

# Contract for the Sale and Purchase of Land (Residential)

## Notice to Purchaser:

**This is a contract for the sale of residential land. You may be bound by the terms of this contract if it is signed by both you and the Vendor. You should seek independent legal advice if you are unsure about the terms contained in this contract. It is advisable to check section 5 of the *Land and Business (Sale and Conveyancing) Act 1994* regarding any cooling-off rights that you may have and how to exercise them.**

## Property address:

Street: 66 MERCHANTS ROAD

Suburb: BASKET RANGE

State: SA

Postcode: 5138

The Vendor agrees to sell and the Purchaser agrees to buy the Property, being the Land and all Goods sold with the Land, for the Price and on the terms set out in this contract.

The terms of this contract are contained in the -

- Particulars of Sale; and
- Special Conditions, if any; and
- General Conditions,

and, if a provision of one document is inconsistent with a provision of another document, then the above order of priority applies.

## Cooling-off period - Section 5 *Land and Business (Sale and Conveyancing) Act 1994* (SA)

You may end this contract within two clear Business Days of the day that you sign the contract or the day you are served the Form 1 Vendor's Statement, whichever is later, and if none of the exceptions listed below applies to you.

You must either give 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'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 paid EXCEPT for a deposit up to \$100 if you end the contract in this way.

## EXCEPTIONS

The cooling-off period does not apply if -

- you received independent legal advice before signing the contract and the legal practitioner signed a certificate in the prescribed form as to the giving of that advice; or
- you bought the Property by auction; or
- you bought the Property on the same day you, or someone on your behalf, bid at the auction for the Property; or
- the sale is by tender and the contract is made not less than five clear Business Days after the day fixed for the closing of tenders and not less than two clear Business Days after the vendor's statement is served on the purchaser; or
- the sale is made by the exercise of an option to purchase not less than five clear Business Days after the grant of the option and not less than two clear business days after the Form 1 vendor's statement is served on the Purchaser; or
- the contract also provides for the sale of a business that is not a small business.

# Contract for the Sale and Purchase of Land (Residential)

## Signing of this Contract

**WARNING: THIS IS A LEGALLY BINDING AGREEMENT. YOU SHOULD READ THIS CONTRACT BEFORE SIGNING IT.**

Purchasers should ensure that prior to signing this contract, they have received:

- a copy of the full terms of this contract; and
- a copy of the Form 1 vendor's statement (if the purchaser will not have the right to cool off under the contract).

In this contract, **Form 1 vendor's statement** means a statement required to be given by a vendor under section 7 of the *Land and Business (Sale and Conveyancing) Act 1994 (SA)*.

### Signed by the Purchaser

<input type="text"/>	Signature	<input type="text"/>	Signature
<input type="text"/>	Full name	<input type="text"/>	Full name
<input type="text"/>	Date	<input type="text"/>	Date

In the presence of:

<input type="text"/>	Signature	<input type="text"/>	Signature
<input type="text"/>	Witness name	<input type="text"/>	Witness name
<input type="text"/>	Date	<input type="text"/>	Date

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

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

### Signed by the Vendor

<input type="text"/>	Signature	<input type="text"/>	Signature
<input type="text"/>	Full name	<input type="text"/>	Full name
<input type="text"/>	Date	<input type="text"/>	Date

In the presence of:

<input type="text"/>	Signature	<input type="text"/>	Signature
<input type="text"/>	Witness name	<input type="text"/>	Witness name
<input type="text"/>	Date	<input type="text"/>	Date

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

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

**Contract for the Sale and Purchase of Land (Residential)  
Particulars of Sale**



**Vendor's Agent**

Company name: \_\_\_\_\_  
Trading name: Brenton Ward Real Estate  
Agent Name: Brenton Ward  
Email: brenton@brentonward.com.au  
ABN/ACN: 57 501 064 871 RLA: 122299  
Address: 76 HEWITT AVENUE

Suburb: ROSE PARK State: SA Postcode: 5067  
Telephone: 0412 348 212 Facsimile: \_\_\_\_\_ DX: \_\_\_\_\_ Ref: \_\_\_\_\_

**Vendor**

Name: SHARRON MARIE KEMP  
Email: \_\_\_\_\_ ABN/ACN: \_\_\_\_\_  
Address: 66 MERCHANTS ROAD

Suburb: BASKET RANGE State: SA Postcode: 5138

Name: \_\_\_\_\_  
Email: \_\_\_\_\_ ABN/ACN: \_\_\_\_\_  
Address: \_\_\_\_\_

Suburb: \_\_\_\_\_ State: \_\_\_\_\_ Postcode: \_\_\_\_\_

**Vendor's legal practitioner or conveyancer**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_

Suburb: \_\_\_\_\_ State: \_\_\_\_\_ Postcode: \_\_\_\_\_

Email: \_\_\_\_\_  
Telephone: \_\_\_\_\_ Facsimile: \_\_\_\_\_ DX: \_\_\_\_\_ Ref: \_\_\_\_\_

**Purchaser**

Name: \_\_\_\_\_  
Email: \_\_\_\_\_ ABN/ACN: \_\_\_\_\_  
Address: \_\_\_\_\_

Suburb: \_\_\_\_\_ State: \_\_\_\_\_ Postcode: \_\_\_\_\_

Name: \_\_\_\_\_  
Email: \_\_\_\_\_ ABN/ACN: \_\_\_\_\_  
Address: \_\_\_\_\_

Suburb: \_\_\_\_\_ State: \_\_\_\_\_ Postcode: \_\_\_\_\_

**Purchaser's legal practitioner or conveyancer**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_

Suburb: \_\_\_\_\_ State: \_\_\_\_\_ Postcode: \_\_\_\_\_

Email: \_\_\_\_\_  
Telephone: \_\_\_\_\_ Facsimile: \_\_\_\_\_ DX: \_\_\_\_\_ Ref: \_\_\_\_\_

# Contract for the Sale and Purchase of Land (Residential) Particulars of Sale

**Land (General Condition 3)** The Land is described in the table below and includes all improvements, fixtures and fittings

~~Lot / Allot:~~ 288 in Plan No: \_\_\_\_\_ being Whole / ~~Portion~~\* of the land.

Certificate of Title Reference: 5604/641 \_\_\_\_\_ \*Delete the inapplicable

Description of the Property:

---

Improved (built on)  Unimproved (vacant)

Property Address:

Street: 66 MERCHANTS ROAD

Suburb: BASKET RANGE

State: SA

Postcode: 5138

**Goods sold with the Land** (list or attach schedule)

ALL VENDORS FIXTURES AND FITTINGS, FIXED FLOOR COVERINGS, LIGHT FITTINGS, WINDOW TREATMENTS AND DISHWASHER

**Goods excluded from the sale**

ALL VENDORS LOOSE FURNITURE AND PERSONAL EFFECTS.

**Payment (General Conditions 8 and 18)**

Price \$ \_\_\_\_\_

GST (if applicable) \$ \_\_\_\_\_

Deposit \$ \_\_\_\_\_ by \_\_\_\_\_ dd/mm/yyyy (of which \$ \_\_\_\_\_ has been paid)

Balance \$ \_\_\_\_\_ payable at Settlement

**GST (general condition 20)**

The Price includes GST (if any) unless the words '**plus GST**' appear in this box

If this is a sale of a 'farming business' or 'going concern' then add the words '**farming business**' or '**going concern**' in this box

If the margin scheme will be used to calculate GST then add the words '**margin scheme**' in this box

**GST Withholding (General Condition 21)**

If this box is ticked then the Vendor is not required to give the Purchaser a written notice which complies with section 14-255(1) of schedule 1 of the *Taxation Administration Act 1953* (Cth).

If this box is ticked then the Vendor notifies the Purchaser in accordance with section 14-255(1) of schedule 1 of the *Taxation Administration Act 1953* (Cth) that the Purchaser is not required to make a withholding payment in relation to the supply of the property under section 14-250 of schedule 1 of the *Taxation Administration Act 1953* (Cth).

If this box is ticked then General Condition 21 applies in relation to the supply of the property.

**Settlement (General Condition 18)**

is due on \_\_\_\_\_ dd/mm/yyyy

unless the Land is a lot in an undeposited plan of subdivision, in which case Settlement is due on the later of:

- the above date; and
- 14 days after the Vendor gives notice in writing to the Purchaser of deposit of the plan of division.

# Contract for the Sale and Purchase of Land (Residential)

## Particulars of Sale

### Tenancy (General Condition 1)

At Settlement the Purchaser is entitled to vacant possession of the Property unless the words '**subject to Tenancy**' appear in this box, in which case refer to General Condition 1. If the Property is sold '**subject to Tenancy**' then particulars of the Tenancy are:

Commencement date \_\_\_\_\_ dd/mm/yyyy End date \_\_\_\_\_ dd/mm/yyyy

or

a periodic tenancy determinable by notice

Rent: \$ \_\_\_\_\_ per week

Bond: \$ \_\_\_\_\_ Bond lodged with Consumer and Business Services:  Yes  No

### Finance (General Condition 7)

If this box is checked this contract is subject to loan approval.

The following details apply if this contract is subject to a loan being approved:

Lender: \_\_\_\_\_

Loan amount: not more than \$ \_\_\_\_\_

Approval Date: \_\_\_\_\_ dd/mm/yyyy

### Exceptions and reservations

Known encroachments or encumbrances (if any):

NONE KNOW

Alterations or improvements erected without consent (if any):

NOT APPLICABLE

Notices or orders which will not be discharged on or before Settlement (if any):

NOT APPLICABLE

If the land is a strata unit or community lot, known breaches of the *Strata Titles Act 1988 (SA)* or the *Community Titles Act 1996 (SA)* (if any):

NOT APPLICABLE

### Pool Safety

Is there a pool on the Land or on adjacent land used in association with the Land?  Yes  No

The swimming pool is:

compliant with the *Planning, Development and Infrastructure Act 2016 (SA)* (as amended) requirements for swimming pools constructed pre-1 July 1993.

compliant with the *Planning, Development and Infrastructure Act 2016 (SA)* (as amended) requirements for swimming pools constructed on or after 1 July 1993.

Non-compliant.

Details of non-compliance: \_\_\_\_\_

### Vendor's Works (General Condition 16)

Works to be carried out by Vendor:

NIL

### Special conditions

This contract does not include any special conditions unless the words '**special conditions**' appear in this box.

If the contract is subject to '**special conditions**' then particulars of the special conditions are set out after the General Conditions.

## General Conditions

### 1. Encumbrances

1.1 The Purchaser buys the Property subject to:

- (a) any encumbrance shown in the Form 1 vendor's statement as not to be discharged on or before Settlement;
- (b) all easements, rights or other interests described or referred to in the Certificate of Title for the Land;
- (c) any Tenancy; and
- (d) any exceptions, reservations and encumbrances described in the Particulars of Sale.

1.2 The Purchaser benefits from all rights and proceeds, and is responsible and liable for all obligations under any Tenancy that are to be performed by the Vendor as landlord after Settlement. The Purchaser will pay for all obligations and liabilities of the Vendor as landlord after Settlement.

### 2. Vendor Warranties

2.1 The warranties in General Conditions 2.2 and 2.3 replace the Purchaser's right to make requisitions and inquiries.

2.2 The Vendor warrants that the Vendor:

- (a) has, or by the due date for Settlement will have, the right to sell and transfer the Property;
- (b) is under no legal disability;
- (c) is in possession of the Property, either personally or through a tenant;
- (d) has not previously sold or granted any option to purchase, agreed to a tenancy or granted a pre-emptive right, which is current over the Property and that gives another party rights that have priority over the interest of the Purchaser;
- (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 Goods sold with the Land.

2.3 The Vendor further warrants that the Vendor has no knowledge of any of the following, which have not been disclosed in this contract or the Form 1 vendor's statement:

- (a) easements over the Land;
- (b) tenancy or other possessory agreement or lease affecting the Land;
- (c) notice or order affecting the Land, which will not be dealt with or discharged on or before Settlement, other than the usual statutory rates and taxes notices;
- (d) legal proceedings, which would render the sale of the Land void or voidable or capable of being set aside.

2.4 The warranties in General Conditions 2.2 and 2.3 are subject to any contrary provisions in this contract and disclosures in the Form 1 vendor's statement.

2.5 Subject to the express Vendor warranties in this General Condition 2 the Purchaser takes the Property in its existing condition and because of its own inquiries and the Vendor makes no other warranties or representations in relation to the Property, its condition or the uses to which it has been or may be put.

### 3. Identity of the Property

3.1 An omission or mistake in the description of the Property or any deficiency in the area, description or measurements of the Property does not invalidate this contract.

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 the Certificate of Title or pay any cost of amending the Certificate of 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 Contract Date and Settlement however will be in the same or similar condition at Settlement as they were on the Contract Date subject to fair wear and tear, or any intervening third-party event or weather.

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 to be obtained by the Vendor in order to sell the Property. 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. Notices

The Purchaser is responsible for compliance with any notice, order, demand or levy imposing liability on the Property that is issued or made on or after the Contract Date that does not relate to the usual statutory rates and taxes notices.

### 7. Finance

7.1 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.

7.2 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;
- (b) did everything reasonably required to obtain approval of the loan;
- (c) serves written notice ending the contract on the Vendor within two clear Business Days after the Approval Date or any later date allowed by the Vendor, together with written evidence of the Purchaser's immediate application for, and the lender's rejection or non-approval of, the loan; and
- (d) is not in default under any other condition of this contract when the notice is given.

7.3 All money must be immediately refunded to the Purchaser if the contract is ended under this General Condition 7, subject to any amount that may be retained pursuant to the *Land and Business (Sale and Conveyancing) Act 1994 (SA)*.

### 8. Payment of Deposit

8.1 In this General Condition:

- (a) '**Bank**' means an authorised deposit-taking institution under the *Banking Act 1959 (Cth)*;



## General Conditions

**(b) 'Bank Guarantee'** means an irrevocable and unconditional undertaking from a bank to pay on demand an amount equal to the Deposit (or such other amount agreed by the parties) on terms and conditions acceptable to the Vendor (acting reasonably). If the Land is a lot in an undeposited plan of division, the bank guarantee must be in favour of the Vendor's legal practitioner or conveyancer;

**(c) 'Deposit Bond'** means an irrevocable and unconditional undertaking from a financial institution resident in Australia acceptable to the Vendor to pay on demand an amount equal to the Deposit (or such other amount agreed by the parties) on terms and conditions acceptable to the Vendor. If the Land is a lot in an undeposited plan of division, the deposit bond must be in favour of the Vendor's legal practitioner or conveyancer; and

**(d) 'Financial Institution'** means a bank, building society, credit union, insurance company or other entity, which is authorised to provide finance, issue bank guarantees or deposit bonds in Australia.

**8.2** The Purchaser must pay the Deposit on the date specified in the Particulars of Sale:

**(a)** to the Vendor's Agent; or

**(b)** if there is no agent, to the Vendor's legal practitioner or conveyancer;

who will hold the Deposit on trust pending Settlement.

**8.3** The Vendor may, at its discretion, agree to accept a Deposit Bond or Bank Guarantee instead of payment of a cash deposit as the Deposit by the Purchaser.

**8.4** If the Vendor agrees to accept a Deposit Bond or Bank Guarantee instead of payment of a cash deposit as the Deposit by the Purchaser, the Purchaser must pay the Deposit in cleared funds to the Vendor's legal practitioner or conveyancer on the first to occur of:

**(a)** Settlement;

**(b)** the date that is 30 days before the Bank Guarantee or Deposit Bond expires;

**(c)** any earlier date on which:

**(i)** the Vendor would be entitled to the release of the Deposit to it having regard to the provisions of this contract;

**(ii)** the Vendor rescinds or otherwise terminates this contract for breach or repudiation of the contract by the Purchaser; or

**(iii)** the Bank Guarantee or Deposit Bond becomes ineffective.

**8.5** If General Condition 8.3 applies, when the Purchaser pays the Deposit, the Vendor will return the Bank Guarantee or Deposit Bond to the Purchaser.

**8.6** Without limiting any of the Vendor's other rights under this contract, if the Purchaser does not comply with General Condition 8.4, the Vendor or the Vendor's legal practitioner or conveyancer (if the Land is a lot in an undeposited plan of division) can make demand for the amount secured by the Deposit Bond or Bank Guarantee without reference to the Purchaser.

**8.7** Any amount paid by the bank or financial institution under General Conditions 8.4 or 8.6 must be dealt with in accordance with General Condition 8.2.

## 9. Release of Deposit

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.

## 10. Liability of Signatory

Any signatory for a proprietary limited company purchaser must be a director or secretary and will be personally liable for the due performance of the Purchaser's obligations as if the signatory were the Purchaser in the case of a default by a proprietary limited company purchaser.

## 11. 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.

## 12. Transfer

**12.1** Any transfer of land document required to effect a transfer of the Property must be prepared by the Purchaser and delivered to the Vendor five Business Days before Settlement (or such later date as the Vendor may allow). The delivery of the transfer of land document is not acceptance of title.

**12.2** The parties must prepare and submit the online duties form or such other forms required to be completed for assessment of duty on this transaction by Revenue SA as soon as practicable before Settlement. Both parties agree to co-operate to complete such forms prior to Settlement.

## 13. Nominee

The Purchaser may no later than 10 days before the due date for Settlement (or such later date as the Vendor may allow) nominate a substitute or additional transferee, but the named purchaser remains personally liable for the due performance of all the Purchaser's obligations under this contract.

## 14. Release of Security Interest

**14.1** This General Condition applies if any part of the Property is subject to a security interest to which the *Personal Property Securities Act 2009* (Cth) applies.

**14.2** For the purposes of enabling the Purchaser to search the Personal Property Securities Register for any security interests affecting any personal property for which the Purchaser may be entitled to a release, statement, approval or correction in accordance with General Condition 14.4, the Purchaser may request the Vendor to provide the Vendor's date of birth to the Purchaser. The Vendor must within two days, comply with a request made by the Purchaser under this condition if the Purchaser makes the request at least seven days before the due date for Settlement (or such later date as the Vendor may allow).

**14.3** If the Purchaser is given the details of the Vendor's date of birth under condition 14.2, the Purchaser must:

**(a)** only use the Vendor's date of birth for the purposes specified in General Condition 14.2; and

**(b)** keep the date of birth of the Vendor secure and confidential.

## General Conditions

**14.4** The Vendor must ensure that at or before Settlement, the Purchaser receives:

- (a) a release from the secured party releasing the Property from the security interest;
- (b) a statement in writing in accordance with section 275(1)(b) of the *Personal Property Securities Act 2009* (Cth) setting out that the amount or obligation that is secured is nil at Settlement; or
- (c) a written approval or correction in accordance with section 275(1)(c) of the *Personal Property Securities Act 2009* (Cth) indicating that, on Settlement, the personal property included in the contract is not or will not be property in which the security interest is granted.

**14.5** A release for the purposes of General Condition 14.4(a) must be in writing.

**14.6** A release for the purposes of General Condition 14.4(a) must be effective in releasing the goods from the security interest and be in a form that allows the Purchaser to take title to the goods free of that security interest.

**14.7** If the Vendor receives a release under General Condition 14.4(a) the Vendor must provide the Purchaser with a copy of the release at or as soon as practicable before Settlement.

**14.8** In addition to ensuring that a release is received under General Condition 14.4(a), the Vendor must ensure that at or before Settlement the Purchaser receives a written undertaking from a secured party to register a financing change statement to reflect that release if the property being released includes goods of a kind that are described by serial number in the Personal Property Securities Register.

**14.9** The Vendor is not required to ensure that the Purchaser receives a release in respect of the Land. This General Condition 14.9 applies despite General Condition 14.1.

**14.10** Words and phrases which are defined in the *Personal Property Securities Act 2009* (Cth) have the same meaning in General Condition 14 unless the context requires otherwise.

## 15. Adjustments

**15.1** All rates, taxes, levies and charges payable by the Vendor, and any rent and other income received in respect of the Property, must be apportioned between the parties as at midnight on the day before Settlement and any adjustments made as appropriate.

**15.2** The rates, taxes, levies and charges and rent and other income must be apportioned on the following basis:

- (a) the Vendor is liable for the rates, taxes, levies and charges and entitled to the rent and other income up to midnight on the day before Settlement;
- (b) the Purchaser is liable for the rates, taxes, levies and charges and entitled to the rent and other income from and including the day of Settlement;
- (c) the Land is treated as the only land of which the Vendor is owner;
- (d) the Vendor is taken to own the Land as a resident Australian beneficial owner; and
- (e) any personal statutory benefit available to each party is disregarded in calculating apportionment.

**15.3** Water use will be adjusted on a pro rata daily rate and will be adjusted at Settlement or as soon as practicable after Settlement (with a reasonable amount to be held back at Settlement until such adjustment and any required payment is made).

**15.4** The Vendor must provide copies of all certificates and other information used to calculate the adjustments if requested by the Purchaser.

**15.5** If requested by the Purchaser, the Vendor must provide all information regarding the payment of rent and other moneys under any Tenancy reasonably required by the Purchaser to calculate the adjustments.

## 16. Vendor's Works

The Vendor will carry out the Vendor's Works in a proper and competent manner prior to Settlement.

## 17. Loss or Damage Before Settlement

**17.1** The Purchaser carries the risk of loss or damage to the Property from the Contract Date.

**17.2** The Vendor must deliver the Property to the Purchaser at Settlement in the same condition it was in on the Contract Date, subject to any Vendor's Works, but the Vendor will not be responsible for fair wear and tear or any structural, mechanical or electrical breakdowns or defects occurring or that become evident after the Contract Date, unless caused by the Vendor's negligence.

**17.3** The Purchaser must not delay Settlement because one or more of the Goods sold with the Land is not in the condition required by General Condition 17.2, but may claim compensation from the Vendor after Settlement.

**17.4** The Purchaser may nominate an amount not exceeding \$15,000 to be held by a stakeholder to be appointed by the parties if the Property is not in the condition required by General Condition 17.2 at Settlement.

**17.5** 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.

**17.6** The stakeholder must pay the amounts referred to in General Condition 17.5 in accordance with the determination of the dispute, including any order for payment of the costs of the resolution of the dispute.

## 18. Settlement

**18.1** Settlement is to take place on the day specified in the Particulars of Sale and at Settlement:

- (a) the Purchaser must pay the Balance; and
- (b) the Vendor must:
  - (i) do all things necessary to be done by a registered proprietor of the Land 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.

**18.2** The Purchaser must pay all money other than the Deposit:

- (a) to the Vendor, or the Vendor's legal practitioner or conveyancer; or



## General Conditions

(b) in accordance with a written direction of the Vendor or the Vendor's legal practitioner or conveyancer.

**18.3** Subject to General Condition 19, payments under this contract must be made or tendered:

(a) in cash up to \$10,000;

(b) by cheque drawn on a bank; or

(c) if the parties agree, by electronically transferring the payment in the form of cleared funds. Payment is made by electronic funds transfer when the funds are received and cleared in the recipient's bank account.

**18.4** At Settlement, the Purchaser must pay the fees on up to three cheques drawn on a bank. If the Vendor requests that any additional cheques be drawn on a bank, the Vendor must reimburse the Purchaser for the fees incurred.

**18.5** Subject to General Condition 19, Settlement must be conducted between the hours of 10.00 a.m. and 4.00 p.m. at the Lands Titles Office of South Australia unless the parties agree otherwise.

**18.6** For the purpose of this general condition 'bank' means an authorised deposit-taking institution under the *Banking Act 1959* (Cth).

## 19. Electronic Conveyancing

**19.1** In this General Condition:

(a) '**Discharging Mortgagee**' means any mortgagee, chargee, covenant chargee or caveator whose provision of an electronically signed discharge of mortgage, discharge of charge or withdrawal of caveat is required in order for unencumbered title to the property to be transferred to the Purchaser;

(b) '**ECNL**' means the *Electronic Conveyancing National Law* (South Australia);

(c) '**Electronic Document**' means an instrument as defined in the *Real Property Act 1886* (SA), which may be created and signed electronically in an electronic workspace;

(d) '**Electronic Transaction**' means a transaction to be conducted for the parties by their legal representatives as subscribers using an ELN and in accordance with the ECNL and the participation rules;

(e) '**Electronic Transfer**' means a transfer of land under the *Real Property Act 1886* (SA) for the Property to be prepared and electronically signed in the electronic workspace established for the purposes of the parties' transaction;

(f) '**Electronic Workspace**' means a shared electronic workspace generated by the ELN;

(g) '**ELN**' means Electronic Lodgement Network under the ECNL;

(h) '**ELNO**' means Electronic Lodgement Network Operator under the ECNL;

(i) '**Participation Rules**' means the participation rules as determined by the ECNL; and

(j) '**Subscriber**' means a person who is authorised under a participation agreement to use an ELN to complete conveyancing transactions on behalf of another person or on their own behalf.

**19.2** This transaction is to be conducted as an electronic transaction unless the Registrar-General has determined that lodgment of instruments under this contract (in part or in whole) are not eligible to be lodged electronically in accordance with the ECNL.

**19.3** If this transaction is not to be conducted as an electronic transaction this General Condition 19 ceases to apply and this transaction is to be conducted in accordance with this contract otherwise than as an electronic transaction unless the parties otherwise agree in writing.

**19.4** If this transaction is to be conducted as an electronic transaction:

(a) to the extent, but only to the extent, that any other provision of this contract is inconsistent with this General Condition, the provisions of this General Condition prevail;

(b) a party must pay the fees and charges payable by that party to the ELNO and the Registrar-General as a result of this transaction being an electronic transaction;

(c) any provision of this contract requiring the physical preparation, signing, delivery or payment of anything that is dealt with digitally or electronically within or using the electronic workspace is amended accordingly;

(d) the parties agree that written communications for the purposes of preparing for and facilitating the electronic transaction may be given and received electronically within the electronic workspace, however, no other notices may be given electronically within the electronic workspace;

(e) any communication from one party to another party in the electronic workspace is taken to have been received by that party at the time determined by the *Electronic Communications Act 2000* (SA); and

(f) despite anything in this contract to the contrary, the electronic transfer is not required to be served five Business Days before the due date for Settlement.

**19.5** Each party must:

(a) be, or engage a representative who is, a subscriber;

(b) ensure that each other person for whom that party is responsible and who is associated with the transaction is, or engages, a subscriber;

(c) authorise their representative to act on their behalf in the manner required by the ECNL; and

(d) conduct the electronic transaction in accordance with the participation rules and the ECNL.

**19.6** The Vendor must as soon as reasonably practicable after the Contract Date:

(a) create an electronic workspace;

(b) complete the title details for the Property, the due date for Settlement and a time for Settlement; and

(c) invite the Purchaser and any discharging mortgagee to the electronic workspace.

## General Conditions

**19.7** As soon as reasonably practicable after receiving an invitation from the Vendor to join the electronic workspace, the Purchaser must:

- (a) join the electronic workspace;
- (b) create and complete an electronic transfer;
- (c) invite any incoming mortgagee to join the electronic workspace; and
- (d) accept the nominated Settlement date and time.

**19.8** Before Settlement:

- (a) each party must do everything reasonably necessary to progress the transaction in the electronic workspace to Settlement on the due date for Settlement at the Settlement time;
- (b) the parties must ensure that:
  - (i) all electronic documents which a party must electronically sign to complete the electronic transaction are completed and electronically signed; and
  - (ii) all certifications required by the ECNL are properly given, and
- (c) the parties must complete the electronic workspace with payment details as soon as reasonably practicable before the due date for Settlement.

**19.9** On Settlement the electronic workspace must record that the exchange of funds or value (if any) between the accounts of the relevant financial institutions in accordance with the instructions of the parties has occurred.

**19.10** If Settlement takes place in the electronic workspace:

- (a) the parties are deemed to agree under General Condition 18.3 that the Balance may be paid by electronically transferring the funds; and
- (b) no party may exercise any rights under this contract or at law to terminate this contract during the time that the electronic workspace is locked for Settlement.

**19.11** If Settlement has not occurred by the time that the ELNO usually closes for settlements in South Australia on the due date for Settlement, the parties must do everything reasonably necessary to effect Settlement:

- (a) as an electronic transaction on the next Business Day; or
- (b) if Settlement cannot reasonably be effected as an electronic transaction, then at the option of either party, exercised by giving notice to the other party to that effect, otherwise than as an electronic transaction, as soon as reasonably practicable.

**19.12** A party is not in default under this contract if:

- (a) the computer systems of any of Land Services South Australia, Revenue SA, the ELNO or the Reserve Bank of Australia are inoperative for any reason at the settlement time agreed by the parties and there is a failure to complete this contract for that reason; or
- (b) that party is prevented from complying with an obligation because the other party or the other party's financial institution has not done something in the electronic workspace, but that party must comply with that party's obligations as soon as such events cease to apply.

**19.13** If the parties do not agree about the delivery before Settlement of one or more documents or things (including keys or other security devices) that cannot be delivered through the electronic workspace, the party required to deliver the documents or things:

- (a) holds them on and from Settlement in escrow for the benefit of; and
- (b) must immediately after Settlement deliver the documents or things to, or as directed by, the party entitled to them.

**19.14** Each party must do everything reasonably necessary to assist the other party to trace and identify the recipient of any mistaken payment made in the electronic workspace and to recover the mistaken payment.

## 20. GST

**20.1** The Purchaser does not have to pay the Vendor any amount in respect of GST 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 in respect of a taxable supply made under this contract in addition to the Price if:

- (a) GST is payable by the Vendor solely as a result of any action taken or intended to be taken by the Purchaser after the Contract Date, including a change of use;
- (b) if the Particulars of Sale specify that the supply made under this contract is of land on which a farming business is carried on and the supply (or a part of it) 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 of a going concern and the supply (or a part of it) does not satisfy the requirements of section 38-325 of the GST Act.

**20.2** 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.

**20.3** If the Particulars of Sale specify that the supply made under this contract is of land on which a 'farming business' is carried on:

- (a) the Vendor warrants that the Property is land on which a farming business has been carried on for the period of five 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.

**20.4** 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;
- (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.

## General Conditions

**20.5** 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.

**20.6** This General Condition will not merge on either Settlement or registration.

**20.7** In this General Condition:

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

### 21. GST Withholding

**21.1** If subdivision 14-E of schedule 1 of the *Taxation Administration Act 1953* (Cth) applies to the sale of the Property, the Vendor must give the Purchaser a written notice, which complies with section 14-255(1) of schedule 1 of the *Taxation Administration Act 1953* (Cth) as soon as practicable before the due date for Settlement.

**21.2** If the Purchaser is required to make a payment to the Commissioner of Taxation under section 14-250 of schedule 1 of the *Taxation Administration Act 1953* (Cth), the Purchaser must:

(a) pay the GST withholding amount specified in the Vendor's notice that the Purchaser is required to pay under section 14-250 of schedule 1 of the *Taxation Administration Act 1953* (Cth) to the Commissioner of Taxation at the time specified in section 14-250(4) of schedule 1 of the *Taxation Administration Act 1953* (Cth); and

(b) give the Commissioner of Taxation the notice required under section 16-250(2) of schedule 1 of the *Taxation Administration Act 1953* (Cth).

**21.3** As soon as practicable before the due date for Settlement, the Purchaser must give evidence to the Vendor that it has complied with General Condition 21.2(b) (if it is obliged to do so) including a copy of the confirmation received from the Commissioner of Taxation following lodgement of the Purchaser's notice, which includes details of the lodgement reference number and payment reference number.

**21.4** At Settlement, the Purchaser must (if Settlement is not to take place electronically) give the Vendor a bank cheque for the GST withholding amount specified in the Vendor's notice that is payable to the Commissioner of Taxation. The Purchaser will be taken to have complied with this General Condition if it pays the GST withholding amount by electronic funds transfer to the account nominated by the Commissioner of Taxation via an Electronic Lodgement Network (as defined in the *Electronic Conveyancing National Law (South Australia)*) as part of an electronic settlement.

**21.5** After Settlement, the Vendor must give the Commissioner of Taxation any bank cheque received under this General Condition 24, together with any forms required to be provided to the Commissioner of Taxation to confirm that Settlement has been effected.

**21.6** The Purchaser is responsible for any penalties or interest payable to the Commissioner of Taxation on account of late payment of the withholding amount, except to the extent that they arise from any failure by the Vendor to comply with its obligations under this contract.

### 22. Foreign Resident Capital Gains Withholding

**22.1** Words defined or used in subdivision 14-D of schedule 1 to the *Taxation Administration Act 1953* (Cth) have the same meaning in this General Condition 22 unless the context requires otherwise.

**22.2** This General Condition 22 applies unless:

(a) the Vendor gives the Purchaser a clearance certificate issued by the Commissioner of Taxation under section 14-220(1) of schedule 1 to the *Taxation Administration Act 1953* (Cth). The specified period in the clearance certificate must include the Contract Date and the day the Vendor provides the certificate to the Purchaser; or

(b) the transaction is excluded under section 14-215(1) of schedule 1 to the *Taxation Administration Act 1953* (Cth).

**22.3** If the Vendor has not given the Purchaser a clearance certificate issued by the Commissioner of Taxation under section 14-220(1) of schedule 1 to the *Taxation Administration Act 1953* (Cth) at least two Business Days prior to Settlement, the Purchaser may withhold an amount an amount determined under section 14-200(3)(a) of schedule 1 to the *Taxation Administration Act 1953* (Cth), or such lower percentage or amount specified in a written notice issued by the Commissioner of Taxation under section 14-235 of schedule 1 to the *Taxation Administration Act 1953* (Cth), and that withholding will constitute discharge of the Purchaser's obligation to pay the price to the extent of the withholding.

**22.4** The Purchaser must:

(a) prior to Settlement lodge a *Foreign Resident Capital Gains Withholding Purchaser Notification Form* with the Australian Taxation Office for each person comprising the Purchaser and give copies to the Vendor with the payment reference numbers;

(b) within two Business Days of Settlement:

(i) pay, or ensure payment of, the withholding amount to the Commissioner of Taxation in the manner required by the Commissioner of Taxation; and

(ii) promptly provide the Vendor with proof of payment.

The Purchaser will be taken to have complied with this General Condition if it pays the withholding amount by electronic funds transfer to the account nominated by the Commissioner of Taxation via an Electronic Lodgement Network (as defined in the *Electronic Conveyancing National Law (South Australia)*) as part of an electronic settlement.

**22.5** The Purchaser is responsible for any penalties or interest payable to the Commissioner of Taxation on account of late payment by it of the withholding amount.

### 23. Breach

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

**23.1** compensation for any reasonably foreseeable loss to the other party resulting from the breach; and

**23.2** any interest due under this contract as a result of the breach.



## General Conditions

### 24. Interest

Interest at a rate that is 2% above the Reserve Bank of Australia "cash rate" as set from time to time accrues daily and is payable on any money owing under the contract during the period of default, without affecting any other rights of the offended party.

### 25. Default Notice

**25.1** Except in an instance of an action urgent or interlocutory in nature, 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 given and fails to comply with a written default notice.

**25.2** 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 the notice being given:
  - (i) the default is remedied; and
  - (ii) the reasonable costs incurred as a result of the default and any interest payable are paid.

### 26. Default Not Remedied

**26.1** 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.

**26.2** 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.

**26.3** 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;
- (b) all those amounts are a charge on the Land until payment; and
- (c) the Purchaser may also recover any loss otherwise recoverable.

**26.4** If the contract ends by a default notice given by the Vendor:

- (a) the Deposit is forfeited to the Vendor as the Vendor's absolute property (if it is not paid it is immediately due and payable);
- (b) the Vendor is entitled to possession of the Property;
- (c) in addition to any other remedy, the Vendor may 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;

- (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.

**26.5** The ending of the contract does not affect the rights of the offended party as a consequence of the default.

### 27. Time

**27.1** Time is of the essence of this contract.

**27.2** Time is extended until the next Business Day if the time for performing any action falls on a day that is not a business day.

### 28. Service

**28.1** Any document sent by:

- (a) regular post is taken to have been served on the sixth Business Day after posting, unless proved otherwise;
- (b) priority post is taken to have been served on the fourth Business Day after posting, unless proved otherwise;
- (c) express post is taken to have been served on the next Business Day after posting, unless proved otherwise; or
- (d) email is taken to have been served at the time of receipt within the meaning of the *Electronic Communications Act 2000* (SA).

**28.2** 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—

- (a) personally;
- (b) by pre-paid post;
- (c) in any manner authorised by law or the Supreme Court for service of documents, including any manner authorised for service on or by a legal practitioner regardless of whether the person serving or receiving the document is a legal practitioner; or
- (d) by email.

**28.3** This General Condition applies to the service of any demand, notice or document by or on any party. In this contract, the expression 'serve' includes 'give' and 'served', 'serviced' and 'given' have corresponding meanings.

### 29. Counterparts and Execution

**29.1** This contract may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument of the relevant document.

**29.2** A copy of an original executed counterpart given or served by facsimile machine, email or link emailed:

- (a) will be treated as an original counterpart;
- (b) is sufficient evidence of the execution of the original; and
- (c) may be produced in evidence for all purposes in place of the original.

## General Conditions

**29.3** The person signing this contract warrants that they have full authority to sign on behalf of the party they represent and has the authority to bind that party.

**29.4** Each party consents to the contract and the Form 1 Vendor's statement being signed by any other party in accordance with an electronic communication method and being given or served by electronic communication, including by link emailed to a party to download an electronic copy.

**29.5** Without limiting General Condition 29.4, the parties acknowledge and agree that:

- (a) electronic signatures will constitute a signature and have the same quality of integrity as a written signature including if the signature is:
  - (i) computer generated;
  - (ii) by computer pen;
  - (iii) by a typed mark or name;
  - (iv) physically signed on paper and scanned electronically; or
  - (v) any electronic symbol, or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record or document.

**29.6** Where either party applies an electronic signature to this contract or any other document attached or annexed to such:

- (a) that party confirms that the method of identifying the person, their intention to be bound and method of signing is reliable and conclusive evidence of that party's intention to be legally bound by that document;
- (b) each party is able to rely on the electronic signature as if that party had signed the relevant document by manuscript signature in accordance with all legal requirements; and
- (c) each party consents to the conduct of an electronic transaction and the method of electronic signature used by the other party.

**29.7** Each party agrees that it will not contest the validity or enforceability of this contract, another contract or document because it was signed or transmitted electronically. Each party will not dispute the admissibility or authenticity of this contract, another contract or document on the grounds that it is not an original or that any signature was not manually affixed.

## 30. Definitions

**30.1** In this contract, unless the context otherwise requires:

- (a) **'Approval Date'** means the date by which any loan approval condition is required to be satisfied, as specified in the Particulars of Sale.
- (b) **'Balance'** means the amount described as such in the Particulars of Sale.
- (c) **'Business Day'** means any day that is not a Saturday, Sunday or proclaimed public holiday in South Australia.
- (d) **'Contract Date'** is the date upon which both parties have signed this contract and if the parties sign this contract on different dates, is the date upon which the last party signs.

(e) **'Deposit'** means the amount described as such in the Particulars of Sale.

(f) **'Goods sold with the Land'** means those items described as such in the Particulars of Sale.

(g) **'Land'** means the land described as such in the Particulars of Sale.

(h) **'Price'** means the amount described as such in the Particulars of Sale.

(i) **'Property'** means the Land, together with all Goods sold with the Land.

(j) **'Purchaser'** means each purchaser described in the Particulars of Sale and if there is more than one means each purchaser jointly and severally

(k) **'Registrar-General'** means the Registrar-General of the Lands Titles Office of South Australia.

(l) **'Services'** means all electricity, gas, water, sewer, telecommunications or other services or utilities supplied to the Property.

(m) **'Settlement'** means settlement of the sale and purchase of the Property.

(n) **'Tenancy'** means the tenancy, lease or licence to occupy (if any) described as such in the Particulars of Sale.

(o) **'Vendor'** means the vendor or vendors described as such in the Particulars of Sale.

(p) **'Vendor's Agent'** means the entity described as such in the Particulars of Sale.

(q) **'Vendor's Works'** means the works described as such in the Particulars of Sale.

## 30.2 Governing law

This contract is governed by the laws of South Australia and the parties submit to the exclusive jurisdiction of the courts of South Australia.

## 30.3 Variations

Any variation to this agreement must be in writing and signed by the parties

## 30.4 Costs

(a) The Purchaser must pay any stamp duty assessed on this contract or the sale and purchase of the Property (including any penalties or interest).

(b) The parties will otherwise bear their own costs of this contract and the sale and purchase of the Property.



# Contract for the Sale and Purchase of Land (Residential)

## General Conditions

The following special conditions (if any) apply in respect of this contract.

SUBJECT TO FINANCE

DRAFT

# Form R3

*Land and Business (Sale and Conveyancing) Act 1994 (section 13A)*

*Land and Business (Sale and Conveyancing) Regulations 2010 (regulation 17)*

## Buyers information notice

Before you buy a home there are a number of things that you should investigate and consider. Though it may not be obvious at the time, there could be matters that may affect your enjoyment of the property, the safety of people on the property or the value of the property.

The following questions may help you to identify if a property is appropriate to purchase. In many cases the questions relate to a variety of laws and standards. These laws and standards change over time, so it is important to seek the most up to date information. Various government agencies can provide up to date and relevant information on many of these questions. To find out more, Consumer and Business Services recommends that you check the website: [www.cbs.sa.gov.au](http://www.cbs.sa.gov.au).

Consider having a professional building inspection done before proceeding with a purchase. A building inspection will help you answer some of the questions below.

The questions have been categorised under the headings **Safety**, **Enjoyment** and **Value**, but all of the issues are relevant to each heading.

### Safety

- Is there **asbestos** in any of the buildings or elsewhere on the property e.g. sheds and fences?
- Does the property have any significant **defects** e.g. **cracking** or **salt damp**? Have the wet areas been waterproofed?
- Is the property in a **bushfire** prone area?
- Are the **electrical wiring, gas installation, plumbing and appliances** in good working order and in good condition? Is a **safety switch** (RCD) installed? Is it working?
- Are there any prohibited **gas appliances** in bedrooms or bathrooms?
- Are **smoke alarms** installed in the house? If so, are they hardwired? Are they in good working order and in good condition? Are they compliant?
- Is there a **swimming pool and/or spa pool** installed on the property? Are there any safety barriers or fences in place? Do they conform to current standards?
- Does the property have any **termite** or other pest infestations? Is there a current preventive termite treatment program in place? Was the property treated at some stage with persistent organochlorins (now banned) or other **toxic** termiticides?
- Has fill been used on the site? Is the soil contaminated by **chemical residues** or waste?
- Does the property use **cooling towers** or manufactured warm water systems? If so, what are the maintenance requirements?

## Enjoyment

- Does the property have any **stormwater** problems?
- Is the property in a **flood prone** area? Is the property prone to coastal flooding?
- Does the property have an on-site **wastewater treatment facility** such as a septic tank installed? If so, what are the maintenance requirements? Is it compliant?
- Is a **sewer mains connection** available?
- Are all gutters, downpipes and stormwater systems in good working order and in good condition?
- Is the property near **power lines**? Are there any trees on the property near power lines? Are you considering planting any trees? Do all structures and trees maintain the required clearance from any power lines?
- Are there any **significant** trees on the property?
- Is this property a unit on **strata or community title**? What could this mean for you? Is this property on strata or community title? Do you understand the restrictions of use and the financial obligations of ownership? Will you have to pay a previous owner's debt or the cost of planned improvements?
- Is the property close to a hotel, restaurant or other venue with entertainment consent for live music? Is the property close to any industrial or commercial activity, a busy road or airport etc that may result in the generation of **noise** or the **emission of materials or odours** into the air?
- What appliances, equipment and fittings are included in the sale of the property?
- Is there sufficient car parking space available to the property?

## Value

- Are there any **illegal or unapproved additions**, extensions or alterations to the buildings on the property?
- How **energy efficient** is the home, including appliances and lighting? What **energy sources** (e.g. electricity, gas) are available?
- Is the property connected to SA Water operated and maintained **mains water**? Is a mains water connection available? Does the property have a **recycled water** connection? What sort of water meter is located on the property (a **direct or indirect meter** – an indirect meter can be located some distance from the property)? Is the property connected to a water meter that is also serving another property?
- Are there water taps outside the building? Is there a watering system installed? Are they in good working order and in good condition?
- Does the property have **alternative sources** of water other than mains water supply (including **bore or rainwater**)? If so, are there any special maintenance requirements?

For more information on these matters visit: [www.cbs.sa.gov.au](http://www.cbs.sa.gov.au).

**Disclaimer:** There may be other issues relevant to the purchase of real estate. If you are unable to ascertain enough information about the questions raised in this form and any other concerns you may have we strongly recommend you obtain independent advice through a building inspection, a lawyer, and a financial adviser.