

## Annexure “A” - Special Conditions

### 1. Statement of Intent

The Property is being offered by sale by the South Burnett Regional Council (the **Seller**) pursuant to its statutory power of sale contained in *Local Government Regulation (Qld) 2012* (the Regulations).

As the Seller, the Seller does not have full knowledge of the Property.

Subject to any express right under this Contract to conduct inspections and to terminate this Contract, the Buyer agrees that it takes the Property with all known and unknown defects and liabilities (other than the adjustment of Outgoings as provided for in this Contract) and that prior to entering into this Contract the Buyer has undertaken all relevant inspections and searches it required to satisfy itself as to the Property.

The Buyer's rights are limited, and unless the Seller is in default of its material obligations under this Contract, the Buyer cannot refuse to settle, subject to standard clause 6.3 (Delay Event), delay Settlement. If the Buyer is entitled to terminate this Contract for any reason other than the Sellers wilful refusal to settle this Contract in accordance with its terms, the Buyer's only right is to terminate this Contract and obtain a refund of the Deposit and any interest earned on the deposit (if any).

The Buyer represents to the Seller that the Buyer has obtained or has had the opportunity to obtain and has elected not to do so, independent legal advice regarding these special conditions.

Unless the Buyer purchased the Property under the hammer at auction or has waived its cooling off period, the Buyer retains its statutory right to terminate this Contract during the cooling off period applicable to this Contract.

On that basis, the Buyer enters into this Contract with limited termination rights.

### 2. Deletions and Variations

The following deletions and variations are made to the standard Terms of Contract:

- a. The following clauses are deleted

Clauses (x), 2.2, 3.2 to 3.3, 4.1 to 4.3, 5.2 to 5.4(b), 5.5 to 5.9, 7.4 to 7.11, 8.2 to 8.5 and 11.7

- b. Clause 1.1 is varied by adding a new definition as follows:

“Limited” and a reference to the Buyer's rights being limited in connection with anything means that the Buyer cannot:

- i. End this Contract;
- ii. Refuse or delay Settlement; or
- iii. Claim any compensation, damages or variation in the Purchase Price,

Because of that thing.’

- c. Clause 1.1(v)(i) to 1.1(v)(iii) is deleted and replaced with ‘Encumbrances means encumbrances noted on the certificate of title for the Property at Settlement that claim payment of money such as mortgages, writs and statutory charges’.

- d. Clause 2.3(4) is varied by the addition of the words 'Subject to the special conditions' before the words 'If this Contract'.
- e. Clause 3.4 is varied by –
  - i. Paragraph 3.7 is varied by renumbering paragraphs (a) and (b) to (b) and (c) respectively, and inserting a new paragraph (a) –
    - '(a) for payment of Outgoings, to the Seller's agent and to the Seller's solicitors, however the Seller may at its discretion accept trust account cheques drawn on a solicitor's trust account instead of Bank Cheques;'
- f. Clause 5.1 is varied by the addition of the following new clause:
  - '3 If Settlement does not take place on the Settlement Date and if the Seller agrees to a request for an extension to the Settlement date by the Buyer time is to remain of the essence, and at the option of the Seller:
    - (i) adjustments to the Balance Purchase Price will be calculated in accordance with clause 10.7 as if the Settlement Date was the original due date for Settlement; and
    - (ii) Additional legal fees incurred by the Seller on a solicitor and own client basis.'
- g. Clause 5.7 is varied by inserting '(1)' at the start of the current paragraph and inserting the following clauses after paragraph (1):
  - '(2) The Buyer acknowledges that a certificate of classification or other building approval may not have issued for the Property and the Seller's obligation to deliver vacant possession will be met even though the Buyer may not be entitled to lawfully occupy any Improvements on the Property.
  - (3) The Buyer acknowledges that its rights are Limited if any fixtures or Included Chattel is not on the Property on the Settlement Date or is damaged or the condition of it has deteriorated or does not work as the Property is at the Buyer's risk.'
- h. Clause 5.9 paragraphs (1) to (4) are deleted and replaced with the following –
  - '(1) The Buyer acknowledges that the Seller will not be required to remove any chattels or other items (whether sold to the Buyer under this Contract or not) located on the Property on the Settlement date.
  - (2) The owner of any temporary fencing or the like may enter upon the Property at any time for the sole purpose of removing any temporary fencing erected on the Property. Such fencing may have been erected at the request of the Seller under a hire agreement for safety purposes. Any such fencing will not become the Buyer's Property and cannot be sold by the Buyer. The Buyer must erect its own fencing promptly following Settlement to ensure the Property is safe to all persons, whether trespassers or invitees.'
- i. Clause 8.4 is deleted and replaced with the following clause:
  - 'If requested by the Buyer, the Seller must give the Buyer before Settlement:
    - i. Copies of all documents in the possession of the Sellers relating to any unregistered interests in the Property known to the Seller; and
    - ii. Details known to the Seller of any Tenancies.'
- j. Clauses 9.3, 9.5 and 9.8 are deleted. Instead, the Buyer agrees that the Buyers'

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only remedy if the Seller breaches this Contract or is unable to settle this Contract is to affirm and require the Seller to comply with the terms of this Contract or, if the breach is of an essential term or is material, to terminate. If the Buyer terminates this Contract due to the Seller's breach for any reason other than the Seller's wilful refusal to settle this Contract in accordance with its terms, the Buyer will accept the refund of the Deposit and any further monies paid by the Buyer to the Seller in full and final satisfaction of any claims.

### **3. Buyer acceptance of the Property**

#### **3.1. Condition and quality**

The Buyer acknowledges that it is purchasing the Property in an 'as is...where is' condition.

#### **3.2. Authority To Inspect**

The Seller hereby authorises the Buyer or its solicitors to inspect all records relating to the Property hereby sold held by the relevant Local Authority or other body maintaining any such records and will, if required by the Buyer, sign an appropriate authority to permit such inspection by the Buyer.

#### **3.3. Requirements of authorities**

- a. Despite any other provisions of this Contract the parties agree that the Seller shall not be responsible for complying with any requisition notice or order issued pursuant to any statute or by any local authority or court or any governmental or semi-governmental or other competent authority in respect of the Property or any footpath or road adjoining the Property.
- b. Subject to the adjustment of Outgoings as provided for in this Contract, the Buyer accepts any liabilities, obligations, requisitions, directions, recommendations and notices which may now or in the future be outstanding regarding the Property and indemnifies the Seller against any costs, expenses or liabilities incurred by the Seller in respect of them (unless this Contract is terminated without default on the part of the Buyer).

#### **3.4. Non-reliance**

The Buyer acknowledges and agrees that

- a. In entering into this Contract the Buyer does not rely on any representation, warranty, condition or other conduct which may have been made by or on behalf of the Seller or the agent;
- b. The Seller and the agent have not made representation, given any advice or given any warranty or undertaking of any kind in respect of the Property;
- c. It has not relied in any way on the skill or judgment of the Seller or the agent and has relied absolutely on its own opinion and professional advice based upon its own independent analysis, assessment, investigation and appraisal in deciding to enter into this Contract;
- d. It has made its own enquiries and sought independent legal advice concerning this risk and the financial risks associated with the acquisition of the Property;
- e. It has had adequate opportunity to:
  - i. Conduct due diligence investigations into the Property; and
  - ii. Raise queries with the Seller about the Property

And has used the opportunity to the extent it considered necessary

- f. Without limitation, that the Buyer has, subject to any express right under this Contract to conduct inspections and to terminate this Contract, satisfied itself

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in relation to the following matters:

- i. The physical condition of the Property;
- ii. The state and condition of the Property (including the existence or not of any contamination);
- iii. The Sellers rights and obligations relating to the Property;
- iv. The description of the Property;
- v. The existence or lack of encroachments;
- vi. Legal rights and restrictions relating to the use of the Property;
- vii. Validity or terms of any development approval in connection with the Property;
- viii. The suitability of the Property for any purpose;
- ix. Whether the Property complies with laws and requirements of authorities;
- x. Whether there are contaminants or hazardous substances in the Property, including asbestos, or if a notifiable activity has been carried out on the Property;
- xi. The services to or within the Property;
- xii. Whether there are easements or other rights for services to the Property that cross other Property and services to other Property that cross the Property.
- xiii. Any marketing or other material that the Seller gave the Buyer before the date of this Contract;
- xiv. The compliance of the Property or any improvements on it with any town planning or Environmental laws or with any local authority by-laws affecting the use of the Property or any improvements;
- xv. The existence of any defects (latent or patent) affecting the Property;
- xvi. Any potential future use or profitability of the Property;
- xvii. The encumbrances;
- xviii. Whether the access to the Property is by way of adjoining road dedicated for public use as a road or by way of a registered easement to a road dedicated for public use or otherwise;
- xix. Whether the Property is affected by a proposal of an authority for the realignment, widening, resiting or altering of the level or direction of any road or railway abutting the Property;
- xx. Whether there are any outstanding notices, orders or agreements with respect to the constructions or repair of a dividing fence between the Property and any adjoining Property;
- xxi. Whether there is current in respect of the whole or part of the Property, a notice to treat or a notice of intention to resume issued by an authority;
- xxii. Whether any electricity, telephone, water supply, sewerage or drainage service to the Property which passes or may pass through other Property is not or will not be protected by a registered easement or statutory authority;
- xxiii. Whether a local government water supply line, gas and/or sewerage pipeline or the service of another agency or corporation, including electricity, telecommunication or otherwise, traverses the Property

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whether on or below the surface;

- xxiv. Whether the Property is dedicated as a protected area of any class mentioned in section 14 of the *Nature Conservation Act 1992* (Qld) or is affected by a conservation agreement or conservation plan pursuant to that Act;
- xxv. Whether the Property is subject to any notice, approval or Property map of assessable vegetation under the *Vegetation Management Act 1999* (Qld);
- xxvi. Whether the Property is affected by regulatory mapping associated with either vegetation under the *Vegetation Management Act 1999* (Qld) or koala habitat;
- xxvii. Whether the Property is affected by local laws (or other local government regulations) which restrict the clearing or interference with vegetation; and
- xxviii. The existence or otherwise of necessary consents, approvals and licenses from authorities relating to the Property, including any failure to comply with any approvals or licenses.

### 3.5. Pool fencing, safety switch, smoke alarm and Possession.

- a. The Buyer acknowledges that any written notice by the Seller as to whether there is an Approved Safety Switch, Compliant Smoke Alarm or Pool Safety Certificate is limited to the statutory notice required to be given by the Seller and does not make warranties to the Buyer regarding the installation, operation or compliance of the safety switch, smoke alarm or pool fencing. The Seller has not been in occupation or possession of, nor had access to the Land or improvements and has no knowledge nor has it verified the existence or otherwise of:
  - (1) An Approved Safety Switch for the General-Purpose Socket Outlets; and/or
  - (2) The installation or otherwise of a Compliant Smoke Alarm.
- b. The Seller accordingly gives notice that neither an Approved Safety Switch nor a Compliant Smoke Alarm is installed in the residence or improvements, and
- c. It is the Buyer's responsibility to install those items after settlement if they do not exist in the residence or improvements.
- d. The Seller gives no warranty or assurance whatsoever with respect to passing vacant possession of the Land to the Buyer; and
- e. The Buyer is responsible for taking possession, vacant or otherwise, of the Land at the Buyer's own election, expense, risk and liability; and
- f. The Buyer indemnifies the Seller from and against liability on any account whatsoever to any person whomsoever occasioned by action in taking possession of the Land.
- g. The Buyer undertakes to ensure that the transfer documents are lodged at the Department of Environment and Resource Management within 90 days of Settlement.
- h. The Buyer acknowledges that this Contract is not conditional on inspections of the pool fencing or the issue of a safety certificate. If the Property has a pool and no pool safety certificate has issued, the Buyer is responsible for carrying out works and must obtain a pool safety certificate within 90 days of

Settlement or as may be required under the Building Act 1975I.

**3.6. Limited Termination Rights**

The Buyer's rights are Limited (other than in accordance with the Buyer's right to terminate in clauses 4.1 and 4.2 of the Terms of Contract) as the result of the matters referred to in this Special Condition 3.

**3.7. Seller's Reliance**

The Buyer acknowledges that in entering into this Contract the Seller has relied on the acknowledgements, undertaking and limitations contained in this Special Condition.

**4. Foreign Resident Capital Gains Withholding (FRCGW Certificate)**

4.1 The Buyer acknowledges the Seller is not obliged to provide a FRCGW Certificate on settlement.

**5. Seller Disclosure Scheme**

5.1 The South Burnett Regional Council hereby declares that all land offered for sale at this auction is in accordance with Chapter 4 Part 12 Division 3 of the Local Government Regulation 2012 (Qld) – Overdue Rates and Charges. Consequently, Council is exempt from giving prospective purchasers the statutory Seller Disclosure information and documentation associated with the land offered for sale.

**6. Settlement Documentation**

The balance of the Purchase Price shall be paid on the Settlement Date in exchange for:-

**6.1 Possession of the Property.**

Except as otherwise provided in this Contract, any Instrument of Title relating to the Land required to register the transfer unless the Seller is dispensing with the requirement to produce such instrument under the Regulations at the Seller's discretion; and

6.2 Executed Transfer Documents of the Land in favour of the Buyer and such other Documents as are necessary in connection with the stamping and registration thereof and which have previously been submitted by the Buyer to the Seller. For clarity, these include electronically signed Transfer documents via PEXA.

**7. Caveats, Warrants or Delays**

If required, the Seller will procure the Queensland Revenue Office (**QRO**) to provide a withdrawal of a statutory charge for Property tax in exchange for payment of the Property tax assessed on the Property. The Buyer must co-operate with the Seller and the QRO to provide the withdrawal to the solicitors of either the Seller or the Buyer to act as unpaid agent for the QRO for the purposes of Settlement.

**a. Dealings not adverse to Buyer**

**i. If at Settlement date, the Property is affected by a Caveat:**

1. For which the Seller delivers a withdrawal or lapsing (stamped if required for registration);
2. Lodged by or filed for the Buyer; or
3. Which would not prevent registration of the Buyer's transfer,

then the Buyer must settle this Contract. In the case of a lapsing, withdrawal or cancellation the Seller will allow to the Buyer the amount of any lodging fee payable to the Department of Environment and Resource Management on that dealing.

**ii. The Buyer must accept at Settlement for lodgement prior to the transfer dealings**

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giving effect to any matter which the Buyer takes the Property subject to under this Contract. The Seller will allow to the Buyer an amount equal to any registration fee payable to the Department of Environment and Resource Management Division of Titles on any such document.

b. Dealings Preventing Transfer

i. If, on the Settlement date:

1. The Property is affected by a Caveat which would prevent registration of the Buyer's transfer; or
2. The Seller is stopped from settling in terms of this Contract (including delivering possession) for any reason except its own wilful refusal to settle; or
3. To proceed to Settlement would expose the Seller to liability to third parties,

then the Seller may either terminate this Contract or extend the Settlement Date until the date which is 5 Business Days after the impediment to Settlement is removed. If it does, the Seller will use reasonable efforts to remove the impediment to Settlement but is not obliged, in trying to do so, to pay any money or incur any expense.

- ii. If the Settlement date is extended under this special condition and Settlement has not taken place within 60 days after the original Settlement Date, then either party may terminate this Contract by written notice to the other in which event the deposit and any other monies paid under this Contract will be refunded to the Buyer by the Seller and/or the Deposit Holder but without interest, costs or damages and the Buyer will accept the refund in full and final satisfaction of all claims against the Seller.
- iii. If any person lodges or has lodged a caveat or tries to stop this Contract settling, the Buyer must help the Seller to remove the caveat to ensure that Settlement occurs.

**8. Capacity of Seller**

- a. Subject to the Sellers' obligation to provide supporting declarations to enable registration of the transfer documents at Settlement, the Buyer acknowledges and accepts that:
  - i. The Seller is selling pursuant to its statutory power of sale contained in the Regulations; and
  - ii. The Seller has given all notices and done and/or will do all acts necessary to enable it to sell the Property; and
  - iii. The Buyer will make no requisition and take no objection to the Sellers' capacity to sell; and
  - iv. The Seller is not required to establish to the Buyer that any of the steps have been taken.
- b. The Seller is not required to produce a release of any charge registered at the Australian Securities and Investments Commission or Security Interest registered on the PPSR.
- c. Despite any other provisions of this Contract, this Contract is subject to the expiry of all notices or periods of demand necessary (either by statute to otherwise) and the defaults specified in those notices of demand remaining unremedied at the Settlement Date as a pre-requisite to the exercise by the Seller of its power of sale. The Seller is not obliged to settle until the expiry of all such notices or periods of demand and it being satisfied once those events have occurred that it has complied with its obligations under the *Property Law Act 1974* (Qld) (the PLA

Act).

- d. If the Seller cannot sell the Property as per this clause or is not satisfied that it has complied with its obligations under the PLA Act, then the Seller may terminate this Contract by notice in writing to the Buyer in which case the deposit shall be refunded in full to the Buyer and the Buyer shall have no other claim against the Seller.
- e. The receipt of the Seller of any moneys payable under this Contract is a sufficient discharge for the Buyer who is not obliged to enquire as to the disposal of those moneys.

## 9. Interpretation

- a. Every covenant or obligation expressed or implied in this Contract by which two or more persons covenant, agree or are bound binds those persons jointly and each of them severally and every provision expressed or implied in this Contract which applies to two or more persons applies to those persons jointly and each of them severally.
- b. References to the Queensland Law Society Incorporated and any other authorities associations and bodies whether statutory or otherwise will if any of those authorities associations or body ceases to exist or it reconstituted renamed or relaced or the powers or functions of them are transferred to any other authority associations or body be deemed to refer to the authority association or body established or constituted instead of it and/or as nearly as may be succeeding to is powers or functions.
- c. Reference to the Property, in the absence of any provision to the contrary, include any part of the Property.
- d. The terms "the Parties" or "Party" mean the Seller and/or the Buyer but, except where there is an express indication to the contrary, exclude any third party.
- e. Words denoting the singular number only the plural number and vice versa a reference to any gender includes ever other gender and words denoting individuals include corporations.
- f. Every obligation or covenant (whether positive or negative) undertaken by any party hereto will, notwithstanding the wording, be deemed to be and will construed as if each obligation or covenant is a separate and independent covenant made by the party undertaking the obligation and continuing (unless the context otherwise requires) throughout the term of this Contract and after the term so long as the covenant remains to be performed.
- g. Reference in this Contract to any clause, sub-clause, paragraph or annexure without further designation will be construed as reference to the clause, sub-clause, paragraph or annexure of this Contract so numbered. The headings or marginal notes in this Deed are included for convenience only and will not affect the constructions of this Deed.

## 10. Personal Guarantees

- a. If the Buyer listed on the Contract is a company, then this Clause is to have effect.
- b. In this Clause: -
  - i. **"Contract"** means this Contract;
  - ii. **"Guarantor"** means the all of directors of the corporate Buyer;
  - iii. **"Guarantor's Obligations"** means the obligations of the Guarantor set out in this Clause or in any other provision of this Contract to which this Clause

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relates;

- iv. **“Buyer’s Obligations”** means the due and punctual observance and performance of the Buyer of all liabilities, obligations and agreements, (whether contingent, prospective or actual) to the Seller under or in connection with this Contract;
  - v. **“Insolvency”** includes administration, bankruptcy, compromise, arrangement, amalgamation, receivership, reconstructions, winding up, liquidation, dissolution and assignment for or compromise with creditors, and insolvent is construed accordingly; and
  - vi. **“Security”** means any mortgage, pledge, lien, charge or other security, whether consensual or arising by operation of law, and any guarantee, suretyship or other obligation whereby a responsibility is assumed for any obligation or indebtedness or the insolvency or financial condition of any other person.
- c. In consideration of the Seller at the request of the Guarantor and/or Buyer entering into this Contract, the Guarantor unconditionally (and jointly and severally where there is more than one Guarantor):
- i. Guarantees the Guarantor’s Obligations; and
  - ii. Indemnifies the Seller against any loss or liability the Seller incur arising from or connected with the Guarantor’s Obligations.
- d. Each of the Guarantor’s Obligations:
- i. Are a principal obligation and will not be treated an ancillary or collateral to any other right or obligation however created or arising;
  - ii. May be enforced against the Guarantor without the Seller first being required to exhaust any remedy it may have against the Buyer or to enforce any security it may have in respect to the Guarantor’s Obligations;
  - iii. Is a continuing guarantee and indemnity for the whole of the Guarantor’s Obligations and is irrevocable and remains in full force and effect until discharged; and
  - iv. Will not be considered as wholly or partially discharged by performance at any time of any of the Guarantor’s Obligations or by any settlement of account or by any other matter or thing whatever and will apply to the present and future scope of the Guarantor’s Obligations;
- e. The liability of the Guarantor is absolute and will not be effected by any act, omission, matter or thing which but for this provision might operate to release or otherwise exonerate the Guarantor from the Guarantor’s Obligations in whole or in part including:
- i. The grant to the Buyer or any other person of any time, waiver or other indulgence or concession or the discharge or release of any other security held by the Seller in respect of the Guarantor’s Obligations;
  - ii. Any transaction or arrangement that may take place between the Seller and the Buyer, the Guarantor or any other person;
  - iii. The insolvency of the Buyer;
  - iv. The Seller exercising or refraining from exercising any other security or any of the right, powers or remedies conferred on it by law or by this Contract or any other agreement with any other person, or taking or failing to take any other security;
  - v. The variation (including a variation which increases the Guarantor’s

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Obligations), extinguishment, unenforceability, failure, loss, release, discharge, abandonment or transfer either in whole or in part of this Contract, or any security now or in the future held by the Seller from the Buyer the Guarantor or any other person;

- vi. The Guarantor's Obligations or any part of them being or becoming wholly or partially illegal, void, voidable or unenforceable;
- vii. The failure by the Seller to give notice to the Guarantor of any default by the Buyer under this Contract;
- viii. Any legal limitation, disability, incapacity, or other circumstances related to the Buyer; or
- ix. The failure of any Guarantor to execute this guarantee or the granting of this guarantee by any Guarantor or becoming void or voidable;
- f. This Guarantee extends to cover this Contract as amended, varied or replaced, either with or without the consent of the Guarantor;
- g. If the Buyer becomes insolvent, the Guarantor authorise the Seller for all monies which the Buyer or any other person will have paid under this Contract and to retain and to carry into a suspense account and to appropriate at the discretion of the Seller any dividends received in the insolvency of the Buyer and all other monies received in respect of the Guarantor's Obligations until the Seller has been paid in full in respect of the Guarantor's Obligations.