

Contract for the sale and purchase of business — 2021 edition

(a choice printed in BLOCK CAPITALS applies unless a different choice is marked)

Vendor's agent (if more than one, the first named)	Name LJ Hooker Commercial Address Shop 1 and 2, 1 Campbell Cres, Terrigal NSW 2260	Phone 0450 719 600 Email ben.purdue@ljhooker.com.au Ref Ben Purdue
Vendor	Name Indigo Enterprises Pty Ltd ACN 646 857 392 Address c/- 221 Wattle Tree Rd, Holgate NSW 2250 221 Wattle Tree Road, Holgate NSW 2250	ACN/ARBN 646 857 392 ABN
Vendor's <input checked="" type="checkbox"/> SOLICITOR <input type="checkbox"/> conveyancer	Name Landmark Legal Address Unit c203, 215-217 Pacific Hwy, Charlestown NSW 2290 PO Box 146, Charlestown NSW 2290	Phone 02 4943 3905 E: suzannah@landmarklegal.com.au Ref Suzannah Mikulski SM:244215
Purchaser	Name Address	ACN/ARBN ABN
if more than one	<input type="checkbox"/> joint tenants <input type="checkbox"/> TENANTS IN COMMON (in equal shares unless otherwise stated)	
Purchaser's <input type="checkbox"/> SOLICITOR <input type="checkbox"/> conveyancer	Name Address and DX e-mail address	Phone Fax Ref
Depositholder	Agent	Invest deposit <input type="checkbox"/> NO <input checked="" type="checkbox"/> yes (clause 3)
Completion date	42 days	after the <i>contract date</i> (clause 19)
Business name	Bamboo Buddha Bamboo Buddha Registered: <input type="checkbox"/> no <input checked="" type="checkbox"/> YES	(clause 20)
Premises	221 Wattle Tree Rd, Holgate NSW 2250	
Contact numbers	landline- 02 4365 5810, e-mail address- thebamboobuddha@gmail.com , domain name- https://www.bamboobuddha.com.au , webpage- Bamboo Buddha, social media – Facebook and Insta – Bamboo Buddha (clause 20)	
Type of business	Nursery and ancillary tea house	
Restraint time	(if not stated, no restraint time) (clause 17)	
Restraint distance	(if not stated, no restraint distance) (clause 17)	
Training period	Pre-completion: 0 days Post-completion: 0 days (clause 26)	
Price Deposit Balance		
Trading stock sum	\$0.00 (clause 4)	
Asset and price apportionment	Goodwill: \$0.00 Equipment: \$0.00 (or as set out in attached apportionment schedule)	
Interdependent contract	no <input type="checkbox"/> YES <input checked="" type="checkbox"/> (clause 19) If yes – Vendor: Linda Fay Eckhold Purchaser:	
Contract date	(if not stated, the date this contract was made)	

NOTE: Subject to clause 13, the price INCLUDES goods and services tax (if any) payable by the vendor.

Vendor

Purchaser

Witness

Witness

DOCUMENTS (copy of document attached if marked) (some copies are required by *legislation*)

<input type="checkbox"/> profit and loss statement of the <i>business</i>	<input checked="" type="checkbox"/> current lease of <i>premises</i>
<input type="checkbox"/> balance sheet of the <i>business</i>	<input type="checkbox"/> proposed lease of <i>premises</i>
<input type="checkbox"/> schedule setting out asset and price apportionment	<input type="checkbox"/> memorandum setting out lease covenants
<input checked="" type="checkbox"/> inventory of <i>equipment</i>	<input type="checkbox"/> document evidencing a variation of lease
<input type="checkbox"/> depreciation schedule	<input type="checkbox"/> headlease affecting <i>premises</i>
<input type="checkbox"/> list of <i>stock-in-trade</i>	<input type="checkbox"/> property certificate for the land
<input type="checkbox"/> list of <i>work in progress</i>	<input type="checkbox"/> plan of the land
<input type="checkbox"/> promise, statement or representation made by (or on behalf of) <i>vendor</i> and relied on by <i>purchaser</i>	<input type="checkbox"/> strata by-laws
<input type="checkbox"/> promise, statement or representation made by (or on behalf of) <i>purchaser</i> and relied on by <i>vendor</i>	<input type="checkbox"/> notice or order affecting the <i>premises</i>
<input type="checkbox"/> licence affecting the <i>business</i>	<input type="checkbox"/> lessor's disclosure statement (<i>Retail Leases Act 1994</i>)
<input checked="" type="checkbox"/> notice or order affecting the <i>business</i>	<input type="checkbox"/> lessor's disclosure update (<i>Retail Leases Act 1994</i>)
<input type="checkbox"/> list of continuing agreements (for example, equipment and service agreements)	<input type="checkbox"/> lessee's disclosure statement (<i>Retail Leases Act 1994</i>)
<input type="checkbox"/> equipment and service agreement	<input type="checkbox"/> assignor's disclosure statement (<i>Retail Leases Act 1994</i>)
<input type="checkbox"/> franchise agreement	<input checked="" type="checkbox"/> <i>business name</i> registration certificate
<input type="checkbox"/> franchisor's disclosure statement (<i>Competition and Consumer Act 2010</i>)	<input type="checkbox"/> certificate of registration of trade mark
<input type="checkbox"/> assignor's disclosure statement (<i>Competition and Consumer Act 2010</i>)	<input type="checkbox"/> certificate of registration of patent
<input type="checkbox"/> PPS Act Register search	<input type="checkbox"/> certificate of registration of design
<input type="checkbox"/> development approval	<input type="checkbox"/> document evidencing rights to internet domain name
<input type="checkbox"/> document evidencing restraint affecting <i>business</i>	<input type="checkbox"/> document evidencing rights to internet web site
<input type="checkbox"/> list of key persons and persons who will sign the restraint deed	<input type="checkbox"/> schedule A - employees
	<input type="checkbox"/> service or other agreement with employee
	<input type="checkbox"/> particulars of <i>superannuation fund</i> for employees of <i>business</i> (name of fund, trustee, members)

CHOICES

Business sold on a stock inclusive basis	<input checked="" type="checkbox"/> NO	<input type="checkbox"/> yes	if yes, <i>price</i> includes <i>trading stock</i> (clause 4)
Stock-in-trade on consignment	<input checked="" type="checkbox"/> NO	<input type="checkbox"/> yes	(clause 10.1.5)
Special completion address	<input checked="" type="checkbox"/> NO	<input type="checkbox"/> yes	address (clause 20)
Sale subject to the grant of a new lease	<input checked="" type="checkbox"/> NO	<input type="checkbox"/> yes	(clauses 27 and 29)
Landlord's mortgagee's consent required	<input checked="" type="checkbox"/> NO	<input type="checkbox"/> yes	(clause 27)
Landlord's mortgagee's consent obtained	<input type="checkbox"/> NO	<input type="checkbox"/> yes	(clause 27)
Purchaser must provide a suitable guarantee	<input type="checkbox"/> no	<input checked="" type="checkbox"/> YES	(clause 27.2.3)
Franchisor's consent required	<input type="checkbox"/> NO	<input type="checkbox"/> yes	(clause 31)
Franchisor's consent obtained	<input type="checkbox"/> NO	<input type="checkbox"/> yes	(clause 31)
Purchaser requires audit	<input type="checkbox"/> NO	<input type="checkbox"/> yes	(clause 8)
Adjustment for accrued but untaken personal/carer's leave	<input type="checkbox"/> NO	<input type="checkbox"/> yes	If yes, (clause 35.4.2)
Long service leave multiplier applies	<input type="checkbox"/> NO	<input type="checkbox"/> yes	If yes, (clause 35.10)
Electronic transaction	<input type="checkbox"/> no	<input checked="" type="checkbox"/> YES	If yes, (clause 28)

GST PROMISES (A New Tax System (Goods and Services Tax) Act 1999) (clause 13)

This sale is a taxable supply (Subdivision 9-A)	<input checked="" type="checkbox"/> NO	<input type="checkbox"/> yes
This sale is the supply of a going concern (Subdivision 38-J)	<input type="checkbox"/> no	<input checked="" type="checkbox"/> YES

LEASE PARTICULARS

Date lease starts: 1 January 2024
Date lease ends: 31 December 2024
Current rent (show monthly/annually): \$150.00 per week
Current outgoings (show monthly/annually): as per lease
Review dates:
Option period: 1 year
Date(s) on which option to renew lease has been exercised:
Date(s) on which option to renew lease to be exercised:
Last day for exercise of option to renew lease:
Guarantee or security deposit:

VENDOR'S ACCOUNTANT - NAME, ADDRESS AND PHONE NUMBER

Tel: Julie Staples , Newcastle Tax Team, PO Box 44 Warners Bay NSW 2282. 0409 968 268 - email julie@tamworthtaxteam.com.au
(or if there is no accountant, details of where books and records of *business* kept)

SCHEDULE A - EMPLOYEES

[illegible]

WARNINGS

1. Various Acts of Parliament and other matters can affect the rights of the parties to this contract. Some important matters are actions, claims, consents, decisions, licences, notices, orders or proposals involving –

Australian Competition and Consumer Commission	Franchising Code of Conduct	Privacy law compliance
Council	Independent Liquor and Gaming Authority	SafeWork NSW
Department of Education, Skills and Employment	IP Australia	Telecommunications Authority
Electricity Authority	Landlord of premises	Transport for NSW
Environment Protection Authority	Mortgagee of premises	Water, sewerage or drainage authority
	NSW Fair Trading	
	Owner of adjoining land	

If you think that any of these matters affects the business, tell your solicitor or licensed conveyancer. The parties should consider whether it is appropriate to disclose matters which are material to the business.

- The sale and purchase of a business can have important taxation consequences. Vendors and purchasers should seek advice before entering into a contract about the tax implications (for example, capital gains tax, income tax, goods and services tax and payroll tax) of the transaction(s).
- When the parties are negotiating the completion date of this contract, the parties should take into account the time taken to obtain necessary consents (for example, from landlords and mortgagees).
- The vendor should continue the vendor's insurance until completion. If the vendor wants to give the purchaser possession before completion, the vendor should first ask the insurer to confirm this will not affect the insurance.
- The purchaser should arrange insurance.
- If the purchaser intends to re-employ people currently employed in the business, the purchaser may be assuming liabilities relating to the entitlements of those employees and those employees will need to agree to their new employment.
- Assets may be affected by the *Personal Property Securities Act 2009* (Cth).
- The purchaser will usually have to pay duty on this contract. If the purchaser does not pay the duty within 3 months after the date of the making of this contract, the purchaser may incur penalties.

DISPUTES

If you get into a dispute with the other party, the Law Society of NSW and Real Estate Institute of NSW encourage you to use informal procedures such as negotiation, independent expert appraisal or mediation (for example, mediation under the Law Society Mediation Rules).

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The *vendor* sells and the *purchaser* buys the *business* for the *price* under these provisions, subject to any *legislation* that cannot be excluded.

1 Definitions (a term in italics is a defined term)

1.1 The business means the business identified on page 1 of the contract and includes the chattels, fittings, fixtures and furniture, goodwill, intellectual and industrial property, licences, permits, plant, quotas and software of the business, together with any other items referred to in this contract as forming part of the business.

1.2 In this contract, these terms (in any form) mean –

<i>adjustment date</i>	the earlier of the giving of possession to the <i>purchaser</i> or completion;
<i>bank</i>	the Reserve Bank of Australia or an authorised deposit-taking institution which is a bank, a building society or a credit union;
<i>business</i>	the business described in provision 1.1;
<i>business day</i>	any day except a bank or public holiday throughout NSW or a Saturday or Sunday;
<i>cheque</i>	a cheque that is not postdated or stale;
<i>document of title</i>	document relevant to the title or the passing of title;
<i>employees</i>	the persons whose names and particulars of employment as being employed in the <i>business</i> and are specified in Schedule A;
<i>employee entitlements</i>	the variable and fixed entitlements of <i>employees</i> of the <i>business</i> , including <i>wages</i> , annual leave, personal/carer's leave, long service leave, superannuation and entitlements under any <i>legislation</i> , modern award, enterprise agreement, service agreement, or other contract or arrangement;
<i>equipment</i>	the chattels, fittings, furniture, plant and vendor's fixtures forming part of the <i>business</i> ;
<i>FW Act</i>	<i>Fair Work Act 2009</i> (Cth);
<i>GST Act</i>	<i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth);
<i>landlord</i>	the landlord (lessor) of the <i>premises</i> ;
<i>legislation</i>	an Act or a by-law, industrial award or instrument, ordinance, regulation or rule made under an Act;
<i>normally</i>	subject to any other provision of this contract;
<i>party</i>	each of the <i>vendor</i> and the <i>purchaser</i> ;
<i>PPS Act</i>	<i>Personal Property Securities Act 2009</i> (Cth);
<i>requisition</i>	an objection, question or requisition (but the term does not include a claim);
<i>rescind</i>	rescind this contract from the beginning;
<i>serve</i>	serve in writing on the other <i>party</i> ;
<i>settlement cheque</i>	an unendorsed <i>cheque</i> made payable to the person to be paid – <ul style="list-style-type: none"> issued by a <i>bank</i> and drawn on itself; or if authorised in writing by the <i>vendor</i> or the <i>vendor's solicitor</i>, some other <i>cheque</i>;
<i>solicitor</i>	in relation to a <i>party</i> , the <i>party's</i> solicitor or licensed conveyancer named in this contract or in a notice served by the <i>party</i> ;
<i>stock-in-trade</i>	goods owned or agreed to be bought by the <i>vendor</i> which are to be sold to third parties (either wholesale or retail) as part of the conduct of the <i>business</i> ;
<i>superannuation fund</i>	a superannuation fund, retirement benefit scheme or other pension scheme or arrangement;
<i>tenant</i>	the tenant (lessee) of the <i>premises</i> ;
<i>terminate</i>	terminate this contract for breach;
<i>terminating employee</i>	an <i>employee</i> who is not a <i>transferring employee</i> ;
<i>trading stock</i>	<i>stock-in-trade</i> or <i>work in progress</i> ;
<i>transferring employee</i>	an <i>employee</i> who prior to completion accepts the <i>purchaser's</i> offer of employment referred to in clause 33.2;
<i>wages</i>	wages, salary, commissions, bonuses and allowances;
<i>within</i>	in relation to a period, at any time before or during the period;
<i>work in progress</i>	any of the following – <ul style="list-style-type: none"> goods which are not <i>stock-in-trade</i> but have a process of manufacture, treatment or other application applied to them which adds value to the goods and are then used in the conduct of the <i>business</i>; benefits under a contract or other agreement for the <i>vendor</i> to provide services to a third party for value in connection with the <i>business</i>; or anything specified as work in progress in this contract; and
<i>work order</i>	a valid direction, notice or order that requires work to be done or money to be spent on or in relation to the <i>business</i> or arising from the occupation as lessee of the premises or any adjoining footpath or road.

2 Deposit and other payments before completion

2.1 The *purchaser* must pay the *deposit* to the *depositholder* as stakeholder.

- 2.2 The *purchaser* must pay the *deposit* on the making of this contract and this time is essential.
- 2.3 If this contract requires the *purchaser* to pay any of the *deposit* by a later time, that time is also essential.
- 2.4 The *purchaser* can pay any of the *deposit* only by unconditionally giving cash (up to \$2,000) or a *cheque* to the *depositholder* or to the *vendor*, *vendor's agent* or *vendor's solicitor* for sending to the *depositholder*.
- 2.5 If any of the *deposit* is not paid on time or a *cheque* for any of the *deposit* is not honoured on presentation, the *vendor* can *terminate*. This right to *terminate* is lost as soon as the *deposit* is paid in full.

3 Investment of deposit

If this contract says that the *deposit* is to be invested, the *depositholder* is to invest the *deposit* (at the risk of the *party* who becomes entitled to it) with a *bank*, in an interest-bearing account in NSW, payable at call, with interest to be reinvested, and pay the interest to the *parties* equally, after deduction of all proper government taxes and bank charges and other charges.

4 Trading stock

- 4.1 The *vendor* sells and the *purchaser* buys the good and saleable *trading stock* of the *business* for the sum agreed on by both *parties* or determined under this clause.
- 4.2 *Normally*, the *purchaser* must pay for the *trading stock* on completion in addition to the *price*.
- 4.3 If this contract states the *business* is sold on a stock inclusive basis, the *price* includes the value of the *trading stock*.
- 4.4 If the value of the *trading stock* is greater than the *trading stock sum*, the *purchaser* does not have to purchase the part of the *trading stock* in excess of the sum, and the *purchaser* can serve a notice identifying the part of the *trading stock* which the *purchaser* wants withdrawn from the sale.
- 4.5 If the *parties* do not agree on the sum payable for *trading stock* or if any other dispute arises about *trading stock* –
- 4.5.1 the dispute must be finalised by a stocktaker appointed by the *parties* or, if an appointment is not made *within* 28 days of completion, by a stocktaker appointed by the President of the Real Estate Institute at the request of a *party*;
- 4.5.2 each *party* must pay half the cost of the appointment and determination of the stocktaker; and
- 4.5.3 a *party* does not have to complete until the date 7 days after the *purchaser* receives written notice of the decision of the stocktaker and clause 25.3 does not apply to this provision.

5 Passing of risk

Until the *adjustment date* the *business* and all its assets are at the risk of the *vendor*.

6 Confidentiality

A *party* must not disclose the terms of this contract or anything connected with or related to this contract unless –

- 6.1 the disclosure is to any of a financial adviser or lender to that *party*, or to a franchisor or the *landlord*;
- 6.2 the disclosure is required under a court order or *legislation*; or
- 6.3 the other *party* has agreed in writing to the disclosure.

7 Certificates and inspections

The *vendor* must do everything reasonable to enable the *purchaser*, subject to the rights on any *tenant* –

- 7.1 to have the *premises* inspected to obtain any certificate or report reasonably required;
- 7.2 to apply (if necessary, in the name of the *vendor*) for –
- 7.2.1 any certificate that can be given in respect of the *premises* under *legislation*; or
- 7.2.2 a copy of any approval, certificate, consent, direction, notice or order in respect of the *premises* given under *legislation*, even if given after the *contract date*; and
- 7.3 to have any accounting records relating to the *business* inspected.

8 Audit

If this contract says the *purchaser* requires an audit the *purchaser* is entitled to have the records of the *business* audited.

9 How the vendor must conduct the business until completion

- 9.1 It is an essential provision of this contract that the *vendor* must, between the *contract date* and completion –
- 9.1.1 maintain the goodwill of the *business* and carry on the *business* in a proper and business like way;
- 9.1.2 stay in possession of the *business* and the *premises*, ensuring the *business* is run as a going concern;
- 9.1.3 maintain the equipment in the same state of repair as at the *contract date* (except for any fair wear and tear); and
- 9.1.4 comply with the lease of the *premises* and exercise any option to renew the lease of the *premises*

which is required under the lease to be exercised before the date of completion.

9.2 It is an essential provision of this contract that the *vendor* must not, without the prior written consent of the *purchaser* –

- 9.2.1 offer *stock-in-trade* for sale in any way other than in the usual course of business (for example, by advertising a closing down sale or by selling *stock-in-trade* at less than the prevailing retail price);
- 9.2.2 cancel any existing franchise arrangements, leases (including the lease of the *premises*), licences, services or other similar facilities of the *business* referred to in this contract, or breach any of those facilities in a way which would allow the supplier to cancel the supply contract; or
- 9.2.3 grant or vary any *employee entitlements* (unless required to do so under *legislation* or in accordance with the rules of a *superannuation fund* the existence of which is disclosed in the contract).

10 Vendor's promises

10.1 The *vendor* promises that, to the best of the *vendor's* knowledge and other than as disclosed in this contract –

- 10.1.1 the *vendor* has full authority and capacity to enter into this contract and sell the *business*;
- 10.1.2 the *vendor* has absolute title to the *business*;
- 10.1.3 the *business* is not subject to any charge, encumbrance, lease, mortgage, security interest under the *PPS Act* or other liability or security;
- 10.1.4 the *equipment* is in proper working order;
- 10.1.5 the *business* does not include any *stock-in-trade* acquired on terms that property in it does not pass until full payment has been made (for example, *stock-in-trade* acquired on consignment);
- 10.1.6 there is no subsisting breach by the *vendor* of a lease, franchise agreement, or other agreement with a third party which would entitle the lessor, franchisor or third party to terminate the agreement or refuse to grant an option to renew the agreement or refuse to transfer the benefit of the agreement to the *purchaser*;
- 10.1.7 the *vendor* has complied with all requirements under *legislation* relating to the *business*;
- 10.1.8 there is no current dispute or litigation relating to the *business* between the *vendor* and any other person (for example, any lessor, franchisor, supplier of goods or services to the *business*, current or former employee, trade union, council, government department, or the Fair Work Ombudsman);
- 10.1.9 each *superannuation fund* named in this contract –
 - is fully funded and solvent; and
 - complies in all other respects with *legislation*;
- 10.1.10 the *vendor* does not have any other *superannuation fund*;
- 10.1.11 there is no superannuation guarantee charge or liability accrued or payable to employees of the *business*;
- 10.1.12 anything attached to this contract is accurate and complete; and
- 10.1.13 there are no workers compensation claims by any employees of the *business* for the past three years.

10.2 These promises are made as at the *contract date* and are also made as at completion.

10.3 If the *vendor* becomes aware before completion of any fact which makes a promise in clause 10.1 incorrect or misleading, the *vendor* must disclose that fact to the *purchaser* promptly and before completion.

11 Foreign Acquisitions and Takeovers Act 1975

11.1 The *purchaser* promises that the Commonwealth Treasurer cannot prohibit and has not prohibited the transfer of the *business* to the *purchaser* under the *Foreign Acquisitions and Takeovers Act 1975* (Cth).

11.2 This promise is essential and breach of it entitles the *vendor* to *terminate*.

12 Restrictions of rights of parties

12.1 The *parties* cannot make a claim or *requisition* or *rescind* or *terminate* in respect of a promise, representation or statement about this contract or the *business* not set out or referred to in this contract; and

12.2 The *purchaser* cannot make a claim or *requisition* or *rescind* or *terminate* in respect of anything the substance of which is disclosed in this contract.

13 Goods and services tax (GST)

13.1 In this clause, input tax credit, registered, supply of a going concern, tax invoice and taxable supply have the same meanings as in the *GST Act*.

13.2 *Normally*, if a *party* must pay the *price* or any other amount to the other *party* under this contract, GST is not to be added to the *price* or amount.

13.3 If under this contract a *party* must make an adjustment, pay an expense of another party or pay an amount payable by or to a third party (for example under clauses 4 or 18) –

13.3.1 the *party* must adjust or pay at that time any GST added to or included in the amount; but

13.3.2 if this contract says this sale is a taxable supply, and payment would entitle the *party* to an input tax credit, the adjustment or payment is to be worked out by deducting any input tax credit to which the

- party receiving the adjustment is or was entitled and then adding 10%.
- 13.4 If this contract says this sale is the supply of a going concern –
- 13.4.1 the *parties* agree that the sale of the *business* is a supply of a going concern;
- 13.4.2 *normally*, the *purchaser* promises that, by the *completion date* –
- the *purchaser* will be registered; and
 - the *purchaser* will produce written confirmation from the Australian Taxation Office of registration;
- 13.4.3 if the *purchaser* is not registered by the *completion date*, the *parties* must complete and the *purchaser* must pay on completion, in addition to the *price*, an amount of 10% of the *price* ("the retention sum"). The retention sum is to be held by the *depositholder* and dealt with as follows –
- if *within* 3 months of completion the *purchaser* serves a letter from the Australian Taxation Office stating the *purchaser* is registered, and the registration took effect from the date on or before the time of the supply, the *depositholder* is to pay the retention sum to the *purchaser*; but
 - if the *purchaser* does not serve that letter within 3 months of completion, the *depositholder* is to pay the retention sum to the *vendor*; and
- 13.4.4 if the *vendor*, despite clause 13.4.1, serves a letter from the Australian Taxation Office stating the *vendor* has to pay GST on the *price*, the *purchaser* must pay to the *vendor* on demand the sum of 10% of the *price*.
- 13.5 If this contract says the sale is not a taxable supply, the *purchaser* promises that the *business* will not be conducted and represents that the *purchaser* does not intend the *business* to be conducted in a way that could make the sale a taxable supply.
- 13.6 If this contract says this sale is not a taxable supply, the *purchaser* must pay the *vendor* on completion in addition to the *price* an amount of 10% of the *price* if this sale is a taxable supply because of –
- 13.6.1 a breach of clause 13.5; or
- 13.6.2 something else known to the *purchaser* but not the *vendor*.
- 13.7 If this contract says this sale is a taxable supply, the *vendor* must pay the *purchaser* on completion an amount of one-eleventh of the *price* if this sale is not a taxable supply.
- 13.8 On completion the *vendor* must give the *purchaser* a tax invoice for any taxable supply by the *vendor* by or under this contract.
- 14 Requisitions**
- If the *purchaser* is or becomes entitled to make a *requisition*, the *purchaser* can make it only by *serving* it –
- 14.1 if it arises out of this contract or it is a general question about the *business* - *within* 10 days after the *contract date*;
- 14.2 if it arises out of anything *served* by the *vendor* - *within* 10 days after the later of the *contract date* and that *service*; and
- 14.3 in any other case - *within* a reasonable time.
- 15 Rescission by vendor and termination by purchaser**
- 15.1 The *vendor* can *rescind* if –
- 15.1.1 the *vendor* is, on reasonable grounds, unable or unwilling to comply with a *requisition*;
- 15.1.2 the *vendor* serves a notice of intention to *rescind* that specifies the *requisition* and those grounds; and
- 15.1.3 the *purchaser* does not *serve* a notice waiving the *requisition* *within* 10 days after that *service*.
- 15.2 If the *vendor* does not comply with this contract (or a notice under or relating to it) in an essential respect, the *purchaser* can *terminate* by *serving* a notice. After the *termination* –
- 15.2.1 the *purchaser* can recover the *deposit* and any other money paid by the *purchaser* under this contract;
- 15.2.2 the *purchaser* can sue the *vendor* to recover damages for breach of contract; and
- 15.2.3 if the *purchaser* has been in possession a *party* can claim for a reasonable adjustment.
- 16 Compliance with work orders**
- 16.1 *Normally*, the *vendor* must by completion comply (or cause someone else to comply) with a *work order* made on or before the *contract date* and, if this contract is completed, the *purchaser* must comply with any other *work order*.
- 16.2 If the *purchaser* has to comply with a *work order*, and the cost of compliance is greater than 10% of the *price*, the *purchaser* can *rescind* (but only before completion).
- 16.3 If the *purchaser* complies with a *work order*, and this contract is *rescinded* or *terminated*, the *vendor* must pay the expense of compliance to the *purchaser*.
- 17 Restriction on vendor's competition**
- 17.1 In this clause –

- 17.1.1 'be involved' includes being involved as a sole trader, partner, joint venturer, manager, agent, appointor, assistant, clerk, director, financier, majority shareholder or person with the capacity to exercise substantial control of a corporation;
- 17.1.2 'key person' means –
- if the *vendor* is a corporation, an officer of the *vendor*, a majority shareholder of the *vendor*, or a person capable of exercising substantial control over the *vendor*; and
 - a person named in this contract as a key person.

- 17.2 The *vendor* must not, without the prior written consent of the *purchaser* –
- 17.2.1 be involved in a business which is the same type of business, or a similar type of business;
- 17.2.2 during the *restraint time*;
- 17.2.3 within the *restraint distance* (measured radially).
- 17.3 The *vendor* must not during the *restraint time* engage in any conduct derogating from the *purchaser's* right to obtain the full benefit of the goodwill of the *business*.
- 17.4 The *vendor* acknowledges that the *restraint time* and the *restraint distance* are no greater than are reasonably required to protect the goodwill sold to the *purchaser*.
- 17.5 *Normally*, the *vendor* must cause every key person to sign a deed with the *purchaser* in the same terms as the restraint of trade in this clause and give the deed to the *purchaser* by completion.
- 17.6 If this contract says a key person will not sign a restraint deed, clause 17.5 does not apply to that person.

18 Adjustments

- 18.1 The *vendor* is entitled to the profits and takings of the *business* and will be liable for all rent, gas, electricity and telecommunications charges and all other periodic outgoings up to (but not including) the *adjustment date* from which the *purchaser* will be entitled and liable.
- 18.2 The *parties* must make any necessary adjustment on completion.
- 18.3 The *vendor* can direct the *purchaser* to produce a *settlement cheque* on completion to pay an amount adjustable under this contract and if so –
- 18.3.1 the amount is to be treated as if it were paid; and
- 18.3.2 the *cheque* must be forwarded to the payee immediately after completion (by the *purchaser* if the *cheque* relates only to the *business* or by the *vendor* in any other case).

19 Completion date

- 19.1 The *parties* must complete by the *completion date* and, if they do not, a *party* can serve a notice to complete if that *party* is otherwise entitled to do so.
- 19.2 If a consent is required from a franchisor, *landlord* or *landlord's* mortgagee, the *purchaser* does not have to complete earlier than 7 days after *service* of the consent (and if more than one, the last of the required consents) and clause 25.3 does not apply to this provision.
- 19.3 This clause applies only if this contract says there is an *interdependent contract* –
- 19.3.1 the completion date will be the later of the *completion date* and the completion date in the *interdependent contract*;
- 19.3.2 if the *interdependent contract* is *rescinded* by the *purchaser* or the *vendor*, this contract is also *rescinded*; and
- 19.3.3 if the *interdependent contract* is *terminated* by the *purchaser* or the *vendor*, this contract is also *terminated* by that *party*.

20 Completion

• Vendor

- 20.1 On completion the *vendor* must give the *purchaser* –
- 20.1.1 possession of the *business* and the *premises*;
- 20.1.2 the certificate of registration of each *business name* associated with the *business*, the Australian Securities and Investments Commission notice containing the transfer number and any other information needed to transfer each *business name* to the *purchaser*;
- 20.1.3 any document evidencing tenure of the *premises*;
- 20.1.4 any other document needed to effect registration of the *business* under *legislation*; and
- 20.1.5 any other *document of title* that relates only to the *business*.
- 20.2 If on completion the *vendor* has possession or control of a *document of title* that relates also to property other than the *business*, the *vendor* must produce it as and where necessary.
- 20.3 On completion the *vendor* must –
- 20.3.1 sign all necessary forms and make all necessary applications to –
- allow the *contact numbers* to be transferred to the *purchaser*; and
 - make all other services to the *business* and the *premises* available to the *purchaser* (subject to the consent of the suppliers of the services); and
- 20.3.2 cause the legal title to the *business* to pass to the *purchaser* (subject to any necessary registration), free of any mortgage or other interest.

- 20.4 By completion, the *vendor* must serve –
- 20.4.1 the consent of any mortgagee or head lessor of the land to the transfer or grant of the lease of the *premises*; and
- 20.4.2 the consent of any franchisor to the sale of the *business*.
- **Purchaser**
- 20.5 On completion the *purchaser* must –
- 20.5.1 pay to the *vendor*, by cash (up to \$2,000) or *settlement cheque*, the *price* (less any *deposit* paid) and any other amount payable by the *purchaser* under this contract (less any amount payable by the *vendor* to the *purchaser* under this contract); and
- 20.5.2 take over the burden and benefit of the continuing agreements listed in this contract and indemnify the *vendor* against any liability under those agreements arising after completion.
- 20.6 If the *vendor* requires more than 5 *settlement cheques*, the *vendor* must pay \$10 for each extra *cheque*.
- 20.7 On completion the *purchaser* must give the *vendor* an order signed by the *purchaser* authorising the *depositholder* to account to the *vendor* for the *deposit*.
- 20.8 On completion the *deposit* belongs to the *vendor*.
- **Place for completion**
- 20.9 *Normally*, the *parties* must complete at the completion address, which is –
- 20.9.1 if a special completion address is stated in this contract - that address; or
- 20.9.2 in any other case - the *vendor's solicitor's* address stated in this contract.
- 20.10 The *vendor* by reasonable notice can require completion at another place, if it is in NSW, but the *vendor* must pay the *purchaser's* additional expenses, including any agency or mortgagee fee.
- 20.11 If the *purchaser* requests completion at a place that is not the completion address, and the *vendor* agrees, the *purchaser* must pay the *vendor's* additional expenses, including any agency or mortgagee fee.
- 21 Book debts**
- 21.1 The *vendor* is entitled to payment of all debts of the *business* owing to the *vendor* at completion.
- 21.2 The *purchaser* must promptly account to the *vendor* for payment of those debts received after completion.
- 22 Purchaser's default**
- If the *purchaser* does not comply with this contract (or a notice under or relating to it) in an essential respect, the *vendor* can *terminate* by serving a notice and after the *termination* –
- 22.1 keep or recover the *deposit* (to a maximum of 10% of the *price*);
- 22.2 hold any other money paid by the *purchaser* under this contract as security for anything recoverable under this clause –
- 22.2.1 for 12 months after the *termination*; or
- 22.2.2 if the *vendor* commences proceedings under this clause *within* 12 months, until those proceedings are concluded; and
- 22.3 sue the *purchaser* either –
- 22.3.1 where the *vendor* has resold the *business* under a contract made *within* 12 months after the *termination*, to recover –
- the deficiency on resale (with credit for any of the *deposit* kept or recovered and after allowance for any capital gains tax and GST payable on anything recovered under this clause); and
 - the reasonable costs and expenses arising out of the *purchaser's* non-compliance with this contract or the notice and of resale and any attempted resale; or
- 22.3.2 to recover damages for breach of contract.
- 23 Rescission of contract**
- 23.1 If this contract expressly gives a *party* a right to *rescind*, the *party* can exercise the right –
- 23.1.1 only by *serving* a notice before completion; and
- 23.1.2 in spite of any making of a claim or *requisition*, any attempt to satisfy a claim or *requisition*, any arbitration, litigation, mediation or negotiation or any giving or taking of possession.
- 23.2 *Normally*, if a *party* exercises a right to *rescind* expressly given by this contract or any *legislation* –
- 23.2.1 the *deposit* and any other money paid by the *purchaser* under this contract must be refunded;
- 23.2.2 a *party* can claim for a reasonable adjustment if the *purchaser* has been in possession;
- 23.2.3 a *party* can claim for damages, costs or expenses arising out of a breach of this contract; and
- 23.2.4 a *party* will not otherwise be liable to pay the other *party* any damages, costs or expenses.
- 24 Miscellaneous**
- 24.1 The *parties* acknowledge that anything stated in this contract to be attached was attached to this contract by the *vendor* before the *purchaser* signed it and is part of this contract.

- 24.2 If a *party* consists of 2 or more persons, this contract benefits and binds them separately and together.
- 24.3 A *party's solicitor* can receive any amount payable to the *party* under this contract or direct in writing that it is to be paid to another person.
- 24.4 A document under or relating to this contract is –
- 24.4.1 signed by a *party* if it is signed by the *party* or the *party's solicitor*;
 - 24.4.2 served if it is served by the *party* or the *party's solicitor*;
 - 24.4.3 served if it is served on the *party's solicitor*, even if the *party* has died or any of them has died;
 - 24.4.4 served if it is served in any manner provided in s170 of the *Conveyancing Act 1919*;
 - 24.4.5 served if it is sent by email or fax to the *party's solicitor*, unless in either case it is not received;
 - 24.4.6 served on a person if it (or a copy of it) comes into the possession of the person; and
 - 24.4.7 served at the earliest time it is served, if it is served more than once.
- 24.5 An obligation to pay an expense of another *party* of doing something is an obligation to pay –
- 24.5.1 if the *party* does the thing personally - the reasonable cost had someone else done it;
 - 24.5.2 if the *party* pays someone else to do the thing - the amount paid, to the extent it is reasonable.
- 24.6 Rights under clauses 10, 13, 16, 18 and 36 continue after completion, whether or not other rights continue.
- 24.7 A reference to any *legislation* includes a reference to any corresponding later legislation.

25 Time limits in these provisions

- 25.1 If the time for something to be done or to happen is not stated in these provisions, it is a reasonable time.
- 25.2 If there are conflicting times for something to be done or to happen, the latest of those times applies.
- 25.3 The time for one thing to be done or to happen does not extend the time for another thing to be done or to happen.
- 25.4 If the time for something to be done or to happen is the 29th, 30th or 31st day of a month, and the day does not exist, the time is instead the last day of the month.
- 25.5 If the time for something to be done or to happen is a day that is not a *business day*, the time is extended to the next *business day*, except in the case of clause 2.
- 25.6 *Normally*, the time by which something must be done is fixed but not essential.

26 Training before and after completion

- 26.1 This clause applies only if a *training period* is specified in this contract.
- 26.2 The *purchaser* (or the *purchaser's* nominee) can attend the *premises* after the *contract date* and before completion for up to the number of working days specified as the pre-completion *training period* to watch the way the *business* is conducted and to receive training in the *business*.
- 26.3 Attending the *premises* under clause 26.2 does not of itself imply that the *vendor* has given possession to the *purchaser*.
- 26.4 The *vendor* (or a nominee of the *vendor* familiar with the *business*) must attend the *premises* after completion for the number of working days specified as the post-completion *training period* to train the *purchaser* in the running of the *business* and to introduce to the *purchaser* the clients, customers and suppliers of the *business*.
- 26.5 The *party* attending the *premises* must do so –
- 26.5.1 at the expense of that *party*; and
 - 26.5.2 during normal operating hours or at such other times as are agreed.

27 Lease of premises – general provisions

- 27.1 This clause applies only if the *premises* are, or are on completion to be, subject to a lease.
- 27.2 The *purchaser* must –
- 27.2.1 supply references and other information reasonably required by the *landlord* to allow the *landlord* to consider the application;
 - 27.2.2 pay or bear the costs and expenses of the *landlord* (including the costs of a *landlord's* mortgagee) arising from any negotiations between the *landlord* and the *purchaser* for proposed changes to a lease disclosed in this contract, whether or not this contract is completed; and
 - 27.2.3 if this contract says the *purchaser* must provide a suitable guarantee, provide any guarantee reasonably required by the *landlord* to support performance of the obligations of the *tenant* under the lease.
- 27.3 The *vendor* must –
- 27.3.1 apply to the *landlord* for the consent of the *landlord* to the *purchaser* becoming the *tenant*; and
 - 27.3.2 pay or bear the costs and expenses of the *landlord* arising under this contract, apart from those payable under clause 27.2 (including the costs of a *landlord's* mortgagee), whether or not this contract is completed.
- 27.4 If the consent of a *landlord's* mortgagee is required, and the *landlord's* mortgagee does not consent by the *completion date*, a *party* can *rescind*, but only if the *party* has complied with this clause.
- 27.5 A *party* cannot *rescind* under clause 27.4 after the other *party* has served notice of the consent of the *landlord's* mortgagee.

28 Electronic transaction

- 28.1 This *Conveyancing Transaction* is to be conducted as an *electronic transaction* if –
- 28.1.1 this contract says that it is an *electronic transaction*;
 - 28.1.2 the *parties* otherwise agree that it is to be conducted as an *electronic transaction*; or
 - 28.1.3 the *conveyancing rules* require it to be conducted as an *electronic transaction*.
- 28.2 However, this *Conveyancing Transaction* is not to be conducted as an *electronic transaction* –
- 28.2.1 if the folio of the Register is not *electronically tradeable* or a *relevant dealing* is not eligible to be lodged electronically; or
 - 28.2.2 if, at any time after the *effective date*, but at least 14 days before the completion date, a *party* serves a notice stating a valid reason why it cannot be conducted as an *electronic transaction*.
- 28.3 If, because of clause 28.2.2, this *Conveyancing Transaction* is not to be conducted as an *electronic transaction* –
- 28.3.1 each *party* must –
 - bear equally any disbursements or fees; and
 - otherwise bear that *party's* own costs;
 - 28.3.2 if a *party* has paid all of a disbursement or fee which, by reason of this clause, is to be borne equally by the *parties*, that amount must be adjusted under clause 18.2.
- 28.4 If this *Conveyancing Transaction* is to be conducted as an *electronic transaction* –
- 28.4.1 to the extent that any other provision of this contract is inconsistent with this clause, the provisions of this clause prevail; and
 - 28.4.2 *normally*, words and phrases used in this clause 28 (italicised and in Title Case, such as *Electronic Workspace* and *Lodgment Case*) have the same meaning which they have in the *participation rules*;
 - 28.4.3 the *parties* must conduct the *electronic transaction* –
 - in accordance with the *participation rules* and the *ECNL*; and
 - using the nominated *ELN*, unless the *parties* otherwise agree;
 - 28.4.4 a *party* must pay the fees and charges payable by that *party* to the *ELNO* and the *Land Registry* as a result of this transaction being an *electronic transaction*;
 - 28.4.5 any communication from one *party* to another *party* in the *Electronic Workspace* made –
 - after the *effective date*; and
 - before the receipt of a notice given under clause 28.2.2; is taken to have been received by that *party* at the time determined by s13A of the *Electronic Transactions Act 2000*; and
 - 28.4.6 a document which is an electronic document is *served* as soon as it is first *Digitally Signed* in the *Electronic Workspace* on behalf of the *party* required to serve it.
- 28.5 *Normally*, the *vendor* must *within 7 days of the effective date* –
- 28.5.1 create an *Electronic Workspace*;
 - 28.5.2 *populate* the *Electronic Workspace* with *title data*, the *completion date* and, if applicable, *mortgagee details*; and
 - 28.5.3 invite the *purchaser* and (if necessary) the *landlord* to the *Electronic Workspace*.
- 28.6 If the *vendor* has not created an *Electronic Workspace* in accordance with clause 28.5, the *purchaser* may create an *Electronic Workspace*. If the *purchaser* creates the *Electronic Workspace* the *purchaser* must –
- 28.6.1 *populate* the *Electronic Workspace* with *title data*;
 - 28.6.2 (if clause 30 applies) create and *populate* an *electronic transfer*;
 - 28.6.3 *populate* the *Electronic Workspace* with the *completion date* and a nominated *completion time*; and
 - 28.6.4 invite the *vendor* and any *incoming mortgagee* to join the *Electronic Workspace*.
- 28.7 *Normally*, *within 7 days* of receiving an invitation from the *vendor* to join the *Electronic Workspace*, the *purchaser* must –
- 28.7.1 join the *Electronic Workspace*;
 - 28.7.2 (if clause 30 applies) create and *populate* an *electronic transfer*;
 - 28.7.3 invite any *incoming mortgagee* to join the *Electronic Workspace*; and
 - 28.7.4 *populate* the *Electronic Workspace* with a nominated *completion time*.
- 28.8 If the *purchaser* has created the *Electronic Workspace* the *vendor* must *within 7 days* of being invited to the *Electronic Workspace* –
- 28.8.1 join the *Electronic Workspace*;
 - 28.8.2 *populate* the *Electronic Workspace* with *mortgagee details*, if applicable; and
 - 28.8.3 invite any *discharging mortgagee* to join the *Electronic Workspace*.
- 28.9 To complete the financial settlement schedule in the *Electronic Workspace* –
- 28.9.1 the *purchaser* must provide the *vendor* with *adjustment figures* at least 2 *business days* before the *completion date*; and
 - 28.9.2 the *vendor* must confirm the *adjustment figures* at least 1 *business day* before the *completion date*.
- 28.10 Before completion, the *parties* must ensure that –
- 28.10.1 all *electronic documents* which a *party* must *Digitally Sign* to complete the *electronic transaction* are *populated* and *Digitally Signed*;

- 28.10.2 all certifications required by the *ECNL* are properly given; and
- 28.10.3 they do everything else in the *Electronic Workspace* which that *party* must do to enable the *electronic transaction* to proceed to completion.
- 28.11 If completion takes place in the *Electronic Workspace* –
- 28.11.1 payment electronically on completion of the *price* in accordance with clause 20.5 is taken to be payment by a single *settlement cheque*;
- 28.11.2 the completion address in clause 20.9 is the *Electronic Workspace*; and
- 28.11.3 clauses 20.6, 20.10 and 20.11 do not apply.
- 28.12 If the computer systems of any of the *Land Registry*, the *ELNO* or the Reserve Bank of Australia are inoperative for any reason at the *completion time* agreed by the *parties*, a failure to complete this contract for that reason is not a default under this contract on the part of either *party*.
- 28.13 If the computer systems of the *Land Registry* are inoperative for any reason at the *completion time* agreed by the *parties*, and the *parties* choose that financial settlement is to occur despite this, then on financial settlement occurring –
- 28.13.1 all *electronic documents Digitally Signed* by the *vendor* and any *electronic document* forming part of the *Lodgment Case* for the *electronic transaction* shall be taken to have been unconditionally and irrevocably delivered to the *purchaser* or the *purchaser's* mortgagee at the time of financial settlement together with the right to deal with the *premises*; and
- 28.13.2 the *vendor* shall be taken to have no legal or equitable interest in the *premises*.
- 28.14 A *party* who holds a certificate of title must act in accordance with any *Prescribed Requirement* in relation to the certificate of title.
- 28.15 If the *parties* do not agree about the delivery before completion of one or more documents or things that cannot be delivered through the *Electronic Workspace*, the *party* required to deliver the documents or things –
- 28.15.1 holds them on completion in escrow for the benefit of; and
- 28.15.2 must immediately after completion deliver the documents or things to, or as directed by; the *party* entitled to them.
- 28.16 In this clause 28, these terms (in any form) mean –
- | | |
|---------------------------------|--|
| <i>adjustment figures</i> | details of the adjustments to be made to the <i>price</i> under clause 18; |
| <i>completion time</i> | the time of day on the <i>completion date</i> when the <i>electronic transaction</i> is to be settled; |
| <i>conveyancing rules</i> | the rules made under s12E of the <i>Real Property Act 1900</i> ; |
| <i>discharging mortgagee</i> | any discharging mortgagee, chargee, covenant chargee or caveator whose provision of a <i>Digitally Signed</i> discharge of mortgage, discharge of charge or withdrawal of caveat is required; |
| <i>ECNL</i> | the <i>Electronic Conveyancing National Law (NSW)</i> ; |
| <i>effective date</i> | the date on which the <i>Conveyancing Transaction</i> is agreed to be an <i>electronic transaction</i> under clause 28.1.2 or, if clauses 28.1.1 or 28.1.3 apply, the <i>contract date</i> ; |
| <i>electronic document</i> | a dealing as defined in the <i>Real Property Act 1900</i> which may be created and <i>Digitally Signed</i> in an <i>Electronic Workspace</i> ; |
| <i>electronic transfer</i> | a transfer of lease under the <i>Real Property Act 1900</i> for the <i>premises</i> to be prepared and <i>Digitally Signed</i> in the <i>Electronic Workspace</i> established for the purposes of the <i>parties' Conveyancing Transaction</i> ; |
| <i>electronic transaction</i> | a <i>Conveyancing Transaction</i> to be conducted for the <i>parties</i> by their legal representatives as <i>Subscribers</i> using an <i>ELN</i> and in accordance with the <i>ECNL</i> and the <i>participation rules</i> ; |
| <i>electronically tradeable</i> | a land title that is Electronically Tradeable as that term is defined in the <i>conveyancing rules</i> ; |
| <i>incoming mortgagee</i> | any mortgagee who is to provide finance to the <i>purchaser</i> on the security of the interest of the <i>purchaser</i> in the <i>premises</i> and to enable the <i>purchaser</i> to pay the whole or part of the <i>price</i> ; |
| <i>mortgagee details</i> | the details which a <i>party</i> to the <i>electronic transaction</i> must provide about any <i>discharging mortgagee</i> of the <i>premises</i> as at completion; |
| <i>participation rules</i> | the participation rules as determined by the <i>ECNL</i> ; |
| <i>populate</i> | to complete data fields in the <i>Electronic Workspace</i> ; |
| <i>relevant dealing</i> | a document to be lodged with the <i>Land Registry</i> whereby an interest in the <i>premises</i> is created, surrendered or transferred; and |
| <i>title data</i> | the details of the title to the property made available to the <i>Electronic Workspace</i> by the <i>Land Registry</i> |

29 Grant of new lease

- 29.1 This clause applies only if this contract says the sale is subject to the grant of a new lease.
- 29.2 The *parties* intend that the *landlord* is to grant to the *purchaser* a lease of the *premises* –

- 29.2.1 in the form of the proposed lease of *premises* attached to the contract; or
 29.2.2 if no proposed lease is attached to the contract, with the lease particulars as set out in this contract, and on other terms substantially similar to those in force between the *landlord* and the *vendor*.

29.3 If the *landlord* does not grant a lease in accordance with this clause –

- 29.3.1 by the *completion date*, the *purchaser* can *rescind*; or
 29.3.2 by the 91st day after the *contract date*, a *party* can *rescind*.

29.4 A *party* cannot *rescind* under clause 29.3 after the *landlord* has granted a lease in accordance with this clause.

30 Transfer of existing lease

30.1 This clause applies only if –

- 30.1.1 the *premises* are subject to a lease; and
 30.1.2 this contract does not say the sale is subject to the grant of a new lease.

30.2 The *parties* intend that the *landlord* is to consent to a transfer of the lease from the *vendor* to the *purchaser*.

30.3 The *purchaser* must serve the form of transfer at least 7 days before the *completion date*.

30.4 If the *landlord* does not consent to the transfer of the lease –

- 30.4.1 by the *completion date*, the *purchaser* can *rescind*; or
 30.4.2 by the 91st day after the *contract date*, a *party* can *rescind*.

30.5 A *party* cannot *rescind* under clause 30.4 after the other *party* has served notice of the consent of the *landlord*.

31 Consent to transfer of franchise

31.1 This clause applies only if the *vendor* conducts the *business* as a franchisee.

31.2 The *vendor* must –

- 31.2.1 apply to the franchisor for the consent of the franchisor to a transfer of the franchise to the *purchaser*; and
 31.2.2 pay or bear the costs and expenses of the franchisor relating to the application for consent whether or not this contract is completed.

31.3 The *purchaser* must –

- 31.3.1 supply references and other information reasonably required by the franchisor to allow the franchisor to consider the application; and
 31.3.2 comply with any other requirement imposed by the franchise agreement or under *legislation*.

31.4 The *purchaser* promises that, if the franchisor consents to the transfer of the franchise to the *purchaser*, the *purchaser* will comply with the obligations of the franchisee under the franchise agreement.

31.5 If the franchisor does not consent to the transfer of the franchise to the *purchaser* within 42 days of the *contract date*, a *party* can *rescind*, but only if the *party* has complied with this clause.

31.6 A *party* cannot *rescind* under clause 31.5 after the other *party* has served notice of the consent of the franchisor.

32 Employees – notices

32.1 Unless otherwise agreed with the *purchaser* in writing, the *vendor* must give written notice terminating the employment of each *employee* on and from completion.

32.2 The notice period is the greater of:

- 32.2.1 14 days;
 32.2.2 a period specified in the *FW Act*; or
 32.2.3 a period specified in the *employee's* contract of employment.

33 Proposed transfer of employees

33.1 The *purchaser* must at least 15 *business days* prior to completion notify the *vendor* of the names of the *employees* to whom the *purchaser* wishes to offer employment in the *business* after completion and the election made in accordance with clause 35.3.

33.2 The *purchaser* must promptly offer those *employees* (the 'prospective transferring employees') employment in the *business* with the *purchaser* from and conditional on completion. The offer must –

- 33.2.1 be in writing;
 33.2.2 be on terms which accord with any transferable instrument (for example, modern award, enterprise agreement or other relevant statutory instrument) which applies to the prospective *transferring employees*;
 33.2.3 subject to clause 35, be on terms and conditions of employment substantially similar to, and no less favourable overall, to the prospective *transferring employees* when compared with their terms and conditions of employment with the *vendor* as at the *contract date*; and
 33.2.4 unequivocally state –
- whether the *purchaser* will or will not recognise service with the *vendor* (see clause 35) and for what purposes; and

- that employment with the *vendor* will terminate immediately prior to, and employment with the *purchaser* will commence, on completion.

- 33.3 The *vendor* must –
- 33.3.1 encourage any and all *employees* who receive an offer from the *purchaser* to accept the offer, and;
- 33.3.2 release each *transferring employee* from their employment and any post-termination restrictions with effect from completion.
- 33.4 To the extent that any notice period under clause 32.2 has yet to fully expire as at completion, the *vendor* is responsible for any payment in lieu of that notice to *transferring employees*.
- 34 Employee entitlements – terminating employees**
- Normally, the *vendor* is responsible for the *employee entitlements* of the *terminating employees* and on completion must pay to each *terminating employee* the *employee entitlements* (if any) due to each *terminating employee*, whether arising under any contract, any *legislation*, transferable instrument or otherwise, including in respect of –
- 34.1 accrued *wages*;
- 34.2 accrued entitlements to annual leave and long service leave;
- 34.3 any entitlements to a payment in lieu of notice;
- 34.4 any entitlements to redundancy pay; and
- 34.5 any other remuneration or entitlement arising out of employment or termination of employment; and the *vendor* indemnifies the *purchaser* against any loss or claim against the *purchaser* in respect of the *terminating employees* to the extent that the loss or claim relates to the period prior to completion.
- 35 Employee entitlements – transferring employees**
- 35.1 The *vendor* must deliver to the *purchaser* on completion a document setting out full details of –
- 35.1.1 the *employee entitlements* in respect of each *transferring employee* as at completion;
- 35.1.2 details of any *employee entitlements* which the *transferring employee* was either paid upon the termination of his or her employment with the *business* or to which the *transferring employee* is entitled; and
- 35.1.3 details of provisioning in the *vendor's* accounts for annual leave, personal/carer's leave and long service leave in respect of each of the *transferring employees*.
- 35.2 The *purchaser* must recognise service of *transferring employees* with the *vendor* for the purposes of –
- 35.2.1 Division 4 of Part 2-2 of the *FW Act* (which deals with requests for flexible working arrangements);
- 35.2.2 Division 5 of Part 2-2 of the *FW Act* (which deals with parental leave); and
- 35.2.3 Division 7 of Part 2-2 of the *FW Act* (which deals with personal/carer's leave).
- 35.3 The *purchaser* is not required to, and so must elect whether or not the *purchaser* recognises service with the *vendor*, and in doing so calculate the period of employment as including service with the *vendor*, for the purposes of –
- 35.3.1 Division 2 of Part 3-2 of the *FW Act* (which deals with access to unfair dismissal);
- 35.3.2 Division 6 of Part 2-2 of the *FW Act* (which deals with annual leave); and
- 35.3.3 Subdivision B of Division 11 of Part 2-2 of the *FW Act* (which deals with redundancy pay).
- 35.4 If the *purchaser* elects to recognise service under clause 35.3 –
- 35.4.1 the *vendor* must make the payments set out in clause 34 but for *transferring employees*, except for an entitlement which is adjusted in accordance with this clause;
- 35.4.2 the *vendor* must pay or allow the *purchaser* on completion –
- an amount equal to 70% of the value of the accrued annual leave (including any annual leave loading) for *transferring employees* as at completion (but only if service with the *vendor* counts as service with the *purchaser* for this purpose and no payment is made to *transferring employees* by the *vendor* of such leave entitlements);
 - subject to clause 35.10 the *vendor* must pay or allow the *purchaser* on completion an amount equal to 70% of the nominal long service leave in respect of the *transferring employees*.
The nominal long service leave amount will be calculated as if *transferring employees* with in excess of 5 years continuous employment with the *vendor* had accrued long service leave entitlements calculated upon the basis of their periods of employment (but only if service with the *vendor* counts as service with the *purchaser* for this purpose and no payment is made to *transferring employees* by the *vendor* of such leave entitlements); and
 - if this contract says the *vendor* will allow for accrued but untaken personal/carer's leave, the *vendor* must pay or allow the *purchaser* on completion an amount equal to 70% of the value of accrued personal/carer's leave for *transferring employees*.
- 35.5 If the *purchaser* makes an election not to recognise service in any circumstance set out in clause 35.3, the *vendor* must make the payments set out in clause 34 in relation to that circumstance and for *transferring employees*.
- 35.6 If the *purchaser* does not make an election, the *purchaser* is taken to have elected not to recognise service in any circumstance set out in clause 35.3 and the *vendor* must then make all the payments set out in clause 34

in relation to those circumstances and for *transferring employees*.

- 35.7 The *purchaser* must pay to the *vendor* at completion an amount equal to the total amount of *wages* paid by the *vendor* to the *transferring employees* in respect of any period after completion.
- 35.8 The *vendor* indemnifies the *purchaser* against any loss or damage in respect of the *transferring employees* to the extent that the loss or claim relates to any entitlement to a payment under clause 34.
- 35.9 The *purchaser* is responsible for all liabilities of any *transferring employee* arising out of their employment after completion, and indemnifies the *vendor* against any loss or claim in respect of the *transferring employees* to the extent that the loss or claim relates to the period after completion.
- 35.10 If this contract says the adjustment for the nominal long service leave amount is the value of any long service entitlement of each *transferring employee* (calculated in accordance with clause 35.4.2), varied by multiplying that value by the figure shown in column 2 of the Long Service Leave Adjustment Table which corresponds to the length of continuous service shown in column 1 of the Long Service Leave Adjustment Table.

Long Service Leave Adjustment Table	
Column 1	Column 2
Length of continuous service	Adjustment Multiplier
Less than 5 years	0%
At least 5 years but less than 6 years	20%
At least 6 years but less than 7 years	30%
At least 7 years but less than 8 years	40%
At least 8 years but less than 9 years	50%
At least 9 years but less than 10 years	60%
At least 10 years	70%

36 Release of perfected security interest

- 36.1 This clause applies if any personal property forms part of the *business* or is *trading stock* and in either case is subject to a perfected security interest under the *PPS Act*.
- 36.2 Words and phrases used in this clause which are defined in the *PPS Act* have the same meaning in this clause.
- 36.3 The *vendor* must do everything reasonable to enable the *purchaser* to ascertain whether there are any security interests in any personal property forming part of the *business* or *trading stock*.
- 36.4 *Normally*, the *vendor* must ensure that at or before completion, in respect of each item of personal property to which clause 36.1 applies, the *purchaser* receives –
- 36.4.1 one of the following documents –
- a release (the 'PPS release') from each secured party releasing the security interest in respect of the property; or
 - a statement in accordance with section 275(1)(b) of the *PPS Act* setting out that the amount or obligation that is secured is nil at completion; or
 - an approval or correction in accordance with section 275(1)(c) of the *PPS Act* indicating that, on completion, the personal property included in the contract is not or will not be property in which the security interest is granted if the security interest is to remain perfected despite completion; and
- 36.4.2 in the case of serial numbered goods a written undertaking from each secured party to register a financing change statement which reflects that undertaking;
- and the *purchaser* does not have to complete until the *vendor* has complied with this clause 36.4.
- 36.5 The *vendor* does not have to comply with clause 36.4 in respect of a particular item of personal property to which clause 36.1 applies, if in respect of that item, the contract discloses a security interest and specifically states that clause 36.4 does not apply to that security interest.
- 36.6 *Normally*, the *purchaser* must accept a PPS release that is in a form published by the Australian Bankers' Association. If the *vendor* proposes to give the *purchaser* another form of PPS release the *purchaser* must accept that form unless it is unreasonable to do so.
- 36.7 If the *vendor* in complying with clause 36.4 proposes to give the *purchaser* a form of statement, approval, correction or undertaking, the *purchaser* must accept that form unless it is unreasonable to do so.
- 36.8 A *party* must provide a copy of any document mentioned in this clause to the other *party* on request.

SPECIAL CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1 DEFINITIONS

Business Day means a day on which banks are open for business in Sydney NSW other than a Saturday, Sunday or public holiday in that city.

Claim means any claim, loss, cost, expense, demand, cause of action, proceeding, judgment, damage or liability of any kind however it arises whether now or in the future.

Corporations Act means the Corporations Act 2001 (Cth).

Default Rate: 8 (eight) per cent per annum.

Guarantor means each director of the purchaser as at the date of this contract.

Printed Form means the Contract for the sale and purchase of business 2021 edition attached to and forming part of this contract.

1.2 INTERPRETATION

In this contract the following rules of interpretation apply, unless the contrary intention appears or context otherwise requires:

- (a) Headings and subheadings are for convenience only and do not affect the interpretation of this contract.
- (b) References to clauses, schedules, annexures, appendices, attachments and exhibits are references to the clauses of, and the schedules, annexures, appendices, attachments and exhibits to, this contract.
- (c) References to parties are references to the parties to this contract.
- (d) References to a party to any agreement or document include that party's permitted assignees and successors, including executors and administrators and legal representatives.
- (e) Words denoting the singular include the plural and words denoting the plural include the singular.
- (f) Words denoting any gender include all genders.
- (g) The word "person" includes any individual, corporation or other body corporate, partnership, joint venture, trust, association and any Government Agency.
- (h) A reference to a body (other than a party to this contract), whether statutory or not, that ceases to exist or has its powers or functions transferred to another body is a reference to the body that replaces it or that substantially succeeds to its powers or functions.
- (i) A reference to any agreement or document (including this contract) includes any amendments to or replacements of that document.
- (j) A reference to a law includes:

- A. legislation, regulations and other instruments made under legislation and any consolidations, amendments, re-enactments or replacements of them;
- B. any constitutional provision, treaty or decree;
- C. any judgment;
- D. any rule or principle of common law or equity,

and is a reference to that law as amended, consolidated, re-enacted, replaced or applied to new or different facts.

- (k) Any promise, agreement, representation or warranty given or entered into on the part of two or more persons binds them jointly and each of them severally.
- (l) Any promise, agreement, representation or warranty given or entered into on the part of two or more persons is for the benefit of them jointly and each of them severally.
- (m) No provision of this contract will be construed adversely to a party because that party was responsible for the preparation of that provision or this contract.
- (n) Specifying anything in this contract after the terms "include", "including", "includes", "for example", "such as" or any similar expression does not limit the sense of the words, description, definition, phrase or term preceding those terms unless there is express wording to the contrary.
- (o) This contract includes all schedules, annexures, appendices, attachments and exhibits to it.
- (p) Where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (q) If there is any conflict between these special conditions and the Printed Form these special conditions will prevail.

1.2 GOVERNING LAW

- (a) This contract is governed by the law in force in New South Wales.
- (b) Each party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in New South Wales and courts of appeal from them in respect of any proceedings arising out of or in connection with this contract.

1.3 ENTIRE AGREEMENT

This contract states all the express terms agreed by the parties about its subject matter. It supersedes all prior agreements, understandings, negotiations and discussions in respect of its subject matter.

1.4 NO MERGER

Rights and obligations of the parties set out in this contract that have not been fulfilled on completion or are intended to have application after completion, continue to apply after completion.

1.5 SEVERABILITY

If the whole or any part of a provision of this contract is or becomes invalid or unenforceable under the law of any jurisdiction, it is severed in that jurisdiction to the extent that it is invalid or unenforceable and whether it is in severable terms or not.

2. WARRANTIES

2.1 PURCHASER'S WARRANTY

In entering into this contract, the purchaser acknowledges and warrants to the vendor that:

- (a) the purchaser has not relied on any warranty, representation or statement (whether oral or written) made or published by the vendor or by any person on behalf of the vendor or otherwise except such as are expressly made in this contract;
- (b) There are no actions, claims, proceedings or investigations pending or threatened against the purchaser or to its knowledge by, against or before any person which may have a material effect on the transaction the subject of this contract;
- (c) the purchaser is duly incorporated and validly exists under the law of its place of incorporation;
- (d) the purchaser has full power and authority to enter into this contract;
- (e) no Insolvency Event has occurred in relation to the purchaser; and
- (f) so far as the purchaser is aware, there are no facts, matters or circumstances that could reasonably be expected to give rise to an Insolvency Event in respect of the purchaser.

2.2 VENDOR'S WARRANTY

- a. In entering into this contract, the vendor warrants to the purchaser that it has full power to enter into and perform its obligation under this Agreement.
- b. The Vendor agrees to use all reasonable endeavours to keep all existing plant and equipment located at the Premises in good working order and condition (except for fair wear and tear), up to Completion;
- c. This clause, as well as the warranties in printed form condition 10, shall not merge upon completion.

3. LATE COMPLETION

3.1. PAYMENT OF INTEREST

If completion does not occur on or before the date for completion, the purchaser must pay to the vendor on completion, interest on the unpaid balance of the purchase price calculated daily at the Default Rate from and including the day following the date for completion to and including the date of completion.

3.2 DELAY BY VENDOR

Special condition 3.1 does not apply for any period during which completion is delayed solely due to the fault of the vendor.

3.3 ESSENTIAL TERM

The purchaser acknowledges that:

- (a) this special condition 3 is an essential term of this contract;
- (b) the amount payable under special condition 3.1 is a genuine pre-estimate of the vendor's loss resulting from the purchaser's failure to complete this contract on the date for completion; and
- (c) the purchaser may not require the vendor to complete this contract unless interest payable under this special condition 3 is paid to the vendor on completion.

4. NOTICE TO COMPLETE

4.1 ISSUING NOTICE TO COMPLETE

- (a) If a party is entitled to serve a notice to complete, then the party may at any time serve a notice requiring completion on a specified date (being not less than 14 days after the date of service of that notice).
- (b) The parties agree that 14 days is a reasonable period to allow for completion in any notice to complete.
- (c) A party that issues a notice to complete may withdraw the notice at any time before the completion date set out in that notice and may issue further notices to complete.

5. ALTERATIONS TO CONTRACT

- (a) Each party authorises their solicitor or conveyancer, or any employee of their solicitor or conveyancer, to amend this contract at any time after it has been signed by that party up until the date of this contract.
- (b) Any amendments made in accordance with this clause 5 are binding on the authorising party and form part of this contract as if they were made before the contract was signed by that party.

6. GUARANTEE AND INDEMNITY

6.1 APPLICATION OF THIS CLAUSE

- (a) This clause:
 - A. applies if the purchaser is a corporation but does not apply to a corporation listed on an Australian securities exchange; and
 - B. is an essential term of this contract.
- (b) If each director of the purchaser has not signed this contract as a guarantor, the vendor may terminate this contract by serving a notice within 14 days after the contract date.

6.2 GUARANTEE

In consideration of the vendor entering into this contract at the Guarantor's request, the Guarantor unconditionally and irrevocably guarantees to the vendor that the purchaser will comply on time with the purchaser's obligations under this contract including payment of the purchase price and all other money payable under this contract.

6.3 INDEMNITY

- (a) The Guarantor unconditionally and irrevocably indemnifies the vendor against, and agrees as principal debtor to pay to the vendor on demand a sum equal to, any liability, loss, claim, damages, costs and expenses arising from or incurred by the vendor in connection with or arising from any one or more of the following:
 - A. the purchaser's failure to perform an obligation in accordance with the terms of this contract, including an obligation to pay money;
 - B. a representation or warranty by the purchaser in this contract being incorrect or misleading, when made or when taken to be made;
 - C. a liquidator or trustee in bankruptcy disclaiming this contract;
 - D. an obligation of the purchaser or the Guarantor under this contract is found to be unenforceable; or
 - E. the purchaser becomes subject to an Insolvency Event.
- (b) It is not necessary for the vendor to incur expense or make any payment before enforcing its right of indemnity under this clause.
- (c) The Guarantor must pay interest on any amount payable under this guarantee and indemnity on demand from when the amount becomes due for payment until it is paid in full. Interest is calculated on daily balances at the Default Rate.
- (d) The Guarantor cannot insist that the vendor commence proceedings or enforce any other right against the purchaser or any other person before claiming under this guarantee and indemnity.
- (e) This guarantee and indemnity is a continuing security and is not discharged by any one payment and may not be terminated by the Guarantor. It continues until all of the Guarantor's obligations under it are complied with or the vendor releases the Guarantor in writing.
- (f) The liabilities of the Guarantor under this guarantee and indemnity as a guarantor, indemnifier or principal debtor and the rights of the vendor under this guarantee and indemnity are not affected by anything which might otherwise affect them including any one or more of the following:
 - A. the vendor granting time or other indulgence to, compounding or compromising with or releasing the purchaser or any other Guarantor;
 - B. acquiescence, delay, acts, omissions or mistakes on the part of the vendor;
 - C. any transfer of a right of the vendor;
 - D. the termination or assignment of this contract;

- E. the invalidity or unenforceability of an obligation or liability of a person other than the Guarantor; or
 - F. any person named as Guarantor not executing or not executing effectively this contract as Guarantor.
- (g) Until all money payable to the vendor in connection with this contract is paid and all of the Guarantor's obligations are satisfied or discharged, the Guarantor may not:
- A. raise a set-off or counterclaim available to it or the purchaser against the vendor in reduction of its liability under this guarantee and indemnity;
 - B. claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of any security or guarantee held by the vendor in connection with this contract;
 - C. make a claim or enforce a right against the purchaser or its property; or
 - D. prove in competition with the vendor if a liquidator, provisional liquidator, receiver, manager, receiver and manager, administrator, controller (as defined in section 9 of the Corporations Act) or similar officer or trustee in bankruptcy is appointed in respect of the purchaser or any of its assets or the purchaser is otherwise unable to pay its debts when they fall.
- (h) The Guarantor must pay or reimburse the vendor on demand for all expenses incurred (including legal fees, costs and disbursements on the higher of a full indemnity basis and a solicitor and own client basis, determined without taxation, assessment or similar process) in connection with exercising, enforcing or preserving, or attempting to exercise, enforce or preserve, rights under this guarantee and indemnity.

7. EXISTING CREDITORS AND DEBTORS

- 7.1. All existing creditors and debtors up to the date of settlement remain the responsibility and property of the vendor. The purchaser will create his own debtors and creditors after the date of settlement.

8. TRANSFER AND ASSIGNMENT OF BUSINESS

At completion, in exchange for the purchaser paying the whole of its right, title and interest in and to the equipment free from all encumbrances and subject to the conditions of this agreement:

- (a) deliver to the purchaser possession of the equipment;
- (b) deliver to the purchaser any document reasonably required by the purchaser to transfer the business and equipment to the purchaser and to complete the sale under this agreement;
- (c) deliver to the purchaser or keys, codes, combinations or any other devices required to access the business, equipment and assets of the business;
- (d) deliver to the purchaser any other document reasonably required by the purchaser to transfer the business to the purchaser and to complete the sale under this agreement (including the ASIC transfer number for registration of the business name).

9. INTERDEPENDENT CONTRACT

- 9.1. This contract is interdependent with the contract for sale of land at 221 Wattle Tree Road Hogate, being the property on which the business operates and settlement of this sale of business contract must occur simultaneously with settlement of that sale of land contract.

INVENTORY OF EQUIPMENT

Café Equipment

- 3 Tall bar tables
- 6 tall bar stools
- 3 Octagonal teak timber tables
- 2 Teak square timber tables
- 6 Brown square café tables
- 4 Wooden square café tables
- 2 Grey wooden waiters' stations
- 2 Indian wooden cubes
- 1 Indian day bed
- 1 Large rectangular table in Bali Hut
- 2 Smaller wooden tables in Bali Hut
- Multiple cushions and rugs for day beds
- 1 x 12 seat timber table in Sails area
- 43 Brown wicker chairs
- 14 Grey wicker chairs
- 2 Woven chairs and matching table
- 2 Timber folding chairs
- 4 Timber high chairs
- 2 Bamboo display ladders
- 3 Cane stools
- 1 Large fan
- 1 Standing electric heater

3 Outdoor gas heaters

8 Swap and Go gas bottles

Gallery Equipment

40 White resin chairs

7 Trestle tables

1 Vacuum cleaner

1 Timber storage bin

8 Bean bags

4 Folding bamboo tables

1 Wooden coffee table

1 Timber bookcase

2 Timber easels

Yoga Room Storage Room

1 Hot water urn

2 Kettles

1 Sony LCD TV KDL 46x3100

1 Denon Amplifier

1 5.1 Surround Sound System

1 Epson projector

1 Livingstone portable amp/PA

2 Fire extinguishers

Various platters, Jugs, Vases, Candles

Boxes of champagne and wine glasses

Bamboo Platters

Yoga room

30 red blankets

20 yoga bolsters

20 yoga mats

Various pillows

Garden

2 Large fish ponds with UV filter system

25 Koi fish

2 Pond pumps

1 Wooden bridge over pond

Various water plants

Multiple statues around garden

Office

Fuji Xerox printer

Arlo security system with 4 cameras

1 Laminator and sheets

Computer with hard drive

Phone and answering machine

Café area

3 Thermal docket printers

- 1 Koeler drink fridge
- 6 Stainless steel benchtops
- 3 Google home range extenders
- 1 Stereo system Sherwood Amplifier
- 1 LG Microwave
- 1 Westinghouse bar fridge
- 1 Westinghouse bar freezer
- 1 Cake display
- 1 Cash drawer
- 1 Stainless double sink
- 2 Metal cabinets with sliding doors
- 1 Industrial shelving unit
- 1 Eswood ES25 slide through dishwasher
- 1 Rinse aid wash dispenser
- 2 Stainless steel shelving units
- 1 Electric orange peeler

Cooking utensils, pots, saucepans, frypans, knives, plastic storage containers, crockery, plates, bowls, entrée plates, side plates, glasses, tea pots, teacups, coffee mugs, dishes, mugs, cutlery, fire blankets, kitchen scales, on counter can opener

Kitchen

- 1 Free standing 6 burner Cooker
- 1 Rangehood
- 1 Freestanding 2 basket deep fryer
- 1 Lennox Air conditioner
- 1 Sharp microwave

1 Polar counter 4 door fridge
1 Polar single glass door fridge
1 Robocoup R211 Ultra food processor
1 Robocoup hand mixer
1 Electric soup pot
1 Sandwich press
1 Rotating toaster
1 Robocoup V80 Ultra juicer
2 Vitamix 2 speed blenders
9 Stainless steel benches
3 Wire storage benches
10 Rubber floor mats
Aprons and Bamboo Buddha uniform shirts
Vegetarian cookbooks
Boxes of tea towels and cleaning cloths
Table numbers and holders
Money safe

Form: 07L
Release: 4-8

LEASE
New South Wales
Real Property Act 1900

Leave this space clear. Affix additional
pages to the top left-hand corner.

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

STAMP DUTY

Insert Duties Assessment No. as issued by Revenue NSW Office.

Duties Assessment No.

(A) **TORRENS TITLE**

Property leased

1/258833

(B) **LODGED BY**

Document
Collection
Box

Name, Address, Telephone, and Customer Account Number if any

CODE

L

Email:

Reference:

(C) **LESSOR**

Linda Fay Eckhold

The lessor leases to the lessee the property referred to above.

(D)

Encumbrances (if applicable):

(E) **LESSEE**

Indigo Enterprises Pty Ltd ACN 646 857 392

(F)

TENANCY:

(G) 1. **TERM** One (1) year

2. **COMMENCING DATE** 1 January 2024

3. **TERMINATING DATE** 31 December 2024

4. With an **OPTION TO RENEW** for a period of one (1) year
set out in clause 4 of Annexure A

5. With an **OPTION TO PURCHASE** set out in clause N.A of N.A

6. Together with and reserving the **RIGHTS** set out in clause N.A of N.A

7. Incorporates the provisions or additional material set out in **ANNEXURE(S) A**

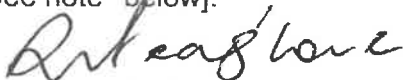
hereto.

8. Incorporates the provisions set out in N.A.
No.

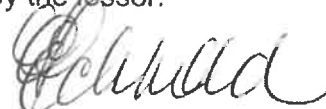
9. The **RENT** is set out in Item No. 10 of Annexure A

DATE

- (H) I certify I am an eligible witness and that the lessor signed this dealing in my presence. [See note* below].


Signature of witness:

Certified correct for the purposes of the Real Property Act 1900 by the lessor.


Signature of lessor:

Name of witness: *Richard Seagrove*
Address of witness: *43 - 45 Kilpa Rd,
Wyangah, NSW 2259.*

Certified correct for the purposes of the Real Property Act 1900

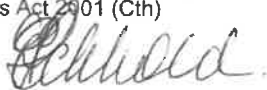
and executed on behalf of the company named below by the

authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.

Company: Indigo Enterprises Pty Ltd ACN 646 857 392

Authority: Section 127 Corporations Act 2001 (Cth)

Signature of authorised person:



Name of authorised person: Linda Fay Eckhold

Office held: Sole Director/ Secretary

(I) **STATUTORY DECLARATION***

I

solemnly and sincerely declare that—

1. The time for the exercise of option to _____ in expired lease No. _____ has ended; and
2. The lessee under that lease has not exercised the option.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act 1900.

Made and subscribed at _____ in the State of New South Wales _____ on

in the presence of _____ of _____

☐ Justice of the Peace (J.P. Number: _____) ☐ Practising Solicitor

☐ Other qualified witness [specify] _____

who certifies the following matters concerning the making of this statutory declaration by the person who made it:

1. I saw the face of the person OR I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering; and
2. I have known the person for at least 12 months OR I have confirmed the person's identity using an identification document and the document I relied on was a _____ [Omit ID No.]

Signature of witness:

Signature of applicant:

* As the services of a qualified witness cannot be provided at lodgment, the declaration should be signed and witnessed prior to lodgment. # If made outside NSW, cross out the witness certification. If made in NSW, cross out the text which does not apply.

** s117 RP Act requires that you must have known the signatory for more than 12 months or have sighted identifying documentation.

ANNEXURE A – COMMERCIAL LEASE 2021

SEE A SOLICITOR ABOUT THIS LEASE

Lessor: Linda Fay Eckhold

Lessee: Indigo Enterprises Pty Ltd ACN 646 857 392

This annexure consists of pages.

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You can prepare your own version of Annexure A of this Lease. Except as permitted under the *Copyright Act 1968* (Cth) or consented to by the copyright owner (including by way of guidelines issued from time to time), no other part of this Lease may be reproduced without the specific written permission of The Law Society of New South Wales.

NOTE: Any alterations and additions to Lease Covenants in Annexure B **must** be made by additional clauses in Annexure A. The printed clauses in Annexure B are to remain in their copyright form without alteration.

SCHEDULE OF ITEMS

Item 1
(cl 1.8) **Property: 221 Wattle Tree Rd, Holgate NSW 2250**

Item 2
(cls 3, 6.2.7) **Additional leased property: N/A**

Item 3
(cl 1.4) **Lessor:** 
Name: **Linda Fay Eckhold**
ACN/ABN: N/A

(cl 14.2) **Address for service of notices**
Street address: 221 Wattle Tree Rd, Holgate NSW 2250

Email: lindaeckhold@yahoo.com.au /

Item 4
(cl 1.5) **Lessee**
Name: Indigo Enterprises Pty Ltd
ACN/ABN: ACN 646 857 392

(cl 14.2) **Address for service of notices**
Street address: 221 Wattle Tree Rd, Holgate NSW 2250

Email: bamboobuddha@gmail.com

TENANCY (inc. share):

Item 5
(cl 1.6, 13.1)
(cl 13.7) A. **The guarantor: N/A**
 B. **Limit of guarantor's liability: N/A**
(cl 14.2) C. **Address for service of notices**



Item 6
(cl 4.1)

Term: One (1) year

Item 7
(cl 4.1)

Commencing date: 1 January 2024

Item 8
(cl 4.1)
(cl 12.1)

Terminating date: 31 December 2024

Item 9
(cl 4)

Option to renew

- A. Further period of one (1) year from 1 January 2025 to 31 December 2025
- B. ~~Further period of~~ years from ~~to~~
- C. Maximum period of tenancy under this lease and permitted renewals: Two (2) years
- D. First day option for renewal can be exercised: 1 July 2024
- E. Last day option for renewal can be exercised: 30 September 2024

Item 10
(cl 5)

Rent

For the lease period:

From the commencement date
to the first rent review date:

\$13,000 a year by monthly instalments of
\$1,083.00

Afterwards:

At the new yearly rent beginning on each
review date by monthly instalments of one
twelfth of the new yearly rent.

Item 10
(continued)
(cl 5)

For the further period in item 9A:

From the commencement date
to the first rent review date:

4%

(for example: Current market rent)

Afterwards:

At the new yearly rent beginning on each
review date by monthly instalments of one
twelfth of the new yearly rent.

~~For the further period in item 9B:~~

~~From the commencement date
to the first rent review date:~~

~~(for example: Current market rent)~~

~~Afterwards:~~

~~At the new yearly rent beginning on each
review date by monthly instalments of one
twelfth of the new yearly rent.~~

Item 11
(cl 5)

Outgoings

A. Share of outgoings: 100%

B. Outgoings –

[Select applicable items]

(a) local council rates and charges;

(b) water sewerage and drainage charges;

(c) land tax;

(d) public liability insurance and building insurance;

~~(e) all levies and contributions of whatsoever nature determined and/or levied by the owners corporation with the exception of any contribution to a capital works fund or special levy in respect of the strata scheme of which the property forms part (if applicable);~~

~~(f) other:-~~

for the land or the building of which the property is part, fairly apportioned to the period of this lease.

Item 12
(cl 5.1.5)

Interest rate: 10 %

Item 13
(cl 5.5)

Rent review

Rent review date

Method of rent review

If Method 1 applies, increase by
(the increase should show percentage
or amount)

1 January 2025

Method 1

4%

Method 1 is a fixed amount or percentage.

Method 2 is Consumer Price Index.

Method 3 is current market rent.

Method 2 applies unless another method is stated.

NOTE: Clause 5.7 provides that despite the method selected the new rent on a rent review date must not be less than the rent immediately before the rent review date.

Item 14
(cl 6.1)

Permitted use: Café, nursery, events

Item 15
(cl 8.1.1)

Amount of required public liability insurance: \$20,000,000.00

Item 16
(cl 16)

Bank Guarantee

~~N/A month(s) rent and the lessee's proportion of outgoings increased by the rate of GST (expressed as a percentage) applicable from time to time.~~

An amount of \$

ANNEXURE A

Item 17
(cl 17)

Security Deposit

N/A

~~month(s) rent and the lessee's proportion of outgoings increased by the rate of GST
(expressed as a percentage) applicable from time to time.~~

Details of strata manager/secretary of the owners corporation (if applicable)

N/A



The following alterations and additions are to be made to the Lease Covenants in Annexure B:

ANNEXURE A

[Handwritten signature]

[Handwritten signature]

Execution by Lessor

ANNEXURE A

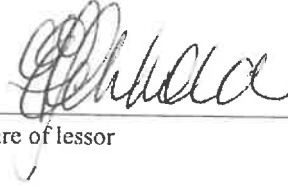
I certify that I am an eligible witness and
that the lessor signed this dealing in
my presence.

[See note * at end]

) Certified correct for the purposes of the *Real*
) *Property Act 1900* and signed by the lessor.



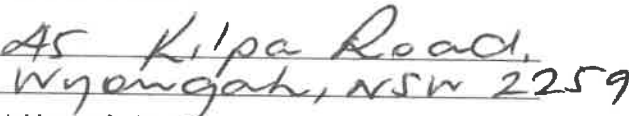
Signature of witness



Signature of lessor



Name of witness



Address of witness

* Section 117 of the *Real Property Act 1900* requires that you must have known the signatory for more than 12 months or have sighted identifying documentation.

OR

Certified correct for the purposes of the *Real Property Act 1900*
and executed on behalf of the company named below by the
authorised person(s) whose signature(s) appear(s) below
pursuant to the authority specified.

Company:

Authority:

Signature of authorised person

Signature of authorised person

Name of authorised person

Name of authorised person

Office held

Office held

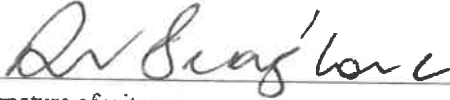


Execution by Lessee

I certify that I am an eligible witness and
that the lessee signed this dealing in
my presence.

[See note * at end]

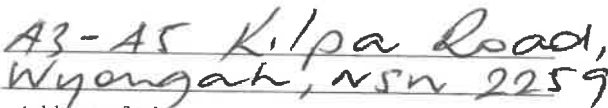
) Certified correct for the purposes of the *Real*
) *Property Act 1900* and signed by the lessee.



Signature of witness



Name of witness



Address of witness

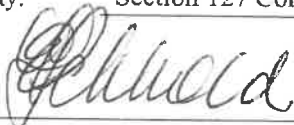
* Section 117 of the *Real Property Act 1900* requires that you must have known the signatory for more than 12 months or have sighted identifying documentation.

OR

Certified correct for the purposes of the *Real Property Act 1900*
and executed on behalf of the company named below by the
authorised person(s) whose signature(s) appear(s) below
pursuant to the authority specified.

Company: Indigo Enterprises Pty Ltd

Authority: Section 127 Corporations Act 2001 (Cth)



Signature of authorised person:

Signature of authorised person:

Linda Fay Eckhold

Name of authorised person

Name of authorised person

Sole Director/ Secretary

Office held

Office held




Execution by guarantor

(cl 13)

I certify that I am an eligible witness and
that the guarantor signed this dealing in
my presence.

[See note * at end]

) Certified correct for the purposes of the *Real*
) *Property Act 1900* and signed by the guarantor.

Signature of guarantor

Signature of witness

Name of witness

Address of witness

* Section 117 of the *Real Property Act 1900* requires that you must have known the signatory for more than 12 months or have sighted identifying documentation.




ANNEXURE B – COMMERCIAL LEASE 2021

ANNEXURE B

PAGE 1 OF 14 PAGES

SEE A SOLICITOR ABOUT THIS LEASE

Lessor: Linda Fay Eckhold

Lessee: Indigo Enterprises Pty Ltd ACN 646 857 392

This annexure consists of 14 pages.

Property: 221 Wattle Tree Rd, Holgate NSW

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NOTE: Any alterations and additions to Lease Covenants in Annexure B **must** be made by additional clauses in Annexure A. The printed clauses in Annexure B are to remain in their copyright form without alteration.

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2	Grant of Lease	2	12	Forfeiture and End of Lease	9
3	Additional Leased Property	2	13	Guarantee	10
4	Lease Period	2	14	Exclusions and Notices	11
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8	Insurance and Damage	7	18	Strata	12
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CLAUSE 1 INTERPRETATION

About this lease.

- 1.1 There are three parts to this lease – a lease form or electronic lease tender, Annexure A and this Annexure B.
- 1.2 This lease is a deed even if it is not registered.
- 1.3 A reference in this deed to the schedule is to the schedule of items in Annexure A.
- 1.4 The lessor is named in item 3 in the schedule.
- 1.5 The lessee is named in item 4 in the schedule.
- 1.6 The guarantor is named in item 5A in the schedule, if there is a guarantor.
- 1.7 If a party consists of two or more persons, obligations of that party can be enforced against any one or more of them.
- 1.8 In this lease, “property” means the Property leased described in item 1 in the schedule.
- 1.9 A reference to any legislation is also a reference to any corresponding later legislation.
- 1.10 In the event of any inconsistency between Annexure A of this lease and any other part of this lease, Annexure A will prevail.

CLAUSE 2 GRANT OF LEASE

The lessor grants to the lessee, and the lessee accepts, a lease of the property.

CLAUSE 3 ADDITIONAL LEASED PROPERTY

What other property is leased?

- 3.1 The lessor’s fixtures are included in the property.
- 3.2 If anything else is leased (such as furniture belonging to the lessor) and is described in item 2 in the schedule it is included in the property.
- 3.3 If the property has facilities and services shared in common with other persons in the same building as the property, clause 11.3.2 applies to those common facilities. The lessee shares the common facilities with the lessor, and with others. The lessor can set reasonable rules for sharing these common facilities.

CLAUSE 4 LEASE PERIOD

How long is this lease for?

- 4.1 This lease is for the period stated in item 6 in the schedule, commences on the date stated in item 7 in the schedule and ends on the date stated in item 8 in the schedule.
- 4.2 If a further period, commencing when this lease ends, is stated in item 9A in the schedule then the lessee has the option to renew this lease for that period.
- 4.3 The lessee can renew this lease more than once if that is stated in item 9B in the schedule. However the period of tenancy under this lease and under any renewal(s) is, in total, not longer than the maximum period stated in item 9C in the schedule.
- 4.4 The lessee can exercise the option only if –
 - 4.4.1 the lessee serves on the lessor a notice of exercise of option not earlier than the first day stated in item 9D in the schedule and not later than the last day stated in item 9E in the schedule;
 - 4.4.2 there is at the time of service no rent or outgoing that is overdue for payment; and
 - 4.4.3 at the time of service all the other obligations of the lessee have been complied with or fully remedied in accordance with the terms of any notice to remedy given by the lessor.
- 4.5 After exercising the option the lessee must continue to pay all rents and outgoings on time and continue to comply with all of the lessee’s obligations under this lease. If the lessee does not do so, the lessor may treat any breach as being a breach of the new lease as well as of this lease.

- 4.6 A new lease will be the same as this lease except for –
- 4.6.1 the new rent;
 - 4.6.2 the commencement date and the termination date;
 - 4.6.3 the omission of clauses 4.2, 4.3, 4.4, 4.5 and 4.6 and items 9A and 9B in the schedule in the last lease allowed in item 9 in the schedule;
 - 4.6.4 item 9B becoming item 9A;
 - 4.6.5 adjustment of item 9C in the schedule; and
 - 4.6.6 adjustment of items 9D and 9E in the schedule. The number of days between the dates stated in items 9D and 9E in the schedule of the new lease and the termination date of the new lease and the number of days between each date stated in items 9D and 9E in the schedule of this lease and the termination date of this lease are to correspond.

If the new rent is to be current market rent it will be decided in the same way that current market rent is to be decided under Method 3 stated in clause 5 assuming that this lease and the new lease were one continuous lease and the commencement date of the new lease was a rent review date.

CLAUSE 5 MONEY

What money must the lessee pay?

- 5.1 The lessee must pay to the lessor or as the lessor directs –
- 5.1.1 the rent stated in item 10 in the schedule;
 - 5.1.2 the share stated in item 11A in the schedule of those outgoings stated in item 11B in the schedule and the utility charges referred to in clauses 5.23 and 5.24;
 - 5.1.3 the reasonable cost to the lessor of remedying a default by the lessee;
 - 5.1.4 the reasonable cost to the lessor (including legal costs) of dealing with any application by the lessee for the lessor's consent or where applicable an owners corporation's consent under this lease (whether or not it is given);
 - 5.1.5 interest on these moneys at the rate stated in item 12 in the schedule when payment is more than 14 days overdue, calculated from the due date to the date of payment;
 - 5.1.6 registration and lodgment fees for registration of this lease at NSW Land Registry Services (payable on delivery to the lessor's solicitor or conveyancer of the executed lease);
 - 5.1.7 if the lessee defaults, the lessor's reasonable legal costs relating to the default;
 - 5.1.8 the lessor's reasonable costs and expenses in connection with the preparation of this lease, excluding expenses incurred in connection with obtaining the consent of the mortgagee; and
 - 5.1.9 GST as provided for in clause 15.
- 5.2 The first month's instalment of rent is to be paid by the commencement date. Each later month's instalment of rent is to be paid in advance.
- 5.3 A payment under clause 5.1.2 must be paid on the next rent day after a request for payment is made by the lessor.
- A request for payment can be made –
- 5.3.1 after the lessor has paid an outgoing; or
 - 5.3.2 after the lessor has received an assessment or account for payment of an outgoing.
- 5.4 If item 11B in the schedule refers to land tax, the liability of the lessee is not to exceed the amount of that liability had the amount of land tax payable by the lessor been assessed on the basis that the land was the only land owned by the lessor and that there was no special trust or non-concessional company involved and –
- 5.4.1 if the property is a strata lot, the relevant land tax is land tax on that lot; or
 - 5.4.2 if the property is not a strata lot but is part of a building, the relevant land tax is land tax on the land on which the building is situated, plus any land of the lessor used or available for use by or for the benefit of lessees conducting business in the building or in connection with trading in the building.

When and how is the rent to be reviewed?

- 5.5 The rent is to be reviewed on the rent review dates stated in item 13 in the schedule.
- 5.6 The lessee must continue to pay rent at the old rate until the new rate is known. After that, the lessee is to pay the new rent from the next rent day. By that rent day the lessee is also to pay any shortfall between the old and new rate for the period since the rent review date.
- 5.7 There are three different methods described here for fixing the new rent on a rent review date. The method agreed by the lessor and the lessee is stated at item 13 in the schedule. Despite the method selected, the new rent on a rent review date must not be less than the rent immediately before the rent review date.

Method 1. By a fixed amount or percentage.

- 5.8 In this case the rent beginning on each review date will be increased by the percentage or amount stated in item 13 in the schedule.

Method 2. By reference to Consumer Price Index.

- 5.9 In this case –
- take the yearly rent as of the last review date or if none, the rent at the commencement date (\$X),
 - divide that rent by the Consumer Price Index Number for Sydney (All Groups) for the quarter ended just before that date (CPI 1),
 - multiply the result by the Consumer Price Index Number for Sydney (All Groups) for the quarter ended just before the review date (CPI 2).

The product is the new rent for the year beginning on the review date (\$Y), written as a formula –

$$\frac{\$X}{\text{CPI 1}} \times \text{CPI 2} = \$Y$$

- 5.10 The lessor must calculate the new rent after each review date and give the lessee written notice of the new rent.
- 5.11 If the Australian Bureau of Statistics makes a change in the reference base of the index and there is a published co-relation between the old and new base then the published co-relation is to be applied to convert the CPI 1 figure to the new reference base. If there is none then the lessor and the lessee agree to accept the calculations of the lessor's solicitor or conveyancer who must be retained to determine a fair co-relation between the old and the new series of numbers.
- 5.12 If the index used to calculate the new rent is discontinued the lessor may substitute another index that, as nearly as practicable, serves the same purpose and, if there is no such index, then the rent will be fixed by Method 3.

Method 3. By reference to current market rent.

- 5.13 In this case the rent is to be the current market rent. This is the rent that would reasonably be expected to be paid for the property having regard to the following matters –
- 5.13.1 the provisions of this lease;
 - 5.13.2 have regard to premises of comparable position, size and quality in the same local government area where the property is located;
 - 5.13.3 the rent that would reasonably be expected to be paid for the property if it were unoccupied and offered for renting for the same or a substantially similar use to which the property may be put under this lease; and
 - 5.13.4 the gross rent, less the lessor's outgoings payable by the lessee,
- and disregard –
- 5.13.5 the value of goodwill created by the lessee's occupation and the value of lessee's fixtures and fittings; and
 - 5.13.6 any alterations or refurbishment works done by the lessee to the property at its expense.
- 5.14 The lessor or the lessee may inform the other in writing at least 60 days before the rent review date of the rent that the lessor or lessee thinks will be the current market rent at the review date.

- 5.15 If the lessor and the lessee agree on a new rent then that rent will be the new rent beginning on the rent review date and the lessor and the lessee must sign a statement saying so.
- 5.16 If the lessor and the lessee do not agree on the amount of the new rent 30 days before the rent review date, the current market rent will be decided by a valuer appointed under clause 5.17.
- 5.17 If the lessor and the lessee do not agree on the appointment of a valuer 14 days before the rent review date, either can ask the President of the Law Society of New South Wales to nominate a person who is a valuer to decide the current market rent.
- 5.18 The valuer will act as an expert not an arbitrator. The lessor and the lessee can each make submissions in writing to the valuer.
- 5.19 The valuer's decision is final and binding. The valuer must state in writing how the decision was reached.
- 5.20 If the valuer –
- 5.20.1 does not accept the nomination to act;
 - 5.20.2 does not decide the current market rent within 1 month after accepting the nomination;
 - 5.20.3 becomes incapacitated or dies; or
 - 5.20.4 resigns,
- then another valuer is to be appointed in the same way.
- 5.21 The lessor and lessee must each pay half the valuer's costs.
- 5.22 If the lessor and lessee do not agree upon a valuer and neither asks for a valuer to be appointed within 6 months after a review date then the rent will not change on that rent review date.

Utility Charges

- 5.23 The lessee must pay separately metered utility charges for utilities such as water usage, gas, electricity, telecommunications, trade waste or grease trap charges with respect to the property directly as they fall due.
- 5.24 If the utilities are not separately metered the lessor, acting reasonably, must apportion an amount attributable to the property. The amount apportioned by the lessor to the lessee must be paid by the lessee to the lessor on the next date that rent is due to be paid by the lessee to the lessor.
- 5.25 If the lessee does not pay the utility charges under either clause 5.23 or 5.24 the lessor may pay the same and immediately recover from the lessee the amount paid by the lessor as if the charges were rent in arrears payable by the lessee.

CLAUSE 6 USE

How must the property be used?

- 6.1 The lessee must –
- 6.1.1 use the property for the purpose stated in item 14 in the schedule and not for any other purpose;
 - 6.1.2 open for business at times usual for a business of the kind conducted by the lessee;
 - 6.1.3 keep the property clean and dispose of waste properly;
 - 6.1.4 comply with all laws regulating how the property is used, obtain any consents or licences needed, comply with any conditions of consent, and keep current any licences or registrations needed for the use of the property or for the conduct of the lessee's business there; and
 - 6.1.5 do all things required by the lessor from time to time (including, without limitation, signing any documents required by the lessor) to enable the lessor to register its security interests under the *Personal Property Securities Act 2009* (Cth) and to release any security interests under that Act.

- 6.2 The lessee must not –
- 6.2.1 do anything that might invalidate any insurance policy covering the property or that might increase the premium unless the lessor consents in which case the lessee must pay the increased premium;
 - 6.2.2 use the property as a residence or for any activity that is dangerous, offensive, noxious, illegal or immoral or that is or may become a nuisance or annoyance to the lessor or to the owner or occupier of any neighbouring property;
 - 6.2.3 hold any auction, bankrupt or fire sale in the property;
 - 6.2.4 display signs or advertisements on the outside of the property, or that can be seen from the outside, unless the lessor consents (but the lessor cannot withhold consent unreasonably);
 - 6.2.5 overload the floors or walls of the property;
 - 6.2.6 without the prior written consent of the lessor use any common area for any purpose other than for access to and egress from the property; or
 - 6.2.7 create a security interest (as that term is defined in the *Personal Property Securities Act 2009* (Cth)) in favour of a third party in respect of the additional leased property without the lessor's consent which must not be unreasonably withheld.

CLAUSE 7 CONDITION AND REPAIRS

Who is to repair the property?

- 7.1 The lessor must –
- 7.1.1 maintain in a state of good condition and serviceable repair the roof, the ceiling, the external walls and external doors and associated door jambs, and the floors of the property and must fix structural defects;
 - 7.1.2 maintain the property in a structurally sound condition; and
 - 7.1.3 maintain essential services.
- 7.2 The lessee must otherwise maintain the property in its condition at the commencement date and promptly do repairs needed to keep it in that condition but the lessee does not have to –
- 7.2.1 alter or improve the property;
 - 7.2.2 fix structural defects; or
 - 7.2.3 repair fair wear and tear.
- 7.3 The lessee must also –
- 7.3.1 reimburse the lessor for the cost of fixing structural damage caused by the lessee, apart from fair wear and tear;
 - 7.3.2 maintain and decorate the shop front if the property has one; and
 - 7.3.3 decorate the inside of the property in the last 3 months of the lease period (however it ends) – 'decorate' here means restoring the surfaces of the property in a style and to a standard of finish originally used e.g. by repainting.
- 7.4 If an authority requires work to be done on the property and it is structural work or work needed to make the property safe to use then the lessor must do the work unless it is required only because of the way the lessee uses the property. If it is any other work, or is required only because of the way the lessee uses the property, then the lessee must do the work.
- 7.5 If the lessee fails to do any work that the lessee must do the lessor can give the lessee a notice in writing stating what the lessee has failed to do. After the notice is given the lessee must –
- 7.5.1 do the work immediately if there is an emergency; and
 - 7.5.2 do the work promptly and diligently in any other case.
- If the lessee does not do the work, the lessor can do it and the lessee must reimburse the lessor for the cost of the work.
- 7.6 The lessee must not make any structural alterations to the property. Any other alterations require the lessor's consent in writing (but the lessor cannot withhold consent unreasonably).

CLAUSE 8 INSURANCE AND DAMAGE**What insurances must the lessee take out?**

- 8.1 The lessee must keep current an insurance policy noting the interests of the lessor and covering –
- 8.1.1 liability to the public in an amount not less than the amount stated in item 15 in the schedule (for each accident or event); and
 - 8.1.2 damage or destruction from any cause to all plate glass in the windows and other portions of the property,
- and must produce to the lessor, upon request, the policy and the receipt for the last premium.

What happens if the property is damaged?

- 8.2 If the property or the building of which it is part is damaged (a term which includes destroyed) –
- 8.2.1 the lessee is not liable to pay rent, or any amount payable to the lessor in respect of outgoings and other charges, that is attributable to any period during which the property cannot be used under this lease or is inaccessible due to that damage;
 - 8.2.2 if the property is still useable under this lease but its useability is diminished due to the damage, the lessee's liability for rent and any amount in respect of outgoings attributable to any period during which useability is diminished is reduced in proportion to the reduction in useability caused by the damage;
 - 8.2.3 if the lessor notifies the lessee in writing that the lessor considers that the damage is such as to make its repair impracticable or undesirable, the lessor or the lessee can terminate this lease by giving not less than 7 days' notice in writing of termination to the other and no compensation is payable in respect of that termination;
 - 8.2.4 if the lessor fails to repair the damage within a reasonable time after the lessee requests the lessor to do so the lessee can terminate this lease by giving not less than 7 days' notice in writing of termination to the lessor; and
 - 8.2.5 nothing in clause 8.2 affects any right of the lessor to recover damages from the lessee in respect of any damage or destruction to which the clause applies.

CLAUSE 9 ACCESS**What are the lessor's rights of access to the property?**

- 9.1 The lessee must give the lessor (or anyone authorised in writing by the lessor) access to the property at any reasonable time for the purpose of –
- 9.1.1 inspecting the condition of the property, or how it is being used;
 - 9.1.2 doing anything that the lessor can or must do under this lease or must do by law;
 - 9.1.3 viewing the property as a valuer, prospective buyer or mortgagee;
 - 9.1.4 fixing a notice in a reasonable position on the outside of the property saying that it is for sale;
 - 9.1.5 viewing the property as a prospective lessee not earlier than 6 months before the lease period ends;
 - 9.1.6 fixing a notice not earlier than 6 months before the lease period ends in a reasonable position on the outside of the property saying that it is to let; or
 - 9.1.7 inspecting, cleaning or repairing another property or any services to another property.
- 9.2 The lessor must give the lessee at least 2 days' written notice for access (except in an emergency). The day of the giving of the notice and any Saturday, Sunday or public holiday on which the property is not open for business are not counted.
- 9.3 The lessor must promptly make good any damage caused to the property and to any of the lessee's belongings which results from exercising these rights.
- 9.4 The lessee must give to the lessor a copy of any notice relating to the property or relating to any neighbouring property immediately after receiving the notice.

CLAUSE 10 TRANSFER, SUB-LEASE AND CHANGE IN CONTROL

Can this lease be transferred or the property shared or sub-let?

- 10.1 The lessee must not transfer this lease without the lessor's written consent, which cannot be unreasonably withheld.
- 10.2 Before any transfer,
- 10.2.1 the lessee must not be in breach of this lease unless the breach has been waived by the landlord or remedied; and
- 10.2.2 the lessee must prove to the lessor's reasonable satisfaction that the transferee is respectable and has financial resources sufficient to satisfy the lessee's obligations under this lease.
- 10.3 A request for the lessor's consent to a transfer of lease must be made in writing and the lessee must provide the lessor with such information as the lessor may reasonably require concerning the financial resources of the proposed transferee.
- 10.4 The lessor must deal expeditiously with a request for consent to assignment of lease.
- 10.5 The lessee has to pay in connection with any consent the lessor's reasonable legal costs, any duty, mortgagee's consent fees and the registration and lodgment fees for the transfer.
- 10.6 The lessee can sub-let, grant a licence or concession, share or part with the possession of the whole or any part of the property or mortgage or otherwise charge or encumber the lessee's estate or interest in this lease only with the written consent of the lessor which cannot be unreasonably withheld.
- 10.7 **Change in control of lessee: company**
- 10.7.1 If the lessee is a company and there is a proposal for the lessee or any company controlling the lessee to change its shareholding or change its constitution so that the effective control of the lessee is altered then that proposed change in control is treated as a proposed transfer of this lease and clause 10.1 applies.
- 10.7.2 Clause 10.7.1 does not apply if the lessee is listed on the Australian Securities Exchange or, if the change occurs to a company controlling the lessee, that company is listed on the Australian Securities Exchange.

CLAUSE 11 LESSOR'S OTHER OBLIGATIONS

What are the lessor's other obligations?

- 11.1 So long as the lessee does all the things that must be done by the lessee under this lease the lessor must allow the lessee to possess and use the property in any way permitted under this lease without interference from the lessor, or any person claiming under the lessor or having superior title to the title of the lessor.
- 11.2 The lessor must pay all outgoings for the land or the building of which the property is part when they fall due.
- 11.3 If the property is part of a building owned or controlled by the lessor –
- 11.3.1 the lessor must maintain in reasonable structural condition all parts of the building that the lessee can use under this lease; and
- 11.3.2 if the property has facilities and service connections shared in common with other persons the lessor must –
- 11.3.2.1 allow reasonable use of the facilities and service connections including –
- the right for the lessee and other persons to come and go to and from the property over the areas provided for access;
 - access by the lessee to service connections; and
 - the right for the lessee's customers to park vehicles in any area set aside for customer parking, subject to any reasonable rules made by the lessor.
- 11.3.2.2 maintain the facilities and service connections in reasonable condition.

- 11.4 The lessor must provide the lessee with an executed copy of the lease within 3 months after the lease is returned to the lessor or the lessor's solicitor, conveyancer or agent following its execution by the lessee. That 3 month period is to be extended for any delay attributable to the need to obtain any consent from a head lessor or mortgagee (being delay not due to any failure by the lessor to make reasonable efforts to obtain consent).
- 11.5 If this lease is for a term of more than 3 years or is to be registered –
- 11.5.1 the lessor must lodge the lease for registration in accordance with the *Real Property Act 1900* within 3 months after the lease is returned to the lessor or the lessor's solicitor, conveyancer or agent following its execution by the lessee; and
- 11.5.2 the 3 month period within which a lease must be lodged for registration is to be extended for any delay attributable to –
- 11.5.2.1 the need to obtain any consent from a head lessor or mortgagee (being delay not due to any failure by the lessor to make reasonable efforts to obtain consent), or
- 11.5.2.2 requirements arising under the *Real Property Act 1900* that are beyond the control of the lessor.
- 11.6 For the purposes of clause 11.5 the term of this lease includes any term for which the lease may be extended or renewed at the option of the lessee. Clauses 11.5 and 11.6 do not affect the operation of the *Real Property Act 1900*.
- 11.7 Where this lease is lodged for registration, the lessor must ensure that it is registered and –
- 11.7.1 provide notification of registration and the relevant dealing number; or
- 11.7.2 provide the original registered lease to the lessee, where available.
- 11.8 Where this lease is lodged for registration, the lessee must assist with any requirements to achieve registration.
- 11.9 If a consent is needed for this lease, from someone such as a mortgagee or head lessor of the property, then the lessor must get the consent.

CLAUSE 12 FORFEITURE AND END OF LEASE

When does this lease end?

- 12.1 This lease ends –
- 12.1.1 on the date stated in item 8 in the schedule;
- 12.1.2 if the lessor lawfully enters and takes possession of any part of the property; or
- 12.1.3 if the lessor lawfully demands possession of the property.
- 12.2 The lessor can enter and take possession of the property or demand possession of the property if –
- 12.2.1 the lessee has repudiated this lease;
- 12.2.2 rent or any other money due under this lease is 14 days overdue for payment; or
- 12.2.3 the lessee has failed to comply with a lessor's notice under section 129 of the *Conveyancing Act 1919*.
- 12.3 When this lease ends, unless the lessee becomes a lessee of the property under a new lease the lessee must –
- 12.3.1 return the property to the lessor in the state and condition that this lease requires the lessee to keep it in (including any obligation to decorate under clause 7.3.3); and
- 12.3.2 have removed any goods (unless otherwise directed by the lessor to the extent the lessor has any security interest) and anything that the lessee fixed to the property and have made good any damage caused by the removal.

Anything not removed becomes the property of the lessor who can keep it or remove and dispose of it and charge to the lessee the cost of removal, making good and disposal.

- 12.4 If the lessor allows the lessee to continue to occupy the property after the end of the lease period (other than under a new lease) then –
- 12.4.1 the lessee becomes a monthly lessee and must go on paying the same rent and other money in the same way that the lessee had to do under this lease just before the lease period ended (apportioned and payable monthly);
 - 12.4.2 the monthly tenancy will be on the same terms as this lease, except for –
 - clause 4; and
 - clauses 5.5 to 5.22 inclusive;
 - 12.4.3 either the lessor or the lessee can end the monthly tenancy by giving, at any time, 1 month written notice to the other expiring on any date; and
 - 12.4.4 anything that the lessee must do by the end of this lease must be done by the end of the monthly tenancy.
- 12.5 Essential terms of this lease include –
- 12.5.1 the obligation to pay rent not later than 14 days after the due date for payment of each periodic instalment (and this obligation stays essential even if the lessor, from time to time, accepted late payment);
 - 12.5.2 the obligations of the lessee in clause 5.1.2 (outgoings);
 - 12.5.3 the obligations of the lessee in clauses 5.23 to 5.25 (utility charges);
 - 12.5.4 the obligations of the lessee in clause 6.1, 6.2.1, 6.2.2 and 6.2.5 (use);
 - 12.5.5 the obligations of the lessee in clause 7 (repairs);
 - 12.5.6 the obligations of the lessee in clause 8.1 (insurance);
 - 12.5.7 the obligations of the lessee in clause 10 (transfer, sub-lease and change in control);
 - 12.5.8 the obligations of the lessee in clause 15 (GST); and
 - 12.5.9 the obligations of the lessee in clause 16 (bank guarantee) or clause 17 (security deposit).
- 12.6 If there is a breach of an essential term the lessor can recover damages for losses over the entire period of this lease but must do every reasonable thing to mitigate those losses and try to lease the property to another lessee on reasonable terms.
- 12.7 The lessor can recover damages even if –
- 12.7.1 the lessor accepts the lessee's repudiation of this lease;
 - 12.7.2 the lessor ends this lease by entering and taking possession of any part of the property or by demanding possession of the property;
 - 12.7.3 the lessee abandons possession of the property; or
 - 12.7.4 a surrender of this lease occurs.

CLAUSE 13 GUARANTEE

What are the obligations of a guarantor?

- 13.1 This clause applies if a guarantor of the lessee is named in item 5A in the schedule and has signed or executed this lease or, if this lease is a renewal of an earlier lease, the earlier lease.
- 13.2 The guarantor guarantees to the lessor the performance by the lessee of all the lessee's obligations (including any obligation to pay rent, outgoings or damages) under this lease, under every extension of it or under any renewal of it or under any tenancy and including obligations that are later changed or created.
- 13.3 If the lessee does not pay any money due under this lease, under any extension of it or under any renewal of it or under any tenancy the guarantor must pay that money to the lessor on demand even if the lessor has not tried to recover payment from the lessee.
- 13.4 If the lessee does not perform any of the lessee's obligations under this lease, under any extension of it or under any renewal of it or under any tenancy the guarantor must compensate the lessor even if the lessor has not tried to recover compensation from the lessee.

- 13.5 If the lessee is insolvent and this lease or any extension or renewal of it is disclaimed the guarantor is liable to the lessor for any damage suffered by the lessor because of the disclaimer. The lessor can recover damages for losses over the entire period of this lease or any extension or renewal but must do every reasonable thing to mitigate those losses and try to lease the property to another lessee on reasonable terms.
- 13.6 Even if the lessor gives the lessee extra time to comply with an obligation under this lease, under any extension of it or under any renewal of it or under any tenancy, or does not insist on strict compliance with the terms of this lease or any extension of it or renewal of it or of any tenancy, the guarantor's obligations are not affected.
- 13.7 If an amount is stated in item 5B in the schedule the guarantor's liability under this clause is limited to that amount.
- 13.8 The terms of this guarantee apply even if this lease is not registered, even if any obligation of the lessee is only an equitable one, and even if this lease is extended by legislation.

CLAUSE 14 EXCLUSIONS AND NOTICES

- 14.1 No covenant or power is implied in this lease by section 84 or 85 of the *Conveyancing Act 1919*.
- 14.2 A document under or relating to this lease is –
- 14.2.1 signed by a party if it is signed by the party or the party's solicitor or conveyancer;
 - 14.2.2 served if it is served by the party or the party's solicitor or conveyancer;
 - 14.2.3 served if it is served in any manner provided in section 170 of the *Conveyancing Act 1919*;
 - 14.2.4 served on the lessee if it is left at the property;
 - 14.2.5 served if it is sent by email or by fax to the email address or fax number for that party set out in the schedule (or any substitute email address or fax number given in writing by that party), unless it is not received;
 - 14.2.6 served if it is left at, or posted to, that party's address for service of notices as set out in the schedule (or any substituted address given in writing by that party);
 - 14.2.7 served on a person if it or a copy of it comes into possession of that person; and
 - 14.2.8 served at the earliest time it is served, if it is served more than once.

CLAUSE 15 GOODS AND SERVICES TAX

- 15.1 As consideration in whole or in part for a taxable supply the person receiving the supply must pay to the party making the supply an additional amount equal to the amount of GST payable on the supply unless that consideration is expressed in this lease to be inclusive of GST.
- 15.2 To the extent that the lessee is required to reimburse the lessor in whole or in part for outgoings incurred by the lessor, for the purposes of this lease the amount of the outgoings must be reduced by the amount of any credit or refund of GST to which the lessor is entitled as a result of incurring outgoings.
- 15.3 Outgoings in item 11B in the schedule are to be calculated after deducting any input tax credit to which the lessor is entitled.
- 15.4 For the purposes of this lease GST means a tax in the nature of a supply of goods and services tax levied or imposed by the Commonwealth of Australia.

CLAUSE 16 BANK GUARANTEE

- 16.1 If an amount or a number of months appears in item 16 in the schedule, clauses 16.2 to 16.6 apply.
- 16.2 On or before the commencement date of this lease the lessee will deliver to the lessor a guarantee for the performance of the lessee's obligations under this lease by an authorised deposit-taking institution trading in the State of New South Wales in the form of an unconditional and irrevocable undertaking to pay drawn in favour of the lessor (unlimited as to time) in a form acceptable to the lessor, acting reasonably, and for an amount equivalent to the number of months or the amount referred to in item 16 in the schedule.

- 16.3 The lessor is entitled to claim under the guarantee an amount equal to any moneys due but unpaid by the lessee to the lessor under this lease and the lessee must deliver to the lessor within 14 days of a notice from the lessor, an additional guarantee equal to the amount claimed.
- 16.4 The lessee agrees to vary the amount of the guarantee within 28 days of a written request from the lessor after any rent review so that the amount represents the equivalent of the number of months referred to in the schedule.
- 16.5 The lessor will deliver the guarantee (or so much of it as is then held by the lessor) to the lessee within 2 months after the lessee completes performance of the obligations under this lease for which the guarantee is provided as security. The lessor is not required to return a guarantee if it has expired or has been cancelled.
- 16.6 If there is a change in lessor, the lessee must at the cost of the lessor provide a replacement guarantee that complies with clause 16.2 drawn in the name of the new lessor, within 2 months of receipt of a written request for a replacement guarantee.

CLAUSE 17 SECURITY DEPOSIT

- 17.1 If an amount or a number of months appears in item 17 in the schedule, clauses 17.2 to 17.6 apply.
- 17.2 On or before the commencement date of this lease the lessee will pay the security deposit to the lessor.
- 17.3 The lessor is entitled to deduct from the security deposit an amount equal to any monies due but unpaid by the lessee to the lessor under this lease and the lessee must deliver to the lessor within 14 days of a notice from the lessor, an additional amount equal to the amount claimed.
- 17.4 The security deposit will be held by the lessor.
- 17.5 The lessee agrees to vary the amount of the security deposit within 28 days of a written request from the lessor after any rent review so that it represents the equivalent of the number of months referred to in the schedule.
- 17.6 The lessor will pay the security deposit (or so much of it as is then held by the lessor) to the lessee within 2 months after the lessee completes performance of the obligations under this lease for which the security deposit is provided as security.

CLAUSE 18 STRATA

- 18.1 "Strata Acts" means the *Strata Schemes Management Act 2015* and the *Strata Schemes Development Act 2015*, and includes any amending Acts, rules, regulations, ordinances, by-laws, statutory instruments, orders or notices made under those Acts.
- 18.2 "Owners corporation", "owner", "strata scheme", "lot" and "parcel" where used in this lease have the meanings given under the Strata Acts.
- 18.3 "Strata conversion" means a subdivision of the property under the *Strata Schemes Development Act 2015* or the *Community Land Development Act 1989* or the *Community Land Management Act 1989* or other legislation permitting such subdivision.
- 18.4 **Strata Conversion**
 - 18.4.1 By its entry into this lease the lessee acknowledges that the lessor can register a strata plan, a strata plan of subdivision, a strata plan of consolidation or a building alteration plan insofar as any of these may relate to the property, the building or the land. The lessor will provide the lessee with copies of the proposed strata plan and associated documentation for the lessee's approval, which approval must not be unreasonably withheld.
 - 18.4.2 Unless the lessee raises an objection to the strata conversion referred to in clause 18.4.1, then within 14 days of written request by the lessor the lessee will sign and return to the lessor any consents or other documents necessary to enable the lessor to carry out the strata conversion and will make no objection or claim for compensation in relation to the strata conversion.
 - 18.4.3 If the strata conversion occurs:
 - 18.4.3.1 any reference in this lease will be deemed to be a reference to the buildings comprised in the registered plan or plans of which the property forms part;

- 18.4.3.2 any levies or other monies payable to the owners corporation will be payable by the lessee with the exception of any contribution to a capital works fund or special levy; and
- 18.4.3.3 this lease will be deemed to be amended in any respect that is necessary to ensure that this lease reflects that the strata conversion has been carried out.

18.5 **Not to prejudice interests of owners corporation.**

- 18.5.1 Without the prior written consent of the owners corporation, the lessee must not do any act, matter or thing under the exercise of its rights and obligations elsewhere contained in this lease or permit or allow any act, matter or thing to be done which will or may:
 - 18.5.1.1 increase the rate of premium payable by the owners corporation under any policy of insurance taken out by the owners corporation; or
 - 18.5.1.2 invalidate, avoid or suspend the operation of any policy of insurance or otherwise prejudice the owners corporation rights under any such policy.
- 18.5.2 Upon the occurrence of any of the matters referred to in clause 18.5.1, the lessee must:
 - 18.5.2.1 pay to the lessor or such other person responsible for payment any amounts payable to the owners corporation as a consequence of any such matters;
 - 18.5.2.2 pay to the lessor for and on behalf of the owners corporation any amounts payable by the owners corporation as a consequence of any such matters and not the subject of clause 18.5.1; and
 - 18.5.2.3 pay to the lessor for and on behalf of the owners corporation the amount of any and all losses and damages arising from the occurrence of any such matters.

18.6 **Indemnity**

The lessee indemnifies the lessor for any loss or damage suffered by the lessor if the lessee or the lessee's employees fail to comply with the obligations as to conduct imposed upon the lessee or the lessee's employees by this lease or by reason of the Strata Acts.

18.7 **Use**

- 18.7.1 Where the property is a lot in a strata scheme the lessee must:
 - 18.7.1.1 use the common property only in connection with the use of the property and to obtain access to and egress from the property;
 - 18.7.1.2 co-operate with all other permitted users of the common property;
 - 18.7.1.3 comply with the provisions of the Strata Acts and the by-laws and all lawful orders, motions and directives under the Strata Acts as may be applicable to the exercise of the lessee's rights and obligations under this lease;
 - 18.7.1.4 meet the cost of all damage to the common property caused by the lessee or any invitee or licensee of the lessee;
 - 18.7.1.5 permit the owners corporation, temporarily, to close any part of the common property for the purpose of making and effecting repairs to it; and
 - 18.7.1.6 permit the owners corporation access to the property on giving the lessee reasonable prior notice for the purpose of making and effecting any repairs to the common property.
- 18.7.2 Where the property is a lot in a strata scheme the lessor must use its reasonable endeavours to:
 - 18.7.2.1 assist the lessee, at the expense of the lessee, to obtain the consent of the owners corporation to the lessee's fit out of the property (as approved by the lessor) and the lodgment of any development application in relation to the lessee's use of the property; and
 - 18.7.2.2 cause the owners corporation to maintain and repair the common property, to the extent of any obligation of the lessor to maintain the building.

IMPORTANT NOTES

The following notes are for guidance and do not form part of this lease.

If you are a lessor, a solicitor or conveyancer will prepare this lease for you. This lease is specifically for use for commercial premises only. It does not comply with the requirements of the *Retail Leases Act 1994*. This lease should not be used for a lease of retail premises.

If you are a lessee, a solicitor or conveyancer can advise you about it.

1. This document creates legal rights and legal obligations.
2. The Commercial Building Disclosure (CBD) Program requires most sellers and lessors of office space of 1000 square metres or more to have an up-to-date Building Energy Efficiency Certificate (BEEC). This is necessary to comply with legal obligations under the *Building Energy Efficiency Disclosure Act 2010*.
3. Failure to register a lease can have serious consequences.
4. If an option for renewal is not exercised at the right time it will be lost.
5. The lessee can exercise an option for renewal even if there has been a breach of this lease in a case where section 133E of the *Conveyancing Act 1919* applies. The lessor must give a prescribed notice within 14 days after the option is exercised if the lessor wants to rely on the breach to prevent the exercise of the option.
6. If there is a mortgage on the title to the property, ensure mortgagee consent is obtained.
7. Clause 15 provides for payment by the lessee of GST.
8. The Law Society of New South Wales is not responsible for any loss resulting from the use of this lease as printed whether authorised or not.



ASIC

Australian Securities & Investments Commission

Record of Registration for Business Name

Business name information for:

BAMBOO BUDDHA

This Record of Registration contains information recorded on the Australian Securities and Investments Commission's (ASIC) register under section 33(8) of the Business Names Registration Act 2011.

Date: 9 January 2024

Next renewal date: 9 January 2025

Record of registration issued by the Australian Securities and Investments Commission on 9 January 2024

Registry
Officer

Registry Services

On behalf of Australian Securities and Investments Commission

RECORD OF REGISTRATION



ASIC

Australian Securities & Investments Commission

Summary of business name details

Business name: BAMBOO BUDDHA

Registration date: 9 January 2024

Status: Registered

Period of registration: 1 Year

Next renewal date: 9 January 2025

Business name holder details

Business name holder: INDIGO ENTERPRISES PTY LTD

Holder type: Incorporated Body

ABN: 99646857392

Addresses

Address for service of documents

221 Wattle Tree Rd

.

Holgate NSW 2250

Australia

Principal place of business

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.

Holgate NSW 2250

Australia

Email

info@australiabusinessnames.com.au

RECORD OF REGISTRATION



ASIC

Australian Securities & Investments Commission

RECORD OF REGISTRATION

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