

**Warning statement**

*Property Agents and Motor Dealers Act 2000*

This form is effective from 1 July 2009.

The contract attached to this warning is subject to a five day cooling-off period.

**Notice to agent:** This warning statement must be:

- attached to the **FRONT** of a contract for sale of residential property (vacant land or land and already existing house) and;
- signed by the buyer **BEFORE** the attached contract is signed.

If this is not done, the buyer may terminate the contract.

# WARNING

**Do NOT sign** the attached contract without reading and understanding this warning.

**Do not sign** if you feel pressured.

**You should obtain independent legal advice and an independent valuation of the property**

Before signing or during the five day cooling-off period the Office of Fair Trading strongly recommends you:

- contact the Queensland Law Society on 07 3842 5842 or [www.qls.com.au](http://www.qls.com.au) for advice on finding a solicitor.
- contact the Australian Property Institute on 07 3832 3139 or [www.propertyinstitute.com.au](http://www.propertyinstitute.com.au) or the Valuers Registration Board on 07 3221 3892 or [www.valuersboard.qld.gov.au](http://www.valuersboard.qld.gov.au) to find a suitable valuer.
- arrange a search for the property's sales history from your local Department of Environment and Resource Management on 07 3227 6626, or for a map of latest sales [www.nrw.qld.gov.au](http://www.nrw.qld.gov.au).

**House and land package buyers:**

Is the building contract fairly valued? Seek quotes from several different builders (see note on page 2).

**STOP!!**

Before signing this form or the contract have you read and understood the information about your rights?



**Buyer(s):**

I/we have read this warning statement and the important information over the page.

First names.....

First names.....

Last name.....

Last name.....

Signature.....

Signature.....

Date.....

Date.....

### **Independent legal advice**

Do you fully understand the legal consequences of signing this contract? Are you sure the advice you've been given is totally independent? Before signing the contract, the Office of Fair Trading strongly recommends you seek independent legal advice and clarify any queries or concerns you have about buying the property. Exercise extreme caution in accepting the advice of anyone referred to you by the seller or his/her agent.

If you engage *any* lawyer in relation to purchasing the property, they must give you a certificate about their independence from the seller or anyone else included in the sale, and about benefits the lawyer expects to receive from the sale.

### **Valuation of property**

Are you sure the purchase price is fair? Before the cooling-off period expires seek independent advice from a registered valuer. Ask the valuer if they have Professional Indemnity Insurance, have a relationship with any person involved with the property you're buying, and about the valuation cost.

Further information on how to deal with valuers is available on [www.fairtrading.qld.gov.au](http://www.fairtrading.qld.gov.au) (search 'valuations').

### **Building contracts**

For building contracts associated with the purchase of residential property.

- Domestic building contracts have a cooling-off period (Section 72 of the *Domestic Building Contracts Act 2000*. Please refer to the Building Services Authority of Queensland for further information on building contracts). Ensure that if you exercise your cooling-off right under the residential property contract that you also give written notice to terminate the building contract.
- Ensure that the building contract price is not over valued or inflated. Get a valuation or compare homes of similar value advertised or displayed by other home builders.

### **What is a cooling-off period?**

You can change your mind about purchasing a property during a 5 day cooling-off period. Use this time to seek independent legal advice and an independent valuation of the property.

### **When does the cooling-off period start?**

It begins on the day you are bound by the attached contract.

Both the buyer and the seller are bound by the contract as soon as the buyer or their agent, lawyer or personal representative receives a copy of the signed contract.

In any dispute concerning the commencement of the cooling-off period, it will be up to the seller to prove the buyer received a copy of the contract.

**Note:** If the buyer is bound by the contract on a day other than a business day, the cooling-off period commences on the first business day after the day the buyer is bound by the contract.

### **When does the cooling-off period end?**

It ends at 5:00 pm on the fifth business day after the cooling-off period started.

### **What is a business day?**

It is a day other than a Saturday, Sunday or a public holiday.

### **Can I waive or shorten the cooling-off period?**

You may, but only by obtaining a lawyer's certificate from your solicitor. If you waive the cooling-off period you will be bound by the contract from that time, subject to the terms of the contract.

### **How do I terminate the contract during the cooling-off period?**

At any time before the end of the fifth day cooling-off period give a signed and dated notice to the seller or the seller's agent indicating that you wish to terminate the contract.

### **Will I lose my deposit if I terminate the contract during the cooling-off period?**

The seller must refund your deposit within 14 days of termination of the contract but may deduct a termination penalty equal to 0.25% of the purchase price.

### **What happens after the cooling-off period ends?**

You are legally bound to buy the property, subject to the terms in the contract. Make sure you're happy with all of the terms in the contract before you sign it and before the cooling-off period ends.

### **Claim fund**

A Claim Fund exists which, in some cases, enables a buyer who suffers financial loss as a result of dealing with a real estate agent to make a claim. Strict guidelines apply. If you suffer financial loss because of buying an investment property or buying residential property directly from a property developer you **CANNOT** make a claim for compensation against the Fund. There are restrictions on claims made due to property marketeering.

### **How do I know if I'm dealing with a licensed real estate agent or property developer?**

The Office of Fair Trading can help you to identify if the person you are dealing with is a licensed real estate agent, property developer or a registered salesperson of one.

Ask the person you are dealing with for proof of their licence or registration.

### **Further information:**

Contact [www.fairtrading.qld.gov.au](http://www.fairtrading.qld.gov.au) or your nearest Office of Fair Trading on 13 13 04.



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Accredited Agency

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# Contract

## For Houses and Residential Land

Sixth 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:** Active Property Sales Pty Ltd atf RW & SL Bardon Family Trust trading as Ray White Middle Park  
ABN: 47 792 040 187 Licence Number: 3174081  
Address: Shop 20, 92 Horizon Drive, Middle Park Qld 4074  
Telephone: 3279 4777 Facsimile: 3376 5781 Mobile: 0405 484 828  
Email: mail@rwmp.com.au

**Parties**

**Seller:**

ABN:  
Address:  
Telephone:

Email:  
Facsimile: Mobile:

**Seller's Solicitor:**

ABN:  
Address:  
Telephone:  
Email:

Ref: [or any other solicitor notified to the Buyer]  
Facsimile: Mobile:

**Buyer:**

ABN:  
Address:  
Telephone:

Email:  
Facsimile: Mobile:

**Buyer's Solicitor:**

ABN:  
Address:  
Telephone:  
Email:

Ref: [or any other solicitor notified to the Seller]  
Facsimile: Mobile:

**Property**

**Land:** Address:

Description: Lot:  
County:  
Title Reference:  
Land sold as: Freehold

on: Parish:  
Area: [more or less]

*Built on*

**Present Use:**

**Local Government:**

**Excluded Fixtures:**

**Included Chattels:**



**Matters Affecting Property**

**Title Encumbrances:**

[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:** *Active Property Sales Pty Ltd 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:

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

**Finance**

**Finance Amount:** \$ *sufficient to complete the purchase*

[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:** *Registered Lending Authority of Buyer's choice*

**Finance Date:** *21 days from Contract date*

**Building and/or Pest Inspection**

**Inspection Date:** *7 days from Contract date*

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

**Building Inspector:** *Licensed Building Inspector of Buyer's choice*

**Pest Inspector:** *Licensed Pest Inspector of Buyer's choice*

**[WARNING:** If the Buyer does not give notice under clause 4 by the Inspection Date it will be taken to be satisfied with the reports obtained]

[If required under the *Queensland Building Services Authority Act 1991*, the Inspector must hold a current licence under that Act]

**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:

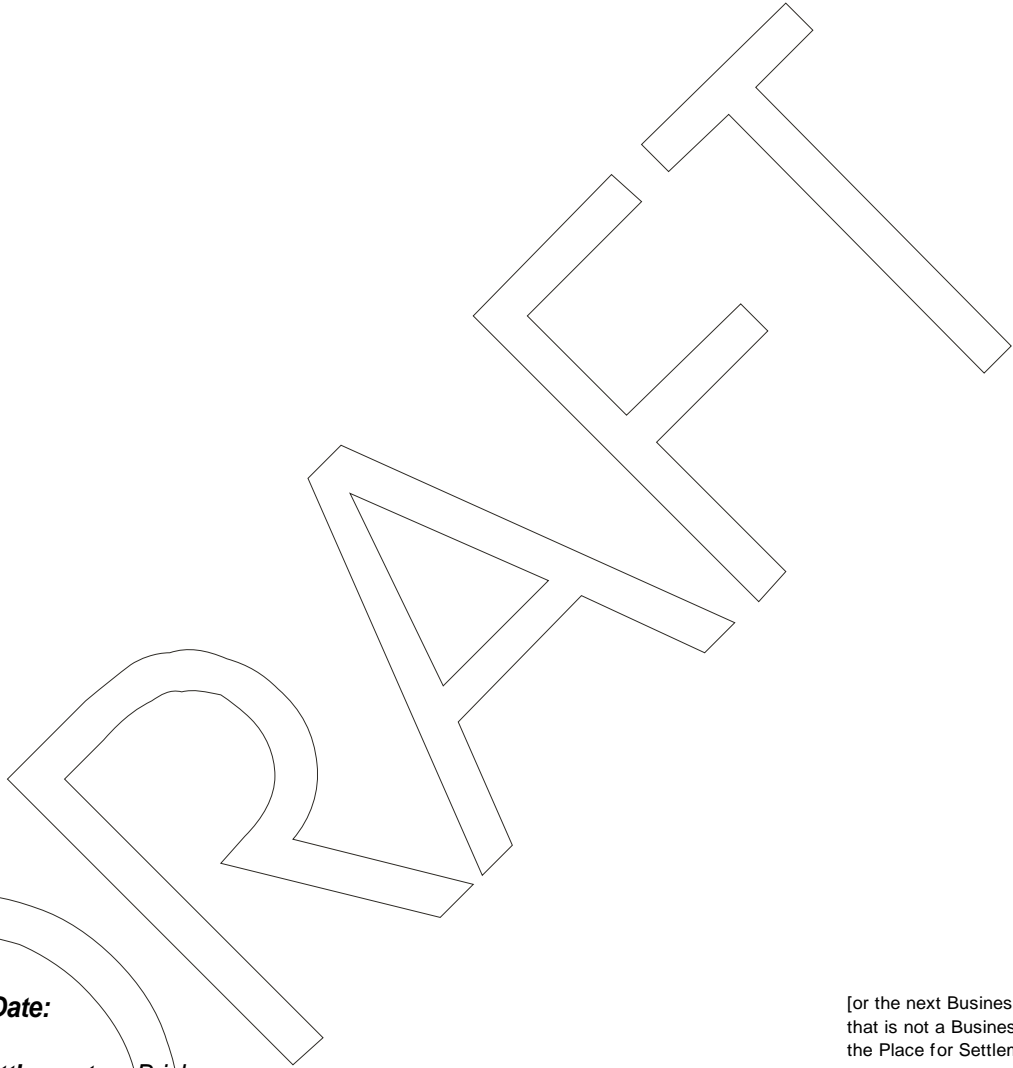
- \*installed in the residence
- \*not installed in the residence

*\* 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:**

**Place for Settlement:** *Brisbane*

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

**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(11);
  - (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 Act 1994*;
  - (e) **“Business Day”** means a week day other than a public holiday in the Place for Settlement;
  - (f) **“Compliant Smoke Alarm”** means a smoke alarm complying with sections 104RB (2) or (4) of the *Fire and Rescue Service Act 1990*;
  - (g) **“Contract Date”** or **“Date of Contract”** means the date inserted in the Reference Schedule;
  - (h) **“Encumbrances”** includes unregistered and statutory encumbrances;
  - (i) **“Financial Institution”** means a Bank, building society or credit union;
  - (j) **“General Purpose Socket Outlet”** means an electrical socket outlet as defined in the *Electrical Safety Regulation 2002*;
  - (k) **“GST”** means the goods and services tax under the *GST Act*;
  - (l) **“GST Act”** means *A New Tax System (Goods and Services Tax) Act* and includes other GST related legislation;
  - (m) **“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;
  - (n) **“Keys”** means keys, codes or devices in the Seller’s possession for all locks or security systems on the Property;
  - (o) **“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;
  - (p) **“Property”** means:
    - (i) the Land;
    - (ii) the Improvements; and
    - (iii) the Included Chattels;
  - (q) **“Rent”** means any periodic amount payable under the Tenancies;
  - (r) **“Reserved Items”** means the Excluded Fixtures and all chattels on the Land other than the Included Chattels;

- (s) **“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
- (t) **“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 post-dated cheque; or
  - (c) pays the Deposit by cheque which is dishonoured on presentation.

#### 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:
 

$$\frac{\text{Unimproved value of the parcel that includes the Land under Valuation of Land Act 1944}}{\text{Area of Land}} \times \frac{\text{Area of the parcel}}{\text{Area of the parcel}}$$
- (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) 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 contract is terminated; 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**

- 4.1** This contract is conditional upon the Buyer obtaining a written building report from the Building Inspector and a written pest report from the 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 may terminate this contract by notice to the Seller at any time before 5pm on the Inspection Date if an Inspector's report is unsatisfactory to the Buyer. The Buyer must act reasonably.
- 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** If the Buyer does not terminate this contract by 5pm on the Inspection Date, it will be treated as being satisfied with the building and pest reports it has obtained.
- 4.5** If required under the *Queensland Building Services Authority Act 1991*, the Inspector must hold a current licence under that Act.

## 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;
  - (b) unstamped Transfer Documents capable of immediate registration after stamping;
  - (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.
- (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 Act 1994*) 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) 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.
- (3) The Buyer may terminate this contract by notice to the Seller if there is an outstanding notice at the Contract Date under sections 247 or 248 of the *Building Act 1975* or sections 4.3.9 or 4.3.11 of the *Integrated Planning Act 1997* 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. Buyer's Default

### 9.1 Seller May Affirm or Terminate

If the Buyer fails to comply with any provision of this contract, the Seller 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 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 interest earned on its investment;
- (3) sue the Buyer for damages;
- (4) resell the Property.

### 9.4 Resale

- (1) The Seller may recover from the Buyer as liquidated damages:
  - (a) any deficiency in price on a resale; and
  - (b) its expenses connected with this contract, 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.

### 9.5 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 a solicitor and own client basis and the cost of any Work or Expenditure under clause 7.6(2).

### 9.6 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 9.6 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 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.