

DISCLAIMER

This is a standard contract for use by lawyers, estate agents and agents Representatives. It will normally require additions or amendments to ensure its suitability for a particular transaction. The Estate Agents Act 1980 only allows additions and amendments to be made by a lawyer. The LIV and the Real Estate Institute of Victoria disclaim any direct or indirect liability arising from the use or adaption of this Contract.



**Law
Institute
Victoria**

SALE OF BUSINESS CONTRACT

| | | |
|-----------|----------------------|----------------------|
| Vendor | <input type="text"/> | <input type="text"/> |
| Purchaser | <input type="text"/> | <input type="text"/> |
| Business | <input type="text"/> | <input type="text"/> |



Important Notice to the Person Preparing this Sale of Business Contract

This Contract is in a standard copyright form. You may need to make changes to record the agreement of the Parties. Any changes or amendments to it must be made by way of **Special Conditions**.

The **Vendor** sells and the **Purchaser** buys the **Business**, the **Assets** and the **Stock** for the **Price** and on the conditions of this **Contract**.

The **Purchaser** acknowledges that, prior to signing this **Contract**, the **Purchaser** received a copy of it and, where appropriate, a statement by a vendor of a small business under section 52 of the *Estate Agents Act 1980 (Vic)*.

This **Contract** is approved by the Law Institute of Victoria under section 53A(1)(a) of the *Estate Agents Act 1980 (Vic)*.

NOTE: This **Contract** should be used only for the Sale of a **Business** as a going concern as defined in the **GST Act**.

WARNING

THIS IS A BINDING CONTRACT

YOU SHOULD OBTAIN THE ADVICE OF A LEGAL PRACTITIONER BEFORE YOU SIGN

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SAMPLE ONLY

PARTICULARS OF SALE

1. VENDOR: _____
ACN/ABN: _____
Address: _____
Ph: _____ Fax: _____ Ref: _____
Email: _____

2. VENDOR'S SELLING AGENT/BROKER: _____
Address: _____
Ph: _____ Fax: _____ Ref: _____
Email: _____

3. VENDOR'S LEGAL PRACTITIONER: _____
Address: _____
Ph: _____ Fax: _____ Ref: _____
Email: _____

4. VENDOR'S ACCOUNTANT(S): _____
Address: _____
Ph: _____ Fax: _____ Ref: _____
Email: _____

5. PURCHASER: _____
ACN/ABN: _____
Address: _____
Ph: _____ Fax: _____ Ref: _____
Email: _____

6. PURCHASER'S LEGAL PRACTITIONER: _____
Address: _____
Ph: _____ Fax: _____ Ref: _____
Email: _____

7. VENDOR'S GUARANTOR(S): _____
Address: _____
Ph: _____ Fax: _____ Ref: _____
Email: _____

8. PURCHASER'S GUARANTOR(S): _____
Address: _____
Ph: _____ Fax: _____ Ref: _____
Email: _____

9. TYPE OF BUSINESS: _____

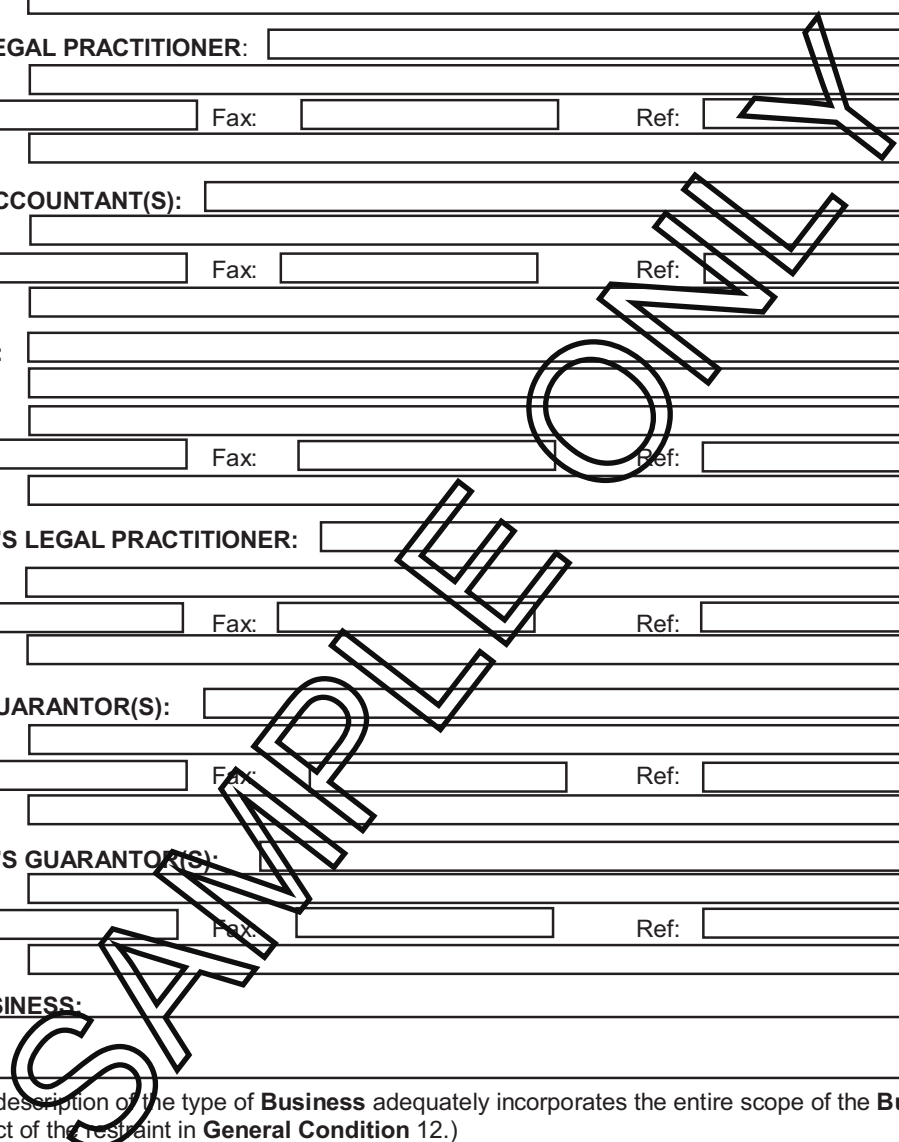
(Ensure that the description of the type of **Business** adequately incorporates the entire scope of the **Business** activity the subject of the restraint in **General Condition 12.**)

10. BUSINESS NAME(S): _____

* Registration number: _____

* Not registered

**Delete the inapplicable*



11. PAYMENT

Price: \$ [] exclusive of any **GST**.
Deposit: \$ [] which must be paid concurrently with the **Purchaser** delivering to the **Vendor** a copy of this **Contract** duly executed by the **Purchaser**.
Residue: \$ [] exclusive of any **GST**.

Payment of Residue: On the **Date of Settlement**

Allocation of Price:

- 1. **Plant and Equipment** \$ []
- 2. **Goodwill** \$ []
- 3. **Vendor's Intellectual Property** \$ []

12. DATE FOR SETTLEMENT:

The [] day of [] 20[] being the date on which the **Purchaser** is required to pay the **Residue** and the **Vendor** is required to give possession of the **Business**, the **Assets** and the **Stock** to the **Purchaser**.

13. STOCK: Maximum **Stock** value \$ []

14. BUSINESS PREMISES

Address: []

Title Particulars: Volume [] Folio []

The **Business Premises** are occupied by:

- * Owner
- * Tenant named in **Lease** (refer to **Schedule 3**)
- * Licensee named in **Licence** (refer to **Schedule 3**)
- * Other (specify) []

15. INQUIRY PERIOD: The **Inquiry Period** is days commencing on the day after the **Contract Date**.

* Not applicable

16. ASSISTANCE PERIOD: *days prior to the **Date for Settlement** and *days after the **Date of Settlement**.

* Not applicable

17. MAXIMUM VENDOR LIABILITY: \$ []

18. FINANCE:

Lender: []

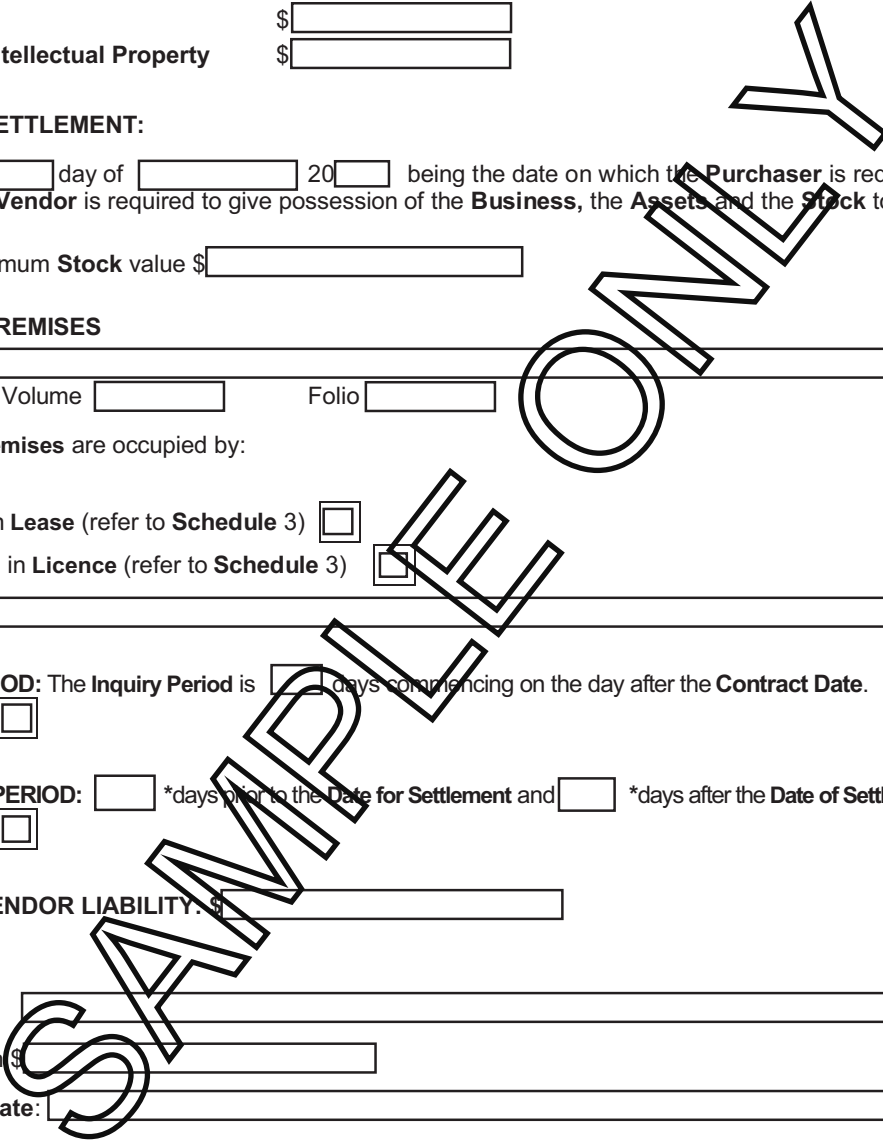
Loan not less than \$ []

Loan Approval Date: []

19. TRIAL PERIOD: The **Trial Period** is [] days commencing on []

**Delete if inapplicable*

20. CONTRACT DATE: The [] day of [] 20 []



GENERAL CONDITIONS

THESE GENERAL CONDITIONS MUST ONLY BE CHANGED BY WAY OF SPECIAL CONDITIONS.

1. Definitions and Interpretation

1.1 In this **Contract** the listed expressions have the meaning set out opposite them:

| Expressions | Meaning |
|---------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Accounting Standards | The standards issued by the Australian Accounting Standards Board from time to time and the requirements of the Corporations Act in relation to the preparation and content of financial statements and, to the extent that any matter is not covered by them, generally accepted accounting principles consistently applied in Australia. |
| Accounts | The financial accounts of the Business , prepared up to and including the Adjustment Date in accordance with the Accounting Standards . |
| Adjustment Date | Subject to General Condition 16.2, the earlier of: (a) the day immediately prior to the date of giving possession of the Business , the Assets and the Stock to the Purchaser ; or (b) the day immediately prior to the Date of Settlement . |
| Annexure | An annexure to this Contract . |
| Asset(s) | All the items specified in Schedule 1 . |
| Assistance | Allowing the Purchaser to observe the way the Business is conducted by the Vendor and introducing the Purchaser to the clients, customers and suppliers of the Business . |
| Assistance Period | The period specified in Item 16 of the Particulars . |
| Associated Person | In relation to a corporation: any director, officer or related corporation or substantial shareholder as those terms are respectively defined in the Corporations Act . |
| Bank | An authorised deposit-taking institution as defined in the <i>Banking Act 1959 (Cth)</i> . |
| Bank Cheque | A cheque drawn on a Bank . |
| Business | The business conducted by the Vendor under the Business Name (if any) from the Business Premises . |
| Business Day | Any day except a public holiday throughout Victoria or a Saturday or Sunday. |
| Business Name | The name or names specified in Item 10 of the Particulars . |
| Business Premises | The premises described in Item 14 of the Particulars . |
| Cancellation | Ending of this Contract for any reason other than an event of default. |
| Confidential Information | All information passing from the Vendor to the Purchaser relating to the Business including but not limited to trade secrets, trademark and patent applications, drawings, know-how, techniques, source and object code, business and marketing plans, sales projections, profit and loss statements, Management reports, licences, arrangements and contracts with third parties, customer information, formulae, customer lists, concepts not produced in material form, designs, plans and models and without limitation includes: (a) information designated as confidential by the Vendor ; (b) information or material, whether in material form or not, which is the property of the Vendor ; (c) information acquired by the Purchaser solely by virtue of the provision of it to the Purchaser by the Vendor ; (d) information imparted in confidence to the Purchaser by the Vendor ; (e) any evaluation made by or on behalf of the Purchaser , including all minutes, notes, papers, communications and other records capable of being reproduced; (f) any other information capable of being classified by equity as Confidential Information , but does not include information: (g) disclosed by the Purchaser to its professional advisers or lenders or to the landlord of the Business Premises , but only to the extent that it is necessary for the Purchaser to disclose Confidential Information in order that it may fulfill its obligations under this Contract ; or (h) disclosed under a Court order or Legislation ; or (i) which the Vendor has agreed in writing is not Confidential Information ; or (j) which comes into the public domain other than by a breach of this Contract by the Purchaser or its agents; or (k) independently known or developed by the Purchaser |

| | |
|--------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Contract | This contract comprising the Particulars, General Conditions, Special Conditions, Schedules and any Annexures . |
| Contract Date | The date specified in Item 20 of the Particulars . |
| Contact Numbers | Include any landline, fax, mobile numbers, electronic mail address and/or domain name being transferred with the Business . |
| Corporations Act | <i>Corporations Act 2001 (Cth)</i> . |
| Date for Settlement | The date fixed for Settlement as specified in Item 12 of the Particulars . |
| Date of Settlement | The date on which the Purchaser pays the Residue and the Vendor gives possession of the Business, the Assets and the Stock to the Purchaser . |
| Deposit | The amount specified as the deposit in Item 11 of the Particulars . |
| Dispute Notice | Written notification given by one Party to another in accordance with this Contract , specifying the nature of the dispute that has arisen. |
| Employees | The persons whose names and particulars of employment are specified in Schedule 4 . |
| Employee Entitlements | The entitlements of Employees of the Business , including wages, holiday pay, sick pay, long service leave, superannuation and entitlements under any Legislation , industrial award or instrument including any Australian Workplace Agreement, service agreement, or other contract. |
| Equipment Hire Contract | Any equipment hire contract or any lease contract for any property on loan specified in Schedule 2 . |
| General Condition | A general condition of this Contract . |
| GST | Goods and Services Tax (GST) within the meaning of the GST Act . |
| GST Act | <i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i> (as amended). |
| Inquiry Period | The period specified in Item 15 of the Particulars during which the Purchaser has the opportunity to do those things and make those inquiries set out in General Condition 3 of this Contract . |
| Intellectual Property | Includes: (a) Confidential Information (b) copyright (c) inventions (including patents) (d) trade marks (e) designs (f) business names and domain names (g) business and company logos (h) secret processes (i) formulae (j) recipes (k) computer systems software (l) information databases (m) client lists and information databases (n) distribution agreements and similar industrial and commercial property whether or not registered or registrable (and includes any right to apply for the registration of those rights and also includes all renewals and extensions of them) and whether or not protected by Legislation . |
| Landlord | The landlord under the Lease . |
| Lease | The lease of the Business Premises , the particulars of which are specified in Schedule 3 . |
| Legislation | An Act or a bylaw, industrial award or instrument ordinance, regulation or rule made under an Act. |
| Licence | The licence of the Business Premises , the particulars of which are specified in Schedule 3 . |
| Loan Amount | The amount specified in Item 18 of the Particulars . |
| Loan Approval Date | The date specified in Item 18 of the Particulars . |
| Material Contracts | The contracts concerning the Business which are to continue after Settlement , full particulars of which are specified in Schedule 5 . |
| Mediator | An impartial third party who is engaged or appointed to assist the Parties in exploring options for resolution of conflicts. |
| Month | A calendar month. |

| | |
|---------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Order | A valid direction, notice or order issued under any Legislation which requires the Vendor to do any thing, perform any work or spend money in relation to the Business , the Business Premises or any property adjoining the Business Premises . |
| Particulars | The Particulars of Sale forming part of this Contract . |
| Party or Parties | Party or parties to this Contract and if intended respective guarantors if they are nominated. |
| Payment | Any money paid or to be paid in accordance with the terms of this Contract . |
| Plant and Equipment | The items specified as plant and equipment in Schedule 1 . |
| Price | The price specified as the price in Item 11 of the Particulars plus or minus adjustments as provided for in this Contract . |
| Purchaser | The person or corporation specified in Item 5 of the Particulars . |
| Purchaser's Guarantor(s) | The person(s) specified in Item 8 of the Particulars . |
| Purchaser's Warranties | The warranties specified in Schedule 8 . |
| Residue | The amount specified as the residue in Item 11 of the Particulars . |
| Responsible Authority | Any statutory or public authority, any local, State or Federal government, any Court or any other person or entity having jurisdiction, power or authority over the Business Premises , the Business or the land or building which comprises the Business Premises . |
| Settlement | Completion of the sale and purchase of the Business as provided for in this Contract . |
| Schedule | A schedule to this Contract . |
| Special Condition | A special condition of this Contract . |
| Stakeholder | A person or entity appointed to hold any money payable under this Contract on behalf of any Party or Parties . |
| Stock | Includes the goods and products, the raw materials, work-in-progress and finished stock used or to be sold in connection with the Business whether located on the Business Premises or elsewhere on the Date of Settlement , but does not include: <ul style="list-style-type: none"> (a) any item of stock which is out of date, damaged, contaminated, or deteriorated; (b) any packaging or wrapping materials which on the day prior to the Date of Settlement are of a type not current or which do not comply with the provisions of any Legislation relating to labelling, packaging, health or any other applicable Legislation; or (c) any stationery used in the Business greater than that quantity required in the two (2) Months prior to the Date of Settlement. |
| Terminating Employee | An Employee who is not a Transferring Employee . |
| Transferring Employee | An Employee who prior to Settlement accepts the Purchaser's offer of employment referred to in General Condition 15.2 . |
| Vendor | The person or corporation specified in Item 1 of the Particulars . |
| Vendor's Guarantor(s) | The person(s) specified in Item 7 of the Particulars . |
| Vendor's Intellectual Property | The Intellectual Property of the Vendor which forms a component of the Business and forms part of the Assets . |
| Vendor's Selling Agent Broker | The person or entity specified in Item 2 of the Particulars . |
| Vendor's Warranties | The warranties contained in Schedule 6 . |

1.2 This **Contract** is to be interpreted according to the following:

- (a) references to law include all **Legislation** or **Orders** made by a **Responsible Authority** and include any consolidations, amendments, reenactments or replacements of any of them.
- (b) this **Contract** is to be governed by the laws of the State of Victoria. Any proceeding under or in connection with it must be taken in the appropriate Court in that State.
- (c) the **Parties** irrevocably and unconditionally submit to the non-exclusive jurisdiction of the Courts of the State of Victoria and waive any right to object to proceedings being brought in those Courts.
- (d) this **Contract** must be interpreted so that it complies with all **Legislation** applicable in Victoria. If any provision of this **Contract** does not comply with all relevant **Legislation**, the provision must be read down so as to give it as much effect as possible. If it is not possible to give the provision any effect at all, it must be severed from the rest of the **Contract**.
- (e) another grammatical form of a defined word or expression has a corresponding meaning.
- (f) a reference to a document or instrument includes the document or instrument as notated, altered, supplemented or replaced from time to time.
- (g) a reference to \$ (Dollars) is to Australian currency unless specified otherwise.
- (h) any change to this **Contract** must be in writing and signed by the **Parties**.
- (i) an obligation imposed by this **Contract** on or in favour of more than one person binds or benefits all of them jointly and each of them individually.
- (j) the use of a gender includes other genders and the singular includes the plural and vice versa.
- (k) a rule of construction does not apply to the disadvantage of a **Party** because the **Party** was responsible for the preparation of this **Contract** or any part of it.
- (l) if any of the **Parties** is an individual, this **Contract** binds that person's legal personal representative. If any of the **Parties** is a corporation, this **Contract** binds its transferees and successor in title.
- (m) where this **Contract** requires a **Party** to do or refrain from doing something, that **Party** is required to ensure that its agents do or refrain from doing the thing, as the case may be.
- (n) if a day on or by which an obligation must be performed or an event must occur is not a **Business Day**, the obligation must be performed or the event must occur on or prior to the next **Business Day**.
- (o) if there is a conflict between the **General Conditions**, the **Special Conditions** and/or the **Schedules** or **Annexures**, the order of priority is as follows:
 - (i) the **Special Conditions**;
 - (ii) the **Schedules**;
 - (iii) the **Annexures**; and
 - (iv) the **General Conditions**.
- (p) A provision of this **Contract** which can, and is intended to, operate after the **Date of Settlement** remains effective after that date.

2. Vendor's Warranties

- 2.1 The **Vendor** warrants that the **Particulars**, the **Schedules** and the **General Conditions** included in this **Contract** have not been modified, other than by the **Special Conditions**.
- 2.2 The **Vendor** warrants and represents to the **Purchaser**, as an inducement to the **Purchaser** to enter into this **Contract** and to purchase the **Business**, that, save as expressly disclosed in writing by the **Vendor** to the **Purchaser** prior to the **Contract Date**, each of the **Vendor's Warranties** specified in **Schedule 6** is true, complete and accurate, both at the **Contract Date** and on the **Date of Settlement** except where such a warranty is stipulated to be given only for a specified period or otherwise qualified in writing. Where the **Vendor** warrants on the basis of knowledge and belief as at the **Date of Settlement**, then the warranty is made on the basis of the **Vendor's** actual knowledge and belief as at the **Date of Settlement** and the **Vendor** further warrants that it has made due and careful inquiry as to the matter which is the subject of the warranty before giving the warranty.
- 2.3 The **Vendor** must indemnify and hold harmless the **Purchaser** against:
 - (a) all costs, liability, losses and claims incurred by the **Purchaser** as a result of a breach by the **Vendor** of any of the **Vendor's Warranties** or any other term of this **Contract**;
 - (b) any loss by or damage incurred by the **Purchaser** because the **Business** or any of the **Assets** was worth less than it would have been worth had the warranty or the **Contract** not been breached;but only up to the maximum liability set out in Item 17 of the **Particulars**. If no amount is shown in Item 17 of the **Particulars**, then the **Vendor's** liability under this **Contract** is unlimited.
- 2.4 The **Vendor** must indemnify the **Purchaser** against any taxes which may be incurred by the **Purchaser** arising from the performance by the **Vendor** of its obligations under this **General Condition 2**.
- 2.5 The **Vendor's Warranties** and the provisions of **General Conditions 2.2** and **2.3** remain in full force and effect and binding until six (6) **Months** from the **Date of Settlement** and, if prior to that date the **Purchaser** gives the **Vendor** notice of a claim for a breach of a warranty, that warranty continues after that date to the extent required to enable the **Purchaser** to prosecute it, and the indemnity granted in **General Condition 2.4** continues to enure in favour of the **Purchaser** in respect of that claim until the claim is finally resolved and all issues in respect of any taxation payable in consequence of this resolution have been determined.
- 2.6 The **Vendor** is not liable to the **Purchaser** for any cost, liability, loss or claim incurred by the **Purchaser** arising from any breach of any warranty made by the **Vendor** if the matter or thing the subject of that breach is disclosed by the **Vendor** to the **Purchaser** in writing prior to the **Contract Date**.
- 2.7 The **Vendor's Warranties** are personal to the **Purchaser** and the benefit of those warranties is not capable of assignment or transfer.

- 2.8 The **Purchaser** may not make a claim against the **Vendor** for a breach of any representation, warranty or term under this **Contract** unless and until the aggregate of all those claims exceeds the amount of five thousand dollars (\$5,000.00).
- 2.9 Each **Vendor's Warranty** is a separate warranty and representation and its meaning is not affected by any other warranty.

3. Purchaser Inquiry and Inspections

- 3.1 During the **Inquiry Period**, the **Purchaser** or the **Purchaser's** legal practitioner may deliver to the **Vendor** or the **Vendor's** legal practitioner any written inquiries relating to the **Business** or concerning any matter appearing in this **Contract**.
- 3.2 The **Vendor** must answer the inquiries prior to the end of the **Inquiry Period** but in any event, not later than fourteen (14) days prior to the **Date for Settlement**.
- 3.3 If the **Purchaser** during the **Inquiry Period** determines that there is a material breach of any of the **Vendor's Warranties** which the **Vendor** is not able or willing to address or rectify to the **Purchaser's** reasonable satisfaction, the **Purchaser** may give to the **Vendor** notice in writing of the **Purchaser's** intention to **Cancel** this **Contract** at the expiration of seven (7) days unless the breach is rectified to the **Purchaser's** reasonable satisfaction.
- 3.4 The **Vendor** may **Cancel** this **Contract** if the **Vendor**:
- (a) is unable or unwilling to satisfy the **Purchaser's** inquiries, and
 - (b) the **Vendor** serves a notice on the **Purchaser** of its intention to **Cancel** which specifies the inquiry the **Vendor** is unable or unwilling to satisfy and the reason for the intended **Cancellation**, and
 - (c) the **Purchaser** does not give a written notice to the **Vendor** waiving the inquiry within seven (7) days after service of the notice by the **Vendor**.
- 3.5 During the **Inquiry Period** the **Vendor** must ensure that the **Purchaser** has reasonable access to the records of the **Vendor** regarding the **Business** for the purpose of enabling the **Purchaser** to make such inquiries as are reasonably necessary to verify:
- (a) the accuracy of the **Vendor's Warranties**; and
 - (b) any matter referred to in the **Particulars** and the **Schedules**.
- 3.6 If the **Contract** is **Cancelled** under **General Condition** 3.3 or 3.4 the **Vendor** must repay or cause to be repaid to the **Purchaser** any money paid on account of the **Price** but is not liable to pay the **Purchaser** any damages, costs or losses suffered by the **Purchaser** as a consequence of the **Cancellation**.
- 3.7 In this **General Condition** the expression '**Purchaser**' includes the **Purchaser** and its authorised agents.
- 3.8 The **Vendor** must, if and when required by the **Purchaser**, during the **Inquiry Period** sign or execute and give to the **Purchaser** a document prepared and submitted by the **Purchaser** to the **Vendor** authorising the **Purchaser** to make all necessary inquiries of the **Responsible Authorities** regarding the **Business**.

- 3.9 The **Vendor** must promptly allow inspection of the **Business Premises** by officers of any **Responsible Authority** at the request of the **Purchaser** and must do all things necessary and provide all consents required for the purposes of satisfying the **Vendor's** obligations under this **Contract**.
- 3.10 The **Purchaser** is entitled to inspect the **Business** and the **Business Premises** within three (3) **Business Days** prior to the **Date for Settlement**.

4. Confidential Information

- 4.1 The **Purchaser** undertakes and agrees that as a condition precedent to the **Vendor** providing any **Confidential Information** to the **Purchaser**, the **Confidential Information** so provided will be treated, preserved and maintained in strict confidence by the **Purchaser**, its agents, advisers and lenders and will not be disclosed to any third party without the **Vendor's** written consent, other than as required by law. The **Purchaser** is responsible for ensuring that all persons to whom the **Purchaser** provides **Confidential Information** maintain the confidentiality in it.
- 4.2 The **Vendor** and the **Purchaser** must not disclose the terms of this **Contract** to any third party unless the disclosure is agreed to or required by law.
- 4.3 The **Purchaser** undertakes and agrees:
- (a) not to use any part of the **Confidential Information** for any purpose other than evaluating the **Business**, obtaining finance for the purchase of the **Business**, verifying the **Vendor's Warranties** and preparing for **Settlement**;
 - (b) not to make copies of any documents supplied by the **Vendor** under this **Contract** other than for purposes specified in this **Contract** without the prior written consent of the **Vendor**;
 - (c) not to retain or remove from the **Business Premises** any representation, record or reproduction (whether written, electronic, photographic or otherwise) of the **Confidential Information** without the prior written consent of the **Vendor**;
 - (d) to deliver to the **Vendor** all copies of or documents containing **Confidential Information** and all materials related to it or provided under this **Contract** immediately on demand by the **Vendor** and, without limitation, immediately on the expiration of the **Inquiry Period**; and
 - (e) to procure where applicable any necessary written undertakings from its agents, advisers and lenders as may reasonably be required by the **Vendor** to maintain confidentiality in the **Confidential Information**.
- 4.4 Without limiting **General Condition** 4.1, the **Purchaser** must not without the prior written consent of the **Vendor**:
- (a) manufacture any product or use any process based on the **Confidential Information**; or
 - (b) develop or use any service, product or process based on the **Confidential Information**; or
 - (c) use or disclose to a third party any aspect of the **Confidential Information** for the purpose of contacting or contracting with any **Employee** or client of the **Vendor**.

- 4.5 The undertakings given by the **Purchaser** in relation to the **Confidential Information** will merge only on **Settlement** of this **Contract** but if this **Contract** is not completed for any reason, they will survive and continue in force.
- 4.6 The **Purchaser** agrees to indemnify and hold harmless the **Vendor** against all costs, liability, losses and claims incurred by the **Vendor** as a result of a breach by the **Purchaser** or its agents, advisers and lenders of this **General Condition 4**.
- 4.7 The **Purchaser** acknowledges that, without in any way compromising the **Vendor's** right to seek damages or any other form of relief in the event of a breach of this **General Condition 4**, the **Vendor** may seek and obtain an *ex parte*, interlocutory or final injunction to prohibit or restrain the **Purchaser**, the **Purchaser's Guarantor**, **Associated Person**, **Employee** or agent of the **Purchaser** from any breach or threatened breach of this **General Condition 4**.

5. Ownership and Settlement

- 5.1 The **Vendor** must on each of the **Contract Date** and at the **Date of Settlement** have the right to sell the **Business**.
- 5.2 The **Vendor** must transfer the **Business**, the **Assets** and the **Stock** to the **Purchaser** not later than the **Date of Settlement** subject only to encumbrances agreed to by the **Parties**.
- 5.3 The **Vendor** must by the **Date of Settlement**:
- ensure that the **Business Premises** can be lawfully used for the **Business** by the **Purchaser** after **Settlement**; and
 - comply with any **Order** made by a **Responsible Authority** prior to the **Date of Settlement**.
- 5.4 On the **Date of Settlement** the **Vendor** must give to the **Purchaser**:
- possession of the **Business** and the **Business Premises**;
 - the **Plant and Equipment** in the same state of repair and working order as at the **Contract Date** unless otherwise agreed in writing by the **Parties**;
 - the certificate of registration of each **Business Name** associated with the **Business**, and a completed form to transfer the **Business Name** to the **Purchaser**;
 - any document of title of which the **Vendor** has possession or control that relates to obligations in this **Contract**;
 - all documents evidencing tenure of the **Business Premises**;
 - any document required to effect registration of the **Business** under **Legislation**, including any letter as provided for in **General Condition 21.4**;
 - all documents of title which relate to the **Business**;
 - all documents required to effect the transfer of any **Vendor's Intellectual Property**;
 - all necessary forms executed by the **Vendor** and in addition the **Vendor** must co-operate in making all necessary applications to:
 - allow the **Contact Numbers** to be transferred to the **Purchaser**; and

(ii) (subject to the consent of the suppliers of the services), make all other services to the **Business** and the **Business Premises** available to the **Purchaser**;

- written consent of any mortgagee or head lessor of the land to the transfer of the **Lease** or grant of a new lease (or, if applicable, a **Licence**) of the **Business Premises**;
 - written consent of any franchisor to the sale of the **Business**;
 - written consents to the assignment of each **Material Contract** to the **Purchaser**; and
 - details of **Transferring Employees** as provided in **General Condition 15.4**.
- 5.5 On the **Date of Settlement** the **Purchaser** must pay to the **Vendor** by cash (but only up to \$2,000.00) or **Bank Cheque**:
- the **Price** (less any **Deposit** paid);
 - any amount payable for **Stock** in accordance with **General Condition 11**;
 - any amount payable by the **Purchaser** in accordance with **General Condition 15.5**; and
 - any amount payable by the **Purchaser** in accordance with **General Condition 16**.
- 5.6 On the **Date of Settlement** the **Vendor** must pay the **Purchaser** any amount payable under **General Condition 13.4(c)**.
- 5.7 Subject to the **Vendor** having delivered written consents to the assignment of the **Material Contracts**, from **Settlement** the **Purchaser** must take over the burden and benefit of the **Material Contracts** and agrees to indemnify and hold harmless the **Vendor** against all costs, liability, losses and claims incurred by the **Vendor** after **Settlement** in respect of or under the **Material Contracts**.
- 5.8 If the **Vendor** requires more than five (5) **Bank Cheques** at **Settlement**, the **Vendor** must pay (or reimburse the **Purchaser**) for each extra **Bank Cheque** required.
- 5.9 On the **Date of Settlement** the **Purchaser** must give the **Vendor** an order signed by the **Purchaser** authorising the **Stakeholder** to pay the **Deposit** (and any other money paid to the **Stakeholder** by the **Purchaser**) to the **Vendor**, or as the **Vendor** may direct.
- 5.10 Unless otherwise agreed, **Settlement** must take place at the office of the **Vendor's** legal practitioner specified in Item 3 of the **Particulars** or at such other address nominated by the **Vendor** and which the **Vendor** has given to the **Purchaser** prior to the **Date of Settlement**.

6. Payments

- 6.1 The **Purchaser** must pay:
- the **Deposit** to the **Vendor** or the **Vendor's Selling Agent** on the **Contract Date**; and
 - the **Residue** on the **Date of Settlement**.
- 6.2 All money payable by the **Purchaser** under this **Contract** must be paid to the **Vendor**, the **Vendor's** legal practitioner as set out in Item 3 of the **Particulars**, or otherwise in accordance with the **Vendor's** written direction.

7. Finance

7.1 *This **Contract** is subject to the lender specified in Item 18 of the **Particulars** unconditionally approving a loan of not less than the **Loan Amount** not later than the **Loan Approval Date**.

*OR

7.1 *This **Contract** is not conditional on finance.

**Delete the inapplicable*

7.2 The **Purchaser** may **Cancel** the **Contract** if a loan for not less than the **Loan Amount** is not approved by the **Loan Approval Date** but only if the **Purchaser**:

- (a) has made application for the loan as soon as reasonably practicable after the **Contract Date**;
- (b) has done everything reasonably required to obtain approval of the loan by the **Loan Approval Date**;
- (c) gives written notice not later than two (2) **Business Days** after the **Loan Approval Date** of its intention to **Cancel** the **Contract**; and
- (d) is not in default under any other condition in this **Contract** when the notice is given.

7.3 If the **Contract** is **Cancelled** under **General Condition** 7.2, all money paid by the **Purchaser** to the **Vendor** or the **Stakeholder** must be immediately refunded to the **Purchaser**.

8. Lease

8.1 If not already provided as part of the **Vendor's** obligations under section 52 of the *Estate Agents Act 1980 (Vic)* (if applicable) the **Vendor** must make any **Lease** (and/or any **Licence**) available for inspection by the **Purchaser** within seven (7) days after the **Contract Date**.

8.2 The **Vendor** must obtain for the **Purchaser** by the **Date of Settlement** a **Lease** of the **Business Premises** either:

- (a) by transfer with the **Landlord's** written consent; or
- (b) by the grant of a new lease for a term and on conditions identical to or substantially similar to the **Lease** or otherwise as approved by the **Purchaser** in writing.

8.3 Prior to the **Date of Settlement**:

- (a) the **Vendor** and the **Purchaser** must each do all things reasonably necessary to obtain the transfer of the **Lease** or the grant of a new lease;
- (b) the **Purchaser** must upon request promptly supply to the **Vendor** any references and other information reasonably required by the **Landlord**, and the **Vendor** must promptly deliver that material to the **Landlord** to enable the **Landlord** to consider the application for transfer of the **Lease**, or the grant of the new lease; and
- (c) the **Vendor** must perform all the **Vendor's** obligations (other than the payment of rent) under the **Lease** up to and including **Settlement** and until the **Adjustment Date** in relation to the payment of rent.

8.4 If the freehold of the **Business Premises** is subject to a mortgage or charge, the **Parties** must do anything reasonably required, but at the cost of the **Vendor**, to obtain the consent of the mortgagee or chargee to the transfer or the new lease.

8.5 The **Purchaser** may **Cancel** this **Contract** and any money paid by the **Purchaser** to the **Vendor** or **Stakeholder** must be repaid if by the **Date for Settlement**:

- (a) the **Landlord** has not consented in writing to the transfer of the **Lease**; or
- (b) the **Landlord** has not granted a new lease to the **Purchaser** on the terms specified in **General Condition** 8.2(b) or on terms otherwise acceptable to the **Purchaser**; or
- (c) a mortgagee or chargee has not consented in writing to the transfer of the **Lease** or the grant of a new lease.

8.6 The **Purchaser** must pay all reasonable legal costs and any statutory duties or charges for the negotiation and preparation of the transfer of the **Lease** or the granting of a new lease to the extent permitted by the *Retail Leases Act 2003 (Vic)*.

8.7 The **Vendor** must pay all expenses not payable by the **Purchaser** under **General Condition** 8.6.

9. Vendor's Debts

9.1 The debts of the **Business** incurred by the **Vendor** prior to **Settlement** remain the responsibility of the **Vendor** and must be paid by the **Vendor** no later than the **Date of Settlement**.

9.2 The **Assets** do not include debts owed to the **Vendor** on the **Date of Settlement**.

9.3 The **Purchaser** must promptly account to the **Vendor** for any payments received from the **Vendor's** debtors after **Settlement**.

10. Running the Business

10.1 The **Vendor** must maintain the goodwill of the **Business** until **Settlement**.

10.2 The **Vendor** must do whatever is reasonably necessary to provide **Assistance** to the **Purchaser** during the **Assistance Period**.

10.3 The **Business** is at the risk of the **Vendor** until **Settlement**.

10.4 The **Vendor** at its own expense and without delay must comply with any **Order** of any **Responsible Authority** issued prior to the **Date of Settlement**.

11. Valuing Stock

11.1 In addition to the **Price**, the **Purchaser** must pay to the **Vendor** on the **Date of Settlement** by **Bank Cheque** the value of the **Stock** up to the amount specified in Item 13 of the **Particulars**. If there is no **Stock** value specified in the **Particulars**, the **Purchaser** must buy all of the **Stock**.

11.2 The value of the **Stock** is:

- (a) the value agreed by the **Vendor** and the **Purchaser**;
- (b) failing agreement, the value as determined prior to the **Date for Settlement** by an independent valuer agreed on by each of the **Vendor** and the **Purchaser**; or failing agreement, by a valuer appointed by the President of the Law Institute of Victoria upon application by either the **Vendor** or the **Purchaser**.

- 11.3 The valuer's decision is binding on the **Parties** and each **Party** must pay an equal share of the valuer's costs.
- 11.4 If the value of the **Stock** is greater than the maximum value of **Stock** specified in item 13 of the **Particulars** the **Purchaser** will be entitled to nominate which **Stock** is to be withdrawn from obligations related to this **Contract**.

12. Restraint of Trade

- 12.1 The Vendor undertakes to the Purchaser that it will not:
- (a) engage in a business or an activity which is:
 - (i) the same or similar to the **Business**; and/or
 - (ii) in competition with the **Business**;
 - (b) solicit, canvass or approach a person who was at any time during the period of one (1) year ending on the **Date of Settlement** a customer of the **Business**; or
 - (c) interfere with the relationship between either of the **Business** and its customers, or its **Employees**.
- 12.2 The undertakings in **General Condition** 12.1 begin on the **Date of Settlement** and end:
- (a) 36 **Months** after the **Date of Settlement***.
 - (b) 24 **Months** after the **Date of Settlement***.
 - (c) 12 **Months** after the **Date of Settlement***.
 - (d) 6 **Months** after the **Date of Settlement***.
 - (e) 3 **Months** after the **Date of Settlement***.

**Delete if inapplicable*

- 12.3 The undertakings in **General Condition** 12.1 apply only in the business or activity prohibited by **General Condition** 12.1 occurs within:
- (a) New South Wales, Queensland, the Australian Capital Territory and Victoria*.
 - (b) New South Wales, the Australian Capital Territory and Victoria*.
 - (c) New South Wales and Victoria*.
 - (d) Victoria*.
 - (e) a 150 kilometre radius of the **Business Premises***.
 - (f) a 50 kilometre radius of the **Business Premises***.
 - (g) a 10 kilometre radius of the **Business Premises***.
 - (h) a 5 kilometre radius of the **Business Premises***.

**Delete if inapplicable or modify by way of Special Condition.*

- 12.4 The **Parties** intend that each of the covenants and restraints contained in this **General Condition** 12 are to be interpreted as being separate and independent, and that they be interpreted according to the following:
- (a) the **Parties** intend that of each of the independent covenants and restraints in **General Conditions** 12.1, 12.2 and 12.3, the greater length of time and larger geographical area of restriction or restraint shall apply to restrain the **Vendor**;
 - (b) if any of the several separate and independent covenants and restraints in **General Conditions** 12.1, 12.2 and/or 12.3 is or are declared by any Court or tribunal to be invalid or unenforceable for any reason, then that invalidity or unenforceability will not affect the validity or enforceability of any of the other separate and independent covenants and restraints which apply in this **Contract**; and

- (c) if any of the prohibitions or restrictions contained in **General Conditions** 12.1, 12.2 or 12.3 are considered by the **Parties** to go beyond what is reasonable in the circumstances and necessary to protect the goodwill of the **Business**, the **Parties** should either delete the inapplicable items in **General Conditions** 12.1, 12.2 and 12.3 or modify by way of **Special Condition**.

13. Default

- 13.1 Time is of the essence of this **Contract**.
- 13.2 If the **Purchaser** defaults in making any **Payment**, the **Vendor** may recover **Payment** or part thereof to satisfy the unpaid obligation without affecting any other right provided for in this **Contract**.
- 13.3 If a **Party** defaults under this **Contract**, the **Party** in default must pay to the non-defaulting **Party**:
- (a) the expenses incurred by the non-defaulting **Party** as a result of the default; and
 - (b) interest on any money overdue during the period of default in accordance with section 2 of the *Penalty Interest Rates Act 1983 (Vic)* as at the date of default, in addition to any other money payable by the **Party** in default under this **Contract**.
- 13.4 If a **Party** defaults, the other **Party** may serve a notice which:
- (a) specifies the default, the expenses attributable to the default and the rate of any interest payable;
 - (b) allows not less than five (5) **Business Days** for the default to be remedied and **Payment** made; and
 - (c) states the rights under **General Conditions** 13.5 and 13.6 which the **Party** serving the notice intends to exercise if the default is not remedied and **Payment** not made.
- 13.5 If the **Purchaser** has defaulted, the **Vendor** may in the notice state:
- (a) that unless the default is remedied, all money under this **Contract** which is not yet due is then due and payable; and
 - (b) that the **Vendor** will retain the **Deposit** to offset costs associated with the **Purchaser's** default.
- 13.6 The **Party** giving notice may state that unless the notice is complied with this **Contract** is terminated.
- 13.7 If the **Purchaser** terminates this **Contract** pursuant to this **General Condition** 13, the **Vendor** must repay any money paid by the **Purchaser** to the **Vendor**, and pay the expenses attributable to the default.
- 13.8 The **Parties** may not terminate this **Contract** under this **General Condition** 13 unless they have first served a notice in accordance with **General Condition** 13.4.
- 13.9 For the purposes of this **General Condition** 13 default means:
- (a) the failure by a **Party** to perform an obligation imposed upon them by the **General Conditions** 2, 5.2, 5.3, 5.4, 6, 8, 9 or 10 of this **Contract**;
 - (b) a **Party** proposing to compromise its debts with some or all its creditors;

- (c) a liquidator, administrator being appointed to a **Party**;
- (d) a receiver, receiver and manager, or controller being appointed to a **Party** or any of its assets;
- (e) a **Party** entering into a deed of company arrangement;
- (f) a **Party** proposing a scheme of arrangement with some or all of its creditors or members;
- (g) a **Party** becoming bankrupt or proposing to enter into a debt agreement or personal insolvency agreement in accordance with the provisions of the *Bankruptcy Act 1966 (Cth)*.

14. Mediation of Dispute

- 14.1 If a dispute arises out of or in relation to this **Contract** (including any dispute as to breach or **Cancellation** of the **Contract**) a **Party** to the **Contract** may not commence any Court proceedings relating to the dispute unless it has complied with the following:
- (a) a **Party** to this **Contract** claiming that a dispute has arisen under or in relation to this **Contract** must give a **Dispute Notice** to the other **Party** to this **Contract** specifying the nature of the dispute;
 - (b) on service of a **Dispute Notice** by any **Party**, the **Parties** to this **Contract** in dispute must endeavour in good faith to resolve the dispute expeditiously through mediation;
 - (c) the **Parties** must endeavour to jointly engage a **Mediator** and endeavour to agree on the **Mediator's** terms of engagement. If the **Parties** fail to agree on the engagement of a **Mediator** and the **Mediator's** terms of engagement within five (5) **Business Days** of service of a **Dispute Notice** or any other time to which the **Parties** agree in writing, either **Party** may apply to the President of the Law Institute of Victoria or the President's nominee to appoint a **Mediator**;
 - (d) the **Parties** must observe the instructions of the **Mediator** with respect to the conduct of the mediation; and
 - (e) if the dispute is not resolved within ten (10) **Business Days** after the **Mediator** is appointed, or any other time to which the **Parties** agree in writing, the mediation shall be deemed ended.
- 14.2 Each **Party** must pay an equal share of the costs of the mediation to the **Mediator** and each **Party** agrees to indemnify the **Mediator** against liability in respect of the mediation of the dispute.
- 14.3 If the dispute is resolved, each **Party** must sign the terms of the mediated outcome and the terms are binding on the **Parties**.
- 14.4 The mediation procedure is confidential and statements made during the mediation process are made without prejudice to the legal rights of any **Party**.
- 14.5 The **Parties** agree that this **General Condition** 14 will not apply:
- (a) to any claim by the **Vendor** under **General Condition** 13.2; or
 - (b) where a **Party** seeks urgent interlocutory relief.

15. Employees

- 15.1 Unless otherwise agreed with the **Purchaser** in writing, the **Vendor** must at least fourteen (14) **Business Days** prior to the **Date for Settlement** give written notice terminating the employment of each **Employee** on and from **Settlement**. Fourteen (14) **Business Days** notice of termination provides a minimum notice period. Where applicable the **Vendor** must provide additional notice as provided by the *Fair Work Act 2009 (Cth)* of the **Employee's** relevant contract of employment (whichever is more generous).
- 15.2 The **Purchaser** must at least fifteen (15) **Business Days** prior to the **Date for Settlement** notify the **Vendor** of the names of the **Employees** to whom the **Purchaser** wishes to offer employment in the **Business** after **Settlement** and must then promptly offer prospective **Transferring Employees** employment in the **Business** with the **Purchaser** from and conditional on **Settlement**, on terms which accord with the relevant transferrable instrument, for example, award, Enterprise Agreement or other relevant industrial instrument or contract of employment of the prospective **Transferring Employees**. The **Purchaser** must not make any offer of employment to a prospective **Transferring Employee** which contains terms less favourable to the prospective **Transferring Employee** than their terms of employment with the **Vendor** as at the **Contract Date**.
- 15.3 The **Vendor** is solely responsible for the **Employee Entitlements** of the **Terminating Employees** and on the **Date of Settlement** must pay to each **Terminating Employee** the **Employee Entitlements** (if any) due to each **Terminating Employee**, whether arising under any contract, any **Legislation**, transferrable instrument, or otherwise, in respect of:
- (a) accrued salary, wages, holiday pay and sick leave;
 - (b) accrued entitlements to long service leave;
 - (c) any entitlements to redundancy pay; and
 - (d) any other remuneration or entitlement arising out of employment or termination of employment, and the **Vendor** must indemnify the **Purchaser** against any loss or claim against the **Purchaser** in respect of the **Terminating Employees** to the extent that the loss or claim relates to the period prior to **Settlement**.
- 15.4 In relation to the **Transferring Employees**:
- (a) the **Vendor** must deliver to the **Purchaser** on the **Date of Settlement** a document setting out full details in respect of each **Transferring Employee**, including all accrued entitlements as at the **Date of Settlement** and, without limitation, details of any accrued statutory entitlements to which the **Transferring Employee** was either paid upon the termination of his or her employment with the **Vendor** or to which the **Transferring Employee** is entitled (and for the purposes of this **General Condition** 15.4, **Transferring Employees** with more than five (5) years service with the **Vendor** prior to **Settlement** are deemed to have an accrued entitlement to long service leave, but **Transferring Employees** with less than five (5) years service are deemed not to have accrued entitlement to long service leave);

(b) the following provisions apply in relation to the **Transferring Employees** entitlements:

(i) for **Transferring Employees** who are transferring between associated entities as defined by the **Corporations Act**, the **Transferring Employee** will retain all accrued statutory entitlements (that is, annual leave, personal leave and long service leave) and continuity of service will be recognised (that is, the **Transferring Employee's** service will be calculated from the first day of employment with the **Vendor**).

(ii) for **Transferring Employees** of non-associated entities, the **Purchaser** must nominate if it will recognise the **Transferring Employee's** prior service with the **Vendor** for the purpose of annual leave and redundancy. All other statutory entitlements accrued by the **Transferring Employee** (that is, long service leave) must be paid to the **Transferring Employee** by the **Vendor** on termination of the **Transferring Employee's** employment, if the **Transferring Employee** has an entitlement.

(c) where **Transferring Employee's** entitlements are transferred to the **Purchaser**, the **Vendor** must pay or allow the **Purchaser** an amount equal to the **Transferring Employee's** entitlements in accordance with either **General Condition 15.4(b)(i)** or **General Condition 15(4)(b)(ii)**.

(d) the **Vendor** must give written notice to the **Purchaser** of any **Transferring Employee** who is on long term absence due to illness or injury as at the **Date of Settlement** and advise the **Purchaser** of the responsibilities of the **Purchaser** to these **Employees** after the **Date of Settlement**;

(e) the **Vendor** must on the **Date of Settlement** pay or allow to the **Purchaser** an amount equal to sixty (60) per cent of the value of the accrued long service leave entitlements for **Transferring Employees** who have at **Settlement** completed more than five (5) but less than seven (7) years service in the **Business** as referred to in **General Condition 15.4(a)**, and one hundred (100) per cent of such entitlements after seven (7) years of employment.

15.5 The **Purchaser** must pay to the **Vendor** at **Settlement** an amount equal to the total amount of wages and salaries paid by the **Vendor** to the **Transferring Employees** in respect of any period after **Settlement**.

16. Apportionment of Outgoings

16.1 The **Parties** must adjust the **Price** by apportioning the outgoings and expenses payable by the **Vendor** in relation to the **Business** at the **Adjustment Date** including the following:

16.1.1 APPORTIONED OUTGOINGS:

- (a) rent;
- (b) rates;
- (c) land tax;
- (d) licence fees;
- (e) prepaid advertising expenses;
- (f) registration fees (including for example registrations of any motor vehicles forming part of the **Assets**);
- (g) telephone or trade directory subscriptions or similar entries; and

(h) other recurrent outgoings for which the tenant is responsible under the **Lease**.

16.1.2 APPORTIONED EXPENSES:

- (a) wages;
- (b) holiday pay and annual leave loading;
- (c) superannuation payments, charges and levies;
- (d) long service entitlements accrued but not taken; and
- (e) sick leave being taken as at the **Adjustment Date** for a period extending beyond the **Adjustment Date**.

16.2 If the **Purchaser** is to receive the proceeds of trading on the **Date of Settlement**, then the adjustment must be effected as at the day immediately preceding that date. If the **Vendor** is to retain the proceeds of trading on the **Date of Settlement**, then the adjustment must be effected as at the **Date of Settlement**.

16.3 The following expenses of the **Business** are not to be apportioned at **Settlement**:

- (a) business promotion prizes; or
- (b) business, professional or trade subscriptions.

17. Notice

17.1 A **Party** or their nominated representative may give a notice in writing, other than a cooling off notice by:

- (a) post;
- (b) facsimile; or
- (c) delivery

to the **Party's** last known address or registered office.

17.2 Posted notices will be taken to have been received seventy two (72) hours after posting unless proved otherwise.

17.3 Notices delivered or sent by facsimile after 5.00 p.m. will be taken to have been received at 9.00 a.m. on the next **Business Day** at the place where they have been delivered or sent.

18. Guarantee in favour of the Vendor

18.1 The **Purchaser's Guarantor** in consideration of the **Vendor** having entered into this **Contract** at the request of the **Purchaser's Guarantor** (which is verified by its execution of this **Contract**):

- (a) guarantees that the **Purchaser** will perform all its obligations under this **Contract**; and
- (b) hereby agrees to pay on demand any amount which the **Vendor** is entitled to recover from the **Purchaser** under this **Contract**; and
- (c) indemnifies the **Vendor** against all costs, liability, losses and claims resulting from the **Vendor** having entered into this **Contract** whether from the **Purchaser's** failure to perform its obligations under it or from this **Contract** being or becoming unenforceable against the **Purchaser**.

18.2 The **Purchaser's Guarantor** agrees that the:

- (a) **Vendor** may retain any money received including dividends from the **Purchaser's** bankrupt estate and will allow the **Purchaser's Guarantor** a reduction in its liability under this guarantee only to the extent of the amount received and retained by the **Vendor**; and

- (b) **Purchaser's Guarantor** must not seek to recover money from the **Purchaser** to reimburse the **Purchaser's Guarantor** for **Payments** made to the **Vendor** until the **Vendor** has been paid in full all money owing under this **Contract**; and
 - (c) **Purchaser's Guarantor** must not prove in the bankruptcy or winding up of the **Purchaser** for any amount which the **Vendor** has demanded from the **Purchaser's Guarantor** unless the **Vendor** has been paid in full all money owing under this **Contract**; and
 - (d) **Purchaser's Guarantor** must pay to the **Vendor** on demand all money which the **Vendor** refunds to the **Purchaser's** liquidator or trustee in bankruptcy as preferential **Payments** received from the **Purchaser**.
- 18.3 If any of the **Purchaser's** obligations are unenforceable against the **Purchaser**, then this **General Condition** is to operate as a separate indemnity, and the **Purchaser's Guarantor** indemnifies the **Vendor** against all loss resulting from the **Vendor's** inability to enforce performance of those obligations. The **Purchaser's Guarantor** must pay the **Vendor** the amount of the loss resulting from the unenforceability.

19. Guarantee in favour of the Purchaser

- 19.1 The **Vendor's Guarantor** in consideration of the **Purchaser** having entered into this **Contract** at the request of the **Vendor's Guarantor** (which is verified by its execution of this **Contract**):
- (a) guarantees that the **Vendor** will perform all its obligations under this **Contract**; and
 - (b) hereby agrees to pay on demand any amount which the **Purchaser** is entitled to recover from the **Vendor** under this **Contract**; and
 - (c) indemnifies the **Purchaser** against all costs, liability, losses and claims resulting from the **Purchaser** having entered into this **Contract** whether from the **Vendor's** failure to perform its obligations under it or from this **Contract** being or becoming unenforceable against the **Vendor**, but only up to the amount set out in Item 17 of the **Particulars**.
- 19.2 The **Vendor's Guarantor** agrees that the:
- (a) **Purchaser** may retain any money received including dividends from the **Vendor's** bankrupt estate and will allow the **Vendor's Guarantor** a reduction in its liability under this guarantee only to the extent of the amount received and retained by the **Purchaser**; and
 - (b) **Vendor's Guarantor** must not seek to recover money from the **Vendor** to reimburse the **Vendor's Guarantor** for **Payments** made to the **Purchaser** until the **Purchaser** has been paid in full all money owing under this **Contract**; and
 - (c) **Vendor's Guarantor** must pay to the **Purchaser** on demand all money which the **Purchaser** refunds to the **Vendor's** liquidator or trustee in bankruptcy as preferential payment received from the **Vendor**.
- 19.3 If any of the **Vendor's** obligations are unenforceable against the **Vendor**, then this **General Condition** is to operate as a separate indemnity and the **Vendor's Guarantor** indemnifies the **Purchaser** against all loss resulting from the **Purchaser's** inability to enforce performance of those obligations. The **Vendor's Guarantor** must pay the **Purchaser** the amount of the loss resulting from the unenforceability but only up to the amount set out in Item 17.

20. GST

- 20.1 Expressions used in this **General Condition** 20 have the same meaning as when used in the **GST Act**.
- 20.2 The **Purchaser** warrants that it is registered or required to be registered under the **GST Act** at the **Date of Settlement**.
- 20.3 The **Purchaser** and **Vendor** agree that this **Contract** provides for the sale of a going concern at the **Date of Settlement**.
- 20.4 If a **Party** makes a taxable supply under this **Contract**, except where this **Contract** states otherwise, the **Payment** made by a **Party** for the taxable supply is expressed as a **GST** exclusive amount.
- 20.5 The **Party** liable to pay for a taxable supply to which this **General Condition** applies must also pay the amount of any **GST** payable in respect of the taxable supply on the date on which **Payment** for the taxable supply is due. However, if the **Vendor** is required to include **GST** in respect of the supply it makes under this **Contract** in a **GST** return for a tax period which ends on a date which is earlier than the **Date of Settlement**, then the **Purchaser** must pay the **GST** payable in respect of the supply on that earlier date.
- 20.6 A **Party** is not obliged under **General Condition** to pay the **GST** on a taxable supply to it, until given a valid tax invoice for the supply.
- 20.7 The **Vendor** warrants that the **Business** will be operated as a going concern up until the **Date of Settlement**.
- 20.8 This **General Condition** 20 does not merge on **Settlement** under this **Contract**.

21. Liquor Licence

- 21.1 If the **Business** is operated with a liquor licence this **Contract** is conditional upon the **Responsible Authority** by the **Date of Settlement** giving its written consent to the transfer to the **Purchaser** of the liquor licence.
- 21.2 The **Purchaser** must promptly prepare and file the application for the approval with the **Responsible Authority** and do all things reasonably necessary to seek the transfer of the liquor licence.
- 21.3 The **Vendor** must do all things and sign or execute all documents reasonably required to assist the **Purchaser** in an application for the transfer of the liquor licence, at the expense of the **Purchaser**.
- 21.4 On the **Date of Settlement** the **Vendor** must provide to the **Purchaser** a letter addressed to the **Responsible Authority** confirming that **Settlement** has occurred and requesting that the transfer of the liquor licence be registered.
- 21.5 The **Purchaser** may **Cancel** the **Contract** if the transfer of the liquor licence is not obtained by the **Date of Settlement** but only if the **Purchaser**:
- (a) has after signing this **Contract** made immediate application for the transfer of the liquor licence;
 - (b) has done everything reasonably required to obtain the transfer of the liquor licence;
 - (c) serves written notice **Cancelling** the **Contract** on the **Vendor** on or before two (2) **Business Days** after the **Date for Settlement**; and
 - (d) is not in default under any other of the **General Conditions** or the **Special Conditions** of this **Contract** when the notice is given.
- 21.6 If the **Contract** is **Cancelled** under **General Condition** 21.5, all money paid by the **Purchaser** to the **Vendor** or a **Stakeholder** must be immediately refunded to the **Purchaser**.

EXECUTED AS AN AGREEMENT:

SIGNED by the **VENDOR** in the presence of:

Witness

SIGNED by the **PURCHASER** in the presence of:

Witness

SAMPLE ONLY

EXECUTED on behalf of the **VENDOR** corporation named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.

Corporation:

Authority: *Section 127 of the Corporations Act*

Signature of authorised person

Signature of authorised person

Name of authorised person

Name of authorised person

Director, Secretary, Sole Director/Secretary
Office held

Director, Secretary, Sole Director/Secretary
Office held

EXECUTED on behalf of the **PURCHASER** corporation named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.

Corporation:

Authority: *Section 127 of the Corporations Act*

Signature of authorised person

Signature of authorised person

Name of authorised person

Name of authorised person

Director, Secretary, Sole Director/Secretary
Office held

Director, Secretary, Sole Director/Secretary
Office held

SIGNED by the **VENDOR'S GUARANTOR** in the presence of:

Witness

SIGNED by the **PURCHASER'S GUARANTOR** in the presence of:

Witness

SCHEDULE 1

ASSETS

1. The Vendor's rights pursuant to the Lease, if any: *

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2. The plant and equipment: *

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3. Business Name(s): *

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4. Quotas and Franchises: *

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5. Services connected with the Business Premises:

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6. Licences, permits, approvals and registration necessary for the Business: *

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7. Vendor's Intellectual Property: *

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SAMPLE ONLY

SCHEDULE 2

EQUIPMENT HIRE CONTRACTS

Owner:

Lessee:

Commencement date:

Expiry date:

Term:

Option:

Payment:

Default:

Default notice:

Owner:

Lessee:

Commencement date:

Expiry date:

Term:

Option:

Payment:

Default:

Default notice:

Owner:

Lessee:

Commencement date:

Expiry date:

Term:

Option:

Payment:

Default:

Default notice:

Owner:

Lessee:

Commencement date:

Expiry date:

Term:

Option:

Payment:

Default:

Default notice:

SAMPLE ONLY

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SCHEDULE 3

TERMS OF LEASE / LICENCE

LANDLORD / LICENSOR *

TENANT / LICENSEE *

COMMENCEMENT DATE *

TERM *

OPTION (if any) *

RENT / LICENCE FEE *

OUTGOINGS *

METHOD OF RENT / LICENCE REVIEW *

PERIOD OF RENT / LICENCE REVIEW *

WHERE LEASE / LICENCE CAN BE INSPECTED *

DETAILS OF PREVIOUS TRANSFERS *

OR

THERE IS NO LEASE OF THE PREMISES *
DETAILS AS FOLLOWS:

SAMPLE ONLY

*Delete if inapplicable

SCHEDULE 4

EMPLOYEES

| Name | Classification | Date of Commencement of Employment | Rate of Remuneration | Sick Leave | Holiday Pay | Long Service Entitlements | Bonuses | Service Contracts and Agreements |
|------|----------------|------------------------------------|----------------------|------------|-------------|---------------------------|---------|----------------------------------|
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SCHEDULE 5

MATERIAL CONTRACTS

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If there is insufficient room, attach an additional page (or pages)

SCHEDULE 6

VENDOR'S WARRANTIES (GENERAL CONDITION 2)

1. Capacity and Authority

- 1.1 If the **Vendor** is a corporation:
- (a) it is validly incorporated under the laws of Australia;
 - (b) it has full corporate power and authority to own the **Assets** and conduct the **Business**;
 - (c) it is not insolvent;
 - (d) it is not an externally administered body corporate within the meaning of the **Corporations Act**;
 - (e) no proceeding has been brought, threatened or commenced for the purpose of winding up the **Vendor** and placing it under administration;
 - (f) the execution and delivery of this **Contract** has been properly authorised by all necessary corporate action of the **Vendor**; and
 - (g) the **Vendor** has full corporate power and lawful authority to execute and deliver this **Contract** and to consummate and perform or cause to be performed its obligations under this **Contract**.
- 1.2 The **Vendor** is authorised to lawfully conduct the **Business** throughout the State or Territory in which the **Business** is conducted.
- 1.3 The **Vendor** is the beneficial owner of the **Business** and there is no mortgage, lien, claim, charge or other encumbrance.
- 1.4 This **Contract** constitutes a legal, valid and binding obligation of the **Vendor** enforceable in accordance with its terms by legal remedy.
- 1.5 This **Contract** and **Settlement** do not and will not conflict with or result in a breach of or default under any provision of the Constitution of the **Vendor** (if it is a company) or any material term or provision of any agreement or deed or any writ, Order or injunction, judgment or **Legislation** to which it is a Party or is subject to or by which it is bound.

2. Financial Statements and Business Records

- 2.1 Any financial statements provided by the **Vendor** to the **Purchaser** concerning the **Business**:
- (a) disclose a true and fair view of the affairs, financial position and **Assets** and liabilities of the **Business** as at the date of their preparation;
 - (b) were prepared in accordance with the requirements of the **Corporations Act** and **Accounting Standards**;
 - (c) are not affected by any unusual, extraordinary, exceptional or non-recurring items; and
 - (d) contain proper and adequate provision for and full disclosure of all liabilities as at the date of their preparation.
- 2.2 Since the date of preparation of any of the financial statements provided by the **Vendor** to the **Purchaser** concerning the **Business**:
- (a) there has been no material adverse change in the **Assets**, liabilities, turnover, financial condition, trading position or prospects of the **Business**;
 - (b) the **Vendor** has carried on the **Business** in the ordinary and usual course;
 - (c) the **Vendor** has not encumbered any of its **Assets** with any mortgage, charge, lien or other encumbrance save those disclosed by the usual searches;

- (d) the **Vendor** has not incurred or undertaken any actual or contingent liabilities or obligations, including taxation, except in the ordinary course of **Business**;
- (e) the **Vendor** has not acquired or disposed of or dealt with any **Assets** nor has it entered into any agreement or option to acquire or dispose of any **Assets** other than in the ordinary course of **Business**;
- (f) the **Vendor** has not paid or agreed to pay any retiring allowance, superannuation or benefit to any of its officers or **Employees** except where **Legislation** requires it or in accordance with a superannuation or retirement scheme in force at the date of preparation of the financial statements;
- (g) there has been no alteration to the terms of employment of the **Employees** and, in particular, the **Vendor** has not increased the rate of compensation payable to, or to become payable to, any of its officers, **Employees** or agents above the rates reflected in the **Accounts** as at the date of their preparation and the **Vendor** will not alter the terms of employment of the **Vendor's Employees** after the **Contract Date**; and
- (h) the **Business** has not implemented any new accounting or valuation method for the **Business**, or its **Assets**, property or rights since the date of preparation of the **Accounts** and will not do so after the **Contract Date**.

2.3 The records of the **Business**:

- (a) are in the possession of the **Vendor**;
 - (b) have been fully, properly and accurately kept and maintained;
 - (c) accurately record the details of all of the transactions, finances, **Assets** and liabilities of the **Business**;
 - (d) do not contain any material inaccuracies or discrepancies; and
 - (e) as far as is required by law, have been prepared in accordance with the requirements of the **Corporations Act** and **Accounting Standards**.
- 2.4 The **Vendor** has filed all annual returns and other forms as and when required to be filed or registered under the **Corporations Act**.

3. Taxation

- 3.1 The **Vendor** is not involved in any dispute with any taxation authority responsible for the assessment and collection of tax in relation to the **Business** and the **Vendor** is not aware of any circumstances which may give rise to such a dispute.
- 3.2 No taxation audit, investigation, enquiry or proceeding has been instituted by any taxation authority in relation to the **Business** and the **Vendor** has not received a notification, nor is the **Vendor** aware, that any such action is proposed unless otherwise advised to the **Purchaser** in writing.
- 3.3 The **Vendor** has paid or will pay when due, all taxes relating to the **Business** for the period prior to **Settlement**.
- 3.4 The only liabilities for tax of the **Business** arising after the period covered by any financial statements provided to the **Purchaser** by the **Vendor** and ending on the **Date of Settlement** will be liabilities arising out of the normal **Business** and trading activities of the **Vendor**.

4. Ownership of Assets

- 4.1 Except for the **Plant and Equipment** the subject of an **Equipment Hire Contract**, the **Vendor** legally and beneficially owns all of the **Assets** in **Schedule 1**, except for **Assets** subsequently sold or realised in the ordinary course of **Business**.
- 4.2 There is no, and the **Vendor** has not agreed to give, create or grant any, mortgage, lease, pledge, lien, bill of sale, encumbrance, option, charge or security interest over the whole of any part of the **Assets**, which will not be discharged at **Settlement**.
- 4.3 The **Vendor** has not been notified by any government entity or person that either the **Business** or the **Assets** will be compulsorily acquired and the **Vendor** is not aware of any such notification pending.

5. Equipment Hire Contracts

- 5.1 **Schedule 2** contains a complete and accurate summary of the terms of each **Equipment Hire Contract**.

6. Compliance with Applicable Laws

- 6.1 The **Vendor** has not breached:
- (a) any contract, agreement or instrument binding on it; or
 - (b) any judgment, **Order**, injunction or decree of any **Responsible Authority** relating to the **Vendor** or the **Business**.
- 6.2 The **Business** is conducted in accordance with all applicable **Legislation**; does not contravene any **Legislation**; and no allegation of any contravention of any applicable **Legislation** is known to the **Vendor**.
- 6.3 Neither the **Vendor** nor any of its officers, agents or **Employees** has, while performing their duties for the **Vendor**, breached any **Legislation** including but not limited to the **Corporations Act** or any trade practices or taxation **Legislation**.
- 6.4 The **Vendor** holds all statutory certifications, licences, consents, registrations, approvals, permits and authorisations necessary for the carrying on of the **Business**. So far as the **Vendor** is aware, there is no fact or matter which might prejudice the continuance or renewal, or result in the revocation or variation in any material respect, of any such licences, consents, registrations, approvals, permits and other authorisations.

7. Litigation and Indebtedness

- 7.1 Neither the **Vendor** nor any person for whose acts or defaults the **Vendor** may be vicariously liable with respect to the **Business** is involved in or threatened with, any claim, litigation, prosecution or arbitration in any Court, tribunal or otherwise and there are no facts or circumstances likely to give rise to any such litigation, prosecution or arbitration; and
- 7.2 To the best of the **Vendor's** knowledge, there are no unsatisfied judgments, awards, claims or demands against the **Vendor**.

8. Industrial Disputes

- 8.1 The **Vendor** is not a party to any agreement, arrangement or understanding with any trade union, employee association or other similar organisation in relation to the **Employees** of the **Business**.
- 8.2 The **Vendor** has complied with all relevant laws of employment relating to the engagement of the **Employees**.

- 8.3 There is no grievance or arbitration proceeding arising out of or under any award or agreement, nor is such a proceeding threatened or pending against the **Vendor** to the best of the **Vendor's** knowledge in respect of the **Employees**.

- 8.4 The **Vendor** is not aware of any facts or circumstances which may result in a material industrial dispute involving the **Vendor** and its **Employees** and no material pay claims are currently being made against the **Vendor** in relation to such **Employees**.

9. Employees

- 9.1 **Schedule 4** contains:
- (a) a true and accurate list of the names and positions of all the **Vendor's Employees**;
 - (b) true and complete details of the date of commencement of employment, *all relevant remuneration details, bonuses (including, but not limited to, profit sharing, commission or discretionary bonus arrangements), *superannuation and statutory or other leave entitlements of all of the **Vendor's Employees**; and
 - (c) details of current service contracts and agreements with the **Vendor's** present or past **Employees** except those service contracts with persons employed on a weekly, fortnightly or monthly basis.
- 9.2 All salary or wages, superannuation or pension contributions, and all statutory leave, or other entitlements due to any **Employee** of the **Vendor** have been paid or have been fully provided for in the **Accounts** unless stated otherwise.
- 9.3 To the best of the **Vendor's** knowledge, the **Vendor** has no liability, actual or contingent, to compensate any former officer or former **Employee** for loss of office or employment.
- 9.4 There are no outstanding loans or advances to any of the **Vendor's** present or past **Employees**.
- 9.5 The **Vendor** has never been found by a Court to have acted negligently towards an **Employee** nor, to the best of the **Vendor's** knowledge, has it breached any statutory duty to any such **Employee**.
- 9.6 The **Vendor** has complied in all material respects with all contractual, statutory, legal and fiscal obligations of and in relation to its employment of its **Employees**, including all codes of practice, Enterprise, Collective or Workplace Agreements, awards or other relevant industrial instruments.
- 9.7 No **Employee** of the **Vendor** has given notice which has not yet expired terminating his or her contract of employment or is under notice of termination of his or her contract of employment.
- 9.8 No payments are due by the **Vendor** in connection with the redundancy of any **Employee** except as provided for under this **Contract**.
- 9.9 To the best of the **Vendor's** knowledge, there are no claims outstanding, pending or threatened against the **Vendor** by any **Employee** or by any third party (including former **Employees**) in respect of any accident or injury, which are not fully covered by insurance.
- 9.10 All amounts of tax and superannuation contributions required by law to be deducted by the **Vendor** from the remuneration of **Employees** have been duly deducted and where appropriate duly paid to the Australian Taxation Office to the end of the pay period preceding **Settlement**.

SCHEDULE 7

SPECIAL CONDITIONS FORMING PART OF THIS CONTRACT

TRIAL PERIOD SPECIAL CONDITIONS *(Delete if inapplicable)*

The **Trial Period** is days commencing on specified in Item 19 of the **Particulars**.

TRIAL PERIOD SPECIAL CONDITIONS

TRIAL PERIOD

1. For the purposes of these **Trial Period Special Conditions**, the following terms have the meanings set out below:

Gross Takings means the total sum of all sales and other income of the **Business** before tax and allowable deductions.

Minimum Gross Takings means the sum of \$

Trading Days means those days during the **Trial Period** on which the **Business** is open for trade.

Trading Records means records of **Gross Takings** kept by the **Vendor** in the conduct of the **Business**, including (as appropriate) cash register tapes, records of electronic funds points of sale, float details and transactions carried out via the internet, invoices and receipts, cost of goods sold.

Trial Period means the period specified in item 19 of the **Particulars**.

2. During the **Trial Period**, the **Vendor** must, subject to **Trial Period Special Condition 5**:

- 2.1 give the **Purchaser** reasonable access to the **Business Premises** on all **Trading Days** for the purpose of viewing the conduct of the **Business**; and

- 2.2 upon the reasonable request of the **Purchaser**, produce to the **Purchaser** such **Trading Records** as are necessary to provide satisfactory evidence of the **Gross Takings** during the **Trial Period**.

3. If upon completion of the **Trial Period** the **Gross Takings**, as evidenced by the **Trading Records** provided by the **Vendor** under **Trial Period Special Condition 2.2**, are less than the **Minimum Gross Takings**, the **Purchaser** may **Cancel** the **Contract** by written notice to the **Vendor** given not less than two (2) **Business Days** after the end of the **Trial Period**.

4. If the **Purchaser Cancels** the **Contract** pursuant to **Trial Period Special Condition 3**, all money paid to the **Vendor** or the **Stakeholder** must be immediately refunded to the **Purchaser**.

5. Notwithstanding anything contained in these **Trial Period Special Conditions**, the **Vendor** is not required to give the **Purchaser** access to the **Business Premises** during the **Trial Period** if, in the **Vendor's** reasonable opinion, the **Purchaser's** presence may adversely affect the **Vendor's** relationship with its staff or customers.

FURTHER SPECIAL CONDITIONS FORMING PART OF THIS CONTRACT

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SCHEDULE 8

PURCHASER'S WARRANTIES

The **Purchaser** warrants and represents to the **Vendor**, as an inducement to the **Vendor** to enter into this **Contract** and to sell the **Business**, at the date of this **Contract**:

- (a) (if it is a company) the execution and delivery of this **Contract** have been properly authorised by all necessary corporate actions of the **Purchaser**;
- (b) (if it is a company) the **Purchaser** has full corporate power and lawful authority to execute and deliver this **Contract** and to consummate and perform or cause to be performed its obligations under this **Contract**;
- (c) this **Contract** constitutes a legal, valid and binding obligation of the **Purchaser** enforceable in accordance with its terms by appropriate legal remedy; and
- (d) this **Contract** and **Settlement** do not and will not conflict with or result in a breach of or default under any provision of its Constitution or any material term or provision of any agreement or deed or any writ, order or injunction, judgment, law, rule or regulation to which it is a **Party** or is subject or by which it is bound.

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