

## Annexure "A"

### SPECIAL CONDITIONS

#### 1. STANDARD TERMS OF CONTRACT

The Seller and the Buyer **acknowledge** that prior to the signing of this Contract, the Seller and the Buyer did receive a copy of or had access to the Terms of Contract for Commercial Land and Buildings Eighth Edition referred to herein, and read and understood the provisions thereof.

#### 2. ALTERATION TO STANDARD TERMS

- (a) Clauses 4.1(a), 4.1(c) to 4.1(k), 4.2, 5.1, 5.2, 6.1 to 6.6, 7.3, 7.6, 7.7, 8.1, 8.2, 9.1 to 9.3, , 10.4, 10.5, 14.1 to 14.3, 15.1, 15.5, 15.6, 16.1 to 16.5, 17.2, 17.3, 18.1, 18.2, 20.1, 20.2, 21.1, 21.2, 21.4, 25.1, 25.2, 28.1 to 28.4, 29.1, 29.2, 31.1 to 31.4, 32.1 to 32.3, 34.3 to 34.4, 34.6 to 34.11, 35.1 to 35.5, 36.1 to 36.7, are deleted from the Terms of Contract.

#### 3. SETTLEMENT DOCUMENTATION

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

- (a) Possession of the Property (subject to Special Conditions 5(c) and 5(m) hereof);
- (b) 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 *Local Government Regulations 2012 (QLD)* at the Seller's discretion; and
- (c) 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.

#### 4. 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.

#### 5. SELLER'S TITLE TO SELL AND RESERVATIONS

- (a) The Seller hereby represents to the Buyer that the Seller is a local government selling in exercise of its statutory rights under and by virtue of the *Local Government Regulation 2012 (QLD)*.
- (b) If the Seller shall fail to show or make good title to the Property hereby sold or any part of it, the Buyer shall have no right, power or remedy against the Seller in respect thereof, any rule of law or equity or any provision hereof to the contrary. Nothing in this Special Condition shall abrogate any right of the Buyer to recover the deposit or any other moneys paid hereunder on account of the purchase price if lawfully terminated.
- (c) In the event of an Order or Decree of a Court of competent jurisdiction being made against the Seller which takes effect as an interim injunction restraining the Seller in any way in the performance of this Contract or a Caveat forbidding registration of the transfer referred to in Special Condition 3 hereof being lodged or if the Seller is restricted or prohibited by any means whatsoever in giving title to the Property or in effecting settlement in accordance with the terms hereof **THEN**, the Seller may, at its absolute option, by notice in writing to the Buyer extend the time for completion of this Contract by such period or periods of time as the Seller may reasonably require in all the circumstances, not being more than ninety (90) days (in aggregate), to give title to the Property or in effecting settlement **PROVIDED THAT** if the Seller shall not be able to give title to the Property

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Initial- Buyer:.....

Initial- Seller: .....

or effect settlement hereunder in such extended period or periods of time **THEN** either party may at its option by notice in writing to the other party terminate this Contract in which event all deposit and other moneys received by the Seller or the Deposit Holder on account of the purchase price together with interest accrued thereon (if any) shall be refunded to the Buyer by the Seller or the Deposit Holder as the case may be and the Seller shall hereby be released from all or any of its obligations to the Buyer arising from or in relation to the signing of this Contract. The Buyer agrees and acknowledges that it shall not be entitled to make any claim or bring any action for damages, compensation, account or seek to enforce any other remedies at law or in equity by reason of the Seller's inability to pass title to the Property at settlement or otherwise under this Contract.

- (d) The Land is sold to the Buyer subject to the reservations and conditions express or implied in the Instrument of Title of the Land and the Buyer shall not be entitled to make any objection, requisition or claim for compensation in relation thereto.
- (e) The Land and the Property hereby sold is believed by the Seller to be and shall be taken to be correctly described. No error omission or misdescription in the particulars of the Property or in the boundaries or area of the Land shall invalidate this Contract nor be the subject of any claim for compensation by either party. The Buyer shall not be entitled to delay completion of this Contract or to withhold any part of the purchase price in relation thereto.
- (f) Except as otherwise expressly provided in this Contract, the Seller shall not be required to deliver any abstracts of title or copies of deeds or documents whether in its possession or not.
- (g) The Seller gives no warranty that the improvements purporting to be on or in or comprising the Land are wholly on the Land or that buildings or improvements on adjoining lands do not encroach on the Land and this sale and Contract is deemed subject to any such encroachment which may exist and the Buyer shall not be entitled to make any objection, requisition or claim for compensation in relation thereto.
- (h) The Property hereby sold is sold in an "as is" condition and no promise or warranty whatsoever is given or shall be implied with respect to any of the Property nor as to the condition, state of repair, suitability or sufficiency of any improvement or other part of the Property nor as to the nature or condition of the same. All improvements included in the sale are sold with all faults or defects (whether latent or not) and no warranty is given as to the condition or suitability for use thereof.
- (i) The Seller gives no warranty or assurance whatsoever with respect to the environmental state or condition of the Land and this sale and Contract is deemed subject to any contamination (if any) affecting the Land and the Buyer shall not be entitled to make any objection, requisition or claim for compensation in relation thereto.
- (j) If there is a pool on the Land the Seller makes no warranty or guarantee that the pool and fencing surrounding the pool ("pool fencing") complies with any statute, by-law, regulation or local government ordinance relating to the construction, height, size, nature or otherwise of the pool or pool fence on the subject property and the Buyer shall not be entitled to make any objection, requisition or claim for compensation in respect of any non-compliance by the Seller, whether before or after the date of the Contract, with any statute, by-laws, regulations or local government ordinance relating to the pool or pool fencing.
- (k) The Seller gives no warranty or assurance whatsoever with respect to the present use, the permitted use, the zoning or any town planning approvals granted (if any) or building approvals granted (if any) affecting the Land or that any services including but not limited to sewerage, water, electricity, telephone, or gas are available for supply to the Land and the Buyer shall not be entitled to make any objection, requisition or claim for compensation in relation thereto.
- (l) The Buyer acknowledges that there may be property not hereby sold which is not removed from the Land on the Settlement Date and which is the property of the former owner. Any such property must be removed from the Land at the Buyer's own election, expense, risk and liability and the

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Initial- Buyer:.....

Initial- Seller: .....

Buyer indemnifies the Seller from and against liability on any account whatsoever to any person whomsoever occasioned by such removal.

- (m) The Buyer acknowledges that the seller gives no warranty or assurance whatsoever with respect to passing vacant possession of the Land to the Buyer, and that the Buyer is responsible for taking possession, vacant or otherwise, of the Land at the Buyer's own election, expense, risk and liability. 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.
- (l) Any valid notice or order issued either prior to or after the date of this Contract pursuant to any Statute or by any Local Authority or Court necessitating the doing of work or expenditure of money on or in relation to the Property or on any path or road adjoining the Land must be fully complied with by the Buyer at the Buyer's expense and no claim for compensation or contribution will be sought from the Seller.

## 6. SAFETY SWITCH

- (a) In this clause "approved safety switch" refers to an approved safety switch under Division 4 of the *Electrical Safety Regulation 2013* ("the Electricity Regulations") and the terms used have the meanings as defined in the Electricity Regulations.
- (b) If there is an approved safety switch installed for the general purpose of socket-outlets in the Improvements, the Seller makes no representations about the condition, quality or working order of the approved safety switch.

## 7. SMOKE ALARM

- (a) In this clause "approved smoke alarm" refers to a smoke alarm as referred to in the Building Code of Australia.
- (b) If there is an approved smoke alarm installed in the Property, the Seller makes no representations about the condition, quality or working order of the approved smoke alarm.

## 8. CONDITION OF IMPROVEMENTS/EXCLUSION OF WARRANTIES

- (a) The Buyer acknowledges that:-
  - (i) It has entered into this Contract after satisfactory personal investigation of the Property hereby sold;
  - (ii) It has relied upon such independent advice as it deems necessary from experts or professional advisors, including engineers, surveyors, architects, builders, town planners, environmental experts, valuers, accountants, lawyers and the like concerning the Property hereby sold;
  - (iii) It has not relied on any representations or warranties by the Seller, the Seller's agent or any other person inducing it to enter into this Contract, all of which such warranties and representations, if any, are hereby expressly negated; and
  - (iv) It is buying the Property hereby sold in its present state and condition together with any defects, whether apparent or latent, and the Buyer shall make no objection, requisition or claim for compensation in relation to same.
- (b) The Buyer agrees that it shall be deemed to have purchased the Property hereby sold, subject to all requisitions, notices and requirements of any lawful authority affecting or relating to the Property hereby sold or any part thereof and that it shall be the responsibility of the Buyer, at the Buyer's cost and expense to comply with all such requisitions, notices and requirements and the

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Initial- Buyer:.....

Initial- Seller: .....

Buyer shall make no objection or requisition or claim for compensation in relation thereto but shall indemnify the Seller in relation to same.

9. **ENTIRE CONTRACT**

The terms herein contained constitute the entire and only agreement between the parties hereto in relation to the Property hereby sold and merges all prior discussions and negotiations between them and neither of the parties shall be bound by any warranties or representations with respect to the subject matter of this Contract other than as set forth herein.

10. **INTERPRETATION**

In this Contract:-

- (a) Headings have been included for ease of reference and none of the provisions hereof shall be construed or interpreted by reference to such headings;
- (b) The expression "the Seller" extends to and includes its successors in title and assigns;
- (c) The expression "the Buyer" extends to and includes its successors in title and permitted assigns;
- (d) Any covenant or agreement on the part of two or more persons hereto shall be deemed to bind them jointly and each of them severally; and
- (e) Words importing the singular number shall include the plural numbers and singular numbers respectively and words importing the masculine gender only shall include the feminine gender and shall also have application to bodies corporate of every nature.

11. **SALE SUBJECT TO ACCEPTANCE BY SELLER**

This sale and Contract is subject to the final acceptance of same in writing by the Seller by its signing of this Contract.

12. **GOODS AND SERVICES TAX**

- (a) The Seller and the Buyer acknowledge and agree the Purchase Price under this Contract has been calculated without regard to GST.
- (b) If the Seller is liable to pay any GST (or any similar tax) in respect of the supply of the Land under this Contract, then the Purchase Price shall be deemed increased to an amount equivalent to the Purchase Price plus all adjustments and any GST payable thereon and the Buyer shall pay to the Seller the increased Purchase Price (or the balance thereof) adjusted to include the GST (or any similar tax) on the Settlement Date.
- (c) Where the Seller has become subject to any penalties or interest as a result of the late payment of GST (or any similar Tax) in respect of the supply of the Land under this Contract because of the failure of the Buyer to punctually comply with the terms of this clause 12, then the Buyer shall pay to the Seller an additional amount on demand equal to the amount of those penalties and interest from the due date for payment continuing until payment in full is made by the Buyer in compliance with the terms of this Contract and the Buyer shall indemnify and keep indemnified the Seller for and against all such GST (or any similar tax and any penalties or interest thereon) at all times now and in the future.

13. **PERSONAL GUARANTEE AND INDEMNITY**

- (a) If the Buyer is a company, then the Buyer must:

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Initial- Buyer:.....

Initial- Seller: .....

- (i) procure the due execution of a guarantee and indemnity from each director of the company in the form of the guarantee and indemnity forming **Annexure "B"** of this Contract; and
- (ii) immediately deliver the duly executed guarantee and indemnity to the Seller together with this Contract.

14. **COOLING-OFF PERIOD**

Insofar as it is not inconsistent with legislative requirements pertaining to contracts of sale of this nature, and these special conditions, no cooling-off period applies to this contract.

15. **SPECIAL CONDITIONS PREVAIL**

In the event of any inconsistency between the provisions of these Special Conditions 1 to 15 inclusive and the provisions of the Standard Terms of Contract then, the provisions of these Special Conditions shall prevail.

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Initial- Buyer:.....

Initial- Seller: .....

## Signing

### Buyer – Individual(s)

1. Executed by \_\_\_\_\_ as **Buyer** on this \*\*th day of \*\* 2022  
(name)

\_\_\_\_\_  
(signature)

in the presence of:

\_\_\_\_\_  
Witness (name and signature)

2. Executed by \_\_\_\_\_ as **Buyer** on this \*\*th day of \*\* 2022  
(name)

\_\_\_\_\_  
(signature)

in the presence of:

\_\_\_\_\_  
Witness (name and signature)

### Buyer – Company

Executed by \_\_\_\_\_ (ACN \_\_\_\_\_) by being signed by:  
(company name)

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Company Secretary

\_\_\_\_\_  
Print full name

\_\_\_\_\_  
Print full name

### Seller

Executed by \_\_\_\_\_ as **Seller** on this \*\*th day of \*\* 2022  
For the \*\* Council

\_\_\_\_\_  
(signature)

in the presence of:

\_\_\_\_\_  
Witness (name and signature)

Initial- Buyer:.....

Initial- Seller: .....

## ANNEXURE "B"

### GUARANTEE AND INDEMNITY

In consideration of the Seller having at the request of:

- (a) \_\_\_\_\_ of \_\_\_\_\_;
- (b) \_\_\_\_\_ of \_\_\_\_\_;
- (c) \_\_\_\_\_ of \_\_\_\_\_;
- (d) \_\_\_\_\_ of \_\_\_\_\_,  
(name of guarantor) (address of guarantor)

("the guarantors") agreed to enter into the contract of sale ("the contract") to which this deed of guarantee and indemnity is annexed with \_\_\_\_\_ (ACN \_\_\_\_\_) ("the Buyer"):

1. the guarantors hereby guarantee to the seller the due punctual payment by the Buyer to the Seller of all sums of money becoming due, owing or payable by the buyer to the seller under the terms of and or as a result of this contract ("the guaranteed monies") at the times and in the manner as set out in this contract or otherwise on demand;
2. the guarantors hereby guarantee the due and punctual performance and observance by the Buyer of all and any of the covenants, provisions and stipulations on the part of the buyer to be performed and observed under and pursuant to this contract ("the guaranteed obligations");
3. the guarantors further indemnify the Seller against and in respect of any damages, loss, claim, demand, cost, expense or obligation direct or indirect which the Seller has or may suffer incur or sustain as a result of the Buyer's failure to pay the guaranteed monies when due or to perform the guaranteed obligations when due;
4. this guarantee and indemnity shall be a continuing guarantee and indemnity until the whole of the guaranteed monies are paid and the whole of the guarantee obligations performed and shall be independent of and in addition to and in no way affected by any other security instrument or document which the seller may hereafter obtain or hold for any indebtedness or liability whatsoever of the buyer or other guarantors to the Seller;
5. the liability of the guarantors shall not be affected or discharged in any way whatsoever in the event that the Seller grants or agrees to grant to the Buyer any time or any other indulgence or consideration or in the event that the Seller compounds with or releases or assents to the winding up of the Buyer or wholly or partially releases or discharges the Buyer from any of the terms of the contract or in the event that the Seller varies any of the terms of this contract;
6. the Seller shall not be bound at any time to exercise any of its rights under this contract or in any collateral or other contract and any omission failure of refusal by the Seller so to do shall not prejudice, affect, discharge or diminish any of the liabilities of the guarantors hereunder and the liability of the guarantors hereunder shall not be affected or discharged by any other laches or mistakes on the Seller's part;
7. if by reason of any statute, rule of law or for any other reason whatsoever any covenant, term or condition of this contract is rendered unenforceable by the Seller against the Buyer then the guarantors agree hereby at all times to indemnify the Seller to the full extent in respect of the guaranteed monies or any part thereof which have thereby been rendered unrecoverable by the Seller from the Buyer;

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Initial- Buyer:.....

Initial- Seller: .....

8. for the purposes of this guarantee, the guarantors may be treated as the principal debtors under the contract and the guarantors waive all rights either at law or under any statute that the guarantors might otherwise be entitled to claim or enforce in respect thereof; and
9. any notice or consent to be given or any demand to be made by the Seller to the guarantors under or pursuant to this guarantee may be given or made by writing under the hand of the Seller or of any manger, acting manager, clerk, solicitor or any other person acting on behalf of the Seller and may be delivered by prepaid post addressed to the guarantors' addresses stated herein and any such notice consent or demand shall be deemed to have been received by the guarantors on the day after posting or sending;

except to the extent that such interpretation shall be excluded by or be repugnant to the context whenever the same is used herein the word "guarantors" shall mean and include every person who is a guarantor and each or any of them, their or his assigns and executors and administrators or successors of each guarantor and this guarantee and the obligations and agreements on their part herein contained or implied shall bind each of them and both of them jointly and each of them severally; and the expression "the seller" shall mean and include the seller, it's assigns and successors; words importing the singular number or plural number shall be deemed to include the plural number and the singular number respectively and the words importing any gender shall include any gender; and a reference in the case of incorporation to winding up shall include official management, receivership or scheme or arrangement.

Executed by \_\_\_\_\_ on the **\*\*th day of \*\* 2022**  
(name of guarantor)

Signed sealed and delivered by the said \_\_\_\_\_ as guarantor  
(name of guarantor)

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
Witness (name and signature)

Executed by \_\_\_\_\_ on the **\*\*th day of \*\* 2022**  
(name of guarantor)

Signed sealed and delivered by the said \_\_\_\_\_ as guarantor  
(name of guarantor)

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
Witness (name and signature)

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Initial- Buyer:.....

Initial- Seller: .....