

# Useful Clauses 2013

*July 2013*

*Revised August 2018*

**REINZ** | REAL ESTATE  
INSTITUTE OF  
NEW ZEALAND



NEW ZEALAND  
LAW SOCIETY

NZLS EST 1869

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# Introduction

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Clauses in this booklet are drafted for use with the ADLS / REINZ Agreement for Sale and Purchase of Real Estate. The Real Estate Institute of New Zealand (REINZ) first published this booklet in 1957 under the title Bulletin on Sales Agreements and has republished several editions since.

This 2013 edition has been prepared by REINZ and the New Zealand Law Society (NZLS) in collaboration, in order to benefit members of both organisations and the wider community.

Real estate agents are invited to contact REINZ and lawyers are invited to contact NZLS with any questions relating to this booklet.

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# Important matters

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The clauses contained in this booklet relate primarily to the sale and purchase of real estate and are drafted principally to be used in conjunction with, and inserted as clauses in, the “Further Terms of Sale” section of the ADLS/REINZ Agreement for Sale and Purchase of Real Estate Ninth Edition ONLY and no other edition of that form.

Caution should be exercised when inserting any clauses in other ADLS/REINZ agreement forms (e.g. Auction or Tender forms) or in Agreements for Sale and Purchase other than the ADLS/REINZ Ninth Edition.

Clauses inserted in the Further Terms of Sale will need to be appropriately renumbered, as also will reference in any clause to another clause in the Further Terms of Sale.

Where a clause in the Further Terms of Sale is intended to override a provision in the General Terms, rather than delete the relevant clause in the General Terms, it is preferable for the special term to contain a sentence to the following effect:

*Clause [ . . . . . ] of the General Terms is hereby negated.*

Under the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012, an agent must recommend a vendor or purchaser to seek legal advice before they enter into an Agreement for Sale and Purchase. However, in addition to this general obligation, the notes to some of the clauses suggest that specific legal advice should be obtained in relation to the clause concerned. Further, the notes are not intended to be taken as a substitute for obtaining professional advice.

The clauses in this booklet will be updated from time to time, and in particular in conjunction with any new edition of the ADLS/REINZ Agreement for Sale and Purchase form.

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## Part A

# Conditions

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### A 1 Sale of the Purchaser's Property

- 1.1 This agreement is conditional upon the purchaser obtaining an unconditional agreement for the sale of the purchaser's property situated at [ADDRESS], for [\$.....] or such lesser amount as the purchaser accepts on terms and conditions acceptable to the purchaser by [DATE]. This condition is inserted for the sole benefit of the purchaser.

**Note:** Care must be taken to ensure that any agreement entered into by the purchaser takes into account the standard time limits in this agreement. The normal cut-off time for satisfying conditions is 5.00pm (see clauses 1.1(32) and 1.2(2) of the General Terms of Sale. If in doubt specific legal advice should be obtained).

### A 2 Purchaser's Existing Property Sale Being Declared Unconditional

- 2.1 This agreement is conditional upon the existing agreement dated [DATE] for the sale of the purchaser's property situated at [ADDRESS] to [NAME] becoming unconditional by [DATE]. This condition is inserted for the sole benefit of the purchaser.

**Note:** Care must be taken when using this clause to ensure that it is correctly linked to the time limits in the purchaser's existing conditional contract and that there is sufficient time after the time limit set in that agreement to communicate acceptance to the vendor under this contract. The normal cut-off time for satisfying conditions is 5.00pm (see clauses 1.1(32) and 1.2(2) of the General Terms of Sale. If in doubt specific legal advice should be obtained).

## A 3 Settlement of Purchaser's Sale

- 3.1 This agreement is conditional upon the agreement for the sale of the purchaser's property situated at [ADDRESS], settling in terms of that agreement on or before [DATE] or / within [.....] working days of the date of this agreement (DELETE ONE). This condition is inserted for the sole benefit of the purchaser.

## A 4 Expiry of Prior Option

- 4.1 This agreement is conditional upon the existing option over the property previously granted by the vendor to [NAME OF THE OPTION HOLDER] not being exercised by [DATE]. This condition is inserted for the sole benefit of the vendor.

**Note:** Care must be taken to ensure that there is a proper linkage between the time limits in the first option and in this agreement and in the event of doubt legal advice should be obtained. (See clauses 1.1(32) and 1.2(2) of the General Terms of Sale.)

## A 5 Obtaining Finance

- 5.1 This agreement is conditional upon the purchaser arranging finance by [DATE] or / within [.....] working days of the date of this agreement (DELETE ONE), of an amount of [\$.....] or / [.....%] of the purchase price (DELETE ONE) by way of a first mortgage to be secured against the property from [NAME OF LENDER] or a similar lending institution on terms satisfactory to the purchaser. This condition is inserted for the sole benefit of the purchaser.

**Note:** If the specific Finance condition particulars in the Conditions section on the front page of the agreement are completed, a clause of this nature would not be required.

The Finance condition contained in the Conditions section, or in the clause above, (whichever is used), must be completed with caution. They both have the effect of binding the purchaser to the financial arrangements as stated, something that should be clearly explained to the purchaser.

## A 6 Lawyer's Approval

- 6.1 This agreement is conditional upon the approval in all respects of the lawyer for the vendor or / purchaser (DELETE ONE) who may take into

account the commercial and conveyancing aspects of this agreement and any other matters which the lawyer considers are relevant. The lawyer is entitled in his or her absolute discretion to give or withhold approval. This condition has been inserted for the benefit of the vendor or / purchaser (**DELETE ONE**) and is to be satisfied by **[DATE]** or / within **[.....]** working days of the date of this agreement (**DELETE ONE**).

**Note:** If in doubt specific legal advice should be sought by the parties. If there is to be a requirement for full lawyer approval then a due diligence clause may be more appropriate. In a number of cases, the Courts have held that a "Lawyer's Approval" clause permits withdrawal from an agreement only by reason of legal issues and not for other reasons.

## **A 7    Lawyer's Approval as to Title**

- 7.1**    This agreement is conditional upon the purchaser's lawyer approving in all respects the title and all encumbrances and other interests or instruments registered against the title to the property by **[DATE]** or / within **[.....]** working days of the date of this agreement (**DELETE ONE**). This condition is inserted for the sole benefit of the purchaser and is in substitution for the right of requisition pursuant to clause 6.0 of the General Terms of Sale.

**Note:** This "Lawyer's Approval" clause is limited to matters of title. The parties should seek specific legal advice before including this condition.

## **A 8    Obtaining Building Report – Vendor Given Right to Remedy**

- 8.1**    This agreement is conditional upon the purchaser obtaining and approving a report on the condition of any building(s) on the property including but not limited to weather tightness and structural integrity. The purchaser must obtain the report from a suitably qualified building inspector at the purchaser's cost. The vendor must upon request:
- (a)    allow the building inspector engaged by the purchaser full access to the property for the purposes of the inspection; and
  - (b)    upon request by the purchaser provide any information held on the property relevant to the inspection.
- 8.2**    If the purchaser does not approve the report the purchaser must provide a copy of the report to the vendor and give notice to the vendor ("purchaser's

notice”) on or before [DATE] or / within [.....] working days of the date of this agreement (DELETE ONE) stating the particular matters in respect of which approval is withheld and, if those matters are reasonably capable of remedy, what the purchaser requires the vendor to do to remedy those matters. If the purchaser does not give the purchaser’s notice within the time specified above the purchaser will be deemed to have approved the report.

8.3 The vendor must give notice to the purchaser (“vendor’s notice”) within 5 working days of the receipt of the purchaser’s notice advising whether or not the vendor is willing and able to comply with the purchaser’s notice by the settlement date. If the vendor does not give a vendor’s notice accordingly, or if the vendor’s notice states that the vendor is unable or unwilling to comply with the purchaser’s notice and if the purchaser does not, within 5 working days of receipt of the vendor’s notice, give notice to the vendor that the purchaser waives the requirements contained in the purchaser’s notice, this condition will not have been fulfilled and the provisions of clause 10.8(5) of the General Terms of Sale will apply.

8.4 If the vendor gives a vendor’s notice advising that the vendor is able and willing to comply with the purchaser’s notice, this condition is deemed to have been fulfilled and it will be a requirement of settlement that all the requirements contained in the purchaser’s notice are complied with. The vendor must obtain any necessary approvals or consents of the local authority in respect of the work and comply with any terms or conditions of such approvals or consents.

8.5 The building inspector may open up or otherwise expose for inspection, recording, measuring or testing (“Inspection”) any parts of the building(s) on the property. The purchaser must ensure that any damage to the building(s) occasioned by the Inspection is made good in a proper and workmanlike manner.

**Note:**

1. The specific working days and the time limits for rectification should provide an appropriate time for a settlement date which works in with the dates referred to and the agent preparing the agreement with these dates needs to take account of those dates in the same manner as with a LIM clause. This clause can be modified for other types of specialist reports such as valuation, geotechnical and engineering reports.
2. Clause A8.5 should be omitted if an invasive inspection is not required.

## A 9 Building Inspection

**9.1** This agreement is conditional upon the purchaser obtaining a building inspection report and being satisfied with the condition of any building(s) on the property by 5pm on [DATE]. In the event that the purchaser is dissatisfied with any aspect of the report the purchaser may by notice in writing terminate this agreement and in such case any deposit paid must immediately be refunded in full. This clause is inserted for the sole benefit of the purchaser.

The vendor undertakes and agrees to:

- (a) allow the building inspector employed by the purchaser full access to the property for the purposes of the inspection; and
- (b) upon request to the purchaser provide any information held on the property relevant to the inspection.

**9.2** The building inspector may open up or otherwise expose for inspection, recording, measuring or testing ("Inspection") any part of the building(s) on the property. The purchaser must ensure that any damage to the building(s) occasioned by the Inspection is made good in a proper and workmanlike manner.

### Note:

- 1. This clause provides for access for specialists.
- 2. Clause A 9.2 should be omitted if an invasive inspection is not required.

## A 10 Obtaining Approvals and/or Resource Consent

**10.1** This agreement is conditional upon the vendor or / purchaser (DELETE ONE) obtaining at that party's own cost from the relevant local authority such approvals or consents as are required to carry out the works or development in respect of the property which that party has agreed to carry out. Such consents or permits are to be obtained upon terms and conditions acceptable to the party making the application for the consent. The party responsible must promptly make application for such consents or permits. Such consents or permits are to be obtained on or before [DATE] or / within [.....] working days of the date of this agreement (DELETE ONE). This condition is inserted for the sole benefit of the vendor or / purchaser (DELETE ONE).

**Note:** It is advisable for both parties to obtain specific legal advice before agreeing to this condition and specify the agreed work that is to be carried out.

## A 11 Director / Trustee Ratification

- 11.1 The obligations of the purchaser under this agreement are suspended until the agreement has been ratified by the Directors / Trustees of the purchaser. In deciding whether to ratify the agreement, the Directors / Trustees may take into account the commercial and conveyancing aspects of the agreement and such other matters as the Directors / Trustees consider are relevant. If such ratification is not given in writing by the purchaser to the vendor on or before 5.00pm on the [..... ] working day after the date of this agreement, this agreement will be void and all moneys paid under it must be refunded and neither party will have any claim against the other. This condition is inserted for the sole benefit of the purchaser.

## A 12 Third Party Consent

- 12.1 This agreement is conditional upon the vendor obtaining written consent to this sale on terms satisfactory to the vendor from [.....] on or before [DATE] or / within [.....] working days of the date of this agreement (DELETE ONE). This condition is inserted for the sole benefit of the vendor.

## A 13 Vendor Acquiring Another Property

- 13.1 This agreement is conditional upon the vendor entering into an agreement to purchase another property of the vendor's choice and upon that agreement becoming unconditional on or before [DATE] or / within [.....] working days of the date of this agreement (DELETE ONE). This condition is inserted for the sole benefit of the vendor.

**Note:** It is advisable for both parties to obtain legal advice before agreeing to this condition – especially the purchaser as this will bind the purchaser until such time as the vendor has obtained alternative property suitable to themselves.

## A 14 Internal Inspection of Property

- 14.1** This agreement is conditional upon the purchaser inspecting and approving the state of repair and condition of the interior of the property on or before [DATE] or / within [.....] working days of the date of this agreement (*DELETE ONE*). This condition is inserted on the basis that the purchaser has entered into this agreement before being able to obtain access to the interior of the property for inspection. The purchaser's rights pursuant to clause 3.2 of the General Terms of Sale continue notwithstanding that this condition is satisfied. This condition is inserted for the sole benefit of the purchaser and either party may exercise their rights under clause 10.8(5) of the General Terms of Sale if this condition is not fulfilled.

**Note:** This clause should be used with caution as it allows the purchaser a wide discretion to bring the contract to an end. However, it may be appropriate where the purchaser has made an offer but has not yet inspected the inside of the property.

## A 15 Due Diligence (Long)

- 15.1** This agreement is conditional upon the purchaser, at the purchaser's sole discretion, being satisfied with the results of the purchaser's due diligence investigation as to the suitability of the property for the purchaser's intended use. Such investigation may include, but is not limited to, the following matters:

- 15.1.1** The soundness, suitability and value of the property and any buildings situated on it; and
- 15.1.2** The suitability of the terms of the local authority's District and Regional Plans, relevant to the intended use of the property by the purchaser; and
- 15.1.3** The location of any buildings in relation to the boundaries of the land and any other survey matters; and
- 15.1.4** Any engineering aspects of the property and buildings on the land taking into account both the current state of the property and buildings and any potential development of the property and buildings; and
- 15.1.5** Such other matters as the purchaser in the purchaser's sole discretion determines as relevant to the purchaser's intended use and benefit of the property

**15.2** The vendor must cooperate with the purchaser in respect of the due diligence enquiry including by:

- (a) providing any relevant information, reports and documentation held by or available to the vendor that will enable the purchaser to better undertake the enquiry; and
- (b) allowing the purchaser together with the purchaser's consultants full access to the property for the purposes of the enquiry.

**15.3** The date for satisfaction of this condition is on or before [DATE] or / within [.....] working days of the date of this agreement (~~DELETE ONE~~). If this condition is not satisfied by that date then, this agreement is at an end and all moneys paid under it must be refunded and neither party will have any claim against the other. This condition is inserted for the sole benefit of the purchaser.

**Note:** This clause may need alteration depending on the parties' circumstances and preferences. Also note that this clause does not necessarily protect the agent against claims by purchasers under the Real Estate Agents Act (Professional Conduct and Client Care) Rules.

## **A 16 Due Diligence (Short)**

**16.1** This agreement is conditional upon the purchaser being satisfied with the results of a due diligence investigation of the property and the purchaser's intended development of it by 5pm on [DATE]. If the purchaser is dissatisfied with any aspect of this investigation the purchaser may at the purchaser's absolute discretion by notice in writing terminate this agreement and in such case any deposit paid must immediately be refunded in full. This clause is inserted for the sole benefit of the purchaser and the purchaser is under no obligation whatsoever to supply any reasons for the purchaser's dissatisfaction with any aspect of the investigation.

The vendor undertakes and agrees to:

- (a) allow the purchaser together with consultants employed by the purchaser full access to the property for the purposes of the due diligence investigation; and
- (b) provide to the purchaser any information held relating to the property relevant to the due diligence investigation.

**Note:** This clause does not necessarily exonerate the agent where the agent is aware of any defects or likely defects in the property. The agent is still obliged to comply with the duties under the Real Estate Agents Act (Professional Conduct and Client Care) Rules.

## A 17 Escape Clause

- 17.1** If before this agreement becomes unconditional the vendor receives an acceptable offer from a third party to purchase the property, then the vendor may serve on the purchaser a notice requiring the purchaser to advise within [.....] working days after service of the notice whether all conditions for the benefit of the purchaser have been satisfied or waived and whether the requisition procedure in clause 6.0 of the General Terms of Sale has been completed to the purchaser's satisfaction. If the purchaser does not notify the vendor within the period set out above that the above matters have all been satisfied and that this agreement is accordingly unconditional, then this agreement will immediately terminate.

**Note:** This clause is sometimes required by a vendor before accepting a conditional offer. Care must be taken to ensure that there is a proper linkage between the original agreement and the "back-up" agreement. Clause A17 above is inserted in the first agreement and clause A18 below is inserted in any "back-up" agreement. A letter exercising the notice provision in clause A17 should be prepared by the vendor's lawyer. The vendor should be asked to decide whether or not a conditional back-up offer should be able to trigger the escape clause.

## A 18 Cancellation of Prior Agreement

- 18.1** This agreement is conditional on the cancellation of the prior agreement referred to below ("Prior Agreement").
- 18.2** The vendor must not (without obtaining the prior written consent of the purchaser):
- (a) extend any of the conditional dates in the Prior Agreement; or
  - (b) waive any right of the vendor to cancel the Prior Agreement.
- 18.3** The vendor must cancel the Prior Agreement as soon as the vendor is lawfully entitled to do so.
- 18.4** The Prior Agreement is an agreement for the sale of the property by the vendor to [.....] dated [DATE].

## A 19 On-Sale of Property by Vendor

- 19.1** The parties acknowledge and the vendor warrants that the vendor has entered into an agreement dated [DATE] to purchase the property (“First Agreement”) and that the First Agreement is conditional until [DATE].
- 19.2** This agreement is conditional on the First Agreement being declared unconditional in all respects. Any deposit paid by the purchaser under this agreement must be held by the agent as stakeholder until such time as the vendor has advised the purchaser that the vendor under the First Agreement is ready, willing and able to settle under that agreement.
- 19.3** The parties acknowledge that the vendor has disclosed any provisions contained in the First Agreement that may affect the property and the vendor warrants that all such provisions have been disclosed.

**Note:** It must be clearly explained to the vendor that he/she/it is not assigning the First Agreement but rather is entering into a separate contract with the purchaser and that the vendor must carry out his/her/its obligations under both contracts, the first as purchaser and the second as vendor.

## Part B

# Specific contractual terms

---

### B 1 Contemporaneous Settlement

- 1.1 This agreement and another agreement dated [DATE] made between the same parties and affecting the property at [.....] are to be read together and are interdependent. Settlement under each agreement must take place contemporaneously.

**Note:** If the same agent is acting for both parties under two interdependent agreements and collecting a commission from both transactions care needs to be taken to ensure that both principals are aware and acknowledge in writing that the agent is acting for and receiving commission from both parties. The suggested wording for an acknowledgement, which can be annexed to the agreement for sale and purchase is:

"To: [NAME OF AGENT]

I acknowledge that you have disclosed to me that you are also acting as agent for [OTHER PARTY'S NAME] in the transaction that is interdependent with the transaction in which you are my agent and that you may be receiving a commission from the vendors in both transactions. With full knowledge of these circumstances, I consent to you continuing to act for both parties and receiving commissions from both."

### B 2 Deadline for Acceptance of Offer

- 2.1 This offer by the purchaser is open for acceptance by the vendor by [.....AM/PM] on [DATE]. If by that time, the vendor has not accepted the offer by signing this agreement and giving written notice of such

acceptance to the purchaser or the purchaser's lawyer then this offer will lapse and have no further legal effect and neither party will have any claim against the other.

**Note:**

1. It must be clearly explained to the parties that the agreement is not binding on either party until the vendor has notified the purchaser or the purchaser's lawyer in writing, as noted in this clause.
2. There is an issue as to whether it is appropriate to insert a clause of this kind in the agreement as it is a term of the offer and not of the agreement. Further, once the agreement comes into force the clause will have no effect. It may be preferable to include the provision in a letter or memo which accompanies the purchaser's offer. Specific legal advice should be sought.

### **B 3 Disclaimer (General)**

- 3.1** Despite any other provision in this agreement, the purchaser acknowledges and agrees that the vendor (and any agent of the vendor) has no liability to the purchaser for any representations made by anyone concerning any issue under the Resource Management Act 1991 and/or Building Act 2004 (*DELETE AS APPLICABLE*) with regard to the property or any buildings (as defined in the Building Act 2004) erected thereon. The purchaser will not have any claim or right of recovery against the vendor or the vendor's agent in respect of any such representation, however made.

**Note:** This exclusion clause does not necessarily protect the vendor nor the agent. Courts can disregard such a disclaimer under the Contractual Remedies Act unless the circumstances are such that the clause should be upheld and it will not necessarily protect the agent if claims are made under the Fair Trading Act or a complaint is lodged under the Real Estate Agents Act.

### **B 4 Disclaimer as to Weathertightness and Integrity of Materials of the Property**

- 4.1** Despite any other provision in this agreement, the purchaser acknowledges that no representation has been made by the vendor on which the purchaser is relying concerning the condition of the property including but not limited to the weather tightness or structural integrity of both the property and the materials in the property. The purchaser enters into this agreement solely in reliance on the purchaser's own judgement. The purchaser will not have any right of

recovery against the vendor or the vendor's agent in respect of any such representation, however made.

**Note:** This exclusion clause does not necessarily protect the vendor nor the agent. Courts can disregard such a disclaimer under the Contractual Remedies Act unless the circumstances are such that the clause should be upheld and it will not necessarily protect the agent if claims are made under the Fair Trading Act or a complaint is lodged under the Real Estate Agents Act.

## B 5 Disclosure of Non-Compliance

- 5.1 Despite any other provision in this agreement, the purchaser acknowledges and accepts that the purchaser has been fully informed that certain aspects specified by the vendor in respect of the property or buildings (as defined in the Building Act 2004) may not comply with the Building Act or the Building Code and that there is no building permit, building consent, resource consent, code compliance certificate, certificate of acceptance or final sign off for any building permits (if applicable), in respect of the property or building works carried out thereon. Accordingly, the vendor's warranties under clause 7 of the General Terms of Sale are hereby negated. The purchaser enters into this agreement and accepts the property on this express understanding and will have no claim against the vendor under the vendor's warranties pursuant to clause 7 with regards to the Building Act and the Building Code nor will the purchaser have the right to issue a purchaser's notice pursuant to clause 10.2(2) of the General Terms of Sale in respect of any matters relating to the non-compliance with the Resource Management Act 1991, Building Act or the Building Code.

**Note:** This clause does not necessarily protect the agent. If this clause is used it is recommended the particular work that is non-compliant is defined or explained in the clause. The agent will still be expected to comply with the Real Estate Agents Act (Professional Conduct and Client Care) Rules.

## B 6 Property Awaiting Code Compliance Certificate

- 6.1 The vendor must, at the vendor's cost in all respects, make application for and obtain a code compliance certificate for the property. Where necessary, the vendor must at the vendor's cost in all respects carry out such work as is required in order to obtain the code compliance certificate. The code compliance certificate must be obtained by the vendor prior to, and as a requirement of, settlement and the vendor must provide a

copy of the code compliance certificate to the purchaser immediately upon it being granted to the vendor.

- 6.2 The purchaser must settle within [.....] working days of the vendor providing a copy of the code compliance certificate to the purchaser, or on settlement date, whichever is the later.
- 6.3 If the vendor is unable to obtain a code compliance certificate within [.....] months of the date of this agreement, the purchaser may cancel this agreement in which case the vendor must refund to the purchaser the deposit in full. Upon the refund of the deposit, this agreement will be at an end and neither party will have any further claim against the other.

**Note:** If the above clause is used then on the front page of the agreement after the settlement date insert "subject to clause [CLAUSE NUMBER] in the Further Terms of Sale". Also note that alteration to this clause may be necessary in situations where the vendor is unable to obtain a code compliance certificate from the relevant territorial authority and may wish to refer to a certificate of acceptance or safe & sanitary report instead, for example. It is recommended to state the particular work that is to be undertaken in this clause. This clause is designed to cover the position where work has been carried out but a code compliance certificate has not been obtained.

## B 7 Leasehold – Purchaser's Acknowledgment

- 7.1 The purchaser is aware that the land is held under a perpetually renewable ground lease from [.....] as Lessor. The lease is renewable every [.....] years with the present term expiring on [DATE]. The current rental is [\$.....] per annum. The lease provides for review of the rental every [.....] years with the next rent review date being [DATE].
- 7.2 This agreement is conditional upon any necessary consent of the Lessor to the assignment of the lease from the vendor to the purchaser, which consent must be obtained by the vendor at the vendor's expense on or before the settlement date.

## B 8 Lowest Cash Price

- 8.1 The purchase price for the property is the lowest price that the parties would have agreed upon for the property at the date this agreement is

entered into under the rules relating to the accrual treatment of income and expenditure in the Income Tax Act 2007 and on that basis no income or expenditure arises in respect of the sale and purchase of the property under those rules and the purchase price does not contain any capitalised interest.

**Note:** This clause is to be used for a lengthy, delayed settlement.

## **B 9 Variation of Purchase Price**

**9.1** The purchase price is that provided in this agreement or such increased purchase price determined by the Inland Revenue Department as being the market price for the property.

OR

**9.2** If at any time the Inland Revenue Department (IRD) considers the purchase price recorded in this agreement is inadequate or excessive, then if both the vendor and the purchaser agree, they may, provided that settlement has not taken place:

- (a) Terminate this agreement; or
- (b) Adjust the purchase price to that approved by the IRD; or
- (c) Adjust the purchase price to that agreed between themselves.

**Note:** This clause is used when a property is transferred to/from a Trust. It is essential that the parties have legal advice if a Trust is involved in the transaction.

## **B 10 Purchaser's Waiver of Requisition**

**10.1** The purchaser accepts the vendor's title and acknowledges that the purchaser has no right to object to or requisition the vendor's title under clauses 6.2 or 6.3 of the General Terms of Sale. Furthermore sub-clause 2.4(1) of the General Terms of Sale is hereby negated.

**Note:** It is advisable that the agent first ensures that the purchaser obtains specific legal advice before agreeing to this condition.

## **B 11 Probate – Sale by an Estate**

**11.1** The vendors have signed this agreement as executors of the estate of the registered proprietor. Settlement cannot occur until such time as probate

has been granted by the High Court. Pending the grant of probate the purchaser has two options, namely:

- (a) To take possession of the property under an Occupation Licence on the terms and conditions set out below; or
- (b) To take possession of the property upon payment of the balance of the purchase price to the vendors' lawyer's trust account, to be held in escrow by the vendors' lawyer, pending the grant of probate and the vendors' ability to pass clear title to the purchaser. Any interest earned on the balance of the purchase price held in the vendors' lawyer's trust account as set out in this clause will accrue to the benefit of the vendors.

**11.2** Prior to taking possession of the property the purchaser must provide to the vendors an undertaking that the purchaser will settle on the settlement date in full and without deduction.

**11.3** While the purchaser is in possession of the property the purchaser must:

- (a) Occupy the property as a licensee;
- (b) Maintain the property in the same state of repair and condition as at the date of commencement of possession;
- (c) Meet the cost of all utilities in respect of the property;
- (d) Make no alterations or additions to the property;
- (e) Not carry out any act or thing which might invalidate the vendors' insurance; and
- (f) Comply with all the terms and conditions of the Occupation Licence.

**Note:** It is preferable that the parties have specific legal advice when inserting this clause in the agreement. With clause B11, the parties may prefer to set the settlement date as [.....] working days after the vendor has notified the purchaser that Probate has been granted by the High Court.

## **B 12 Guarantee of Purchaser's Obligations**

**12.1** In consideration of the vendor entering into this agreement at the request of the guarantor (as the guarantor acknowledges) the guarantor unconditionally and irrevocably guarantees to the vendor the due and punctual performance of all of the obligations of the purchaser under this agreement. The liability of the guarantor under this guarantee constitutes

a principal obligation of the guarantor and that liability is not relieved or in any way affected in a manner prejudicial to the vendor by any granting of time, waiver or forbearance to sue by the vendor or by any other act, omission, matter, circumstance or thing whereby the guarantor as a surety only would, but for the provisions of this clause, have been released from liability.

- 12.2 The guarantor indemnifies the vendor from and against any loss, claim, demand, cost, action or proceeding whatsoever which the vendor may incur or suffer resulting from default by the purchaser in compliance with any of the obligations of the purchaser under this agreement.
- 12.3 No release, delay or other indulgence given by the vendor to the purchaser or other alteration in the terms of this agreement or any other thing by which the guarantor would have been released if the guarantor had been a surety only will release, prejudice or affect the liability of the guarantor as guarantor or indemnifier.

**Note:** If this clause is used, there should be a separate execution clause by the guarantor who must sign the agreement. The vendor's lawyer should review this clause before including it in the agreement. The guarantor may need to obtain independent legal advice prior to signing.

## B 13 Confidentiality

- 13.1 No party to this agreement may divulge the existence or details of this agreement to any other party without the prior written consent of the other party unless either party, acting reasonably, considers that it is necessary to divulge to their respective legal advisors, the purchaser's financier or the purchaser's other advisors such particulars as are necessary for the purchaser to satisfy the conditions contained in this agreement. The obligations in this clause continue in force until such time as the parties agree that the existence of this agreement and the information contained in it is no longer confidential. If the agreement is terminated and settlement does not occur, a party must, if requested by the other party, return to that party any information supplied by that party in respect of this agreement.
- 13.2 Clause [13.1] above does not prevent the agent from providing statistical data from this agreement to the Real Estate Institute of New Zealand Incorporated.

## B 14 Facsimile and Electronic Execution

**14.1** This agreement may be constituted by each party signing a copy and forwarding it to the other party by facsimile. Each party agrees to subsequently deliver their respective signed copy to the other party if required on the basis that all parts of the agreement will be held on behalf of both parties. This agreement may be executed in any number of counterparts and each party may execute separate counterparts. All of the counterparts together will be deemed one and the same instrument.

**14.2** This agreement will be deemed to be signed by a party if that party executes and delivers to the other party any of the following formats of the agreement:

- (a) An original; or
- (b) A copy in Portable Document Format (“PDF”) transmitted by email; or
- (c) A facsimile copy.

The delivery by a party to the other of a PDF or facsimile copy of this agreement duly executed will be deemed delivery of the original thereof and the party so delivering the PDF or facsimile copy must deliver to the other party an original within five (5) working days after delivery of the PDF or facsimile copy. If the original is not so delivered, the party accepting the PDF or facsimile copy pursuant to this clause may in any court of law or other proceeding produce, or exhibit the PDF or facsimile copy as if it were the original thereof and no party to this agreement may object to the copy being produced or exhibited as an original and will be deemed to have waived any law of evidence or other requirement that an original executed document be produced or exhibited as evidence of the existence or content of the agreement.

## B 15 No Assignment of Agreement

**15.1** The purchaser must not assign, transfer (whether by nomination or otherwise), dispose of or alienate the benefit of this agreement nor any rights or obligations under it nor nominate any other person as the transferee, except with the prior written approval of the vendor.

**Note:** ‘and/or nominee’ on the front page of the agreement must be deleted if this clause is used.

## **B 16 Access for Due Diligence**

- 16.1** The vendor must allow the purchaser's consultants and advisors to enter onto the property prior to the date for satisfying the due diligence condition and during normal working hours to undertake survey, engineering and/or geotechnical investigations required for the purchaser's future development of the property provided however that those entering onto the property must cause as little disruption to the vendor and the vendor's normal activities on the land as is reasonably possible.

## **B 17 Early Release of Deposit**

- 17.1** The parties agree to sign all documents necessary to allow the deposit to be released earlier than the statutory period prescribed in s 123 of the Real Estate Agents Act 2008.

## **B 18 Settlement in Person**

- 18.1** Despite any provision to the contrary in the General Terms of Sale, the vendor's lawyer may by giving notice to the purchaser's lawyer not less than two working days prior to the settlement date, require settlement to be effected in person. In that event payment must be made in the manner provided in clause 3.10 of the General Terms of Sale.

## **B 19 Subdivision**

- 19.1** This agreement is conditional upon the vendor at the vendor's expense obtaining a subdivisional resource consent in respect of the attached sub-divisional plan ('Subdivisional Plan') on terms and conditions which are:
- (a) usual in the circumstances; or
  - (b) not unduly prejudicial to either party; or
  - (c) acceptable to each party.
- 19.2** The date for satisfying of this condition is [DATE].
- 19.3** Once the above condition is satisfied, the vendor must at the vendor's cost and with due expedition, take all necessary steps to deposit the

Subdivisional Plan at LINZ in order to arrange for a separate title to issue in respect of the property.

- 19.4** If the Subdivisional Plan has not deposited with LINZ after the date on which the condition in clause [.....] is satisfied, the purchaser may cancel this agreement by notice in writing given to the vendor at any time prior to the purchaser receiving notice of the deposit of the Subdivisional Plan.
- 19.5** The purchaser accepts that the area and/or the measurements of the property may be adjusted on final survey. The purchaser will have no claim of any kind against the vendor as a consequence of any such variations.
- 19.6** The purchaser must not register a caveat against the title to the vendor's land prior to the issue of a separate title for the property.

## **B 20 Retention of Deposit**

- 20.1** The person to whom the deposit is paid must hold it as a stakeholder until one of the following events occurs:
- (a) settlement is effected; or
  - (b) settlement is overdue solely by reason of default by the purchaser; or
  - (c) this agreement is validly cancelled by a party.
- 20.2** Clause 2.4 of the General Terms of Sale is negated.

## **B 21 Assignment of Warranties and Guarantees**

- 21.1** The vendor must, subject to the provisions of clause [21.3], do everything necessary to assign to the purchaser on settlement the benefit of all warranties, guarantees, contracts and commitments from or with third parties in favour of the vendor ('Warranties') regarding the condition, fitness or maintenance of the property, including or relating to (in particular but not in limitation) structural soundness, weathertightness, fixtures and fittings, plant and equipment, utilities, heating ventilation and air-conditioning, and other electrical and mechanical installations on the property.
- 21.2** The vendor must upon request by the purchaser deliver to the purchaser copies of all Warranties which are in the vendor's possession or control.

- 21.3 Where the vendor is unable to assign the benefit of a Warranty without consent of the relevant third party, the vendor must use best endeavours to obtain the consent of the third party to the assignment.

## B 22 New Zealand Real Estate Trust – Terms of Use for Agencies

- 22.1 This may be accessed from the New Zealand Real Estate Trust website at *[www.realestatetrust.co.nz/termsofuse](http://www.realestatetrust.co.nz/termsofuse)*

## B 23 New Zealand Real Estate Trust – Terms of Use for Vendor and Purchaser

- 23.1 This may be accessed from the New Zealand Real Estate Trust website at *[www.realestatetrust.co.nz/termsofuse](http://www.realestatetrust.co.nz/termsofuse)*

**Note:** New Zealand Real Estate Trust and its related entities are not associated with, nor endorsed by either the Real Estate Institute of New Zealand or the New Zealand Law Society.

## Part C

# Building and construction clauses

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### C 1 Disclosure of Weathertightness Issues

- 1.1** The purchaser acknowledges and accepts the purchaser has been fully informed that the property may not be weather tight or structurally sound. Accordingly, the vendor gives no warranty with respect to the weather tightness or structural integrity of the property and the vendor's warranties under clause 7 of the General Terms of Sale do not apply. The purchaser enters into and accepts the property on this express understanding. The purchaser acknowledges that the vendor has no liability to the purchaser in relation to weather tightness or structural integrity of the property and agrees to waive any right of recovery against the vendor in respect of the same whether under clause 6.4 and/or clause 7.5 of this agreement or otherwise. The vendor must deliver to the purchaser, immediately upon receipt, any notice or demand received by the vendor (or any other information the vendor receives or becomes aware of) in respect of the weather tightness or structural integrity of the property.

**Note:** This clause does not necessarily exonerate the agent where the agent is aware of any defects or likely defects with the building and the agent is still obliged to comply with the agent's statutory duties under the Real Estate Agents Act (Professional Conduct and Client Care) Rules. The use of this clause should be limited to situations where there has been full disclosure of the risks and potential problems or actual problems with regard to the property and it is recommended to specify in this clause what has been disclosed.

## C 2 Vendor to Construct New Dwelling on the Land

- 2.1 The vendor must, at the vendor's cost in all respects, complete construction of the dwelling currently under construction on the property together with such other improvements as are identified in the vendor's plans and specifications (attached) and which are lodged with the local authority for the purpose of obtaining the necessary building consent under the Building Act 2004. The vendor must complete the construction diligently and with due expedition in accordance with best trade practices and the warranties set out under the Building Act 2004 and in accordance with the current building codes and the terms of the building consent.

**Note:** Care must be taken to make sure plans and specifications are attached to the agreement and that all signing parties initial every page of the attached plans and specifications.

## C 3 Variation to Plans and Specifications

- 3.1 The vendor reserves the right to amend, revise or alter the plans and specifications attached in such manner as the vendor considers appropriate having regard to the circumstances, and the purchaser will not be entitled to claim any compensation, damages, right of set off or to make any objection or requisition based on any such amendment, revision or alteration whether pursuant to clause 6.4 and 7.5 of the General Terms of Sale or otherwise provided that any such amendment, revision or alteration does not have a material adverse effect on the use, occupation, enjoyment or value of the property.

**Note:** Care must be taken to make sure plans and specifications are attached to the agreement and that all signing parties initial every page of the attached plans and specifications.

## C 4 Maintenance Provision

- 4.1 There is a maintenance period of [.....] days from the settlement date. The vendor must carry out, during or within a reasonable time from the expiry of the maintenance period, all maintenance work arising from faulty materials or workmanship, at the vendor's cost and in compliance with the Building Act 2004 and the Building Code, which are notified by the purchaser in writing to the vendor prior to the expiry of the maintenance period. For the avoidance of doubt the vendor will not be required to repair damage caused by other owners, the purchaser or the purchaser's

employees, contractors or visitors or caused by fire, earthquake, tempest, or other occurrence normally covered by a comprehensive insurance policy.

## C 5 Substitution of Materials

- 5.1 If any materials shown in the plans and specifications are unprocurable or are prohibited by any law, or the consequences of strict adherence are financially impractical, or if it becomes necessary or expedient for the vendor to undertake or incorporate an amendment in respect of anything shown or described in the plans and specifications, the vendor may substitute such materials with materials that are of a value and quality as near as reasonably practicable to the specified materials, provided that the changes or amendments do not result in any material adverse effect on the use, occupation, enjoyment or value of the property by the purchaser.

## C 6 Swimming Pool/Spa Pool Non-Compliance

- 6.1 The purchaser acknowledges and accepts that the swimming pool or / spa pool (**DELETE AS APPLICABLE**) situated on the property and the associated means of restricting access to it may not be:
- (a) In a proper working order and condition; and/or
  - (b) In compliance with the local authority's building bylaws or the Building Act 2004 or the Building Code; and/or
  - (c) In compliance with the local authority requirements as to swimming pool fencing and/or with the Building (Pools) Amendment Act 2016.
- 6.2 The vendor gives no warranty as to the working order and condition of the swimming pool or / spa pool (**DELETE AS APPLICABLE**) nor in respect of its compliance with the requirements of the local authority, the Building Act 2004 and the Building Code or with the local authority's fencing requirements or the Building (Pools) Amendment Act 2016. Accordingly, the vendor's warranties under clause 7 of the General Terms of Sale do not apply to the swimming pool or / spa pool (**DELETE AS APPLICABLE**) and the associated means of restricting access to it.

**Note:** Real estate agents should remember that when they are conducting open homes, they have obligations as a PCBU under the Health and Safety at Work Act 2015 and should take care, in consultation with the vendor, to

implement controls on any safety hazards (including any non-compliant pools) present at the property.

## **C 7 Vendor to Complete Work Prior to Settlement**

**7.1** Prior to settlement the vendor must carry out the following work on the property at the vendor's cost:

(a) [.....]

(b) [.....]

(c) [.....]

**7.2** All work that the vendor is to carry out will be subject to the warranties in clause 7.2(5) of the General Terms of Sale and must be carried out in a proper and competent manner in accordance with the terms of the Building Act 2004 and the Building Code and (if relevant) the terms of the building consent obtained by the vendor from the local authority. This work must be completed prior to, and as a requirement of, settlement.

**7.3** If any work that the vendor is to carry out requires a code compliance certificate, the vendor must, at the vendor's cost in all respects, carry out such work in order to be granted the code compliance certificate and make application for a code compliance certificate for the work. The code compliance certificate must be obtained by the vendor prior to, and as a requirement of, settlement and the vendor must provide a copy of the code compliance certificate to the purchaser immediately upon its receipt by the vendor.

## **C 8 Right of Entry for Construction by Purchaser**

**8.1** Upon the purchaser declaring this agreement unconditional in all respects, the vendor must permit the purchaser, together with the purchaser's agents, contractors and employees and their equipment and machinery, access to the property during normal business hours. The access will be for the express purpose of development / construction in the area marked on the plan annexed hereto.

**8.2** Upon the purchaser exercising the right of access pursuant to this clause the purchaser must pay to the vendor the sum of [\$.....] on account of the purchase price prior to commencement of the development / construction work and the purchaser will be liable for any damage to

the property caused by the purchaser or the purchaser's agents, invitees, contractors or employees.

- 8.3** The purchaser acknowledges that the proposed development / construction work is undertaken at the purchaser's sole risk and must ensure that there is an appropriate form of insurance in place for the work and must further ensure that the vendor's and the vendor's mortgagees' interests are noted on the insurance policies.

**Note:** This clause should be used with caution and it is preferable the parties have specific legal advice. The vendor must be made aware of the risks if the purchaser fails to settle and development / construction work has been carried out. It may be desirable to require the purchaser to obtain an appropriate building consent from the territorial authorities prior to commencing any work and produce such evidence to the vendor prior to granting the access. The vendor could also seek an appropriate completion bond for the work.

## **C 9** Curtilage Exemption

- 9.1** The parties agree that for the purposes of GST the value of the dwelling house on the land and the immediate surrounding curtilage is [\$......]. However, in the event that that the value of the dwelling house and curtilage or the remaining land are determined by Inland Revenue Department as being inadequate or excessive then the value must be adjusted as required or approved by the Inland Revenue Department but the total price payable for the entire property will not be adjusted.

**Note:** It is preferable for the parties to have specific legal advice when dealing with GST issues in an agreement. It is important that both parties understand their GST obligations under the agreement before the agreement is signed.

## Part D

# GST clauses

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### D 1 Formula for GST Date

- 1.1** The GST date for the purposes of clause 14 of the General Terms of Sale is [.....] working days before the date on which the vendor is to account to the Inland Revenue Department for GST or the settlement date, whichever occurs earlier. The vendor must give the purchaser not less than five (5) working days written notice of the GST date where it falls earlier than the settlement date.

**Note:** This clause should be used only in the event that the GST date on the front page of the agreement is not written in. It is advisable for both parties to obtain specific legal advice before agreeing to this condition.

### D 2 Alterations to GST Information

- 2.1** If the GST information supplied in this agreement by the purchaser is altered prior to settlement in accordance with clause 15.5 and the parties agree the price will be adjusted accordingly neither of the parties will hold the agent, its employees or contractors liable for any claims arising from this and the parties will indemnify the agent, its employees and contractors accordingly. The parties acknowledge that they have been advised to obtain independent tax advice before entering into this agreement.

**Note:** This clause does not necessarily exonerate the agent from his or her obligations under the Real Estate Agents Act (Professional Conduct and Client Care) Rules.

## Part E

# Rural

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### E 1 Crown Lease

- 1.1 This agreement is conditional upon the consent of the lessor under Crown Lease number [.....] being obtained from the relevant authority by [.....] or / within [.....] working days after the date of this agreement (*DELETE ONE*). Each party must take whatever steps are necessary or desirable to ensure the satisfaction of this condition and in particular the purchaser must provide the vendor with all reasonable assistance in this regard including providing full and prompt responses to the lessor's reasonable request(s) for information concerning the purchaser and procuring such guarantees of the lease as the lessor may reasonably require.

### E 2 Farm Management

- 2.1 The vendor must farm the property until the possession date in a manner that is in accordance with industry standards after taking into account:
- (a) The vendor's specific obligations under this agreement (if any); and
  - (b) Climatic and similar conditions which the vendor cannot control.
- 2.2 However this farm management clause does not require the vendor to carry out any seasonal work involving specific expense.

**Note:** This clause is not intended to cover such things as fertiliser application, specific weed control, cleaning ditches, cutting hedges, planting crops, re-grassing etc. Other clauses to cover those specific occurrences must be inserted in the agreement in addition.

## E 3 Top Dressing

- 3.1 Prior to settlement the vendor must, at the vendor's expense in all respects, top dress the property at the appropriate time in accordance with the normal custom in the district in which the property is situated with not less than [.....] tonnes per hectare of [.....].

**Note:** This clause should be amended if top dressing is to be undertaken on only part of the property.

## E 4 Vendor to Leave Hay for Purchaser

- 4.1 The vendor must leave for the purchaser on the possession date, at no cost to the purchaser, no less than [.....] bales of hay stored under cover.

**Note:** Because different types of baling are now used, it will be necessary to describe the type of bale.

## E 5 Autumn-Saved Pasture

- 5.1 The vendor must not later than [DATE], close up and refrain from grazing that part of the property marked "A" on the attached plan which comprises approximately [.....] hectares. That area will be for the exclusive use of the purchaser following settlement.

**Note:** Care must be taken to make sure the plan is attached to the agreement and all signing parties initial every page of the attached plan.

## E 6 Sowing Winter Feed / Pasture

- 6.1 Prior to settlement the vendor must, at the vendor's expense in all respects, cultivate, sow and fertilise [.....] hectares of winter feed or / pasture (~~DELETE ONE~~) in accordance with best farming practice in the district in which the property is situated.

## E 7 Re-Grassing

- 7.1 The vendor must, at the vendor's expense, cultivate and re-sow in grass (~~OR ALTERNATIVELY SPECIFY THE SEED TO BE SOWN~~) the area marked [.....] on the attached plan during the month of [DATE]. The type of seed must be approved by the purchaser, but the purchaser must not unreasonably withhold its consent.

- 7.2 Such re-sowing must be carried out in accordance with best farm practices with the appropriate quality and quantity of seed and fertiliser.

## E 8 Transfer of Resource Consents as to Farming Operation

- 8.1 The vendor must use the vendor's best endeavours to transfer and assign to the purchaser the rights that the vendor holds under the vendor's resource consents relating to the farming operation. Such consents may include, without limitation, the transfer of any water rights and any rights of disposal of effluent and otherwise. If such rights cannot be transferred or assigned to the purchaser then the purchaser must accept that situation and will have no claim against the vendor arising under this clause.

**Note:** See also clause 1C above (Obtaining Approvals and/or Resource Consent)

## E 9 Chattels Exclusion – Property of Sharemilker / Tenant / Manager

- 9.1 The purchaser acknowledges and accepts that the specific chattels listed below situated in the dwelling house on the property are owned by the sharemilker / tenant / farm manager and are excluded from the sale evidenced by this agreement.

The vendor must ensure that those chattels are removed from the property prior to the possession date. The chattels are as follows:

- (a) [CHATTEL]
- (b) [CHATTEL]
- (c) [CHATTEL]

## E 10 Effluent Disposal Warranty

- 10.1 The vendor warrants that the effluent disposal system on the property will, as at settlement date, meet the requirements of the local authority in all respects.

## E 11 Reservation of Forestry Rights

- 11.1 The purchaser accepts and agrees that the vendor retains the timber cutting rights over an area of approximately [.....] hectares of radiata pine (OR OTHER SPECIES OF TREES IF APPLICABLE) within the area marked red on the attached plan. Such cutting rights will continue for a term of [.....] years from the settlement date.
- 11.2 The cutting rights include the rights of the vendor, the vendor's agents, employees and contractors to:
- (a) Gain access at reasonable times to the area together with such vehicles, plant and equipment as is necessary for the purposes of inspecting, protecting, tending, cutting and harvesting the trees; and
  - (b) Make, construct and utilise such roadways, bridges, dams and landings as are necessary for the purposes of inspecting, protecting, tending, cutting and harvesting the trees; and
- 11.3 Once the harvesting of the trees is complete, or on the sooner termination of the cutting rights, the vendor must leave the area [SPECIFY THE STATE IN WHICH THE LAND IS TO BE LEFT - E.G., CLEAR AND READY FOR REPLANTING / READY FOR GRASS SEED ETC].
- 11.4 At any time during the term of the cutting rights the vendor may call on the purchaser to execute a transfer granting cutting rights. Both parties agree to enter into the appropriate Authority and Instruction for the purposes of registering the cutting rights transfer against the title to the land. Such documentation and transfer will be at the vendor's cost and expense in all respects.

**Note:** Care must be taken to make sure the plan is attached to the agreement and all signing parties initial every page of the attached plan. Also note that the parties will need to be aware of the provisions and implications of the Climate Change Response (Emissions Trading) Amendment Act 2008 and the Climate Change Response (Emissions Trading Forestry Sector) Amendment Act 2009 and the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009.

## E 12 Fertiliser

- 12.1 The vendor must spread [.....] tonnes of [DESCRIPTION OF FERTILISER] on the property between the dates of [DATE] and [DATE]. The vendor

must prior to settlement provide to the purchaser satisfactory evidence that the vendor has complied with the provisions of this clause.

### **E 13 Fertiliser (Specific Areas)**

- 13.1 The vendor must put [.....] tonnes of [DESCRIPTION OF FERTILISER] spread evenly over the part of the property marked “A” on the attached plan. The vendor must prior to settlement provide to the purchaser satisfactory evidence that the vendor has complied with the provisions of this clause.

### **E 14 Fertiliser – Vendor to Comply with the Purchaser's Instructions**

- 14.1 Once this agreement is unconditional, the vendor must spread fertiliser on the property where specified by the purchaser in accordance with the purchaser's reasonable requests. The purchaser must pay the vendor the excess (including GST) on settlement if the total cost of the fertiliser and spreading of the fertiliser exceeds [\$......] plus GST. The vendor must prior to settlement provide to the purchaser satisfactory evidence that the vendor has complied with the provisions of this clause.

### **E 15 Fertiliser – Vendor Warranty as to Application of Fertiliser**

- 15.1 The vendor warrants that the following fertiliser has been put on the property since [DATE]:

- (a) [FERTILISER]
- (b) [FERTILISER]
- (c) [FERTILISER]

The vendor must prior to settlement provide to the purchaser satisfactory evidence that the vendor has complied with the provisions of this clause.

### **E16 Drains**

- 16.1 The vendor must clean all drains on the property or / the drains specified and marked on the attached plan (~~DELETE ONE~~) at the vendor's cost

before settlement date. The cleanings from the drains must be spread evenly over the paddocks adjacent to the drains.

## E 17 Fonterra Clauses

NZLS Property Law Section members can access Fonterra Clauses at <http://www.lawsociety.org.nz/law-society-services/law-society-sections/property-law-section/practitioner-resources>.

Non-members can access the clauses at <https://www.fonterra.com/content/dam/fonterra-public-website/phase-2/new-zealand/pdfs-docs-infographics/pdfs-and-documents/pdf-nzls-fonterra-shares-clause-nov-2013.pdf>

## Part F

# Commercial

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### F 1 Guarantee of Rental of Property by Vendor

1.1 Prior to the possession date, the vendor must procure the execution by a tenant approved by the purchaser (which approval must not be withheld where the proposed tenant is respectable, responsible and solvent) of a deed of lease containing the following terms:

- (a) Rental of [\$......] per annum;
- (b) A minimum term of [.....] years;
- (c) Rental reviews at [.....] yearly intervals;
- (d) Use: Such use as conforms with the requirements of the operative and any proposed District Plan and as is otherwise approved by the purchaser PROVIDED THAT such approval must not be unreasonably or arbitrarily withheld in the case of a use which is not noxious, offensive or illegal;
- (e) Commencement of rental: On or prior to the settlement date;
- (f) The personal covenants of the shareholders where the tenant is a company other than a public listed company;
- (g) Such other terms as are usual and reasonable.

1.2 If a lease as set out above is not arranged, the vendor must pay monthly in advance to the purchaser an amount equivalent to the monthly payments of rent and all other outgoings which would otherwise be payable if such tenancy had been arranged and such monthly payments will continue until a lease has been arranged by the vendor with such apportionment for any broken monthly period as may be appropriate.

**Note:** The use of this clause should be undertaken only with careful specific legal advice as it may require the inclusion of various conditions which are the subject of both parties obtaining legal advice.

## **F 2      Approval of Leases**

- 2.1**      This agreement is conditional upon the purchaser's lawyer approving in all respects all the leases to which the property is subject ("Leases").
- 2.2**      The vendor must make copies of the Leases available to the purchaser's lawyer within [.....] working days after the date of this agreement. The date for the satisfying of this condition is [.....] working days after the purchaser's lawyer receives copies of all the Leases. The purchaser's lawyer may give or withhold approval of the Leases in his or her sole discretion.

## **F 3      Vendor's Authority**

- 3.1**      The vendor warrants that:
- (a)      The entry by it into this agreement has been duly authorised by all necessary action of the vendor; and
  - (b)      The vendor has full power and lawful authority to enter into this agreement and to perform or cause to be performed all of its obligations under this agreement and under each transaction contemplated by this agreement to be performed by the vendor.

## Part G

# Balance of purchase price

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### G 1 Payment and Settlement Date for the Property Where the Title is to be Issued

- 1.1 The balance of the purchase price must be paid or satisfied by payment in cleared funds on the settlement date which is [.....] working days after the date on which the purchaser receives notice from the vendor that a search copy of the title, as defined in section 172A of the Land Transfer Act 1952, is obtainable from the LandOnline database.

**Note:**

1. When using this clause, option (1) "By payment in cleared funds on the settlement date which is..." must be deleted from the Payment of Purchase Price section on the front page of the agreement. Do not delete option (2) "In the manner described in the Further Terms of Sale". Clause 3.17 of the General Terms of Sale will not apply if this clause is used and it should be deleted or negated.
2. Professional Advice Recommended. Given the complexity of clauses5 below, it is strongly recommended that licensees wishing to include these clauses in agreements should not allow parties to enter into agreements containing these clauses, or any other clause relating to vendor finance or to circumstances where the title has yet to be issued or to specific GST concerns, without first obtaining professional advice, where necessary, and ensuring the appropriate clauses have been inserted after consultation with the parties' lawyers.

## G 2 Vendor Finance and Settlement Date

2.1 The balance of the purchase price must be paid or satisfied as follows:

- (a) by payment in cleared funds of [\$.....] on the settlement date which is [.....]; and
- (b) by the purchaser executing in favour of the vendor a vendor finance agreement (“the vendor finance agreement”) secured by a first or / second (DELETE ONE) mortgage (“the vendor mortgage”) over the property for the sum [\$.....] on terms and conditions as are set out below.

2.2 The vendor finance agreement and vendor mortgage will be on the following terms and conditions:

- (a) Principal Sum: [\$.....] (the sum referred to in paragraph (b) of the immediately preceding clause).
- (b) Term: [.....] years commencing on the settlement date.
- (c) Interest: Accrues at an ordinary rate of [.....] per annum on the outstanding Principal Sum, or accrues at a penalty rate of [.....%] per annum on any part of the Principal Sum then due and unpaid. Interest is calculated daily on the basis of the actual number of days elapsed and a 365 day year until payment of the Principal Sum in full.
- (d) Interest Payment: Payable weekly or / monthly or / quarterly (DELETE AS APPLICABLE) in arrears as from settlement date.
- (e) Optional Principal Repayment: Payable on any interest payment date in multiples of [\$.....] or the full balance of the outstanding Principal Sum, in each case together with accrued but unpaid interest, with interest ceasing to accrue on such amount as from the date of repayment.
- (f) Form of Mortgage: In accordance with the terms of clause 9.10 of the General Terms of Sale and prepared by the vendor’s lawyer at the cost of the purchaser in all respects.
- (g) Priority Sum: Where the vendor’s mortgage is a second mortgage the priority afforded to the first mortgage must not be more than [\$.....] or / [.....%] (DELETE ONE). of the purchase price.

**Note:** It may be preferable to have a copy of the mortgage form attached to the agreement.

### **Credit Contracts and Consumer Finance Act 2003 Disclosure Requirements**

**Note 1:** If the above clause 2 is used and the vendor finance agreement meets certain other requirements [see Notes 2, 3 and 4 below] the disclosure provisions of the Credit Contracts and Consumer Finance Act 2003 will apply and the parties should be notified of this by the real estate agent when the agreement is signed. Initial disclosure must be made by the vendor to the purchaser within five (5) working days of the date of the vendor finance agreement and it is important that each party seeks professional advice to ensure disclosure is carried out correctly and the requirements of the Act are satisfied.

It is important to note that the purchaser has a right to cancel the vendor finance agreement by written notice within three (3) working days of initial disclosure being made, and that the vendor finance agreement is not enforceable by the vendor until initial disclosure has been made. Initial disclosure is deemed to be made:

- (a) on the same day if made direct to the purchaser (e.g., handing documents direct to the purchaser); or
- (b) Two (2) working days after initial disclosure is sent if sent by electronic means (e.g., by email); or
- (c) Four (4) working days after initial disclosure is sent if documents are posted.

**Note 2:** The provisions of the Credit Contracts and Consumer Finance Act 2003 outlined in Note 1 above shall apply only where:

- (a) The purchaser is a natural person (i.e., the purchaser is not a family trust, company or incorporated society or body); and
- (b) The agreement is for personal, domestic or household purposes (i.e., it is not for a business or investment purpose); and
- (c) The vendor is someone who carries on the business of providing credit or does that as a side business or the parties were introduced by a paid adviser or broker; and
- (d) The balance of the purchase price is payable at a date more than 2 months from the date of the vendor finance agreement.

**Note 3:** Where Notes 2 (a), (b), (c) and (d) all apply, initial disclosure must be made to the purchaser and the vendor cannot enforce the vendor finance

agreement until the relevant timeframe in Notes 1 (a), (b) or (c) expire, whichever is appropriate depending on the circumstances.

**Note 4:** Examples of situations where Note 2(c) above applies are where the vendor is a bank, a property developer or a solicitor's nominee company.

Another example is where the vendor is a private client of the purchaser's lawyer introduced to the purchaser by that lawyer.

#### Income Tax and GST

1. If there is to be a sale on terms with settlement more than 93 days after the date of the agreement the transaction may be affected by the accruals provisions of the Income Tax Act 2007.
2. The provisions of the Goods and Services Tax Act 1985 might require payment of GST by the vendor on the whole purchase price at the time of payment of the deposit or first instalment.

#### Legal Advice

Parties should not enter into agreements containing the above clause or any other clause relating to vendor finance without obtaining legal advice and ensuring the appropriate clauses have been prepared after consultation with the parties' lawyers. The provisions of the Credit Contracts and Consumer Finance Act 2003, Income Tax Act 2007 and Goods and Services Act 1985 may apply and it is extremely important that each party obtain professional advice before the agreement is drafted and signed. Note that this clause and any other clause relating to vendor finance may be further affected by the law reform currently proposed by the Credit Contracts and Financial Services Law Reform Bill, about which professional advice should also be obtained.

## G 3 Payment by Instalments and Settlement Date

**3.1** The balance of the purchase price must be paid in cleared funds of [\$.....] by instalments on the post-settlement dates as specified below:

1. An instalment of [\$.....] payable on [DATE];
2. An instalment of [\$.....] payable on [DATE];
3. An instalment of [\$.....] payable on [DATE];
4. An instalment of [\$.....] payable on [DATE];

**3.2** The remainder of the purchase price must be paid or satisfied by payment in cleared funds together with any unpaid instalments as set out above together with default interest accrued thereon on [DATE].

- 3.3** Any instalment of the purchase price unpaid on the due date for payment will attract default interest in accordance with the terms of clause 3.12(1) of the General Terms of Sale.

**Note:** When using this clause, option (1) "By payment in cleared funds on the settlement date which is..." must be deleted from the Payment of Purchase Price section on the front page of the agreement. Do not delete option (2) "In the manner described in the Further Terms of Sale". The parties should seek legal advice before agreeing to this condition.

## **G 4 Payment by Goods as Part Payment and Settlement Date**

- 4.1** The balance of the purchase price must be paid or satisfied as follows:

- (a) by payment in cleared funds of **[\$.....]** on the settlement date which is **[DATE]**.
- (b) The sum of **[\$.....]** will be satisfied by the purchaser transferring to the vendor on settlement date ownership of the following items:
  - (i) **[ITEM]**
  - (ii) **[ITEM]**

- 4.2** The purchaser warrants that the items listed above are or will be by the settlement date:

- (a) The unencumbered property of the purchaser and the purchaser will transfer good and clear title to the items; and
- (b) In good working order and repair.

- 4.3** If any of the items listed above require a notice, certificate or written evidence of change of ownership then the purchaser must provide the vendor on settlement with a valid signed and registrable form of such notice of change of ownership as a requirement of settlement.

**Note:** When using this clause, option (1) "By payment in cleared funds on the settlement date which is." must be deleted from the Payment of Purchase Price section on the front page of the agreement. Do not delete option (2) "In the manner described in the Further Terms of Sale". Note that this clause could be scrutinised by the Inland Revenue Department if there is any suggestion of values of the goods referred to not being able to be sustained as Market Value. Therefore, there is the potential for a tax

implication in respect of any significantly inaccurate valuation of goods used as part payment of a property transaction.

## **G 5 Payment by Way of a Long-Term Agreement for Sale and Purchase and Settlement Date**

- 5.1** The balance of the purchase price must be paid or satisfied by a part payment in cleared funds of [\$......] on the possession date which is [DATE].
- 5.2** The remaining balance of the purchase price being the sum of [\$......] must be paid or satisfied by payment in equal consecutive monthly payments of [\$......] on the [.....] day of each month. The first of such payments is payable [.....] month(s) from the possession date.

Such payments will be applied by the vendor:

- (a) first in payment of interest, which accrues at the rate of [.....%] per annum on the outstanding amount of the purchase price (or accrues at a penalty rate of [.....%] per annum on any part of the purchase price then due and unpaid), and which is calculated daily on the basis of the actual number of days elapsed and a 365 day year until payment of the purchase price in full; and
- (b) secondly in reduction of the balance of the purchase price.

The final payment of the balance of the purchase price must be paid in cleared funds on the settlement date which is [DATE].

- 5.3** On any of the above monthly payment dates the purchaser may make additional payments in multiples of [\$......] in reduction of the balance of the purchase price. Interest on any sum repaid will cease to accrue as from that interest payment date. The making of an additional payment in reduction of the purchase price will not relieve the purchaser of the obligation to continue to make the compulsory periodic payments as set out above, until the purchase price is paid in full.
- 5.4** During the term of this agreement all covenants contained in the ADLS form of Memorandum of Mortgage No 2011/4299 will be imported into this agreement as if they were terms of this agreement. The purchaser must comply with those covenants to the intent that a breach by the purchaser of any of those covenants will be a breach of this agreement. Without limiting the generality of the foregoing, if the purchaser fails

to meet its obligations under this clause the vendor may exercise the rights and powers conferred in that Memorandum.

**5.5** The proceeds of any insurance claim received by the vendor or the vendor's mortgagee may be applied (subject to the vendor's mortgagee's approval) in or towards payment of the balance of the purchase price and any moneys owing hereunder.

**5.6** While the balance of the purchase price remains owing the vendor may at the vendor's option require the purchaser to take title to the property and to execute in favour of the vendor and/or the vendor's nominee a registrable first mortgage over the property securing the balance of the purchase price on the following terms:

- (a) The mortgage will be for a term commencing from the date that the purchaser delivers the signed mortgage to the vendor and ceasing on the date specified for the final payment of the balance of the purchase price as set out above, together with interest thereon at the rate specified above and all other terms and conditions will be in accordance with the provisions as set out above with any necessary modifications; and
- (b) The mortgage will be prepared by the vendor's lawyer at the expense in all respects of the purchaser. It will include all the terms set out above and it will otherwise be on the form as specified in clause 10.10 of the General Terms of Sale.

**5.7** Pending the purchaser taking title, the vendor will be at liberty to mortgage or re-mortgage the property provided that the sum secured at any time by such mortgage or mortgages must not exceed the balance of the purchase price from time to time owing to the vendor. The vendor will apply any payments received on account of the purchase price from the purchaser in reduction of the principal sum or sums secured by such mortgage or mortgages. In the event that the purchaser registers a caveat against the title to the property the purchaser must at the cost of the purchaser sign a consent to the registration of any such mortgage by or on behalf of the vendor upon request being made by the vendor provided the vendor complies with this clause at all times.

**5.8** The purchaser may elect to remedy any default by the vendor under any mortgage registered against the property and any moneys paid by the purchaser in doing so will be deemed to be an additional payment in reduction of the purchase price as provided for above.

- 5.9** If the purchaser sells, exchanges or otherwise disposes of the property during the continuance of this agreement, then the balance of the purchase price and all other moneys owing under this agreement will be due and payable in full on settlement of the sale, exchange or disposal of the property by the purchaser.

**Note 1:** Please refer to the notes under clause above (Vendor Finance and Settlement Date) in respect of the Credit Contracts and Consumer Finance Act 2003, Income Tax Act 2007 and Goods and Services Tax Act 1985. Please read over these notes carefully before inserting the above clause G! (Payment by Way of a Long Term Agreement for Sale and Purchase and Settlement Date) into an agreement.

**Note 2:** When using this clause, option (1) "By payment in cleared funds on the settlement date which is..." must be deleted from the Payment of Purchase Price section on the front page of the agreement. Do not delete option (2) "In the manner described in the Further Terms of Sale". Parties should take legal advice before agreeing to clause 5.

## Part H

# Earthquake and insurance clauses

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### Assignment of Insurance Claims

Earthquake Commission (EQC) claims can be assigned, provided the Deed of Assignment contains sufficient information (as required by EQC). Information is available from the EQC website on assigning an EQC claim.

However, since the 2011 Canterbury earthquakes, many private insurers have amended their policy wording, so that the insurer's consent must be obtained before a private insurance claim can be validly assigned. Depending on the policy wording, a private insurance claim may also be subject to various conditions and requirements before it can be validly assigned. It is advisable for the vendor to contact their insurer and lawyer to discuss assignment, before an Agreement for Sale and Purchase is entered into.

### H 1 Insurance Condition

- 1.1 This agreement is conditional upon the purchaser arranging building insurance in respect of the buildings and any other improvements on the property on terms and conditions satisfactory to the purchaser in all respects within [.....] working days of the date of this agreement.

This condition is inserted for the sole benefit of the purchaser.

(Or)

- 1.2 This agreement is conditional upon the purchaser arranging building insurance in respect of the buildings and any other improvements on the property on terms and conditions satisfactory to the purchaser within [.....] working days of the date of this agreement. The terms

and conditions are deemed to be satisfactory to the purchaser and this condition is deemed to be satisfied if insurance is available to the purchaser on substantially the same terms and conditions as is currently maintained by the vendor in respect of the property.

## **H 2 Insurance Disclosure (to use with clause H 1.1)**

- 2.1** The vendor must supply the purchaser with a copy of the vendor's building insurance policy for the property including any relevant policy schedules, and any and all insurance details and information which relate to the property, within [.....] working days of the date of this Agreement.

## **H 3 Professional Reports Conditions**

- 3.1** This agreement is conditional upon the purchaser being satisfied in all respects with the condition of the property after obtaining at the purchaser's cost such professional reports as the purchaser thinks fit including but not limited to a building inspection report, a structural engineering report, and a geotechnical engineering report. The professionals must not carry out any invasive testing of any buildings without the vendor's prior written consent. However, geotechnical professionals may carry out invasive testing of the land by test drilling and any other tests necessary to ascertain the land conditions, subject to prior consultation with the vendor as to the extent of the tests required and provided that the land is restored as near as is practicable to its previous condition.

The date for the satisfying of this condition is [.....] working days after the date of this agreement. This condition is inserted for the sole benefit of the purchaser.

## **H 4 Earthquake Claims Condition**

- 4.1** The vendor must supply to the purchaser within five (5) working days of the date of this agreement all information about earthquake claims, repairs and settlements insofar as it relates to the property, including but not limited to the following information:
- (a) Full details of any damage to the property that has been caused by earthquakes;
  - (b) All EQC and private insurer claim information;

- (c) Full details of any earthquake repairs that have been completed, or which are still to be completed, including the scope of works, and any confirmation that repairs have been completed; and
- (d) Full details of any insurance claims that have been settled in relation to the property, including details of any payments made by the EQC or the private insurer pursuant to the claims.

**4.2** The vendor must provide authority for the purchaser to contact the EQC and to discuss all details relating to the property, including the EQC claims, within five (5) days of the date of this agreement.

**4.3** This agreement is conditional upon the purchaser approving the earthquake claims information provided pursuant to clauses **4.1** and **4.2** above in all respects within ten (10) working days of the date of this agreement. This condition is inserted for the sole benefit of the purchaser.



