



# SHIRE OF MURWEH

## Murweh Shire Council

### Request for Tender

<b>Request for Tender (RFT)</b>	Sale of lots in the Charleville Industrial Estate
<b>RFT Number</b>	IE4. 21-22
<b>Tender Closing Time</b>	4:30pm on Friday 6 August 2021

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## SECTION A - INTRODUCTION

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### 1. BACKGROUND

Council is inviting tenders for the sale of the following lots in the Charleville Industrial Estate:

Lot No.	Survey Plan No	Area (in m <sup>2</sup> )
5	SP305929	4020
6	SP313219	2355
7	SP313219	3009
8	SP305929	2948
9	SP313219	3571
12	SP313219	3264
13	SP313219	3264
14	SP313219	4728
15	SP313219	4779
16	SP313219	3298
17	SP313219	3298
20	SP313219	5057
22	SP313219	2374
23	SP313219	2714
24	SP313219	3807

Respondents may provide a tender for one or more of the lots.

The successful respondent will enter into the REIQ Contract for Commercial Land and Buildings (Eighth Edition) and subject to special conditions, as shown in Section E of this Request for Tender.

The Contract Date under the Contract of Sale shall be the date that Council notifies the successful respondent that its tender has been accepted, pursuant to these Conditions of Tender.

If respondents submit a tender based on different contract terms or additional or varied special conditions to those shown in Section E of this Request for Tender (for example, if finance is required to be a condition of the Contract of Sale), Council will treat those responses as Non-Conforming Tenders.

Council will permit interested respondents to inspect the lots prior to the Tender Closing Time by prior arrangement, where Council is reasonably able to do so. Respondents and interested respondents acknowledge that any request to inspect the lots may not be able to be accommodated.

Tenders will be assessed by reference to the Conditions of Tendering in Section C of this Request for Tender.

Tenderers must complete and submit the Response Schedules contained in Section D of this Request for Tender.

Tenderers should note that Council's assessment criteria for this Tender will involve an evaluation of both the Purchase Price offered, and the proposed use of the lot upon which the Tenderer is submitting a Tender. Tenderers should ensure the material submitted with their Tender adequately addresses both criteria.

**To be considered, Tenders must be submitted by 4:30pm on Friday 6 August 2021. Tenders submitted after this time may not be considered.**

Tenders are to be lodged in accordance with Section B and Section C of this Request for Tender.

Canvassing of any Council staff or Councillors will disqualify Tenderers from the Procurement Process.

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## SECTION B – TENDER INFORMATION

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This Tender Information must be read in conjunction with and will form part of the Conditions of Tendering.

- Purpose for Request:** Sale of lots in the Charleville Industrial Estate
- Tender Closing Time:** Date: **Friday 6 August 2021**  
Time: **4:30pm**
- Tender Validity Period:** 120 days
- Lodgement Requirements:** On or before the Tender Closing Time, Tenders must be received by:
- (a) post, addressed as follows:  
  
IE4. 21-22 Sale of Lots in the Charleville Industrial Estate  
Chief Executive Officer  
Murweh Shire Council  
PO Box 63  
CHARLEVILLE QLD 4470
  - (b) hand, addressed as follows:  
  
IE4. 21-22 Sale of Lots in the Charleville Industrial Estate  
Chief Executive Officer  
Murweh Shire Council  
95 – 101 Alfred Street  
CHARLEVILLE QLD 4470
  - (c) email, addressed as follows:  
  
IE4. 21-22 Sale of Lots in the Charleville Industrial Estate  
[mail@murweh.qld.gov.au](mailto:mail@murweh.qld.gov.au)

Tenders must be clearly endorsed with the RFT Number on the cover of this Request.

**Evaluation Criteria:**

<b>Criteria</b>	<b>Weighting (%)</b>
The proposed Purchase Price under the Contract of Sale	60%
The proposed use of the lot, including: <ul style="list-style-type: none"><li>• The feasibility of the proposed use;</li><li>• The Tenderer's capacity to deliver the proposed use;</li><li>• The benefits that the proposed use will bring to the Murweh local government area, including by way of economic opportunities such as tourism and local employment</li></ul>	40%

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## SECTION C – CONDITIONS OF TENDERING

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## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

- (a) In these Conditions of Tendering:
- (i) **Agreement** is the document contained in Section E of this Request for Tender, as modified by any subsequent negotiations between Council and a Tenderer which are evidenced in writing and executed by the parties, and which have been prepared in accordance with this Request for Tender.
  - (ii) **Business Day** means a day that is not a Saturday, Sunday or a public holiday in Charleville.
  - (iii) **Conditions of Tendering** means the conditions of tendering contained in this Section C – Conditions of Tendering of the Request for Tender;
  - (iv) **Conflict of Interest** includes any activity or interest of the Tenderer which may be in conflict with the Tenderer's ability to lodge a Tender in good faith and objectively. A Conflict of Interest will include a real, perceived or apprehended conflict.
  - (v) **Conforming Tender** means a Tender which:
    - A. is in the form required by the Response Schedules;
    - B. complies with the Lodgement Requirements;
    - C. contains substantially all of the information and documentation required by the Tender Documents;
  - (vi) **Consequential Loss** means indirect loss, loss of profits, loss of revenue, loss of savings, loss of opportunity, loss of bargain, loss of use, damage to credit rating, loss of or damage to reputation, future reputation or publicity, loss in connection with claims made by third parties, remote, abnormal or unforeseeable loss and any consequential loss or damage that is similar to the other categories of loss in this definition, whether or not such loss or damage was foreseeable or within the contemplation of Council and/or the Tenderer at any time;
  - (vii) **Council** means Murweh Shire Council, and may, if the context requires, include a duly authorised delegate of Council;
  - (viii) **Evaluation Criteria** means the evaluation criteria set out in the Tender Information;
  - (ix) **Intellectual Property Rights** means copyright, patents and all rights in relation to inventions, registered and unregistered trademarks (including service marks), registered designs, circuit layouts and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;
  - (x) **Introduction** means Section A – Introduction of this Request for Tender;

- (xi) **Law** includes all:
- A. legislation and subordinate legislation, including local laws, rules statutory instruments, by-laws, orders, ordinances, awards and proclamations of a local government authority, the State of Queensland, the Commonwealth which are applicable to the Agreement, the Tender Documents, the Procurement Process or which are otherwise in force and includes all related fees and charges;
  - B. certificates, licenses, accreditations, clearances, authorisations, approvals, consents, permits and other requirements of authorities and other organisations having jurisdiction applicable to the Agreement, the Tender Documents or the Procurement Process and includes all related fees and charges;
- (xii) **Lodgement Requirements** means the lodgement requirements noted in the Tender Information;
- (xiii) **Non-Conforming Tender** means a Tender which is not a Conforming Tender;
- (xiv) **Personnel** includes the officers, employees, agents, representatives, agents, contractors and consultants of a party and any other person or entity for whom that party is vicariously liable, and, in the case of Council, includes councillors;
- (xv) **Procurement Process** means the process associated with calling tenders in accordance with these Conditions of Tendering;
- (xvi) **Purpose for Request** means the purpose for which this Request for Tender has been made, as identified in the Tender Information;
- (xvii) **Request for Tender** means this request for tender (including Sections A to F) and all documents included in or incorporated by reference into it;
- (xviii) **Response Schedules** means the fields in Section D – Response Schedules which are to be lodged in accordance with the Tender Documents;
- (xix) **Tender** means the Tender submitted by a Tenderer in response to this Request for Tender and includes all documents and information submitted with or as part of the Tender;
- (xx) **Tender Closing Time** means the closing time detailed in the Tender Information;
- (xxi) **Tender Documents** means this Request for Tender, any communications to tenderers issued pursuant to these Conditions of Tendering, and all documents included in or incorporated by reference into these documents;
- (xxii) **Tenderer** means:
- A. any person who submits a Tender; and
  - B. to the extent to which the Tender Documents can apply to any other person who obtains a copy of any of the Tender Documents during the Procurement Process, also includes such other persons;

(xxiii) **Tender Information** means the information contained in Section B – Tender Information of this Request for Tender;

(xxiv) **Tender Validity Period** means the earlier of:

- A. the period of time identified as such in the Tender Information, or, where a date is stated, the period ending on that date;
- B. the date that the Tenderer is notified that their Tender has not been accepted.

If no time is stated in the Tender Information, the Tender Validity Period shall be one (1) year.

## 1.2 Interpretation

(a) These Conditions of Tendering must be read in conjunction with the Introduction and the Tender Information. The Introduction and the Tender Information are not comprehensive or complete in themselves, but shall form part of these Conditions of Tendering.

(b) Without limiting the above, in the Tender Documents:

- (i) an obligation of two or more parties binds them jointly and each of them severally and an obligation incurred in favour of two or more parties is enforceable by them severally;
- (ii) words importing the singular number include the plural number and words importing the plural number include the singular number;
- (iii) clause headings are for reference purposes only and must not be used in interpretation;
- (iv) the words 'include', 'includes' or 'including' shall be read as if followed by 'without limitation';
- (v) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form concerning the word or phrase has a corresponding meaning;
- (vi) where time is to be reckoned from a day or event, the day or the day of the event must be excluded and if any time period specified in the Tender Documents expires on a day which is not a business day, the period will expire at the end of the next business day;
- (vii) a reference to:
  - A. a person includes any other legal entity and a reference to a legal entity includes a person;
  - B. a party includes the party's heirs, executors, successors and permitted assigns;
  - C. any gender shall be read as including every gender;

- D. a monetary amount is a reference to an Australian currency amount;
  - E. any Law, standard, code, guideline or policy includes a reference to that Law, standard, code, guideline or policy as amended or replaced from time to time, and all related Law, standards, codes, guidelines or policies;
  - F. writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes e-mail and facsimile transmissions;
  - G. a time is to local time in Charleville;
  - H. a business day is to a day that banks are open for trading in Charleville.
- (viii) the Request for Tender and Procurement Process are governed by the Law of Queensland and the Commonwealth of Australia which are in force in Queensland. Council and Tenderers submit to the jurisdiction of the Courts of Queensland, relevant Federal Courts and Courts competent to hear appeals from them;
  - (ix) the *contra proferentem* rule and other rules of construction will not apply to disadvantage a party whether that party put the clause forward, was responsible for drafting all or part of it or would otherwise benefit from it;
  - (x) the rights and remedies of a party under this Request for Tender are in addition to the rights or remedies conferred on the party at law or in equity;
  - (xi) if a provision of this Request for Tender is void or unenforceable it must be severed from this Request for Tender and the provisions that are not void or unenforceable are unaffected by the severance; and
  - (xii) no waiver by a party of a provision of this Request for Tender is binding unless made in writing.

## **2. REQUEST FOR TENDER**

### **2.1 Conditions of Tendering**

- (a) This Request for Tender is not an offer but is a request for Tenderers to submit a Tender for the goods, services or other deliverables specified as the Purpose for Request.
- (b) The Tenderer acknowledges that upon submitting a Tender (irrespective of whether that Tender is a Conforming Tender or a Non-Conforming Tender), the Tenderer shall be bound by the terms of these Conditions of Tendering as though the Conditions of Tendering were a deed between Council and the Tenderer.
- (c) If the Tenderer breaches any of these Conditions of Tendering, Council may, at its discretion and without limiting its other rights, exclude the Tenderer's Tender(s) from assessment.

## 2.2 The Tender Documents

- (a) The Tender Documents must be read and construed together and are intended to be mutually explanatory.
- (b) If the Tenderer:
  - (i) finds any defect, deficiency, error, inconsistency, ambiguity, discrepancy or conflict in or between, or omission from any of the documents comprising the Tender Documents or any other information provided by Council; or
  - (ii) finds any inconsistency or conflict between the Tender Documents and any Law; or
  - (iii) has any doubt as to the meaning of any portion of the Tender Documents,the Tenderer must notify Council in accordance with clause 3.1 and (if applicable) must include in its Tender a statement of the interpretation upon which it relies and on which its Tender has been prepared.
- (c) When certain work is specified or described in the Tender Documents other work that is obviously or indispensably necessary will be deemed to be included even if it is not specifically mentioned.
- (d) Council gives no warranty and makes no representation as to, and accepts no responsibility for, the accuracy, adequacy or completeness of the Tender Documents or any other information provided by or on behalf of Council.
- (e) The Tender Documents must be used solely for the purpose of tendering for the Agreement, and for no other purpose.
- (f) The Tender Documents shall at all times remain the property of Council.

## 3. THE PROCUREMENT PROCESS

### 3.1 Communications with Council

All communications between the Tenderer and Council in relation to the Procurement Process must be directed to Council's Chief Executive Officer.

### 3.2 Nature of communications

- (a) The Tenderer must not discuss the Procurement Process or obtain any information relating to the Procurement Process from any Personnel of Council other than in accordance with the preceding clause, unless expressly contemplated in these Conditions of Tender.
- (b) Without limiting any other provision of these Conditions of Tender, Council will not be bound by, and the Tenderer may not rely upon, any oral advice or information nor any written advice or information provided other than in accordance with this clause.
- (c) Council:

- (i) may in its absolute discretion limit the time for Tenderers to make queries or requests for further information or clarifications;
- (ii) is not bound to respond to any query or request for further information or clarification, whether received prior to or after the required time; and
- (iii) may in its absolute discretion notify any or all Tenderers of a query or request for further information or clarification made (without identifying the submitting party) and Council's response to the query or request.

### **3.3 Council's Rights before Tender Closing Time**

- (a) Without limiting any other provision of these Conditions of Tender, Council may, at any time before the Tender Closing Time, in its absolute discretion:
  - (i) modify or depart from the procedures set out in the Tender Documents;
  - (ii) extend or reduce any timeframes or dates provided for in the Tender Documents;
  - (iii) amend, add to or delete any part of the Tender Documents;
  - (iv) suspend, terminate or alter the Procurement Process at any time;
  - (v) request any one or more Tenderers to attend meetings.

### **3.4 Conduct of Tenderers**

- (a) The Tenderer must not, and must ensure that its Personnel do not:
  - (i) engage in misleading or deceptive conduct in relation to the Procurement Process;
  - (ii) engage in any collusive tendering, anticompetitive conduct, or any other unlawful or unethical conduct with any other Tenderer, or any other person in connection with the Procurement Process;
  - (iii) approach or communicate, or attempt to approach or communicate, in any way with any Personnel of Council, other than in accordance with the specific provisions of these Conditions of Tender;
  - (iv) attempt to improperly influence any of Council's Personnel, or violate any applicable Law regarding the offering of inducements in connection with the Procurement Process;
  - (v) accept or seek improper assistance of any of Council's Personnel, or any former Personnel of Council in preparing its Tender; or
  - (vi) use any information improperly obtained, or obtained in breach of any obligation of confidentiality in preparing the Tender.
- (b) The Tenderer must:

- (i) disclose in its Tender any Conflict of Interest arising or which is likely to arise as a result of this Procurement Process or the performance of the Tenderer's obligations under the Agreement if it is the successful Tenderer; and
  - (ii) not, and must ensure that its Personnel do not, engage in any activity or obtain any interest which is likely to result in a conflict between Council and the Tenderer's interests; and
  - (iii) immediately notify Council of any Conflict of Interest that arises or is likely to arise and which is not disclosed in the Tender.
- (c) The Tenderer must at all times during the Procurement Process comply and ensure that its Personnel comply, with any Law applicable to the Procurement Process.
- (d) Without limiting any other right of Council, Council may exclude from assessment any Tender lodged by a Tenderer who, in Council's reasonable opinion, has engaged in any behaviour contrary to this clause in relation to the Procurement Process.
- (e) The Tenderer indemnifies Council against all costs (including legal costs), expenses, losses or damages incurred or suffered by Council in connection with a breach of subclause 3.4(a), 3.4(b) or 3.4(c). This indemnity extends to:
- (i) costs and expenses incurred by Council relating to any legal challenge to the Procurement Process including the acceptance of a Tender or anything related to the Procurement Process; and
  - (ii) costs and expenses incurred by Council in terminating and/or recommencing the Procurement Process.

### **3.5 Complaints in Relation to the Procurement Process**

- (a) Any complaint in relation to the Procurement Process or the Request for Tender must:
- (i) be made in writing to Council:
    - A. in accordance with clause 3.1, if the complaint is made prior to the Tender Closing Time;
    - B. otherwise in accordance with Council's Complaints Policy or equivalent policy published on Council's website;
  - (ii) be made immediately upon the cause of the complaint arising or upon a Tenderer becoming aware of the complaint or its cause;
  - (iii) contain adequate details of:
    - A. the complaint (including the cause of the complaint, the basis upon which the complaint is made and any other relevant issues);
    - B. the effect on the complainant;
    - C. the complainant's desired outcome; and

- 
- D. any other relevant information,  
to allow Council to properly investigate the cause of the complaint.
- (b) Council will investigate and otherwise deal with the complaint in the manner Council considers reasonably appropriate, having regard to:
- (i) the nature of the complaint, including whether Council considers the complaint to be frivolous or vexatious;
  - (ii) Council's Complaints Policy or equivalent Policy Council considers to be relevant in the circumstances;
  - (iii) any other matter that Council considers reasonably appropriate.
- (c) The complainant has no recourse against Council for any reason and in any circumstances as a result of the performance of Council's obligations or the exercise of its discretion under this clause.

#### **4. LODGEMENT OF TENDERS**

##### **4.1 Lodgement**

- (a) The Tender must comply with the Lodgement Requirements.
- (b) A Tender will be received by the Tender Closing Time if it is received by Council by the Tender Closing Time.
- (c) The Tenderer is wholly responsible for:
  - (i) if it delivers its Tender to Council by post, ensuring that the Tender is received by Council by the Tender Closing Time;
  - (ii) if it delivers its Tender by email:
    - A. ensuring that its information technology system is capable of transmitting its Tender successfully by email by the Tender Closing Time;
    - B. any failure to transmit its Tender before the Tender Closing Time, irrespective of how that failure arises.
- (d) Council recommends that Tenderers commence emailing Tenders at least three (3) hours before the Tender Closing Time, to avoid any digital processing delays.
- (e) The Tenderer may at any time prior to the Tender Closing Time submit an amendment to its Tender in the same manner as its original Tender. Any amendment must clearly identify the Tender which is being amended and the amendments to be made. To the extent of any inconsistency between the Tender and the amendment, the amendments will prevail.
- (f) Any Tender or an amendment to a Tender that is not received by the Tender Closing Time may be rejected or admitted to evaluation at the discretion of Council. In exercising its discretion to reject or admit a late Tender to evaluation, Council may, without limitation,

take into account the time at which the Tender is received, the reason the Tender is late and whether any other Tender has been received by the Tender Closing Time.

- (g) Council may, in its absolute discretion, elect to consider a Tender received after the Tender Closing Time if:
- (i) Council is satisfied that the Tenderer has taken all reasonable steps to lodge its Tender on time and has notified Council of the technical failure prior to, on, or as soon as practicable after the Tender Closing Time;
  - (ii) the Tenderer was prevented from lodging its Tender on or before the Tender Closing Time due to technical failure beyond the control of the Tenderer, and the Tenderer is able to produce evidence of that technical failure that is acceptable to Council; and
  - (iii) the Tenderer lodged its Tender successfully as soon as possible after the technical failure was resolved.

#### **4.2 Tenderer's Warranties**

- (a) By lodging a Tender, the Tenderer warrants that:
- (i) all information contained in the Tender is accurate;
  - (ii) it has complied with its obligations under the Tender Documents;
  - (iii) it has not relied on the accuracy, adequacy or completeness of the Tender Documents, or any other information provided by or on behalf of Council in preparing its Tender;
  - (iv) it has not relied on the accuracy, adequacy or completeness of any other information provided by or on behalf of Council in preparing its Tender;
  - (v) it has satisfied itself of the local conditions, environment and facilities that may impact upon the Tenderer's ability to perform its obligations under the Agreement;
  - (vi) it has examined all information relevant to the risks, contingencies and other circumstances having an effect on its Tender and the performance of its obligations under the Agreement;
  - (vii) it has informed itself fully as to the accuracy, adequacy and completeness of its Tender for the performance of the obligations under the Agreement and that the rates and prices included in the Tender include compliance with all obligations under the Agreement and all matters necessary for the complete performance of the Tenderer's obligations under the Agreement;
  - (viii) it has carried out its own investigations as to the feasibility of its Tender and has relied on those investigations.
- (b) Failure by a Tenderer to do any of the things that it has warranted will not relieve the Tenderer of its obligation to perform under the Agreement that may be entered into between the Tenderer and Council.

- (c) Council does not represent or warrant that the information provided in this Request for Tender, including any information provided by Council's Personnel or as part of the Procurement Process generally, is accurate, adequate or complete.

#### **4.3 Submission of Tender constitutes acceptance of Agreement**

- (a) If the Tenderer lodges a Tender (including a Non-Conforming Tender), the Tenderer will be taken to unconditionally agree to enter into the Agreement with Council.
- (b) However, nothing in this clause limits Council's rights pursuant to clause 5.2(b).

#### **4.4 Non-Conforming Tenders**

- (a) Council may, in its absolute discretion, accept or exclude a Non-Conforming Tender from assessment.
- (b) In exercising its discretion to exclude a Non-Conforming Tender, Council may, without limitation, take into account the nature and extent of the non-conformances, whether the Tenderer has also submitted a Conforming Tender and whether any Conforming Tender has been lodged by another Tenderer.
- (c) Acknowledgement by Council that it has received a Tender does not imply that the Tender has been admitted as a Conforming Tender.

#### **4.5 Intellectual Property**

- (a) All Intellectual Property Rights in the Tender Documents and other documents supplied to the Tenderer by or on behalf of Council are as between Council and the Tenderer the property of Council.
- (b) The Intellectual Property Rights in any material included in the Tender and created by the Tenderer and relating specifically to the Agreement vests in Council upon acceptance by Council of a Tender (or any part thereof).
- (c) To the extent that any material submitted by a Tenderer in its Tender is the subject of pre-existing Intellectual Property Rights of third parties, the Tenderer warrants that it is able to procure for Council an irrevocable, royalty free licence to use, adapt, reproduce, publish and sublicense on the same terms all such Intellectual Property Rights and agrees to obtain such licence upon acceptance of its Tender (or any part thereof).
- (d) By submitting a Tender, the Tenderer is deemed to have granted Council a licence to reproduce the Tender in whole or in part and to do or authorise any other act or omission in relation to the Tender for the purposes of exercising its rights, or carrying out its functions or obligations under these Conditions of Tendering or the Agreement. The Tenderer shall procure all necessary consents or waivers from creators in respect of moral rights under the *Copyright Act 1968* (Cth) to allow Council to do or authorise any such acts or omissions.
- (e) The Tenderer indemnifies Council against all costs (including legal costs), expenses, losses or damages incurred or suffered by Council in connection with a claim by a third party alleging that any material submitted as, with or in relation to the Tender or any act or omission done or authorised by Council or done in accordance with these Conditions of

Tendering or the Agreement in respect of such material infringes the Intellectual Property Rights of that third party.

## **5. ASSESSMENT OF TENDERS**

### **5.1 Tender Opening**

Tenders will not be opened publicly and Tenderers will not be permitted to attend the opening of Tenders.

### **5.2 Council's Rights After Tenders Received**

(a) Without limiting any other specific clause in these Conditions of Tender, Council may, at any time after Tenders have been received, in its absolute discretion:

- (i) request any one or more Tenderers to change their Tender to take account of a change in the Tender Documents or any error in the Tender Documents. However, Council has no obligation to do so and need not extend the same opportunity to each Tenderer;
- (ii) request a meeting with any one or more Tenderers to obtain additional information from that Tenderer;
- (iii) seek to clarify and alter any aspect of a Tenderer's Tender and may, at its discretion, advise any or all of the preferred Tenderers of such clarification or alteration;
- (iv) request any one or more Tenderers to provide a presentation of their Tender in person at Council's office at no cost to Council; and
- (v) request additional information from one or more Tenderers.

#### **(b) Negotiations**

- (i) Council reserves the right to negotiate amendments to any aspect of the Tender or the Tender Documents with any one or more Tenderers. Council is under no obligation to enter into negotiations with any Tenderer, nor is Council required to extend the opportunity to each Tenderer.
- (ii) Council entering into negotiations pursuant to the preceding subclause does not constitute a rejection of the Tenderer's Tender or a counter offer to the Tenderer, unless specified otherwise.
- (iii) Council may suspend or terminate negotiations at any time and for whatever reason.

### **5.3 Assessment of Tenders**

- (a) In determining which Tender is most advantageous to Council, each Tender admitted to assessment in accordance with these Conditions of Tendering will be assessed against the Evaluation Criteria.
- (b) In assessing Tenders, Council may:

- (i) consider:
    - A. information contained in the Tender;
    - B. outcomes from discussions with Tenderer's referees (if any);
    - C. any other information available to Council;
    - D. any relevant Law, including the *Local Government Act 2009* (Qld) and any regulation enacted under it; and
    - E. other information which Council reasonably considers to be relevant to its assessment, including but not limited to any procurement policies or procedures implemented by Council;
  - (ii) ignore any part of the Tender which is ambiguous, uncertain, unclear or illegible without seeking clarification from the Tenderer and may assess the balance of the Tender.
- (c) Council may seek any further information or assistance from any person (including third parties) where Council considers in its absolute discretion it is necessary to do so in order to properly evaluate any aspect of the Tender. Council may (but is not required to) notify the Tenderer of a third party appointed by Council to provide such assistance to Council, and, if advised, the Tenderer must cooperate with and provide all information and assistance reasonably requested by such third party. Council may exclude from assessment or reject a Tender if the Tenderer does not provide such cooperation, information and other assistance.
- (d) Council:
- (i) is not bound to accept the lowest or any Tender, or any clarification, alteration or amendment of a Tender; and
  - (ii) may, subject to these Conditions of Tendering, at its discretion, reject or accept:
    - A. a late Tender;
    - B. a Non-Conforming Tender;
    - C. a Tender which fails to achieve a satisfactory score against any of the Evaluation Criteria;
    - D. a Tender which has been clarified, altered or amended in accordance with these Conditions of Tendering; or
    - E. a Tender submitted by a Tenderer that has breached these Conditions of Tendering.

#### 5.4 Tender Validity Period

- (a) Each Tender must remain valid and open for acceptance by Council until the end of the Tender Validity Period.

- (b) Notwithstanding clause 5.4(a), if a Tenderer wishes to withdraw its Tender before the end of the Tender Validity Period, Council may, in its absolute discretion, and without any obligation to do so for the benefit of the Tenderer, allow the Tenderer to withdraw its Tender. Council's consent to the withdrawal of the Tender may be subject to conditions.
- (c) Council may request an extension of the Tender Validity Period at any time by giving written notice to the Tenderer. If a Tenderer does not agree to extend the Tender Validity Period as requested by Council then Council may exclude the Tenderer's Tender from assessment or further assessment as the case may be.

## 5.5 Form of Acceptance

- (a) A Tender shall be deemed to be accepted when Council expressly advises the successful Tenderer in writing that the Tenderer's Tender (as amended by any negotiations pursuant to clause 5.2(b)) is accepted.
- (b) However, notwithstanding Council's acceptance of a Tender, no binding agreement will exist between the parties until any documents required to form part of the Agreement has been duly executed by both parties in its final form.
- (c) An executed agreement will supersede any prior representations, agreements, statements or understandings (whether oral or in writing).
- (d) The Tenderer acknowledges and agrees that if their Tender is accepted pursuant to subclause (a) of this clause, then the Tenderer must take all steps reasonably required by Council to complete and sign any documents that Council requires to form part of the Agreement.
- (e) The parties acknowledge and agree that:
  - (i) unless expressly authorised by Council in writing, the successful Tenderer (or any Tenderer) is not authorised to begin delivery of goods, services or other deliverables that form part of the scope of the Purpose for Request until Council has issued a Purchase Order;
  - (ii) if the Purpose for Request involves the appointment of the successful Tenderer to a register of pre-qualified suppliers or an approved supplier panel, the successful Tenderer shall not be entitled to work in any particular volumes or to any particular value.

## 5.6 Notification of Unsuccessful Tenderers

- (a) Council shall, subject to its rights under these Tender Documents, notify all unsuccessful Tenderers as soon as practicable after a Tender is accepted under clause 5.5.
- (b) Unsuccessful Tenderers may request that Council provides feedback on the Tenderer's Tender and Council's response will be at its discretion.
- (c) A Tender shall not be deemed to be rejected until Council notifies the unsuccessful Tenderer in writing that the Tender was not successful.

## 6. TENDERER'S ACKNOWLEDGMENTS

### 6.1 Tendering Costs

- (a) The Tenderer expends money, makes commitments and incurs liabilities in considering and responding to this Request for Tender ("**Tendering Costs**") at its own risk and expense.
- (b) Council shall not be liable to the Tenderer, for any reason whatsoever, to reimburse or otherwise compensate the Tenderer for any part of the Tendering Costs or for any loss associated with responding to this Request for Tender, including Consequential Loss.

### 6.2 Tenderer to Inform Itself

- (a) The Tenderer must undertake all necessary enquiries and investigations to satisfy itself as to:
  - (i) the accuracy, adequacy and completeness of the Tender Documents and any other information provided by or on behalf of Council;
  - (ii) all considerations, including logistical considerations, associated with discharging obligations under the Agreement; and
  - (iii) any other risks, contingencies and other circumstances which could have an effect on the cost of discharging obligations under the Agreement or the compliance with the Tenderer's other obligations under the Agreement in the event that the Tenderer's Tender is accepted.
- (b) If the Tenderer requires any further information or documentation from Council to enable it to comply with this clause then the Tenderer must notify Council of this in accordance with these Conditions of Tendering at least 7 days prior to the Tender Closing Time.
- (c) The Tenderer must allow, and warrants that it has allowed, in its Tender for:
  - (i) all risks, contingencies and other circumstances referred to in clause 6.2(a);
  - (ii) carrying out all obligations required under the Agreement;
  - (iii) all other risks which will be borne by the Tenderer under the Agreement if its Tender is accepted.

### 6.3 No Liability

- (a) Without limiting any other clause in these Conditions of Tendering, Council and its Personnel are not liable upon any claim for, and the Tenderer indemnifies Council against and releases Council from all liability for, any costs, expenses, losses, damages suffered or incurred by the Tenderer or any of the Tenderer's Personnel (including Consequential Loss) relating to, or arising out of or in connection with:
  - (i) the preparation and submission of the Tenderer's Tender;
  - (ii) the exercise by Council of any of its rights under the Tender Documents; or

- (iii) any defect, deficiency, error, inconsistency, ambiguity, discrepancy or conflict in or between, or omission from any of the documents comprising the Tender Documents, or any other information provided by Council, or Council's Personnel in connection with the Procurement Process.
- (b) If a court finds that Council is liable to any Tenderer with respect to the Procurement Process, the Tenderer agrees that the total aggregate liability of Council to the Tenderer for any negligence of Council or its Personnel, breach of statute by Council, breach of Contract shall be limited to \$1,000.00.

## 7. CONFIDENTIALITY AND USE OF INFORMATION

### 7.1 Confidentiality

#### (a) Council's confidentiality

- (i) Subject to this clause, any information contained in the Tender Documents which is not in the public domain is to be treated by the Tenderer as confidential ('**Confidential Information**'). Confidential Information contained in the Tender Documents is only to be used for the purpose of preparing a Tender in response to the Tender Documents.
- (ii) Each Tenderer:
  - A. must ensure that only appropriate Personnel have access to the Confidential Information. In all such cases, the party is to inform such Personnel of the confidential nature of the information and that it must not be disclosed;
  - B. must not and must ensure that its Personnel do not at any time disclose such Confidential Information directly or indirectly to any person whatsoever for any reason, or use or permit it to be used directly or indirectly for any reason except to the extent required by a Law; and
  - C. indemnifies Council against any costs (including legal costs), expenses, losses, damages or liability arising out of disclosure or unauthorised use of Confidential Information by the party, or its Personnel.

#### (b) Tenderer's confidentiality

- (i) Subject to clause 7.2, information relating to the Tenderer's assets, operations, business dealings or financial affairs will be treated by Council as being confidential.
- (ii) No other information contained in the Tender will be treated as confidential, unless:
  - A. the information is clearly identified as confidential; and
  - B. Council considers in its discretion, (acting reasonably) that the information should be treated as confidential.

- (iii) Council may use material submitted as, with or in relation to a Tender (including information relating to the design, products or methodology proposed to be used by the Tenderer but not including any material which is to be treated as confidential pursuant to clauses 7.1(b)(i) or 7.1(b)(ii)) for its own purposes, including for the purpose of seeking prices from other Tenderers and for use in a contract with a party other than the Tenderer.

## 7.2 Disclosure by Council

- (a) Notwithstanding the preceding clause, Council may disclose any information contained in a Tender:
  - (i) to comply with any Law including, without limitation under the *Local Government Regulation 2012* (Qld) and the *Right to Information Act 2009* (Qld);
  - (ii) to comply with any of its own policies, procedures and governance requirements; and
  - (iii) to such of its Personnel as is necessary to properly conduct the Procurement Process, including to evaluate and obtain approval of Tenders received.

## 7.3 Media Release

Tenderers must not, either on their own account or in conjunction with other parties, issue any publication, advertisement, document, article or information whether verbal or written, concerning the Purpose for Request, the Agreement or the Procurement Process in any media without the prior approval of Council.

## SECTION D – RESPONSE SCHEDULES

**All parts of Section D – Response Schedules must be completed and returned. If a Tender contains incomplete parts of this Section D, the Tender will be a Non-Conforming Tender.**

### Part A: Tenderer Details

<b>Name of Tenderer</b>	
<b>ABN/ACN</b>	
<b>Contact Person</b>	
<b>Position of Contact Person</b>	
<b>Street Address of Tenderer</b>	
<b>Postal Address of Tenderer</b>	
<b>Email Address of Tenderer</b>	
<b>Contact Telephone of Tenderer</b>	
<b>Alternative Contact Telephone of Tenderer</b>	
<b>Is the Tenderer registered for GST?</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Does the Tenderer have any Conflicts of Interest?</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No  If Yes, include details on additional pages.

**Important Note:** The Tenderer acknowledges and agrees that the party named in this Part A shall be the party under the Contract of Sale in the event the Tenderer's Tender is successful.

## Part B: Lot being tendered for

Tenderer to confirm which lot is the subject of their Tender by ticking or crossing the box beside the lot that is the subject of the Tenderer's Tender.

If the Tenderer is submitting a Tender for more than one lot, the Tenderer must tick all boxes that apply.

Lot No.	Survey Plan No	Area (in m <sup>2</sup> )	<input checked="" type="checkbox"/>
5	SP313219	4020	<input type="checkbox"/>
6	SP313219	2355	<input type="checkbox"/>
7	SP313219	3009	<input type="checkbox"/>
8	SP313219	2948	<input type="checkbox"/>
9	SP313219	3571	<input type="checkbox"/>
12	SP313219	3264	<input type="checkbox"/>
13	SP313219	3264	<input type="checkbox"/>
14	SP313219	4728	<input type="checkbox"/>
15	SP313219	4779	<input type="checkbox"/>
16	SP313219	3298	<input type="checkbox"/>
17	SP313219	3298	<input type="checkbox"/>
20	SP313219	5057	<input type="checkbox"/>
22	SP313219	2374	<input type="checkbox"/>
23	SP313219	2714	<input type="checkbox"/>
24	SP313219	3807	<input type="checkbox"/>

### **Part C: Purchase Price**

Tenderer to insert proposed Purchase Price under the Contract of Sale.

If the Tenderer's Tender is for multiple lots, the Tenderer must attach additional sheets with the relevant purchase prices, and specify what purchase price applies to which lot.

\$ \_\_\_\_\_ (excluding GST)

### **Part D: Proposed Use**

Tenderer to attach a summary document of no more than 5 pages explaining:

- the proposed use of the lot;
- any approvals required before the proposed use can be realised;
- the timing for the proposed use;
- the Tenderer's financial capacity to give effect to the proposed use;
- the economic and other opportunities that the proposed use is likely to bring to the Murweh local government area.

## Part E: Tenderer Execution

I/We (“the Tenderer”) acknowledge that:

- the Tenderer has read and understand, and agrees to be bound by, the Request for Tender, including the Conditions of Tendering;
- the Tenderer has completed all parts of the Response Schedules;
- if the Tenderer’s Tender is accepted:
  - the Tenderer must take all steps reasonably required by Council to complete and sign any documents that Council requires to form part of the Agreement, including the Contract of Sale in the form set out in Section E, subject to the completion of any uncompleted details in the Reference Schedule of the Contract of Sale as agreed by Council;
  - the Contract Date in the Contract of Sale shall be the date that Council communicates its acceptance of the Tender to the Tenderer;
  - without limiting or derogating from the conditions set out in the Contract of Sale, the Tenderer acknowledges that by submitting this Tender, the Tenderer has sufficient finance to complete the purchase for the Purchase Price, and the Contract of Sale is unconditional in this regard.

<b>SIGNED, SEALED AND DELIVERED by THE TENDERER</b>	
Signature	
Name of Signatory	
Signature of Second Signatory (if applicable)	
Name of Second Signatory (if applicable)	
Witness Signature	
Date	

## SECTION E – CONTRACT OF SALE

---

# Contract for Commercial Land and Buildings

*Eighth Edition*

*This document has been approved by The Real Estate Institute of Queensland Limited and the Queensland Law Society Incorporated as being suitable for the sale and purchase of Commercial Land and Buildings in Queensland.*

**The Seller and Buyer agree to sell and buy the Property under this Contract.**

## REFERENCE SCHEDULE

### A CONTRACT DATE

NOTE 1

### B AGENT:

NAME: WITHOUT THE INTERVENTION OF AN AGENT

ADDRESS:

SUBURB:

STATE:

POSTCODE:

PHONE:

FAX:

EMAIL:

LICENCE NO:

ABN/ACN:

### C SELLER:

NAME: MURWEH SHIRE COUNCIL

ADDRESS: 95 - 101 ALFRED STREET

SUBURB: CHARLEVILLE

STATE: QLD

POSTCODE: 4470

PHONE:

FAX:

MOBILE:

EMAIL:

ABN/ACN:

NAME:

ADDRESS:

SUBURB:

STATE:

POSTCODE:

PHONE:

FAX:

MOBILE:

EMAIL:

ABN/ACN:

### D SELLER'S SOLICITOR:

NAME: PRESTON LAW

ADDRESS: 15 SPENCE STREET

SUBURB: CAIRNS

STATE: QLD

POSTCODE: 4870

PHONE:

FAX:

MOBILE:

EMAIL:

ABN/ACN:

07 4052 0717

07 4052 0777

jbodenmann@prestonlaw.com.au

### E BUYER:

NAME:

ADDRESS:

SUBURB:

STATE:

POSTCODE:

PHONE:

FAX:

MOBILE:

EMAIL:

ABN/ACN:

NAME:

ADDRESS:

SUBURB:

STATE:

POSTCODE:

PHONE:

FAX:

MOBILE:

EMAIL:

ABN/ACN:

**INITIALS** (Note: initials not required if signed with Electronic Signature)

000018566071

**F BUYER'S SOLICITOR:**

NAME: \_\_\_\_\_  
 ADDRESS: \_\_\_\_\_  
 \_\_\_\_\_  
 SUBURB: \_\_\_\_\_ STATE: \_\_\_\_\_ POSTCODE: \_\_\_\_\_  
 PHONE: \_\_\_\_\_ FAX: \_\_\_\_\_ MOBILE: \_\_\_\_\_ EMAIL: \_\_\_\_\_ ABN/ACN: \_\_\_\_\_

**G DEPOSIT HOLDER:**

NAME: \_\_\_\_\_ PHONE: \_\_\_\_\_  
 PRESTON LAW TRUST ACCOUNT

**H LAND:**

ADDRESS: \_\_\_\_\_  
 \_\_\_\_\_  
 SUBURB: \_\_\_\_\_ STATE: \_\_\_\_\_ POSTCODE: \_\_\_\_\_

NOTE 2  
(See  
Warning)

Present Use: (if any) VACANT LAND  
 Description: \_\_\_\_\_

Title Reference: \_\_\_\_\_ Area: \_\_\_\_\_ ← more or less

NOTE 3

Type of Holding: FREEHOLD Lease No: \_\_\_\_\_  
 Local Government: MURWEH

**I IMPROVEMENTS INCLUDED IN SALE:**

NOTE 4

Nature of Buildings: NOT APPLICABLE

Unless excluded below the Purchase Price includes all partitions, stoves, hot water systems, wall-to-wall floor coverings, drapes and tracks, blinds, light fittings, clothes lines, hoists, fixed television or satellite antennae or dishes, in-ground shrubs and all fixtures as inspected by the Buyer.

Exclusions: \_\_\_\_\_  
 \_\_\_\_\_

**J OTHER CHATELS INCLUDED IN SALE: ← Attach inventory if insufficient space**

NIL  
 \_\_\_\_\_

**K THE LAND IS SOLD AS:**

Choose which applies →  Freehold ← Subject to the reservations exceptions and conditions in the deed of grant  
 Leasehold ← Subject to the conditions of the Crown leasehold title

**L ENCUMBRANCES:**

Is the Property sold subject to any Encumbrances?  No  Yes, listed below:

\_\_\_\_\_

← **WARNING TO SELLER:** You are required to disclose all Title Encumbrances which will remain after settlement (for example, easements on your title and statutory easements for sewerage and drainage which may not appear on a title search). Failure to disclose these may entitle the Buyer to terminate the contract or to compensation. It is NOT sufficient to state "refer to title", "search will reveal", or similar.

**M LEASES AND SERVICE CONTRACTS:**

NOTE 5 See Lease Schedule and Service Contract Schedule.

**N PURCHASE PRICE:**

\$ \_\_\_\_\_

INITIALS (Note: initials not required if signed with Electronic Signature)

000018566071

**O DEPOSIT:**

\$ 5% PURCHASE PRICE Initial Deposit payable on the day the Buyer signs this contract unless another time is specified below:

\$ \_\_\_\_\_ Balance Deposit (if any) payable on: \_\_\_\_\_

**Deposit Holder's Trust Account**

PRESTON LAW TRUST ACCOUNT

BANK: ANZ

BSB: 014 734

ACCOUNT NO: 835 827 858

**P DEFAULT INTEREST RATE:**

CLAUSE 11  
&  
NOTE 6

\_\_\_\_\_ % ← If no figure is inserted, the Contract Rate applying at the Contract Date published by the Queensland Law Society Inc. will apply.

**Q SETTLEMENT DATE:**

Date: 30 DAYS FROM THE CONTRACT DATE

or the next Business Day if that is not a Business Day in the city or town in item R

**R CITY OR TOWN FOR SETTLEMENT:**

CLAUSES  
25.1 & 25.2

CAIRNS

**FINANCE**

NOTE 7 **SUBJECT TO FINANCE:**

If this Contract is **subject to finance** then Items S, T and U must be completed in every respect and Item V must be deleted and initialled.

CLAUSE 31 **NOT SUBJECT TO FINANCE:**

If this Contract is **not to be subject to finance** then Items S, T and U must be deleted and initialled and Item V shall apply.

~~**S LENDER OR CLASS OF LENDER:**~~

~~**T THE APPROVAL DATE:**~~

~~The \_\_\_\_\_ day of \_\_\_\_\_  
MONTH YEAR~~

~~OR the next Business Day if that is not a Business Day in the city or town in item R~~

~~**U AMOUNT OF LOAN:**~~

~~\$ \_\_\_\_\_~~

**V**

THIS CONTRACT IS NOT SUBJECT TO FINANCE AND CLAUSE 31 OF THE STANDARD COMMERCIAL CONDITIONS DOES NOT APPLY.

**W NEIGHBOURHOOD DISPUTES (DIVIDING FENCES AND TREES) ACT 2011**

The Seller gives notice to the Buyer in accordance with section 83 of the Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 that the Land:

(select whichever is applicable)

\*is not affected by any application to, or an order made by, the Queensland Civil and Administrative Tribunal (QCAT) in relation to a tree on the Land

\*is affected by an application to, or an order made by, QCAT in relation to a tree on the Land, a copy of which has been given to the Buyer prior to the Buyer signing the contract.

← **WARNING:** Failure to comply with section 83 Neighbourhood Disputes (Dividing Fences and Trees Act) 2011 by giving a copy of an order or application to the Buyer (where applicable) prior to Buyer signing the contract will entitle the Buyer to terminate the contract prior to Settlement.

**INITIALS** (Note: initials not required if signed with Electronic Signature)

000018566071

## GOODS AND SERVICES TAX - WARNING

Marking the GST Items in the GST Table may have significant consequences for the Seller and Buyer. The Seller and Buyer should seek professional advice about the completion of the GST Items and not rely on the Agent to complete the GST items.

Notes to Completion:

A. Only 1 box in the selected item must be marked.

B. If the Yes box in item GST 1 is marked:

- items GST2 and GST3 must not be marked;
- despite any markings of Items GST2 and GST3, Clauses 34.4, 34.5 and 34.6 do not apply.

C. If the Yes box in item GST2 is marked:

- item GST1 and GST3 must not be marked;
- despite any marking of Items GST1 and GST3, Clauses 34.4, 34.5 and 34.7 do not apply.

**GST1 GOING CONCERN:**

Is this a sale of a Going Concern? Yes

If Yes, Clause 34.7 (If the Supply is a Going Concern) applies.

Otherwise Clause 34.7 (If the Supply is a Going Concern) does not apply.

If the Yes box is marked, do not complete Items GST2 and GST3.

←**WARNING:** There are strict requirements for the sale of a Going Concern under the GST Act. If in doubt about complying with these provisions, seek professional advice before marking this item.

**GST2 MARGIN SCHEME:**

Is the Margin Scheme to apply to the sale of the Property? Yes

If Yes, Clause 34.6 (Margin Scheme) applies.

Otherwise Clause 34.6 (Margin Scheme) does not apply.

The Seller must not apply the Margin Scheme to the Supply of the Property if Clause 34.6 does not apply.

If the Yes box is marked, do not complete Items GST1 and GST3.

**GST3 INCLUSIVE OR EXCLUSIVE PURCHASE PRICE:**

Does the Purchase Price include GST? Yes  No

If Yes, Clause 34.4 (Purchase Price Includes GST) applies.

If No, Clause 34.5 (Purchase Price Does Not Include GST) applies.

If neither box is marked or both boxes are marked, Clause 34.4 (Purchase Price Includes GST) applies.

↑ Mark 1 box only

←Do not complete Item GST3 if Item GST1 (Going Concern) or Item GST2 (Margin Scheme) are marked Yes.

**GST WITHHOLDING OBLIGATIONS**

Is the Buyer registered for GST and acquiring the Land for a creditable purpose?

(select whichever is applicable)

Yes

No

[Note: If the Buyer selects [No] the Seller may be required to give a notice under section 14-255 of the Withholding Law prior to settlement]

←**WARNING:** the Buyer warrants in clause 4.5 that this information is true and correct.

**Y BUILDING AND/OR PEST INSPECTION DATE**

Inspection Date: NOT APPLICABLE

← If "Inspection Date" is not completed, the contract is not subject to an inspection report and clause 35 does not apply.

**INITIALS** (Note: initials not required if signed with Electronic Signature)

000018566071

**LEASE SCHEDULE\***

See Clause 32 of Standard Commercial Terms

**LEASE 1:**

Name of Tenant: NOT APPLICABLE \_\_\_\_\_

Use: \_\_\_\_\_

Location / Tenancy No: \_\_\_\_\_

Area of Tenancy (m<sup>2</sup> approx): \_\_\_\_\_

Current Rental per Annum: \$ \_\_\_\_\_  inclusive of outgoings  exclusive of outgoings

Current Commencement Date: \_\_\_\_\_

Current Lease Term: \_\_\_\_\_

Remaining Option/s: Option 1 Term: \_\_\_\_\_ years

Option 2 Term: \_\_\_\_\_ years

Option 3 Term: \_\_\_\_\_ years

Tenant Carpark: No.: \_\_\_\_\_ Rate: \$ \_\_\_\_\_ per  annum  month

**LEASE 2:**

Name of Tenant: \_\_\_\_\_

Use: \_\_\_\_\_

Location / Tenancy No: \_\_\_\_\_

Area of Tenancy (m<sup>2</sup> approx): \_\_\_\_\_

Current Rental per Annum: \$ \_\_\_\_\_  inclusive of outgoings  exclusive of outgoings

Current Commencement Date: \_\_\_\_\_

Current Lease Term: \_\_\_\_\_

Remaining Option/s: Option 1 Term: \_\_\_\_\_ years

Option 2 Term: \_\_\_\_\_ years

Option 3 Term: \_\_\_\_\_ years

Tenant Carpark: No.: \_\_\_\_\_ Rate: \$ \_\_\_\_\_ per  annum  month

\* Attach further Schedule if insufficient space

**INITIALS** (Note: initials not required if signed with Electronic Signature)

000018566071

**SERVICE CONTRACT SCHEDULE\***

See Clause 32 of Standard Commercial Terms

**CONTRACT 1:**

Contractor: NOT APPLICABLE

Service Performed:

Cost: \$ \_\_\_\_\_ per  annum  quarter  month

**CONTRACT 2:**

Contractor:

Service Performed:

Cost: \$ \_\_\_\_\_ per  annum  quarter  month

**CONTRACT 3:**

Contractor:

Service Performed:

Cost: \$ \_\_\_\_\_ per  annum  quarter  month

**CONTRACT 4:**

Contractor:

Service Performed:

Cost: \$ \_\_\_\_\_ per  annum  quarter  month

**CONTRACT 5:**

Contractor:

Service Performed:

Cost: \$ \_\_\_\_\_ per  annum  quarter  month

\* Attach further Schedule if insufficient space

## **SPECIAL CONDITIONS**

The approval by The Real Estate Institute of Queensland Limited and the Queensland Law Society Inc does not extend to any alterations to the printed text of the Standard Commercial Terms or to any Special Conditions of this Contract. The Standard Commercial Terms may need to be added to or varied by inserting specifically prepared Special Conditions in this Contract. If the printed text of the Standard Commercial Terms is altered, or Special Conditions are included, it is recommended that the Seller and the Buyer consult their respective legal advisers prior to signing this Contract.

**INITIALS** *(Note: initials not required if signed with Electronic Signature)*

000018566071

**SIGNATURES:**

Buyer's signature: \_\_\_\_\_

Name of person signing: \_\_\_\_\_

By signing this contract, I warrant that I am the Buyer named in the Reference Schedule or authorised by the Buyer to sign.

Witness's signature: \_\_\_\_\_

Name of witness: \_\_\_\_\_

(Note: No witness is required if the Buyer signs using an Electronic Signature)

Buyer's signature: \_\_\_\_\_

Name of person signing: \_\_\_\_\_

By signing this contract, I warrant that I am the Buyer named in the Reference Schedule or authorised by the Buyer to sign.

Witness's signature: \_\_\_\_\_

Name of witness: \_\_\_\_\_

(Note: No witness is required if the Buyer signs using an Electronic Signature)

Seller's signature: \_\_\_\_\_

Name of person signing: \_\_\_\_\_

By signing this contract, I warrant that I am the Seller named in the Reference Schedule or authorised by the Seller to sign.

Witness's signature: \_\_\_\_\_

Name of witness: \_\_\_\_\_

(Note: No witness is required if the Seller signs using an Electronic Signature)

Seller's signature: \_\_\_\_\_

Name of person signing: \_\_\_\_\_

By signing this contract, I warrant that I am the Seller named in the Reference Schedule or authorised by the Seller to sign.

Witness's signature: \_\_\_\_\_

Name of witness: \_\_\_\_\_

(Note: No witness is required if the Seller signs using an Electronic Signature)

**DEPOSIT HOLDER'S ACKNOWLEDGEMENT:**

NOTE 8 The deposit holder acknowledges having received \$ \_\_\_\_\_ as the Deposit or on account of the Deposit and agrees to hold that amount and any balance of the Deposit when received as deposit holder for the parties as provided in this Contract.

Deposit holder's Signature: \_\_\_\_\_

Licence No.: \_\_\_\_\_

**INITIALS** (Note: initials not required if signed with Electronic Signature)

000018566071

# Standard Commercial Terms | Commercial Land and Buildings

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## 1 DEFINITIONS

1.1 In this Contract, terms in **bold** in the Reference Schedule have the meanings shown opposite them and unless the context otherwise indicates:

- (a) **"Agent"** means the person named in item B and includes Auctioneer;
- (b) **"ATO"** means the Australian Taxation Office;
- (c) **"ATO Clearance Certificate"** means a certificate issued under section 14-220(1) of the Withholding Law which is current on the date it is given to the Buyer;
- (d) **"Bond"** includes any security for payment of rent or other monies or performance of any obligation pursuant to any Lease;
- (e) **"Business Day"** means a day other than:
  - (i) a Saturday or Sunday
  - (ii) a public holiday in the city or town named in Item R; or
  - (iii) a day in the period 27 to 31 December (inclusive);
- (f) **"Buyer"** means the party named in Item E;
- (g) **"CGT Withholding Amount"** means the amount determined under section 14-200(3)(a) of the Withholding Law or, if a copy is provided to the Buyer prior to settlement, a lesser amount specified in a variation notice under section 14-235.

- NOTE 6
- (h) **"Contract Rate"** means the rate of interest at the Contract Date published by the Queensland Law Society Incorporated for the purposes of clause 11;
  - (i) **"Deposit"** means the sum stated in Item O;
  - (j) **"Deposit Holder"** means the person named in Item G or, where no person is named in Item G, the Agent;
  - (k) **"Electronic Signature"** means an electronic method of signing that identifies the person and indicates their intention to sign the contract;
  - (l) **"Encumbrances"** includes but is not limited to:
    - (i) unregistered encumbrances;
    - (ii) statutory encumbrances; and
    - (iii) Security Interests;
  - (m) **"Enterprise"** means the enterprise (as the term is defined in the GST Act) carried on using the Property;
  - (n) **"Financial Institution"** means a bank, building society or credit union;
  - (o) **"GST"** means the goods and services tax under the GST Act;
  - (p) **"GST Act"** means *A New Tax System (Goods and Services Tax) Act* and includes other GST related legislation;
  - (q) **"GST Withholding Amount"** means the amount (if any) determined under section 14-250 of the Withholding Law required to be paid to the Commissioner of Taxation;
  - (r) **"Guarantee"** means a guarantee or an undertaking in relation to any tenant or occupier under a Lease;
  - (s) **"ITAA"** means the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997*;
  - (t) **"Item"** means an item of particulars in the Reference Schedule;

- (u) **"Keys"** means implements or instruments necessary for the purposes of fastening or unfastening:
  - (i) the lock on any gate, door, grille, shutter or lift which secures any means of entrance to or exit from the Land (whether or not such gate, door, grille, shutter or lift forms part of the Property);
  - (ii) any other lock attached to or included in the Property; and includes electronic devices and written records of all codes and combinations necessary for the purposes of fastening or unfastening any such lock;
- (v) **"Land"** means the land described in Item H;
- (w) **"Lease"** means all leases, subleases, agreements for lease, agreements for sublease and tenancy agreements whether oral or in writing, and as the context admits, licences and rights to occupy, and which are set out in the Lease Schedule;
- (x) **"Local Government"** means the relevant local government (and includes the Brisbane City Council);
- (y) **"PPSR"** means the Personal Property Securities Register established under the *Personal Property Securities Act 2009* (Cth);
- (z) **"Property"** means the Property listed in Items H, I and J and includes any part of the Property;
- (aa) **"Purchase Price"** means the sum stated in Item N;
- (bb) **"Rent"** means base rent, turnover rent, percentage rent, contributions to outgoings and any money payable by a tenant to the Seller.
- (cc) **"Security Interests"** means all security interests registered on the PPSR over the Property;
- (dd) **"Seller"** means the party named in Item C;
- (ee) **"Service Contract"** for the purposes of clause 32 of this Contract means any contract between the Seller and another party pertaining to services performed for the benefit of the Property, which are capable of assignment, and which are set out in the Service Schedule Contract and **"Service Contractor"** means any party performing those services;
- (ff) **"Settlement Date"** means the date stated in Item Q or such other date as may be agreed in writing by the parties or fixed pursuant to the conditions of this Contract;
- (gg) **"Site Value"** means:
  - (i) in the case of non-rural land, site Value under the *Land Valuation Act 2010*; or
  - (ii) in the case of rural land, the unimproved value of the Land under the *Land Valuation Act 2010*;
- (hh) **"Solicitor"** means a solicitor currently entitled to practice in Australia whether acting as principal or agent;
- (ii) **"Transport Infrastructure"** has the meaning in the *Transport Infrastructure Act 1994*; and
- (jj) **"Withholding Law"** means Schedule 1 to the *Taxation Administration Act 1953* (Cth).

1.2 Unless the contrary is shown, the Contract shall be deemed to have been formed on the date of this Contract and the date of this Contract shall be deemed to be the date stated in Item A.

**INITIALS** (Note: initials not required if signed with Electronic Signature)

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- 1.3** Any reference in this Contract to a statute includes:
- (a) any statute amending, consolidating or replacing the statute; and
  - (b) Orders in Council, proclamations, regulations, rules, by-laws and ordinances made under the statute.
- 1.4** In this Contract, unless inconsistent with the context or subject matter, where the term "Item" is used in conjunction with a particular letter of the alphabet, it is a reference to the Item set opposite the letter referred to.
- 1.5** Any defined terms used in any part of this Contract shall have the same meaning when used in any other part of this Contract.
- 1.6** The marginal notes in the Reference Schedule are references to clauses or notes, as the case may be, in the Standard Commercial Terms.
- 1.7** This Contract shall be governed by the laws of Queensland.
- 1.8** Headings and notes have been included for ease of reference and guidance and this Contract shall be construed without reference to them.

## 2 BUSINESS DAYS

- 2.1** 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.

## 3 DEPOSIT

- 3.1** The Deposit shall be paid by the Buyer to the Deposit Holder at the times stated in Item O.
- 3.2** If the Buyer:
- (a) fails to pay the Deposit as provided in clause 3.1;
  - (b) pays the Deposit by cheque which is post-dated; or
  - (c) pays the Deposit by cheque which is not honoured on presentation;
- then, the Buyer shall be in substantial breach of this Contract and the Seller may:
- (i) affirm this Contract and exercise the rights expressed in clause 13.2; or
  - (ii) terminate this Contract and exercise the rights expressed in clause 13.3.
- 3.3** The rights and powers conferred by clause 3.2 are in addition to any other rights the Seller may have at law or in equity.
- 3.4** The Deposit shall be retained by the Deposit Holder until settlement or earlier termination of this Contract whereupon the Deposit Holder shall pay the Deposit to the person entitled to it.
- 3.5** If this Contract is terminated pursuant to the provisions of clauses 7.6, 9.3(a), 19, 20.1, 21.1 31.2(a), 32.2, 32.3(b) or 35.4, the Deposit and other monies paid under this Contract shall be refunded to the Buyer by the Seller or the Deposit Holder as the case may be but without interest, costs or damages and the same shall be accepted by the Buyer in full and final satisfaction of all claims.

## 4 SETTLEMENT AND POSSESSION

- 4.1** The balance of the Purchase Price shall be paid on the Settlement Date as the Seller or the Seller's Solicitor directs in exchange for:
- (a) possession of the Property (such possession to be vacant except for any Lease);
  - (b) a properly executed transfer for the Land in favour of the Buyer capable of immediate registration (after stamping) in the appropriate office free from Encumbrances (other than those set out in Item L) and title to the Property (other than the Land) free from Encumbrances (other than those set out in Item L) but subject to the conditions of this Contract;

**NOTE**  
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- (c) any declaration required, by the *Duties Act 2001*, to be furnished to procure the stamping of the transfer;
- (d) such other instruments or declarations as are required by law to be signed by the Seller to procure the stamping and/or registration of the transfer;
- (e) except as otherwise provided in this Contract, any instrument of title for the Land required to register the transfer;
- (f) notices of assignment issued pursuant to clause 16.5;
- (g) all other instruments (which shall be duly stamped) in the possession or control of the Seller evidencing estates and interests affecting the Property and which are exclusive to the Property;
- (h) true copies of all other instruments (which shall be duly stamped) in the possession or control of the Seller evidencing estates and interests affecting the Property but which are not exclusive to the Property;
- (i) the Certificate of Classification pursuant to the *Building Act 1975* appropriate to the uses stated in Item H (if the improvements on the Land may not be lawfully occupied unless such certificate has issued);
- (j) all plans and drawings relating to the construction of the improvements on the Land in the possession or control of the Seller; and
- (k) all documents in the possession or control of the Seller which the Buyer would reasonably require to enable the Buyer to manage the Property and to prepare returns under the ITAA.

- 4.2** If both of the following apply:

- (a) the sale is not an excluded transaction under section 14-215 of the Withholding Law; and
- (b) the Seller has not given the Buyer on or before settlement for each person comprising the Seller either:
  - (i) an ATO Clearance Certificate; or
  - (ii) a variation notice under section 14-235 of the Withholding Law which remains current at the Settlement Date varying the CGT Withholding Amount to nil,

then:

- (c) for clause 4.1, the Seller irrevocably directs the Buyer to draw a bank cheque for the CGT Withholding Amount in favour of the Commissioner of Taxation or, if the Buyer's Solicitor requests, the Buyer's Solicitor's Trust Account;
- (d) the Buyer must lodge a *Foreign Resident Capital Gains Withholding Purchaser Notification Form* with the ATO for each person comprising the Buyer and give copies to the Seller with the payment reference numbers (PRN) on or before settlement;
- (e) the Seller must return the bank cheque in paragraph (c) to the Buyer's Solicitor (or if there is no Buyer's Solicitor, the Buyer) at settlement; and
- (f) the Buyer must pay the CGT Withholding Amount to the ATO in accordance with section 14-200 of the Withholding Law and give the Seller evidence that it has done so within 2 Business Days of settlement occurring.

- 4.3** For clause 4.2 and section 14-215 of the Withholding Law, the market value of the CGT asset is taken to be the Purchase Price less any GST included in the Purchase Price for which the Buyer is entitled to an input tax credit unless:

- (a) the Property includes items in addition to the Land and Improvements; and
- (b) no later than 2 Business Days prior to the Settlement Date, the Seller gives the Buyer a valuation of the Land and Improvements prepared by a registered valuer,

in which case the market value of the Land and Improvements will be as stated in the valuation.

- 4.4 If the Buyer is required to pay the GST Withholding Amount to the Commissioner of Taxation at settlement pursuant to section 14-250 of the Withholding Law:
- (a) the Seller must give the Buyer a notice in accordance with section 14-255(1) of the Withholding Law;
  - (b) prior to settlement the Buyer must lodge with the ATO:
    - (i) a *GST Property Settlement Withholding Notification* form ("Form 1"); and
    - (ii) a *GST Property Settlement Date Confirmation* form ("Form 2");
  - (c) on or before settlement, the Buyer must give the Seller copies of:
    - (i) the Form 1;
    - (ii) confirmation from the ATO that the Form 1 has been lodged specifying the Buyer's lodgement reference number and payment reference number;
    - (iii) confirmation from the ATO that the Form 2 has been lodged; and
    - (iv) a completed ATO payment slip for the Withholding Amount.
  - (d) the Seller irrevocably directs the Buyer to draw a bank cheque for the GST Withholding Amount in favour of the Commissioner of Taxation and deliver it to the Seller at settlement; and
  - (e) the Seller must pay the GST Withholding Amount to the ATO in compliance with section 14-250 of the Withholding Law promptly after settlement.
- 4.5 The Buyer warrants that the statements made by the Buyer in the Reference Schedule under GST Withholding Obligations are true and correct.

## 5 KEYS

- 5.1 Immediately on settlement, the Seller shall deliver all Keys, which are in the possession or under the control of the Seller, in accordance with any notice given in writing by the Buyer to the Seller and failing such notice the Seller shall deliver the Keys:
- (a) to the Buyer, if the Buyer is present personally at settlement;
  - (b) to the Buyer's Solicitor at settlement, if the Buyer is not present personally;
  - (c) to the Seller's Agent at the address shown in Item B, if neither the Buyer nor any Solicitor acting for the Buyer is present personally at settlement;
  - (d) to and will leave the keys at the Property if none of the provisions of clauses 5.1(a), 5.1(b) or 5.1(c) are applicable.
- 5.2 At or prior to settlement, the Seller shall make a written record of all codes and combinations necessary for the purposes of fastening or unfastening any lock referred to in the definition of Keys.

## 6 INVESTMENT OF DEPOSIT

- 6.1 If either party directs by notice in writing to the Deposit Holder to invest the Deposit then (where the Deposit Holder is lawfully able) the Deposit Holder shall invest the Deposit with any Financial Institution permitted by law for the investment of trust monies until the Settlement Date.
- 6.2 If this Contract is completed, all interest accruing on the investment of the Deposit shall be shared equally between the Seller and the Buyer. If this Contract is not completed for any reason, the interest accruing on the Deposit shall be paid to the party entitled to the Deposit upon termination of this Contract.

- 6.3 The Deposit and any accrued interest shall be invested at the risk of the party to whom the Deposit and accrued interest is ultimately payable and the Deposit Holder shall not be liable for any loss suffered by the parties in consequence of an investment pursuant to clause 6.1.
- 6.4 To facilitate investment of the Deposit, each party shall notify its tax file number to the Deposit Holder within 4 Business Days following the date of this Contract.
- 6.5 The parties authorise the Deposit Holder to prepare and lodge any taxation return necessary in respect of the Deposit and interest and to pay any tax assessed out of the Deposit and interest and indemnify the Deposit Holder against any taxation assessed in respect of such interest.
- 6.6 The Seller and the Buyer shall be deemed to be presently entitled in equal shares to any interest accrued for the purposes of ITAA.

## 7 SELLER'S STATEMENT

- 7.1 The Buyer is not entitled to deliver to the Seller requisitions or enquiries on or to the Seller's title to the Property.
- 7.2 The Seller states that, except as disclosed in this Contract, each of the following statements is accurate at the time the Seller executes this Contract:
- (a) the Seller has free and unqualified capacity and power to contract and to complete this Contract;
  - (b) the Seller is not under any legal disability which affects the Seller's capacity to contract and to complete this Contract; and
  - (c) if the Seller is a trustee, the Seller has free and unqualified power of sale under the instrument creating the trust, and that instrument does not require the consent or authority of any person to the entering into of this Contract or the settlement of this Contract.
- 7.3 The Seller states that, except as disclosed in this Contract, each of the following statements will be accurate at the Settlement Date:
- (a) there is no current litigation by any person claiming an estate or interest in the Property;
  - (b) there is no unsatisfied judgement, order or writ of execution which effects the Property;
  - (c) no order has been made under Part 11 of the *Property Law Act 1974* which would operate as a charge on the Land;
  - (d) there is no order of a Court or other competent authority affecting the ability of the Seller to complete this Contract;
  - (e) no notice has been issued by a competent authority or proceedings instituted in a Court pursuant to any statute whereby the interest of the Seller in the Property may be rendered liable to forfeiture to the Crown;
  - (f) if the Land is Crown leasehold title, the Crown leasehold title is not rendered liable to forfeiture by reason of the non-observance or non-performance of the covenants or conditions of the Lease;
  - (g) if the Seller is a natural person, the Seller is not a bankrupt nor has the Seller signed any authority under section 188 of the *Bankruptcy Act 1966* (Cth);
  - (h) if the Seller is a corporation within the meaning of the *Corporations Act 2001* (Cth):
    - (i) the Seller is not in liquidation;
    - (ii) no action has been taken by or against the Seller which could lead to the winding up of the Seller;
    - (iii) an administrator, controller or managing controller has not been appointed to the Seller or in respect of the whole or any part of the Property; and

**INITIALS** (Note: initials not required if signed with Electronic Signature)

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- (iv) a compromise or arrangement has not been proposed between the Seller and its members or creditors nor agreed to by the members or creditors nor sanctioned by a Court; and
  - (i) the Seller is the registered owner or the lessee of the Land (according to the title expressed or implied in this Contract).
- 7.4 If a statement contained in either clause 7.2 or clause 7.3 is not accurate then the Buyer may terminate this Contract by notice in writing to the Seller.
- 7.5 If this Contract is terminated pursuant to clause 7.4, the Deposit and other monies paid under this Contract shall be refunded to the Buyer by the Seller or the Deposit Holder as the case may be and the Seller shall be liable by way of damages as compensation for the loss suffered by the Buyer in such sum as at the time this Contract was made was reasonably foreseeable as the loss liable to result, and which does in fact result from a termination of this Contract due to a statement contained in either clause 7.2 or clause 7.3 not being accurate.
- 7.6 (1) 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 date of this Contract;
- (a) there is no outstanding obligation on the Seller to give notice to the administering authority under EPA of a notifiable activity being conducted on the Land; and
  - (b) 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.
- (2) If the Seller breaches a warranty in clause 7.6(1), the Buyer may:
- (a) terminate this Contract by notice in writing to the Seller given 14 days after the date of this Contract; or
  - (b) complete this Contract and claim compensation, but only if the Buyer claims it in writing before settlement of this Contract.
- 7.7 If requested by the Buyer, the Seller within 14 days of such request shall:
- (a) produce to the Buyer all unregistered documents relating to the Property and full and proper particulars of all unregistered dealings that so relate; and
  - (b) deliver to the Buyer photocopies of such documents or dealings (if the dealings are in writing) certified by the Seller or the Seller's Solicitor as being true copies.

## 8 ERRORS AND MISDESCRIPTIONS

- 8.1 If there is any immaterial mistake or error in the description or particulars of the Property or as to title, the Buyer shall not be entitled to terminate this Contract but shall be entitled to such compensation (if demanded in writing on or before the Settlement Date) as the case may require. The Buyer shall not be entitled to delay settlement or to withhold any part of the Purchase Price by reason of any such claim for compensation.
- 8.2 If there is any material mistake or error in the description or particulars of the Property or as to title and the Buyer does not exercise any right which the Buyer has at law to terminate this Contract, the Buyer shall be entitled to such compensation (if demanded in writing on or before the Settlement Date) as the case may require. The Buyer shall not be entitled to delay settlement or to withhold any part of the Purchase Price by reason of any such claim for compensation.

## 9 SURVEY AND INSPECTION

- 9.1 The Buyer shall be entitled to conduct a survey of the Land to ascertain the boundaries and area of the Land and to establish the location of structures purporting to be on the Land or on adjoining land.
- 9.2 If there is any immaterial error in the boundaries or area of the Land or any immaterial encroachment, the Buyer shall not be entitled to terminate this Contract but shall be entitled to such compensation (if demanded in writing on or before the Settlement Date) as the case may require. The Buyer shall not be entitled to delay settlement or to withhold any part of the Purchase Price by reason of any such claim for compensation.
- 9.3 If there is any material error in the boundaries or area of the Land or any material encroachment, the Buyer shall be entitled to elect by notice in writing to the Seller given on or before the Settlement Date either:
- (a) to terminate this Contract; or
  - (b) to complete this Contract with compensation, in which event the Buyer shall be entitled to such compensation as the case may require and shall not be entitled to delay settlement or to withhold any part of the Purchase Price by reason of any such claim for compensation.

## 10 EXECUTION AND PRODUCTION OF DOCUMENTS

- 10.1 Subject to compliance by the Buyer with the Buyer's obligations under or by virtue of this Contract and subject to clause 10.2, the Seller shall as required do all acts and execute all documents necessary for the purpose of completing the sale and ensuring that the Buyer obtains a good and valid title to the Property.
- 10.2 All transfer documents, any declaration required pursuant to clause 4.1(c), and all instruments or declarations required pursuant to clause 4.1(d) shall be prepared by and at the expense of the Buyer and delivered to the Seller within a reasonable time prior to the Settlement Date.
- 10.3 If so requested by the Buyer, the Seller shall deliver to the Buyer, prior to the Settlement Date, photocopies of the documents executed by the Seller.
- 10.4 After execution of the transfer, if so requested by the Buyer and upon payment of the usual production fee by the Buyer, the Seller shall cause the transfer to be tendered to the Office of State Revenue for stamping, together with any declaration referred to in clause 4.1(c) and thereupon the Seller shall be deemed to have complied with the Seller's obligations under clause 4.1(c).
- 10.5 If an instrument of title is required to register a transfer of the Land and the instrument of title relating to the Land also relates to other land, the Seller shall not be obliged to deliver it to the Buyer but shall enter into such reasonable covenants with the Buyer as the Buyer may require for production of the instrument of title.
- 10.6 If the instrument of title is partially cancelled the Seller shall not be obliged to produce a separate instrument of title on settlement.
- 10.7 Where either clause 10.5 or clause 10.6 applies, the Buyer shall bear the cost of any new instrument of title relating to the Land.

## 11 INTEREST ON LATE PAYMENTS

- 11.1 The Buyer must pay interest at the annual rate in item P:
- (a) on any amount payable under this contract which is not paid when due; and
  - (b) on any judgement for money payable under this contract.
- 11.2 Interest continues to accrue:
- (a) under clause 11.1(a), from the date it is due until paid; and

(b) under clause 11.1(b), from the date of judgement until paid.

**11.3** Any amount payable under clause 11.1(a) in respect of a period prior to settlement must be paid by the Buyer at settlement. If this contract is terminated or if any amount remains unpaid after settlement, interest continues to accrue.

**11.4** Nothing in this clause affects any other rights of the Seller under this contract or at law.

## **12 DIVIDING FENCES**

Notwithstanding any provision in the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*, the Seller need not contribute to the cost of construction of any dividing fence between the Land and any adjoining land owned by it. The Buyer waives any right to claim contribution from the Seller.

## **13 BUYER'S DEFAULT**

**13.1** If the Buyer:

- (a) fails to pay the balance of the Purchase Price as provided in clause 4; or
- (b) fails to comply with any of the terms or conditions of this Contract;

then the Seller may:

- (i) affirm this Contract; or
- (ii) terminate this Contract.

**13.2** If the Seller affirms this Contract pursuant to clause 3.2 or clause 13.1, the Seller may:

- (a) sue the Buyer for damages for breach or for specific performance and damages in addition to or instead of damages for breach; and
- (b) recover from the Buyer as a liquidated debt the Deposit or any part of it which the Buyer has failed to pay and shall pay the Deposit or any part of the Deposit which is recovered to the Deposit Holder.

**13.3** If the Seller terminates this Contract pursuant to clause 3.2 or clause 13.1, the Seller may elect to:

- (a) declare the Deposit (or so much of it as shall have been paid) forfeited and/or sue the Buyer for breach; or
- (b) declare the Deposit (or so much of it as shall have been paid) forfeited and/or resell the Property and if the resale is completed within 2 years from the date of termination any deficiency and any expense arising from such resale shall be recoverable by the Seller from the Buyer as liquidated damages;

and in either case the Seller may recover from the Buyer as a liquidated debt the Deposit of any part of it which has not been paid by the Buyer.

**13.4** The rights and powers conferred upon the Seller by this clause 13 are in addition to any other right or power which the Seller may have at law or in equity.

## **14 PARTICULARS OF ADJUSTABLE ITEMS**

**14.1** Within a reasonable time after written request by the Buyer prior to the Settlement Date, the Seller shall deliver to the Buyer:

- (a) a written statement of all rates, taxes, outgoing, rents and profits not capable of discovery by search or enquiry in any office of public record or pursuant to the provisions of any statute in respect of the Property; and
- (b) (where the Land is subject to a Lease) a written statement disclosing to the extent the same is not disclosed in the Lease Schedule:
  - (i) the names and postal addresses of any tenant or other occupier of the Land;

(ii) the amounts, the due days for and the manner of payment of all periodic sums payable in respect of the Lease;

(iii) the date to which the same shall have been paid; and

(iv) the amounts of any Bond held from any such tenant or other occupier and the identity of the party holding such Bond.

**14.2** If the Seller becomes aware of any information at any time between the date of delivering any such statement and settlement the effect of which is or may be to render such statement untrue in a material respect the Seller shall immediately disclose that information to the Buyer by notice in writing.

**14.3** The Seller warrants that every such statement shall be true at the Settlement Date.

## **15 ADJUSTMENTS**

**15.1** The Seller shall pay or discharge all rates, taxes (including land tax) and other outgoing (except insurance premiums on insurances effected by the Buyer) with respect to the Property up to and including the date of possession.

**15.2** The Buyer shall pay or discharge all rates, taxes (including land tax) and other outgoing with respect to the Property from the date of possession.

**15.3** Except for water charges based on the quantity of water used all rates, taxes and outgoing shall be apportioned:

- (a) in the case of those paid by the Seller, on the amount actually paid;
- (b) in the case of those levied but unpaid, on the amount payable disregarding any discount for early payment;
- (c) in the case of those not levied but the amount can be ascertained by advice from the relevant rating and taxing authority, on the amount advised by the relevant rating and taxing authority disregarding any discount for early payment; and
- (d) in the case of those not levied and not ascertainable from the relevant rating and taxing authority and where a separate assessment was issued for the Land for the assessment period immediately prior to the date of possession, on the amount payable in that separate assessment disregarding any discount for early payment.

**15.4** Any rates in the nature of water rates and which are not determined by reference to water usage shall be apportioned in accordance with clause 15.3. Any water charges based on the quantity of water used shall be adjusted in accordance with the following provisions:

- (a) the Buyer, at the expense of the Buyer, shall read or procure the reading of any water meter installed on the Land no more than 5 days and no less than 3 days prior to the date of possession, and shall inform the Seller of the results of the water meter reading;
- (b) the deemed water usage in litres for the whole of the current rating period for water charges ("the deemed water usage") shall be calculated as the amount which is directly proportionate to the water usage between the date of commencement of the current rating period for water charges and the date of the water meter reading referred to in clause 15.4(a) (no allowance being made for seasonal or other factors);
- (c) the likely assessment of water charges for the deemed water usage shall be calculated by using the method and rates then being used by the Local Government or other water supplier ("the likely assessment");
- (d) the likely assessment shall then be apportioned.

## 15.5 Land Tax shall be apportioned:

- (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) if there is no separate Site Value for the Land, on a notional Site Value equal to:

$$\frac{\text{Site Value of the parcel}}{\text{Area of the Parcel}} \times \text{Area of the Land}$$

15.6 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 of the 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 15.3.

## 16 RENTS AND PROFITS GUARANTEES AND BONDS

16.1 The rents and profits with respect to the Property shall benefit the Seller up to and including the date of possession and thereafter shall benefit the Buyer and shall be dealt with as follows:

- (a) all unpaid rents and profits in respect of any period terminating on or prior to the date of possession shall not be apportioned between the parties on settlement but shall be recoverable by the Seller in accordance with clause 16.3;
- (b) all rents and profits paid in advance of the date of possession shall be apportioned between the parties on settlement;
- (c) all rents and profits payable in respect of any period current at the date of possession which have not been paid at the Settlement Date shall be apportioned when received by either party.

16.2 If on settlement a deduction is made in respect of any Bond, the Buyer shall following settlement keep the Seller indemnified in that respect.

16.3 The Seller assigns to the Buyer, subject to the settlement of this Contract and with effect from the Settlement Date:

- (a) the benefit of all conditions contained in any Leases on the part of the tenant or other occupier of the Land given in favour of the Seller or any predecessors in title of the Seller;
- (b) the benefit of all terms and conditions contained in the Service Contracts (subject to the consent of Service Contractor); and
- (c) the benefit of all Guarantees or Bonds held by the Seller in respect of the Leases which are capable of assignment.

provided that all unpaid rents and profits in respect of any period terminating on or prior to the date of possession not apportioned upon settlement shall not be assigned to the Buyer but be recoverable by the Seller and to that extent section 117 of the *Property Law Act 1974* shall not apply.

16.4 The Buyer agrees to retain records relating to the Leases and to produce the Leases and any records relating to the Leases in any proceedings commenced by the Seller to recover any unpaid rents and profits.

16.5 The Seller shall prepare and execute appropriate notices to give effect to the assignments in clause 16.3.

## 17 LIABILITY OF BUYER

17.1 The Property shall be at the risk of the Seller until 5:00pm on the next Business Day after the date of this Contract and then the risk shall pass to the Buyer. The Seller whilst continuing in possession will use the Property with reasonable care.

17.2 From the date of this Contract until settlement, the Seller shall use best endeavours to administer the Property and properly enforce the Leases in accordance with the usual practice of the Seller. Should any matter or circumstance arise which may materially affect the proper performance of the terms of any Lease by any party, the Seller shall immediately notify the Buyer in writing.

17.3 In addition to the obligations contained in Clause 17.2, the Seller shall not without the prior written consent of the Buyer which shall not be unreasonably withheld:

- (a) accept or agree to accept a surrender of any Lease;
- (b) grant any Lease for any part of the Property which is vacant at the date of this Contract or which may become vacant prior to settlement;
- (c) consent to the variation of any Lease, proposed assignment or any other dealing concerning any Lease; or
- (d) negotiate or set new rent.

## 18 ACCESS

18.1 The Seller shall permit the Buyer or any person authorised by the Buyer to enter the Property on the Settlement Date for the purpose of checking the inventory of chattels (if any) and ascertaining the existence and state of repair of the Property.

18.2 The Seller shall permit any person authorised by the Buyer in writing upon reasonable written notice to enter the Property on one occasion for the purposes of reading any water, gas, electricity or other meter.

## 19 CONSENTS

If any consent is required by statute to the sale or the performance of any obligation under or by virtue of this Contract, this Contract is subject to such consent being given and the party who is required, by the statute, to obtain such consent ("Applicant") shall apply for the consent and pursue the application. The Applicant shall pay all costs and fees (other than the other party's solicitor's) in respect of the application. The other party shall if and when required by the Applicant immediately join in the application and/or shall supply such information as shall be reasonably required in support of the application. If the consent is refused or not granted by the Settlement Date then either party may by notice in writing to the other terminate this Contract.

## 20 REQUIREMENTS OF AUTHORITIES

20.1 If it is established that at the date of this Contract the Local Government has given to the Seller or some other person a notice in writing pursuant to sections 247 and 248 of the *Building Act 1975* or sections 167 or 168 of the *Planning Act 2016* in respect of any building or structure on the Land and the notice is current at the Settlement Date the Buyer may by notice in writing to the Seller given on the Settlement Date terminate this Contract.

20.2 Except for any notice referred to in clause 20.1, or a tree order disclosed under section 83 of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*, any valid notice or order issued pursuant to any statute or by any Local Government or Court necessitating the doing of work or the expenditure of money on or in relation to the Property or any path or road adjoining the Land:

- (a) if issued before the date of this Contract shall be fully complied with by the Seller in a proper and workmanlike manner on or before the Settlement Date; or
- (b) if issued on or after the date of this Contract shall be fully complied with by the Buyer who shall indemnify the Seller in respect of the compliance with the notice or order.

If without default of the Buyer this Contract is terminated, the Seller shall pay to the Buyer on demand any amount expended by the Buyer in complying with any notice or order which was of the nature of a capital expenditure or has resulted in a benefit to the Seller.

## 21 PROPERTY ADVERSELY AFFECTED

21.1 If at the Contract Date:

- NOTE**  
2
- (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;
  - (e) there is an outstanding condition of a development approval attaching to the Land under section 73 of the *Planning Act 2016* or section 96 of the *Economic Development Queensland Act 2012* which, if complied with, would constitute a material mistake or error as to the Seller's title to the Property;
  - (f) the Property is affected by the *Queensland Heritage Act 1992* or is included in the World Heritage List;
  - (g) the Property is declared acquisition land under the *Queensland Reconstruction Authority Act 2011*;
  - (h) there is a charge against the Land under section 104 of the *Foreign Acquisitions and Takeovers Act 1975*, and that has not been disclosed in this contract, the Buyer may terminate this contract by notice to the Seller given on or before settlement.

21.2 If no notice is given under clause 21.1, the Buyer will be treated as having accepted the Property subject to all of the matters referred to in that clause.

21.3 The Seller authorises the Buyer to inspect records held by any authority, including Security Interests on the PPSR relating to the Property.

21.4 Before the Settlement Date, the Seller must give the Buyer:

- (a) copies of all documents relating to any unregistered interests in the Property; and
- (b) further copies of details if those previously given cease to be complete or accurate;
- (c) if requested by the Buyer, copies of all Security Interests or sufficient details of the Security Interests to enable the Buyer to undertake a search of the PPSR.

## 22 NO WARRANTY ON PRESENT USE

No warranty is implied that the use of the Property as described in Item H is permissible under any town planning scheme and no compensation is payable if the particulars stated in Item H are not correct.

## 23 COSTS

The parties shall pay their own costs of and incidental to the sale and purchase but all stamp duty on this Contract and any duty in respect of the conveyance by the Seller to the Buyer shall be paid by the Buyer and if not paid by the Buyer may be paid by the Seller and recovered from the Buyer as a liquidated debt.

## 24 MERGER

Despite settlement and despite the registration of the transfer in favour of the Buyer, any general or special condition (or any part or parts thereof) to which effect is not given by settlement or registration and which is capable of taking effect after settlement or registration shall remain in full force and effect.

## 25 TIME AND PLACE FOR SETTLEMENT

- 25.1 Settlement shall be effected at such time and place as may be agreed upon by the parties. The time for settlement shall be between the hours of 9:00am and 4:00pm AEST on the Settlement Date.
- 25.2 In the absence of agreement as to place, settlement shall be effected in the city or town named in Item R at:
- (a) the office of a solicitor or financial institution nominated by the Seller; or
  - (b) if the Seller does not make a nomination at the land registry office in or nearest to the city or town in item R.
- 25.3 Despite clause 25.2 if a mortgage is to be discharged on settlement the Seller may by notice in writing to the Buyer given not less than 2 Business Days prior to the Settlement Date require settlement to take place at the office of the Seller's mortgagee in the city or town named in Item R or if such mortgagee does not have an office in that city or town at the office of such mortgagee in Queensland nearest to that city or town.

## 26 TIME OF THE ESSENCE

- 26.1 Time is of the essence of this contract, except regarding any agreement between the parties on a time of day for settlement and except otherwise provided in this Contract.
- 26.2 Clauses 26.2 to 26.8 apply if a party is unable to perform a Settlement Obligation solely as a consequence of a Delay Event but does not apply where the inability is attributable to:
- (i) damage to, destruction of or diminution in value of the Property or other property of the Seller or Buyer; or
  - (ii) termination or variation of any agreement between a party and another person whether relating to the provision of finance, the release of an Encumbrance, the sale or purchase of another property or otherwise.
- 26.3 Time for the performance of the parties' Settlement Obligations is suspended and ceases to be of the essence of the contract and the parties are deemed not to be in breach of their Settlement Obligations.
- 26.4 An Affected Party must take reasonable steps to minimise the effect of the Delay Event on its ability to perform its Settlement Obligations.
- 26.5 When an Affected Party is no longer prevented from performing its Settlement Obligations due to the Delay Event, the Affected Party must give the other party a notice of that fact, promptly.
- 26.6 When the Suspension Period ends, whether notice under clause 26.5 has been given or not, either party may give the other party a Notice to Settle.

**26.7** A Notice to Settle must be in writing and state:

- (i) the Suspension Period has ended; and
- (ii) a date, being not less than 5 nor more than 10 Business Days after the date the Notice to Settle is given, which shall become the Settlement Date;
- (iii) that time is of the essence.

**26.8** When Notice to Settle is given, time is again of the essence of the contract.

**26.9** In this clause 26:

- (i) "**Affected Party**" means a party referred to in clause 26.2;
- (ii) "**Delay Event**" means:
  - (a) a tsunami, flood, cyclone, earthquake, bushfire or other act of nature;
  - (b) riot, civil commotion, war, invasion or a terrorist act;
  - (c) an imminent threat of an event in paragraphs (a) or (b); or
  - (d) compliance with any lawful direction or order by a Government Agency;
- (iii) "**Government Agency**" means the government of the Commonwealth of Australia or an Australian State, Territory or local government and includes their authorities, agencies, government owned corporations and authorised officers, courts and tribunals.
- (iv) "**Settlement Obligations**" means, the obligations of the Buyer and Seller under clause 4;
- (v) "**Suspension Period**" means the period during which the Affected Party (or if both the Buyer and Seller are Affected Parties, either of them) remains unable to perform a Settlement Obligation solely as a consequence of a Delay Event.

## **27 NOTICES, COMMUNICATIONS, AUTHORITY DIRECTIONS, ETC**

**27.1** Notices under this contract must be in writing.

**27.2** Notices under this contract or notices required to be given by law may be given and received by the party's solicitor.

**27.3** Notices under this contract or notices required to be given by law may be given by:

- (a) delivering or posting to the other party or its solicitor; or
- (b) sending it to the facsimile number of the other party or its solicitor stated in the Reference Schedule (or another facsimile number notified by the recipient to the sender); or
- (c) sending it to the email address of the other party or its solicitor stated in the Reference Schedule (or another email address notified by the recipient to the sender).

**27.4** Subject to clause 27.5, a notice given after this contract is entered into in accordance with clause 27.3 will be treated as given:

- (a) 5 Business Days after posting;
- (b) if sent by facsimile, at the time indicated on a clear transmission report; and
- (c) if sent by email, at the time it is sent.

**27.5** Notices given by facsimile, by personal delivery or by email between 5pm on a Business Day (the "first Business Day") and 9am on the next Business Day (the "second Business Day") will be treated as given or delivered at 9am on the second Business Day.

**27.6** If two or more notices are treated as given at the same time under clause 27.5, they will be treated as given in the order in which they were sent or delivered.

**27.7** 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.

**27.8** For the purposes of clause 27.3(c) and clause 36.2 the notice or information may be contained within an email, as an attachment to an email or located in an electronic repository accessible by the recipient by clicking a link in an email.

## **28 REMOVAL OF FIXTURES, FITTINGS AND CHATTELS**

**28.1** Unless otherwise agreed between the parties any property not sold under this Contract (other than property of any tenant or other occupier of the Land) shall be removed from the Land prior to delivery of possession.

**28.2** The Seller shall at the Seller's own expense reinstate and make good prior to delivery of possession any damage done to the improvements in removing that property and if the Seller fails to do so the Buyer may do so and recover the costs of so doing from the Seller as a liquidated debt.

**28.3** Any of that property not so removed shall be deemed abandoned by the Seller and the Buyer may without prejudice to any other remedy complete this Contract and appropriate or remove or otherwise dispose of that property as the Buyer thinks fit.

**28.4** Any costs incurred by the Buyer in removing that property or in making good any damage done to the improvements in such removal may be recovered by the Buyer from the Seller and the Seller shall indemnify and hold indemnified the Buyer from and against all claims, demands, actions, costs, judgements and expenses which the Buyer may suffer or incur by reason of any other person claiming any interest in that property.

## **29 CHATTELS**

**29.1** Title to any chattels agreed to be sold by or under this Contract shall pass at settlement.

**29.2** The Seller assigns to the Buyer subject to the settlement of this Contract and with effect from the Settlement Date, the benefit of all warranties capable of assignment held by the Seller in respect of the chattels agreed to be sold. The Seller shall deliver to the Buyer at settlement all documents in the possession or control of the Seller evidencing the warranties referred to in this clause which would be sufficient to enable the Buyer to enforce those warranties.

## **30 APPOINTMENT OF AGENT**

In the absence of any specific appointment the Seller by executing this Contract confirms the appointment of the Seller's Agent (jointly with any other agent in conjunction with whom the Seller's Agent has sold) as the agent of the Seller to introduce a Buyer.

## **31 FINANCE CLAUSE**

**31.1** If Items S, T and U are not deleted, this Contract is subject to the Buyer obtaining approval of a loan from the lender or class of lender specified in Item S on or before the approval date specified in Item T not less than the amount of loan specified in Item U on terms satisfactory to the Buyer. The Buyer must take reasonable steps to obtain the approval.

### **NOTE 7**

**31.2** The Buyer may give notice to the Seller that:

- (a) approval has not been obtained by the approval date and the Buyer terminates this contract; or
- (b) the finance condition has been either satisfied or waived by the Buyer.

**31.3** The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 31.2 by 5pm on the approval date. This is the Seller's only remedy for the Buyer's failure to give notice.

**31.4** The Seller's right under the clause 31.3 is subject to the Buyer's continuing right to give written notice to the Seller of satisfaction, termination or waiver pursuant to clause 31.2.

## **32 PROPERTY SOLD SUBJECT TO LEASES AND SERVICE CONTRACTS**

### **32.1 Seller's Statement**

Where the Property is sold subject to any Lease or Service Contract, the Seller states that, except as disclosed in this Contract, each of the following statements shall be accurate at the Settlement Date:

- (a) the particulars in the Lease Schedule and the Service Contract Schedule are true and correct;
- (b) that no circumstances exist as far as the Seller is aware that would render any Lease liable to forfeiture nor has the Seller agreed to a surrender of any Lease;
- (c) that all Leases and Service Contracts have been disclosed to the Buyer prior to execution of this Contract;
- (d) the Seller is not aware of any breach by the Seller of any Lease or Service Contract;
- (e) where any of the Leases are subject to the application of the *Retail Shop Leases Act 1994* ("Act"), the following further statements by the Seller apply:
  - (i) as far as the Seller is aware the Seller has in all respects complied with the Act in relation to the Leases;
  - (ii) no Lease is subject to an existing or renewed retail tenancy dispute within the meaning of the Act;
  - (iii) there are no mediation agreements, Queensland Civil and Administrative Tribunal proceedings or orders in existence in respect of any Lease;
  - (iv) no tenant has notified the Seller requesting the right to renew any Leases for a further period;
  - (v) no tenant has made a claim upon the Seller to pay compensation for loss or damage suffered by the tenant by virtue of sections 43, 46G or 46K of the Act nor are there any circumstances existing to the Seller's knowledge which might give rise to a claim for such compensation.

### **32.2 Inaccurate Statement**

If a statement contained in clause 32.1 is not accurate then the Buyer may terminate this Contract by notice in writing to the Seller.

### **32.3 Acceptance of Lease and Service Contract Terms**

- (a) Within 7 days of the date of this Contract, the Seller will deliver to the Buyer or the Buyer's solicitor true copies of all Leases and Service Contracts together with a written statement that they constitute the whole of every agreement or arrangement with each of the tenants stated in those Leases or with each of the Service Contractors in those Service Contracts.
- (b) If:
  - (i) the Seller does not deliver to the Buyer or the Buyer's solicitor true copies of all Leases and Service Contracts pursuant to clause 32.3(a); or

- (ii) true copies of all Leases and Service Contracts have been delivered pursuant to clause 32.3(a) and the Buyer is not satisfied with any of the terms and conditions of any Lease or Service Contract;

then in the case of clause 32.3(b)(i) the Buyer shall be entitled to terminate this Contract by notice in writing to the Seller or in the case of clause 32.3(b)(ii) the Buyer shall be entitled to terminate this Contract by written notice to the Seller within 7 days from the date upon which all Leases and Service Contracts have been delivered.

- (c) If the Buyer does not give written notice to the Seller pursuant to clause 32.3(b)(i) or 32.3(b)(ii), the Buyer agrees to be bound by the terms and conditions of each Lease and Service Contract disclosed by the Seller in the Lease Schedule and the Service Contract Schedule from the Settlement Date as if the Buyer were named as lessor in such Lease or as a contracting party in such Service Contract in substitution for the Seller.
- (d) With respect to Service Contracts, clause 32.3(c) will apply subject to the consent of the Service Contractor.
- (e) The amounts paid or payable in respect of the Service Contracts shall be outgoing for the purposes of clause 15 and shall be apportioned accordingly.

## **33 FOREIGN BUYER APPROVAL**

**NOTE**  
10 The Buyer warrants that either:

- (1) the Buyer's purchase of the Property is not a notifiable action; or
- (2) the Buyer has received a no objection notification, under the *Foreign Acquisitions and Takeovers Act 1975*.

## **34 GOODS AND SERVICES TAX**

### **34.1 Definitions**

Words and phrases defined in the GST Act have the same meaning in this Contract unless the context indicates otherwise.

### **34.2 Reference Schedule and Notes**

The Reference Schedule and the Notes to Completion are part of this clause 34.

### **34.3 Taxable Supply**

This clause 34 applies where the transaction is:

- (a) a Taxable Supply; or
- (b) not a Taxable Supply because it is the Supply of a Going Concern.

### **34.4 Purchase Price Includes GST**

If this clause 34.4 applies, the Purchase Price includes the Seller's liability for GST on the Supply of the Property. The Buyer is not obliged to pay any additional amount to the Seller on account of GST on the Supply of the Property.

### **34.5 Purchase Price Does Not Include GST**

If this clause 34.5 applies, the Purchase Price does not include the Seller's liability for GST on the Supply of the Property. The Buyer must on the Settlement Date pay to the Seller in addition to the Purchase Price an amount equivalent to the amount payable by the Seller as GST on the Supply of the Property.

### 34.6 Margin Scheme

**Warning:** The Seller is warranting that the Margin Scheme can apply. If in doubt about using the Margin Scheme you should seek professional advice.

If this clause 34.6 applies:

- (a) the Purchase Price includes the Seller's liability for GST on the Supply of the Property. The Buyer is not obliged to pay any additional amount to the Seller on account of GST on the Supply of the Property;
- (b) the Seller:
  - (i) must apply the Margin Scheme to the Supply of the Property; and
  - (ii) warrants that the Margin Scheme is able to be applied;
- (c) if the Seller breaches clause 34.6(b)(i) or its warranty under clause 34.6(b)(ii) then:
  - (i) the Buyer may terminate this Contract if it becomes aware of the breach prior to the Settlement Date.
  - (ii) if the Buyer does not terminate this Contract under clause 34.6(c)(i) or does not become aware of the breach until after the Settlement Date, it must pay to the Seller an amount equal to the Input Tax Credit which the Buyer will receive for GST payable for the Supply of the Property. Payment must be made when the Buyer receives the benefit of the Input Tax Credit;
  - (iii) the Buyer is entitled to compensation from the Seller if there is a breach of clause 34.6(b).

### 34.7 If the Supply is a Going Concern

**Warning:** The parties are providing certain warranties under this clause. If there is doubt about whether there is a Supply of a Going Concern you should seek professional advice.

If this clause 34.7 applies:

- (a) the Purchase Price does not include any amount for GST;
- (b) the parties agree the Supply of the Property is a Supply (or part of a Supply) of a Going Concern;
- (c) the Seller warrants that:
  - (i) between the date of this Contract and the Settlement Date the Seller will carry on the Enterprise; and
  - (ii) the Property (together with any other things that must be provided by the Seller to the Buyer at the Settlement Date under a related agreement for the same Supply) is all of the things necessary for the continued operation of the Enterprise;
- (d) the Buyer warrants that at the Settlement Date it is registered or required to be Registered under the GST Act;
- (e) if either of the warranties in clause 34.7(c) is breached:
  - (i) the Buyer may terminate this Contract if it becomes aware of the breach prior to the Settlement Date;
  - (ii) if the Buyer does not terminate this Contract then, at the Settlement Date, the Buyer must pay to the Seller the amount payable by the Seller as GST on the Supply of the Property;

- (iii) if the Buyer does not become aware of the breach until after the Settlement Date, it must pay to the Seller an amount equal to the Input Tax Credit which the Buyer will receive for GST payable in respect of the Supply of the Property. Payment must be made when the Buyer receives the benefit of the Input Tax Credit;
- (iv) the Buyer is entitled to compensation from the Seller if there is a breach of the warranty;
- (f) if the warranty in clause 34.7(d) is not correct the Buyer must pay to the Seller an amount equal to the GST payable in respect of the Supply of the Property. Payment must be made at the Settlement Date or, if settlement has occurred, immediately on demand;
- (g) if for any reason other than a breach of a warranty by the Seller or the Buyer this transaction is not a Supply of a Going Concern, the Buyer must pay to the Seller the amount payable by the Seller as GST on the Supply of the Property. Payment must be made at the Settlement Date or, if settlement has occurred, immediately on demand.

### 34.8 Adjustments

Where this Contract requires an adjustment or apportionment of outgoings or rent and profits of the Property, that adjustment or apportionment must be made on the amount of the outgoing, rent or profit exclusive of GST.

### 34.9 Tax Invoice

Where GST is payable on the Supply of the Property, the Seller must give to the Buyer a Tax Invoice at the Settlement Date.

### 34.10 No Merger

To avoid doubt, the clauses in this clause 34 do not merge on settlement.

### 34.11 Remedies

The remedies provided in clauses 34.6(c), 34.7(e) and 34.7(f) are in addition to any other remedies available to the aggrieved party.

## 35 BUILDING AND PEST INSPECTION REPORTS

**35.1** This contract is conditional on the Buyer obtaining a written building report and a written pest report (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).

**35.2** The Buyer must give notice to the Seller that:

- (1) a satisfactory report under clause 35.1 has not been obtained by the Inspection Date and the Buyer terminates this contract. The Buyer must act reasonably; or
- (2) clause 35.1 has been either satisfied or waived by the Buyer.

**35.3** 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.

**35.4** The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 35.2 by 5pm on the Inspection Date. This is the Seller's only remedy for the Buyer's failure to give notice.

**35.5** The Seller's right under clause 35.4 is subject to the Buyer's continuing right to give written notice to the Seller of satisfaction, termination or waiver pursuant to clause 35.2.

## 36. ELECTRONIC SETTLEMENT

### 36.1 Application of Clause

- 36.1.1. Clause 36 applies if the Buyer, Seller and each Financial Institution involved in the transaction agree to an Electronic Settlement using the same ELNO System and overrides any other provision of this Contract to the extent of any inconsistency.
- 36.1.2. Acceptance of an invitation to an Electronic Workspace is taken to be an agreement for clause 36.1.1.
- 36.1.3. Clause 36 (except clause 36.5.3) ceases to apply if either party gives notice under clause 36.5 that settlement will not be an Electronic Settlement.

### 36.2 Completion of Electronic Workspace

- 36.2.1. The parties must:
- ensure that the Electronic Workspace is completed and all Electronic Conveyancing Documents and the Financial Settlement Schedule are Digitally Signed prior to settlement; and
  - do everything else required in the Electronic Workspace or otherwise to enable settlement to occur on the Settlement Date.
- 36.2.2. If the parties cannot agree on a time for settlement, the time to be nominated in the Workspace is 4pm AEST.
- 36.2.3. If any part of the Purchase Price is to be paid to discharge an Outgoing:
- the Buyer may, by notice in writing to the Seller, require that the amount is paid to the Buyer's Solicitor's trust account and the Buyer is responsible for paying the amount to the relevant authority;
  - for amounts to be paid to destination accounts other than the Buyer's Solicitor's trust account, the Seller must give the Buyer a copy of the current invoice for the Outgoing to enable the Buyer to verify the destination account details in the Financial Settlement Schedule.
- 36.2.4. If the Deposit is required to discharge any Encumbrance or pay an Outgoing at settlement:
- the Deposit Holder must, if directed by the Seller at least 2 Business Days prior to Settlement, pay the Deposit (and any interest accrued on investment of the Deposit) less commission as clear funds to the Seller's Solicitor;
  - the Buyer and the Seller authorise the Deposit Holder to make the payment in clause 36.2.4(a);
  - the Seller's Solicitor will hold the money as Deposit Holder under the Contract; and
  - the Seller and Buyer authorise the Seller's Solicitor to pay the money as directed by the Seller in accordance with the Financial Settlement Schedule.

### 36.3 Electronic Settlement

- 36.3.1. Clauses 10.2, 10.3, 25.2 and 25.3 do not apply.
- 36.3.2. Payment of the balance of the Purchase Price electronically as directed by the Seller's Solicitor in the Financial Settlement Schedule satisfies the Buyer's obligation in clause 4.1.
- 36.3.3. The Seller and Buyer will be taken to have complied with:
- clause 4.2(c),(e) and (f); and
  - clause 4.4(d) and (e),

(as applicable) if at settlement the Financial Settlement Schedule specifies payment of the relevant amount to the account nominated by the Commissioner of Taxation.

- 36.3.4. The Seller will be taken to have complied with clauses 4.1(b), (c), (d), (f), (g) (h), (i), (j) and (k) and clause 5 if:
- in relation to documents which are suitable for Electronic Lodgement in the Land Registry at settlement, the documents are Digitally Signed within the Electronic Workspace; and
  - in relation to any other document or thing, the Seller's Solicitor:
    - confirms in writing prior to settlement that it holds all relevant documents which are not suitable for Electronic Lodgement and all Keys in escrow on the terms contained in the QLS E-Conveyancing Guidelines; and
    - gives a written undertaking to send the documents and Keys (if applicable) to the Buyer or Buyer's Solicitor no later than the Business Day after settlement; and
    - if requested by the Buyer, provides copies of documents in the Seller's Solicitors possession.
- 36.3.5. A party is not in default to the extent it is prevented from complying with an obligation because the other party or the other party's Financial Institution has not done something in the Electronic Workspace.
- 36.3.6. Any rights under the contract or at law to terminate the contract may not be exercised during the time the Electronic Workspace is locked for Electronic Settlement.
- 36.3.7. Electronic Settlement is taken to occur when Financial Settlement is effected, whether or not Electronic Lodgement has occurred.

### 36.4 Computer System Unavailable

If settlement fails and cannot occur by 4pm AEST on the Settlement Date because a computer system operated by the Land Registry, Office of State Revenue, Reserve Bank, a Financial Institution or the relevant ELNO System is inoperative, neither party is in default and the Settlement Date is deemed to be the next Business Day. Time remains of the essence.

### 36.5 Withdrawal from Electronic Settlement

- 36.5.1. Either party may elect not to proceed with an Electronic Settlement by giving written notice to the other party.
- 36.5.2. A notice under clause 36.5.1 may not be given later than 5 Business Days before the Settlement Date unless an Electronic Settlement cannot be effected because:
- the transaction is not a Qualifying Conveyancing Transaction; or
  - a party's solicitor is unable to complete the transaction due to death, a loss of legal capacity or appointment of a receiver or administrator (or similar) to their legal practice or suspension of their access to the ELNO System; or
  - the Buyer's or Seller's Financial Institution is unable to use the relevant ELNO System to effect Electronic Settlement.
- 36.5.3. If clause 36.5.2 applies:
- the party giving the notice must provide satisfactory evidence of the reason for the withdrawal; and

- (b) the Settlement Date will be extended to the date 5 Business Days after the Settlement Date.

### 36.6 Costs

Each party must pay its own fees and charges of using the relevant ELNO System for Electronic Settlement.

### 36.7 Definitions for clause 36

In clause 36:

"Digitally Sign" and "Digital Signature" have the meaning in the ECNL.

"ECNL" means the Electronic Conveyancing National Law (Queensland).

"Electronic Conveyancing Documents" has the meaning in the *Land Title Act 1994*.

"Electronic Lodgement" means lodgement of a document in the Land Registry in accordance with the ECNL.

"Electronic Settlement" means settlement facilitated by an ELNO System.

"Electronic Workspace" means a shared electronic workspace within an ELNO System that allows the Buyer and Seller to effect Electronic Lodgement and Financial Settlement.

"ELNO" has the meaning in the ECNL.

"ELNO System" means a system provided by the ELNO for facilitating Financial Settlement and Electronic Lodgement.

"Financial Settlement" means the exchange of value between Financial Institutions facilitated by an ELNO System in accordance with the Financial Settlement Schedule.

"Financial Settlement Schedule" means the electronic settlement schedule within the Electronic Workspace listing the source accounts and destination accounts.

"Qualifying Conveyancing Transaction" means a transaction that is not excluded for Electronic Settlement by the rules issued by the relevant ELNO, Office of State Revenue, Land Registry, or a Financial Institution involved in the transaction.

## 37. ELECTRONIC CONTRACT AND DISCLOSURE

### 37.1 Electronic Signing

If this contract is signed by any person using an Electronic Signature, the Buyer and Seller:

- (a) agree to enter into this contract in electronic form; and
- (b) consent to either or both parties signing the contract using an Electronic Signature.

### 37.2 Pre-contract Disclosure

The Buyer consents to the Seller's use of electronic communication to give any notice or information required by law to be given to the Buyer and which was given before the Buyer signed this contract.

## 38. COUNTERPARTS

38.1 This contract may be executed in two or more counterparts, all of which will together be deemed to constitute one and the same contract.

38.2 A counterpart may be electronic and signed using an Electronic Signature.

## NOTES AND WARNINGS

NB. Where any specific items are not required delete and initial

NOTE <sup>1</sup> Insert, in Item A, the date of signing by the last party to sign.

NOTE <sup>2</sup> Describe, in Item H, the actual use presently being made of the Land and/or the improvements, e.g. commercial etc.

**WARNING** -Refer to clause 21.1(a). **Before this Contract is signed the Seller should ensure that the present use described in Item H is a lawful use.**

For example, if a business is being carried on at a dwelling house in a residential zone, that use may be unlawful unless town planning consent exists. **This warning applies whether the Buyer intends to continue the use stated in Item H or not.** If the use is not lawful or if there is a doubt about the use, this should be drawn to the Buyer's attention and, if the Buyer agrees, a special condition should be inserted in this Contract so as to modify or avoid the operation of clause 21.1(a).

NOTE <sup>3</sup> If freehold, do not complete "Type of Holding" or "Lease No".

NOTE <sup>4</sup> Describe in general terms, e.g. factory, warehouse etc.

NOTE <sup>5</sup> Particulars should be inserted in the Lease Schedule and the Service Contract Schedule.

NOTE <sup>6</sup> The Contract Rate is published each month in "The Proctor".

NOTE <sup>7</sup> If this Contract is to be subject to finance then Items S, T and U must be completed in every respect and Item V must be deleted and initialed.

If this Contract is not to be subject to finance Items S, T and U must be deleted and initialed and Item V shall apply.

If known, state name of lender in Item S. If not known, state class, e.g. trading bank, savings bank, building society, insurance company, credit union, or other class of lending institution. Do not insert the words "finance company" but insert the specific name (or names) of a finance company.

The date in Item T should be at least 14 days prior to the Settlement Date.

The dollar amount of the loan being sought must be inserted in Item U. Do not insert the words "sufficient to complete this purchase" or words of a similar effect.

NOTE <sup>8</sup> The Deposit Holder should sign with his or her personal signature.

If the Deposit Holder is a partnership, a member of the partnership should sign in the partnership name.

If the Deposit Holder is a company, the acknowledgement should be signed in accordance with the *Corporations Act 2001*, section 127 or by a person duly authorised to sign acknowledgements of Deposit Holder on behalf of the company.

NOTE <sup>9</sup> A Seller which is a corporation should note that to ensure the Property is free from Encumbrances it may be necessary to provide evidence at settlement that the Property has been released from or is not subject to a security interest given by the Seller.

NOTE <sup>10</sup> If this Contract is to be made subject to the approval of the Commonwealth Treasurer being obtained, a special condition should be inserted in this Contract so as to modify or avoid the operation of clause 33.

## ANNEXURE A – SPECIAL CONDITIONS

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### 1. EXCLUDED AND AMENDED TERMS

#### 1.1. Inconsistency

The REIQ Standard Commercial Terms of the Sale for Commercial Land and Buildings (Eighth Edition) (**Standard Terms**) apply to this Contract except as are excluded or modified by these Special Conditions. Where there is any inconsistency between the terms of the Standard Terms and these Special Conditions, the terms of these Special Conditions shall prevail to the extent of that inconsistency.

#### 1.2. Definitions

In these Special Conditions, unless the context otherwise requires:

- 1.2.1. **Claim** means any action, suit, claim, demand, liability or proceeding (whether actual or potential) at law, in equity or under statute in relation to any damages, losses, costs, charges, expenses, injuries or deaths;
- 1.2.2. **Insolvent** means, in respect of a party, a receiver (or receiver and manager), administrator, provisional liquidator, liquidator or a controller is appointed to the party, or in respect of any property of the party;
- 1.2.3. **Liability** means any damage, loss, cost, charge, expense, payment or liability (including legal costs and expenses incurred on a solicitor and own client basis) or a claim, action, proceeding or demand, however arising and whether present or future, direct or indirect, fixed or ascertained, actual or contingent;
- 1.2.4. **Object** means to do or refrain from doing any act with the intention or for the purpose of preventing or delaying the performance of this Contract or the exercise of rights under this Contract or at law and includes to:
  - 1.2.4.1. object to title;
  - 1.2.4.2. in any way terminate this Contract or refuse to perform obligations under this Contract;
  - 1.2.4.3. in any way delay settlement;
  - 1.2.4.4. make a Claim, including a claim for compensation or any reduction in the Purchase Price;
  - 1.2.4.5. claim a set-off, or to otherwise retain any part of the Purchase Price other than a settlement adjustment; or
  - 1.2.4.6. require the Seller to carry out any works;

### 1.3. Amendments to Standard Terms

The Standard Terms are amended as follows:

1.3.1. clauses 4.1(f), 4.1(i), 4.1(j), 5, 7.6, 16, 21.1, 21.2, 28, 31 and 35 are deleted;

1.3.2. clause 8 is deleted and replaced with the following:

**“8 Errors and Misdescriptions**

If there is any material or immaterial mistake or error in the description or particulars of the Property or as to title, the Buyer shall not be entitled to delay settlement, terminate this Contract and shall not be entitled to any compensation or to make any Claim.”;

1.3.3. clauses 9.2 and 9.3 are deleted and replaced with the following:

**“9.2** If there is any material or immaterial error in the boundaries or area of the Land or any material or immaterial encroachment, the Buyer will not be entitled to terminate the Contract and will not be entitled to any compensation or to make any Claim.”;

## 2. WAIVER OF COOLING OFF PERIOD

The Buyer waives any cooling off period that may apply to this Contract under the *Property Occupations Act 2014* (Qld).

## 3. NO REPRESENTATIONS

### 3.1. Acceptance of Present Condition

The Buyer agrees that the Property is being sold, and accepts the Property, in an “as is where is” condition and subject to any legal, physical, patent or latent defects, including, without limitation, any of the matters to which the Buyer has satisfied itself as stated in special condition 3.2.3.

### 3.2. Buyer’s acknowledgement

The Buyer:

3.2.1. does not rely on, and has not been induced to enter into this Contract by, any information provided or statements about the Property, or representations or warranties either express or implied made by or on behalf of the Seller, the Seller’s agent or their respective employees or agents, other than as set out in this Contract;

3.2.2. acknowledges that it has relied on its own advice, enquiries and commercial judgement in entering into this Contract;

- 3.2.3. must not Object to or make any Claim against the Seller and has satisfied itself in relation to:
- 3.2.3.1. all rights and privileges relating to the Land and/or the Property;
  - 3.2.3.2. the existence or non-existence of any defects (latent or patent) affecting the Property or the title to the Property;
  - 3.2.3.3. any immaterial or material error in the description or particulars of the Property, the title of the Property, or the boundaries or area of the Land;
  - 3.2.3.4. the existence of any Encumbrances, encroachments, heritage status, notices or history affecting the Property (whether adversely or not);
  - 3.2.3.5. the existence of any statutory rights relating to water supply, sewerage, drainage, electricity, telephone and other services in, passing through or over the Land;
  - 3.2.3.6. whether the boundaries of the Land may be incorrect and whether the boundary fences:
    - (a) are give and take fences (whether wholly or in part);
    - (b) are erected on the actual boundaries of the Land.
  - 3.2.3.7. the fitness and suitability of the Property for the purposes the Buyer is purchasing it for;
  - 3.2.3.8. the zoning, restrictions and potential use of the Property, including the lawful purposes for which the Property may be used, or the suitability of the Land for future development;
  - 3.2.3.9. the existence or otherwise of necessary approvals and licences from any Authority relating to the Property, including any failure to comply with any approvals or licences and the state of any conditions under those approvals;
  - 3.2.3.10. the future economic feasibility, viability and economic return of the Property or use of the Property;
  - 3.2.3.11. whether there are any requirements of any Authority relating to the Property, including resumptions, road dedications, road widenings and similar things;
  - 3.2.3.12. the means of access to the Property;
  - 3.2.3.13. whether any services (such as electricity, telecommunications, sewerage and water) are connected to the Property or available to the Land;

- 3.2.3.14. whether any part of the Property is identified on the regulated vegetation management map or vegetation management supporting map and/or property map of assessable vegetation under the *Vegetation Management Act 1999 (Qld)* or is protected under the *Vegetation Management Act 1999 (Qld)* or is subject to any notice or order under that Act;
  - 3.2.3.15. whether the property has or may be affected by flooding;
  - 3.2.3.16. whether the Property is dedicated as a protected area of any class mentioned in section 14 of the *Nature Conservation Act 1992 (Cth)* or is affected by a conservation agreement or conservation plan pursuant to the *Nature Conservation Act 1992 (Cth)*;
  - 3.2.3.17. whether there exists any claim for an interest in the Property by an Australian Aboriginal People pursuant to the *Aboriginal Land Act 1991 (Qld)*, the *Native Title Act 1993 (Cth)* or the *Native Title (Queensland) Act 1993 (Qld)*;
  - 3.2.3.18. whether there exists any aboriginal cultural heritage on the Land and whether the *Aboriginal Culture Heritage Act 2003* applies in respect of the Land;
  - 3.2.3.19. the accuracy of any statement made or information contained in an information memorandum or similar document prepared by or on behalf of the Seller;
  - 3.2.3.20. the value of the Property; and
  - 3.2.3.21. any independent reports that the Seller gave the Buyer before the Contract Date.
- 3.2.4. acknowledges that the Seller, in entering into this Contract, has relied on and been induced by the acknowledgements, representations and warranties made by the Buyer in this Contract and but for these assurances, the Seller would not have entered into this Contract.

### 3.3. **Waiver**

To the extent permitted by law, the Buyer agrees not to make and waives any right it may have to Claim against the Seller, or any officers, employees or agents of the Seller, under Schedule 2, section 18 of the *Competition and Consumer Act 2010 (Cth)* or the corresponding provision of any State or Territory enactment.