Heritage Act 1992* or is included in the World Heritage List;
- and that has not been disclosed in this contract, the Buyer may terminate this contract by notice to the Seller given no later than 2 Business Days before the Settlement Date.
- (2) If no notice is given under clause 7.7(1), the Buyer will be treated as having accepted the Property subject to all of the matters referred to in that clause.
- (3) The Seller authorises the Buyer to inspect records held by any authority relating to the Property.

7.8 Dividing Fences

The Seller need not contribute to the cost of building any dividing fence between the Land and any adjoining land owned by it. The Buyer waives any right to claim contribution from the Seller.

8. Rights Until Settlement

8.1 Risk

The Property is at the Buyer's risk from 5pm on the first Business Day after the Contract Date.

8.2 Access

After reasonable notice to the Seller, the Buyer and its consultants may enter the Property:

- (1) once to read any meter;
- (2) for inspections under clause 4;
- (3) once to inspect the Property before settlement; and
- (4) once to value the Property before settlement.

8.3 Seller's Use of Property

The Seller must use the Property reasonably until settlement. The Seller must not do anything regarding the Property or Tenancies that may significantly alter them or result in later expense for the Buyer.

8.4 Information Regarding the Property

Before settlement, the Seller must give the Buyer:

- (1) copies of all documents relating to any unregistered interests in the Property;
- (2) full details of the Tenancies to allow the Buyer to properly manage the Property after settlement; and
- (3) further copies or details if those previously given cease to be complete and accurate.

8.5 Possession Before Settlement

If possession is given before settlement:

- (1) the Buyer must maintain the Property in substantially its condition at the date of possession, fair wear and tear excepted;
- (2) entry into possession is under a licence personal to the Buyer revocable at any time and does not:
 - (a) create a relationship of landlord and tenant; or
 - (b) waive the Buyer's rights under this contract;
- (3) the Buyer must insure the Property to the Seller's satisfaction; and
- (4) the Buyer indemnifies the Seller against any expense or damages incurred by the Seller as a result of the Buyer's possession of the Property.

9. Parties' Default

9.1 Seller and Buyer May Affirm or Terminate

Without limiting any other right or remedy of the parties including those under this contract or any right at common law, if the Seller or Buyer, as the case may be, fails to comply with an Essential Term, or makes a fundamental breach of an intermediate term, the Seller (in the case of the Buyer's default) or the Buyer (in the case of the Seller's default) may affirm or terminate this contract.

9.2 If Seller Affirms

If the Seller affirms this contract under clause 9.1, it may sue the Buyer for:

- (1) damages;
- (2) specific performance; or
- (3) damages and specific performance.

9.3 If Buyer Affirms

If the Buyer affirms this contract under clause 9.1, it may sue the Seller for:

- (1) damages;
- (2) specific performance; or
- (3) damages and specific performance.

9.4 If Seller Terminates

If the Seller terminates this contract under clause 9.1, it may do all or any of the following:

- (1) resume possession of the Property;
- (2) forfeit the Deposit and any interest earned;
- (3) sue the Buyer for damages;
- (4) resell the Property.

9.5 If Buyer Terminates

If the Buyer terminates this contract under clause 9.1, it may do all or any of the following:

- (1) recover the Deposit and any interest earned;
- (2) sue the Seller for damages.

9.6 Seller's Resale

- (1) If the Seller terminates this contract and resells the Property, the Seller may recover from the Buyer as liquidated damages:
 - (a) any deficiency in price on a resale; and

- (b) its expenses connected with any repossession, any failed attempt to resell, and the resale; provided the resale settles within 2 years of termination of this contract.

- (2) Any profit on a resale belongs to the Seller.

9.7 Seller's Damages

The Seller may claim damages for any loss it suffers as a result of the Buyer's default, including its legal costs on an indemnity basis and the cost of any Work or Expenditure under clause 7.6(3).

9.8 Buyer's Damages

The Buyer may claim damages for any loss it suffers as a result of the Seller's default, including its legal costs on an indemnity basis.

9.9 Interest on Late Payments

- (1) Without affecting the Seller's other rights, if any money payable by the Buyer under this contract is not paid when due, the Buyer must pay the Seller at settlement interest on that money calculated at the Default Interest Rate from the due date for payment until payment is made.
- (2) The Seller may recover that interest from the Buyer as liquidated damages.
- (3) Any judgment for money payable under this contract will bear interest from the date of judgment to the date of payment and the provisions of this clause 9.9 apply to calculation of that interest.

10. General

10.1 Agent

The Agent is appointed as the Seller's Agent to introduce a Buyer.

10.2 Foreign Investment Review Board

The Buyer warrants that either:

- (1) the Treasurer has consented under the *Foreign Acquisitions and Takeovers Act* to the Buyer's purchase of the Property; or
- (2) the Treasurer's consent is not required to the Buyer's purchase of the Property.

10.3 Duty

The Buyer must pay all duty on this contract.

10.4 Notices

- (1) Notices under this contract must be in writing and may be given by a party's solicitor.
- (2) Notices are effectively given if:
 - (a) delivered or posted to the other party or its solicitor; or
 - (b) sent to the facsimile number of the other party or its solicitor.
- (3) Posted notices will be treated as given 2 Business Days after posting.
- (4) Notices sent by facsimile will be treated as given when the sender obtains a clear transmission report.
- (5) Notices given after 5pm will be treated as given on the next Business Day.
- (6) Notices or other written communications by a party's solicitor (for example, varying the Inspection Date, Finance Date or Settlement Date) will be treated as given with that party's authority.

10.5 Business Days

- (1) If anything is required to be done on a day that is not a Business Day, it must be done instead on the next Business Day.

- (2) If the Finance Date or Inspection Date fall on a day that is not a Business Day, then it falls on the next Business Day.

10.6 Rights After Settlement

Despite settlement and registration of the transfer, any term of this contract that can take effect after settlement or registration remains in force.

10.7 Further Acts

If requested by the other party, each party must, at its own expense, do everything reasonably necessary to give effect to this contract.

10.8 Severance

If any term or part of a term of this contract is or becomes legally ineffective, invalid or unenforceable in any jurisdiction it will be severed and the effectiveness, validity or enforceability of the remainder will not be affected.

10.9 Interpretation

(1) Plurals and Genders

Reference to:

- (a) the singular includes the plural and the plural includes the singular;
- (b) one gender includes each other gender;
- (c) a person includes a body corporate; and
- (d) a party includes the party's executors, administrators, successors and permitted assigns.

(2) Parties

- (a) If a party consists of more than one person, this contract binds them jointly and each of them individually.
- (b) A party that is a trustee is bound both personally and in its capacity as a trustee.

(3) Statutes and Regulations

Reference to statutes includes all statutes amending, consolidating or replacing them.

(4) Inconsistencies

If there is any inconsistency between any provision added to this contract and the printed provisions, the added provision prevails.

(5) Headings

Headings are for convenience only and do not form part of this contract or affect its interpretation.