

CONTRACT FOR SALE OF LAND 2022 EDITION

Clause	Description 2022	Description 2022 of changes from 2019 edition
Pages 1-4	The front page of the contract gives you all of the relevant details of the parties involved, the property, its improvements and inclusions. These details should be checked to ensure they are correct. The second page has the signing area. Additionally, the third page sets out the taxation issues such as whether land tax is adjustable, whether GST is payable and whether the purchaser's solicitor must withhold that GST and remit it to the ATO at settlement. Page 4 contains the list of documents that can be attached to the contract.	<ul style="list-style-type: none"> • Page 1 - "air conditioning", "ceiling fans" and "EV charger" (electric vehicle charger) have been added as specified inclusions • Page 2 - with the increasing use of electronic signature platforms, and decreased witnessing occurring in practice, a space for witnesses signature has not been provided. • Page 4- New item 15 "occupation certificate" has been added to the List of Documents.
Pages 5-7	These pages contain warnings and notifications to the purchaser which should be read carefully such as the warnings in relation to asbestos, smoke alarms and swimming pools. Page 6 contains an explanation of the cooling off period and when no cooling off period applies.	<ul style="list-style-type: none"> • Page 5 - the prescribed warnings for smoke alarms and loose-fill asbestos insulation have been amended • Page 6 - the content of the statutory cooling off notice has been amended. • Page 7 - the alert regarding surcharge purchaser duty has been expanded and the announcement of the FHBC annual property tax has been referenced.
Standard clause number	Pages 8 to 21 contain the standard terms and conditions which apply to the contract unless amended by way of special condition.	Many of these will not apply to your conveyancing transaction as they are generalised terms which will be amended or added to by way of a set of special conditions which relate directly to your transaction

1	Definitions of terms used in the contract	<p>New terminology:</p> <ul style="list-style-type: none"> manual transaction – this term has been introduced to capture a transaction that is not an <i>electronic transaction</i>. Noting all transactions are automatically electronic and if not then your solicitor will nominate a manual paper transaction if required.
2	Clause 2 outlines conditions of payment of the deposit, electronically and other matters related to timing of deposit	You should always ensure the payment of deposit is received by the agent on or before the final due date so as not to be in breach of contract provisions
3	Clause 3 outlines conditions of payment of the deposit by deposit bond	
4	Clause 4 sets out rules applying to electronic settlement transactions	This clause has replaced former clause 4 which dealt with the paper form of transfer in a settlement in the paper environment
5	Clause 5 outlines to use of requisitions on title. There are questions a purchaser has the right to ask of the vendor about the property title within 21 days of exchange. The vendor may attach a form of requisitions to the contract and the purchaser is taken to have made those requisitions	
6	Clause 6 notes that any error or misdescription in the contract, made by the vendor can lead to a purchaser claiming compensation as to the title, property unless the purchaser knew the true position.	
7	<p>Clause 7 grants a right to the purchaser to make a claim against the vendor prior to completion of the contract (Clause 7 Claim). If the amount claimed by the purchaser exceeds 5% of the price, then the vendor can rescind the contract, the deposit is returned to the purchaser and neither party has any further rights under the contract.</p> <ul style="list-style-type: none"> A common example of an error or misdescription is where the inclusions stipulated in the contract do not match those which are actually present on the property. 	(Most contracts amend these clauses so as to reduce the standard amount of 5% to 1% or \$1.00) and prohibit claims at all.

	<ul style="list-style-type: none"> The Clause details what happens if the vendor does not rescind such that the parties must complete the contract and \$ must be held out of the deposit to finalise the claim If the claim is made and the vendor serves notice to rescind, the purchaser may waive their rights and withdraw the claim 	
8	<p>Clause 8 details the Vendor's rights to rescind if they are unable or unwilling to comply with a requisition or if they serve a notice of intention to rescind.</p> <p>Clause 8.2 provides an express right of termination for the purchaser where the vendor does not comply with the contract.</p> <p>This clause was introduced to rebalance the respective rights of the parties, having regard to the unfair contract terms provisions of the Australian Consumer Law</p>	Most contracts will amend this clause to delete the rights of the purchaser in clause 8.2
9	<p>Clause 9 provides for the Vendor's remedies if a Purchaser fails to complete, or settle their purchase, on the agreed date. The Vendor has two options:-</p> <ul style="list-style-type: none"> If the Vendor has re-sold the property under a contract made within 12 months after termination of the contract with the Purchaser, then the Vendor can sue to recover the deficiency on resale of the property. However, the deposit, which the Vendor is entitled to retain on default by a Purchaser, must be taken into account as a credit. Under this option the Vendor can also claim the reasonable costs and expenses arising out of the Purchaser's non-compliance with the contract. In the alternative, the Vendor may sue to recover damages under the general law for breach of contract by the Purchaser 	
10	<p>Clause 10 precludes the purchaser from relying on any promises, representations and statements about the property that are not set out in the contract (does not include misrepresentations under Trade Practices Act). They cannot rescind or make claims in respect of fences, services, walls or party walls, changes due to fair wear and tear</p>	

	before completion, reservations in the crown grant, anything disclosed in the contract, or because of a defect in inclusions title or quality.	
11	Clause 11 provides that if there are any work orders by a local authority such as Council or Sydney Water, made on or before the contract date, the vendor must comply with them by completion. If a purchaser complies with a work order and the contract is rescinded or termination the vendor must pay for that work.	
12	Clause 12 provides that the vendor must allow inspections (reasonably required) for pre-inspection reports or any other reports reasonably required and allow pre-completion inspection in the 3 days before a settlement date	
13	Clause 13 details the GST provisions. These clauses, more of than not, do not apply in the majority of residential transactions because if the property is purchased as your primary residence, GST is not payable. GST is payable on new properties such as off the plan builds and new land registrations.	<ul style="list-style-type: none"> • Changes relate to the Foreign Resident Capital Gains Withholding scheme. • Changes relate to the time frame for <i>servicing</i> evidence of the submission of a <i>GSTRW payment</i>
14	Clause 14 details how adjustments at settlement are to be dealt with for amounts such as rent, rates, water and any other periodic outgoings including land tax where that is adjustable. In most matters, land tax will not be adjustable.	<ul style="list-style-type: none"> • New clause 14.5 has been inserted to clarify that any first home buyer choice property tax is not to be adjusted.
15	Clause 15 explains that the parties must complete on the completion date noting the special conditions will include the consequences of not completing on the contract date such as interest charged, legal fees and possible breach of contract	
16	<p>Clause 16 sets out what occurs on completion/settlement date for the vendor, purchaser and place for completion.</p> <p>Clause 16.4 the vendor must pay any land tax or first home buyer property tax by completion</p>	<ul style="list-style-type: none"> • Clause 16.1 is the former clause 16.3 of the 2019 Edition, with an amendment to reflect that in the event unpaid first home buyer choice property tax will form a charge on the land, this charge must be cleared prior to, or on settlement

	Clause 16.5 purchaser to withhold any necessary payment in the Foreign Resident capital gains tax withholding and exclude it from the amount payable to the vendor along with any GST required to be withheld	
17	Clause 17 deals with the vendor giving vacant possession on completion subject to existing tenancies which are disclosed in the contract. This clause notes that if there is a protected tenancy the purchaser may claim compensation to rescind.	
18	Clause 18 details the circumstances where the parties have agreed to early possession by the purchaser. This is often superseded or added to with the drafting of an agreement called Licence agreement or by way of possession under licence. The clause details what occurs if the contract terminates or is rescinded and how adjustments are dealt with.	
19	Clause 19 provides for a rescission of the contract noting that where a legal rescission occurs and a written notice of rescission is given, the purchaser is refunded the deposit, adjustments can be made if the purchaser was in possession. Further the contract provides that damages, costs and expenses arising out of a breach are claimable. This is often deleted by way of special conditions.	
20	<p>Clause 20 deals with miscellaneous matters such as:</p> <ul style="list-style-type: none"> • An area or measurement in the contract is only approximate • Parties if more than one, are bound separately and together • Detailing service of a document including electronic service <p>Clause 20.8 to take into account some clause 4 obligations continue after completion (eg purchaser to provide evidence of payment of remittance amount to ATO)</p>	<ul style="list-style-type: none"> • With the increasing electronic execution of contracts, new clauses 20.16 and 20.17 have been added to assist in meeting the requirements of the Electronic Transactions Act 2000
21	Clause 21 details time limits for (unless otherwise stated in the contract), how public holidays and end of month days are dealt with.	

22	Clause 22 provides the undertaking by the purchaser that they are not a foreign buyer without permission to purchase under FIRB legislation	If you are not an Australian citizen or have not been in Australia for 200+ days in the 12 months prior to the date of the contract, then you may be a foreign person and liable to the surcharge duty or other payments
23	<p>Clause 23 provides the parameters for sale/purchase of strata or community title.</p> <p>Clause 23.17 limitations of right exercisable such that the purchaser's rights of participating in a general meeting only accrues after expiry of the cooling off period.</p> <p>Under the revised clause 23.6 if the non-regular periodic contribution is not disclosed in the contract, but was determined on or before the contract date, the vendor will be liable for the contribution.</p> <p>Under clause 23.9 a purchaser is rights to rescind such as where a strata renewal has progressed as specified in circumstances where certain documentation associated with strata renewal was not attached to the contract. If the vendor has attached the strata renewal proposal or plan to the contract there is no right of rescission</p>	In most contracts, any rights herein will be deleted by the vendor in special conditions. Vey few of these rights will remain in most contracts
24	Clause 24 details what happens in sale of property where there is a tenant in possession including how adjustments are to be made in certain circumstances, transfer of bond monies,	
25	Clause 25 applies where the land is qualified title, limited title and old system title and sets out the details of service of the abstract of title required.	
26	Clause 26 applies only if the purchase money is payable to the Crown	

27	Clause 27 sets out the provisions where there is consent to transfer on land that has restricted title and has been updated and amended to capture obtaining consent to transfer in relation to planning agreements	
28	Clause 28 applies only where the land is described as a lot in an unregistered plan. So called Off the Plan type matters. These provisions are generally altered by the vendor by way of special conditions setting their own time limits for the registration of the title and the conditions which will allow any rescission by parties	
29	Clause 29 applies only where the contract part or completions is conditional on an event occurring. For example, the contract is conditional on the purchaser obtaining finance approval	
30	This new clause has been added and will apply to a small number of transactions where they are unable to be transacted electronically.	
31	This clause details the Foreign Resident Capital Gains Tax withholding measures such as purchaser obliged to complete a purchaser payment notification with ATO and provide to vendor at least 5 business days before completion and produce settlement cheque on completion for remittance amount.	