

# Contract for Sale of Land (Section 143 Local Government Regulation 2012)

The Seller and Buyer agree to sell and buy the Land under this Contract.

## REFERENCE SCHEDULE

Contract Date: \_\_\_\_\_

### PARTIES

#### Seller:

NAME:	Mareeba Shire Council Pursuant to Chapter 4, Part 12, Division 3 of the Local Government Regulation	ABN:	39 114 383 874		
ADDRESS:	65 Rankin Street				
SUBURB:	MAREEBA	STATE:	QLD	POSTCODE:	4880
CONTACT:	TELEPHONE:	EMAIL:			
	1300 308 461	info@msc.qld.gov.au			

#### Seller's Solicitor:

NAME:	Preston Law				<input type="checkbox"/> or any other solicitor notified to the Buyer
REF:	CONTACT:				
ADDRESS:	15 Spence Street				
SUBURB:	CAIRNS	STATE:	QLD	POSTCODE:	4870
PHONE:	MOBILE:	FAX:	EMAIL:		
07 4052 0700			jcuda@prestonlaw.com.au		

#### Buyer:

NAME:					ABN:
ADDRESS:					
SUBURB:		STATE:		POSTCODE:	
PHONE:	MOBILE:	FAX:	EMAIL:		
NAME:					ABN:
ADDRESS:					
SUBURB:		STATE:		POSTCODE:	
PHONE:	MOBILE:	FAX:	EMAIL:		

INITIALS

**Buyer's Solicitor:** NAME: \_\_\_\_\_  or any other solicitor notified to the Seller

REF: \_\_\_\_\_ CONTACT: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

SUBURB: \_\_\_\_\_ STATE: \_\_\_\_\_ POSTCODE: \_\_\_\_\_

PHONE: \_\_\_\_\_ MOBILE: \_\_\_\_\_ FAX: \_\_\_\_\_ EMAIL: \_\_\_\_\_

**LAND**

ADDRESS: 2577 Herberton Petford Road

SUBURB: Irvinebank STATE: QLD POSTCODE: 4887

Built on  Vacant

Description: Lot: 6  
on: Crown Plan I3148

Title Reference: 20137025 Area: 759m<sup>2</sup> Land sold as:  Freehold  Leasehold  
 more or less  if neither is selected, the land is treated as being Freehold

Present Use: Vacant Land Local Government: Mareeba Shire Council

**PRICE**

Deposit Holder: Preston Law

Deposit Holder's Trust Account: Preston Law Trust Account

Bank: ANZ

BSB: 014 734 Account No: 835 827 858

Purchase Price: \$ \_\_\_\_\_  Unless otherwise specified in this contract, the Purchase Price includes any GST payable on the supply of the Property to the Buyer.

Deposit: \$ 10% of Purchase Price Initial Deposit payable when Buyer signs this contract

\$ \_\_\_\_\_ Balance Deposit (if any) payable on: N/A

Default Interest Rate: \_\_\_\_\_ %  If no figure is inserted, the Contract Rate applying at the Contract Date published by the Queensland Law Society Inc will apply.

**MATTERS AFFECTING LAND**

**Title Encumbrances:**

Is the Land sold subject to any Encumbrances?  No  Yes, listed below:

\_\_\_\_\_

**GST WITHHOLDING OBLIGATIONS**

Is the Buyer registered for GST and acquiring the Land for a creditable purpose?  
(select whichever is applicable)

- Yes
- No

[Note: An example of an acquisition for a creditable purpose would be the purchase of the Land by a building contractor, who is registered for GST, for the purposes of building a house on the Land and selling it in the ordinary course of its business.]

The Seller gives notice to the Buyer in accordance with section 14-255(1)(a) of the Withholding Law that:

(select whichever is applicable)

- the Buyer is *not* required to make a payment under section 14-250 of the Withholding Law in relation to the supply of the Property
- the Buyer is required to make a payment under section 14-250 of the Withholding Law in relation to the supply of the Property. Under section 14-255(1) of the Withholding Law, the Seller is required to give further details prior to settlement.

The attached Terms of Contract (pages 4 to 14) contain the Terms of this Contract.

### SETTLEMENT

**Settlement Date:** 30 days from the Contract Date  or the next Business Day if that is not a Business Day in the Place for Settlement

**Place for Settlement:** Cairns

### SIGNATURES

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

If this contract is concluded at, or, in limited circumstances, as a result of auction, no cooling-off period is applicable.

**BUYER:** \_\_\_\_\_ **WITNESS:** \_\_\_\_\_

**BUYER:** \_\_\_\_\_ **WITNESS:** \_\_\_\_\_  
By placing my signature above I warrant that I am the Buyer named in the Reference Schedule or authorised by the Buyer to sign. **[Note: No witness is required if the Buyer signs using an Electronic Signature]**

**SELLER:** \_\_\_\_\_ **WITNESS:** \_\_\_\_\_

**SELLER:** \_\_\_\_\_ **WITNESS:** \_\_\_\_\_  
By placing my signature above I warrant that I am the Seller named in the Reference Schedule or authorised by the Seller to sign. **[Note: No witness is required if the Seller signs using an Electronic Signature]**

# TERMS OF CONTRACT

## 1. DEFINITIONS

### 1.1. In this Contract:

1.1.1. Terms in **bold** in the Reference Schedule have the meanings shown opposite them; and

1.1.2. Unless the context otherwise indicates:

- 1.1.2.1. "**Balance Purchase Price**" means the Purchase Price, less the Deposit, adjusted under clause 2.5;
- 1.1.2.2. "**Business Day**" means a week day other than a public holiday in the Place of Settlement;
- 1.1.2.3. "**Contract Date**" or "**Date of Contract**" means the date inserted in the Reference Schedule;
- 1.1.2.4. "**Court**" includes any tribunal established under statute;
- 1.1.2.5. "**Default Interest Rate**" means the Contract Rate published by the Queensland Law Society Inc;
- 1.1.2.6. "**Electronic Signature**" means an electronic method of signing that identifies the person and indicates their intention to sign the contract;
- 1.1.2.7. "**Encumbrances**" includes:
  - 1.1.2.7.1. unregistered encumbrances;
  - 1.1.2.7.2. statutory encumbrances.
- 1.1.2.8. "**Essential Term**" includes, in the case of breach by:
  - 1.1.2.8.1. the Buyer: clauses 2.2, 2.4, 3.1, 4.1 and 7.1; and
  - 1.1.2.8.2. the Seller: clauses 3.3 and 4.1;but nothing in this definition precludes a Court from finding other terms to be essential;
- 1.1.2.9. "**GST**" means the goods and services tax under the GST Act;
- 1.1.2.10. "**GST Act**" means A New Tax System (Goods and Services Tax) Act and includes other GST related legislation;
- 1.1.2.11. "**Improvements**" means fixed structures on the Land;
- 1.1.2.12. "**Keys**" means any keys, codes or devices in the Seller's possession or control for locks or security systems on the Land;
- 1.1.2.13. "**Land**" means the Land the subject of this contract;
- 1.1.2.14. "**Outgoings**" means:
  - 1.1.2.14.1. rates or charges on the Land by any competent authority (for example, council rates, water rates, fire service levies); and
  - 1.1.2.14.2. land tax;
- 1.1.2.15. "**PPSR**" means the Personal Property Securities Register established under Personal Property Securities Act 2009 (Cth);
- 1.1.2.16. "**Property**" means the Land;
- 1.1.2.17. "**Security Interests**" means all security interests registered on the PPSR over Improvements;
- 1.1.2.18. "**Transfer Documents**" means:
  - 1.1.2.18.1. the form of transfer approved by the Registrar of Titles under the Land Title Act 1994

required to transfer title in the Land to the Buyer; and

1.1.2.18.2. any other document to be signed by the Seller necessary for stamping or registering the transfer.

1.1.2.19. **"Withholding Law"** means Schedule 1 to the Taxation Administration Act 1953 (Cth).

## 2. PURCHASE PRICE

### 2.1. GST

2.1.1. Unless otherwise specified in this contract, the Purchase Price includes any GST payable on the supply of the Land to the Buyer.

2.1.2. If a party is required to make any payment or reimbursement under this contract, that payment or reimbursement will be reduced by the amount of any input tax credits to which the other party (or the representative member for a GST group of which it is a member) is entitled.

### 2.2. Deposit

2.2.1. The Buyer must pay the Deposit to the Deposit Holder at the times shown in the Reference Schedule. The Deposit Holder will hold the Deposit until a party becomes entitled to it.

2.2.2. The Buyer will be in default if it:

2.2.2.1. does not pay the Deposit when required;

2.2.2.2. pays the Deposit by a post-dated cheque; or

2.2.2.3. pays the Deposit by cheque which is dishonoured on presentation.

2.2.3. The Seller may recover from the Buyer as a liquidated debt any part of the Deposit which is not paid when required.

### 2.3. Entitlement to Deposit and Interest

2.3.1. The party entitled to receive the Deposit is:

2.3.1.1. if this Contract settles, the Seller;

2.3.1.2. if this Contract is terminated without default by the Buyer, the Buyer; and

2.3.1.3. if this Contract is terminated owing to the Buyer's default, the Seller.

2.3.2. If this Contract is terminated, the Buyer has no further claim once it receives the Deposit and interest, unless the termination is due to the Seller's default or breach of warranty.

### 2.4. Payment of Balance Purchase Price

2.4.1. On the Settlement Date, the Buyer must pay the Balance Purchase Price by bank cheque as the Seller directs.

2.4.2. Despite any other provision of this Contract, a reference to a "bank cheque" in clause 2.4.1:

2.4.2.1. includes a cheque drawn by a Building Society or Credit Union on itself;

2.4.2.2. does not include a cheque drawn by a Building Society or Credit Union on a Bank;

and the Seller is not obliged to accept a cheque referred to in clause 2.4.2.2 on the Settlement Date.

2.4.3. If both the following apply:

2.4.3.1. the sale is not an excluded transaction under s14-215 of the Withholding Law; and

2.4.3.2. the Seller has not given the Buyer on or before settlement for each person comprising the Seller either:

2.4.3.2.1. an ATO Clearance Certificate; or

2.4.3.2.2. a variation notice under s14-235 of the Withholding Law which remains current at the Settlement Date varying the CGT Withholding Amount to nil,

then:

2.4.3.3. the Seller irrevocably directs the Buyer to draw a bank cheque for the CGT Withholding Amount in favour of the Commissioner of Taxation or, if the Buyer's Solicitor requests, the Buyer's Solicitor's Trust Account;

2.4.3.4. the Buyer must lodge a Foreign Resident Capital Gains Withholding Purchaser Notification Form with the ATO for each person comprising the Buyer and give copies to the Seller with the payment reference numbers (PRN) on or before settlement;

2.4.3.5. the Seller must return the bank cheque in paragraph 2.4.3.3 to the Buyer's Solicitor (or if there is no Buyer's Solicitor, the Buyer) at settlement; and

2.4.3.6. the Buyer must pay the CGT Withholding Amount to the ATO in accordance with section 14-200 of the Withholding Law and give the Seller evidence that it has done so within 2 Business Days of settlement occurring.

2.4.4. For clause 2.4.3 and section 14-215 of the Withholding Law, the market value of the CGT asset is taken to be the Purchase Price less any GST included in the Purchase Price for which the Buyer is entitled to an input tax credit unless:

2.4.4.1. the Property includes items in addition to the Land and Improvements; and

2.4.4.2. no later than 2 Business Days before the Settlement Date, the Seller gives the Buyer a valuation of the Land and Improvements prepared by a registered valuer,

in which case the market value of the Land and Improvements will be as stated in the valuation.

2.4.5. If the Buyer is required to pay the GST Withholding Amount to the Commissioner of Taxation at settlement pursuant to section 14-250 of the Withholding Law:

2.4.5.1. the Seller must give the Buyer a notice in accordance with section 14-255(1) of the Withholding Law;

2.4.5.2. prior to settlement the Buyer must lodge with the ATO:

2.4.5.2.1. a GST Property Settlement Withholding Notification form ("Form 1"); and

2.4.5.2.2. a GST Property Settlement Date Confirmation form ("Form 2");

2.4.5.3. on or before settlement, the Buyer must give the Seller copies of:

2.4.5.3.1. the Form 1;

2.4.5.3.2. confirmation from the ATO that the Form 1 has been lodged specifying the Buyer's lodgement reference number and payment reference number;

2.4.5.3.3. confirmation from the ATO that the Form 2 has been lodged; and

2.4.5.3.4. a completed ATO payment slip for the Withholding Amount;

2.4.5.4. the Seller irrevocably directs the Buyer to draw a bank cheque for the GST Withholding Amount in favour of the Commissioner of Taxation and deliver it to the Seller at settlement; and

2.4.5.5. the Seller must pay the GST Withholding Amount to the ATO in compliance with section 14-250 of the Withholding Law promptly after settlement.

## **2.5. Adjustments to Balance Purchase Price**

2.5.1. The Buyer is liable for Outgoings after the Settlement Date.

2.5.2. Outgoings for periods including the Settlement Date must be adjusted :

2.5.2.1. for those paid, on the amount paid;

2.5.2.2. for those assessed but unpaid, on the amount payable (excluding any discount) ; and

2.5.2.3. for those not assessed:

2.5.2.3.1. on the amount the relevant authority advises will be assessed (excluding any discount); or

2.5.2.3.2. if no advice on the assessment to be made is available, on the amount of the latest separate assessment (excluding any discount).

2.5.3. The Seller's liability for any rates, taxes or other outgoings in respect of the Land merges on settlement of this Contract.

2.5.4. Any payments for outgoings or other amounts contemplated by this clause are subject to the provisions of the *Local Government Regulation 2012*.

### **3. SETTLEMENT**

#### **3.1. Time and Date**

3.1.1. Settlement must occur between 9am and 4.45pm on the Settlement Date at the Place for Settlement.

#### **3.2. Transfer Documents**

3.2.1. The Transfer Documents must be prepared by the Buyer and delivered to the Seller a reasonable time before the Settlement Date.

#### **3.3. Documents and Keys at Settlement**

3.3.1. In exchange for payment of the Balance Purchase Price, the Seller must deliver to the Buyer at settlement unstamped Transfer Documents capable of immediate registration after stamping and any keys held by the Seller.

#### **3.4. Consent to Transfer**

3.4.1. If the Land sold is leasehold, this contract is subject to any necessary consent to the transfer of the lease to the Buyer being obtained by the Settlement Date.

3.4.2. The Buyer must apply for the consent required as soon as possible.

3.4.3. The Seller must do everything reasonably required to help obtain this consent.

### **4. TIME**

4.1. Time is of the essence of this contract, except regarding any agreement between the parties on a time of day for settlement.

### **5. MATTERS AFFECTING THE PROPERTY**

#### **5.1. Title**

The Land is sold subject to:

5.1.1. any reservations or conditions on the title or the original Deed of Grant (if freehold) ; or

5.1.2. the Conditions of the Crown Lease (if leasehold).

#### **5.2. Encumbrances**

The Land is sold free of all Encumbrances in accordance with the *Local Government Regulation 2012*.

#### **5.3. Requisitions**

The Buyer may not deliver any requisitions or enquiries on title.

#### **5.4. No Warranties**

5.4.1. The Land is sold "as is where is" in accordance with the Seller's powers pursuant to the *Local Government Regulation 2012*. The Buyer accepts the Land on this basis.

5.4.2. The Seller gives no warranty of any kind as to:

- 5.4.2.1. the condition of the Land;
- 5.4.2.2. the condition and any occupancy of any Improvements on the Land;
- 5.4.2.3. the boundaries of the Land and any encroachments;
- 5.4.2.4. compliance with or lack of compliance with the requirements of any statutory or other authority;
- 5.4.2.5. whether the Land or any Improvements thereon are adversely affected by the requirements of any authority or any other matter or thing including any PPSR Security Interest of any kind.

5.4.3. The Buyer:

5.4.3.1. acknowledges that the Buyer has conducted all searches and other enquiries the Buyer deems necessary in respect of the Land and has satisfied itself in relation to all matters in relation to the Land, including but not limited to the following:

- 5.4.3.1.1. rights and privileges relating to the Land;
- 5.4.3.1.2. the existence or non-existence of any defects (latent or patent) affecting the Property or the title to the Property;
- 5.4.3.1.3. any immaterial or material error in the description or particulars of the Property, the title of the Property, or the boundaries or area of the Land;
- 5.4.3.1.4. the existence of any Encumbrances, encroachments, heritage status, notices or history affecting the Property (whether adversely or not);
- 5.4.3.1.5. any walls or fences on the Land that should be on the boundaries of the Land but which are not;
- 5.4.3.1.6. the state of repair and condition, quality, quantity, structural soundness and absence or otherwise of impediments, faults, inadequacies and defects in the Property or any improvements on the Land, and whether or not the construction or use of the Property is, or will be, lawful;
- 5.4.3.1.7. whether or not the Property, the Improvements on the Land (including any pool) and any occupation of those improvements comply with all obligations under any law including without limitation *Building Act 1975 (Qld)*, *Building Code of Australia*, *Fire and Rescue Service Act 1990 (Qld)* and the *Building Fire Safety Regulation 2008 (Qld)*;
- 5.4.3.1.8. the fitness and suitability of the Property for the purposes the Buyer wants it;
- 5.4.3.1.9. the zoning, restrictions and potential use of the Property, including the lawful purposes for which the Property may be used, or the suitability of the Land for future development;
- 5.4.3.1.10. the existence or otherwise of necessary approvals and licences from any Authority relating to the Property, including any failure to comply with any approvals or licences and the state of any conditions under those approvals;
- 5.4.3.1.11. the future economic feasibility, viability and economic return of the Property or use of the Property;
- 5.4.3.1.12. whether there are any requirements of any Authority relating to the Property, including notices requiring the doing of work in respect of the Property, enforcement notices, resumptions, road dedications, road widenings and similar things;
- 5.4.3.1.13. the means of access to the Property;
- 5.4.3.1.14. whether any services (such as electricity, telecommunications, sewerage and water) are connected to the Property or available to the Land;
- 5.4.3.1.15. whether any services and systems relating to the Property (for example: irrigation systems, lifts and airconditioning systems) are operative and in good repair;
- 5.4.3.1.16. whether the Property is dedicated as a protected area of any class mentioned in section 14 of the *Nature Conservation Act 1992 (Cth)* or is affected by a conservation agreement or conservation plan pursuant to the Act;
- 5.4.3.1.17. whether the Property is entered on the Heritage Register or is the subject of a stop order, restoration



order or non-development order or is in a declared protected area or in a restricted zone pursuant to the *Queensland Heritage Act 1992* (Cth);

5.4.3.1.18. whether there exists any claim for an interest in the Property by an Australian Aboriginal People pursuant to the *Aboriginal Land Act 1991* (Qld), the *Native Title Act 1993* (Cth) or the *Native Title (Queensland) Act 1993* (Qld);

5.4.3.1.19. the existence of any asbestos in or around the Land;

5.4.3.1.20. the existence of any contamination or remedial works, whether requested or not in or around the Land;

5.4.3.1.21. whether the Land is affected by any application to, or an order made by, the Queensland Civil and Administrative Tribunal in relation to a tree or trees on the Land;

5.4.3.1.22. any adverse claims against, or current or threatened litigation by any person claiming an estate or interest in, the Property;

5.4.3.1.23. the GST treatment of the supply of the Property to the Buyer or the ability to obtain any GST exemptions or concessions;

5.4.3.1.24. the existence, currency or adequacy of any insurance policies held in connection with the Property;

5.4.3.1.25. the accuracy of any statement made or information contained in an information memorandum or similar document prepared by or on behalf of the Seller;

5.4.3.1.26. the value of the Property; and

5.4.3.1.27. any independent reports that the Seller gave the Buyer before the Contract Date;

5.4.3.2. acknowledges that the Buyer is purchasing the Land solely in reliance on the Buyer's own judgement and without regard to any representation of any kind by or on behalf of the Seller.

## 6. SMOKE ALARMS

6.1. The Seller cannot take steps to comply with the *Fire and Emergency Services Act 1990*. The Buyer accepts the Property in its state at the Settlement Date.

## 7. RIGHTS AND OBLIGATIONS UNTIL SETTLEMENT

### 7.1. Risk

The Land is at the Buyer's risk on and from the Contract Date.

## 8. ACCESS

8.1. The Seller is selling the Land in its capacity as local government for unpaid rates under the *Local Government Regulation 2012* (Qld). The Seller is not authorised to allow the Buyer and its consultants access to the Property.

## 9. PARTIES' DEFAULT

### 9.1. Seller and Buyer May Affirm or Terminate

Without limiting any other right or remedy of the parties including those under this Contract or any right at common law, if the Buyer, fails to comply with an Essential Term, or makes a fundamental breach of an intermediate term, the Seller may affirm or terminate this contract.

### 9.2. If Seller Affirms

If the Seller affirms this Contract under clause 9.1, it may sue the Buyer for:

9.2.1. damages;

9.2.2. specific performance; or

9.2.3. damages and specific performance.

INITIALS

### 9.3. If Seller Terminates

If the Seller terminates this contract under clause 9.1, it may do all or any of the following:

9.3.1. forfeit the Deposit;

9.3.2. sue the Buyer for damages;

9.3.3. resell the Land.

### 9.4. Seller's Resale

9.4.1. If the Seller terminates this contract and resells the Land, the Seller may recover from the Buyer as liquidated damages :

9.4.1.1. any deficiency in price on a resale; and

9.4.1.2. its expenses connected with any repossession, any failed attempt to resell, and the resale.

9.4.2. Any profit on a resale belongs to the Seller.

### 9.5. Seller's Damages

The Seller may claim damages for any loss it suffers as a result of the Buyer's default, including its legal costs on an indemnity basis.

### 9.6. Interest on Late Payments

9.6.1. Without affecting the Seller's other rights, if any money payable by the Buyer under this contract is not paid when due, the Buyer must pay the Seller at settlement interest on that money calculated at the Default Interest Rate from the due date for payment until payment is made.

9.6.2. The Seller may recover that interest from the Buyer as liquidated damages.

9.6.3. Any judgment for money payable under this contract will bear interest from the date of judgment to the date of payment and the provisions of this clause 9.6 apply to calculation of that interest.

## 10. GENERAL

### 10.1. Duty

The Buyer must pay all duty on this contract.

### 10.2. Notices

10.2.1. Notices under this contract must be in writing and may be given by a party's solicitor.

10.2.2. Notices may be given by:

10.2.2.1. delivering or posting to the other party or its solicitor ; or

10.2.2.2. sending to the email address

of the other party or its solicitor stated in the Reference Schedule or another email address specified in a notice given by the recipient to the sender.

10.2.3. Posted notices will be treated as given 2 Business Days after posting.

10.2.4. Notices given by email will be deemed to be served at the time the email was transmitted by the sender, provided the sender does not immediately indicate a malfunction in the transmission.

10.2.5. Notices given after 5pm will be treated as given on the next Business Day.

10.2.6. Notices or other written communications by a party's solicitor will be treated as given with that party's authority.

### 10.3. Business Days

If anything is required to be done on a day that is not a Business Day, it must be done instead on the next Business Day.

#### **10.4. Rights After Settlement**

Despite settlement and registration of the transfer, any term of this contract that can take effect after settlement or registration remains in force.

#### **10.5. Further Acts**

If requested by the other party, each party must, at its own expense, do everything reasonably necessary to give effect to this contract.

#### **10.6. Severance**

If any term or part of a term of this contract is or becomes legally ineffective, invalid or unenforceable in any jurisdiction it will be severed and the effectiveness, validity or enforceability of the remainder will not be affected.

#### **10.7. Interpretation**

##### **10.7.1. Plurals and Genders**

Reference to:

- 10.7.1.1. the singular includes the plural and the plural includes the singular;
- 10.7.1.2. one gender includes each other gender;
- 10.7.1.3. a person includes a Body Corporate; and
- 10.7.1.4. a party includes the party's executors, administrators, successors and permitted assigns.

##### **10.7.2. Parties**

- 10.7.2.1. If a party consists of more than one person, this contract binds them jointly and each of them individually.
- 10.7.2.2. A party that is a trustee is bound both personally and in its capacity as a trustee.

##### **10.7.3. Statutes and Regulations**

Reference to statutes includes all statutes amending, consolidating or replacing them.

##### **10.7.4. Inconsistencies**

If there is any inconsistency between any provision added to this contract and the printed provisions, the added provision prevails.

##### **10.7.5. Headings**

Headings are for convenience only and do not form part of this contract or affect its interpretation.

##### **10.7.6. Foreign Buyer Approval**

- 10.7.6.1. The Buyer warrants that either:
  - 10.7.6.1.1. the Buyer's purchase of the Property is not a notifiable action;
  - or
  - 10.7.6.1.2. the Buyer has received a no objection notification, under the Foreign Acquisitions and Takeovers Act 1975.
- 10.7.6.2. The Buyer indemnifies the Seller against and must pay the Seller on demand the amount of all Claims incurred paid or incurred by the Seller as a consequence of the breach of the warranty in clause 10.7.6.1.1.

### 10.7.7. Electronic Signing

- 10.7.7.1. If this Contract is signed by any person using an Electronic Signature, the Buyer and the Seller:
- 10.7.7.1.1. Agree to enter into this contract in electronic form; and
  - 10.7.7.1.2. Consent to either or both parties signing the contract using an Electronic Signature.

## 11. SELLER STATUS

11.1. The Buyer acknowledges and agrees for the benefit of the Seller, the employees and agents of the Seller that:

- 11.1.1. the Seller is selling the Property pursuant to Chapter 4 Part 12 Division 3 of the Local Government Regulation 2012 and has no personal responsibility whatsoever for the actions of the registered owner;
- 11.1.2. the Seller and its employees and agents (and each of them) are not liable personally or otherwise to the Buyer for the performance or non-performance of the Seller's obligations under this Contract or otherwise and any aspects of the Property;
- 11.1.3. without limiting the generality of clause 11.1.2 the Buyer acknowledges and agrees that any liability arising under or in connection with the sale of the Property can be enforced against the Seller only to the extent to which it can be satisfied out of property for which the Seller is actually indemnified for the liability;
- 11.1.4. without limiting the generality of Special Condition 11.1.2 the, the Buyer releases the Seller and its employees and agents (and each of them) from all Claims arising out of or in any way related to this Contract including (without limitation) any dealings prior to the signing of this Contract;
- 11.1.5. the Seller acts in the capacity to sell pursuant to Chapter 4 Part 12 Division 3 of the *Local Government Regulation 2012* and the Buyer is not entitled to enquire further in respect of the Seller's capacity.

11.2. At settlement the Buyer will accept a transfer of the property executed by the Seller as "Mareeba Shire Council pursuant to Chapter 4 Part 12 Division 3 of the *Local Government Regulation 2012*".

11.3. Pursuant to the provisions Chapter 4 Part 12 Division 3 of the *Local Government Regulation 2012*, the Buyer acknowledges and agrees the Seller is not required to provide to the Buyer any release of any caveat over the title of the Property or the original certificate of title issued for the Property.

## 12. RELEASE AND INDEMNITY FROM BUYER

12.1. The Buyer releases the Seller and the Seller's employees and agents, from any personal Liability for, or in relation to:

- 12.1.1. any aspect of this Contract, the Property and the performance or non-performance of the Seller's obligations under this Contract; and
- 12.1.2. any negligent act or omission.

12.2. The Buyer agrees (to the maximum extent permitted by law) to indemnify the Seller and to keep them indemnified on and after settlement of this Contract from and against all Liabilities that they directly and indirectly incur (including in a personal capacity):

- 12.2.1. Because a person, including an employee or agent of the Buyer, makes a claim against them in their personal capacity with respect to any matter arising through the Buyer's investigations of or other dealings in respect of the Property, or the Buyer entering into this Contract; and
- 12.2.2. in connection with a breach of this Contract by the Buyer; and
- 12.2.3. in relation to the Property, but only in respect of acts or omissions occurring or circumstances arising after settlement of this Contract.

## 13. SELLER'S RIGHTS IF SETTLEMENT AFFECTED BY IMPEDIMENTS

### 13.1. What is an Impediment

An **Impediment** is any thing or right or event that prevents or will prevent the Seller complying with the obligation under this Contract to convey the Property to the Buyer on the Settlement Date and on the terms specified in this Contract. An Impediment includes (but is not limited to):

- 13.1.1. an injunction or other order of any court of competent jurisdiction; or
- 13.1.2. a caveat or writ of execution affecting the Land; or
- 13.1.3. any accident, civil disturbance, war or act of god; or
- 13.1.4. any want of authority or lack of a necessary consent; or
- 13.1.5. any other circumstances whatsoever and howsoever arising.

### **13.2. Right to terminate**

Subject to clause 13.3, the Seller may terminate this Contract by giving a notice to the Buyer if, because of an Impediment, the Seller is unable to:

- 13.2.1. provide the Buyer with a transfer of the Property that is capable of immediate registration free of the Encumbrances that must be released under this Contract; and/or
- 13.2.2. otherwise deliver the Property to the Buyer in accordance with the requirements of this Contract.

### **13.3. Waiver**

If the right of termination would arise under Special Condition 13.2.2, and settlement of this Contract would not be a breach of a law or an order of a court, then the Seller must give the Buyer an opportunity to waive the relevant requirement before exercising the right to terminate this Contract.

### **13.4. Right to extend the Settlement Date**

If the Seller is entitled to terminate this Contract under clause 13.2 (or would be, subject to clause 13.3) then the Seller may instead give the Buyer a notice extending the Settlement Date, which will then be the earlier of:

- 13.4.1. the date that is 3 months after the original Settlement Date noted in the Contract (**Sunset Date**); and
- 13.4.2. the date that is 5 Business Days after the Seller notifies the Buyer that it is able to provide the Buyer with a transfer of the Property that is capable of immediate registration free of the Encumbrances that must be released under this Contract and otherwise deliver the Property to the Buyer in accordance with the requirements of this Contract.

### **13.5. Effect and exercise of rights under this Special Condition 13**

- 13.5.1. The Seller can give a notice under Special Condition 13.2;
  - 13.5.1.1. on the Settlement Date; or
  - 13.5.1.2. at any time before the Settlement Date if the Impediment exists and the Seller believes on reasonable grounds that the Impediment will continue to exist on the Settlement Date.
- 13.5.2. A notice under Special Condition 13.4 extending the Settlement Date does not waive or otherwise affect the right of the Seller to give a notice terminating this Contract under Special Condition 13.2.
- 13.5.3. A notice under Special Condition 13.4 extending the Settlement Date can be given multiple times provided that the extended Settlement Date is not later than the Sunset Date.
- 13.5.4. A notice given under Special Condition 13.4.2 is not a representation that the Impediment is removed and is not a waiver of the Seller's right to terminate under Special Condition 13.2

### **13.6. No claims by Buyers**

The Buyer cannot make any claim under this Contract or representation or warranty because the Seller terminates this Contract under clause 13.2, has extended the Settlement Date under clause 13.4 or, because of an Impediment, is unable to:

- 13.6.1. provide the Buyer with a transfer of the Property that is capable of immediate registration free of the Encumbrances that must be released under this Contract; or
- 13.6.2. otherwise deliver the Property to the Buyer in accordance with the requirements of this Contract.

### **13.7. Buyer's right to terminate**

If the Settlement Date has passed and this Contract has not been completed or terminated by the Seller, then the Buyer may terminate this Contract by giving the Seller a notice.

### 13.8. Rights on termination

If a party terminates this Contract under this clause 13 then:

- 13.8.1. neither the Buyer nor the Seller will have any further claim against the other arising out of this Contract;
- 13.8.2. the Deposit and other moneys paid under this Contract shall be refunded to the Buyer by the Seller or the Deposit Holder as the case may be without deduction, interest, costs or damages; and
- 13.8.3. the Seller will not be liable to the Buyer for damages, compensation, costs or any other monies or otherwise arising from such termination.

### 14. Improvements

- 14.1.1. For the avoidance of doubt the Seller does not warrant that any building, improvement or structure on the Property as at the Contract Date will exist on the Property at Settlement.
- 14.1.2. The Buyer agrees that it will not make any claim against the Seller or seek to delay Settlement in the event that any building, improvement or structure is removed.
- 14.1.3. The Buyer acknowledges and agrees that the Seller has no right or obligation to manage or protect the Property and the Buyer agrees that on and from the Contract Date, the Property is at the sole risk of the Buyer and the Buyer will take measures to protect its interest in the Property.

### 15. INSURANCE AND CONDITION OF PROPERTY

#### 15.1. Deterioration

Despite any rule of Law or equity to the contrary:

- 15.1.1. the Buyer must accept the Property with; and
- 15.1.2. the Buyer cannot make any objection, requisition or claim for damages or compensation in relation to, any deterioration or damage that occurs after the Contract Date.

#### 15.2. Removal of rubbish etc

Notwithstanding any obligation to give the Buyer possession of any part of the Land, the Seller is not obliged to:

- 15.2.1. remove any rubbish from the Land;
- 15.2.2. remove any items, personal or chattels that are not included as part of the Property;
- 15.2.3. remove or have any tenant remove any tenant's fixtures from the Land,

(the **Reserved Items**) and the Buyer will accept the Property with all Reserved Items located on the Property on the date of settlement. The Seller gives no warranty as to ownership of any of the Reserved Items..

### 16. BUYER ACTING AS TRUSTEE

16.1. If the Buyer enters into this Contract as trustee of a trust, the Buyer and its successors as trustee of the trust will be liable under this Contract in its own right and as trustee of the trust. Nothing releases the Buyer from any liability in its personal capacity. The Buyer warrants that at the date of this Contract:

- 16.1.1. all the powers and discretions conferred by the deed establishing the trust are capable of being validly exercised by the Buyer as trustee and have not been varied or revoked and the trust is a valid and subsisting trust;
- 16.1.2. the Buyer is the sole trustee of the trust and has full and unfettered power under the terms of the deed establishing the trust to enter into and be bound by this Contract on behalf of the trust and that this Contract is being executed and entered into as part of the due and proper administration of the trust and for the benefit of the beneficiaries of the trust;
- 16.1.3. no restriction on the Buyer's right of indemnity out of or lien over the trust's assets exists or will be created or

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permitted to exist and that right will have priority over the right of the beneficiaries to the trust's assets.

**17. APPLICATION OF PROCEEDS OF SALE**

The Buyer acknowledges that the Seller is bound to comply with section 146 of the *Local Government Regulation 2012* (Qld) (LGR) in relation to the application of the proceeds of sale.

**18. ENTIRE AGREEMENT**

**18.1.** This Contract contains the entire understanding and agreement between the parties as to the subject matter of this Contract.