

Contract of Sale of Real Estate

Form 1 - Particulars of Sale

IMPORTANT NOTICE TO PURCHASERS

Cooling off period: section 31, **Sale of Land Act 1962**.

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

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

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

EXCEPTIONS

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

- you bought the property at or within 3 clear business days before or after a publicly advertised auction;
- you received independent advice from a legal practitioner before signing the contract;
- the property is used mainly for industrial or commercial purposes;
- the property is more than 20 hectares in size and is used mainly for farming;
- you and the Vendor previously signed a similar contract for the same property; or
- you are an estate agent or a corporate body.

The Vendor sells and the Purchaser buys the property, being the Land and the Goods, for the Price and on the conditions set out in this Contract.

The day of sale is the date by which both parties have signed this Contract.

The terms of this Contract are contained in the –

- Particulars of Sale;
- Special Conditions, if any;
- General Conditions; and
- Vendor's Statement

and in that order of priority.

The Vendor's Statement required by section 32(1) of the **Sale of Land Act 1962** is attached to and forms part of this Contract. The parties should ensure that when they sign the Contract they receive a copy of the Vendor's Statement, the General Conditions and any Special Conditions.

**CONTRACT OF SALE OF REAL ESTATE—General Conditions
FORM 2**

TITLE

1. Encumbrances

- 1.1 The Purchaser buys the property subject to:
 - (a) any encumbrance shown in the Vendor's Statement other than mortgages or caveats; and
 - (b) any reservations in the crown grant; and
 - (c) any lease referred to in the Particulars of Sale.
- 1.2 The Purchaser indemnifies the Vendor against all obligations under any lease that are to be performed by the Landlord after settlement.
- 1.3 If the Particulars of Sale provide that the Purchaser is taking over an existing mortgage:
 - (a) the Purchaser assumes liability for the mortgage; and
 - (b) the price is satisfied to the extent of any mortgage money owing at settlement; and
 - (c) the Vendor must treat any payment made by the Purchaser under the mortgage as a payment made to the Vendor under this Contract.

2. Vendor warranties

- 2.1 The Vendor warrants that these General Conditions 1 to 28 are identical to the General Conditions 1 to 28 in the standard form of contract of sale of real estate prescribed by the Estate Agents (Contracts) Regulations 2008 for the purposes of section 53A of the **Estate Agents Act 1980**, unless changed or deleted.
- 2.2 The warranties in General Conditions 2.3 and 2.4 replace the Purchaser's right to make requisitions and inquiries.
- 2.3 The Vendor warrants that the Vendor:
 - (a) has, or by the due date for settlement will have, the right to sell the Land; and
 - (b) is under no legal disability; and
 - (c) is in possession of the Land, either personally or through a tenant; and
 - (d) has not previously sold or granted any option to purchase, agreed to a lease or granted a pre-emptive right which is current over the Land and which gives another party rights which have priority over the interest of the Purchaser; and
 - (e) will at settlement be the holder of an unencumbered estate in fee simple in the Land; and
 - (f) will at settlement be the unencumbered owner of any improvements, fixtures, fittings and Goods sold with the Land.
- 2.4 The Vendor further warrants that the Vendor has no knowledge of any of the following:
 - (a) public rights of way over the Land;
 - (b) easements over the Land;
 - (c) lease or other possessory agreement affecting the Land;
 - (d) notice or order affecting the Land which will not be dealt with at settlement, other than the usual rate notices and any land tax notices;
 - (e) legal proceedings which would render the sale of the Land void or voidable or capable of being set aside.
- 2.5 The warranties in General Conditions 2.3 and 2.4 are subject to any contrary provisions in this Contract and disclosures in the Vendor's Statement.
- 2.6 If sections 137B and 137C of the **Building Act 1993** apply to this contract, the Vendor warrants that:
 - (a) all domestic building work carried out in relation to the construction by or on behalf of the Vendor of the home was carried out in a proper and workmanlike manner; and
 - (b) all materials used in that domestic building work were good and suitable for the purpose for which they were used and that, unless otherwise stated in the Contract, those materials were new; and
 - (c) domestic building work was carried out in accordance with all laws and legal requirements, including, without limiting the generality of this warranty, the **Building Act 1993** and regulations made under the **Building Act 1993**.
- 2.7 Words and phrases used in General Condition 2.6 which are defined in the **Building Act 1993** have the same meaning in General Condition 2.6.

3. Identity of the Land

- 3.1 An omission or mistake in the description, measurements or area of the Land does not invalidate the sale.
- 3.2 The Purchaser may not:
 - (a) make any objection or claim for compensation for any alleged misdescription of the property or any deficiency in its area or measurements; or
 - (b) require the Vendor to amend title or pay any cost of amending title.

4. Services

- 4.1 The Vendor does not represent that the services are adequate for the Purchaser's proposed use of the Property and the Vendor advises the Purchaser to make appropriate inquiries. The condition of the services may change between the day of sale and settlement and the Vendor does not promise that the services will be in the same condition at settlement as they were on the day of sale.



Attach

Contract of Sale of Real Estate

Form 1 - Particulars of Sale - Insert (Code 118B)

- 4.2 The Purchaser is responsible for the connection of all services to the property after settlement and the payment of any associated cost.

5. Consents

The Vendor must obtain any necessary consent or licence required for the sale. The Contract will be at an end and all money paid must be refunded if any necessary consent or licence is not obtained by settlement.

6. Transfer

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

7. Release of company charge

The Vendor must provide at settlement a release of the property from any registered charge lodged under the **Corporations Act 2001 (Cth)** if requested in writing to do so at least 21 days before settlement. This obligation does not apply if the chargee is the proprietor of a registered mortgage over the Land. The Vendor must pay the registration fee if either party requires registration of that release.

8. Builder warranty insurance

The Vendor must provide at settlement details of any current builder warranty insurance relating to the property if requested in writing to do so at least 21 days before settlement.

9. General law land

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

MONEY

10. Settlement

- 10.1 At settlement:
- (a) the Purchaser must pay the Balance; and
 - (b) the Vendor must:
 - (i) do all things necessary to enable the Purchaser to become the registered proprietor of the Land; and
 - (ii) give either vacant possession or receipt of rents and profits in accordance with the Particulars of Sale.
- 10.2 The Vendor's obligations under this General Condition continue after settlement.
- 10.3 Settlement must be conducted between the hours of 10.00 a.m. and 4.00 p.m. unless the parties agree otherwise.

11. Payment

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

12. Stakeholding

- 12.1 The Deposit must be released to the Vendor if:
- (a) the Vendor provides proof, to the reasonable satisfaction of the Purchaser, that either—
 - (i) there are no debts secured against the property; or
 - (ii) if there are any debts, the total amount of those debts does not exceed 80% of the sale price; and
 - (b) at least 28 days have elapsed since the day of sale; and
 - (c) all conditions of the **Sale of Land Act 1962** have been satisfied.
- 12.2 The stakeholder must pay the Deposit and any interest to the party entitled when the deposit is released, the contract is settled, or the Contract is ended.
- 12.3 The stakeholder may pay the Deposit and any interest into court if it is reasonable to do so.

13. GST

- 13.1 The Purchaser does not have to pay the Vendor any GST payable by the Vendor in respect of a taxable supply made under this Contract in addition to the price unless the Particulars of Sale specify that the Price is '**plus GST**'. However the Purchaser must pay to the Vendor any GST payable by the Vendor—
- (a) solely as a result of any action taken or intended to be taken by the Purchaser after the day of sale, including a change of use; or
 - (b) if the Particulars of Sale specify that the supply made under this Contract is a **farming business** and the supply does not satisfy the requirements of section 38-480 of the **GST Act**; or
 - (c) if the Particulars of Sale specify that the supply made under this Contract is a **going concern** and the supply does not satisfy the requirements of section 38-325 of the **GST Act**.
- 13.2 The Purchaser must pay to the Vendor any GST payable by the Vendor in respect of a taxable supply made under this Contract in addition to the Price if the Particulars of Sale specify that the Price is '**plus GST**'.
- 13.3 If the Purchaser is liable to pay GST, the Purchaser is not required to make payment until provided with a tax invoice, unless the margin scheme applies.
- 13.4 If the Particulars of Sale specify that the supply made under this Contract is a '**farming business**':
- (a) the Vendor warrants that the property is land on which a farming business has been carried on for the period of 5 years preceding the date of supply; and
 - (b) the Purchaser warrants that the Purchaser intends that a farming business will be carried on after settlement on the property.
- 13.5 If the Particulars of Sale specify that the supply made under this Contract is a '**going concern**':
- (a) the parties agree that this Contract is for the supply of a going concern; and
 - (b) the Purchaser warrants that the Purchaser is, or prior to settlement will be, registered for GST; and
 - (c) the Vendor warrants that the Vendor will carry on the going concern until the date of supply.
- 13.6 If the Particulars of Sale specify that the supply made under this Contract is a '**margin scheme**' supply, the parties agree that the margin scheme applies to this Contract.
- 13.7 This General Condition will not merge on either settlement or registration.

13.8 In this General Condition:

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

14. Loan

14.1 If the Particulars of Sale specify that this Contract is subject to a loan being approved, this Contract is subject to the lender approving the loan on the security of the property by the approval date or any later date allowed by the Vendor.

14.2 The Purchaser may end the Contract if the loan is not approved by the approval date, but only if the Purchaser:

- (a) immediately applied for the loan; and
- (b) did everything reasonably required to obtain approval of the loan; and
- (c) serves written notice ending the Contract on the Vendor within 2 clear business days after the approval date or any later date allowed by the Vendor; and
- (d) is not in default under any other condition of this Contract when the notice is given.

14.3 All money must be immediately refunded to the Purchaser if the Contract is ended.

15. Adjustments

15.1 All periodic outgoings payable by the Vendor, and any rent and other income received in respect of the property must be apportioned between the parties on the settlement date and any adjustments paid and received as appropriate.

15.2 The periodic outgoings and rent and other income must be apportioned on the following basis:

- (a) the Vendor is liable for the periodic outgoings and entitled to the rent and other income up to and including the day of settlement; and
- (b) the Land is treated as the only land of which the Vendor is owner (as defined in the **Land Tax Act 2005**); and
- (c) the Vendor is taken to own the Land as a resident Australian beneficial owner; and
- (d) any personal statutory benefit available to each party is disregarded in calculating apportionment.

TRANSACTIONAL

16. Time

16.1 Time is of the essence of this Contract.

16.2 Time is extended until the next business day if the time for performing any action falls on a Saturday, Sunday, or bank holiday in Victoria.

17. Service

17.1 Any document sent by post is taken to have been served on the next business day after posting, unless proved otherwise.

17.2 Any demand, notice, or document required to be served by or on any party may be served by or on the legal practitioner or conveyancer for that party. It is sufficiently served if served on the party or on the legal practitioner or conveyancer:

- (a) personally; or
- (b) by prepaid post; or
- (c) in any manner authorised by law or the Supreme Court for service of documents.

18. Nominee

The Purchaser may nominate a substitute or additional Purchaser, but the named Purchaser remains personally liable for the due performance of all the Purchaser's obligations under this Contract.

19. Liability of signatory

Any signatory for a proprietary limited company Purchaser is personally liable for the due performance of the Purchaser's obligations as if the signatory were the Purchaser.

20. Guarantee

The Vendor may require one or more directors of the Purchaser to guarantee the Purchaser's performance of this Contract if the Purchaser is a proprietary limited company.

21. Notices

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

22. Inspection

The Purchaser and/or another person authorised by the Purchaser may inspect the property at any reasonable time during the 7 days preceding and including the settlement day.

23. Terms contract

23.1 If this is a 'terms contract' as defined in the **Sale of Land Act 1962**:

- (a) any mortgage affecting the Land sold must be discharged as to that Land before the Purchaser becomes entitled to possession or to the receipt of rents and profits unless the Vendor satisfies sections 6(1) and 6(2) of the **Sale of Land Act 1962**; and
- (b) the deposit and all other money payable under the Contract (other than any money payable in excess of the amount required to so discharge the mortgage) must be paid to a legal practitioner or conveyancer or a licensed estate agent to be applied in or towards discharging the mortgage.

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

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

24. Loss or damage before settlement

- 24.1 The Vendor carries the risk of loss or damage to the property until settlement.
- 24.2 The Vendor must deliver the property to the Purchaser at settlement in the same condition it was in on the day of sale, except for fair wear and tear.
- 24.3 The Purchaser must not delay settlement because one or more of the goods is not in the condition required by General Condition 24.2, but may claim compensation from the Vendor after settlement.
- 24.4 The Purchaser may nominate an amount not exceeding \$5,000 to be held by a stakeholder to be appointed by the parties if the property is not in the condition required by General Condition 24.2 at settlement.
- 24.5 The nominated amount may be deducted from the amount due to the Vendor at settlement and paid to the stakeholder, but only if the Purchaser also pays an amount equal to the nominated amount to the stakeholder.
- 24.6 The stakeholder must pay the amounts referred to in General Condition 24.5 in accordance with the determination of the dispute, including any order for payment of the costs of the resolution of the dispute.

25. Breach

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

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

DEFAULT

26. Interest

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

27. Default notice

- 27.1 A party is not entitled to exercise any rights arising from the other party's default, other than the right to receive interest and the right to sue for money owing, until the other party is served and fails to comply with a written default notice.
- 27.2 The default notice must:
 - (a) specify the particulars of the default; and
 - (b) state that it is the offended party's intention to exercise the rights arising from the default unless, within 14 days of service of the notice—
 - (i) the default is remedied; and
 - (ii) the reasonable costs incurred as a result of the default and any interest payable are paid.

28. Default not remedied

- 28.1 All unpaid money under the Contract becomes immediately payable to the Vendor if the default has been made by the Purchaser and is not remedied and the costs and interest are not paid.
- 28.2 The Contract immediately ends if:
- (a) the default notice also states that unless the default is remedied and the reasonable costs and interest are paid, the Contract will be ended in accordance with this General Condition; and
 - (b) the default is not remedied and the reasonable costs and interest are not paid by the end of the period of the default notice.
- 28.3 If the Contract ends by a default notice given by the Purchaser:
- (a) the Purchaser must be repaid any money paid under the Contract and be paid any interest and reasonable costs payable under the Contract; and
 - (b) all those amounts are a charge on the Land until payment; and
 - (c) the Purchaser may also recover any loss otherwise recoverable.
- 28.4 If the Contract ends by a default notice given by the Vendor:
- (a) the Deposit up to 10% of the Price is forfeited to the Vendor as the Vendor's absolute property, whether the Deposit has been paid or not; and
 - (b) the Vendor is entitled to possession of the property; and
 - (c) in addition to any other remedy, the Vendor may within one year of the Contract ending either:
 - (i) retain the property and sue for damages for breach of contract; or
 - (ii) resell the property in any manner and recover any deficiency in the Price on the resale and any resulting expenses by way of liquidated damages; and
 - (d) the Vendor may retain any part of the Price paid until the Vendor's damages have been determined and may apply that money towards those damages; and
 - (e) any determination of the Vendor's damages must take into account the amount forfeited to the Vendor.
- 28.5 The ending of the Contract does not affect the rights of the offended party as a consequence of the default.

