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Contract of Sale

Property: 119 Monterey Boulevard, Frankston North Vic 3200

CONTRACT OF SALE OF REAL ESTATE - PARTICULARS OF SALE

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

Property Address: 119 Monterey Boulevard, Frankston North Vic 3200

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

The terms of this contract are contained in the -

- Particulars of sale; and
 - Special conditions, if any; and
 - General conditions;
- in that order of priority.

IMPORTANT NOTICE TO PURCHASERS

Cooling-off period

Section 31

Sale of Land Act 1962

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

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

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

EXCEPTIONS

The 3-day cooling-off period does not apply if -

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

SIGNING OF THIS CONTRACT

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

Purchasers should ensure that prior to signing this contract, they have received-

- a copy of the section 32 statement required to be given by a vendor under section 32 of the **Sale of Land Act 1962** in accordance with Division 2 of Part II of that Act; and
- a copy of the full terms of this contract.

The authority of a person signing:

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

must be noted beneath the signature.

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

SIGNED BY THE PURCHASER

on _____ / _____ / 20

print name of person signing

state nature of authority if applicable (e.g. "director",
"attorney under power of attorney")

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

SIGNED BY THE VENDOR

on _____ / _____ / 20

print name of person signing

state nature of authority if applicable (e.g. "director",
"attorney under power of attorney")

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

Particulars of Sale

Vendor's estate agent

Name: O'Briens Real Estate Frankston

Address:

Telephone:

Email:

Vendor

Name: Yasir Khan & Mehwish Yasir

Address: 95 Woodside Avenue, Frankston South Vic 3199

Vendor's legal practitioner or conveyancer

Name: Warner Conveyancing & Legal, Tamara Warner

Address: PO Box 670, Mount Martha Vic 3934

Telephone: 0414 999 220

email: tamara@warnerconveyancingandlegal.com.au

Purchaser

Name:

Address:

Purchaser's legal practitioner or conveyancer

Name:

Address:

Telephone:

email:

Land (general conditions 3 and 9)

The land is –

described in the table below –

Certificate of Title reference	being lot on plan
Volume 8502 Folio 653	Lot 1093 on Plan LP64428

OR

described in the copy title(s) and plan(s) as attached to the Vendor's Statement if no title or plan references are recorded in the table above or if the land is general law land.

The land includes all improvements and fixtures.

Property Address

The address of the land is : 119 Monterey Boulevard, Frankston North Vic 3200

Goods sold with the land (general condition 2.3 (f))

All fixed floor coverings, light fittings, as inspected on the day of sale

Payment (general condition 11)

Price \$ _____

Deposit \$ _____ by _____ / _____ /20 (of which \$ _____ has been paid)

Balance \$ _____ payable at settlement

GST (general condition 13)

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

Not applicable

If this is a sale of a 'farming business' or 'going concern' then add the words '**farming business**' or '**going concern**' in this box:

Not applicable

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

Not applicable

Settlement (general condition 10)

Is due on _____ or such other date as is mutually agreed between the parties

unless the land is a lot on an unregistered plan of subdivision, in which case settlement is due on the later of:

- above date; or
- 14 days after the vendor gives notice in writing to the purchaser of registration of the plan of subdivision.

Lease (general condition 1.1)

At settlement the purchaser is entitled to vacant possession of the property unless the words '**subject to lease**' appear in this box

SUBJECT TO LEASE

in which case refer to general condition 1.1. If '**subject to lease**' then particulars of the lease are:

Refer to lease attached to the section 32 vendor's statement

Terms contract (general condition 23)

If this contract is intended to be a terms contract within the meaning of the **Sale of Land Act 1962** then add the words '**terms contract**' in this box,

Not applicable

and refer to general condition 23 and add any further provisions by way of special conditions:

Loan (general condition 14)

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

Lender

Loan amount \$ _____

Approval date _____ / _____ / 20

Encumbrances

This sale is subject to the following encumbrances:

1. All easements, covenants, permits, encumbrances and other like restrictions disclosed in this Contract or the Vendor's Statement.
2. All registered and unregistered easements, covenants, encumbrances, restrictions and the like existing or to be created (either expressly or by implication under the *Subdivision Act 1988* (Vic)) in relation to the Property.
3. The Lease, a copy of which is attached to the section 32 Vendor's Statement.

Special Conditions

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

special conditions

If the contract is subject to '**special conditions**' then particulars of the special conditions are:

Special Conditions

1. Interpretation

In this Contract:

1.1 a reference to:

- (a) any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any statutory instrument issued under, that legislation or legislative provision;
- (b) the singular includes the plural and vice versa;
- (c) an individual or person includes a corporation, firm, authority, government or government authority and vice versa;
- (d) any gender includes the other genders;
- (e) a party to this Contract includes that party's executives, administrators, successors and permitted assigns; and
- (f) a condition, annexure or schedule is a reference to a condition, annexure or schedule of this Contract.

1.2 including and singular expressions are not words of limitation;

1.3 headings are for convenience and reference only and do not affect the meaning or interpretation of this Contract; and

1.4 if the whole of any part of a provision of this Contract is invalid or unenforceable, the validity or enforceability of the remaining provisions will not be affected.

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

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

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

2. Amendments to General Conditions

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

2.1.1 any inconsistency between the provisions of the General Conditions and these special conditions then, except in the case of manifest error, to the extent of any inconsistency the provisions of the special conditions shall prevail and have priority; and

2.1.2 any inconsistency between this special condition and any other special condition then, except in the case of manifest error, to the extent of any inconsistency the provisions of any other special conditions shall prevail and have priority over this special condition.

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

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

2.3.1 GC5 is amended to read 'The vendor must obtain any consent or approval required by the vendor as a condition of the vendor selling the property. The contract will be at an end and all money must be refunded to the purchaser if any necessary consent or approval is not obtained by settlement.'

2.3.2 GC6 is amended by inserting the following sentence at the end of the general condition: ' The purchaser will be deemed to have defaulted in payment of the balance of the price if the transfer of land document is not delivered as required by this general condition. The default will be deemed to commence on the settlement date and terminate 10 days after the date on which the vendor receives the transfer of land document.'

2.3.3 GC 7 is deleted and replaced with the following:

'7. Release of security interest

7.1 This general condition applies if any part of the property is subject to a Security Interest registered under the Personal Property Securities Act 2009 (Cth). Words and phrases used in general condition 7 which are defined in the Personal Property Securities Act 2009 (Cth) have the same meaning in general condition 7.

7.2 If a Security Interest in respect to any part of the Property is registered in the Personal Property Securities Register, the vendor must ensure that at or before settlement, the purchaser receives a release from the secured party releasing the property that is subject to the security interest from the security interest.

7.3 The vendor is not obliged to ensure that the purchaser receives a release, statement, approval or correction in respect of any personal property that is required by the Personal Property Securities Regulations 2009 to be described in a registration by a serial number and is not described by serial number in the Personal Property Securities Register.

- 7.4 If the purchaser receives a release under general condition 7.2, the purchaser must provide the vendor with a copy of the release at or as soon as practicable after settlement.
- 7.5 The Purchaser must not grant a Security Interest over any part of the property prior to the Settlement Date. The Purchaser must indemnify and hold harmless the Vendor against all claims, damages or loss incurred by the Vendor as a consequence of the Purchaser granting a Security Interest over any part of the property in breach of this condition.
- 7.6 If the land is sold subject to a lease and the vendor has registered a security interest over any part of the property being sold or the tenant's property, the vendor must transfer the security interest to the purchaser on the settlement date and execute all documents necessary to facilitate registration of the transfer of the security interest.'
- 2.3.4 GC10.1 (b)(i) is amended to read: 'provide all title documents necessary to enable the purchaser to become the registered proprietor of the land; and '
- 2.3.5 GC10.3 is amended by adding a new sentence at the end of the condition as follows: ' A settlement which occurs after 3pm will, unless the vendor agrees otherwise, be treated as having occurred at 9am on the next day which is not a Saturday, Sunday or proclaimed public holiday in the State of Victoria.'
- 2.3.6 GC11.2 is amended by inserting the following sentence at the end of the general condition: 'Unless the price includes GST, the reference to "the price" in this GC11.2 refers to the price plus any GST payable on the price.'
- 2.3.7 GC11.5 is amended to read: 'For the purposes of this general condition "authorised deposit taking institution" means a body corporate which is authorised to use the name "bank" pursuant to the *Banking Act* 1959 (Cwlth).'
- 2.3.8 GC11.6 is amended by changing the reference to '3 bank cheques' to unlimited cheques'.
- 2.3.9 GC18 is amended by adding an additional sentence as follows: ' Any nomination must be made at least 10 days before the settlement date and the purchaser must pay the vendor's solicitors legal fees of \$275 for processing the nomination. If the purchaser wishes to nominate it must deliver to the vendor's solicitor:
- (a) a nomination notice in the form attached executed by the nominee and the purchaser; and
 - (b) a copy of the duly signed nominee statutory declaration required by the State Revenue Office.'
- 2.3.10 GC20 is amended to read as follows: 'If the purchaser is a company other than a public company or if the purchaser nominates a substitute purchaser which is a company other than a public company, the purchaser must procure the execution of the attached form of guarantee and indemnity by:

- (a) each of its directors; or
- (b) a listed company of which the purchaser is a subsidiary,

at the purchaser's expense and deliver it to the vendor together with the executed contract.'

- 2.3.11 The second sentence of GC21 is amended to read: ' The purchaser may enter the property on reasonable times and following prior written notice to the vendor to comply with that responsibility where action is required before settlement. The purchaser must use its reasonable endeavours not to disrupt the use and occupation of the property by the vendor and indemnifies the vendor for any loss or damage suffered by the vendor as a consequence of the purchaser exercising its rights under this general condition.'
- 2.3.12 GC24.4 to 24.6 (inclusive) are deleted.
- 2.3.13 GC25 is amended by adding the following new paragraph at the end of the condition: ' The purchaser acknowledges that without limitation the following items are included within the definition of "a reasonably foreseeable loss" :
 - (a) all costs associated with bridging finance to complete the vendor's purchase of another property;
 - (b) expenses payable by the vendor under any existing loans secured over the property or other property of the vendor;
 - (c) accommodation expenses incurred by the vendor;
 - (d) the vendor's legal costs and expenses as between solicitor and client incurred due to the breach;
 - (e) penalties and any other expenses payable by the vendor due to any delay in completion of the purchase of another property, and
 - (f) if the default results in settlement being delayed until after 31 December in any calendar year, any additional land tax incurred by the vendor as a result of the land being included in the vendor's land tax assessment for the next calendar year.'
- 2.3.14 GC28.4(a) is amended to read as follows: 'an amount equal to 10% of the price is forfeited to the vendor as the vendor's absolute property.'
- 2.3.15 GC28 is amended by including a new paragraph 28.6 as follows: 'Unless the price includes GST, the reference to " the price" in this GC28 refers to the price plus any GST payable on the price.'

3. Condition of Property

3.1 The Purchaser:

- 3.1.1 accepts the Property and improvements and services in its present condition on the Day of Sale with all defects, faults and any non-compliance with any notice or failure to obtain any approvals or permits from any authority and buys the property 'as is';
- 3.1.2 will not require the vendor to patch or repair any holes or damage resulting from removal of any mounted tv brackets. Despite this, the vendor will use all reasonable care in removing those brackets;
- 3.1.3 assumes full responsibility for compliance with any notice or required approval from the day of sale and agrees to hold the Vendor indemnified at all times against all claims arising out of a failure to obtain an approval;
- 3.1.4 acknowledges that the Vendor will not be required to procure any building permit, building approval, final inspection, occupancy permit, pool or spa registration or compliance or any other permits, approvals or inspections in relation to the Property or any improvements; and
- 3.1.5 will not delay settlement or make any claim against the Vendor in relation to any of the matters referred to in this special condition and agrees that those matters do not affect the Vendor's title to the Property.

4. Delayed Settlement

Without limiting any other rights of the Vendor, if the Purchaser fails to settle on the due date for settlement as set out in the particulars of sale to this Contract (**Due Date**) or requests an extension to the Due Date, the Purchaser must pay to the Vendor (by way of a Purchaser allows adjustment at settlement) an amount of \$440 representing a contribution to the Vendor's additional legal costs.

5. Foreign resident capital gains withholding

- 5.1 Words defined or used in Subdivision 14-D of Schedule 1 to the Taxation Administration Act 1953 (Cth) have the same meaning in this special condition unless the context requires otherwise.
- 5.2 Every Vendor under this contract is a foreign resident for the purposes of this special condition unless the Vendor gives the Purchaser a clearance certificate issued by the Commissioner under section 14-220 (1) of Schedule 1 to the Taxation Administration Act 1953 (Cth). The specified period in the clearance certificate must include the actual date of settlement.
- 5.3 This special condition only applies if the Purchaser is required to pay the Commissioner an amount in accordance with section 14-200(3) or section 14-235 of Schedule 1 to the Taxation Administration Act 1953 (Cth) ("the amount") because one or more of the Vendors is a foreign resident, the property is or will have a market value not less than the amount set out in section 14-215 of the legislation just after the transaction, and the transaction is not excluded under section 14-215(1) of the legislation.

- 5.4 The amount is to be deducted from the Vendor's entitlement to the contract consideration. The Vendor must pay to the Purchaser at settlement such part of the amount as is represented by non-monetary consideration.
- 5.5 The Purchaser must:
- 5.5.1 engage a legal practitioner or conveyancer ("representative") to conduct all the legal aspects of settlement, including the performance of the Purchaser's obligations in this special condition; and
 - 5.5.2 ensure that the representative does so.
- 5.6 The terms of the representative's engagement are taken to include instructions to have regard to the Vendor's interests and instructions that the representative must:
- 5.6.1 pay, or ensure payment of, the amount to the Commissioner in the manner required by the Commissioner and as soon as reasonably and practicably possible, from moneys under the control or direction of the representative in accordance with this special condition if the sale of the property settles;
 - 5.6.2 promptly provide the Vendor with proof of payment; and
 - 5.6.3 otherwise comply, or ensure compliance with, this special condition;
- despite any contrary instructions, other than from both the Purchaser and the Vendor; and any other provision in this contract to the contrary.
- 5.7 The representative is taken to have complied with the obligations in special condition 5.6 if:
- 5.7.1 the settlement is conducted through the electronic conveyancing system operated by Property Exchange Australia Ltd or any other electronic conveyancing system agreed by the parties; and
 - 5.7.2 the amount is included in the settlement statement requiring payment to the Commissioner in respect of this transaction.
- 5.8 Any clearance certificate or document evidencing variation of the amount in accordance with section 14-235(2) of Schedule 1 to the Taxation Administration Act 1953 (Cth) must be given to the Purchaser at least 5 business days before the due date for settlement.
- 5.9 The Vendor must provide the Purchaser with such information as the Purchaser requires to comply with the Purchaser's obligation to pay the amount in accordance with section 14-200 of Schedule 1 to the Taxation Administration Act 1953 (Cth). The information must be provided within 5 business days of request by the Purchaser. The Vendor warrants that the information the Vendor provides is true and correct.
- 5.10 The Purchaser is responsible for any penalties or interest payable to the Commissioner on account of late payment of the amount.

6. Electronic Conveyancing - PEXA

- 6.1 Settlement and lodgement will be conducted via PEXA electronically in accordance with the Electronic Conveyancing National Law and the Vendor and Purchaser's representatives have agreed to complete settlement electronically in accordance with the Electronic Conveyancing National Law.
- 6.2 Each party must:
 - 6.2.1 be, or engage a representative who is, a subscriber for the purposes of the Electronic Conveyancing National Law;
 - 6.2.2 ensure that all other persons for whom that party is responsible and who are associated with this transaction are, or engage, a subscriber for the purposes of the Electronic Conveyancing National Law; and
 - 6.2.3 conduct the transaction in accordance with the Electronic Conveyancing National Law.
- 6.3 Either party may open the Electronic Workspace (**Workspace**) as soon as reasonably practicable. The Workspace is an electronic address for the service of notices and for written communications for the purposes of any electronic transactions legislation.
- 6.4 Settlement occurs when the Workspace records that:
 - 6.4.1 the exchange of funds or value between financial institutions in accordance with the instructions of the parties has occurred; or
 - 6.4.2 if there is no exchange of funds or value, the documents necessary to enable the Purchaser to become registered proprietor of the land have been accepted for electronic lodgement; or
 - 6.4.3 PEXA states that settlement has been completed.
- 6.5 The parties must do everything reasonably necessary to effect settlement on the due date for settlement at the time scheduled for settlement.
- 6.6 Each party must do everything reasonably necessary to assist the other party to trace and identify the recipient of any mistaken payment and to recover the mistaken payment.
- 6.7 The Vendor must before settlement:
 - 6.7.1 deliver any keys, security devices and codes (**Keys**) to the estate agent named in the contract;
 - 6.7.2 direct the estate agent to give the Keys to the Purchaser or the Purchaser's nominee on notification of settlement by the Vendor, the Vendor's subscriber or the Electronic Network Operator;
 - 6.7.3 deliver all other physical documents and items (other than the goods sold by the contract) to which the Purchaser is entitled at settlement, and any keys if not delivered to the estate agent, to the Vendor's subscriber or, if there is no

Vendor's subscriber, confirm in writing to the Purchaser that the Vendor holds those documents, items and keys at the Vendor's address set out in the contract; and

6.7.4 direct the Vendor's subscriber to give (or, if there is no Vendor's subscriber, give) all those documents and items, and any such Keys, to the Purchaser or the Purchaser's nominee on notification of settlement by the Electronic Network Operator.

6.8 The Vendor must, at least 7 days before the due date for settlement, provide the original of any document required to be prepared by the Vendor in accordance with general condition 6.

7. GST Withholding

In accordance with Section 14-255 of Schedule 1 to the Taxation Administration Act 1953 (Cth) ("TAA") the Vendor hereby gives notice to the Purchaser that the sale of the Property is not a supply of New Residential Premises / Potential Residential Land as defined by Section 40-75 of the A New Tax System (Goods & Services Tax) Act 1999 and further refined by Section 14-250(2) of the TAA. The Purchaser is notified pursuant to Section 14-250 250 of Schedule 1 of the TAA, that they are not required to withhold and direct funds to the Commission of Taxation at settlement of this Contract for the purchase of the Property.

8. Auction

This special condition applies if the property is sold via auction.

The Property is offered for sale by public auction subject to the Vendor's reserve price. The Rules for the conduct of the auction will be set out in Schedule 1 to the *Sale of Land Regulations 2005 (Vic)* (copy attached) or any rules prescribed by regulation which modify or replace those Rules.

Contract of Sale of Real Estate – General Conditions

Part 2 being Form 2 prescribed by the former *Estate Agents (Contracts) Regulations 2008*

Title

1. Encumbrances

1.1 The purchaser buys the property subject to:

- (a) any encumbrance shown in the section 32 statement other than mortgages or caveats; and
- (b) any reservations in the crown grant; and
- (c) any lease referred to in the particulars of sale.

1.2 The purchaser indemnifies the vendor against all obligations under any lease that are to be performed by the landlord after settlement.

1.3 In this general condition 'section 32 statement' means a statement required to be given by a vendor under section 32 of the *Sale of Land Act 1962* in accordance with Division 2 of Part II of that Act.

2. Vendor warranties

2.1 The vendor warrants that these general conditions 1 to 28 are identical to the general conditions 1 to 28 in the standard form of contract of sale of real estate prescribed by the former *Estate Agents (Contracts) Regulations 2008* for the purposes of section 53A of the *Estate Agents Act 1980*.

2.2 The warranties in general conditions 2.3 and 2.4 replace the purchaser's right to make requisitions and inquiries.

2.3 The vendor warrants that the vendor:

- (a) has, or by the due date for settlement will have, the right to sell the land; and
- (b) is under no legal disability; and
- (c) is in possession of the land, either personally or through a tenant; and
- (d) has not previously sold or granted any option to purchase, agreed to a lease or granted a pre-emptive right which is current over the land and which gives another party rights which have priority over the interest of the purchaser; and
- (e) will at settlement be the holder of an unencumbered estate in fee simple in the land; and
- (f) will at settlement be the unencumbered owner of any improvements, fixtures, fittings and goods sold with the land.

2.4 The vendor further warrants that the vendor has no knowledge of any of the following:

- (a) public rights of way over the land;
- (b) easements over the land;
- (c) lease or other possessory agreement affecting the land;

- (d) notice or order affecting the land which will not be dealt with at settlement, other than the usual rate notices and any land tax notices;
 - (e) legal proceedings which would render the sale of the land void or voidable or capable of being set aside.
- 2.5 The warranties in general conditions 2.3 and 2.4 are subject to any contrary provisions in this contract and disclosures in the section 32 statement required to be given by the vendor under section 32 of the *Sale of Land Act 1962* in accordance with Division 2 of Part II of that Act.
- 2.6 If sections 137B and 137C of the *Building Act 1993* apply to this contract, the vendor warrants that:
- (a) all domestic building work carried out in relation to the construction by or on behalf of the vendor of the home was carried out in a proper and workmanlike manner; and
 - (b) all materials used in that domestic building work were good and suitable for the purpose for which they were used and that, unless otherwise stated in the contract, those materials were new; and
 - (c) domestic building work was carried out in accordance with all laws and legal requirements, including, without limiting the generality of this warranty, the *Building Act 1993* and regulations made under the *Building Act 1993*.
- 2.7 Words and phrases used in general condition 2.6 which are defined in the *Building Act 1993* have the same meaning in general condition 2.6.
- 3. Identity of the land**
- 3.1 An omission or mistake in the description of the property or any deficiency in the area, description or measurements of the land does not invalidate the sale.
- 3.2 The purchaser may not:
- (a) make any objection or claim for compensation for any alleged misdescription of the property or any deficiency in its area or measurements; or
 - (b) require the vendor to amend title or pay any cost of amending title.
- 4. Services**
- 4.1 The vendor does not represent that the services are adequate for the purchaser's proposed use of the property and the vendor advises the purchaser to make appropriate inquiries. The condition of the services may change between the day of sale and settlement and the vendor does not promise that the services will be in the same condition at settlement as they were on the day of sale.
- 4.2 The purchaser is responsible for the connection of all services to the property after settlement and the payment of any associated cost.
- 5. Consents**
- The vendor must obtain any necessary consent or licence required for the sale. The contract will be at an end and all money paid must be refunded if any necessary consent or licence is not obtained by settlement.
- 6. Transfer**

The transfer of land document must be prepared by the purchaser and delivered to the vendor at least 10 days before settlement. The delivery of the transfer of land document is not acceptance of title. The vendor must prepare any document required for assessment of duty on this transaction relating to matters that are or should be within the knowledge of the vendor and, if requested by the purchaser, must provide a copy of that document at least 3 days before settlement.

7. Release of security interest

7.1 This general condition applies if any part of the property is subject to a security interest to which the *Personal Property Securities Act 2009 (Cth)* applies.

7.2 For the purposes of enabling the purchaser to search the Personal Property Securities Register for any security interests affecting any personal property for which the purchaser may be entitled to a release, statement, approval or correction in accordance with general condition 7.4, the purchaser may request the vendor to provide the vendor's date of birth to the purchaser. The vendor must comply with a request made by the purchaser under this condition if the purchaser makes the request at least 21 days before the due date for settlement.

7.3 If the purchaser is given the details of the vendor's date of birth under condition 7.2, the purchaser must:

- (a) only use the vendor's date of birth for the purposes specified in condition 7.2; and
- (b) keep the date of birth of the vendor secure and confidential.

7.4 The vendor must ensure that at or before settlement, the purchaser receives:

- (a) a release from the secured party releasing the property from the security interest; or
- (b) a statement in writing in accordance with section 275(1)(b) of the *Personal Property Securities Act 2009 (Cth)* setting out that the amount or obligation that is secured is nil at settlement; or
- (c) a written approval or correction in accordance with section 275(1)(c) of the *Personal Property Securities Act 2009 (Cth)* indicating that, on settlement, the personal property included in the contract is not or will not be property in which the security interest is granted.

7.5 Subject to general condition 7.6, the vendor is not obliged to ensure that the purchaser receives a release, statement, approval or correction in respect of personal property:

- (a) that:
 - (i) the purchaser intends to use predominantly for personal, domestic or household purposes; and
 - (ii) has a market value of not more than \$5000 or, if a greater amount has been prescribed for the purposes of section 47(1) of the *Personal Property Securities Act 2009 (Cth)*, not more than that prescribed amount; or
- (b) that is sold in the ordinary course of the vendor's business of selling personal property of that kind.

7.6 The vendor is obliged to ensure that the purchaser receives a release, statement, approval or correction in respect of personal property described in general condition 7.5 if:

- (a) the personal property is of a kind that may or must be described by serial number in the Personal Property Securities Register; or
 - (b) the purchaser has actual or constructive knowledge that the sale constitutes a breach of the security agreement that provides for the security interest.
- 7.7 A release for the purposes of general condition 7.4(a) must be in writing.
- 7.8 A release for the purposes of general condition 7.4(a) must be effective in releasing the goods from the security interest and be in a form which allows the purchaser to take title to the goods free of that security interest.
- 7.9 If the purchaser received a release under general condition 7.4(a) the purchaser must provide the vendor with a copy of the release at or as soon as practicable after settlement.
- 7.10 In addition to ensuring that a release is received under general condition 7.4(a), the vendor must ensure that at or before settlement the purchaser receives a written undertaking from a secured party to register a financing change statement to reflect that release if the property being released includes goods of a kind that are described by serial number in the Personal Property Securities Register.
- 7.11 The purchaser must advise the vendor of any security interest that is registered on or before the day of sale on the Personal Properties Securities Register, which the purchaser reasonably requires to be released, at least 21 days before the due date for settlement.
- 7.12 The vendor may delay settlement until 21 days after the purchaser advises the vendor of the security interests that the purchaser reasonably requires to be released if the purchaser does not provide an advice under general condition 7.11.
- 7.13 If settlement is delayed under general condition 7.12 the purchaser must pay the vendor:
 - (a) interest from the due date for settlement until the date on which settlement occurs or 21 days after the vendor receives the advice, whichever is the earlier; and
 - (b) any reasonable costs incurred by the vendor as a result of the delay
 as though the purchaser was in default.
- 7.14 The vendor is not required to ensure that the purchaser receives a release in respect of the land. This general condition 7.14 applies despite general condition 7.1.
- 7.15 Words and phrases which are defined in the *Personal Property Securities Act 2009 (Cth)* have the same meaning in general condition 7 unless the context requires otherwise.

8. Builder warranty insurance

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

9. General law land

- 9.1 This general condition only applies if any part of the land is not under the operation of the *Transfer of Land Act 1958*.

- 9.2 The vendor is taken to be the holder of an unencumbered estate in fee simple in the land if there is an unbroken chain of title starting at least 30 years before the day of sale proving on the face of the documents the ownership of the entire legal and equitable estate without the aid of other evidence.
- 9.3 The purchaser is entitled to inspect the vendor's chain of title on request at such place in Victoria as the vendor nominates.
- 9.4 The purchaser is taken to have accepted the vendor's title if:
- (a) 21 days have elapsed since the day of sale; and
 - (b) the purchaser has not reasonably objected to the title or reasonably required the vendor to remedy a defect in the title.
- 9.5 The contract will be at an end if:
- (a) the vendor gives the purchaser a notice that the vendor is unable or unwilling to satisfy the purchaser's objection or requirement and that the contract will end if the objection or requirement is not withdrawn within 14 days of the giving of the notice; and
 - (b) the objection or requirement is not withdrawn in that time.
- 9.6 If the contract ends in accordance with general condition 9.5, the deposit must be returned to the purchaser and neither party has a claim against the other in damages.
- 9.7 General condition 10.1 should be read, in respect of that part of the land which is not under the operation of the *Transfer of Land Act 1958*, as if the reference to 'registered proprietor' is a reference to 'owner'.

Money

10. Settlement

- 10.1 At settlement:
- (a) the purchaser must pay the balance; and
 - (b) the vendor must:
 - (i) do all things necessary to enable the purchaser to become the registered proprietor of the land; and
 - (ii) give either vacant possession or receipt of rents and profits in accordance with the particulars of sale.
- 10.2 The vendor's obligations under this general condition continue after settlement.
- 10.3 Settlement must be conducted between the hours of 10.00 a.m. and 4.00 p.m. unless the parties agree otherwise.

11. Payment

- 11.1 The purchaser must pay the deposit:
- (a) to the vendor's licensed estate agent; or

- (b) if there is no estate agent, to the vendor's legal practitioner or conveyancer; or
 - (c) if the vendor directs, into a special purpose account in an authorised deposit-taking institution in Victoria specified by the vendor in the joint names of the purchaser and the vendor.
- 11.2 If the land sold is a lot on an unregistered plan of subdivision, the deposit:
 - (a) must not exceed 10% of the price; and
 - (b) must be paid to the vendor's estate agent, legal practitioner or conveyancer and held by the estate agent, legal practitioner or conveyancer on trust for the purchaser until the registration of the plan of subdivision.
- 11.3 The purchaser must pay all money other than the deposit:
 - (a) to the vendor, or the vendor's legal practitioner or conveyancer; or
 - (b) in accordance with a written direction of the vendor or the vendor's legal practitioner or conveyancer.
- 11.4 At settlement, payments may be made or tendered:
 - (a) in cash; or
 - (b) by cheque drawn on an authorised deposit-taking institution; or
 - (c) if the parties agree, by electronically transferring the payment in the form of cleared funds.
- 11.5 For the purpose of this general condition 'authorised deposit-taking institution' means a body corporate in relation to which an authority under section 9(3) of the *Banking Act 1959* (Cth) is in force.
- 11.6 At settlement, the purchaser must pay the fees on up to three cheques drawn on an authorised deposit-taking institution. If the vendor requests that any additional cheques be drawn on an authorised deposit-taking institution, the vendor must reimburse the purchaser for the fees incurred.

12. Stakeholding

- 12.1 The deposit must be released to the vendor if:
 - (a) the vendor provides particulars, to the satisfaction of the purchaser, that either-
 - (i) there are no debts secured against the property; or
 - (ii) if there are any debts, the total amount of those debts does not exceed 80% of the sale price; and
 - (b) at least 28 days have elapsed since the particulars were given to the purchaser under paragraph (a); and
 - (c) all conditions of section 27 of the *Sale of Land Act 1962* have been satisfied.

- 12.2 The stakeholder must pay the deposit and any interest to the party entitled when the deposit is released, the contract is settled, or the contract is ended.
- 12.3 The stakeholder may pay the deposit and any interest into court if it is reasonable to do so.
- 13. GST**
- 13.1 The purchaser does not have to pay the vendor any GST payable by the vendor in respect of a taxable supply made under this contract in addition to the price unless the particulars of sale specify that the price is 'plus GST'. However the purchaser must pay to the vendor any GST payable by the vendor:
- (a) solely as a result of any action taken or intended to be taken by the purchaser after the day of sale, including a change of use; or
 - (b) if the particulars of sale specify that the supply made under this contract is of land on which a 'farming business' is carried on and the supply (or a part of it) does not satisfy the requirements of section 38-480 of the GST Act; or
 - (c) if the particulars of sale specify that the supply made under this contract is of a going concern and the supply (or a part of it) does not satisfy the requirements of section 38-325 of the GST Act.
- 13.2 The purchaser must pay to the vendor any GST payable by the vendor in respect of a taxable supply made under this contract in addition to the price if the particulars of sale specify that the price is 'plus GST'.
- 13.3 If the purchaser is liable to pay GST, the purchaser is not required to make payment until provided with a tax invoice, unless the margin scheme applies.
- 13.4 If the particulars of sale specify that the supply made under this contract is of land on which a 'farming business' is carried on:
- (a) the vendor warrants that the property is land on which a farming business has been carried on for the period of 5 years preceding the date of supply; and
 - (b) the purchaser warrants that the purchaser intends that a farming business will be carried on after settlement on the property.
- 13.5 If the particulars of sale specify that the supply made under this contract is a 'going concern':
- (a) the parties agree that this contract is for the supply of a going concern; and
 - (b) the purchaser warrants that the purchaser is, or prior to settlement will be, registered for GST; and
 - (c) the vendor warrants that the vendor will carry on the going concern until the date of supply.
- 13.6 If the particulars of sale specify that the supply made under this contract is a 'margin scheme' supply, the parties agree that the margin scheme applies to this contract.
- 13.7 This general condition will not merge on either settlement or registration.
- 13.8 In this general condition:

- (a) 'GST Act' means *A New Tax System (Goods and Services Tax) Act 1999* (Cth); and
- (b) 'GST' includes penalties and interest.

14. Loan

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

15. Adjustments

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

Transactional

16. Time

- 16.1 Time is of the essence of this contract.
- 16.2 Time is extended until the next business day if the time for performing any action falls on a Saturday, Sunday or bank holiday.

17. Service

- 17.1 Any document sent by:

- (a) post is taken to have been served on the next business day after posting, unless proved otherwise;
 - (b) email is taken to have been served at the time of receipt within the meaning of section 13A of the *Electronic Transactions (Victoria) Act 2000*.
- 17.2 Any demand, notice or document required to be served by or on any party may be served by or on the legal practitioner or conveyancer for that party. It is sufficiently served if served on the party or on the legal practitioner or conveyancer:
 - (a) personally; or
 - (b) by pre-paid post; or
 - (c) in any manner authorised by law or the Supreme Court for service of documents, including any manner authorised for service on or by a legal practitioner; or
 - (d) by email.
- 17.3 This general condition applies to the service of any demand, notice or document by or on any party, whether the expression 'give' or 'serve' or any other expression is used.
- 18. Nominee**

The purchaser may nominate a substitute or additional transferee, but the named purchaser remains personally liable for the due performance of all the purchaser's obligations under this contract.
- 19. Liability of signatory**

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

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

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

The purchaser and/or another person authorised by the purchaser may inspect the property at any reasonable time during the 7 days preceding and including the settlement day.
- 23. Terms contract**
- 23.1 If this is a 'terms contract' as defined in the *Sale of Land Act 1962*:

- (a) any mortgage affecting the land sold must be discharged as to that land before the purchaser becomes entitled to possession or to the receipt of rents and profits unless the vendor satisfies section 29M of the *Sale of Land Act 1962*; and
- (b) the deposit and all other money payable under the contract (other than any money payable in excess of the amount required to so discharge the mortgage) must be paid to a legal practitioner or conveyancer or a licensed estate agent to be applied in or towards discharging the mortgage.

23.2 While any money remains owing each of the following applies:

- (a) the purchaser must maintain full damage and destruction insurance of the property and public risk insurance noting all parties having an insurable interest with an insurer approved in writing by the vendor;
- (b) the purchaser must deliver copies of the signed insurance application forms, the policies and the insurance receipts to the vendor not less than 10 days before taking possession of the property or becoming entitled to receipt of the rents and profits;
- (c) the purchaser must deliver copies of any amendments to the policies and the insurance receipts on each amendment or renewal as evidence of the status of the policies from time to time;
- (d) the vendor may pay any renewal premiums or take out the insurance if the purchaser fails to meet these obligations;
- (e) insurance costs paid by the vendor under paragraph (d) must be refunded by the purchaser on demand without affecting the vendor's other rights under this contract;
- (f) the purchaser must maintain and operate the property in good repair (fair wear and tear excepted) and keep the property safe, lawful, structurally sound, weatherproof and free from contaminations and dangerous substances;
- (g) the property must not be altered in any way without the written consent of the vendor which must not be unreasonably refused or delayed;
- (h) the purchaser must observe all obligations that affect owners or occupiers of land;
- (i) the vendor and/or other person authorised by the vendor may enter the property at any reasonable time to inspect it on giving 7 days written notice, but not more than twice in a year.

24. Loss or damage before settlement

24.1 The vendor carries the risk of loss or damage to the property until settlement.

24.2 The vendor must deliver the property to the purchaser at settlement in the same condition it was in on the day of sale, except for fair wear and tear.

24.3 The purchaser must not delay settlement because one or more of the goods is not in the condition required by general condition 24.2, but may claim compensation from the vendor after settlement.

24.4 The purchaser may nominate an amount not exceeding \$5,000 to be held by a stakeholder to be appointed by the parties if the property is not in the condition required by general condition 24.2 at settlement.

24.5 The nominated amount may be deducted from the amount due to the vendor at settlement and paid to the stakeholder, but only if the purchaser also pays an amount equal to the nominated amount to the stakeholder.

24.6 The stakeholder must pay the amounts referred to in general condition 24.5 in accordance with the determination of the dispute, including any order for payment of the costs of the resolution of the dispute.

25. Breach

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

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

Default

26. Interest

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

27. Default notice

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

27.2 The default notice must:

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

28. Default not remedied

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

28.2 The contract immediately ends if:

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

- 28.3 If the contract ends by a default notice given by the purchaser:
- (a) the purchaser must be repaid any money paid under the contract and be paid any interest and reasonable costs payable under the contract; and
 - (b) all those amounts are a charge on the land until payment; and
 - (c) the purchaser may also recover any loss otherwise recoverable.
- 28.4 If the contract ends by a default notice given by the vendor:
- (a) the deposit up to 10% of the price is forfeited to the vendor as the vendor's absolute property, whether the deposit has been paid or not; and
 - (b) the vendor is entitled to possession of the property; and
 - (c) in addition to any other remedy, the vendor may within one year of the contract ending either:
 - (i) retain the property and sue for damages for breach of contract; or
 - (ii) resell the property in any manner and recover any deficiency in the price on the resale and any resulting expenses by way of liquidated damages; and
 - (d) the vendor may retain any part of the price paid until the vendor's damages have been determined and may apply that money towards those damages; and
 - (e) any determination of the vendor's damages must take into account the amount forfeited to the vendor.
- 28.5 The ending of the contract does not affect the rights of the offended party as a consequence of the default.

Schedule 1 Guarantee

Guarantee and Indemnity

To:

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

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

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

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

Schedule

Purchaser

Name	Address
------	---------

Guarantors:

Name	Address
------	---------

Dated the _____ **day of** _____ **20** _____

Signed by

in the presence of:

)
)
)

.....

Witness

Signed by

in the presence of:

)
)
)

.....

Witness

Schedule 2 Nomination Agreement

Sale of Real Estate Nomination Form

Relating to a Contract between:

Vendor:

Purchaser:

and/or Nominee

Property:

Nominee:

Guarantor:

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

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

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

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

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

Dated the _____ day of _____ 20____

Purchaser

.....
Nominee

.....
Guarantor

SALE OF LAND (PUBLIC AUCTIONS) REGULATIONS 2014 - SCHEDULE 1

SCHEDULE 1

Sch. 1

Regulations 5, 6 and 7

GENERAL RULES FOR THE CONDUCT OF PUBLIC AUCTIONS OF LAND

- *1. No bids may be made on behalf of the vendor of the land.

OR

- *1. The auctioneer may make one or more bids on behalf of the vendor of the land at any time during the auction.

[*One of these alternatives must be deleted]

2. The auctioneer may refuse any bid.
 3. The auctioneer may determine the amount by which the bidding is to be advanced.
 4. The auctioneer may withdraw the property from sale at any time.
 5. The auctioneer may refer a bid to the vendor at any time before the conclusion of the auction.
 6. In the event of a dispute concerning a bid, the auctioneer may re-submit the property for sale at the last undisputed bid or start the bidding again.
 7. The auctioneer must not accept any bid or offer for a property that is made after the property has been knocked down to the successful bidder, unless the vendor or successful bidder at the auction refuses to sign the contract of sale following the auction.
 8. If a reserve price has been set for the property and the property is passed in below that reserve price, the vendor will first negotiate with the highest bidder for the purchase of the property.
-