



TERMS OF SALE

REVISED EDITION

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TERMS OF SALE

1 DEFINITIONS

1.1 In these Terms of Sale unless the context otherwise requires:-

- (a) "Building" means a permanent structure or improvement on the Land and does not include any walls or fence;
- (b) "Business Day" means any day on which banks are open for trading in Western Australia;
- (c) "Contract" means the contract of sale to which these Terms of Sale are annexed or otherwise form part;
- (d) "Contract Date" means the date on which the last party to sign the Contract, signs it;
- (e) "Duty" means duty payable under the Duties Act 2008 (WA);
- (f) "Encumbrance" means and includes a mortgage, charge, bill of sale, lien, pledge, easement, restrictive covenant, building condition, writ, warrant, caveat and the claims stated therein or other right or interest of any third party affecting the Property or any part thereof;
- (g) "GST" means the goods and services tax payable under the GST Act;
- (h) "GST Act" means A New Tax System (Goods and Services Tax) Act 1999 (Commonwealth);
- (i) "Land" means the land which the Seller has agreed to sell to the Buyer including all improvements and other fixed improvements on that land;
- (j) "Lease" means a lease or tenancy agreement in respect of the Property;
- (k) "Notice" means a notice as specified in clause 21.1;
- (l) "Possession Date" means the date on which the Buyer becomes entitled to possession of the Property under the Contract or is given possession by the Seller whichever is the earlier;
- (m) "Property" means the Land described in the Contract including all fixed improvements attached to or included in the Property, and the items (if any) listed in clause 4 of the Contract;
- (n) "Rate of Interest" means the rate of 9% p.a. calculated on a daily basis;
- (o) "Registration Date" means [insert latest date for registering subdivision plan with Landgate];
- (p) "Representative" means the solicitor or settlement agent acting for the party concerned;
- (q) "Settlement Date" means the date nominated as such in the Contract. If no date is shown, then the Settlement Date will be:
 - (i) that date which is 30 days after the date of the Contract, or
 - (ii) where the Property is subject to subdivision 15 days after the Seller notifies the Buyer that a separate Certificate of Title has issued for the Property;
 - (iii) any other date which the parties agree to in writing;
- (r) "Strata Titles Act" means the *Strata Titles Act 1985 as amended*;

- (s) "Subdivision Plan" means the plan for the Property as a sub-divided lot in the form necessary for registration at Landgate in accordance with the Strata Titles Act;
- (t) "Tax Invoice" means and includes any document or record treated by the Commissioner of Taxation for GST purposes as being a tax invoice or as a document entitling a recipient to an input tax credit;
- (u) "Title" means the duplicate certificate of title to the Property;
- (v) "Underground Power Rate" means an additional or special rate or charge imposed by a government, local government or statutory authority for the connection of the Property to underground electrical power;
- (w) "Water Corporation" means the Water Corporation established by Section 4 of the Water Corporation Act 1995.

1.2 A reference to an Act of Parliament or to a section of an Act includes any amendment thereto or re-enactment of that Act for the time being in force.

1.3 Where two or more persons are named in the Contract as the Seller or as the Buyer, their liability under the Contract is joint and several.

1.4 Headings and clause numbers are for convenience only and do not affect the interpretation of the Terms of Sale; words importing the singular include the plural and vice versa; words importing a gender include any gender; reference to a person includes a reference to a natural person, a corporation and any entity capable of being the subject of legal proceedings.

2 METHOD OF PAYING PURCHASE PRICE

The purchase price for the Property must be paid in the following manner:-

2.1 Deposit

- (a) Subject to section 70 of the Strata Titles Act, the deposit is to be paid to the Seller's Representative by cash or cheque who must hold the same in trust as stakeholder until settlement is completed.
- (b) Neither the Seller nor the Buyer will direct that Representative to pay any part of the deposit moneys to any person prior to the Settlement Date except as agreed to by the Seller and Buyer.
- (c) If the deposit is not paid in the manner required by the Contract or the Buyer's cheque is dishonoured on presentation, the Buyer will be deemed to be in default of the Contract and the Seller will then be entitled to exercise all rights and remedies available to him at law including the right to terminate the Contract within forty eight (48) hours thereof by notice in writing to that effect. Where the Seller takes action under this clause, clause 16.1 does not apply.
- (d) If the deposit is invested in an interest bearing account pending settlement, all interest earned thereon must be paid to the Buyer.
- (e) The Seller and Buyer agree that the Seller's Representative can deduct from the deposit all statutory imposts to the Buyer's account. The Buyer must pay for these charges when requested to do so by the Seller.
- (f) The interest on the deposit shall not make up any part of the purchase price.

2.2 Balance of Purchase Price

The balance of the purchase price is to be paid by bank cheque to the Seller on the Settlement Date in return for the handing over by the Seller of a properly completed and registrable transfer of the Property to the Buyer together with the Title (if one has been issued) and completed, executed and registrable withdrawals of all Encumbrances on the Title unless otherwise specified in the Contract.

2.3 Late Payments

If any part of the purchase price is not paid by the due date then the Seller may (without prejudice to his other rights under these Terms of Sale or at law) charge interest at the Rate of Interest computed from the due date for payment until payment is actually received. The accumulated interest is payable immediately upon, and in addition to, the payment of the last portion of the purchase price.

3 TITLE ENCUMBRANCES

3.1 The Seller sells the Property free of all Encumbrances except for those set out in the Contract or in the case of a strata titled property those referred to in clause 11 below.

3.2 Subject as above, any Encumbrances registered on the Title will be discharged or otherwise removed by and at the cost of the Seller prior to or on the Settlement Date.

3.3 If on the date of signing the Contract, a notification under Section 70A of the Transfer of Land Act 1893 has been lodged against the Title, then the Buyer may give notice to the Seller objecting to the same and if the Seller does not secure the removal of that notification, the Buyer will be entitled by further notice in writing to rescind the Contract and to the repayment of all monies paid by him under the Contract together with interest (if applicable) earned thereon in addition to any other rights and remedies which he may otherwise have at law.

3.4 If the Buyer wishes to rescind the Contract under clause 3.3 above, then he must do so by no later than 14 days prior to the Settlement Date.

3.5 Except where it is vacant land, if the Property is encumbered by a restrictive covenant or easement registered on the Title which is not specified as an Encumbrance in the Contract, the Buyer has no right to rescind the Contract on the ground that the Property is encumbered by the restrictive covenant or easement if the restrictive covenant or easement does not unreasonably interfere with the actual use of the Property at the date of the Contract.

4 POSSESSION AND RISK

4.1 Subject to clause 4.2, vacant possession of the Property must be given by the Seller and accepted by the Buyer at the time of settlement subject to payment of all moneys payable by the Buyer under the Contract and the handing over by the Seller to the Buyer of the transfer and Title (if one has been issued) in accordance with clause 2.2 above.

4.2 If the Property is the principal place of residence of the Seller, the Seller is entitled to occupy the Property until noon on the day following settlement as licensee of the Buyer. However, the Seller is liable to the Buyer for any damage to the Property which is caused or contributed to by the Seller, the Seller's invitees or licensees during the period of the licence.

4.3 Risk in the Property will pass from the Seller to the Buyer when possession is given or settlement is effected, whichever is the earlier.

4.4 If the Buyer is entitled to or is given possession of the Property prior to the Settlement Date, then the Buyer must (and it is a condition of the Contract that he will):-

- (a) not make any alterations or additions to the Property without the prior written consent of the Seller;

- (b) keep the Property in good repair having regard to its state and condition at the Possession Date;
- (c) insure the Property for its full insurable value in the names of the Seller and Buyer and any mortgagee of the Property for all usual risks that a prudent owner may insure. The Buyer must provide to the Seller a copy of the policy if so requested;
- (d) use any insurance monies received on any claim made with regard to the Property to reinstate the same, or in reduction of the balance of the purchase price;
- (e) pay all outgoings assessed against the Property as and from the Possession Date;
- (f) comply with all by-laws and statutory obligations concerning the Property.

4.5 If the Property is sold subject to a Lease, the following will apply:-

- (a) the rent payable under the Lease will be adjusted on the Settlement Date in accordance with clause 7.1;
- (b) if the Lease is in writing, the Seller must deliver to the Buyer on the Settlement Date a true copy of the Lease showing signatures by the parties and stamping (if applicable).

4.6 Any guarantee in the Lease will be automatically assigned to the Buyer and if this is not possible, the Seller must cooperate with the Buyer in obtaining the approval of the guarantor for the assignment of the guarantee.

4.7 The Seller must deliver to the Buyer on the Settlement Date or on possession all keys and security devices which give access to the Property and written details of all codes applicable to access.

5 SETTLEMENT DETAILS

5.1 The sale of the Property will be completed at the time of settlement.

5.2 If the Contract does not stipulate a Settlement Date, then it will be 30 days after the date of signing of the Contract or 21 days after the date when the Contract ceases to be subject to any condition precedent which if not fulfilled could result in the Contract being terminated.

5.3 Settlement will take place at the offices of the Buyer's Representative or financial institution, unless otherwise agreed to by the Seller and Buyer.

5.4 At the place of settlement, the Seller will arrange production of the Title together with the relevant transfer and any documents required to discharge or remove all Encumbrances on the Title.

5.5 The Buyer will be responsible for registration of the transfer at the Department of Land Administration by no later than 7 days following the Settlement Date, as well as the payment of all fees and charges relating to the registration thereof.

5.6 Despite anything else contained in the Contract or these Terms of Sale, the Seller will not be under any obligation to produce the Title where a request has been made under Section 48B(1)(a) of the Transfer of Land Act 1893 that it not be issued and also where no request has been made under Section 48B(3)(b) of that Act for the issue of the Title.

5.7 If the Seller requests the Buyer to provide more than three (3) bank cheques, then he must pay to the Buyer at settlement the bank fees incurred for the provision of each additional cheque.

6 DELAY IN SETTLEMENT

6.1 By the Seller

- (a) If settlement is not effected on or within 3 Business Days after the Settlement Date because of the default of the Seller, then the Buyer will be entitled (without prejudice to his other rights set out below or at law) to claim compensation at the Rate of Interest on the balance of the purchase price computed from the Settlement Date to the date upon which settlement is actually completed.
- (b) Payment of the compensation will be made by deducting the accumulated interest from the balance of the purchase price.

6.2 By the Buyer

- (a) Where the Buyer delays or is unable or unwilling to complete the purchase of the Property on the Settlement Date or within 3 Business Days thereafter, the Seller will be entitled to charge interest against the Buyer on the balance of the purchase price at the Rate of Interest.
- (b) The interest will be computed from the Settlement Date until the date upon which settlement is actually completed.
- (c) The accumulated interest will be an additional charge payable by bank cheque to the Seller at the time of settlement.
- (d) The Seller will not be obliged to tender the transfer of the Property to the Buyer nor hand over the Title until the interest is paid.

6.3 Right to Claim Interest

The Seller's or Buyer's right to claim interest under this clause 6 is conditional upon them being ready willing and able to complete the sale of the Property on the Settlement Date but if not, then interest will only commence and run from the day on which written notice is given to the other to that effect.

7 ADJUSTMENTS

7.1 Under these Terms of Sale, an adjustment will take place between the Seller and Buyer (on the Possession Date or Settlement Date whichever is the earlier with the adjustments up to and including this day to be the liability of the Seller) in respect of each of the following:-

- (a) local Council rates;
- (b) water rates;
- (c) (in the case of a strata title property) Strata Company levies, all rents, fees and other periodical amounts payable under any lease, licence or agreement affecting the Property;
- (d) land tax (on a single ownership basis), except where:
 - (i) land tax liability arises due to the Buyer's delay in Settlement beyond June 30;
 - (ii) the Buyer is not obliged to pay land tax for the Property by virtue of the nature of the Property and the Buyer's intended use thereof,in which case all land tax must be paid for and settled by the Seller who will indemnify the Buyer absolutely for the same.
- (e) any other outgoings affecting ownership of the Property.

- 7.2** Power and gas service and telephone and other services chargeable against the Property must be paid for by the Seller up to the Possession Date or Settlement Date (whichever is the earlier) and thereafter will be the responsibility of the Buyer.

8 SEWERAGE CONNECTION

- 8.1** If the Property is connected to a Water Corporation sewer on the Settlement Date and moneys are or will become owing to the Water Corporation or any other party for the sewer connection, including pursuant to a Water Corporation loan agreement or otherwise, the amount payable must be paid by the Seller to the relevant party on or before the Settlement Date. The Seller must also pay the costs and disbursements incurred in the withdrawal of any relevant caveat.
- 8.2** If the Property is not connected to a Water Corporation sewer at the date of the Contract, the cost of connection to the sewer is the responsibility of the Buyer even if the Water Corporation has already issued a notice requiring the Property to be connected, or issues a notice after the date of the Contract.
- 8.3** The Buyer is responsible for arranging and paying for the decommissioning of any septic tanks on the Property which have not been decommissioned prior to the date of the Contract.

9 ELECTRIC POWER

- 9.1** If on the Settlement Date electricity is connected to the Property pursuant to a contributory extension scheme as provided by the electricity corporation then the Seller must pay all capital contributions and maintenance charges due at the Settlement Date and give to the Buyer all necessary documentation duly executed and stamped which may be required to effect an assignment of the benefits of that scheme to the Buyer.
- 9.2** If at the Settlement Date there is no electricity connected to the Property and the Seller has not signed any agreement under the scheme, then the Buyer will be responsible for payment of all capital contribution and other charges for connecting electricity to the Property.
- 9.3** If on the date of signing the Contract a statutory authority or local government has determined that an Underground Power Rate will apply to the Property and the Property is to be connected to underground power then the following provisions will apply:-
- (a) if there is no prescribed Underground Power Rate or agreement as to the time and manner in which payment is to be made, then the Buyer will be solely responsible for payment of the Underground Power Rate;
 - (b) if an Underground Power Rate has been prescribed, then that rate will be apportioned between the Seller and Buyer on the Possession Date or Settlement Date (whichever is the earlier) unless the rate is payable in a financial year following settlement in which event it will be payable solely by the Buyer;
 - (c) If a determination is made subsequent to the date of signing of the Contract that the Property is to be connected to underground power, then the whole of the Underground Power Rate will be payable by the Buyer.

10 TITLE ENQUIRIES

- 10.1** Subject to clause 10.2, on the signing of the Contract, the Seller must provide all reasonable information to the Buyer including the Title description so as to enable the Buyer to make reasonable enquiries concerning the nature and state of the Title.

- 10.2** This clause will not apply to the Contract if the Property is land registered under the Transfer of Land Act. Freehold land and a strata lot which is the subject of a certificate of title is land registered under the Transfer of Land Act.
- 10.3** Subject to clause 10.2, any request by the Buyer for the information referred to in clause 10.1 above must be made within 14 days after the date of signing of the Contract or 7 days after the date on which the Contract ceases to be subject to any condition precedent.
- 10.4** The Seller must give to the Buyer answers to the Buyer's queries in writing within 7 days after having received the same. If the Seller decides that he is unable or unwilling to answer these queries or provide the relevant information, then the Buyer may (in addition to any other rights available to him at law) rescind the Contract by notice in writing to that effect in which event the Seller must repay to the Buyer the deposit and all other monies paid by the Buyer under the Contract without deduction together with any interest earned thereon (if any) whereupon the Seller will have no further liability to the Buyer under the Contract.

11 STRATA TITLED PROPERTY

- 11.1** If the Property is a strata titled property, the Seller must provide to the Buyer all reasonable information concerning the following:-
- (a) the address of the secretary or manager of the strata company to enable the Buyer to make enquiries concerning covenants affecting the Property under the relevant strata title;
 - (b) details of the rules and by-laws of the strata company;
 - (c) details of monthly or periodic levies issued by the strata company;
 - (d) details of any claims made by the strata company or any other competent authority against the Seller in respect of the Property;
 - (e) details of any arrears in payments due to the strata company;
 - (f) a completed Section 43 Certificate under the Strata Titles Act 1985 (WA) as amended including all or part of the requirements of this clause 11.
- 11.2** If the strata plan relevant to the Property has not been registered under the Strata Titles Act 1985 (as amended) then the deposit and/or any other monies payable by the Buyer under the terms of the Contract prior to the registration of that strata/survey-strata plan must be paid to the Seller's Representative to be held on trust for the Buyer until the plan is registered whereupon those monies can be released for the purpose of completing settlement. Any interest accruing on these deposit monies must be paid to the Buyer.
- 11.3** The Buyer acknowledges that before signing the Contract, he was given the compulsory disclosure material as specified in the attached disclosure statements.
- 11.4** The Seller makes the following representations (which will continue to be true to the best of the Seller's knowledge, information and belief on the Settlement Date):-
- (a) there are no outstanding levies issued against the Seller by the strata company whether of a periodical nature or otherwise;
 - (b) no administrator of the strata company has been appointed;
 - (c) the Seller is not possessed of any knowledge relating to the common property which will substantially affect the Buyer's use or enjoyment of the Property, or the common property, except for those which are described in the Contract or those which a reasonable person may be made aware of by inspecting the strata plan;
 - (d) there is no proposal or application to terminate the strata scheme;
 - (e) there are no proceedings (threatened or pending) relating to the strata company;

- (f) there are not any special levies owing to the strata company in respect of capital works;
- (g) there are no current or proposed amendments to the by-laws of the strata company save and except for those that are noted on the strata plan;
- (h) there are no current or pending proposals for the strata company to pass any special resolution, unanimous resolution or resolution without dissent;
- (i) there is no proposal to vary the unit entitlements under the strata scheme or to effect any legal rights concerning the use of the common property;
- (j) unless requested to do so by the mortgagee of the Property, the Seller will not following the date of signing of the Contract (without seeking the Buyer's prior approval) propose or vote in favour of any resolution of the strata company;
- (k) the Property is deemed to include the share of the Seller in the common property subject to any legal agreement or by-laws of the strata company and the interests notified on the strata plan;
- (l) The information disclosed in the Strata Regulations Form 28 provided to the Buyer or on behalf of the Seller is correct.

11.5 The Seller indemnifies and agrees to indemnify the Buyer against any loss the Buyer may suffer or incur as a result of any breach of the Seller's representation or warranty in clause 11.4 and clause 14 except where otherwise provided in the Contract.

11.6 The right of the Buyer to terminate the Contract under Part 5 of the Strata Titles Act does not affect and is in addition to every other right of the Buyer arising from the default of the Seller under the Contract.

11.7 References in these Terms of Sale to strata lot, strata plan, strata company and strata scheme will where the context requires include survey-strata lot, survey strata plan, survey strata company and survey-strata scheme. Similarly references to unanimous resolution will also mean where appropriate 'resolution without dissent'. Words or terms used in this clause shall have the same meaning ascribed to them under the terms of the Strata Titles Act.

12 WRONG DESCRIPTION OR ERRORS

12.1 The sale of the Property can not be terminated as a result of any error or misdescription of the Property or any part of it but appropriate compensation may be made or given if demanded in writing (clearly setting out the nature and monetary value of the claim) not later than 14 days after the Settlement Date.

12.2 12.2.1 If the Seller and Buyer can not agree on the amount of this compensation, then the amount is to be determined by an arbitrator appointed by the President for the time being of the Law Society of Western Australia whose decision will be final and binding on the parties.

12.2.2 The arbitration shall be conducted in the manner prescribed by the arbitrator appointed and the parties may be represented by duly qualified legal practitioners in those proceedings.

13 LAND SOLD SUBJECT TO REMEDIATED SITE MEMORIAL

13.1 If pursuant to the Contaminated Sites Act 2003 the Land is classified as restricted use, then the Land, where a Building has been constructed on the Land, will be treated as being sold subject to the restricted use classification provided it was reasonable to expect use of the

building to continue after settlement and the restricted use classification does not reasonably affect the use of the Land.

13.2 Where the Land is vacant and the restricted use classification does not unreasonably affect the proposed use or materially affect the value, the Buyer will have no right to terminate.

13.3 Where the Buyer has the right to terminate, it must do so by giving Notice to the Seller before the expiration of 3 Business Days prior to the Settlement Date, failing which it shall lose the right to terminate under the Contract and at general law.

13.4 Neither party shall have a claim or right of action against the other arising from termination under this clause except in relation to any claim or right accruing prior to termination.

14 SELLER'S REPRESENTATIONS AND UNDERTAKINGS

14.1 The Seller makes the following representations:-

- (a) that at the time of settlement, the Property will be free of all Encumbrances or claims from third parties except for those agreed to in writing by the Seller and Buyer;
- (b) that the Seller is the owner of the Property and is free to sell it pursuant to the Contract and these Terms of Sale and will proceed to do so;
- (c) that the state of the Property as at the date of the Contract will remain unchanged to the Settlement Date and the Seller will do all things reasonably necessary to preserve and protect the Property and to maintain it in its current state of repair, order and condition (including upkeep of lawns and gardens);
- (d) that there are no outstanding orders or requisitions of any competent authority relating to the Property which have not been revealed in writing to the Buyer;
- (e) that there are no proposals for the realignment, widening or alteration of the level of any road adjoining the Property by any competent authority that would materially affect the Property or the use thereof or for the resumption of the Property or any part of it, or to limit the use, enjoyment or occupation of the Property except as have been revealed in writing by the Seller to the Buyer;
- (f) that (except for a strata lot) there are no sewers, drains, pipes, cables or other installations passing through the Property providing the relevant services to other land;
- (g) that there are no outstanding demands or notice of liability with regard to dividing fences between the Property and any adjoining land;
- (h) that there are no encroachments onto the Property by any building or structure on the adjoining land;
- (i) that the Seller will grant access to the Property to the Buyer (who may be accompanied by up to two (2) persons), to enable the Buyer to inspect the Property on one occasion within seven (7) days prior to the Settlement Date;
- (j) that the Seller will provide the Buyer with a copy of any proposed resolution of the Strata Company immediately upon the Seller becoming aware of the proposed resolution;
- (k) the Seller must immediately provide a copy of the notice issued under section 47(3) of the Strata Titles Act to the Buyer and follow the Buyer's instructions in objecting to the proposed expenditure.
- (l) The Subdivision Plan, if applicable, will be registered at Landgate by the Registration Date;

- (m) Any Building required to be built under this Contract, will:
 - (i) comply in all respects with the plans and specifications attached to the Contract;
 - (ii) be constructed in a proper and workmanlike manner in accordance with Australian Building Codes and Regulations;
 - (iii) as to the construction, commence as soon as practicable after the Contract Date and be completed as soon as practicable after commencement of its construction;
- (n) where the Property is a proposed subdivided lot the Seller will do all acts and things necessary to be done to expedite the issue of a separate certificate of title for the Property and keep the Buyer informed of the progress and issue of the new certificate of title.

15 BUYER'S REPRESENTATIONS

The Buyer represents to the Seller:-

- (a) that the Buyer is ready, willing and able to complete the purchase of the Property in the manner set out in the Contract and these Terms of Sale, and will proceed to do so;
- (b) that there is no impediment to the Buyer completing the purchase of the Property by the Settlement Date;
- (c) that the Buyer will do all things relevant to obtain the necessary finance and will be in a position to make all payments required to be made under the Contract and these Terms of Sale as and when the same fall due.

16 TIME

Time will be of the essence of the Contract in all respects.

17 NOTICE OF DEFAULT

- 17.1** If either party to the Contract is in default under any of the terms of the Contract or these Terms of Sale, the other party is not entitled to take any action on that default without first giving to the defaulting party a notice in writing clearly specifying the default, and requiring it to be remedied within 7 days of the date of the notice.
- 17.2** If the defaulting party fails to remedy the default by the due date, the non-defaulting party may proceed to exercise all remedies available to him under the terms of the Contract and at law.
- 17.3** It is further agreed between the parties that where one party repudiates or purports to repudiate the Contract, the other party is not obliged to give a notice of default under the terms of this clause.

18 LOSS OR DAMAGE

Where there has been substantial loss or damage to a Building prior to the Settlement Date or the Buyer's possession and the Seller's insurer will not provide a cash settlement for that loss or damage prior to the Settlement Date, either party may by giving 15 Business Days Notice to the other party elect to terminate this Contract. Upon the expiry of the said Notice

period the Deposit will be returned to the Buyer and the parties will release each other from any claim(s) except each party will retain the rights it has against the other party in respect of any past breach or any claim or action that has arisen before termination of the Contract.

19 DEFAULT AND ITS CONSEQUENCES

19.1 By the Buyer

- (a) Where the Buyer is in default or repudiates the Contract, the Seller may (in addition to any other right):-
 - (i) affirm the Contract and sue the Buyer for damages for breach of contract;
 - (ii) affirm the Contract and sue the Buyer for specific performance and damages. Alternatively, the Seller may sue for damages in lieu of specific performance of the Contract;
- (b)
 - (A) if a notice of default issued under clause 17 states, that unless the default is remedied within the time specified in the notice the Contract will or may be terminated, the Seller may terminate the Contract and forfeit so much of the moneys paid to date as do not exceed ten percent (10%) of the total contract price, sue the Buyer for damages for breach, and without further notice proceed to resell the Property in any manner as the Seller deems fit;
 - (B) the resale must be in good faith and at arms length and commenced within 12 months after the date of the notice of the default;
 - (C) if the resale of the Property results in the Seller receiving more than the Seller would otherwise have received from the Buyer in the absence of default, after allowing for all reasonable costs associated with the resale, the surplus can be retained by the Seller;
 - (D) if on the other hand, the resale results in the Seller receiving less, he can recover from the Buyer the shortfall together with all reasonable costs associated with the resale, and the collection of the shortfall.
- (c) If the Seller does not sell or commence to sell the Property within 12 months after the date of the notice of the default, the Seller can not claim any shortfall from the Buyer and the Seller must account to the Buyer for all instalments of the purchase price received by him (other than for any deposit forfeited by the Seller under the terms of the Contract) without interest.

19.2 By the Seller

- (a) Where the Seller has defaulted under or has repudiated the Contract, the Buyer may, in addition to his other rights at law, seek repayment of all moneys paid to date, whether held by a stakeholder or otherwise, together with all reasonable costs incurred by the Buyer to date.
- (b) There shall be no limit on the damages recoverable by the Buyer from the Seller merely because the Seller is unable to give good title to the Property as contemplated by the Contract.

19.3 The defaulting party shall pay the non defaulting party's legal and professional costs and expenses on a full indemnity basis.

20 DUTY AND REGISTRATION FEES

Subject to clause 19.3, the Seller and the Buyer will each bear their own legal and other costs and expenses associated with the Contract and the settlement thereof. The Buyer must pay the duty assessed by the Office of State Revenue on the Contract and registration fees on the transfer of land document.

21 NOTICES

21.1 A notice or other communication to be given or made under the Contract must be in writing and can be signed by the party giving it or that party's solicitor or settlement agent and unless otherwise provided for in the Contract or these Terms of Sale is deemed to have been duly given or made if served on the party concerned:-

- (a) by delivering the notice to him personally;
- (b) in the case of an individual by delivering it or posting it to him at his address specified in the Contract;
- (c) in the case of a corporation, by delivering it or posting it to the corporation at its address specified in the Contract or its registered office or principal place of business in the State of Western Australia for the time being.

21.2 A notice or other communication posted will be deemed to have been served at the expiration of 48 hours from the time of posting.

21.3 Despite anything to the contrary contained in this clause 21 any notice may be sent by facsimile to that party's specified facsimile number and will be deemed to have been served on receipt of an acknowledgment that every page of the notice has been transmitted and received.

21.4 Where a Representative acts for a party, any notice served on that Representative will be treated for all purposes as if the notice had been served on that party.

22 FURTHER ASSURANCES

The Seller and Buyer make such assurances and undertake to do all acts, matters and things as are necessary or desirable to give full force and effect to the terms of the Contract, and to enable it to be completed on the Settlement Date.

23 TOTAL CONTRACT

The terms of the Contract including these Terms of Sale, constitute the whole of the contractual arrangement between the Seller and Buyer concerning the Property, and supersede all previous contracts and agreements.

24 GOVERNING LAW

The Contract and these Terms of Sale are governed by and will be construed according to the laws of Western Australia.

25 AGREEMENTS TO SURVIVE TRANSACTION

All agreements, obligations, covenants, representations, guarantees, warranties and indemnities contained in the Contract which have not been fulfilled shall survive execution and completion of the Contract and the registration of any transfer of Title.

26 INCOME TAX ASSESSMENT ACT

For the purposes of the Income Tax Assessment Act 1936 or 1997 as amended, where the price of any fixtures or fittings comprised in the Property for which depreciation has been allowed or is allocated under that Act, is the price allocated in the Contract or if none is allocated will be the Seller's depreciated values of those items for the purposes of that Act as at the date of the Contract.

27 GST

27.1 GST on Purchase Price

- (a) The purchase price includes GST unless otherwise expressly stated in the Contract.
- (b) Subject to clause 27.1(a), on the Settlement Date the Seller must provide a Tax Invoice to the Buyer if GST is payable on the sale of the Property by the Seller and forms part of the purchase price.
- (c) For the purposes hereof and subject to clause 27.2, the reference to GST being included in the purchase price includes any money paid or payable on settlement in addition to the purchase price and without limitation includes money paid or payable by virtue of:-
 - (i) a delay in settlement;
 - (ii) the adjustment of rent or outgoings;
 - (iii) any payments in respect of an Underground Power Rate, a contributory extension electricity scheme or a sewer connection.

27.2 GST on Compensation

If a party to the Contract is in default and as a result is liable to pay compensation to the non-defaulting party, the party in default must pay the GST payable on the compensation at the same time that the defaulting party pays the compensation. The non-defaulting party must provide a Tax Invoice to the defaulting party on payment of the compensation.