**SPECIAL CONDITIONS**

Our lawyers have drafted these special conditions that can be inserted into an REIQ standard contract of sale and in some cases, lease or commercial tenancy agreement.

They are samples only and may not suit all circumstances so they cannot replace seeking legal advice when required.    We will happily assist with any pre-contractual advice an agent may require putting together a contract of sale.

We do not charge for this service to real estate agents.  Agents are friends, not food.

## PET APPROVAL BY BODY CORPORATE:

1. This contract is subject to and conditional upon the seller providing written approval from the Body Corporate within *[insert no of days]* from the contract date that the buyer may keep a *[insert nature of pet]* in the property.
2. If approval is not obtained by *[insert no of days]* from the contract date, the buyer may elect to waive the benefit of this clause, or terminate the contract and all deposit monies will be refunded in full to the buyer, with neither party having any claim against the other.

## CONTRACT SUBJECT TO SALE OF BUYER'S PRIOR PROPERTY (WHERE CONTRACT ALREADY ENTERED INTO FOR THE PRIOR PROPERTY):

This contract is conditional upon the successful settlement of the buyer's existing property situated at *[insert property address]* on or before *[insert number of days]* from the contract date.

Should settlement of the property at *[insert property address]* not be effected for any reason by the date specified above, then either party may terminate this contract and all deposit monies will be refunded in full to the buyer, with neither party having any claim against the other.

## SUBJECT TO DUE DILIGENCE

1. This contact is subject to and conditional upon the Buyer being satisfied with due diligence inquiries regarding the Property within [no.] days from the Contract Date (“the Due Diligence Date”).

1. If the Buyer is not satisfied with its inquiries, the Buyer, may by notice in writing to the Seller given not later than 4pm on the Due Diligence Date terminate this Contract and receive a refund of the Deposit.

1. If the Buyer fails to give notice that due diligence is satisfied or waived by 4pm on the Due Diligence Date then, at any time after that the Seller or the Buyer may terminate this Contract, and the Deposit will be refunded to the Buyer in that case.

## SUNSET CLAUSE (“72 HOUR CLAUSE):

1. The Buyer acknowledges that, despite the existence of this Contract, the Seller will continue to offer the Property for sale.

1. If the Seller signs a contract on terms more acceptable to the Seller, in their absolute discretion, prior to the Contract going unconditional, then the Seller shall give written notice (‘Notice of Better Offer’) of this to the Buyer.

1. If the Buyer does not give notice to the Seller waiving the benefit of the conditions benefiting the Buyer within 72 hours (time being of the essence) of the Buyer receiving the Notice of Better Offer, the Seller may, at its option, terminate this Contract and the Deposit will refunded to the Buyer in full, and no party shall have any claim against the other.

## BUYER'S RIGHT TO ACCESS PROPERTY PRIOR TO SETTLEMENT TO CARRY OUT RENOVATIONS:

The Seller agrees to allow reasonable access for the Buyer, and appropriate tradespeople, to the property for the purpose of obtaining quotes to conduct renovations to the property.

Once this contract becomes unconditional the Seller agrees to allow access to the property so the renovations can be commenced. The renovations must be conducted in a satisfactory and workmanlike manner by appropriately qualified and/or licensed tradespeople.

The Buyer hereby agrees to pay all costs for the renovations being conducted. In the event that settlement does not occur, through no fault of the Seller, the Buyer agrees to pay all the costs to ensure the renovations are completed in a satisfactory and workmanlike manner and agrees to indemnify the Seller against any costs, damages or other liability caused by the renovations.

The Buyer hereby agrees that they must take out ‘appropriate’ insurance to the Seller’s satisfaction.

## SELLER ACQUIRING ALTERNATIVE PROPERTY:

This contract is conditional upon the Seller entering into a contract of sale to purchase an alternative property of their choice and upon that agreement becoming unconditional within *[insert number of days]* days from the Contract Date. This condition is inserted for the sole benefit of the Seller and can be waived at their sole discretion.

## DUE DILIGENCE:

This contract is conditional upon the buyer being satisfied with the results of a due diligence investigation of the property within *[insert number of days]* days from the Contract Date. If the buyer is not satisfied with any aspect of their due diligence investigation the may may, in their sole discretion, terminate the Contract by notice in writing to the Seller, and in such case any deposit monies paid must immediately be refunded in full to the Buyer. This clause is inserted for the sole benefit of the Buyer and the Buyer is under no obligation whatsoever to supply any reasons for their termination of the Contract.

The Seller agrees to:

1. Allow the Buyer, together with consultants employed by the Buyer, full access to the property for the purposes of the due diligence investigation; and
2. Provide to the Buyer any information held relating tot he property relevant to the due diligence investigation.

## APPROVAL FROM THE FOREIGN INVESTMENT REVIEW BOARD (“FIRB”):

1. This contract is conditional upon the Foreign Investment Review Board (“FIRB”) granting approval to the acquisition of this property;
2. The Buyer, upon signing this contract, undertakes to apply to FIRB for approval as soon as possible, complying with all directions and requests for information from FIRB and using their best endeavours to obtain such approval.
3. The Buyer will upon obtaining FIRB approval provide written notice to the Seller’s solicitor of this approval.
4. If approval is not granted within *[insert number of days]* then this Contract shall be at an end and all deposit monies shall be refunded in full the the Buyer and no part shall have any claim against the other.

## CONTRACT SUBJECT TO SALE OF BUYER’S PRIOR PROPERTY (WHERE CONTRACT NOT YET IN EXISTENCE):

1. This Contract is conditional upon the Buyer obtaining a binding Contract for the sale of their property located at *[insert property address]*, (“the Prior Sale”) within *[insert number of days]* from the Contract Date.
2. This Contract is subject to the settlement of the Prior Sale within [*insert number of days*] from the Contract Date.
3. The Settlement Date will be *[contemporaneous with, or within X number of days]* of the settlement of the Prior Sale.
4. The Buyer will notify the Seller as soon as practical after a contract for the Prior Sale is entered into and the relevant dates under it.
5. If the Buyer does not obtain a Prior Sale contract or if the Prior Sale fails to complete, the Buyer may, if the Buyer does not first waive the benefit of this condition, terminate this Contract and receive a refund of the Deposit paid, and neither party will have any further claim against the other.

## ELECTRONIC TRANSMISSION OF CONTRACT CLAUSE:

This contract may be entered into by and becomes binding on the parties named in the contract upon one party signing the contract that has been signed by the other party (or a photocopy, facsimile or email of that contract) and transmitting a facsimile or email copy of it to the other party or the other party's agent or solicitor.

## INSPECTION OF PROPERTY:

1. This contract is subject to, and conditional upon, the buyer conducting a visual inspection of the property within *[insert number of days]* from the Contract Date. and being satisfied with the property in their absolute discretion.
2. If the buyer is not satisfied, in their absolute discretion, with the property after inspecting it, they may terminate the contract by providing written notice to the seller within *[insert number of days]* from the Contract Date and all deposit monies paid under the contract will be refunded to the buyer in full.
3. If written notice of termination is not provided to the seller within *[insert number of days]* from the Contract Date, then this clause is deemed satisfied.
4. This clause is inserted for the sole benefit of the buyer and may be waived by them at any time.

## PAYMENT OF AGENT’S COMMISSION:

The Seller irrevocably authorises and directs:

a. The Deposit Holder to pay the Agent’s commission upon settlement from the Deposit held prior to paying any balance to the Seller; and

b. If the Deposit held is less than the Commission payable by the Seller to the Agent, the Buyer to draw a separate cheque at settlement to cover the Agent's commission less any Deposit held, as evidenced in a Tax Invoice provided by the Agent to the parties’ or their solicitors prior to settlement.

## EARLY POSSESSION OF PROPERTY:

The Seller grants the Buyer early possession of the Property under a licence agreement on the following terms:

1. The Buyer must pay the Seller [*$insert amount]* per week in licence fees, on the basis that they are provided with early possession of the property, under standard condition 8.6 of the Contract from [*start date of early possession]* until the later of the Settlement Date and the date the Buyer vacates the Property if the Contract is terminated.
2. If this Contract is terminated by either party, the licence will be at an end and the Buyer agrees to vacate the property within *[insert time-frame, eg 5 business days]* of the termination of the Contract and remove all of their possessions from the Property at their own cost.
3. In receiving early possession of the property the Buyer agrees:
	1. that the relationship of Buyer and Seller is not one of landlord and tenant;
	2. that the licence is personal to the Buyer and cannot be assigned;
	3. that risk passes to the Buyer upon the commencement of possession;
	4. that they accept the Property in ‘as is, where is’ condition from the commencement of possession;
	5. that adjustments will be calculated as at the date of possession; and
	6. to indemnify the Seller for any loss or damage to any person or property, that occurs from the date of possession until the later of the Settlement Date and the date the Buyer vacates the Property if the Contract is terminated.

## STRUCTURES THAT DO NOT HAVE COUNCIL APPROVAL

1. The Buyer acknowledges that the Seller has disclosed that the *[described the improvement/structure that is not approved] (“*the Structure”) on the Property does not have Local Government Approval and agrees to accept the Property on that basis.
2. The Seller confirms they have not received any notices from any statutory authority including the Local Government in relation to the Structure as at the Contract Date.
3. The Buyer agrees that they have no recourse against the Seller in relation to the Structure and will be responsible for any costs in relation to securing approval of the Structure in the future, removal of the Structure, or any associated works and indemnifies the Seller accordingly.

**EARLY SETTLEMENT**

Provided that the Contract is unconditional with respect to inspections, finance and due diligence, the Buyer may trigger an earlier settlement upon the giving of not less than 7 days notice to the Seller in writing, in which case the Settlement Date will be brought to the date so nominated.

**GST APPORTIONMENT WHERE MIXED SUPPLY**

The parties acknowledge that the sale is a mixed supply for GST purposes and, therefore, the GST applicable to the purchase price (if any) will be calculated on an apportioned basis according to only that part of the supply (the commercial use) that is a taxable supply.

**Right of First Refusal (In a Lease)**

* 1. If the Lessor wishes to sell the Premises during the Term it must first offer it to the Tenant on whatever commercial terms it decides to offer it for sale (or on terms no less favourable than any genuine third party offer to purchase received by the Lessor, as the case may be).
	2. The Tenant may, within 2 Business Days of receiving the Lessor’s offer, exercise its right to purchase by delivering to the Lessor a signed Contract in the REIQ standard format for the premises on those terms.
	3. If the Tenant does not exercise the option, or waives it, during that period the Lessor may proceed to sell the Premises without further notice to the Tenant.