2022 General Conditions

JOINT FORM OF GENERAL CONDITIONS FOR THE SALE OF LAND

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

REIWA
Real Estate Institute of Western Australia

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For defined terms see clause 26

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1 Deposit

1.1 Payment

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

(a) the Seller Agent; or

(b) the Seller Representative; or

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

1.2 Deposit Holder - Stakeholder

(a) Subject to this clause 1.2, if the Deposit is paid to a Deposit Holder, the Deposit Holder must hold the Deposit as stakeholder.

(b) If a Party contends that:

(1) the Contract has been terminated; and

(2) that Party is entitled to payment of the Deposit, the following provisions of this clause 1.2 apply.

(c) The Deposit Claimant must:

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

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

(d) Unless the Deposit Respondent serves a Notice on the Deposit Holder in accordance with subclause (e), the Deposit Holder must after:

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

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

pay the Deposit to the Deposit Claimant.

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

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

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

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

(1) obtain legal advice as to the action to be taken by the Deposit Holder;

(2) institute interpleader proceedings in a court; and

(3) deduct from the Deposit the legal cost and expense incurred by the Deposit Holder in connection with obtaining that legal advice and those interpleader proceedings.

(g) Each Party:

(1) directs the Deposit Holder to comply; and

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

with this clause 1.2.

(h) Payment by the Deposit Holder of the Deposit in accordance with:

(1) subclause (d); or

(2) interpleader proceedings referred to in subclause (f)(2)

discharges the Deposit Holder from any further liability in respect to the Deposit.

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

(1) does not affect; and

(2) is not treated as a waiver of,

any right as between the Parties.

(j) In this clause 1.2, a reference to the Deposit includes:

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

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

1.3 Deposit - Proposed Scheme Lot

(a) Subject to clause 1.4, if the Contract relates to the sale of:

(1) a Proposed Strata Lot; or

(2) a Proposed Community Lot,

the Deposit must be:

(3) unless otherwise agreed by the Parties, paid by cheque or by direct transfer into a bank account as notified by the Buyer; and

(4) paid to and held by a Legal Practitioner, Real Estate Agent or Settlement Agent in accordance with the Strata Titles Act or the Community Titles Act (as applicable) until registration of the Scheme Plan.

(b) Subject to clause 1.4, on the registration of the Scheme Plan in respect to the Proposed Strata Lot or Proposed Community Lot (as applicable), the Deposit is treated as being held in accordance with clause 1.2.

1.4 Deposit - Future Lot Contract

If the Contract is a Future Lot Contract:

(a) clause 1.1(c) does not apply;

(b) clauses 1.2 and 1.3 do not apply until the condition in clause 13.9(a)(1) has been satisfied;

(c) the Deposit or other amount payable by the Buyer under the Contract must be:

(1) paid by the Seller to a Deposit Holder specified in the Contract within 2 Business Days after receipt of the payment from the Buyer; and

(2) held by the Deposit Holder on trust for the person entitled to receive it under the Contract or the Sale of Land Act; and

(d) the Deposit Holder must comply with the Sale of Land Act.

1.5 Notice of non-payment

If the Buyer:

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

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

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

1.6 Termination for non-payment

(a) If a Notice under clause 1.5 is not complied with:

(1) the Buyer is in default; and

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

(b) Clause 23.1 does not apply if clause 1.5 and this clause 1.6 apply.

1.7 Terms Contract and other right

Clauses 1.5 and 1.6 do not:

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

(b) limit any other right of the Seller.

1.8 Direction to Deposit Holder

Subject to clause 1.11, and unless each Party otherwise agrees in writing, a Party is not entitled to direct the Deposit Holder to pay the Deposit to any person before the Possession Date.

1.9 Investment of Deposit

If requested by the Buyer and permitted by law, the Deposit Holder may pay the Deposit into an interest bearing trust account with a Deposit Financial Institution in the name of the Deposit Holder.

1.10 Interest on Deposit

(a) Subject to clause 24.8, if the Deposit is invested by the Deposit Holder in an interest bearing account with a Deposit Financial Institution in accordance with clause 1.9, the Buyer is entitled to the interest, less:

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

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

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

1.11 Payment of Deposit on Settlement

Subject to clause 24, the Strata Titles Act, the Community Titles Act and the Sale of Land Act, each Party authorises the Deposit Holder to pay the Deposit to:

(a) the Seller at Settlement; or

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

1.12 Deduction from Deposit

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

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

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

2 Encumbrance

2.1 Noted Encumbrance

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

(a) a Specified Encumbrance; and

(b) if the Land is a Scheme Lot, the interests and notifications specified in clause 10.8.

2.2 Benefit of right over Land

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

(a) that benefit is not an Encumbrance; and

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

2.3 Rate Encumbrance - Unpaid Rate Outgoing

(a) Subject to subclause (b), if at Settlement the Land is subject to a Rate Encumbrance which arises from an Unpaid Rate Outgoing:

(1) if the Rate Encumbrance is registered on the Certificate of Title for the Land, the Seller must provide to the Buyer at Settlement any discharge, withdrawal or other document required to remove the Rate Encumbrance from the Certificate of Title for the Land;

(2) the Seller must arrange for the Unpaid Rate Outgoing to be paid at Settlement; and

(3) the Unpaid Rate Outgoing must be apportioned in accordance with clause 7.

(b) If at Settlement the Land is subject to a Rate Encumbrance which arises from an Unpaid Rate Outgoing but the Rate Encumbrance is not registered on the Certificate of Title for the Land, then the Seller is not required to arrange for the Unpaid Rate Outgoing to be paid at Settlement if:

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

(A) deduct from the settlement proceeds due to the Seller or otherwise hold in trust an amount equal to the amount required to pay that Unpaid Rate Outgoing; and

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

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

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

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

(c) If subclause (b)(1) applies, the Seller is treated as having given an irrevocable authority and direction to the Seller Representative:

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

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

(d) If subclause (b)(2) applies, the Buyer is treated as having given an irrevocable authority and direction to the Buyer Representative to pay the Unpaid Rate Outgoing to the relevant Authority immediately after Settlement.

2.4 Land sold subject to easement or restrictive covenant

If on the Contract Date:

(a) the Land is subject to an easement or a restrictive covenant which is not a Specified Encumbrance;

(b) the Land is not vacant land; and

(c) the Land:

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

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

(d) the easement or restrictive covenant does not unreasonably affect the use specified in subclause (c)(1) or (c)(2),

the Land is treated as being sold subject to the easement or restrictive covenant and the Buyer has no right to terminate the Contract or to defer or delay Settlement as a result of the easement or restrictive covenant.

2.5 Land sold subject to Title Restriction

(a) If:

(1) the Land is subject to a Title Restriction, which is not a Specified Encumbrance;

(2) the Land is vacant land; and

(3) the Buyer:

(A) was aware; or

(B) should reasonably have been aware,

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

(4) the Title Restriction does not:

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

(B) materially affect the value of the Property,

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

(b) If:

(1) the Land is subject to a Title Restriction, which is not a Specified Encumbrance;

(2) the Land is not vacant land; and

(3) the Land:

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

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

(4) the Buyer:

(A) was aware; or

(B) reasonably should have been aware,

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

(5) the Title Restriction does not unreasonably affect the use specified in subclause (b)(3),

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

2.6 Land sold subject to Remediated Site Memorial

(a) If:

(1) the Land is a Remediated Site;

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

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

subclauses (b) and (c) apply.

(b) If:

(1) the Land is vacant land; and

(2) the Restricted Use related to the Remediated Site Memorial does not:

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

(B) materially affect the value of the Property,

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

(c) If:

(1) the Land is not vacant land; and

(2) the Land:

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

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

(3) the Restricted Use related to the Remediated Site Memorial does not unreasonably affect the use specified in subclause (c)(2),

the Land is treated as having been sold subject to the Remediated Site Memorial and the Buyer has no right to terminate the Contract or defer or delay Settlement as a result of the Restricted Use or the Remediated Site Memorial.

2.7 Buyer right to terminate

(a) If:

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

(2) the Land is not treated as being sold subject to the easement, restrictive covenant, Remediated Site Memorial or Title Restriction in accordance with clauses 2.4 to 2.6,

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

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

(c) If the Buyer terminates the Contract in accordance with subclause (a):

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

(2) if the Deposit has been invested by the Deposit Holder in accordance with clause 1.9, the Buyer is entitled to the interest on the Deposit;

(3) if any other money has been paid to the Deposit Holder by the Buyer, and invested by the Deposit Holder with a Deposit Financial Institution, the Buyer is entitled to the interest on that other money; and

(4) subject to subclauses (c)(1) to (c)(3), no Party has any claim or right of action against the other arising from the termination, except in respect to any matter which arose before the termination.

2.8 Security Interest

(a) If requested by the Buyer in writing, the Seller must give to the Buyer a reasonable time before Settlement, all information including accurate copies of source documents contemplated by Schedule 1 Part 1 of the PPS Regs sufficient for the Buyer to determine whether the Property Chattels are subject to a security interest to which the PPSA applies.

(b) The Buyer must keep any information and supporting documents provided by the Seller in accordance with clause 2.8(a) secure and confidential (to the extent the information is not publically available) and only use that information to search the PPSR.

(c) If any of the Property Chattels are:

(1) subject to a security interest to which the PPSA applies; and

(2) not property free of the security interest pursuant to Chapter 2 Part 2.5 of the PPSA,

the Seller must:

(3) remove the security interest from the PPSR on or before the Settlement Date; or

(4) provide the Buyer a release of the security interest in a form acceptable to the Buyer (acting reasonably) on or before the Settlement Date; or

(5) otherwise deal with the security interest by written agreement with the Buyer.

3 Settlement

3.1 Preparation of Transfer

The Buyer must arrange for the Transfer to be prepared.

3.2 Delivery to Seller

The Buyer must:

(a) sign the Transfer; and

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

3.3 Duty

(a) The Buyer must arrange for:

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

(2) the Transfer to be Duty Endorsed at Settlement or, if the Duty has been assessed through Revenue Online, a Certificate of Duty to be given at Settlement.

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

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

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

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

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

(d) If the Buyer:

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

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

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

(e) Subject to subclauses (g) to (i), the Buyer may make a request in writing to the Seller that:

(1) the Seller sign the Transfer; and

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

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

(3) payment by the Buyer of Duty on the Contract before Settlement; and

(4) the Transfer being Duty Endorsed before and for the purpose of Settlement.

(f) If Duty has been assessed and will be paid through Revenue Online:

(1) the Buyer may make a request in writing to the Seller that the Seller sign the Transfer; and

(2) if that request is made, the Seller must provide a copy of the Transfer signed by the Seller to the Buyer before the Settlement Date.

(g) If the Seller provides the Transfer to the Buyer Representative in accordance with subclause (e) or (f):

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

(2) the Buyer is treated as having given unconditional undertakings to the Seller that the Buyer Representative must:

(A) hold the Transfer solely for the purpose of payment of Duty on the Contract, and for the Transfer to be Duty Endorsed for the purposes of Settlement; and

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

(h) If the Seller or the Seller Representative has provided the Transfer to the Buyer Representative in accordance with subclauses (e) and (g), the provision of the Transfer to the Buyer Representative is without prejudice to any right of the Seller arising from:

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

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

(i) If the Buyer Representative:

(1) is registered for Revenue Online; and

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

then:

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

(4) the Buyer must, within 5 Business Days after the Transaction Summary is generated, provide a copy of the Transaction Summary to the Seller or the Seller Representative; and

(5) on Settlement the Buyer must provide to the Seller or the Seller Representative a copy of the Certificate of Duty.

3.4 Place for Settlement

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

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

(c) If the Contract does not specify the place for Settlement, the Buyer must specify the place for Settlement which must be in the Perth CBD.

3.5 Completion of Settlement

Each Party must complete Settlement on:

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

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

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

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

(A) termination of the Contract; or

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

the Business Day which is 15 Business Days after the date on which the last condition is satisfied.

3.6 Balance of purchase price

(a) The Buyer must on Settlement pay:

(1) to the Seller; or

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

by 1 or more bank cheques:

(3) the balance of the Purchase Price; and

(4) any other money payable by the Buyer to the Seller at Settlement,

less any deductions allowed under the Contract.

(b) If there is a registered mortgage on the Land, the Seller must pay, or must request the Buyer to pay from the balance of the Purchase Price, the Landgate fee to register a discharge of the mortgage at Settlement.

3.7 Foreign Resident Withholding

(a) This clause 3.7 applies (despite any other provision of the Contract) if:

(1) the market value of the Land is the Threshold Amount or more and the Seller does not provide a Clearance Certificate to the Buyer at least 2 Business Days before Settlement; or

(2) for any other reason the Buyer is obliged to pay a Withholding Amount to the Commissioner.

(b) If this clause 3.7 applies:

(1) the Buyer must deduct the Withholding Amount from the Purchase Price and pay the Withholding Amount to the Commissioner by no later than Settlement; or

(2) if the Buyer provides to the Seller at Settlement:

(A) evidence from the Commissioner or the Australian Taxation Office that the Withholding Amount has been paid to the Commissioner; or

(B) a written undertaking from the Buyer Representative to pay the Withholding Amount to the Commissioner immediately following Settlement; or

(C) any other evidence relating to the payment of the Withholding Amount that is acceptable to the Seller,

the Buyer is not required to pay that part of the Purchase Price to the Seller.

(c) If subclause (b)(2)(B) applies, the Buyer is treated as having given an irrevocable authority and direction to the Buyer Representative to pay the Withholding Amount to the Commissioner immediately following Settlement.

(d) Any Variation Notice not provided to the Buyer at least 2 Business Days before Settlement is to be disregarded for the purposes of determining the Withholding Amount.

(e) If clause 3.12 applies, payment of the Withholding Amount under this clause 3.7 will be made as part of an 'Electronic Settlement'.

3.8 More than 3 Bank Cheques

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

3.9 Settlement Cheque dishonoured

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

(a) is in default; and

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

(1) from and including the Settlement Date;

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

3.10 Seller obligation on Settlement

(a) The Seller must at Settlement give the Buyer:
  (1) subject to clause 3.11, the Duplicate Certificate of Title for the Land;
  (2) the Transfer signed by the Seller;
  (3) each other document, including:
    (A) any transfer executed by a third party;
    (B) every application, declaration and other document,

  necessary to enable the Buyer to become the registered proprietor of the Land free of any Encumbrance, other than:
    (i) an Encumbrance specified in clauses 2.1(a) and 2.1(b); and
    (ii) if applicable, an Encumbrance subject to which the Land is transferred in accordance with clause 2;
  (4) all other documentation required to be delivered on Settlement including:
    (A) any discharge or withdrawal of an Encumbrance which is required to be withdrawn or discharged on Settlement; and
    (B) subject to subclause (b), the documentation specified in clauses 6.10 and 11.2;

(b) If:
  (1) possession of the Property has been given to the Buyer before Settlement; and
  (2) the Seller has delivered the documentation specified in clause 6.10 to the Buyer on or after possession and before Settlement,

  the Seller has no obligation to deliver the documentation specified in clause 6.10 to the Buyer at Settlement.

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

(d) If the Seller is unable to transfer the Land to the Buyer free of Encumbrances, other than an Encumbrance specified in clause 2:
  (1) the Seller is treated as being in default; and
  (2) subject to clauses 23 and 24, the Buyer is entitled to exercise every right of the Buyer arising from that default.

3.11 No duplicate Certificate of Title

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

3.12 Electronic conveyancing

(a) This clause 3.12 applies if:
  (1) Landgate requires that the Contract is completed by an Electronic Settlement;
  (2) the Contract specifies that there will be an Electronic Settlement; or
  (3) the Parties agree to an Electronic Settlement.

(b) Acceptance of an invitation to a Workspace by a Party is taken to be agreement for the purposes of subclause (a)(3).

(c) If this clause 3.12 applies:
  (1) it has priority over any other provision of the Contract to the extent of any inconsistency; and
  (2) without limiting subclause (c)(1), any provision of the Contract requiring the physical preparation, signing, delivery or payment of anything that is dealt with digitally or electronically within or using the Workspace is amended accordingly.

(d) Each Party must:
  (1) be, or engage a Representative who is, a Subscriber;
  (2) ensure that each other person for whom that Party is responsible and who is associated with the transaction is, or engages, a Subscriber;
  (3) authorise their Representative to act on their behalf in the manner required by the ECNL; and
  (4) conduct the transaction in accordance with the ECNL.

(e) Unless Landgate requires that Settlement must be completed by an Electronic Settlement, and subject to subclause (g), a Party may elect not to proceed with an Electronic Settlement by giving written Notice to the other Party.

(f) If a Withdrawal Notice is given, this clause 3.12 ceases to apply and Settlement is to be effected in accordance with the Contract otherwise than as an Electronic Settlement.

(g) A Withdrawal Notice may not be given later than 5 Business Days before the Settlement Date unless Settlement cannot proceed as an Electronic Settlement. If a Withdrawal Notice is given less than 5 Business Days before the Settlement Date:
  (1) the Withdrawal Notice must specify why Settlement cannot proceed as an Electronic Settlement; and
  (2) at the written request of either Party, the Settlement Date may be extended to a date being not more than 5 Business Days after the date the Withdrawal Notice is given.

(h) The Buyer or the Buyer Representative must:
  (1) create a Workspace as soon as reasonably practicable;
  (2) invite the Seller or the Seller Representative and any Financial Institution involved in the transaction to join the Workspace; and
  (3) set the time for Settlement on the Settlement Date.

(i) If the Buyer or the Buyer Representative fails to comply with subclause (h) within 10 Business Days before the Settlement Date, the Seller or the Seller Representative may:
  (1) create a Workspace;
  (2) invite the Buyer or the Buyer Representative and the relevant Financial Institutions to join the Workspace; and
  (3) set the time for Settlement on the Settlement Date.

(j) The Parties consent to written communications for the purposes of preparing for and facilitating Electronic Settlement being given and received electronically within the Workspace but not to any Notice being given in that manner.

(k) Settlement occurs when the Workspace records that the exchange of funds or value (if any) between the Financial Institutions in accordance with the instructions of the Parties has occurred and the definition of 'Settlement' in clause 26.1 is amended accordingly.

(l) Each Party must do everything reasonably necessary to:
  (1) progress the transaction in the Workspace to Electronic Settlement on the Settlement Date at the time specified in the Workspace; and
  (2) assist the other Party to trace and identify the recipient of any mistaken payment made under the Electronic Settlement and to recover the mistaken payment.

(m) If Settlement in accordance with subclause (k) has not occurred by the Closing Time, the Parties must do everything reasonably necessary to effect Settlement:
  (1) as an Electronic Settlement; or
  (2) at the option of either Party, exercised by giving Notice to the other Party to that effect, otherwise than as an Electronic Settlement,

  on the next Business Day and time remains of the essence.

(n) A Party is not in default under the Contract if:
  (1) that Party is prevented from complying with an obligation because the other Party or the other Party's Financial Institution has not done something in the Workspace; or
  (2) Electronic Settlement fails and does not occur by the Closing Time because a computer system of Landgate, the Office of State Revenue, the ELNO or the Reserve Bank of Australia is inoperative for any reason,

  but that Party must comply with that Party's obligations as soon as the event referred to in subclause (n)(1) or (n)(2) ceases to apply.

(o) No Party may exercise any rights under the Contract or at law to terminate the Contract during the time that the Workspace is locked for Electronic Settlement.

(p) Subject to subclause (m), nothing in this clause 3.12 affects the rights of a Party under the Contract if Settlement does not occur on or before the Settlement Date due to the delay or default by the other Party.

(q) Each Party must pay that Party's own fees and charges for using the ELNO for Electronic Settlement.

(r) In this clause 3.12:
  (1) **Business Day** means any day except:
    (A) a Saturday, Sunday or public holiday in Western Australia; or
    (B) a public holiday on the same day in both of Victoria and New South Wales.
  (2) **ECNL** means the Electronic Conveyancing National Law as adopted in Western Australia by the *Electronic Conveyancing Act 2014 (WA);*
  (3) **Electronic Settlement** means Settlement and the lodgment of the documents necessary to record the Buyer as registered proprietor of the Land facilitated by the ELNO;
  (4) **ELNO** has the meaning set out in the ECNL;
  (5) **Closing Time** means the time the ELNO usually closes for settlement transactions in Western Australia on the Settlement Date;
  (6) **Subscriber** means a subscriber under the ECNL;
  (7) **Withdrawal Notice** means a Notice given under clause 3.12(e); and
  (8) **Workspace** means an 'Electronic Workspace' as defined in the participation rules made under the ECNL for the transaction within the ELNO.

4 Delay in Settlement

4.1 Buyer delay

(a) If for any reason not attributable to the Seller, Settlement is not completed within 3 Business Days after the Settlement Date, the Buyer must pay to the Seller at Settlement interest on:
  (1) the balance of the Purchase Price; and
  (2) any other money payable at Settlement.

(b) The right of the Seller to interest under this clause 4.1 is in addition to the entitlement of the Seller to Rent under clause 6.7.

4.2 Seller delay

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

(a) the balance of the Purchase Price; and

(b) any other money payable at Settlement.

4.3 Interest or compensation

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

(a) at the Prescribed Rate; and

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

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

4.4 Seller ready, willing and able

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

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

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

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

(c) If a Notice is given in accordance with subclause (a), later than 3 Business Days after the Settlement Date, interest is calculated and payable from and including the day on which the Notice is given up to but excluding the date on which Settlement occurs.

4.5 Buyer ready, willing and able

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

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

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

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

(c) If a Notice is given in accordance with subclause (a) later than 3 Business Days after the Settlement Date, compensation is calculated from and including the day on which the Notice is given up to but excluding the date on which Settlement occurs.

4.6 Dispute – interest or compensation

(a) If:

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

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

this clause 4.6 will apply.

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

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

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

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

(1) the Representative of the Interest Party; or

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

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

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

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

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

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

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

(e) If:

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

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

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

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

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

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

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

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

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

(1) pay; and

(2) otherwise deal with,

the Interest Amount as specified in this clause.

(h) This clause 4.6 does not affect the right of the Interest Party after Settlement to claim and, if appropriate, institute proceedings against the Buyer to recover, an amount of interest or compensation as specified in clauses 4.1 to 4.5.

4.7 Restriction on right in case of court proceeding

(a) The right of a Party under this clause 4 to interest or compensation ceases from and including the date on which court proceedings are Instituted by a Party for:

(1) specific performance of the Contract; or

(2) a declaration that the Contract:

(A) has been terminated; or

(B) remains valid and enforceable; or

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

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

(b) It is the intention of the Parties that if there is a delay in respect to Settlement, interest or compensation payable under this clause 4 represents the best estimate as to the damages sustained arising from the delay.

(c) If court proceedings are Instituted by a Party in accordance with subclause (a), nothing in the Contract:

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

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

4.8 Right not affected

The rights of a Party under this clause 4 do not affect the rights of a Party under clause 24.

5 Inspection

5.1 Right to inspect

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

(1) the Buyer is entitled to inspect the Property to check that the Seller has complied with the Seller's obligations under the Contract; and

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

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

(b) If following an inspection under subclause (a) the Buyer identifies items that require rectification by the Seller under the Contract, the Buyer may give Notice of those items to the Seller following which:

(1) the Buyer is entitled to inspect the Property to check that the Seller has rectified those items; and

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

on 1 further occasion before the Possession Date.

(c) The Buyer may be accompanied by 2 persons on an inspection.

(d) if the Buyer is a corporation, the reference in this clause 5.1 and in clause 5.2 to the Buyer means a reference to a director, secretary or officer of the corporation or any other person nominated by the corporation.

5.2 Time for inspection

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

(b) If the Buyer and the Seller do not reach agreement by 5 Business Days before the Settlement Date, the Buyer may by not less than 1 Business Day's Notice to the Seller or the Seller Agent specify the date and time for the inspection.

(c) The inspection must be:

(1) on a Business Day; and

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

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

(e) This clause 5.2 applies in respect of each inspection to which the Buyer is entitled under clause 5.1.

6 Possession and Rent

6.1 Entitlement to possession

(a) Subject to clauses 6.2 and 6.3, the Buyer is entitled to possession of the Property on the earlier of:

(1) the date for possession (if any) specified in the Contract; and

(2) Settlement.

(b) Subject to clause 6.3, and without affecting the rights of the Buyer on possession, if the Property is not sold subject to a Lease:

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

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

6.2 Early possession

If the Buyer is given possession of the Property before Settlement:

(a) for a period of less than one month, then clauses 14.6 to 14.9 apply until Settlement; or

(b) for a period of one month or longer, then:

(1) clauses 14.6 to 14.9 apply until Settlement subject to the Residential Tenancies Act; and

(2) the Parties must comply with the Residential Tenancies Act.

6.3 Principal residence – limited occupation right

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

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

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

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

6.4 Damage to Property

If clause 6.3 applies:

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

(1) Settlement; and

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

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

6.5 Keys and security devices

(a) Subject to subclauses (b) to (d), the Seller must deliver the Access Device to the Buyer on the Possession Date.

(b) If clause 6.3 applies, the Seller must, at the time of giving possession of the Property to the Buyer, deliver to the Buyer the Access Device.

(c) If agreed by the Buyer, the Access Device may be delivered to, and be held by, the Seller Agent for delivery to the Buyer following Settlement.

(d) If subclause (c) applies, the Seller:

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

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

6.6 Lease Provisions apply

Clauses 6.7 to 6.10 inclusive apply if the Contract provides that the Property is sold subject to the Lease.

6.7 Rent

(a) The Seller is entitled to all Rent up to and including the Possession Date.

(b) The Buyer is entitled to all Rent from and including the day after the Possession Date.

6.8 Rent paid before Settlement

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

(1) to which the Buyer is entitled under clause 6.7; and

(2) which was paid to the Seller before the Possession Date.

(b) The Seller is not obliged to pay to the Buyer on Settlement any Rent which was payable by a Tenant under a Lease but is unpaid on the Possession Date.

6.9 Rent received after Settlement

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

6.10 General provisions where property leased

If the Property is on the Possession Date subject to a Lease:

(a) the Seller must deliver to the Buyer on the Possession Date:

(1) if the Lease is in writing, an original or true copy of the Lease showing signing by the Parties; and

(2) if the Lease is liable to be assessed for Duty, the original or a true copy of the Lease delivered by the Seller to the Buyer under subclause (a)(1), showing that the Lease has been Duty Endorsed; and

(3) if the Lease is an oral lease or tenancy agreement, a written memorandum setting out all relevant details applicable to the Lease which are applicable on the Possession Date; and

(4) a statement which shows:

(A) the Rent payable for the Rent Period during which the Possession Date occurs; and

(B) the amount paid by the Tenant before the Possession Date in respect to the Rent Period specified in subclause (a)(4)(A); and

(5) any Property Condition Report that has been prepared in respect to the premises the subject of the Lease; and

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

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

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

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

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

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

(b) Subject to clause 6.9, if, on the Possession Date, Rent was due to the Seller and has not been paid by the Tenant:

(1) the Buyer assigns to the Seller the unpaid Rent;

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

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

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

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

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

(c) If a person has:

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

(2) executed the Lease as a guarantor,

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

(d) If a person has:

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

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

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

(e) If subclause (d) applies and the guarantee document is liable to be assessed for Duty, the original or a true copy of the guarantee document delivered by the Seller to the Buyer under subclause (d) must show that the guarantee document has been Duty Endorsed.

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

(g) Any fee payable to a guarantor in relation to an assignment referred to in subclause (f) must be paid by the Buyer.

7 Outgoing

7.1 Seller and Buyer obligation

Subject to this clause 7:

(a) the Seller must pay each Outgoing payable up to and including the Possession Date; and

(b) the Buyer must pay each Outgoing payable from and including the day after the Possession Date.

7.2 Apportionment

Subject to this clause 7 an Outgoing must be apportioned under clause 7.1 and any amount payable by one Party to the other must be paid:

(a) at Settlement; or

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

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

7.3 Buyer not liable for Land Tax

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

7.4 Settlement Date 30 June

(a) If:

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

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

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

(b) If:

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

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

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

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

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

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

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

(c) Subject to subclause (d):
  (1) the Notice as specified in subclause (b)(3) may, subject to the Contract Date being before 1 June, be incorporated in the Contract; and
  (2) if the Notice is incorporated in the Contract in accordance with subclause (c)(1), that Notice is treated as having been given in accordance with subclause (b)(3).

(d) Subclause (c) does not apply unless before 1 June:
  (1) a separate Certificate of Title for the Land has issued; and
  (2) the Buyer has been given Notice by the Seller of the issue of that separate Certificate of Title for the Land.

7.5 Land Tax - Subdivided Land

(a) If on the Possession Date:
  (1) the Property is not a residence as described in clause 7.3; and
  (2) the Land is the subject of a subdivision after the commencement of the Financial Year in which the Possession Date occurs,

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

(b) If subclause (a) applies, Land Tax is apportioned and payable as an Outgoing in accordance with clauses 7.1 and 7.2 on the basis that the Land Tax payable in respect to the Land is:
  (1) the same proportion as the area of the Land bears to the total area of the Subdivision Land; and
  (2) the Subdivision Land is the only land owned by the Seller.

7.6 Land Tax general

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

(b) Except as provided in clause 7.3, and subject to clauses 7.4 and 7.5, Land Tax must be apportioned:
  (1) as an Outgoing and paid as provided in clauses 7.1 and 7.2; and
  (2) otherwise on the basis that the Land is the only land owned by the Seller.

7.7 Future Rate Outgoing

(a) If at Settlement the Land will be subject to a Future Rate Outgoing:
  (1) the Seller must procure the Seller Representative to, not later than 3 Business Days before the Settlement Date, provide a written undertaking to the Buyer Representative that at Settlement, the Seller Representative will:
    (A) hold in trust an amount, which must be specified in that undertaking, sufficient to pay the proportion of the Future Rate Outgoing which is payable by the Seller; and
    (B) immediately after the assessment of the Future Rate Outgoing, pay the Seller's proportion of the Future Rate Outgoing to the relevant Authority; and
  (2) the Buyer must procure the Buyer Representative to, not later than 3 Business Days before the Settlement Date, provide a written undertaking to the Seller Representative that at Settlement, the Buyer Representative will:
    (A) hold in trust an amount specified by the Buyer Representative in that undertaking, which is sufficient to pay the proportion of the Future Rate Outgoing payable by the Buyer; and
    (B) immediately after the assessment of the Future Rate Outgoing, pay the Buyer's proportion of the Future Rate Outgoing to the relevant Authority.

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

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

(d) If the dispute is determined by the Seller Agent or a Real Estate Agent:
  (1) the Seller Agent or the Real Estate Agent must act as an expert and not as an arbitrator;
  (2) the determination of the Seller Agent or the Real Estate Agent is final and binding on the Seller and the Buyer; and
  (3) if any cost is payable to the Seller Agent or a Real Estate Agent for determining a dispute, as specified in subclause (b) and (c), that cost must be paid by the Buyer and the Seller in equal shares.

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

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

8 Risk

8.1 Passing of risk

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

(a) Purchase Price is paid in full; or

(b) Settlement occurs; or

(c) Buyer is given possession of the Property;

whichever first occurs.

8.2 Damage or destruction

(a) If the Property includes a building or other improvement which is:
  (1) destroyed; or
  (2) partially damaged,

  before Settlement, subclause (b) applies.

(b) If:
  (1) the building is a residence and is made substantially uninhabitable; or
  (2) in any other case, a building or other improvement is made substantially unusable for the current use as at the Contract Date;

  clauses 8.3 to 8.7 apply.

8.3 Notice of damage or destruction

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

(a) full particulars of the damage or destruction;

(b) that the Buyer may, within 15 Business Days of service of the Notice, terminate the Contract; and

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

8.4 Right of Buyer to terminate

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

8.5 Right of Seller to terminate

If:

(a) clause 8.2 applies;

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

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

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

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

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

8.6 Termination

If:

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

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

then

(c) subject to subclauses (d) to (g), the Contract is terminated as from and including the date of service of that Notice;

(d) the Deposit, and any other money paid by the Buyer under the Contract, must be promptly repaid to the Buyer;

(e) if the Deposit has been invested by the Deposit Holder in accordance with clause 1.9, the Buyer is entitled to the interest on the Deposit;

(f) if any other money has been paid to the Deposit Holder by the Buyer, and invested by the Deposit Holder with a Deposit Financial Institution, the Buyer is entitled to the interest on that other money; and

(g) subject to subclauses (d) to (f), no Party has any claim or right of action against the other arising from the termination, except in respect to any matter which arose before the termination.

8.7 Right of Buyer to proceed

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

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

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

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

8.8 Reduction of Purchase Price

If clause 8.7 applies:

(a) the Purchase Price is reduced by the amount of the reduction in value of the Property following the damage or destruction;

(b) the amount of the reduction of the Purchase Price is, subject to this clause 8.8, the amount which is agreed in writing between the Seller and the Buyer within 30 Business Days of the date of service of the Notice under clause 8.3;

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

(d) even if:

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

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

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

8.9 Variation of Settlement Date

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

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

(b) determined by arbitration.

9 Seller Representation and Warranty

9.1 As at Contract Date and Possession Date

Except to the extent disclosed in writing by the Seller to the Buyer before the Contract Date, or as otherwise specified in the Contract, the Seller represents and warrants to the Buyer on the Contract Date (and is taken to repeat those representations and warranties at the Possession Date) that:

(a) the Seller does not know of:

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

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

(B) which an Authority proposes to make;

(2) any proposal by an Authority:

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

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

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

(A) work performed or to be performed; or

(B) expenses incurred or to be incurred,

by an Authority in relation to the Land;

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

(5) any obligation to:

(A) construct or repair; or

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

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

(6) any encroachment on the Land by a building or other structure on adjoining land;

(b) no building or other structure on the Land encroaches on adjoining land;

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

(d) the Seller:

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

(2) is, or will be the sole owner of the Property Chattels;

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

(f) subject to clause 6.1(b), the Property will be in the same state and condition it was in immediately before the Contract Date; and

(g) as far as the Seller is aware:

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

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

(3) no mining lease or licence has been issued under any Act, in respect to the Land.

9.2 Contract Date

Except as otherwise disclosed in writing by the Seller to the Buyer before the Contract Date, the Seller represents and warrants to the Buyer on the Contract Date that:

(a) the Seller:

(1) has not received a notice of resumption of; and

(2) does not know of any intention to resume, the Land by an Authority; and

(b) the use of the Property is lawful.

9.3 Breach or non-satisfaction of warranty

If the Seller is in breach of a representation or warranty in clause 9.1, 9.2 or 10.2, then, unless the Parties otherwise agree, the Buyer has no right to terminate the Contract or defer or delay Settlement or withhold any part of the Purchase Price, however:

(a) if the breach unreasonably affects the proposed use of the Property by the Buyer or materially affects the value of the Property, the Buyer may exercise its rights arising at law; and

(b) this clause does not limit any rights of a Party arising at law or elsewhere in the Contract, including any rights referred to in clause 10.3(b).

10 Strata or community title

10.1 When this clause applies

This clause 10 applies if the Land is a Scheme Lot.

10.2 Representation and Warranty

Except to the extent disclosed in writing by the Seller to the Buyer before the Contract Date, or as otherwise specified in the Contract, the Seller represents and warrants to the Buyer on the Contract Date (and is taken to repeat those representations and warranties at the Possession Date) that:

(a) the Seller has paid:

(1) each Scheme Contribution levied by the Scheme Corporation in respect of the Scheme Lot except for any Scheme Contribution which is to be apportioned under clause 7.2 or 10.6;

(2) all other money due to the Scheme Corporation in consideration of any right or privilege granted by the Scheme Corporation in respect of the Scheme Lot;

(3) all money due to the Scheme Corporation for:

(A) work carried out by the Scheme Corporation in relation to the Scheme Lot; or

(B) the provision by the Scheme Corporation of an amenity or service to the Scheme Lot or to the proprietor or occupier of the Scheme Lot;

(4) any other money due by the Seller to the Scheme Corporation; and

(5) all interest due to the Scheme Corporation on the money specified in subclauses (a)(1), (a)(2), (a)(3) and (a)(4);

(b) no administrator of the Scheme Corporation has been appointed;

(c) except for anything:

(1) apparent on an inspection of the Scheme Lot and the parcel of which it forms part; or

(2) registered or recorded on the Scheme Plan; or

(3) specified in the by-laws of the Strata/Community Scheme,

the Seller does not know of anything which will materially affect the Buyer's use or enjoyment of the Scheme Lot or of the common property comprised in the Strata/Community Scheme;

(d) the Seller does not know of any proposal or application to terminate the Strata/Community Scheme;

(e) the Seller does not know of any current, proposed or pending proceeding or application in relation to the:

(1) Strata/Community Scheme;

(2) Scheme Corporation; or

(3) Scheme Lot,

in a court or tribunal;

(f) the Seller does not know of any judgment or order of the State Administrative Tribunal, a court, or other relevant tribunal or judicial or administrative body in respect to the:

(1) Scheme Corporation;

(2) Strata/Community Scheme; or

(3) Scheme Lot,

which has not been satisfied or complied with;

(g) other than changes recorded on the Scheme Plan, no change to the by-laws of the Strata/Community Scheme has been:

(1) voted on by the Scheme Corporation; or

(2) ordered by a court or tribunal;

(h) no money is owing to the Scheme Corporation for work carried out by the Scheme Corporation in relation to the Scheme Lot;

(i) the Seller does not know of any change which:

(1) has been made; or

(2) is proposed,

to the by-laws of the Strata/Community Scheme other than changes recorded on the Scheme Plan;

(j) the Seller does not know of any action taken or any proposal to:

(1) vary the schedule of unit entitlement recorded on the Scheme Plan;

(2) grant, vary or surrender any easement or restrictive covenant affecting the Scheme Lot or any other part of the parcel;

(3) transfer, lease, licence or resume any part of the Scheme Lot or the common property;

(4) take a lease of land outside the parcel;

(5) obtain, vary or surrender a lease of land outside the parcel; or

(6) obtain an expenditure approval under Section 102(6)(b) of the Strata Titles Act;

(k) the Seller does not know of any proposal by the Scheme Corporation to pass any resolution which will:

(1) adversely affect the use and enjoyment by the Buyer of the Scheme Lot or of the common property; or

(2) increase any Outgoing in respect to the Scheme Lot;

(l) the information referred to in Section 156 of the Strata Titles Act or Section 130 of the Community Titles Act and provided to the Buyer by or on behalf of the Seller is correct; and

(m) the Seller does not know of any fact or circumstance which may result in:

(1) proceedings in the State Administrative Tribunal; or

(2) proceedings before a court,

being instituted against the registered proprietor of the Scheme Lot in respect to any matter relating to:

(3) the common property;
(4) the Scheme Lot; or
(5) any action or liability arising under, or referred to in, Section 103 of the Strata Titles Act or Section 88 of the Community Titles Act.

10.3 Indemnity by Seller and right of Buyer

(a) Except for a matter in respect to which the Buyer has agreed in writing to be bound, the Seller indemnifies and agrees to indemnify the Buyer against any Loss the Buyer may suffer or incur as a result of a breach by the Seller of a representation or warranty in clause 10.2:
(1) as the registered proprietor of the Scheme Lot; and
(2) which arises from a fact or circumstance which occurs before the Possession Date.

(b) The right of the Buyer to terminate the Contract under Part 10 of the Strata Titles Act or Part 10 of the Community Titles Act:
(1) does not affect; and
(2) is in addition to,
every other right of the Buyer arising from the default of the Seller under the Contract.

10.4 Voting

On and from the Contract Date until the Buyer becomes registered as the proprietor of the Scheme Lot:

(a) the Seller must:
(1) immediately notify the Buyer if the Seller becomes aware of any proposal for members of the Scheme Corporation to vote on a resolution in respect to the Scheme Corporation; and
(2) provide a copy of the proposed resolution to the Buyer;

(b) the Seller must, if required by the Buyer by Notice, vote in the manner directed by the Buyer in respect to any resolution proposed to be passed by the members of the Scheme Corporation;

(c) if a section 102(6)(b) Strata Notice is given to each proprietor in the Strata Titles Scheme:
(1) the Seller must immediately give Notice to the Buyer of:
(A) the Section 102(6)(b) Strata Notice;
(B) the date of service of the Section 102(6)(b) Strata Notice; and attach to the Notice from the Seller a copy of the Section 102(6)(b) Strata Notice;
(2) the Buyer may, following the service of the Notice under subclause (c)(1), serve a Notice on the Seller directing the Seller to notify the council of the Scheme Corporation that the Seller objects to the expenditure specified in the Section 102(6)(b) Strata Notice; and
(3) if the Buyer gives a Notice to the Seller in accordance with subclause (c)(2), the Seller must immediately notify the council of the Scheme Corporation that the Seller objects to the expenditure specified in the Section 102(6)(b) Strata Notice;

(d) the Seller must not, and must ensure that any mortgagee of the Scheme Lot does not, without the prior approval in writing of the Buyer:
(1) propose; or
(2) vote in favour of,
any resolution of the Scheme Corporation; and

(e) the Seller must ensure that any mortgagee of the Scheme Lot does not, without the prior approval in writing of the Buyer, vote in favour of any proposed expenditure referred to in a Section 102(6)(b) Strata Notice.

10.5 Scheme Corporation application

(a) Subject to subclause (b), the Seller authorises the Buyer and the Representative of the Buyer to make application to the Scheme Corporation in respect to the:
(1) information;
(2) documents to be inspected; and
(3) certificates,
specified in Section 107 of the Strata Titles Act or Section 94 of the Community Titles Act.

(b) Subject to the Scheme Corporation requiring payment, the Buyer must pay to the Scheme Corporation the fee prescribed by the Strata Regulations or the Community Regulations in connection with any application made in accordance with subclause (a).

10.6 Apportionment of Reserve Fund Contribution

(a) This clause 10.6 applies if, on or before the Settlement Date, the Scheme Corporation has levied a Reserve Fund Contribution in respect to the Scheme Lot.

(b) If an instalment of a Reserve Fund Contribution is payable in a Financial Year before the Financial Year in which the Settlement Date occurs, the Seller must pay that instalment.

(c) If:
(1) the whole of the Reserve Fund Contribution is; or
(2) any instalments of the Reserve Fund Contribution are,
payable in the Financial Year in which the Settlement Date occurs,
then the whole of the Reserve Fund Contribution or those instalments of the Reserve Fund Contribution will be apportioned between the Seller and the Buyer as if the Reserve Fund Contribution is an Outgoing for the purposes of clauses 7.1 and 7.2 for that Financial Year.

(d) If any instalment of the Reserve Fund Contribution is payable in a Financial Year after the Financial Year in which the Settlement Date occurs, the Buyer must pay that instalment.

(e) If after the Settlement Date and in a Financial Year in which the Settlement Date occurs, a Reserve Fund Contribution is levied in respect of the Scheme Lot:
(1) there will be no adjustment of that Reserve Fund Contribution; and
(2) the Buyer must pay that Reserve Fund Contribution.

10.7 Property included

(a) The Property includes:
(1) the share of the Seller in the common property comprised in the Scheme Plan; and
(2) the benefit of any lease, licence, right or special privilege in respect to the common property and which is granted to the proprietor of the Scheme Lot and which attaches to the Scheme Lot.

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

10.8 Interests notified

Without affecting any other provision of this clause 10, the Seller sells the Land subject to the interests registered and notifications recorded on the Scheme Plan on the Contract Date.

11 Electricity/Underground Power

11.1 Land not connected to electricity supply

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

11.2 Electricity Scheme Agreement

(a) This clause 11.2 applies if, on the Contract Date:
(1) the Property has been connected to the electricity supply under the Electricity Extension Scheme; and
(2) the Seller is a party to the Electricity Scheme Agreement in relation to the Property.

(b) The Seller must, a reasonable time before the Settlement Date, arrange for Western Power to prepare and deliver to the Buyer the standard form Western Power documentation under which:
(1) the Seller is released from obligation under the Electricity Scheme Agreement; and
(2) the Buyer becomes liable for all obligations under the Electricity Scheme Agreement.

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

(d) The Seller must, before Settlement, pay to Western Power each:
(1) capital contribution; and
(2) electricity supply and other charge,
payable to Western Power under the Electricity Scheme Agreement up to the Settlement Date and provide evidence to the Buyer at Settlement of compliance with this subclause (d).

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

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

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

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

11.3 Cost of Electricity Scheme Agreement documentation

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

11.4 Underground power

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

(a) in the area within which the Land is situated; and
(b) the Land is required to be, or has been connected to the underground power supply,

clauses 11.5 and 11.6 apply.

11.5 Underground power rate payable by Buyer

If:

(a) clause 11.4 applies; and
(b) the Authority has not before the Contract Date prescribed:
(1) an Underground Power Rate; and
(2) the manner in which the Underground Power Rate must be paid, the Buyer must pay the Underground Power Rate.

11.6 Underground power rate payable by Seller

If:

(a) clause 11.4 applies; and
(b) the Authority has before the Contract Date prescribed:
(1) an Underground Power Rate; and

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

the Seller must:

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

(4) on Settlement:

(A) pay the Underground Power Rate to the Buyer on the basis that the Buyer must pay the Underground Power Rate to the Authority; or

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

12 Sewer/Septic Tank

12.1 Property connected

(a) If on the Contract Date:

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

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

the Seller must pay that amount:

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

(4) to the Buyer at Settlement.

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

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

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

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

12.2 Land not connected

If on the Contract Date:

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

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

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

12.3 Decommissioning of Septic Tank

If on the Contract Date:

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

(b) the septic tank has not been decommissioned,

the Buyer is solely responsible for decommissioning the septic tank.

13 Subdivision

13.1 When this clause applies

(a) Subject to subclause (b), this clause 13 applies only if the Land is not a Lot on the Contract Date.

(b) If the Land is a Proposed Strata Lot or a Proposed Community Lot, only clauses 13.6, 13.7, 13.8 and 13.10 apply unless the Contract is also a Future Lot Contract, in which case clause 13.9 also applies.

13.2 Contract conditional

(a) The Contract is conditional on:

(1) an application for the subdivision of the Subdivision Lot from the Original Land being lodged with the Planning Commission within 3 months after the Contract Date; and

(2) the Planning Commission granting approval for the subdivision of the Subdivision Lot from the Original Land within 6 months after the Contract Date, or any longer period as specified in:

(A) the Contract;

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

(b) Subject to clause 13.5, if the Planning Commission grants approval for subdivision subject to a condition, the Planning Commission will be treated as having granted approval for subdivision for the purposes of subclause (a)(2).

(c) If a condition specified in subclause (a) is not satisfied, the Contract terminates:

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

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

13.3 Further condition for subdivision

(a) The Contract is also conditional on:

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

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

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

(1) the Contract; or

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

(c) If the conditions specified in subclause (a) are not satisfied:

(1) either Party may at any time prior to the relevant condition being satisfied, elect by Notice to the other Party to terminate the Contract; and

(2) if Notice terminating the Contract has been given under subclause (c)(1), the Contract terminates on the date of service of the Notice.

13.4 Application and Subdivision Plan

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

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

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

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

(A) lodged at Landgate; and

(B) endorsed as In Order for Dealing, as soon as practicable.

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

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

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

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

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

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

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

13.5 Unacceptable condition or requirement imposed by Planning Commission

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

(1) is unwilling to comply with; or

(2) considers to be prejudicial,

the Party who:

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

(B) is prejudiced by the condition or requirement,

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

(b) If Notice terminating the Contract has been given under subclause (a), the Contract terminates on the date of service of the Notice.

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

(1) subclause (a) applies to the condition or requirement imposed by the other Authority;

(2) the Seller must use reasonable endeavours to obtain the approval of the other Authority; and

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

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

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

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

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

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

13.6 Proposed Strata Lot or Proposed Community Lot

If the Subdivision Lot is a Proposed Strata Lot or a Proposed Community Lot, the Seller must use best endeavours to arrange for the Subdivision Plan, being a Scheme Plan, to be registered at Landgate within the period specified or referred to in Section 163(3)(b) of the Strata Titles Act or Section 137(3)(b) of the Community Titles Act (as applicable).

13.7 Strata Lot – obligation to construct development

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

(a) undertake the construction of the building or improvement:
  (1) in a proper and workmanlike manner; and
  (2) in accordance with any plans or specifications which are attached to, or incorporated in, the Contract; and
(b) if on the Contract Date construction has not commenced:
  (1) commence construction after the Contract Date or on any date specified in the Contract; and
  (2) following commencement of construction, cause:
    (A) construction to proceed; and
    (B) the construction of the building or other improvement to be completed.

13.8 Issue of title – Settlement Date

(a) As soon as practicable after the Subdivision Plan is In Order for Dealing, the Seller must:
  (1) apply for, and arrange for the issue of, a separate Certificate of Title for the Subdivision Lot; and
  (2) notify the Buyer in writing, as soon as practicable after a separate Certificate of Title has been issued for the Subdivision Lot.
(b) Unless otherwise provided in the Contract, the Settlement Date is the date which is:
  (1) 15 Business Days after the Seller notifies the Buyer that a separate Certificate of Title has issued for the Subdivision Lot; or
  (2) if:
    (A) the Buyer is aware that a separate Certificate of Title has been issued for the Lot; and
    (B) the Buyer has notified the Seller that the Buyer is aware that a separate Certificate of Title has issued for the Lot,

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

13.9 Future Lot Contract

(a) If the Contract is a Future Lot Contract:
  (1) the Contract is conditional on the Seller being entitled to become the proprietor of the Subdivision Lot, Proposed Strata Lot or Proposed Community Lot within the period referred to in Section 13B of the Sale of Land Act; and
  (2) the Seller must comply with the Sale of Land Act including:
    (A) providing the required statutory warning (Section 13C of the Sale of Land Act);
    (B) using reasonable endeavours to obtain approvals and lodge plans, and giving information to the Buyer (Section 13G of the Sale of Land Act); and
    (C) notifying the Buyer within 10 Business Days of the condition in clause 13.9(a)(1) being satisfied (Section 13H of the Sale of Land Act).
(b) If the Contract is terminated by the Buyer as a result of the condition in clause 13.9(a)(1) not being satisfied or under the Sale of Land Act, clause 13.10 applies.
(c) This clause 13.9 and the Sale of Land Act have priority over any other provision of the Contract to the extent of any inconsistency.

13.10 Consequences of termination of Contract

If the Contract terminates:
(a) under clause 13.2(c);
(b) under clause 13.3(c);
(c) under clause 13.5(b);
(d) as a result of the a Scheme Plan not being registered at Landgate in accordance with clause 13.6; or
(e) as a result of the condition in clause 13.9(a)(1) not being satisfied or under the Sale of Land Act,

then:
(f) the Deposit and any other money paid by the Buyer under the Contract, must be promptly repaid to the Buyer;
(g) if the Deposit has been invested by the Deposit Holder in accordance with clause 1.9, the Buyer is entitled to the interest on the Deposit;
(h) if any other money has been paid to the Deposit Holder by the Buyer, and invested by the Deposit Holder with a Deposit Financial Institution, the Buyer is entitled to the interest on that other money; and
(i) subject to subclauses (f) to (h), no Party has any claim or right of action against the other arising from the termination, except in respect to any matter which arose before the termination.

14 Terms contract

14.1 When this clause applies

This clause 14 applies if the Contract is a Terms Contract but clauses 14.6 to 14.10 only apply if the Buyer is given possession of the Property before Settlement.

14.2 Right to pay Purchase Price

Subject to the Buyer giving not less than 10 Business Days prior notice in writing to the Seller, the Buyer may pay the full balance of the Purchase Price at any time earlier than the time for payment specified in the Contract.

14.3 Right to pay instalment of Purchase Price

(a) Subject to subclauses (b) and (c), the Buyer may at any time pay to the Seller part of the Purchase Price outstanding.
(b) Unless a payment in accordance with subclause (a) is the whole of the balance of the Purchase Price outstanding, any payment made in accordance with subclause (a), must be in the sum of $1,000, or a multiple of $1,000.
(c) Any payment made in accordance with subclause (a) will:
  (1) be treated as payment of the last instalment or instalments of the Purchase Price due under the Contract; and
  (2) not affect the obligation of the Buyer to pay the next instalment of the Purchase Price on the due date for payment.

14.4 Obligation to pay balance of Purchase Price

(a) If the Buyer fails:
  (1) to pay any instalment of the Purchase Price due under the Contract, on the due date for payment; and
  (2) to pay the instalment specified in subclause (a)(1), within the time specified in a Notice served on the Buyer under subclause (b),

  the whole of the balance of the Purchase Price, and all other money due under the Contract, is immediately due and payable by the Buyer to the Seller.
(b) If the Buyer has failed to pay an instalment of the Purchase Price on the due date the Seller may serve Notice on the Buyer. The Notice must:
  (1) specify particulars of the instalment of the Purchase Price which has not been paid on the due date; and
  (2) require the Buyer to pay the instalment specified in subclause (b)(1) within the time specified in the Notice being not less than 10 Business Days after the service of the Notice.

14.5 Right to pay mortgagee

If the Land is subject to a mortgage:
(a) subject to subclause (b), the Buyer may pay any instalment of the Purchase Price due under the Contract, to the mortgagee under the mortgage, in reduction of the amount owed under the mortgage;
(b) the Buyer must give Notice to the Seller of any payment made by the Buyer in accordance with subclause (a);
(c) an amount paid by the Buyer under subclause (a) is treated as payment of the instalment of the Purchase Price next due to be paid by the Buyer under the Contract;
(d) the Seller authorises the Buyer to:
  (1) obtain information from the mortgagee as to the amount owed under the mortgage; and
  (2) pay any amount to the mortgagee, in reduction of the amount owing under the mortgage; and
(e) the Seller authorises the mortgagee to:
  (1) provide any information requested by the Buyer; and
  (2) accept any amount paid by the Buyer in reduction of the account owing under the mortgage.

14.6 Insurance

(a) The Buyer must from and including the Possession Date take out and maintain with an insurer authorised to operate under the Insurance Act in the names of:
  (1) the Buyer;
  (2) the Seller; and
  (3) any mortgagee of the Land,

  for their respective rights and interests, the insurance specified in subclause (b).
(b) The insurance required to be taken out and maintained under subclause (a) is:
  (1) insurance in respect to each building and other improvement on the Land for full replacement value against damage or destruction by fire, storm, tempest, earthquake and any other risk as reasonably determined by the Seller of which Notice is given to the Buyer; and
  (2) public liability insurance in respect to:
    (A) the death or injury of a natural person; or
    (B) damage to or destruction of property of other persons, in respect of any one incident, in the sum of $20 million or any greater amount reasonably required by the Seller.
(c) The Buyer must:
  (1) provide to the Seller a copy of each policy of insurance taken out in accordance with subclauses (a) and (b);
  (2) not alter or vary the insurance taken out under subclauses (a) and (b), without prior written notification to the Seller and in the event of the substitution or variation of any insurance taken out, comply with subclauses (a), (b) and (c)(1); and
  (3) provide proof to the Seller that the insurance is current.
(d) If the Buyer fails to:
  (1) take out insurance as required under subclauses (a) and (b); or
  (2) provide proof to the Seller that the insurance is current,

  the Seller may, without notice to the Buyer, and without being obliged to do so, take out and maintain the insurance required in accordance with subclauses (a) and (b).
(e) If the Seller takes out and maintains insurance in accordance with subclause (d) the Buyer must pay to the Seller on demand:
  (1) all cost incurred by the Seller in taking out and maintaining the insurance; and

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

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

14.7 Insurance – Scheme Lot

(a) Clause 14.6 does not apply if:
   (1) the Property is a Scheme Lot; and
   (2) the Buyer provides proof to the Seller that as at the Possession Date, the Scheme Corporation has taken out and is maintaining insurance in respect to each risk and for the liability specified in clause 14.6(b).

(b) If subclause (a) applies, the Buyer must:
   (1) if required by the Seller, immediately provide to the Seller a copy of each policy of insurance taken out by the Scheme Corporation;
   (2) if the insurance taken out by the Scheme Corporation is altered or varied, provide to the Seller details of the altered or varied insurance immediately the Buyer becomes aware of the alteration or variation, and in particular, provide details of any substitute insurance taken out by the Scheme Corporation; and
   (3) provide proof to the Seller that the Scheme Corporation insurance is current.

(c) The Seller may, by Notice to the Buyer, require that the Buyer take out insurance which:
   (1) is additional to the insurance taken out by the Scheme Corporation;
   (2) is specified in the Notice from the Seller to the Buyer; and
   (3) provides additional insurance in respect to each risk and the liability specified in clause 14.6(b).

(d) If the Seller gives notice to the Buyer under subclause (c):
   (1) the Buyer must take out and maintain the additional insurance; and
   (2) clause 14.6 applies to the additional insurance.

14.8 Application of insurance proceeds

(a) If, arising from an incident, money becomes payable under the insurance taken out and maintained under this clause 14, subclauses (b) and (c) will apply.

(b) The Buyer must:
   (1) subject to any requirement of a mortgagee, if a mortgage is registered over the Land; and
   (2) at the option of the Seller,

   apply insurance proceeds arising from damage or destruction of a building or improvement on the Land in:
      (A) repair, reinstatement or replacement of that building or improvement; or
      (B) as a payment towards, or in full payment of the Purchase Price then outstanding.

(c) The Buyer must apply any proceeds of a claim arising from public risk insurance as required by:
   (1) the insurer; or
   (2) the Seller, acting reasonably.

(d) If the Property is a Scheme Lot:
   (1) insurance in respect to the Property is covered by insurance taken out by the Scheme Corporation; and
   (2) arising from an incident money becomes payable under insurance taken out and maintained by the Scheme Corporation,

   the insurance proceeds must be applied as required by the Scheme Corporation or otherwise in accordance with the Strata Titles Act or the Community Titles Act (as applicable).

14.9 General obligation - Property and Land

From and including the Possession Date, the Buyer must:

(a) not:
   (1) demolish, alter or add to any building or improvement which forms part of the Property; or
   (2) remove from or add any soil or other material to the Land,

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

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

(c) promptly pay all Outgoings;

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

(e) if the Property is, or includes, a farm or cultivated Land:
   (1) maintain the farm; and
   (2) cultivate that Land,

   in accordance with the best practice usually followed in the district in which the Land is situated.

14.10 Default – Seller may remedy

If the Buyer is in default of an obligation under clause 14.9:

(a) subject to subclause (b), the Seller may, without:
   (1) being obliged to do so; and
   (2) any obligation to give any further notice to the Buyer,

   remedy that default;

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

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

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

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

14.11 Delivery of Transfer and title

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

(b) The documentation specified in subclause (a) must be delivered to the Buyer at:
   (1) the place and time agreed between the Seller and the Buyer; and
   (2) if not agreed in accordance with subclause (b)(1), then:
      (A) on the day which is a Business Day; and
      (B) at the time between 9.00am and 5.00pm; and
      (C) at the place within the Perth CBD,

      specified by Notice from the Buyer to the Seller given not less than 3 Business Days before the day specified in subclause (a).

15 Error or Misdescription

15.1 Meaning of error or misdescription

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

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

(b) a boundary of the Property; or

(c) the area of the Land.

15.2 No termination or delay in Settlement

Subject to this clause 15, an error or misdescription of the Property in the Contract does not:

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

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

15.3 Claim for compensation by Buyer

If the Buyer claims:

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

(b) to be entitled to compensation,

the Buyer must give to the Seller a Notice which specifies the basis of the claim and compensation required by the Buyer not later than 10 Business Days after the Possession Date.

15.4 Claim for compensation lost

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

15.5 Determination of claim and compensation

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

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

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

must be determined by arbitration under clause 25.1.

16 No requisition on title for freehold land

If the Land is freehold land:

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

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

17 Cost and duty

17.1 Legal and other cost

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

(a) the Contract; and

(b) Settlement.

17.2 Duty

The Buyer must pay Duty on the Contract and the Transfer.

17.3 Registration fee

The Buyer must pay the registration fee on the Transfer.

17.4 Default cost

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

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

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

(d) A Party may not refuse to complete Settlement because:
  (1) a Party liable; or
  (2) alleged to be liable,
  to pay cost and expense under this clause 17.4 does not pay that cost and expense at Settlement.

18 GST

18.1 Purchase Price does not include GST

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

18.2 Margin Scheme

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

18.3 GST to be paid on Purchase Price

If the Contract provides that GST must be paid in addition to the Purchase Price, at Settlement:

(a) the Buyer must, in addition to the Purchase Price, pay the GST on the Purchase Price and any other consideration payable under the Contract; and

(b) the Seller must provide a Tax Invoice to the Buyer.

18.4 GST on damages

(a) If:
  (1) a Successful Party becomes entitled to damages as a result of default under the Contract; and
  (2) the Successful Party is liable to pay GST on the damages,
  the Payment Party must pay to the Successful Party the GST payable by the Successful Party on the damages at the same time as the Payment Party must pay the damages to the Successful Party.

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

(c) This clause 18.4 applies whether or not GST is payable on the Purchase Price.

19 Depreciation and Capital Works Deduction

19.1 Price of Depreciating Asset in Contract

If:

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

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

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

19.2 Price of Depreciating Asset not specified in Contract

If:

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

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

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

19.3 Capital Works Deduction

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

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

20 Registration of Transfer

20.1 Registration

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

(a) the Transfer; and

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

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

20.2 Seller to cooperate

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

(b) The Seller's obligation in subclause (a) survives Settlement.

20.3 Landgate requisition

(a) If a requisition notice is issued by Landgate relating to the registration of:
  (1) the Transfer; or
  (2) any other document which is lodged for registration with the Transfer,
  the Seller and the Buyer must immediately do everything reasonably necessary to satisfy the requirements of the requisition notice.

(b) If a requisition notice is issued by Landgate in respect to a document prepared by or on behalf of the Seller, the Seller must, not later than 3 Business Days before the time for payment prescribed by Landgate:
  (1) pay to the Buyer the fee required by Landgate in respect to that requisition notice; or
  (2) pay direct to Landgate the fee required by Landgate in respect to that requisition notice and provide a copy of the receipt for the payment issued by Landgate to the Buyer.

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

21 Notice

21.1 Requirements for Notice

A notice to be given under the Contract must be:

(a) in writing; and

(b) in the English language; and

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

21.2 Service generally

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

(a) on a Party which is not a company
  (1) by delivering the Notice to the Party personally; or
  (2) by posting the Notice to the Party at the Party's address specified in the Contract; and

(b) on a Party which is a company
  (1) by delivering the Notice to the company at its registered office;
  (2) by posting the Notice to the company at its address specified in the Contract or at its registered office; or
  (3) in accordance with Section 109X of the Corporations Act.

21.3 Service - Representative

If a Representative acts for a Party:

(a) a Notice served on that Representative in accordance with this clause 21 is treated for all purposes as if the Notice had been served on that Party; and

(b) a Notice given by that Representative in accordance with this clause 21 is treated for all purposes as if the Notice had been given by that Party.

21.4 Service by facsimile or email

(a) If a facsimile number or email address is specified in the Contract or by a Party or a Representative as the facsimile number or email address of that Party or Representative:
  (1) a Notice to the relevant Party or the Representative may be transmitted by facsimile to the specified facsimile number or sent by email to the specified email address;
  (2) a Notice transmitted by facsimile is treated as served:
    (A) on the day on which it is transmitted but if it is transmitted after 4.00pm or on a day which is not a Business Day it is treated as having been served on the next Business Day; and
    (B) when the facsimile machine which transmits the Notice prints an acknowledgment that every page comprising that Notice has been transmitted to the specified facsimile number; and

(3) a Notice sent by email is treated as served when:

(A) it is sent unless the sender receives a return email to the effect that the email was not transmitted successfully; and

(B) on the day on which it is sent but if the email is sent by the sender on a day which is not a Business Day or after 5.00 pm (addressee's time), it is treated as having been given on the next Business Day,

and the Parties consent to a Notice being given by email.

(b) If:

(1) a Party has a Representative; and

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

then:

(3) the facsimile number or email address so specified is, subject to subclause (c), treated as the facsimile or email address for that Party or the Representative of that Party; and

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

(c) Subclause (b) does not apply if a Party or Representative specified in subclause (b) gives Notice to the other Party or the Representative of that other Party that the facsimile number or email address specified in the correspondence is not the facsimile number or email address of the Party or Representative.

21.5 Service when Notice posted

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

21.6 Change of address

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

(1) the Representative of that Party;

(2) the address of that Party; or

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

(4) a specified facsimile number; or

(5) a specified email address.

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

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

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

22 Time of Essence

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

23 Default Notice

23.1 Requirement for Default Notice

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

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

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

23.2 No limit on right to issue further Notice

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

23.3 No Default Notice required for repudiation

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

24 Default

24.1 Buyer Default

If the Buyer:

(a) is in default under the Contract and has failed to comply with a Default Notice; or

(b) repudiates the Contract,

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

24.2 Seller right on default or repudiation

If clause 24.1 applies, the Seller may:

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

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

(1) specific performance of the Contract; and

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

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

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

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

24.3 Further Seller right on termination

If the Seller terminates the Contract under clause 24.2(d) or 24.2(e), the Seller may, subject to the further provisions of this clause 24, elect to exercise any one or more of the following:

(a) forfeit the Deposit;

(b) sue the Buyer for damages for default;

(c) resell the Property.

24.4 Deposit exceeds 10% of Purchase Price

If the Deposit exceeds 10% of the Purchase Price:

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

(b) any money paid by the Buyer in excess of 10% of the Purchase Price, is to be treated as a payment of an Instalment for the purposes of this clause 24 only.

24.5 Resale

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

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

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

24.6 Resale within 12 months

If:

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

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

the amount held by the Seller:

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

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

24.7 Terms Contract

If:

(a) the Contract is a Terms Contract; and

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

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

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

24.8 Interest to Seller

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

(a) accrued on the Deposit; or

(b) on any Instalment paid by the Buyer, belongs to the Seller.

24.9 Instalment

If the Seller:

(a) terminates the Contract; and

(b) holds an Instalment,

the Seller may hold the Instalment pending:

(c) a resale of the Property; or

(d) determination of a claim for damages.

24.10 Sale within 12 months

If the Seller:

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

(b) resells the Property within 12 months of termination of the Contract, the Seller may apply the whole or part of the Instalment to liquidated damages determined in accordance with clause 24.6.

24.11 Payment after 12 months

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

24.12 Finalisation of proceedings

If:

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

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

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

24.13 Payment after finalisation

After determination of the action for damages the Seller:

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

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

24.14 Seller default

If the Seller:

(a) is in default under the Contract and has failed to comply with a Default Notice; or

(b) repudiates the Contract,

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

24.15 Buyer right on default or repudiation

If clause 24.14 applies, the Buyer may:

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

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

(1) specific performance of the Contract; or

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

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

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

24.16 Further Buyer right on termination

If the Buyer terminates the Contract under clause 24.15(c) or 24.15(d):

(a) the Deposit, and any other money paid by the Buyer under the Contract, must be promptly repaid to the Buyer;

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

(c) if the Deposit has been invested with a Deposit Financial Institution in accordance with clause 1.9, the Buyer is entitled to the interest earned on the Deposit;

(d) if any other money paid by the Buyer under the Contract to the Deposit Holder in addition to the Deposit has been invested by the Deposit Holder with a Deposit Financial Institution, the Buyer is entitled to the interest on that other money invested; and

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

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

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

24.17 Legal cost on termination

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

(a) the default of; or

(b) the repudiation by,

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

24.18 Rule in Bain v Fothergill excluded

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

25 General

25.1 Arbitration

If anything in relation to the Contract is to be determined by arbitration:

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

(b) the Commercial Arbitration Act 1985 (WA) applies; and

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

25.2 Contract takes priority

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

25.3 No merger

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

26 Definitions and interpretation

26.1 Definitions

In this document, unless otherwise stated:

Access Device means:

(a) each key and security device; and

(b) written details of each code for any security system which enables access to the Property.

Act means an act of Parliament.

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

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

Bank Cheque means a cheque drawn on itself by a Financial Institution.

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

Buyer means each person so specified in the Contract.

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

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

Certificate of Title means the Certificate of Title held by Landgate.

Clearance Certificate means a current certificate issued by the Commissioner of Taxation under section 14-220 of Schedule 1 to the Tax Administration Act that applies to the Seller (and if the Seller consists of more than one person, to each person who comprises the Seller) in respect of the sale of the Property.

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

Commissioner has the meaning given in the Tax Administration Act.

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

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

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

Corporations Act means the *Corporations Act 2001* (Commonwealth).

Crown Reservation means any of:

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

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

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

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

Default Notice means a notice which:

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

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

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

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

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

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

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

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

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

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

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

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

Deposit Holder means as applicable:

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

(b) if clause 1.3(b) or 1.4 applies the Legal Practitioner, Real Estate Agent or Settlement Agent who holds the Deposit.

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

(a) specifies the Contract has been terminated;

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

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

(d) if the Deposit Respondent disputes that:

(1) the Contract has been terminated; or

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

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

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

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

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

Dollars and **$** means Australian dollars.

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

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

Duties Act means the *Duties Act 2008* (WA).

Duty means duty payable under the Duties Act.

Duty Endorsed means an endorsement that:

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

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

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

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

Electricity Scheme Agreement means:

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

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

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

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

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

Future Lot Contract means a 'future lot contract' as defined in the Sale of Land Act.

Future Rate Outgoing means an Outgoing:

(a) in respect to the Land; and

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

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

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

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

(a) as being in order for dealing; and

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

Income Tax Act means:

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

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

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

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

Instituted means, in relation to court proceedings, that:

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

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

Insurance Act means the *Insurance Act 1973* (Commonwealth).

Interest Amount means the amount specified in the Interest Notice.

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

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

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

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

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

Landgate means the Western Australian Land Information Authority established under the *Land Information Authority Act 2006* (WA).

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

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

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

Legal Practitioner means an Australian legal practitioner or a law practice (as the context requires) as those terms are defined in the Legal Profession Act.

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

Loss includes a claim, judgment, order, financial loss, damages and costs.

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

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

Memorial means a Memorial lodged under an Act.

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

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

Notice means a notice as specified in clause 21.1.

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

Outgoing means:

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

(b) if the Land or any part is a Scheme Lot:

(1) each Scheme Contribution; and

(2) any money payable periodically under a lease, licence or other agreement referred to in clause 10.7,

but does not include a tax specified in the Income Tax Act, GST and Duty.

Party means, as the case requires, either the Seller or the Buyer, or both the Seller and the Buyer.

Payment Party means the Party who is liable to pay damages or other money to the Successful Party arising from default under the Contract.

Perth CBD means the area in or adjoining the City of Perth bounded by Riverside Drive, the Mitchell Freeway, Roe Street, Fitzgerald Street, Newcastle Street, Lord Street, Wellington Street and Plain Street, including both sides of each street or road.

Planning and Development Act means the *Planning and Development Act 2005* (WA).

Planning Commission means the Western Australian Planning Commission.

Possession Date means the date that is the earlier of:

(a) the date Settlement occurs; and

(b) the date on which the Buyer is given possession of the Property.

PPSA means the *Personal Property Security Act 2009* (Commonwealth).

PPSR PPSR means the register established and maintained pursuant to the PPSA and the PPS Regs.

PPS Regs means the *Personal Property Securities Regulations 2010* (Commonwealth).

Prescribed Rate means 9% per annum calculated daily.

Property means the Land and any Property Chattels.

Property Chattels means all items of property, except the Land and anything which forms part of the Land, which the Seller has agreed to sell to the Buyer under the Contract.

Property Condition Report means a report prepared by a Real Estate Agent or other person which records the condition of the premises the subject of a Lease:

(a) as at the date of commencement of that Lease; or

(b) at any time after the commencement of the Lease.

Purchase Price means the price payable for Property stipulated in the Contract.

Rate Encumbrance means a charge:

(a) created over the Land by an Act; and

(b) which arises from an Unpaid Rate Outgoing.

Real Estate Act means the *Real Estate and Business Agents Act 1978* (WA).

Real Estate Agent means a person who is:

(a) defined in the Real Estate Act as a real estate agent; and

(b) is licensed as a real estate agent under the Real Estate Act.

Remediated Site means the Land has been classified under the Contaminated Sites Act as 'remediated for restricted use' or 'contaminated – restricted use'.

Remediated Site Memorial means a Memorial lodged against the Land under the Contaminated Sites Act which classifies the Land under the Contaminated Sites Act as: 'remediated for restricted use' or 'contaminated – restricted use'.

Rent means rent and other money payable by a Tenant under a Lease.

Rent Period means each period under the Lease in respect to which the is required to pay Rent.

Representative means a person who is either a Legal Practitioner or a Settlement Agent and who has been appointed to act for a party in relation to the Contract or Settlement.

Residential Tenancies Act means the *Residential Tenancies Act 1987* (WA).

Restricted Use means the restriction on the use of the Land imposed under the Contaminated Sites Act.

Revenue Online also known as ROL means the system developed by State Revenue which enables Duty to be assessed and paid electronically.

Sale of Land Act means the Sale of Land Act 1970 (WA).

Seller means each person so specified in the Contract.

Seller Agent means a Real Estate Agent appointed to act on behalf of the Seller in respect to the sale of the Property.

Settlement means the completion of the sale and purchase of the Property in accordance with clause 3.

Settlement Agent means a person licensed as a settlement agent under the Settlement Agents Act.

Settlement Agents Act means the *Settlement Agents Act 1981* (WA).

Settlement Date means the date each Party must complete Settlement:

(a) under clause 3.5; and

(b) any other relevant provision of this document or of the Contract.

Specified Encumbrance means an Encumbrance specified in the Contract as subject to which the Property will be transferred.

State means the State of Western Australia.

State Administrative Tribunal means the Tribunal known as the State Administrative Tribunal established by the *State Administrative Tribunal Act 2004* (WA).

State Revenue means the office established by the Commissioner of State Revenue and known as the Office of State Revenue.

Subdivision Lot means the Land which is not a Lot, a Proposed Strata Lot or a Proposed Community Lot and which is the subject of the Contract.

Subdivision Land means the land which at the commencement of the Financial Year in which the Possession Date occurs:

(a) includes the Land; and

(b) from which, following subdivision, the Land is created as a separate Lot.

Subdivision Plan means a deposited plan which includes the Lot including if applicable, a Scheme Plan which includes the Proposed Strata Lot or the Proposed Community Lot (as applicable).

Successful Party means the party who is entitled to damages or other money from another party arising from default under the Contract.

Tax Administration Act means the *Taxation Administration Act 1953* (Commonwealth).

Tax Invoice includes any document or record treated by the Commissioner of Taxation for GST purposes:

(a) as a tax invoice; or

(b) as a document entitling a recipient to an input tax credit.

Tenant means a person who is a tenant under a Lease.

Tenant Bond means:

(a) money paid by the Tenant as a bond in respect to each obligation of the Tenant under a Lease; and

(b) any other security provided by the Tenant under a Lease.

Terminated Party means the Seller or the Buyer who is not the Termination Party.

Termination Party means the Seller or the Buyer who has terminated the Contract as a result of the default of the Terminated Party under the Contract or the repudiation by the Terminated Party of the Contract.

Terms Contract means a terms contract as defined in the Sale of Land Act.

Threshold Amount means the amount which is set out in section 14-215(1)(a) of Schedule 1 to the Tax Administration Act for the purposes of an excluded transaction under that section.

Title Notification means:

(a) any notification under Section 70A of the Transfer of Land Act; or

(b) any notification under Section 165 of the Planning and Development Act,

and which applies in respect to the Land.

Title Restriction means a Crown Reservation and a Title Notification.

Transaction Summary means the summary generated through Revenue Online which specifies:

(a) the date the Contract was lodged on Revenue Online;

(b) the Dutiable Value;

(c) the date of assessment; and

(d) the Duty assessed.

Transfer means the instrument required to transfer the Land to the Buyer in a form acceptable for registration by Landgate, subject to signing by all Parties.

Transfer of Land Act means the *Transfer of Land Act 1893* (WA).

Underground Power Rate means the charge, rate or other payment required from the owner of the Property by an Authority in relation to the provision of underground power.

Unpaid Rate Outgoing means an Outgoing in respect to the Land which, as at Settlement, is:

(a) the subject of an assessment by an Authority; and

(b) unpaid,

and is required to be adjusted under the Contract in relation to the Financial Year in which Settlement takes place.

Variation Notice means a written notice issued by the Commissioner under section 14-235 of the Tax Administration Act to vary the amount otherwise payable by the Buyer under section 14-200 of the Tax Administration Act.

Water Corporation means the statutory body corporate established under the *Water Corporation Act 1995* (WA).

Western Power means the statutory body corporate known as Western Power established under the *Electricity Corporation Act 1994* (WA).

Withholding Amount means the amount which the Buyer is required by section 14-200 of Schedule 1 to the Tax Administration Act to pay to the Commissioner in respect of the purchase of the Property.

26.2 Definitions - Strata and Community Titles Schemes

In this document, unless otherwise stated:

Administrative Fund Contribution means the normal and regular contribution levied by the Scheme Corporation:

(a) if the Property is a Strata Lot or a Proposed Strata Lot - under Section 100(1) of the Strata Titles Act; or

(b) if the Property is a Community Lot or a Proposed Community Lot - under Section 85(1) of the Community Titles Act,

in respect to the registered proprietor in respect of the Scheme Lot in relation to:

(c) the control and management of the common property;

(d) the payment of any premiums of insurance; and

(e) the discharge of any other obligation of the Scheme Corporation.

Community Lot means the lot shown on a Community Scheme Plan the subject of the Contract.

Community Regulations means the Community Titles Regulations 2021 (WA).

Community Scheme Plan means a scheme plan (as defined in the Community Titles Act) if:

(a) in the case of a Community Lot, the community plan has been registered at Landgate; or

(b) in the case of a Proposed Community Lot, the community plan has not been registered at Landgate.

Community Titles Act means the Community Titles Act 2018 (WA).

Community Titles Scheme means the community titles scheme as defined in the Community Titles Act which applies in respect to the lots and common property which form part of the Community Scheme Plan.

Proposed Community Lot means a Lot shown on a Community Scheme Plan which on the Contract Date has not been registered at Landgate, the subject of the Contract

Proposed Strata Lot means a Lot shown on a Strata Scheme Plan which on the Contract Date has not been registered at Landgate, the subject of the Contract

Reserve Fund Contribution means a contribution levied by:

(a) if the Property is a Strata Lot or a Proposed Strata Lot - the Scheme Corporation under Section 100(2) of the Strata Titles Act; or

(a) if the Property is a Community Lot or a Proposed Community Lot - the Scheme Corporation under Section 85(1) of the Community Titles Act,

in respect to the registered proprietor of the Scheme Lot for a reserve fund for the purpose of accumulating funds to meet:

(c) contingent expenses other than those of a routine nature; and

(d) other major expenses of the Scheme Corporation likely to arise in the future.

Scheme Contribution means:

(a) an Administrative Fund Contribution; and

(b) a Reserve Fund Contribution.

Scheme Corporation means:

(a) if the Property is a Strata Lot or a Proposed Strata Lot - the strata company as defined in the Strata Titles Act which applies in respect to the Strata Lot or Proposed Strata Lot; or

(b) if the Property is a Community Lot or a Proposed Community Lot - the community corporation as defined in the Community Titles Act which applies in respect to the Community Lot or Proposed Community Lot.

Scheme Lot means a Strata Lot or a Community Lot (as applicable).

Scheme Plan means a Strata Scheme Plan or a Community Scheme Plan (as applicable).

Section 102(6)(b) Strata Notice means a notice concerning the purpose of and the amount of expenditure proposed for the Strata Titles Scheme as specified in Section 102(6)(b) of the Strata Titles Act.

Strata/Community Scheme means a Strata Titles Scheme or a Community Titles Scheme (as applicable).

Strata Lot means the lot shown on a Strata Scheme Plan the subject of the Contract.

Strata Regulations means the Strata Titles (General) Regulations 2019 (WA).

Strata Scheme Plan means a strata plan or survey-strata plan (as those terms are defined in the Strata Titles Act) if:

(a) in the case of a Strata Lot, the strata plan or survey-strata plan has been registered at Landgate; or

(b) in the case of a Proposed Strata Lot, the strata plan or survey-strata plan has not been registered at Landgate.

Strata Titles Act means the *Strata Titles Act 1985* (WA)

Strata Titles Scheme means the strata titles scheme as defined in the Strata Titles Act which applies in respect to the lots and common property which form part of the Strata Scheme Plan.

26.3 Strata Titles Act

Words which:

(a) are not defined in clause 26.1 or 26.2; but

(b) are defined in the Strata Titles Act,

have the meaning given in the Strata Titles Act.

26.4 Community Titles Act

Words which:

(a) are not defined in clause 26.1 or 26.2; but

(b) are defined in the Community Titles Act,

have the meaning given in the Community Titles Act.

26.5 GST Act

Words which:

(a) are not defined in clause 26.1; but

(b) are defined in the GST Act,

have the meaning given in the GST Act.

26.6 PPSA

Words which:

(a) are not defined in clause 26.1; but

(b) are defined in the PPSA,

have the meaning given in the PPSA.

26.7 Citation – 2022 General Conditions

This Joint Form of General Conditions for the Sale of Land 2022 Revision may be cited as the '2022 General Conditions'.

26.8 Interpretation

In this document and the Contract, unless the context otherwise requires:

(a) the Seller and the Buyer must:
  (1) comply with their respective obligations under the Contract; and
  (2) not assign or transfer the Contract or any right under the Contract to a third party without the prior written consent of the other;

(b) subject to subclause (a), each reference to the Seller and the Buyer includes as applicable:
  (1) the successors of a company or corporation; and
  (2) each legal personal representative of the Seller and the Buyer;

(c) reference to an Authority includes a reference to:
  (1) an officer of that Authority; and
  (2) any other Authority and any officer of that other Authority which performs the same or a similar function to the Authority;

(d) reference to a thing includes the whole and any part of that thing;

(e) reference to the singular includes the plural and vice versa;

(f) headings to clauses do not affect the interpretation of the Contract or this document;

(g) if the Buyer or the Seller and any other person who is a Party consists of more than one person, then each of the two or more persons are liable both jointly and severally;

(h) reference to a person includes reference to:
  (1) a natural person;
  (2) a company; and
  (3) a body corporate constituted under any Act;

(i) if something must be done by or on a day which is not a Business Day, the day by or on which that thing must be done is the next Business Day;

(j) if a period of time is required to be calculated from or after a specific day, or from or after a day on which a specific event occurs, that day must not be included in the period;

(k) if a period of time is expressed to expire on or continue until a specified date, that date is included in the period;

(l) all warranties and representations continue to have effect after Settlement;

(m) reference to being entitled to possession of the Property includes being entitled to Rent from the Property;

(n) reference to a document being signed or to a Party being obliged to sign a document, is treated as requiring that the document be:
  (1) executed by a company or body corporate; or
  (2) signed by a natural person,
  in a manner which is:
  (3) legally effective (including under the *Electronic Transactions Act 2011* (WA)); and
  (4) if the document is required to be registered by Landgate, then in a manner acceptable for registration;

(o) reference to an Act includes:
  (1) any change to that Act or, if the Act is repealed, the Act replacing it; and
  (2) all subsidiary legislation under that Act;

(p) reference to a clause is a reference to a clause in this document; and

(q) reference to a subclause is a reference to a subclause in the clause in which the reference occurs.

JOINT FORM

This form of general conditions for the sale of land has been adopted jointly by The Law Society of Western Australia (Inc) and The Real Estate Institute of Western Australia (Inc). The copyright of these Conditions is the joint property of The Law Society of Western Australia (Inc) ("the Society") and The Real Estate Institute of Western Australia (Inc) ("REIWA") and neither the form nor any part of it may be used or reproduced without the consent of the Society and REIWA.

05/22