# Index

Introduction to REINZ Useful Clauses ©

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Introduction
REINZ Useful Clauses

Clauses in this booklet are drafted for use with the ADLS/REINZ agreement forms. The booklet first appeared in 1957 under the title Bulletin on Sales Agreements.

WARNING

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 into, the "Further Terms of Sale" section of the ADLS/REINZ Agreement for Sale and Purchase of Real Estate Eighth Edition 2006 (3) ONLY and no other edition of that form. These clauses should only be inserted into other editions of the ADLS/REINZ Agreement for Sale and Purchase of Real Estate form with caution and must always be used with care and discretion. Extreme caution should be used when inserting any clauses in other ADLS/REINZ agreement forms (eg Auction or Tender forms) and particular care should be taken to ensure that the clause numbering of the clause, or of any clauses referred to in the clause, are modified accordingly. If there is any doubt about the appropriateness of the clause then the licensee drafting the agreement, or the parties executing the agreement, should take professional advice before executing the agreement in which the clause is inserted. Notes have been inserted adjacent to clauses where considered appropriate but are not to be taken as a substitute for obtaining professional advice.

The clauses in this booklet will be updated as each edition of the ADLS/REINZ Agreement for Sale and Purchase of Real Estate is revised. Further clauses will be inserted in this booklet from time to time at the request of members of the REINZ and as considered appropriate.
The General Terms of Sale in the ADLS/REINZ Agreement for Sale and Purchase of Real Estate Eighth Edition 2006 (3), clauses 1.0 - 16.0, should not be deleted or varied, nor should additional clauses be added to that section. Any deletions, variations or additions should be made in the "Further Terms of Sale" section by reference to the General Terms of Sale.

Example:

17.0

"Delete subclause 9.2 in General Terms of Sale and substitute:

17.1

[Set out full text of clause]

18.0

Delete subclause 9.4 in General Terms of sale and substitute:

18.1

[Set out full text of clause]"

etc
1 PART I CONDITIONS

1.0 Sale of the Purchaser's Property

1.1 This agreement is conditional upon the purchaser entering into an agreement for the sale of the purchaser's property situated at [insert address] for $[ ] (or such lesser amount as the purchaser shall accept) on terms and conditions acceptable to the purchaser by [insert date]. The purchaser must notify the vendor on or before that date that this condition has been satisfied or waived or this agreement will be at an end, all moneys paid under it shall be refunded and neither party will have any claim against the other. 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(27) and 1.2(5) of the General Terms of Sale. If in doubt legal advice should be obtained).

2.0 Purchaser's Existing Property Sale Being Declared Unconditional

2.1 This agreement is conditional upon the existing agreement dated [ ] for the sale of the purchaser's property situated at [insert address] to [insert name] becoming unconditional on or before [insert time] on [insert date]. The purchaser must notify the vendor on or before that date that this condition has been satisfied or waived or this agreement will be at an end, all moneys paid under it shall be refunded and neither party will have any claim against the other. 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(27) and 1.2(5) of the General Terms of Sale. If in doubt legal advice should be obtained).
3.0 Settlement of Purchaser's Sale

3.1 This agreement is conditional upon the agreement for the sale of the purchaser's property situated at [insert address] settling in terms of that agreement on or before [delete one] [ ] or/within [ ] working days of the date of this agreement. This condition is inserted for the sole benefit of the purchaser.

NOTE: This clause should not be used without consultation between the solicitors for the parties. It virtually converts the agreement into an option. However, it might be intended that a purchaser will not be subject to penalties if there is delay in settlement of the purchaser's own sale. If this is what is required, a suitable alternative clause should be drafted.

4.0 Expiry of Prior Option

4.1 This agreement is conditional upon the existing option over the property previously granted by the vendor to [insert name of the option holder] not being exercised by the [insert date]. The vendor will notify the purchaser or the purchaser's solicitor not later than [am/pm] on the aforementioned day whether or not the prior option is exercised. 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(27) and 1.2(5) of the General Terms of Sale.)

5.0 Obtaining Finance

5.1 This agreement is conditional upon the purchaser arranging finance, and advising the vendor on or before [delete one] [ ] or/within [ ] working days of the date of this agreement, of an amount up to [delete one] $[ ]/or [ ]% of the purchase price by way of a first mortgage to be secured against the property from
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 this 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 must be clearly explained to the purchaser.

6.0 Solicitor's Approval

NOTE: As a general principle "Solicitor's Approval" clauses should not be used. The standard form of agreement provides in clause 5.0 for requisition of the title by the purchaser. The right to requisition arises only when there is a defect in the vendor's title not known to the purchaser at the time the contract was made. The Courts have consistently held that a "Solicitor's Approval" clause cannot be used to justify withdrawal from an agreement for other than legal reasons relating to issues such as validity of title (see clause 7.0 below) or capacity of the proposed purchaser. If a purchaser does not wish to be bound until another person has agreed with the purchaser's judgement in entering into the transaction, a clause to the following effect might be used:

"This agreement is conditional upon the purchaser being satisfied, after taking advice as a purchaser may wish, that the property is in all respects suitable for the purchaser. The purchaser shall notify the vendor or the vendor's solicitor on or before [delete one] [ ] or/within [ ] working days of the date of this agreement, that this condition has been fulfilled or this agreement will be at an end and all moneys paid under it shall be refunded and neither party shall have any claim against the other. This condition is inserted for the sole benefit of the purchaser."

If in doubt legal advice should be sought by the parties.
6.1 The obligations of the vendor/purchaser [delete one] under this agreement shall be suspended until the agreement has been approved in all respects by that party's solicitor, who may take into account the commercial and conveyancing aspects of this agreement and the wishes of that party. If such approval has not been given in writing on or before [delete one] [ ] or/within [ ] working days of the date of this agreement, then that party shall pay the other party the sum of $1.00 and except for the obligation to make such payment this agreement shall be voidable and all money paid under this agreement shall be refunded and neither party shall have any claim against the other. This condition has been inserted for the sole benefit of the party referred to in the first line of this clause.

7.0 Solicitor's Approval as to Title

7.1 This agreement is conditional upon the purchaser receiving from the purchaser's solicitor on or before [delete one] [ ] or/within [ ] working days of the date of this agreement a report in respect of the title and all encumbrances on the title to the property confirming there are no defects in the vendor's title or matters which may give rise to a right of requisition. This condition is inserted for the sole benefit of the purchaser and the purchaser waives their rights of requisition pursuant to clause 5.0 of the General Terms of Sale.

NOTE: This version of a "Solicitor's Approval as to Title" clause is acceptable as it refers solely to the solicitor approving the title of the property. The use of a general "Solicitor's Approval" clause (see clause 6 above) is not recommended for the reasons outlined in the clause 6 NOTES.

8.0 Obtaining Acceptable Specialist Report (Building Report, Valuation, Geotechnical, Engineer) – (Vendor Given Right to Remedy Where Report Not Approved by Purchaser)

8.1 This agreement is conditional upon the purchaser obtaining a report on the general condition of the building on the property including but not limited to weathertightness and structural integrity. The purchaser shall obtain the
report from a suitably qualified building or professional of the purchaser's choice at the purchaser's cost.

8.2 If the purchaser does not approve the report the purchaser shall give notice to the vendor (the "purchaser's notice") on or before [delete one] [ ] or/within [ ] working days of the date of this agreement stating the particular matters in respect of which approval is withheld and, if those matters are capable of remedy, what the purchaser requires to be done to remedy those matters. If the purchaser does not give a purchaser's notice the purchaser shall be deemed to have approved the report. If through no fault of the purchaser the report is not available on or before the date previously stated in this clause and the vendor does not give an extension when requested by the purchaser, this condition shall not have been fulfilled and the provisions of clause 9.7(5) of the General Terms of Sale shall apply.

8.3 The vendor shall give notice to the purchaser (the "vendor's notice") on or before the fifth working day after receipt of the purchaser's notice advising whether or not the vendor is willing and able to comply with the purchaser's notice by the settlement date.

8.4 If the vendor does not give a vendor's notice, or if the vendor's notice advises that the vendor is unable or unwilling to comply with the purchaser's notice and if the purchaser does not, on or before the tenth working day after the date on which the purchaser's notice is given, give notice to the vendor that the purchaser waives the matters contained in the purchaser's notice, this condition shall not have been fulfilled and the provisions of clause 9.7(5) of the General Terms of Sale shall apply.

8.5 If the vendor gives a vendor's notice advising that the vendor is able and willing to comply with the purchaser's notice, this condition is deemed to have been fulfilled and it shall be a requirement of settlement that all the matters contained in the purchaser's notice shall be complied with, and also, if the vendor must carry out work on the property, that the vendor shall
obtain the approval of the local authority for such work to be done, both before settlement date.


9.1 This agreement is conditional upon the purchaser obtaining and being satisfied with a report on the general condition of the building on the property including, but not limited to, weathertightness and structural integrity from a suitably qualified building or professional of the purchaser's choice, at the purchaser's cost, by 5.00pm on [insert date] or [within [insert number] working days from the date of this agreement]. This condition is inserted for the sole benefit of the purchaser.

NOTE: This clause allows either party to cancel the agreement if the condition is not satisfied by the stipulated time and date. The purchaser is not required to state any reasons for the non-satisfaction of this clause and the vendor is not given the right to remedy.

10.0 Obtaining Acceptable Resource Consent

10.1 This agreement is conditional upon the vendor/purchaser [delete one] making an application at his/her/its own cost to the relevant local authority for such consents and permissions as are required to carry out the works or development in respect of the property which that party has warranted to carry out. Such consents or permits are those required by the local authority pursuant to its District or Regional Plan and the Resource Management Act 1991. Such consents or permits are to be obtained upon terms and conditions acceptable to the party making the application for the consent. The vendor/purchaser [delete one] shall promptly make application for such consents or permits. Such consents or permits are to be obtained on or before [delete one] [ ] or/within [ ] working days of the date of this agreement. The vendor/purchaser [delete one] may not disapprove or reject the consent where conditions are imposed that would normally be imposed in such applications and which otherwise would have been
reasonably foreseeable by the party or its advisors, given the terms and conditions of the local authority's District or Regional Plan. This condition is inserted for the sole benefit of the vendor/purchaser [delete one].

11.0 Board Ratification

11.1 Notwithstanding that this agreement is an immediate and fully binding agreement the obligations of the purchaser hereunder shall be suspended until the agreement has been ratified by the Board of Directors of the purchaser. In deciding whether to ratify the agreement, the Board of Directors may take into account the commercial and conveyancing aspects of the agreement and the redevelopment potential of the property. If such ratification has not been given in writing by the purchaser to the vendor on or before 5.00pm on the [ ] working day after the date of this agreement, the purchaser shall pay to the vendor the sum of $1.00 and except for the obligation to make such payment, this agreement shall be void and all moneys paid under it shall be refunded and neither party shall have any claim against the other. This condition is inserted for the sole benefit of the purchaser.

NOTE: This clause can only be used where the purchaser is a company.

12.0 Third Party Consent

12.1 This agreement is conditional upon the vendor obtaining written consent from [ ] on or before [delete one] [ ] or/within [ ] working days of the date of this agreement. This condition is inserted for the sole benefit of the vendor.

13.0 Acquiring Alternative Property

13.1 This agreement is conditional upon the vendor entering into an agreement to purchase an alternative property of his/her/its choice and upon that agreement becoming unconditional on or before [delete one] [ ] or/within [ ] working days of the date of this agreement. This condition is inserted for the sole benefit of the vendor.
14.0 Internal Inspection of Property

14.1 Notwithstanding the provisions of clause 3.2 of the General Terms of Sale settlement 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 \[\text{delete one}\] [ ] or/within [ ] working days of the date of this agreement. 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 shall persist 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 9.7(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.

15.0 Satisfactory Due Diligence

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 at the Purchase Price. Such investigation shall include, but shall not be limited to, the following matters:

15.2 The soundness, suitability and value of the property and any buildings situated on it; and

15.3 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

15.4 The location of any buildings in relation to the boundaries of the land and any other survey matters; and
15.5 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 future development potential of the property and buildings; and

15.6 Such other matters as the purchaser in his/her/its sole discretion shall determine as pertinent to the purchaser's intended use and benefit of the property.

15.7 The vendor shall cooperate with the purchaser in respect of the due diligence enquiry by providing any relevant information, reports and documentation that will enable the purchaser to better undertake his/her/its due diligence enquiry in relation to the matters set out above.

15.8 The date for satisfaction of this condition is on or before [delete one] [ ] or/within [ ] working days of the date of this agreement. If this condition is not satisfied by that date then the purchaser shall pay to the vendor the sum of $1.00 and except for the obligation to make such payment, this agreement shall be void and all moneys paid under it shall be refunded and neither party shall have any claim against the other. This condition is inserted for the sole benefit of the purchaser.

16.0 Cash-Out Escape Clause

16.1 If before this agreement becomes unconditional the vendor decides to enter into another agreement on terms and conditions acceptable to the vendor, whether conditional or unconditional in all respects save for the cancellation of this prior agreement, then the vendor may serve on the purchaser notice requiring the purchaser to confirm that all conditions have been fulfilled or waived and that the requisition procedure in clause 5.0 of the General Terms of Sale is completed to the purchaser's satisfaction. The purchaser shall have until 4.00pm on the [ ] working day after service of the notice to advise the vendor by notice that the conditions in this agreement are fulfilled or waived and that the requisition procedure under clause 5.0 of the General Terms of Sale is completed and the agreement is unconditional, otherwise this agreement shall be at an end and all moneys paid under it shall be
refunded and neither party will have any claim against the other. This condition is inserted for the sole benefit of the vendor.

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 16 above is inserted in the first agreement and clause 17 below is inserted in any "back-up" agreement. A letter exercising the notice provision in clause 16 should be prepared by the vendor's solicitor. The vendor should be asked to decide whether or not a conditional back-up offer should be able to trigger the escape clause.

17.0 Expiry of Prior Agreement (Back-up Agreement)

17.1 This agreement is conditional upon the prior agreement for the sale of the property not being declared unconditional in all respects on or before [insert date for the last day of cash-out escape clause notice period] which is the last day of the notice period in the prior agreement for the satisfaction of all the conditions including clause 9.2 of the General Terms of Sale (if applicable) or otherwise upon the earlier termination of the prior agreement.

17.2 Subject to clause 17.3, the vendor warrants not to grant any extension of any of the conditional dates under the prior agreement, not to waive its rights of cancellation or termination and not to vary any of the terms of the prior agreement and agrees to take all appropriate steps available to the vendor to cancel the prior agreement immediately the vendor is able to do so.

17.3 Where this agreement is subject to the satisfaction of conditions by the purchaser and/or the rights to requisition pursuant to clause 5.0 of the General Terms of Sale, then the vendor shall be under no obligation to cancel the prior agreement until such time as all conditions in this agreement have been fulfilled or waived and the requisition procedure under clause 5.0 of the General Terms of Sale is completed without either party cancelling this agreement.
NOTE: The prior agreement may contain more than one condition and this clause refers only to the date on which the last of the conditions is to be satisfied, unless the first agreement is earlier terminated. Care must be taken to ensure that there is a proper linkage between the first agreement and the "back-up" agreement. The "back-up" agreement must contain clause 17 above referring to the prior agreement.

It is preferable for the parties to have legal advice in drafting a back-up agreement.

18.0 On-Sale of Property by Vendor

18.1 The parties acknowledge and the vendor warrants that he/she/it has entered into a sale and purchase agreement dated [             ] as purchaser ("First Agreement") and that the First Agreement is conditional until [             ].

18.2 This agreement is conditional on (a) the First Agreement being declared unconditional in all respects (save for any condition in the First Agreement that refers to this agreement), and (b) the contemporaneous settlement of this agreement and the First Agreement. Any deposit paid by the purchaser under this agreement shall 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.

18.3 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 II SPECIFIC CONTRACTUAL TERMS

19.0 Contemporaneous Settlement

19.1 Settlement of this agreement is conditional upon settlement of the other agreement made between the same parties dated [ ] and affecting the property at [ ] and settlement of both agreements shall be deemed to be interdependent and shall be effected contemporaneously.

NOTE: If the same agent is acting for both parties to this arrangement and collecting a commission from both 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:............................................................................................[insert name of agent]

I acknowledge that you have disclosed to me that you are also acting as agent for [insert 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."

20.0 Deadline for Acceptance of Offer

20.1 This offer by the purchaser is open for acceptance by the vendor by [am/pm] on [ ]. If acceptance by the vendor is not completed by the signing of this agreement by the vendor and conveyed to the purchaser or the purchaser's solicitor by notice in writing by the time and date referred to in this clause then this offer shall be deemed never to have been made and shall be of no further legal effect and neither party will have any claim against the other.
NOTE: 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 solicitor in writing, as noted in this clause.

21.0 Disclaimer (General)

21.1 The parties acknowledge and agree that the vendor (and any agent of the vendor) has no liability to the purchaser for any representations made by anyone in respect of the possible application of the Resource Management Act 1991 and/or Building Act [delete as applicable] with regards to the property or any buildings (as defined in the Building Act) erected thereon. 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 protect the salesperson or branch manager against claims by the agent (business owner) where the salesperson or branch manager makes representations not authorised by the agent (business owner). Nor does this necessarily exonerate the licensee where the licensee is aware of any defects with the building and the licensee is still obliged to comply with his/her/its statutory duties under clauses 6.4 and 6.5 of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2009.

22.0 Disclaimer as to Weathertightness and Integrity of Materials of the Property

22.1 The purchaser acknowledges that no representation has been made by the vendor or vendor's agent on which the purchaser is relying as to the condition of the property including but not limited to the weathertightness 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 protect the salesperson or branch manager against claims by the agent (business owner) where the salesperson or branch manager makes representations not authorised by the agent (business owner).
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23.0 Disclosure of Non-Compliance

23.1 The purchaser acknowledges and accepts that the purchaser has been fully informed that aspects of the property or buildings (as defined in the Building Act) thereon 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 pursuant to clauses 6.2(5) and 6.2(6) of the General Terms of Sale are hereby deleted. The purchaser enters into this agreement and accepts the property on this express understanding and shall have no claim against the vendor under the vendor's warranties pursuant to clauses 6.1 and 6.2 with regards to the Building Act and the Building Code nor shall the purchaser have the right to issue a purchaser's notice pursuant to clause 9.2(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.

24.0 Vendor to Remedy Non-Compliance and Settlement Date

24.1 The vendor warrants that he/she/it shall, at his/her/its cost in all respects, make application for and be granted a code compliance certificate for the property. Where necessary, the vendor shall at his/her/its cost in all respects carry out such work in order to be granted the code compliance certificate. Such code compliance certificate shall be granted to the vendor prior to, and as a requirement of, settlement and the vendor shall be obliged to provide a copy of the code compliance certificate to the purchaser immediately upon it being granted to the vendor.
24.2 The purchaser is obliged to 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.

NOTE: If the above clause is used then the settlement date on the front page of the agreement must be completed and after the settlement date insert "subject to clause [insert clause number] in the Further Terms of Sale".

25.0 Leasehold – Purchaser's Acknowledgment

25.1 The purchaser is aware that the land is held under a perpetually renewable lease with [ ] as Lessor. Such lease is renewable every [ ] years with the present term expiring on [ ]. The current rental is $[ ] per annum. The lease provides for review of the rental every [ ] years.

25.2 This agreement is conditional upon the consent of the Lessor to the assignment of the lease from the vendor to the purchaser, such consent to be granted by the Lessor to the vendor at the vendor's expense on or before the possession date.

26.0 Lowest Cash Price

26.1 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.

27.0 Variation of Purchase Price

27.1 The purchase price is that provided in this agreement or such increase in the purchase price determined by the Inland Revenue Department as being the market price for the property.
NOTE: This clause is used when a Trust is involved in the sale and purchase of the property. It is essential that the parties have legal advice if a Trust is involved in the transaction.

28.0 Purchaser's Waiver of Requisition

28.1 The purchaser accepts the vendor's title and the purchaser expressly acknowledges that he/she/it has no right to object to or requisition the vendor's title under clauses 5.2 and 5.3 of the General Terms of Sale. Furthermore subclause 2.4(1) is deleted from the General Terms of Sale. By this clause the purchaser waives his/her/its rights of requisition pursuant to clause 5.0 of the General Terms of Sale.

29.0 Rights to Occupy the Property Prior to Settlement

29.1 The purchaser shall have a right to occupy the property on the following basis:

(1) The purchaser shall enter into and execute an Occupation Licence effective from the date of possession until settlement date of this agreement or until this agreement is terminated. Such Occupation Licence shall be on the standard terms and conditions as prepared by the vendor's solicitor and to be prepared at the cost of the purchaser in all respects;

(2) From possession all rates, insurances and other outgoings together with the cost of all utilities are to be the purchaser's responsibility;

(3) The purchaser agrees to pay a licence fee of $[              ] pursuant to the terms and conditions of the Occupation Licence. Such licence fee shall be paid weekly/monthly/quarterly [delete as applicable] in advance or in a lump sum on the settlement date, whichever the parties shall agree upon.

29.2 In addition to the purchaser entering into an Occupation Licence as set out above, the vendor shall require the purchaser or the purchaser's solicitor to provide the following as a requirement of obtaining possession:
(1)

(2)

(3)

(4)

(5)  [Set out the terms and conditions that the purchaser's solicitor shall provide such as – payment of the balance of the purchase price less mortgage moneys and/or an undertaking to settle in full without deduction].

NOTE: It is preferable for the parties to have legal advice in drafting an Occupation Licence when inserting this clause into the agreement.

30.0 Probate – Sale by an Estate

30.1 The vendors advise that they have signed this agreement as executors or administrators of the estate of the registered proprietor. However, settlement will not occur until such time as probate has been released by the High Court. Pending the release of probate the purchaser shall have two options, namely:

(1)  To take possession of the property under an Occupation Licence on the terms and conditions as set out below; or

(2)  To take possession of the property upon payment of the balance of the purchase price to the vendors’ solicitor’s trust account, to be held in escrow by the vendors’ solicitor, pending release of probate and the vendors’ ability to pass clear title to the purchaser. Any interest earned on the balance of the purchase price so paid into the vendors’ trust account as set out in this clause shall accrue to the benefit of the vendors.

30.2 Prior to taking possession of the property the purchaser shall provide to the vendors an undertaking that the purchaser shall settle on the settlement date in full and without deduction.
30.3 Whilst the purchaser is in possession of the property the purchaser shall:

(a) Occupy the property as a purchaser in possession;

(b) Maintain the property in the same state of repair and condition as at the date of commencement of possession;

(c) Be responsible for meeting 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 in any way 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 legal advice when drafting the Occupation Licence and when inserting this clause in the agreement.

31.0 Guarantee

31.1 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 law whereby the guarantor as a surety only would, but for the provisions of this clause, have been released from liability.

31.2 The guarantor shall indemnify 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.
31.3 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 surety only shall 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 execute the agreement.

32.0 Confidentiality

32.1 Neither party to this agreement may divulge the existence or details of this agreement to any other party without the express consent of the other unless either party, acting reasonably, considers that it is necessary to divulge to their respective legal advisors, the purchaser's financier and the purchaser's other advisors as are necessary for the purchaser to satisfy the conditions contained in this agreement. The obligations in respect of this clause shall be continuing and persistent until such time as the parties agree 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, each party shall, if requested by the other party, return to the other party any information supplied by them in respect of this agreement.

33.0 Facsimile and Electronic Execution

33.1 This agreement may be concluded 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 shall be held in trust for both parties. This agreement may be executed in any number of counterparts and each party may execute separate counterparts. All of the counterparts together shall be deemed one and the same instrument.

33.2 This agreement shall be deemed to be signed by a party if that party has executed and delivered to the other party any of the following formats of the agreement:
(1) An original; or

(2) A copy in Portable Document Format (PDF) transmitted by email; or

(3) A facsimile copy.

The delivery by any party to the other of a PDF or facsimile copy of this agreement duly executed shall be deemed delivery of the original thereof and the party so delivering such PDF or facsimile copy shall 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 such PDF or facsimile copy as if it were the original thereof and no party to this agreement may object to such copy being produced or exhibited as an original and shall be deemed to have waived any law of evidence or other requirement that an original executed document be produced or exhibited as evidence of its existence or its contents.

34.0 Agreement Not Binding

34.1 This agreement shall not be binding on the parties until signed by both parties in its final form.

35.0 No Assignment of Agreement

35.1 The purchaser shall 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.

36.0 Access for Due Diligence

36.1 The vendor agrees to the purchaser's consultants and advisors entering onto the property prior to the condition date for the due diligence clause 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 cause
as little disruption to the vendor and his/her/its normal activities on the land as possible [or to the vendor's farming operations].
37.0 Disclosure of Weathertightness Issues

37.1 The purchaser acknowledges and accepts that he/she/it has been fully informed that the property, or the building complex within which the property is situated, contains or may contain defects in the weathertightness or structural integrity of the property or building complex (including the materials used in the property or building complex) ("the defect"). Accordingly, the vendor gives no warranty with respect to the defect and the vendor's warranties under clause 6 of the General Terms of Sale do not apply to the defect and the purchaser enters into and accepts the property on this express understanding. The purchaser acknowledges that the vendor shall have no liability to the purchaser in relation to the defect and the purchaser agrees to waive any right of recovery against the vendor in respect of the same whether under clause 5.4 and/or clause 6.5 of this agreement. The vendor shall deliver to the purchaser, immediately upon receipt and prior to settlement, any notice or demand received by the vendor (or any other information the vendor receives or becomes aware of) in respect of the defect.

38.0 Vendor to Construct New Dwelling on the Land

38.1 The vendor shall, 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 building consent under the Building Act. The vendor shall complete the construction diligently and with reasonable speed in accordance with best trade practices and the warranties set out in the section 397 of the Building Act and otherwise in accordance with 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.
39.0 Variation as to Plans and Specifications

39.1 The vendor reserves the right to amend, revise or alter the plans and specifications attached hereto in such a manner as the vendor considers appropriate having regard to the circumstances, and the purchaser shall 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 5.4 and 6.5 of the General Terms of Sale or otherwise.

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.

40.0 Maintenance Provision

40.1 There shall be a maintenance period of [ ] days from the settlement date. The vendor shall 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 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 shall not be required to repair damage caused by other proprietors, 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.

41.0 Substitution of Materials

41.1 If any materials set out 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 shall substitute such materials with materials that are of a value and quality as near as reasonably practicable to the specified materials, provided always that the said changes
or amendments do not result in any material adverse effect on the value, appearance or enjoyment of the property by the purchaser.

42.0 Settlement Date of Land and Buildings Where Vendor is Constructing Dwelling

42.1 The parties agree that the settlement date shall be the later of the following:

(1) Five (5) 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; or

(2) Five (5) working days after the date of the issue of the code compliance certificate

and the provisions of clause 3.14 of the General Terms of Sale shall be read in conjunction with the terms herein.

NOTE: This clause is intended to be used for residential property developers of household units. 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".

43.0 Spa Pool Non-Compliance

43.1 The purchaser acknowledges and accepts that the spa pool situated on the property and the associated fencing (as at the date of this agreement) may not be:

(1) In a proper working order and condition; and/or

(2) In compliance with the local authority's building bylaws or the Building Act or the Building Code; and/or

(3) In compliance with the local authority requirements as to swimming pool fencing and/or with the Fencing of Swimming Pools Act 1987.
43.2 The vendor gives no warranty as to the working order and condition of the spa pool nor in respect of its compliance with the requirements of the local authority, the Building Act and the Building Code or with the local authority's fencing requirements or the Swimming Pool Fencing Act 1987. Accordingly, the vendor's warranties under clause 6 of the General Terms of Sale do not apply to the spa pool and the associated fencing.

44.0 Swimming Pool/Spa Pool Fencing Non-Compliance Waiver by Purchaser

44.1 The purchaser acknowledges and accepts that the fencing surrounding the swimming pool/spa pool [delete as applicable] on the property does not comply with the local authority's requirements as to fencing of swimming pools/spa pools [delete as applicable] and/or with the Fencing of Swimming Pools Act 1987. Accordingly the purchaser acknowledges that the vendor's warranties under clause 6 of the General Terms of Sale shall not apply to the fencing of the swimming pool/spa pool [delete as applicable].

45.0 Vendor to Complete Work Prior to Settlement

45.1 Prior to settlement the vendor warrants to carry out the following work on the property at the vendor's cost in all respects:

(1)

(2)

(3)

45.2 All work that the vendor is to carry out shall be subject to the warranties in clause 6 of the General Terms of Sale and shall be carried out in a proper and competent manner in accordance with the terms of the Building Act and the Building Code and (if necessary) the terms of the building consent obtained by the vendor from the local authority, such work shall be completed prior to, and as a requirement of, settlement.

45.3 If any work that the vendor is to carry out requires a code compliance certificate, the vendor agrees that he/she/it shall, at his/her/its 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 works. Such code compliance certificate shall be granted to the vendor prior to, and as a requirement of, settlement and the vendor shall be obliged to provide a copy of the code compliance certificate to the purchaser immediately upon it being granted to the vendor.

46.0 Right of Entry for Construction by Purchaser

46.1 Upon the purchaser declaring the agreement unconditional in all respects, then the vendor shall permit the purchaser, together with his/her/its agents, contractors and employees and their equipment and machinery, access to the property during normal business hours. The access shall be for the express purpose of development/construction of the area outlined in red on the plan annexed hereto.

46.2 Upon the purchaser exercising its right of access pursuant to this clause the purchaser shall pay to the vendor an additional instalment of the purchase price of $[               ] prior to commencement of such development/construction and the purchaser will be liable for any damage to the property caused by the purchaser or its agents, invitees, contractors or employees.

NOTE: This clause should be used with caution and it is preferable the parties have 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.

47.0 Curtilage Exemption

47.1 The parties agree that for the purposes of GST the value of the dwelling house on the land and the immediate surrounding curtilage is $[               ].
4 PART IV GST CLAUSES

NOTE: It is preferable for the parties to have 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.

48.0 Formula for GST Date

48.1 The GST date for the purposes of clause 13 of the General Terms of Sale is that date [     ] 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 shall give the purchaser not less than five (5) working days written notice of the GST date where it falls earlier than the settlement date.

49.0 GST Off-Set Provision

49.1 The parties agree that the supply being made under this agreement is not the supply of a going concern for the purposes of the GST Act. The provisions in this clause are to be read in conjunction with the GST provisions contained in clause 13 of the General Terms of Sale but if there is any inconsistency between these provisions and the provisions of clause 13 then the provisions contained in this clause shall prevail.

49.2 The parties warrant that, as at the date of this agreement, they are both registered for GST on an invoice basis.

49.3 The parties agree that the GST output tax liability owing by the vendor to the Commissioner of Inland Revenue (“the Commissioner”) in respect of this property transaction, will be met by way of a transfer of the GST input tax credit that the purchaser is entitled to from the purchase of the property.

49.4 The purchaser confirms that the GST input tax credit will be claimed in the first appropriate GST return period following time of supply (as that term is defined in the GST Act). The purchaser also confirms that this GST input tax credit will be claimed in a GST return period which will enable the transfer to be effectively undertaken prior to the due date of the vendor's
corresponding GST output tax liability falling due, subject always to the purchaser receiving from the vendor a GST tax invoice within three (3) working days of the date on which time of supply has been triggered. The purchaser shall also submit to the Commissioner with his/her/its return a letter addressed to the Commissioner requesting the Commissioner to credit the GST input due to the account of the vendor.

49.5 The purchaser warrants that he/she/it does not have any taxation arrears that the GST input tax credit available relating to this transaction could be applied to by the Commissioner in preference to the transfer referred to in the above clauses.

49.6 The purchaser further warrants that any net shortfall in the GST input tax credit available for transfer by the purchaser, due to other trading activities, will be paid by the purchaser to the Commissioner for crediting to the appropriate GST period before the transfer date to ensure sufficient credit is available to enable the transfer of the full GST input tax credit relating to the property transaction as requested.

49.7 In the event that the GST transfer can not be effected in full as anticipated, the purchaser will pay the vendor any late payment penalties and use of money interest the vendor is charged by the Commissioner due to any subsequent late payment of the vendor’s liability as a result of the failure of this transfer to be effected.

49.8 If for whatever reason after the furnishing of the GST returns and the offset having taken place this agreement is cancelled then the vendor shall be obliged pursuant to section 25(3)(a) of the GST Act to issue a credit note for the GST forthwith. The parties shall jointly apply to the Commissioner for a reversal of the GST offset and accordingly neither party shall be entitled to make a change to their GST position as a result of the cancellation of the agreement without the consent and co-operation of the other.
NOTE: This clause is to be used if the property is sold before the auction date set down for the sale of the property and not at the auction itself. If a property that is intended to be auctioned is in fact sold before the auction the REINZ Auction Form should not be used and the REINZ/ADLS Agreement for Sale and Purchase of Real Estate Eighth Edition 2006 (3) should be used instead with the following clause 50.0 inserted under the Further Terms of Sale on the second to last page of the agreement.

If the property is sold after the auction (not at the auction) the REINZ/ADLS Agreement for Sale and Purchase of Real Estate Eighth Edition 2006 (3) should be used but this clause is not required and the purchaser and vendor can negotiate any amendments to the agreement terms in the usual manner.

50.0 Amendments to General Terms of Sale

50.1 The parties agree that:

(1) The purchaser accepts the vendor's title and the purchaser expressly acknowledges that he/she/it has no right to object to or requisition the vendor's title under subclauses 5.2 and 5.3 of the General Terms of Sale.

(2) Subclauses 2.4 and 8.3 and clause 9 of the General Terms of Sale be deleted.

(3) For the avoidance of doubt this agreement is not conditional upon the purchaser obtaining finance, a LIM report or OIA consent.
PART VI RURAL

51.0 Crown Lease

51.1 This agreement is conditional upon the consent of the lessor under Crown Lease number [  ] being obtained from the relevant authority by [delete one] [  ] or/within [  ] working days after the date of this agreement. Each party shall take whatever steps are necessary to ensure the satisfaction of this condition and in particular the purchaser shall 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 proposed transfer of the lease as the lessor may reasonably require. This condition is inserted for the sole benefit of the vendor.

52.0 Farm Management

52.1 The vendor must farm the property until the possession date in a manner that is considered reasonable by industry standards after taking into account:-

(a) The vendor’s specific obligations in the agreement (if any); and

(b) Climatic and similar conditions which the vendor cannot control.

52.2 However this farm management clause does not require the vendor to carry out any seasonable 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.

53.0 Top Dressing

53.1 Pending settlement date the vendor shall, at the vendor's own cost and expense in all respects, top dress the property at the appropriate time in accordance with the normal custom in the district that 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.

54.0 Vendor to Leave Hay for Purchaser

54.1 The vendor shall leave for the purchaser as at 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.

55.0 Autumn-Saved Pasture

55.1 The vendor will not later than [ ] [insert the date] close up and refrain from grazing that part of the property marked “A” on the attached plan which comprises of approximately [ ] hectares of the property. That area shall 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.

56.0 Sowing Winter Feed/Pasture

56.1 Pending settlement date the vendor shall, at the vendor's cost and expense in all respects, cultivate, sow and fertilise [ ] hectares of winter feed/pasture [delete one] in accordance with best farming practice in the district the property is situated, when the time is appropriate for the vendor to do so.

57.0 Re-Grassing

57.1 The vendor shall, at the vendor’s expense, cultivate and re-sow in grass the area marked “[ ]” on the attached plan during the month of [ ]. The type of seed shall be approved by the purchaser, but the purchaser may not unreasonably withhold consent [or alternatively specify the seed to be sown].
57.2 Such re-sowing shall be carried out in accordance with best farm practices with the appropriate quality and quantity of seed and fertiliser.

58.0 Transfer of Resource Consents as to Farming Operation

58.1 The vendor shall use his/her/its best endeavours to transfer and assign to the purchaser the rights that the vendor holds under his/her/its 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 shall accept that situation and shall have no claim against the vendor in respect of this clause.

NOTE: See also clause 10.0 above (Obtaining Acceptable Resource Consent)

59.0 Chattels Exclusion – Property of Sharemilker/Tenant/Manager

59.1 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 specifically excluded from the sale evidenced by this agreement. Those chattels shall be removed from the property prior to the possession date and are as follows:

(1)

(2)

(3)

60.0 Effluent Disposal Warranty

60.1 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.

61.0 Reservation of Forestry Rights

61.1 The purchaser accepts and agrees that the vendor retains the timber cutting rights over an area of approximately [ ] hectares of radiata pine [insert other species of trees if applicable] within the area marked red on the
attached plan. Such cutting rights shall persist for a term expiring on [ ].

61.2 The cutting rights shall include the rights of the vendor, the vendor's agents, employees and contractors to:

1. Gain access to the area together with such vehicles, plant and equipment as shall be necessary during reasonable business hours for the purposes of inspecting, protecting, tending, cutting and harvesting the trees; and

2. Make, construct and utilise such roadways, bridges, dams and landings as shall be necessary for the purposes of inspecting, protecting, tending, cutting and harvesting the trees; and

61.3 Once the harvesting of the trees is complete, or on the sooner termination of the cutting rights, the vendor shall leave the area [Insert the state in which the land is to be left – e.g., clear and ready for replanting/ready for grass seed etc].

61.4 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 shall 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.

62.0 Fertiliser

62.1 The vendor shall spread [ ] tonnes of [describe the fertiliser] on the property between the dates of [ ] and [ ]. The vendor must give the purchaser proof that this fertiliser clause has been complied within five (5) working days of the purchaser notifying the vendor that proof is required.
63.0 Fertiliser (Specific Areas)

63.1 The vendor must put \[ \text{[fill in]} \] tonnes of \text{[describe the fertiliser]} spread evenly over the part of the property marked “A” on the attached plan. The vendor must give the purchaser proof that this fertiliser clause has been complied within five (5) working days of the purchaser notifying the vendor that proof is required.

64.0 Fertiliser (Vendor to Comply with the Purchaser’s Instructions)

64.1 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 instructions. The purchaser must pay the vendor the excess on settlement if the total cost of the fertiliser and spreading of the fertiliser exceeds $\[ \text{[fill in]} \] plus GST. The vendor must give the purchaser proof that this fertiliser clause has been complied within five (5) working days of the purchaser notifying the vendor that proof is required.

65.0 Fertiliser (Vendor Warranty as to Application of Fertiliser)

65.1 The vendor warrants that the following fertiliser has been put on the property since the \text{[insert date]}:

(1)

(2)

(3)

The vendor must give the purchaser proof that this fertiliser clause has been complied within five (5) working days of the purchaser notifying the vendor that proof is required.
66.0 Drains

66.1 The vendor must clean all drains on the property \textit{[the drains specified and marked on the attached plan]} before settlement date. The cleanings from the drains must be spread evenly over the paddocks adjacent to the drains.
7 PART VII COMMERCIAL

67.0 Guarantee of Rental of Property by Vendor

67.1 Prior to possession date, the vendor shall procure the execution by a lessee acceptable to the purchaser (the purchaser's acceptance shall not be withheld in the event that the lessee can be shown to be respectable, responsible and solvent) of a deed of lease in the form annexed hereto (subject to such variations and alterations as the purchaser and the lessee may agree) and containing the following terms:

(1) Rental of $[ ] per annum;

(2) A minimum term of [ ] years;

(3) Rental reviews at [ ] yearly intervals;

(4) 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 shall not be unreasonably or arbitrarily withheld in the case of a use which is not noxious, offensive or illegal;

(5) Commencement of rental: On settlement date;

(6) The personal covenants of the shareholders of any approved tenant shall be required in the case of a company other than a public listed company.

67.2 In the event that a lease is not arranged as aforesaid, the vendor shall 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 shall continue until a lease has been arranged by the vendor with such apportionment for any broken monthly period as may be appropriate.

NOTE: Other commercial clauses are contained within earlier sections of this clause book such as Due Diligence, Confidentiality, Guarantee, Board Ratification, Condition and GST clauses.
8 PART VIII BALANCE OF PURCHASE PRICE

68.0 Vendor Finance and Settlement Date

68.1 The balance of the purchase price shall be paid or satisfied as follows:

(1) by payment in cleared funds of $[ ] on settlement date which is [ ]; and

(2) by the purchaser executing in favour of the vendor a first/second [delete one] mortgage ("the vendor mortgage") secured against the property for the sum $[ ] on terms and conditions as are set out below.

68.2 The vendor mortgage shall be on the following terms and conditions:-

(1) Principal Sum: $[ ] (the sum referred to in the second subclause of the immediately preceding clause).

(2) Term: [ ] years commencing on settlement date.

(3) Interest Rate: An ordinary rate of [ ] % calculated with quarterly rests and a penalty rate the same as the interest rate for late settlement as inserted on the front page of this agreement.

(4) Interest Payment: Payable weekly/monthly/quarterly [delete one] as from settlement date.

(5) Additional Principal Repayment: Payable on any interest payment date in multiples of $[ ] or the full balance of the purchase price with interest ceasing on such amount as from the date of repayment.

(6) Form of Mortgage: In accordance with the terms of clause 9.9 of the General Terms of Sale and prepared by the vendor's solicitor at the cost of the purchaser in all respects.

(7) Priority Sum: Where the vendor's mortgage is a second mortgage the priority afforded to the first mortgage shall not be more than $[ ] / [ ] % [delete one] of the purchase price or the value recommended by the purchaser's registered valuer as the vendor shall determine.
NOTE: It is preferable to have a copy of the mortgage form attached to the agreement.

NOTE: Credit Contract Disclosure Requirements

Note 1: If the above clause 68 is used and the agreement meets certain other requirements [see Notes 2 and 3 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. Disclosure of the credit arrangement must be made by the vendor to the purchaser within five (5) working days of the date of the agreement and it is important that each party seek professional advice to ensure disclosure is carried out correctly and the requirements of the Act are satisfied.

It is important to note that the agreement does not become binding on the purchaser until:

(a) Three (3) working days after disclosure is made direct to the purchaser (e.g., handing documents direct to the purchaser); or

b) Five (5) working days after disclosure is made if made by electronic means (e.g., by email); or

c) Seven (7) working days after disclosure is made if documents are posted.

Note 2: The provisions of the Credit Contracts and Consumer Finance Act 2003 outlined in Note 1 above shall only apply 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 commercial 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 advisor or broker.

Note 3: Where Notes 2 (a), (b) and (c) all apply, disclosure must be made to the purchaser and the purchaser is not bound by the 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 and in each case the vendor is selling the property to the purchaser on credit terms. Another example is where the vendor is a private client of the purchaser's solicitor introduced to the purchaser by that solicitor.

NOTE: 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 effected 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.

NOTE: Legal Advice

(1) Parties should not enter into agreements containing the above clause or any other clause relating to vendor finance without obtaining professional advice and ensuring the appropriate clauses have been prepared after consultation with the parties' solicitors. 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.
69.0 Payment by Instalments and Settlement Date

69.1 The balance of the purchase price shall be paid or satisfied in cleared funds of $[ ] by instalments on the dates as specified below:

(1) An instalment of $[ ] payable on [ ];

(2) An instalment of $[ ] payable on [ ];

(3) An instalment of $[ ] payable on [ ];

(4) An instalment of $[ ] payable on [ ];

69.2 The remainder of the purchase price shall be paid or satisfied by payment in cleared funds together with any unpaid instalments as set out above together with interest accrued thereon on settlement date which is [ ].

69.3 Any instalment of the purchase price unpaid on the due date for payment shall attract interest in accordance with the terms of clause 3.12(1) of the General Terms of Sale and the unpaid instalment plus accrued interest shall be due and payable on settlement date as set out above.

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".

70.0 Payment by Goods as Part Payment and Settlement Date

70.1 The balance of the purchase price shall be paid or satisfied as follows:

(1) by payment in cleared funds of $[ ] on the settlement date which is [ ].

(2) The sum of $[ ] shall be satisfied by the purchaser transferring to the vendor on settlement date ownership of the following items:-

(3)
70.2 The purchaser warrants that the items listed above are or will be by the settlement date:-

(1) The unencumbered property of the purchaser and the purchaser shall transfer good and clear title to the items; and

(2) In good working order and repair.

70.3 If any of the items listed above require a notice, certificate or written evidence of change of ownership then the purchaser shall be obliged to provide the vendor on settlement with a valid signed and registerable 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".

71.0 Payment by Way of a Long Term Agreement for Sale and Purchase and Settlement Date

71.1 The balance of the purchase price shall be paid or satisfied by a part payment in cleared funds of $[              ] on the possession date which is [                  ].

71.2 The remaining balance of the purchase price being a sum of $[              ] shall be paid or satisfied by payment in equal consecutive monthly payments of $[              ] on the [       ] day of each month for the months of [                ]. The first of such payments being payable [        ] month(s) from the possession date. Such payments shall be applied by the vendor first in payment of interest at the rate of [        ]% per annum (and a penalty rate the same as the interest rate for late settlement as defined on the front page of this agreement) calculated with monthly rests and secondly in reduction of the balance of the purchase price as set out herein. The final payment of the balance of the purchase price shall be paid in cleared funds on settlement date which is [                  ].
71.3 On any interest payment date the purchaser may make additional payments in multiples of $[ ] in reduction of the balance of the purchase price. Interest on such sum repaid shall cease to accrue as from that interest payment date. Notwithstanding the making of an additional payment in reduction of the purchase price it shall not relieve the purchaser of the obligation to continue to make the compulsory periodic payments as set out above.

71.4 During the term of this agreement all covenants contained in the ADLS form of Memorandum of Mortgage No 2007/4237 shall be imported into this agreement as if they were terms of this agreement. The purchaser shall comply with those covenants to the intent that a breach by the purchaser of any of those covenants shall 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 meet the purchaser's obligations on the purchaser's behalf and recover the amount from the purchaser together with interest at the interest rate for late settlement for the period from the date that the vendor makes such payment of that amount until the date the vendor receives reimbursement by the purchaser and otherwise as if it was a payment due by the purchaser pursuant to clause 3.12(1) in the General Terms of Sale.

71.5 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.

71.6 While the balance of the purchase price remains owing the vendor may require the purchaser to take title of the property and to execute in favour of the vendor and/or his nominee a registerable first mortgage over the property securing the balance of the purchase price on the following terms:

(1) The mortgage shall 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 in subclause 2 above, together with interest thereon at the rate
specified above and all other terms and conditions shall be in accordance
with the provisions as set out above mutatis mutandis; and

(2) The mortgage shall be prepared by the vendor's solicitor at the expense
in all respects of the purchaser. It shall include all the terms set out
above and it shall otherwise be on the form as specified in clause 9.9 of
the General Terms of Sale.

71.7 Pending the purchaser being given and taking title, the vendor shall be at
liberty to mortgage or re-mortgage the property provided that the sum
secured at any time by such mortgage or mortgages shall 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 shall register a
Caveat against the title to the property the purchaser will 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.

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

71.9 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 hereunder shall be due and payable in full on
settlement of the sale, exchange or disposal of the property by the purchaser.

NOTE: Please refer to NOTES 1-6 under clause 68.0 above (Vendor Finance
and Settlement Date) in respect of the Credit Contracts and Consumer Finance
read over these notes carefully before inserting the above clause 71.0 (Payment
by Way of a Long Term Agreement for Sale and Purchase and Settlement Date) into an agreement.

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".

72.0 Payment and Settlement Date for the Property Where the Title is to be Issued

72.1 The balance of the purchase price shall be paid or satisfied by payment in cleared funds on 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: 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 3.16 of the General Terms of Sale will not apply if this clause is used.

NOTE: Professional Advice Recommended. Given the complexity of clauses 68-72 above, 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’ solicitors.