

Contract of Sale

Local Government Regulation 2012 (Qld)
(Chapter 4 Part 12 Division 3)

PART 1 REFERENCE SCHEDULE

<p>(a) Was the contract formed at auction?</p> <p>(b) Was the contract formed within 2 business days of an auction and was the Buyer a registered bidder at that auction?</p>	<p>Yes / No</p> <p>Yes / No / Not applicable</p>
Item 1 Contract Date	
<p>Item 2 Seller</p> <p>Identity:</p> <p style="text-align: right;">Name:</p> <p>Address for Notices:</p> <p style="text-align: right;">Delivery:</p>	<p>Council of the City of Gold Coast pursuant to Chapter 4 Part 12 Division 3 of the <i>Local Government Regulation 2012 (Qld)</i></p> <p>8 Karp Court, Bundall QLD 4217</p>
<p>Item 3 Seller's Solicitors</p> <p>Identity:</p> <p style="text-align: right;">Name:</p> <p>Address for Notices:</p> <p style="text-align: right;">Post:</p> <p style="text-align: right;">Delivery:</p> <p style="text-align: right;">Email:</p> <p style="text-align: right;">Phone / Fax:</p>	<p>QBM Lawyers</p> <p>PO Box 6344, GCMC QLD 9726</p> <p>Level 5, 142 Bundall Road, Bundall QLD 4217</p> <p>admin@qbmlaw.com.au</p> <p>(07) 5574 0111 / (07) 5574 2600</p>
<p>Item 4 Buyer</p> <p>Identity:</p> <p style="text-align: right;">Name:</p> <p>Address for Notices:</p> <p style="text-align: right;">Post:</p> <p style="text-align: right;">Delivery:</p> <p style="text-align: right;">Email:</p> <p style="text-align: right;">Phone / Fax:</p>	<p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>

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<p>Item 5 Buyer's Solicitors</p> <p>Identity: Name:</p> <p>Address for Notices: Post:</p> <p>Delivery:</p> <p>Email:</p> <p>Phone / Fax:</p>	
<p>Item 6 Stakeholder</p> <p>Identity:</p>	<p>Council of the City of Gold Coast</p>
<p>Item 7 Land</p> <p>Address:</p> <p>Real Property Description:</p> <p>Nature of Title:</p> <p>Remaining Encumbrances:</p> <p>Local Government:</p>	<p>(insert street address), Queensland</p> <p>(a) Title Reference:...</p> <p>(b) Description: Lot ... on</p> <p>Freehold</p> <p>(a) Rights and interests reserved to the Crown by Deed of Grant No.</p> <p>(b) The Encumbrances, tenancies, and interests registered on the registered plan, building units, group titles or survey plan containing the Land</p> <p>(c) Any statutory charge in respect of land tax * * see clause 4.6.2</p> <p>Council of the City of Gold Coast</p>
<p>Item 8 Purchase Price</p> <p>Purchase Price:</p> <p>Deposit:</p>	<p>\$</p> <p>\$5,000.00</p>
<p>Item 9 Default Interest</p> <p>Default Rate:</p>	<p>9% per annum</p>
<p>Item 10 Settlement</p> <p>Settlement Date:</p> <p>Settlement Venue:</p>	<p>7 days from the Contract Date</p> <p>The office of the Seller's solicitor</p>

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Item 11 Guarantor Name: Address:
Item 12 Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 (Qld)	The Seller gives notice to the Buyer in accordance with Section 83 of the <i>Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 (Qld)</i> that the Land (including the Scheme Land, where a lot in a community titles scheme): <input type="checkbox"/> * is not affected by any application to, or an order made by, the Queensland Civil and Administrative Tribunal (QCAT) in relation to a tree on the Land. <input type="checkbox"/> * is affected by an application to, or an order made by, QCAT in relation to a tree on the Land, a copy of which has been given to the Buyer prior to the Buyer signing this Agreement. <i>* Mark whichever is applicable</i>
Item 13 Council of the City of Gold Coast Local Law No 17 (Maintenance of Works in Waterway Areas) 2013	Is this a contract to which section 15 of Local Law No 17 applies? <input type="checkbox"/> *Yes <input type="checkbox"/> * No <i>* Mark whichever is applicable</i> If Yes: (a) Part 10 of this contract applies; (b) The actual specified work that is completely or partly situated on, or connected to the Land is: <input type="checkbox"/> *A revetment wall; <input type="checkbox"/> *A training wall; <input type="checkbox"/> *A jetty; <input type="checkbox"/> *A pontoon <i>* Mark whichever is applicable</i> (c) There is/is not (delete whichever is not applicable) an outstanding notice issued by the Council of the City of Gold Coast under Local Law 17 in relation to the specified prescribed work. If there is an outstanding notice, the contents are attached.

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Item 14 GST Withholding Obligations	<p>Is the Buyer registered for GST and acquiring the Land for a creditable purpose? <i>(select whichever is applicable)</i></p> <p><input type="checkbox"/> *Yes <input type="checkbox"/> * No</p> <p><i>* Mark whichever is applicable</i></p> <p><i>Note: An example of an acquisition for a creditable purpose would be the purchase of the Land by a building contractor, who is registered for GST for the purposes of building a house on the Land and selling it in the ordinary course of its business).</i></p> <p>The Seller gives notice to the Buyer in accordance with section 14-250 of the Withholding Law that:</p> <p><input type="checkbox"/> *the Buyer is <i>not</i> required to make a payment under sections 14-250 of the Withholding Law in relation to the supply of the Land.</p> <p><input type="checkbox"/> *the Buyer <i>is</i> required to make a payment under section 14-250 of the Withholding Law in relation to the supply of the Land. Under section 14-255(1) of the Withholding Law, the Seller is required to give further details prior to Settlement.</p> <p><i>* Mark whichever is applicable</i></p>
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PART 2: INTERPRETATION

2.1 Definitions

In this Agreement, unless the context otherwise indicates, each of the following expressions bears the meaning shown opposite.

Expressions identified in the Reference Schedule shall bear the meaning set out in the Reference Schedule.

Act of Insolvency

- (1) a Controller, Voluntary Administrator, Receiver or a Receiver and Manager is appointed;
 - (2) failing to satisfy a bankruptcy notice or a statutory demand under section 459E of the *Corporations Act 2001 (Cth)*;
 - (3) the presentation of a creditor's petition;
 - (4) the filing of a winding up application or the
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	appointment of a Provisional Liquidator or Liquidator;
	(5) signing an authority under Part IX or X of the <i>Bankruptcy Act 1966 (Cth)</i> .
Address for Notices	With respect to each party: <ol style="list-style-type: none">(1) its address or facsimile number or email address shown at whichever is relevant of Item 2 to Item 5;(2) such other address or facsimile number or email address as it has notified in writing to the party giving it a notice as its address or facsimile number or email address for notices under this Agreement; or(3) if it is not at the address or facsimile number or email address the subject of <i>paragraph (1)</i> or <i>paragraph (2)</i> of this definition, its last principal place of business or facsimile number or email address known to the party giving it a notice.
Agreement	This document and the agreement it evidences.
Approved Safety Switch	A residual current device as defined in the <i>Electrical Safety Regulation 2013 (Qld)</i> .
Balance Purchase Price	The Purchase Price, less the Deposit paid, and subject to such adjustments or withholdings as may be made pursuant to this Agreement.
Business Day	A day, other than a Saturday, Sunday or public holiday, upon which banks are open for business in the city of Gold Coast: <ol style="list-style-type: none">(1) to which a notice under this Agreement is to be sent; or(2) at which an event for which this Agreement provides is to occur.
Compliant Smoke Alarm	A smoke alarm complying with the requirements for such alarms in domestic dwellings under the <i>Fire and Emergency Services Act 1990 (Qld)</i> .
Encumbrances	Has the meaning defined in Schedule 4 <i>Local Government Act 2009 (Qld)</i> , but does not include:– <ol style="list-style-type: none">(1) an easement; and(2) an encumbrance that gives the State or a Government entity an interest in the Land; or(3) body corporate levies and charges;

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	(4) Encumbrances, rights and obligations arising pursuant to the <i>Body Corporate and Community Management Act 1997</i> and the terms and by laws of the Scheme.
General Purpose Socket Outlet	An electrical socket outlet as defined in the <i>Electrical Safety Regulation 2013 (Qld)</i> .
GST Withholding Amount	The amount (if any) determined under section 14-250 of the Withholding Law required to be paid to the Commissioner of Taxation.
Item	A numbered item of information in Part 1 .
Land	The Land described at Item 7 .
Local Law 17	Council of the City of Gold Coast Local Law 17 (Maintenance of Works in Waterway Areas) 2013 and includes where necessary any subordinate Local Law.
Parties	The Seller and the Buyer.
Remaining Encumbrances	The easements, restrictive covenants and other encumbrances over the Land, as known to the Seller detailed at Item 7 .
Sale	Sale and purchase of the Land under this Agreement.
Scheme	The community titles scheme containing the Land.
Scheme Land	The land of the Scheme.
Settlement	Completion of the sale and purchase pursuant to Part 5 of this Agreement.
Settlement Date	The date specified in Item 10 or as may be extended pursuant to this Agreement.
Settlement Venue	The place specified for Settlement in Item 10 , or such other place as may be notified by the Seller to the Buyer.
Transfer	An appropriate form pursuant to section 145 <i>Local Government Regulation 2012 (Qld)</i> .
Withholding Law	Means Schedule 1 to the Taxation Administration Act 1953 (Cth) and any amendments.

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2.2 Interpretation generally

- (1) Where a word or phrase is specifically defined, other parts of speech and grammatical forms of that word or phrase bear meanings corresponding to and consistent with that definition;
- (2) Where a party is composed of two or more persons, this Agreement binds jointly and severally:
 - (a) those persons of each of them; and
 - (b) their and each of their executors, administrators and assigns.
- (3) Each person signing this Agreement in any representative capacity assures each other party that he or she possesses sufficient authority to execute the document in that capacity at the time of signing.

2.3 Parties

Reference to a party includes:

- (1) in the case of a natural person, that person, his personal representatives and assigns; and
- (2) in the case of a corporation, the corporation, its successors and assigns.

2.4 Warranty of Authority

- (1) Each person signing this Agreement as an officer, attorney or trustee, or in any other representative capacity, assures each other party or signatory that he/she possesses unrestricted authority to execute the document in that capacity at the time of signing;
- (2) The Buyer warrants that the consent of the Treasurer is not required for the Buyer's purchase of the Land under the *Foreign Acquisitions and Takeovers Act 1975 (Cth)*.

2.5 Miscellaneous References

Reference to:

- (1) the singular includes the plural, and vice versa;
- (2) a gender includes each other gender;
- (3) A person includes a corporation, a firm and a voluntary association;
- (4) an Act includes an Act that amends, consolidates or replaces an Act;
- (5) money is a reference to Australian dollars and cents;
- (6) a time of day is a reference to Australian Eastern Standard Time;
- (7) writing is a reference to reproduction of words, figures, symbols and shapes in visible form, including print, type, lithograph, facsimile and photocopy; and
- (8) a reference to an act includes an omission, deliberate or otherwise.

2.6 Headings and Notes

Subject headings, footnotes:

- (1) exist for convenience only; and
- (2) are to be disregarded when interpreting this Agreement.

2.7 Merger

Any provision of this Agreement:

- (1) to which effect is not given by Settlement or by registration of the Transfer; and
- (2) capable of taking effect after Settlement or registration of the Transfer,

will continue to be fully enforceable despite settlement or registration.

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2.8 Severance

If:

- (1) any provision of this Agreement is void, voidable, illegal or unenforceable; or
- (2) this Agreement would be void, voidable, illegal or unenforceable unless a particular provision were deleted from it,

the provision will be deemed deleted from this Agreement.

2.9 A party which executes as trustee is bound both personally and in its capacity as trustee.

2.10 Governing Law

The laws of Queensland govern this Agreement.

2.11 Entirety of Agreement

- (1) This Agreement details the entire bargain concluded between the Parties in relation to the Sale, irrespective of:
 - (a) any negotiations or discussions preceding execution of this Agreement; and
 - (b) the content of any brochure, report or other document produced by or on behalf of the Seller for potential Buyers of the Land.
- (2) The Buyer acknowledges that it has not been induced to acquire the Land by any representation, verbal or other, made by or on behalf of the Seller but not detailed in this Agreement.

PART 3: SALE OF LAND

3.1 Agreement to Sell and Purchase pursuant to the Local Government Regulation 2012.

The Seller agrees to sell the Land to the Buyer, and the Buyer agrees to buy the Land from the Seller, pursuant to Chapter 4 Part 12 Division 3 of the *Local Government Regulation 2012 (Qld)* (Selling or acquiring land for overdue rates or charges). Where the Land is a lot in a community titles scheme, the Land is sold subject to the *Body Corporate and Community Management Act 1997 (Qld)* and the bylaws of the Body Corporate of the Scheme.

3.2 Effect of Transfer

Upon the registration of a Transfer pursuant to section 145(4) of the *Local Government Regulation 2012 (Qld)*, the interest of the registered owner will be transferred to the Buyer:

- (a) free of all Encumbrances;
- (b) subject to the Remaining Encumbrances.

3.3 Buyer Acknowledgment

The Seller enters this Agreement without having possession or physical control of the Land (where the Land is a lot in a community titles scheme) without the Seller having participated in any business of the Scheme. The Buyer acknowledges that (where the Buyer bid at auction, it bid in the knowledge that) and (where this Agreement is not formed at auction, it enters this Agreement in the knowledge that) the Seller has made no representation, warranty, or assurance of any nature:

- (a) to the effect that vacant possession of the Land or any improvements will be provided at Settlement or whether any tenancies exist (and the Buyer acknowledges that it is the Buyer's responsibility to obtain possession after Settlement);
- (b) as to the condition, state of repair, or suitability for any use of the Land or any improvements (and the Buyer in that regard acknowledges that the Seller has not been in possession or had physical control of the Land);
- (c) that the Land presently is being used in accordance with approvals (if any) granted by any Government authority;

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- (d) that any improvements on the Land have been constructed or placed upon the Land with all or any applicable legislative requirements of any Government authority being met;
- (e) (where the Land is a lot in a community titles scheme), that the records of the Scheme are complete and accurate;
- (f) that in respect of any pool on the land or used in association with the land there is any Compliance or Exemption certificate, the Buyer acknowledging that the Seller is not an “owner” for the purposes of section 16 of the *Building Regulation 2006 (Qld)* and as a result is not obliged to comply with pool safety requirements under the *Building Act 1975 (Qld)* and the *Building Regulation 2006 (Qld)* including any obligation of owners to give notices thereunder;
and the Buyer warrants in favour of the Seller that it has before entering this Agreement carried out and made all enquiries in relation to the Land and the improvements on it that a reasonable Buyer would having regard to the matters set forth in this clause 3.3.

3.4 Risk

The Land is at the risk of the Buyer from noon on the Business Day following the Contract Date.

3.5 Payment of overdue rates

- (1) If, at any time between the formation of this Agreement and the Settlement Date, the Seller becomes aware that payment of the overdue rates and costs in respect of the Land has been tendered to the Seller whether prior to the auction or after, then the Seller may terminate this Agreement by written notice to the Buyer in which event all monies paid by way of Deposit pursuant to this Agreement shall be refunded to the Buyer without deduction. This is the Buyers only entitlement for the termination of this Agreement.
- (2) For avoidance of doubt, if the Seller terminates this Agreement pursuant to this clause, such termination is not an event of default and does not entitle the Buyer to damages or any other relief.

3.6 Impediment to Settlement

3.6.1 In the event that:

- (1) before Settlement, an injunction is made or sought or proceedings relating to this Agreement or the Seller’s entitlement to sell are instituted by any third party; or
- (2) the Seller reasonably forms the view that any encumbrance (other than the Remaining Encumbrances) will not be removed from the title to the Land on the registration of the Transfer or becomes aware of any potential claims by any party negotiating the sale or the Seller reasonably forms the view that the sale ought not proceed due to any irregularity or issue with respect to its statutory or legal obligations or the procedures set out in the Local Government Act or Regulations; or
- (3) there is some other event or circumstance which impacts or restricts the Seller’s ability to give the Transfer and convey title to the Buyer or pay the proceeds of sale to the parties entitled under clause 4.6,

then the Seller may serve notice on the Buyer extending the Settlement Date for a period of not less than two (2) Business Days and not more than two (2) calendar months, in which case the Settlement Date shall be the date set forth in the Seller’s notice. The Seller may give this notice on more than one occasion provided however that the aggregate of the extensions shall not exceed two (2) calendar months from the Settlement Date set out in this Agreement.

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3.6.2 Where the Seller has given such notice and extended the Settlement Date, the Seller will use reasonable endeavours to resolve the matter impeding Settlement. In the event that the Seller acting reasonably determines that the impediment to Settlement remains, then it may terminate this Agreement by written notice in which event all monies paid by way of Deposit shall be refunded to the Buyer, and neither party shall have any further claim against the other. Nothing in this clause will oblige the Seller to extend the date for Settlement when it believes on reasonable grounds that to do so is futile.

3.7 No transfer of chattels of fixtures

The Buyer acknowledges that by this Agreement, the Seller is to provide a Transfer of the title to the Land only. The Buyer acknowledges that:

- (1) the Seller does not have the power to sell chattels in or about the Land;
- (2) chattels are not included in the Sale of the Land;
- (3) the Seller is not required to remove any chattels or fixtures from the Land; and
- (4) the Seller does not claim and will not exercise any rights in respect of chattels or fixtures, and makes no representation or warranty that any such chattels or fixtures will remain in or about the Land or attached to it at Settlement.

3.8 Approved Safety Switch and Complaint Smoke Alarm

3.8.1 The Seller has not been in occupation or possession of the Land or improvements and has not verified the existence or otherwise of:

- (1) An Approved Safety Switch for the General Purpose Socket Outlets;
- (2) The installation or otherwise of a Compliant Smoke Alarm.

3.8.2 The Seller accordingly gives notice that neither an Approved Safety Switch nor a Compliant Smoke Alarm is installed in the residence.

3.9 Resumption

If the Land is subject to a resumption for road or any other purpose, the balance of the Land remaining only is offered for sale and no objection or requisition shall be raised by the Buyer that the area so offered is approximately only, or that the area left after such resumption has been finalized is more or less than the approximate area so offered, or that the Buyer is delayed in any respect in obtaining a title for the Land purchased.

PART 4: PURCHASE PRICE

4.1 Method of Payment

The Buyer must pay the Purchase Price, and any other sum due to the Seller under this Agreement:

- (1) in legal tender; or
- (2) by a bank cheque, dated on or before the date of delivery, issued by an authorised deposit-taking institution as defined by section 5 of the *Banking Act 1959 (Cth)*, or a bank constituted under a law of the State of Queensland.

4.2 Payment of Deposit

- (1) The Buyer must pay the Deposit (by bank cheque or EFTPOS using Debitcard, visa or MasterCard only) immediately upon execution of this Agreement.
- (2) The Deposit is to be:
 - (a) paid to the Stakeholder's trust account; and
 - (b) held by the Stakeholder as a stakeholder, not as an agent of either party.

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- (3) If it fails to pay the Deposit as required by this clause, the Buyer commits a fundamental breach of this Agreement and the Seller may affirm or terminate this Agreement.
- (4) Without derogating from the strict effect of clause 4.2(3), the Seller may recover the Deposit to the extent it is unpaid as a liquidated debt.

4.3 Balance Purchase Price

The Buyer must pay to the Seller on the Settlement Date the Balance Purchase Price in such a manner as the Seller directs.

4.4 Stakeholder's Obligation (General)

Without limiting the effect of any specific obligation imposed upon the Stakeholder in this Agreement, the Stakeholder must:

- (1) retain the Deposit until:
 - (a) Settlement; or
 - (b) termination of this Agreement;
- (2) upon Settlement or termination, pay the Deposit to the party entitled to it.

4.5 Interest on Late Payments

- (1) If the Deposit or any other money payable under this Agreement is not paid when due, the Buyer must pay interest on the overdue money from the due date for payment to the date of payment (both inclusive).
- (2) A judgment for money payable under this Agreement will also bear interest from the date of judgment to the date of payment (both inclusive).
- (3) Interest:
 - (a) is to be calculated on daily balances at the Default Rate: and
 - (b) paid upon Settlement or otherwise on demand.

4.6 Application of Proceeds of Sale

4.6.1 The Seller will apply the proceeds of sale (to the extent that such proceeds are available) in the order set out in section 146 of the *Local Government Regulation 2012 (Qld)*. As at the date of this contract, that order is as follows:

- (a) to pay any amount agreed for the release of a State encumbrance under section 138(4)(b) or (5) of the *Local Government Regulation 2012 (Qld)*;
- (b) to pay the expenses of the sale;
Example of expenses of the sale—
administrative costs incurred by the local government
- (c) to pay land tax owing on the day of sale;
- (d) to pay the overdue rates or charges for the land;
- (e) to pay any other amounts relating to the land that the owner of the land owed the local government immediately before the sale;
- (f) to pay any rates or charges, other than overdue rates or charges, for the land;
- (g) to pay any registered encumbrances, other than State encumbrances, in order of their priority under the Land Title Act;
- (h) to pay any body corporate fees that the owner of the land owed immediately before the sale;
- (i) to pay the person who owned the land immediately before the sale.

4.6.2 While any statutory charge in respect of land tax will not be extinguished by the transfer, it may be extinguished by the proceeds of sale being paid in accordance with clause 4.6.1.

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4.6.3 The Buyer acknowledges that if there is insufficient proceeds of sale to pay certain charges such as those referred to in clause 4.6.1(c), (d), (e), (f) and (h), the Buyer will become responsible for them to the extent that they are unpaid.

PART 5: SETTLEMENT

5.1 Time and Place for Settlement

- (1) Settlement is to be effected:
 - (a) on the Settlement Date;
 - (b) at the Settlement Venue;
 - (c) at the time agreed by the Parties (agreement to be reached not later than 5.00pm on the day before the Settlement Date);
 - (d) between the hours of 11.00am and 5.00pm.
- (2) Irrespective of any other provision in this Agreement, if the Settlement Date falls on a Saturday, Sunday or public holiday on the Gold Coast, Settlement is to be effected on the Business Day next following the Settlement Date.
- (3) any agreement or proposal between the Parties to effect Settlement before 5.00pm on the Settlement Date does not have the effect of varying this Agreement and is without prejudice to the rights of either party to require Settlement at 5.00pm on the Settlement Date.
- (4) At Settlement the Seller will provide to the Buyer the Transfer in exchange for the Balance Purchase Price. The Buyer will not receive an instrument of title or release of any Encumbrances or keys.
- (5) If, on or before the Settlement Date, the Seller is not in a position to provide the Buyer with either a current ATO Clearance Certificate under s14-220 of the Withholding Law or a variation notice under s14-235 of the Withholding Law, the Seller may:
 - (a) inform the Buyer that it will settle on the Settlement Date without providing either an ATO Clearance Certificate or variation notice and that the provisions of clause 11.1 apply; or
 - (b) serve notice on the Buyer extending the Settlement Date for a period of not less than two (2) Business Days and not more than two (2) calendar months, in which case the Settlement Date shall be the date set forth in the Seller's notice. The Seller may give this notice on more than one occasion provided however that the aggregate of the extensions shall not exceed two (2) calendar months from the Settlement Date set out in this Agreement.

5.2 Preparation and Delivery of Transfer Documents

The Seller will:

- (1) prepare the Transfer; and
- (2) deliver it to the Buyer at Settlement.

The Seller may (but is not required to) cooperate with the Buyer for the provision of the Transfer prior to Settlement for stamping purposes, and such provision shall be on such terms and subject to such conditions as the Seller may impose. The Seller will act reasonably.

5.3 Registration of Transfer

After Settlement, the Buyer must:

- (1) ensure that the Transfer is lodged promptly for registration;
- (2) pursue registration of the Transfer diligently.

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5.4 Further Assurances

Each party must do everything lawfully or reasonably required of it by the other party to:

- (1) give effect to the provisions, and achieve the intent, of this Agreement; and
- (2) preserve and promote the entitlements of the other party under this Agreement, before and after Settlement.

5.5 If new community management statements recorded

(where the Land is a lot in a community titles scheme), if a new community management statement is recorded before Settlement then:

- (1) the Seller will provide a copy of it to the Buyer; and
- (2) the Settlement Date is extended to 14 days after the Seller gives the new community management statement to the Buyer.

PART 6: ERRORS AND MISDESCRIPTIONS

6.1 Errors and Misdescriptions

- (1) The Seller believes the Land to be, and the Buyer accepts the Land as, correctly described in this Agreement.
- (2) No error, omission or misdescription in:
 - (a) **Item 7**;
 - (b) the boundaries or area of the Land,will invalidate this Agreement or entitle the Buyer to claim compensation.

6.2 Survey and Inspection

- (1) The Seller gives no assurance that the surveyed area of the Land is correct.
- (2) The Seller also gives no assurance that there is no encroachment:
 - (a) by the Land onto adjoining land; or
 - (b) by any structure on adjoining land onto the Land,and the Buyer may not:
 - (c) make any objection or claim for compensation whether before or after Settlement; or
 - (d) delay Settlement.
- (3) The Sale is subject to any encroachment from or upon the Land.

PART 7: DEFAULT

7.1 Seller may affirm or terminate

- (1) Without limiting any other right or remedy of the Parties including those under this Agreement, or any right at common law, if the Buyer fails to comply with a material term of this Agreement (including but not limited to the obligation to pay money when due) or makes a fundamental breach, the Seller may affirm or terminate this Agreement.
- (2) If the Seller affirms this Agreement, it may sue the Buyer for:
 - (a) damages;
 - (b) specific performance; or
 - (c) damages and specific performance.
- (3) If the Seller terminates this Agreement, it may:
 - (a) subject to clause 7.1(4) forfeit the Deposit and any interest earned;
 - (b) sue the Buyer for damages.
- (4) If the Deposit exceeds 10% of the Purchase Price:

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- (a) the Seller may under clause 7.1(3)(a) forfeit only that part of the Deposit which does not exceed 10% of the Purchase Price; and
 - (b) any money paid by the Purchaser in excess of 10% of the Purchase Price is to be treated as a payment of an installment for the purposes of this clause 7 only.
- (5) If the Seller holds an installment of the Purchase Price, it may retain such installment pending the termination of any claim for damages by the Seller provided however that if the Seller has not commenced any claim for damages against the Buyer within 12 months after the termination of the Contract, then the Seller must pay to the Buyer, without interest, any installment held.
- (6) The Seller may after determination of any action for damages commenced by it apply the whole or part of the installment toward any judgment for damages and costs awarded by the court, and pay any surplus to the Buyer without interest.

7.2 Buyer's remedies

- (1) In the event that the Seller refuses to settle contrary to the terms of this Agreement, the Buyer may affirm this Agreement and require Settlement of it, or terminate this Agreement in which event the Buyer may recover against the Seller its costs associated with its entry into and performance of this Agreement but shall otherwise have no action for damages.

7.3 Termination for Insolvency

- (1) If the Buyer commits or suffers an Act of Insolvency on or before Settlement, the Seller may terminate this Agreement by written notice to the Buyer.
- (2) The Seller's entitlement to terminate under this clause extends to an Act of Insolvency committed or suffered by the Buyer before the formation of this Agreement.

7.4 Certain acts not to evidence termination

The Buyer acknowledges that the Seller may, if the Buyer is in breach of its obligation to settle this contract, market the Land for sale and take steps toward the disposal of the Land. No such step is to be taken to evidence an election by the Seller to terminate this Agreement.

PART 8: MISCELLANEOUS

8.1 Time

Time shall in all cases and in all respects be deemed the essence of this Agreement.

8.2 Waiver

Neither:

- (1) a failure, delay or indulgence, committed, caused or granted in exercising a power or entitlement in relation to this Agreement; nor
- (2) a single or partial exercise, or a single or partial failure to exercise, such a power or entitlement,

will operate to waive the power of entitlement, or to preclude its exercise or further exercise.

8.3 Service of Notices

A notice under this Agreement:

- (1) must be given in writing; and
- (2) may be delivered personally, posted, transmitted by facsimile or sent by email, to the intended recipient's Address for Notices.

8.4 Receipt of Notices

- (1) A notice delivered personally will be deemed received at the moment of personal delivery.

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- (2) A notice sent by post will be deemed received 3 Business Days after it is posted.
- (3) A notice sent by facsimile transmission will be deemed received at the time specified in a confirmation report, if the report discloses that the transmission was received before 5.00pm. If the confirmation report discloses that the transmission was received after 5.00pm, the notice will be deemed received at 8.30am on the next business day following the date of receipt disclosed in the report.
- (4) A notice sent to the email address of the other party or its solicitor stated in the Reference Schedule (or another email address notified by the recipient to the sender) will be deemed delivered at the time it is sent.

8.5 Legal Expenses and Duties

- (1) Each party must bear its own legal expenses in relation to the negotiation, preparation, stamping and execution of this Agreement.
- (2) The Buyer, however, must bear and indemnify the Seller against all transfer duty assessed upon this Agreement and the Transfer, including any UTI.
- (3) The Buyer also must pay the cost of registering the Transfer.

PART 9: GUARANTEE (APPLICABLE TO CORPORATE BUYERS)

9.1 In the event that the Buyer is a company, this special condition applies and Guarantor means, jointly and severally, such of the directors of the Buyer as executes this Agreement.

- (1) In consideration of the Seller entering this Agreement, the Guarantor, by signing of this Agreement expressly and unconditionally guarantees to the Seller:
 - (a) the due and punctual payment by the Buyer to the Seller of the Purchase Price and of all moneys which are or may become owing or payable by the Buyer to the Seller under this Agreement; and
 - (b) the due and punctual performance by the Buyer of all of the terms, conditions, covenants and obligations contained under this Agreement.
- (2) The Guarantor indemnifies and keeps indemnified the Seller against all loss, damage, cost, and expense which may be suffered or incurred by the Seller due to any default by the Buyer under any of the provisions of this Agreement.
- (3) This Guarantee shall be enforceable against the Guarantor and if more than one jointly and severally. Notwithstanding the fact that this instrument of guarantee may be intended or expressed to be executed or given by more than one person the same shall, in fact, be a valid, effectual and binding against such person or persons as shall execute the same forthwith upon their execution and shall continue to be binding as against such person or persons notwithstanding the fact that any proposed or contemplated party shall not in fact subsequently execute the same.
- (4) This Guarantee continues and remains in full force and effect despite the liquidation of the Buyer or the appointment of an external controller to the Buyer until the whole of the Purchase Price and all other moneys payable to the Seller under the terms of this Agreement have been paid and satisfied in full.
- (5) Any discharge, extinguishment or postponement by liquidation, operation of laws, act of the Parties or otherwise, of the whole or any part of the indebtedness of the Buyer to the Seller will not impair or affect the liability of the Guarantor.
- (6) This special condition and the guarantee do not merge on Settlement of this Agreement.

PART 10: LOCAL LAW 17

10.1 Where indicated in Item 13, this contract is a contract to which section 15 of Local Law 17 applies.

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- 10.2 The actual specified work (insofar as that term is defined in Local Law 15) that is completely or partly situated on, or connected to, the Land is as set out in Item 13.
- 10.3 Under Local Law 17, a person who is a “responsible person” (as that term is defined in Local Law 17) for the specified prescribed work is (at that person’s cost) required to maintain and keep the specified prescribed work in:
- (1) A safe condition; and
 - (2) Good working order, repair and condition, including so that the prescribed work can continue to perform its intended function.
- 10.4 Whether there is any outstanding notice issued by the Council of the City of Gold Coast under Local Law 17 in relation to the actual specified work is set forth in Item 13. The contents of any such notice are attached to this contract.
- 10.5 The Seller will not comply with the terms of any such notice before or after settlement of this contract and it will be and remain the obligation of the Buyer.
- 10.6 For the avoidance of doubt, the expressions “actual specified work”, “specified prescribed work” and “prescribed work” are as used in section 15 of Local Law 17 and this special condition must be read accordingly.

PART 11: FOREIGN RESIDENT CAPITAL GAINS WITHHOLDING

11.1 If both the following apply:

- (1) The sale is not an excluded transaction under s14-215 of the Withholding Law; and
- (2) The Seller has not given the Buyer on or before Settlement Date for each person compromising the Seller either:
 - (a) An ATO Clearance Certificate under s14-220 of the Withholding Law; or
 - (b) A variation notice under s14-235 of the Withholding Law which remains current at the Settlement Date varying the CGT Withholding Amount to nil,

then:

- (3) The Seller may direct, under clause 4.3, the Buyer to draw a bank cheque for the CGT Withholding Amount in favour of the Deputy Commissioner of Taxation;
- (4) The Buyer must lodge a *Foreign Resident Capital Gains Withholding Purchaser Notification Form* with the ATO for each person comprising the Buyer and give copies to the Seller with the payment reference numbers (PRN) on or before Settlement Date; and
- (5) The Seller must return the bank cheque in clause 11.1(3) to the Buyer’s solicitor (or if there is no Buyer’s Solicitor, the Buyer) at Settlement; and
- (6) The Buyer must pay the CGT Withholding Amount to the Commissioner of Taxation in accordance with s14-200 of the Withholding Law and give the Seller evidence that it has done so within 2 Business Days of Settlement occurring.

PART 12: GST WITHHOLDING

12.1 If the Seller has given the Buyer notice in accordance with section 14-255(1) of the Withholding Law that the Buyer is required to pay the GST Withholding Amount to the Commissioner of Taxation at Settlement pursuant to section 14-250 of the Withholding Law:

- (1) prior to Settlement Date the Buyer must lodge with the ATO:
 - (a) a *GST Property Settlement Withholding Notification* form (“Form 1”); and
 - (b) a *GST Property Settlement Date Confirmation* form (“Form 2”);
- (2) on or before the Settlement Date, the Buyer must give the Seller copies of:

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- (a) the Form 1;
 - (b) confirmation from the ATO that the Form 1 has been lodged specifying the Buyer's lodgement reference number and payment reference number; and
 - (c) confirmation from the ATO that the Form 2 has been lodged; and
 - (d) a completed ATO payment slip for the GST Withholding Amount;
- (3) the Seller irrevocably directs the Buyer to draw a bank cheque for the GST Withholding Amount in favour of the Deputy Commissioner of Taxation and deliver it to the Seller at Settlement; and
- (4) the Seller must pay the GST Withholding Amount to the ATO in compliance with section 14-250 of the Withholding Law promptly after Settlement.
- 12.2 The Buyer warrants that the statements made by the Buyer in Item 14 of this Agreement are true and correct.

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EXECUTION

EXECUTED by the Council of the City of Gold Coast by _____, an authorised officer, as Seller in the presence of:]]]

.....
Witness

This contract may be subject to a 5 business day statutory cooling off period. A termination penalty of 0.25% of the purchase price applies if the Buyer terminates the contract during the statutory cooling off period. It is recommended the Buyer obtain an independent property valuation and independent legal advice about the contract and his or her cooling off rights before signing.

EXECUTED by _____]
as Buyer in the presence of:]]

.....
Witness

EXECUTED by _____]
as Buyer in the presence of:]]

.....
Witness

EXECUTED by _____]
as Buyer in the presence of:]]

.....
Witness

EXECUTED for and on behalf of _____]
] Signature of Director
] _____]
in accordance with s.127 of the Corporations Act 2001 (Cth), as Buyer in the presence of:] Full name of Director

.....
Signature of Director / Secretary

.....
Full name of Director / Secretary

Contract of Sale

Local Government Regulation 2012 (Qld)
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EXECUTED for and on behalf of _____]
_____]]
_____]
in accordance with s.126 of the *Corporations*]
Act 2001 (Cth), as Buyer in the presence of:]

.....
Signature of agent
.....
Full name of agent
.....
Position of agent

.....
Signature of Witness

.....
Full Name of Witness

EXECUTED by _____]
as Guarantor in the presence of:]

.....

.....
Witness

EXECUTED by _____]
as Guarantor in the presence of:]

.....

.....
Witness

EXECUTED by the **Council of the City of Gold Coast** by _____, an authorised officer, as Stakeholder in the presence of:]

]
.....

.....
Witness