

GENERAL TERMS OF SALE

1.0 Definitions, notices and interpretation

1.1 Definitions

- (1) Unless the context requires a different interpretation, words and phrases not otherwise defined have the same meanings ascribed to those words and phrases in the Property Law Act 1952 or the Resource Management Act 1991.
- (2) "Agreement" means this document including the front page, these General Terms of Sale, any Further Terms of Sale and any schedules and attachments.
- (3) "Building Act" means the Building Act 1991 and/or the Building Act 2004.
- (4) "Building warrant of fitness" means a building warrant of fitness supplied to a territorial authority under the Building Act.
- (5) "Cleared funds" means:
 - (a) cash; or
 - (b) a bank cheque; or
 - (c) an electronic transfer of funds that has been made pursuant to a protocol agreed between the parties.
- (6) "Default GST" means any interest, or late payment penalty, or shortfall penalty, or other sum imposed on the vendor under the Tax Administration Act 1994 by reason of non-payment of any GST payable in respect of the supply made under this agreement but does not include any such sum levied against the vendor by reason of a default by the vendor after payment of the GST to the vendor by the purchaser.
- (7) "e-dealing" means the process of registration of electronic instruments.
- (8) "e-dealing capable" means being legally capable of performing an e-dealing.
- (9) "Electronic instrument" has the same meaning as ascribed to that term in the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.
- (10) "GST" means Goods and Services Tax arising pursuant to the Goods and Services Tax Act 1985 and "GST Act" means the Goods and Services Tax Act 1985.
- (11) "Landonline Workspace" means an electronic workspace facility approved by the Registrar-General of Land pursuant to the provisions of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.
- (12) "LIM" means a land information memorandum issued pursuant to the Local Government Official Information and Meetings Act 1987.
- (13) "LINZ" means Land Information New Zealand.
- (14) "Local authority" means a territorial authority or a regional council.
- (15) "OIA Consent" means consent to purchase the property under the Overseas Investment Act 2005.
- (16) "Property" means the property described in this agreement.
- (17) "Purchase price" means the total purchase price stated in this agreement which the purchaser has agreed to pay the vendor for the property and the chattels included in the sale.
- (18) "Regional council" means a regional council within the meaning of the Local Government Act 2002.
- (19) "Remote settlement" means settlement of the sale and purchase of the property by way of the purchaser paying the moneys due and payable on the settlement date directly into a bank account nominated by the vendor, in consideration of the vendor agreeing to meet the vendor's obligations under clause 3.7(2), pursuant to a protocol agreed by the parties.
- (20) "Settlement date" means the possession date or such other date as the parties are to perform their obligations under subclause 3.7. Where the day nominated for settlement is not a working day the settlement date shall be the last working day before the day so nominated.
- (21) "Settlement statement" means a statement showing the purchase price, plus any GST payable by the purchaser in addition to the purchase price, less any deposit or other payments or allowances to be credited to the purchaser, together with apportionments of all incomings and outgoings apportioned at the possession date.
- (22) "Territorial authority" means a territorial authority within the meaning of the Local Government Act 2002.
- (23) "Unit title" means a unit title issued under the Unit Titles Act 1972.
- (24) The terms "principal unit", "accessory unit", "unit plan" and "unit" have the meanings ascribed to those terms in the Unit Titles Act 1972.
- (25) The terms "building", "building consent", "code compliance certificate", "compliance schedule", "household unit" and "residential property developer" have the meanings ascribed to those terms in the Building Act.
- (26) The term "title" includes where appropriate a computer register within the meaning of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.
- (27) The terms "going concern", "registered person", "supply" and "taxable activity" have the meanings ascribed to those terms in the GST Act.
- (28) "Working day" means any day of the week other than:
 - (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, New Zealand's anniversary day and the provincial anniversary day as observed at the place where the property is situated; and
 - (b) a day in the period commencing on the 24th day of December in any year and ending on the 5th day of January in the following year, both days inclusive. A working day shall be deemed to commence at 9.00 am and to terminate at 5.00 pm.
- (29) Any act done pursuant to this agreement by a party after 5.00 pm on a working day, or on a day which is not a working day, shall be deemed to have been done at 9.00 am on the next succeeding working day.
- (30) Where two or more acts (including service of notices) done pursuant to this agreement are deemed to have been done at the same time, they shall take effect in the order in which they would have taken effect but for subclause 1.1(29).
- (31) Unless a contrary intention appears on the front page or elsewhere in this agreement:
 - (a) the interest rate for late settlement is double the 90 day bank bill buy rate;
 - (b) the applicable 90 day bank bill buy rate is that as advised by the vendor's solicitor's bank and if more than one such rate then the highest rate during the relevant period;
 - (c) a party is in default if it did not do what it has contracted to do to enable settlement to occur, regardless of the cause of such failure.

1.2 Notices

- (1) The following apply to all notices between the parties relevant to this agreement, whether authorised by this agreement or by the general law:
- (2) All notices must be served in writing.
- (3) All notices must be served by one of the following means:
 - (a) on the party as provided in section 152 of the Property Law Act 1952, or
 - (b) on the party or on the party's solicitor:
 - (i) by personal delivery; or
 - (ii) by posting by ordinary mail; or
 - (iii) by facsimile, or by e-mail; or
 - (iv) in the case of the party's solicitor only, by sending by document exchange.
- (4) In respect of the means of service specified in subclause 1.2(2)(b), a notice is deemed to have been served:
 - (a) in the case of personal delivery, when received by the party or at the solicitor's office;
 - (b) in the case of posting by ordinary mail, on the second working day following the date of posting to the address for service notified in writing by the party or to the postal address of the solicitor's office;
 - (c) in the case of facsimile transmission, when sent to the facsimile number notified in writing by the party or to the facsimile number of the solicitor's office;
 - (d) in the case of e-mail, when acknowledged by the party or by the solicitor orally or by return e-mail or otherwise in writing;
 - (e) in the case of sending by document exchange, on the second working day following the date of sending to the document exchange number of the solicitor's office.
- (5) Notice served by a party after 5.00 pm on a working day, or on a day which is not a working day, shall be deemed to have been served by that party at 9.00 am on the next succeeding working day.
- (6) Where two or more notices are deemed to have been served at the same time, they shall take effect in the order in which they would have been served but for subclause 1.2(4).
- (7) Any period of notice required to be given under this agreement shall be computed by excluding the day of service.

1.3 Interpretation

- (1) If there is more than one vendor or purchaser, the liability of the vendors or of the purchasers, as the case may be, is joint and several.
- (2) Where the purchaser executes this agreement with provision for a nominee, or as agent for an undisclosed principal, or on behalf of a company to be formed, the purchaser shall at all times remain liable for all obligations on the part of the purchaser.
- (3) If any inserted term (including any Further Terms of Sale) conflicts with the General Terms of Sale the inserted term shall prevail.
- (4) Headings are for information only and do not form part of this agreement.

2.0 Deposit

- 2.1 The purchaser shall pay the deposit to the vendor or the vendor's agent immediately upon execution of this agreement by both parties and/or at such other time as is specified in this agreement.
- 2.2 If the deposit is not paid on the due date for payment, the vendor may at any time thereafter serve on the purchaser notice requiring payment. If the purchaser fails to pay the deposit on or before the third working day after service of the notice, the vendor may cancel this agreement by serving notice of cancellation on the purchaser. No notice of cancellation shall be effective if the deposit has been paid before the notice of cancellation is served.
- 2.3 The deposit shall be in part payment of the purchase price.
- 2.4 The person to whom the deposit is paid shall hold it as a stakeholder until:
 - (a) the requisition procedure under clause 5.0 is completed without either party cancelling this agreement; and
 - (b) where this agreement is entered into subject to any condition(s) expressed in this agreement, each such condition has been fulfilled or waived; or
 - (c) this agreement is cancelled pursuant to subclause 5.2(3)(c) or avoided pursuant to subclause 8.7(5).

3.0 Possession and Settlement

Possession

- 3.1 Unless particulars of a tenancy are included in this agreement the property is sold with vacant possession and the vendor shall so yield the property on the possession date.
- 3.2 If the property is sold with vacant possession the vendor shall permit the purchaser or any person authorised by the purchaser in writing, upon reasonable notice:
 - (1) to enter the property on one occasion prior to the possession date for the purposes of examining the property, chattels and fixtures which are included in the sale; and
 - (2) to re-enter the property on or before the possession date to confirm compliance by the vendor with any agreement made by the vendor to carry out any work on the property and the chattels and fixtures.
- 3.3 Possession shall be given and taken on the possession date. Outgoings and incomings in respect of the possession date are the responsibility of and belong to the vendor.
- 3.4 On the possession date the vendor shall make available to the purchaser keys to all exterior doors, electronic door openers relating to the property and the keys and/or security codes to any alarms which may be situated on the property. The vendor does not have to make available keys, electronic door openers and security codes where the property is tenanted and these are held by the tenant.

Settlement

- 3.5 The purchaser shall prepare, at the purchaser's own expense, a transfer instrument in respect of the property, executed by the purchaser if necessary. The purchaser shall tender the transfer instrument to the vendor or the vendor's solicitor a reasonable time prior to the settlement date.
- 3.6 The vendor shall prepare, at the vendor's own expense, a settlement statement. The vendor shall tender the settlement statement to the purchaser or the purchaser's solicitor a reasonable time prior to the settlement date.
- 3.7 On the settlement date:
 - (1) The balance of the purchase price, interest and other moneys, if any, shall be paid by the purchaser in cleared funds or otherwise satisfied as provided in this agreement (credit being given for any amount payable by the vendor under subclause 3.12 or 3.13);
 - (2) The vendor shall concurrently hand to the purchaser:
 - (a) the transfer instrument in respect of the property provided by the purchaser under subclause 3.5, in registrable form;
 - (b) all other instruments in registrable form required for the purpose of registering the transfer instrument and conferring title on the purchaser in terms of the vendor's obligations under this agreement; and
 - (c) LINZ registration fees on each of the instruments referred to in subclause 3.7(2)(b) and the purchaser's solicitor's reasonable agency registration fees.
- 3.8 All obligations under subclause 3.7 are interdependent.

Electronic Instruments

- 3.9 Where:
 - (1) the instruments conferring title on the purchaser in terms of the vendor's obligations under this agreement can be prepared and registered as electronic instruments; and
 - (2) the vendor's solicitor is e-dealing capable but the purchaser's solicitor is not e-dealing capable or the purchaser or the purchaser's solicitor has declined to consent to electronic registration of the instruments - then the vendor's obligation under subclause 3.7(2)(b) to hand to the purchaser any discharges or withdrawals of instruments will be satisfied:
 - (3) if the vendor's solicitor submits the discharges or withdrawals for registration as electronic instruments and produces to the purchaser's solicitor a search of the title to the property evidencing registration of the discharges or withdrawals; or
 - (4) in the case of a remote settlement, if the vendor's solicitor provides the purchaser's solicitor with a written undertaking prior to settlement that:
 - (a) the vendor's solicitor has prepared, certified, signed and pre-validated the discharges or withdrawals as electronic instruments in the Landonline Workspace created for them by the vendor's solicitor (quoting the e-dealing number); and
 - (b) immediately following receipt of confirmation of payment of the moneys due on settlement in accordance with the protocol for remote settlement agreed between the parties, the vendor's solicitor shall submit the discharges or withdrawals for registration as electronic instruments and shall produce to the purchaser's solicitor immediately after registration a search of the title to the property evidencing registration of the discharges or withdrawals.
- 3.10 Where:
 - (1) the instruments conferring title on the purchaser in terms of the vendor's obligations under this agreement can be prepared and registered as electronic instruments; and
 - (2) both parties' solicitors are e-dealing capable and both parties and their solicitors have consented to electronic registration of the instruments then:
 - (3) the purchaser's obligations under subclause 3.5 shall be satisfied by the purchaser's solicitor certifying and signing a reasonable time prior to the settlement date the transfer instrument in the Landonline Workspace created for the transaction by the purchaser's solicitor; and
 - (4) the vendor's obligation under subclause 3.7(2) shall be satisfied:
 - (a) by the vendor's solicitors preparing, certifying, signing and pre-validating a reasonable time prior to the settlement date in such Landonline Workspace the transfer instrument and all other instruments required to confer title on the purchaser in terms of the vendor's obligations under this agreement and releasing the same upon settlement so that the purchaser's solicitor can then submit them immediately after settlement for registration; and
 - (b) by the vendor's solicitor paying to the purchaser's solicitor the LINZ registration fees on all of the instruments mentioned in subclause 3.10(4)(a), except for the transfer instrument, unless an allowance for such fees has been included in the settlement statement or such fees are charged to the vendor by LINZ.

Last Minute Settlement

- 3.11 If due to the delay of the purchaser, settlement takes place between 4.00 pm and 5.00 pm on the settlement date ("last minute settlement"), the purchaser shall pay the vendor:
 - (1) one day's interest at the interest rate for late settlement on the portion of the purchase price paid in the last minute settlement; and
 - (2) if the day following the last minute settlement is not a working day, an additional day's interest (calculated in the same manner) for each day until, but excluding, the next working day.

Purchaser Default: Late Settlement

- 3.12 If the vendor is not in default and if any portion of the purchase price is not paid upon the due date for payment:
 - (1) The purchaser shall pay to the vendor interest at the interest rate for late settlement on the portion of the purchase price so unpaid for the period from the due date for payment until payment ("the default period"); but nevertheless this stipulation is without prejudice to any of the vendor's rights or remedies including any right to claim for additional expenses and damages. For the purposes of this subclause, a payment made on a day other than a working day or after the termination of a working day shall be deemed to be made on the next following working day and interest shall be computed accordingly.
 - (2) The vendor is not obliged to give the purchaser possession of the property or to pay the purchaser any amount for remaining in possession, unless this agreement relates to a tenanted property, in which case the vendor must elect either to:
 - (a) account to the purchaser on settlement for incomings in respect of the property which are payable and received during the default period, in which event the purchaser shall be responsible for the outgoings relating to the property during the default period; or
 - (b) retain such incomings in lieu of receiving interest from the purchaser pursuant to subclause 3.12(1).

Vendor Default: Late Settlement or Failure to give Possession

- 3.13 (1) For the purposes of this subclause 3.13:
- (a) the default period means:
 - (i) in subclause 3.13(2), the period from the possession date until the date when the vendor is able and willing to provide vacant possession and the purchaser takes possession; and
 - (ii) in subclause 3.13(3), the period from the date the purchaser takes possession until the date when settlement occurs; and
 - (iii) in subclause 3.13(5), the period from the possession date until the date when settlement occurs;
 - (b) the vendor shall be deemed to be unwilling to give possession if the vendor does not offer to give possession; and
 - (c) the purchaser shall be deemed not to be in default if the purchaser provides reasonable evidence of the purchaser's ability to perform the purchaser's obligations under this agreement.
- (2) If this agreement provides for vacant possession but the vendor is unable or unwilling to give vacant possession on the possession date, then, provided that the purchaser is not in default:
- (a) the vendor shall pay the purchaser, at the purchaser's election, either:
 - (i) compensation for any reasonable costs incurred for temporary accommodation for persons and storage of chattels during the default period; or
 - (ii) an amount equivalent to interest at the interest rate for late settlement on the entire purchase price during the default period; and
 - (b) the purchaser shall pay the vendor an amount equivalent to the interest earned or which would be earned on overnight deposits lodged in the purchaser's solicitor's trust bank account on such portion of the purchase price (including any deposit) as is payable under this agreement on or by the possession date but remains unpaid during the default period less:
 - (i) any withholding tax; and
 - (ii) any bank or legal administration fees and commission charges; and
 - (iii) any interest payable by the purchaser to the purchaser's lender during the default period in respect of any mortgage or loan taken out by the purchaser in relation to the purchase of the property.
- (3) If this agreement provides for vacant possession and the vendor is able and willing to give vacant possession on the possession date, then, provided the purchaser is not in default, the purchaser may elect to take possession in which case the vendor shall not be liable to pay any interest or other moneys to the purchaser but the purchaser shall pay the vendor the same amount as that specified in subclause 3.13(2)(b) during the default period. A purchaser in possession under this subclause 3.13(3) is a licensee only.
- (4) Notwithstanding the provisions of subclause 3.13(3), the purchaser may elect not to take possession when the purchaser is entitled to take it. If the purchaser elects not to take possession, the provisions of subclause 3.13(2) shall apply as though the vendor were unable or unwilling to give vacant possession on the possession date.
- (5) If this agreement provides for the property to be sold tenanted then, provided that the purchaser is not in default, the vendor shall on settlement account to the purchaser for incomings which are payable and received in respect of the property during the default period less the outgoings paid by the vendor during that period. Apart from accounting for such incomings, the vendor shall not be liable to pay any other moneys to the purchaser but the purchaser shall pay the vendor the same amount as that specified in subclause 3.13(2)(b) during the default period.
- (6) The provisions of this subclause 3.13 shall be without prejudice to any of the purchaser's rights or remedies including any right to claim for any additional expenses and damages suffered by the purchaser.
- (7) Where the parties are unable to agree upon any amount payable under this subclause 3.13:
- (a) An interim amount shall on settlement be paid to a stakeholder by the party against whom it is claimed until the amount payable is determined.
 - (b) The interim amount shall be the lower of:
 - (i) the amount claimed; or
 - (ii) an amount equivalent to interest at the interest rate for late settlement for the relevant default period on such portion of the purchase price (including any deposit) as is payable under this agreement on or by the possession date.
 - (c) Any interest earned on the interim amount net of any withholding tax and any bank or legal administration fees and commission charges shall follow the destination of the interim amount.
 - (d) The amount determined to be payable shall not be limited by the interim amount.
 - (e) If the parties cannot agree on a stakeholder the interim amount shall be paid to a stakeholder nominated on the application of either party by the president or vice-president for the time being of the Law Society for the district where the property is situated.

Deferment of Settlement and Possession

- 3.14 If –
- (a) this is an agreement for the sale by a residential property developer of a household unit; and
 - (b) a code compliance certificate has not been issued by the possession date or the settlement date in relation to the household unit –
- then, unless the parties agree otherwise (in which case the parties shall enter into a written agreement in the form prescribed by the Building (Forms) Regulations 2004) the possession date and/or the settlement date, as the case may be, shall be deferred to the fifth working day following the date upon which the vendor has given the purchaser notice that the code compliance certificate has been issued (which notice must be accompanied by a copy of the certificate).
- 3.15 In every case, if neither party is ready, willing and able to settle on the settlement date, the settlement date (and the possession date if the possession date is the same date) shall be deferred to the second working day following the date upon which one of the parties gives notice it has become ready, willing and able to settle.

New Title Provision

- 3.16 (1) Where –
- (a) the transfer of the property is to be registered against a new title yet to be issued; and
 - (b) a search copy, as defined in section 172A of the Land Transfer Act 1952, of that title is not obtainable by the fifth working day prior to the settlement date –
- then, unless the purchaser elects that settlement shall still take place on the agreed settlement date, the settlement date shall be deferred to the fifth working day following the later of the date on which:
- (c) the vendor has given the purchaser notice that a search copy is obtainable; or
 - (d) the requisitions procedure under clause 5.0 is complete.
- (2) This subclause shall not apply where it is necessary to register the transfer of the property to enable a plan to deposit and title to the property to issue.
- (3) Deferment of the settlement date under this subclause shall not constitute deferment of the possession date unless the parties so agree.

4.0 Risk and insurance

- 4.1 The property and chattels shall remain at the risk of the vendor until possession is given and taken.
- 4.2 If, prior to the giving and taking of possession, the property is destroyed or damaged, and such destruction or damage has not been made good by the possession date, then the following provisions shall apply:
- (1) If the destruction or damage has been sufficient to render the property untenable and it is untenable on the possession date the purchaser may:
 - (a) complete the purchase at the purchase price, less a sum equal to any insurance moneys received or receivable by or on behalf of the vendor in respect of such destruction or damage, provided that no reduction shall be made to the purchase price if the vendor's insurance company has agreed to reinstate for the benefit of the purchaser to the extent of the vendor's insurance cover; or
 - (b) cancel this agreement by serving notice on the vendor in which case the vendor shall return to the purchaser immediately the deposit and any other moneys paid by the purchaser, and neither party shall have any right or claim against the other arising from this agreement or its cancellation.
 - (2) If the property is not untenable on the possession date the purchaser shall complete the purchase at the purchase price less a sum equal to the amount of the diminution in value of the property.
 - (3) In the case of a property zoned for rural purposes under an operative District Plan, damage to the property shall be deemed to have rendered the property untenable where the diminution in value of the property exceeds an amount equal to 20% of the purchase price.
- 4.3 The purchaser shall not be required to take over any insurance policies held by the vendor.

5.0 Title, boundaries and requisitions

- 5.1 The vendor shall not be bound to point out the boundaries of the property except that on the sale of a vacant residential lot which is not limited as to parcels the vendor shall ensure that all boundary markers required by the Cadastral Survey Act 2002 and any related rules and regulations to identify the boundaries of the property are present in their correct positions at the possession date.
- 5.2 (1) The purchaser is deemed to have accepted the vendor's title except as to objections or requisitions which the purchaser is entitled to make and notice of which the purchaser serves on the vendor on or before the earlier of:
- the tenth working day after the date of this agreement; or
 - the possession date; or
 - the settlement date.
- (2) If a plan has been or is to be submitted to LINZ for deposit in respect of the property, then in respect of objections or requisitions arising out of the plan, the purchaser is deemed to have accepted the title except as to such objections or requisitions which the purchaser is entitled to make and notice of which the purchaser serves on the vendor on or before the fifth working day following the date the vendor has given the purchaser:
- notice that the plan has been deposited; or
 - notice that (where a new title is to issue for the property) the title has issued and a search copy of it as defined in section 172A of the Land Transfer Act is obtainable.
- (3) If the vendor is unable or unwilling to remove or comply with any objection or requisition as to title, notice of which has been served on the vendor by the purchaser, then the following provisions will apply.
- The vendor shall notify the purchaser ("a vendor's notice") of such inability or unwillingness on or before the fifth working day after the date of service of the purchaser's notice.
 - If the vendor does not give a vendor's notice the vendor shall be deemed to have accepted the objection or requisition and it shall be a requirement of settlement that such objection or requisition shall be complied with before settlement.
 - If the purchaser does not on or before the fifth working day after service of a vendor's notice notify the vendor that the purchaser waives the objection or requisition, either the vendor or the purchaser may (notwithstanding any intermediate negotiations) by notice to the other, cancel this agreement.
- (4) In the event of cancellation under subclause 5.2(3), the purchaser shall be entitled to the immediate return of the deposit and any other moneys paid under this agreement by the purchaser and neither party shall have any right or claim against the other arising from this agreement or its cancellation. In particular, the purchaser shall not be entitled to any interest or to the expense of investigating the title or to any compensation whatever.
- 5.3 (1) If the title to the property being sold is a cross lease title or a unit title and there are:
- in the case of a cross lease title:
 - alterations to the external dimensions of any leased structure; or
 - buildings or structures not intended for common use which are situated on any part of the land that is not subject to a restricted user covenant;
 - in the case of a unit title, encroachments out of the principal unit or accessory unit title space (as the case may be):
- the purchaser may requisition the title under subclause 5.2 requiring the vendor:
- in the case of a cross lease title, to deposit a new plan depicting the buildings or structures and register a new cross lease or cross leases (as the case may be) and any other ancillary dealings in order to convey good title; or
 - in the case of a unit title, to deposit a redevelopment plan or new unit plan (as the case may be) depicting the principal and/or accessory units and register such transfers and any other ancillary dealings in order to convey good title.
- (2) The words "alterations to the external dimensions of any leased structure" shall only mean alterations which are attached to the leased structure and enclosed.
- 5.4 Except as otherwise expressly set forth in this agreement, no error, omission or misdescription of the property or the title shall annul the sale but compensation, if demanded in writing before settlement but not otherwise, shall be made or given as the case may require.
- 5.5 The vendor shall not be liable to pay for or contribute towards the expense of erection or maintenance of any fence between the property and any contiguous land of the vendor but this proviso shall not enure for the benefit of any subsequent purchaser of the contiguous land; and the vendor shall be entitled to require the inclusion of a fencing covenant to this effect in any transfer of the property.

6.0 Vendor's warranties and undertakings

- 6.1 The vendor warrants and undertakes that at the date of this agreement the vendor has not:
- received any notice or demand and has no knowledge of any requisition or outstanding requirement:
 - from any local or government authority or other statutory body; or
 - under the Resource Management Act 1991; or
 - from any tenant of the property; or
 - from any other party; or
 - given any consent or waiver which directly or indirectly affects the property and which has not been disclosed in writing to the purchaser.
- 6.2 The vendor warrants and undertakes that at the giving and taking of possession:
- The chattels are delivered to the purchaser in their state of repair as at the date of this agreement (fair wear and tear excepted) but failure so to deliver the chattels shall only create a right of compensation.
 - All electrical and other installations on the property are free of any charge whatsoever.
 - There are no arrears of rates, water rates or charges outstanding on the property.
 - Where an allowance has been made by the vendor in the settlement statement for incomings receivable, the settlement statement correctly records those allowances including, in particular, the dates up to which the allowances have been made.
 - Where the vendor has done or caused or permitted to be done on the property any works:
 - any permit, resource consent or building consent required by law was obtained; and
 - the works were completed in compliance with those permits or consents; and
 - where appropriate, a code compliance certificate was issued for those works.
 - Where under the Building Act, any building on the property sold requires a compliance schedule:
 - the vendor has fully complied with any requirements specified in any compliance schedule issued by a territorial authority under the Building Act in respect of the building;
 - the building has a current building warrant of fitness; and
 - the vendor is not aware of any reason, that the vendor has not disclosed in writing to the purchaser, which would prevent a building warrant of fitness from being supplied to the territorial authority when the building warrant of fitness is next due.
- 6.3 The vendor warrants and undertakes that at settlement:
- Since the date of this agreement, the vendor has not given any consent or waiver which directly or indirectly affects the property.
 - Any notice or demand received by the vendor, which directly or indirectly affects the property, after the date of this agreement:
 - from any local or government authority or other statutory body; or
 - under the Resource Management Act 1991; or
 - from any tenant of the property; or
 - from any other party -
- has been delivered forthwith by the vendor to either the purchaser or the purchaser's solicitor, unless the vendor has paid or complied with such notice or demand. If the vendor fails to so deliver or pay the notice or demand, the vendor shall be liable for any penalty incurred.
- (3) Any chattels included in the sale are the unencumbered property of the vendor.
- 6.4 The vendor warrants and undertakes that on or immediately after possession:
- If the water and wastewater charges are determined by meter, the vendor will have the water meter read and will pay the amount of the charge payable pursuant to that reading; but if the water supplier will not make special readings the water and wastewater charges shall be apportioned.
 - Any outgoing included in the settlement statement are paid in accordance with the settlement statement and, where applicable, to the dates shown in the settlement statement, or will be so paid immediately after the possession date.
 - The vendor will give notice of sale in accordance with the Local Government (Rating) Act 2002 to the territorial authority and regional council in whose district the land is situated and will also give notice of the sale to every other authority that makes and levies rates or charges on the land and to the supplier of water.
 - Where the property comprises a stratum estate, the vendor will notify the secretary of the body corporate in writing of the transfer of the property and the name and address of the purchaser.
- 6.5 Breach of any warranty or undertaking contained in this clause does not defer the obligation to settle. Settlement shall be without prejudice to any rights or remedies available to the parties at law or in equity, including but not limited to the right to cancel this agreement under the Contractual Remedies Act 1979.

7.0 Unit title and cross lease provisions

Unit Titles

- 7.1 If the property is a unit title the vendor warrants and undertakes as follows:
- (1) Apart from regular periodic contributions, no contributions have been levied or proposed by the body corporate that have not been disclosed in writing to the purchaser.
 - (2) Not less than five working days before the settlement date the vendor will provide:
 - (a) a copy of all insurance policies or certificates effected by the body corporate under the provisions of section 15 of the Unit Titles Act 1972 ("the Act"); and
 - (b) a certificate from the body corporate under section 36 of the Act. Any periodic contributions shown in that certificate (not being amounts referred in section 36(d)) shall be apportioned.
 - (3) There are no amounts owing by the vendor under sections 14, 33 or 34 of the Act.
 - (4) There are no unsatisfied judgments against the body corporate and no proceedings have been instituted against or by the body corporate.
 - (5) No order or declaration has been made by any Court under sections 28, 37, 40, 42, 43, 46 or 51 of the Act.
 - (6) The vendor has no knowledge or notice of any fact which might give rise to or indicate the possibility of:
 - (a) the vendor or the purchaser incurring any liability under sections 14, 33 or 34 of the Act; or
 - (b) any proceedings being instituted by or against the body corporate; or
 - (c) any order or declaration being sought under sections 28, 37, 40, 42, 43, 46 or 51 of the Act.
 - (7) The vendor is not aware of proposals to pass any body corporate resolution relating to its rules nor are there any unregistered changes to the body corporate rules which have not been disclosed in writing to the purchaser.
 - (8) No lease, licence, easement or special privilege has been granted by the body corporate in respect of any part of the common property.
 - (9) No resolution has been passed and no application has been made and the vendor has no knowledge of any proposal for:
 - (a) the transfer of the whole or any part of the common property;
 - (b) the addition of any land to the common property;
 - (c) the cancellation of the unit plan; or
 - (d) the deposit of a new unit plan in substitution for the existing unit plan which has not been disclosed in writing to the purchaser.
 - (10) As at the giving and taking of possession, all contributions and other moneys payable by the vendor to the body corporate have been paid in full.
- 7.2 If the vendor does not provide a copy of all insurance policies or certificates and the certificate under section 36 in accordance with the requirements of subclause 7.1(2):
- (1) The settlement date shall be deferred to the fifth working day following the date on which that information is provided to the purchaser.
 - (2) The purchaser may elect that settlement shall still take place on the settlement date, such election not being a waiver of any rights under subclause 7.1(2)(b) to a proper apportionment of outgoings.
 - (3) Deferment of the settlement date under this subclause shall not constitute deferment of the possession date unless the purchaser so elects.
- Unauthorised structures - Cross leases and unit titles
- 7.3 (1) Where structures (not stated in clause 5 to be requisitionable) have been erected on the property without:
- (a) in the case of a cross lease title any required lessors' consent; or
 - (b) in the case of a unit title any required body corporate consent -
- the purchaser may demand within the period expiring on the earlier of:
- (i) the tenth working day after the date of this agreement; or
 - (ii) the possession date; or
 - (iii) the settlement date -
- that the vendor obtain the written consent of the current lessors or the body corporate (as the case may be) to such improvements ("a current consent") and provide the purchaser with a copy of such consent on or before the settlement date.
- (2) Should the vendor be unwilling or unable to obtain a current consent then the procedure set out in subclauses 5.2(3) and 5.2(4) shall apply with the purchaser's demand under subclause 7.3(1) being deemed to be an objection and requisition.

8.0 Conditions and mortgage terms

Particular conditions

- 8.1 If particulars of any finance condition(s) are inserted on the front page of this agreement, this agreement is conditional upon the purchaser arranging finance in terms of those particulars on or before the finance date.
- 8.2 (1) If the purchaser has indicated on the front page of this agreement that a LIM is required:
- (a) that LIM is to be obtained by the purchaser at the purchaser's cost; and
 - (b) the purchaser is to request the LIM on or before the fifth working day after the date of this agreement; and
 - (c) this agreement is conditional upon the purchaser approving that LIM.
- (2) If the purchaser does not approve the LIM, the purchaser shall give notice to the vendor ("the purchaser's notice") on or before the fifteenth working day after the date of this agreement stating the particular matters in respect of which approval is withheld and, if those matters are capable of remedy, what the purchaser requires to be done to remedy those matters. If the purchaser does not give a purchaser's notice the purchaser shall be deemed to have approved the LIM. If through no fault of the purchaser the LIM is not available on or before the fifteenth working day after the date of this agreement and the vendor does not give an extension when requested, this condition shall not have been fulfilled and the provisions of subclause 8.7(5) shall apply.
- (3) The vendor shall give notice to the purchaser ("the vendor's notice") on or before the fifth working day after receipt of the purchaser's notice advising whether or not the vendor is able and willing to comply with the purchaser's notice by the settlement date.
- (4) If the vendor does not give a vendor's notice, or if the vendor's notice advises that the vendor is unable or unwilling to comply with the purchaser's notice, and if the purchaser does not, on or before the tenth working day after the date on which the purchaser's notice is given, give notice to the vendor that the purchaser waives the objection to the LIM, this condition shall not have been fulfilled and the provisions of subclause 8.7(5) shall apply.
- (5) If the vendor gives a vendor's notice advising that the vendor is able and willing to comply with the purchaser's notice, this condition is deemed to have been fulfilled and it shall be a requirement of settlement that the purchaser's notice shall be complied with, and also, if the vendor must carry out work on the property, that the vendor shall obtain the approval of the territorial authority to the work done, both before settlement.
- 8.3 (1) If the purchaser has indicated on the front page of this agreement that OIA Consent is not required then the purchaser warrants that the purchaser does not require OIA Consent.
- (2) If the purchaser has indicated on the front page of this agreement that OIA Consent is required, this agreement is conditional upon OIA Consent being obtained on or before the Land Act/OIA date shown on the front page of this agreement, the purchaser being responsible for payment of the application fee.
- 8.4 If this agreement relates to a transaction to which the Land Act 1948 applies, this agreement is subject to the vendor obtaining the necessary consent by the Land Act/OIA date shown on the front page of this agreement.
- 8.5 If the Land Act/OIA date is not shown on the front page of this agreement that date shall be the possession date or a date two months from the date of this agreement whichever is the sooner.
- 8.6 If this agreement relates to a transaction to which section 225 of the Resource Management Act 1991 applies then this agreement is subject to the appropriate condition(s) imposed by that section.

Operation of conditions

- 8.7 If this agreement is expressed to be subject either to the above or to any other condition(s), then in relation to each such condition the following shall apply unless otherwise expressly provided:
- (1) The condition shall be a condition subsequent.
 - (2) The party or parties for whose benefit the condition has been included shall do all things which may reasonably be necessary to enable the condition to be fulfilled by the date for fulfilment.
 - (3) Time for fulfilment of any condition and any extended time for fulfilment to a fixed date shall be of the essence.
 - (4) The condition shall be deemed to be not fulfilled until notice of fulfilment has been served by one party on the other party.
 - (5) If the condition is not fulfilled by the date for fulfilment, either party may at any time before the condition is fulfilled or waived avoid this agreement by giving notice to the other. Upon avoidance of this agreement the purchaser shall be entitled to the immediate return of the deposit and any other moneys paid by the purchaser under this agreement and neither party shall have any right or claim against the other arising from this agreement or its termination.
 - (6) At any time before this agreement is avoided the purchaser may waive any finance condition and either party may waive any other condition which is for the sole benefit of that party. Any waiver shall be by notice.

Mortgage terms

- 8.8 Any mortgage to be arranged pursuant to a finance condition shall be upon and subject to the terms and conditions currently being required by the lender in respect of loans of a similar nature.
- 8.9 If the vendor is to advance mortgage moneys to the purchaser then, unless otherwise stated, the mortgage shall be in the appropriate "fixed sum" form currently being published by the Auckland District Law Society.

9.0 Notice to complete and remedies on default

- 9.1 (1) If the sale is not settled on the settlement date either party may at any time thereafter serve on the other party a settlement notice; but
 (2) The settlement notice shall be effective only if the party serving it is at the time of service either in all material respects ready able and willing to proceed to settle in accordance with the notice or is not so ready able and willing to settle only by reason of the default or omission of the other party.
 (3) If the purchaser is in possession a settlement notice may incorporate or be given with a notice under section 50 of the Property Law Act 1952.
- 9.2 Upon service of the settlement notice the party on whom the notice is served shall settle:
 (1) on or before the twelfth working day after the date of service of the notice; or
 (2) on the first working day after the 13th day of January if the period of twelve working days expires during the period commencing on the 6th day of January and ending on the 13th day of January, both days inclusive –
 time being of the essence, but without prejudice to any intermediate right of cancellation by either party.
- 9.3 (1) If this agreement provides for the payment of the purchase price by instalments and the purchaser fails duly and punctually to pay any instalment on or within one month from the date on which it fell due for payment then, whether or not the purchaser is in possession, the vendor may immediately give notice to the purchaser calling up the unpaid balance of the purchase price, which shall upon service of the notice fall immediately due and payable.
 (2) The date of service of the notice under this subclause shall be deemed the settlement date for the purposes of subclause 9.1.
 (3) The vendor may give a settlement notice with a notice under this subclause.
 (4) For the purpose of this subclause a deposit is not an instalment.
- 9.4 If the purchaser does not comply with the terms of the settlement notice served by the vendor then:
 (1) Without prejudice to any other rights or remedies available to the vendor at law or in equity the vendor may:
 (a) sue the purchaser for specific performance; or
 (b) cancel this agreement by notice and pursue either or both of the following remedies namely:
 (i) forfeit and retain for the vendor's own benefit the deposit paid by the purchaser, but not exceeding in all 10% of the purchase price; and/or
 (ii) sue the purchaser for damages.
 (2) Where the vendor is entitled to cancel this agreement the entry by the vendor into a conditional or unconditional agreement for the resale of the property or any part thereof shall take effect as a cancellation of this agreement by the vendor if this agreement has not previously been cancelled and such resale shall be deemed to have occurred after cancellation.
 (3) The damages claimable by the vendor under subclause 9.4 (1)(b)(ii) shall include all damages claimable at common law or in equity and shall also include (but shall not be limited to) any loss incurred by the vendor on any bona fide resale contracted within one year from the date by which the purchaser should have settled in compliance with the settlement notice. The amount of that loss may include:
 (a) interest on the unpaid portion of the purchase price at the interest rate for late settlement from the settlement date to the settlement of such resale; and
 (b) all costs and expenses reasonably incurred in any resale or attempted resale; and
 (c) all outgoings (other than interest) on or maintenance expenses in respect of the property from the settlement date to the settlement of such resale.
 (4) Any surplus money arising from a resale as aforesaid shall be retained by the vendor.
- 9.5 If the vendor does not comply with the terms of a settlement notice served by the purchaser then without prejudice to any other rights or remedies available to the purchaser at law or in equity the purchaser may:
 (1) sue the vendor for specific performance; or
 (2) cancel this agreement by notice and require the vendor forthwith to repay to the purchaser any deposit and any other money paid on account of the purchase price and interest on such sum(s) at the interest rate for late settlement from the date or dates of payment by the purchaser until repayment.
- 9.6 The party serving a settlement notice may extend the term of the notice for one or more specifically stated periods of time and thereupon the term of the settlement notice shall be deemed to expire on the last day of the extended period or periods and it shall operate as though this clause stipulated the extended period(s) of notice in lieu of the period otherwise applicable; and time shall be of the essence accordingly. An extension may be given either before or after the expiry of the period of the notice.
- 9.7 Nothing in this clause shall preclude a party from suing for specific performance without giving a settlement notice.
- 9.8 A party who serves a settlement notice under this clause shall not be in breach of an essential term by reason only of that party's failure to be ready and able to settle upon the expiry of that notice.

10.0 Non-merger

- 10.1 The obligations and warranties of the parties in this agreement shall not merge with:
 (1) the giving and taking of possession;
 (2) settlement;
 (3) the transfer of title to the property;
 (4) delivery of the chattels (if any); or
 (5) registration of the transfer of title to the property.

11.0 Agent

- 11.1 If the name of a licensed real estate agent is stated on the front page of this agreement it is acknowledged that the sale evidenced by this agreement has been made through that agent whom the vendor appoints as the vendor's agent to effect the sale. The vendor shall pay the agent's charges including GST for effecting such sale.

12.0 Goods and Services Tax

- 12.1 If this agreement provides for the purchaser to pay (in addition to the purchase price stated without GST) any GST which is payable in respect of the supply made under this agreement then:
 (1) The purchaser shall pay to the vendor the GST which is so payable in one sum on the GST date.
 (2) Where the GST date has not been inserted on the front page of this agreement the GST date shall be the possession date.
 (3) Where any GST is not so paid to the vendor the purchaser shall pay to the vendor:
 (a) interest at the interest rate for late settlement on the amount of GST unpaid from the GST date until payment; and
 (b) any default GST.
 (4) It shall not be a defence to a claim against the purchaser for payment to the vendor of any default GST that the vendor has failed to mitigate the vendor's damages by paying an amount of GST when it fell due under the GST Act.
 (5) Any sum referred to in this clause is included in the purchase price, interest and other moneys, if any, referred to in subclause 3.7.
- 12.2 If the supply under this agreement is a taxable supply the vendor will deliver a tax invoice to the purchaser on or before the GST date or such earlier date as the purchaser is entitled to delivery of an invoice under the GST Act.
- 12.3 The vendor warrants that any dwelling and curtilage or part thereof supplied on sale of the property are not a supply to which section 5(16) of the GST Act applies.
- 12.4 (1) Without prejudice to the vendor's rights and remedies under clause 12.1, where any GST is not paid to the vendor on or within one month of the GST date, then whether or not the purchaser is in possession, the vendor may immediately give notice to the purchaser calling up any unpaid balance of the purchase price, which shall upon service of the notice fall immediately due and payable.
 (2) The date of service of the notice under this subclause shall be deemed the settlement date for the purposes of subclause 9.1.
 (3) The vendor may give a settlement notice under subclause 9.1 with a notice under this subclause.

13.0 Supply of a Going Concern

- 13.1 If the supply made pursuant to this agreement comprises the supply of a taxable activity that is a going concern at the time of the supply then, unless otherwise expressly stated herein:
- (1) each party warrants that it is a registered person or will be so by the date of the supply;
 - (2) each party agrees to provide the other party by the date of the supply with proof of its registration for GST purposes;
 - (3) the parties agree that they intend that the supply is of a taxable activity that is capable of being carried on as a going concern by the purchaser; and
 - (4) the parties agree that the supply made pursuant to this agreement is the supply of a going concern on which GST is chargeable at zero per cent.
- 13.2 If it subsequently transpires that GST is payable in respect of the supply and if this agreement provides for the purchaser to pay (in addition to the purchase price without GST) any GST which is payable in respect of the supply made under this agreement then the provisions of clause 12.0 of this agreement shall apply.

14.0 Limitation of Liability

- 14.1 If any person enters into this agreement as trustee of a trust, then:
- (1) That person warrants that:
 - (a) that person has power to enter into this agreement under the terms of the trust;
 - (b) that person has properly signed this agreement in accordance with the terms of the trust;
 - (c) that person has the right to be indemnified from the assets of the trust and that right has not been lost or impaired by any action of that person including entry into this agreement; and
 - (d) all of the persons who are trustees of the trust have approved entry into this agreement.
 - (2) If that person has no right to or interest in any of the assets of the trust except in that person's capacity as trustee of the trust, that person's liability under this agreement shall not be personal and unlimited but shall be limited to an amount equal to the value of the assets of the trust that are available to meet that person's liability unless the right of that person to be indemnified from the assets of the trust has been lost and, as a result, the other party to this agreement is unable to recover from that person that amount.

SAMPLE

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2006

FURTHER TERMS OF SALE

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SCHEDULE 1

List all chattels included in the sale
(strike out or add as applicable)

Stove **Fixed floor coverings** **Blinds** **Curtains** **Drapes** **Light fittings**

WARNING *(This warning does not form part of this agreement)*

This is a binding contract. **Read the information set out on the back page before signing.**

Signature of vendor(s)

Signature of purchaser(s)

.....

.....

.....

.....

BEFORE SIGNING THE AGREEMENT

- It is recommended both parties seek professional advice before signing. This is especially so if:
 - there are any doubts. Once signed, this will be a binding contract with only restricted rights of termination.
 - the property is sold as a going concern.
 - Property such as a hotel or a farm is being sold. The agreement is designed primarily for the sale of residential and commercial property.
 - the property is vacant land in the process of being subdivided or there is a new cross lease or unit title to be issued. In these cases additional clauses may need to be inserted.
 - there is any doubt as to the position of the boundaries.
 - the purchaser wishes to check the weathertightness and soundness of construction of any dwellings or other buildings on the land.
- The purchaser should investigate the status of the property under the Council's District Plan. The property and those around it are affected by zoning and other planning provisions regulating their use and future development.
- The purchaser should investigate whether necessary permits, consents and code compliance certificates have been obtained from the Council where building works have been carried out by an earlier owner. This investigation can be assisted by obtaining a LIM from the Council.
- The purchaser should compare the title plans against the physical location of existing structures where the property is a cross lease or unit title. Structures or alterations to structures not shown on the plans may result in the title being defective.
- In the case of a unit title, the purchaser should inquire whether the body corporate holds funds for deferred maintenance of common property.
- The vendor should ensure the warranties and undertakings in clauses 6 and 7:
 - are able to be complied with; and if not
 - the applicable warranty is deleted from the agreement and any appropriate disclosure is made to the purchaser.
- Both parties should ensure the chattels list in Schedule 1 is accurate.
- If the property is sold as a "going concern", the vendor should ensure the purchase price is stated on the front page as "PLUS GST (if any)".

THE ABOVE NOTES ARE NOT PART OF THIS AGREEMENT AND ARE NOT A COMPLETE LIST OF MATTERS WHICH ARE IMPORTANT IN CONSIDERING THE LEGAL CONSEQUENCES OF THIS AGREEMENT.

PROFESSIONAL ADVICE SHOULD BE SOUGHT REGARDING THE EFFECT AND CONSEQUENCES OF ANY AGREEMENT ENTERED INTO BETWEEN THE PARTIES.

THE PURCHASER IS ENTITLED TO A COPY OF ANY SIGNED OFFER AT THE TIME IT IS MADE.

AGREEMENT FOR SALE AND PURCHASE OF REAL ESTATE

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DATE:**VENDOR:**

Contact Details:

VENDOR'S SOLICITORS:

Firm:

Individual Acting:

Contact Details:

PURCHASER:

Contact Details:

PURCHASER'S SOLICITORS:

Firm:

Individual Acting:

Contact Details:

REAL ESTATE AGENT:

Agency Name

Manager:

Salesperson:

Contact Details: