

# Business Sale Contract: Schedule



**1. VENDOR:** Full Name(s):

Primary Contact: Given Name(s):  Surname:

Street 1:

Street 2:

Suburb:  State:  Postcode:

ABN (if applicable):  ACN (if applicable):

Telephone: W:  M:

Email:

**2. PURCHASER:** Full Name(s):

Primary Contact: Given Name(s):  Surname:

Street 1:

Street 2:

Suburb:  State:  Postcode:

ABN (if applicable):  ACN (if applicable):

Telephone: W:  M:

Email:

**3. AGENT:** Company Name/Legal Entity:

Company Representative:

Street 1:

Street 2:

Suburb:  State:  Postcode:

ABN (if applicable):  RLA No:

Telephone: W:  M:

Email:

**4. BUSINESS:** Name:

*The Business Name is the common name used to refer to the business which may or may not be registered.*

Description of the Business (eg Business names, trademarks etc, if applicable):

**5. BUSINESS PREMISES**

Street 1:

Street 2:

Suburb:  State:  Postcode:

**6. PURCHASE PRICE**

*Goodwill including/excluding Plant and Equipment	\$ <input type="text"/>
Plant & Equipment:	\$ <input type="text"/>
Amount payable for the Business:	\$ <input type="text"/>
GST: * Applicable/Not Applicable	\$ <input type="text"/>
<b>Total:</b>	\$ <input type="text"/>

(\* Strike out as applicable)

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## 7. VENDOR'S ESTIMATE OF THE COST OF THE STOCK IN TRADE

The sum of:	\$
GST: Applicable/Not Applicable *	\$
<b>Total:</b>	\$
<b>Total Purchase Price (incl. Stock in Trade)</b>	\$

(\* Strike out as applicable)

## 8. DEPOSIT

The sum of: \$

Payable on the day of

OR

## 9. DATE OF POSSESSION

On the day of

at the close of the day's trading; and

on completion of the stocktake, if any; and

within of satisfaction of Special Condition(s); and

within of the contract becoming unconditional

and such other date as may be agreed in writing between the parties

## 10. SETTLEMENT DATE

on the day of ; or

within of the contract becoming unconditional; or

such other date as may be agreed in writing between the parties

## 11. OTHER BUSINESS ASSETS

(e.g. Vendor's telephone and facsimile numbers, website or email addresses used in the conduct of the Business)

## 12. OTHER

*Information relating to the day to day operation of the Business or which may be necessary, convenient or incidental to better enable the Business to be conducted*

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## 13. PLANT, EQUIPMENT, FIXTURES AND FITTINGS

*Unencumbered as at the date of this Agreement and to be sold to the Purchaser free of any encumbrances as at the Settlement Date*

## 14. ENCUMBERED PLANT, EQUIPMENT, FIXTURES AND FITTINGS FOR UNENCUMBERED TRANSFER

*Included in the sale and to be transferred to the Purchaser free of any encumbrance as at the Settlement Date*

## 15. ENCUMBERED PLANT, EQUIPMENT AND FIXTURES FOR ENCUMBERED ASSIGNMENT

*Items to be assigned to the Purchaser at Settlement, subject to the existing encumbrances*

Details of the terms of hire, lease or loan:

## 16. EXCLUDED PLANT, EQUIPMENT, FIXTURES AND FITTINGS

*Excluded from the sale*

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## 17. THIRD PARTY PLANT, EQUIPMENT, FIXTURES AND FITTINGS

*Not owned by the Vendor and not included in the sale*

## 18. AGREEMENTS WHERE THE LIABILITY SHALL BE THAT OF THE PURCHASER

Warranties:

Advertising:

Other:

## 19. PERIOD OF ASSISTANCE

trading days from Settlement Date

## 20. CLAIMS, DEMANDS, LITIGATION, DISPUTES OR JUDGMENTS IN RESPECT OF THE BUSINESS

## 21. EXISTING ORDERS, NOTICES OR REQUIREMENTS AFFECTING THE BUSINESS OR THE BUSINESS PREMISES

## 22. ORDERS, NOTICES OR REQUIREMENTS WHICH THE PURCHASER WILL COMPLY WITH AT THE PURCHASER'S COST

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## 23. SPECIAL CONDITIONS WHICH ARE ATTACHED TO AND FORM PART OF THIS AGREEMENT

*Specify each Special Condition attached hereto in words.*

## 24. OTHER AGREED TERMS WHICH ARE ATTACHED TO AND FORM PART OF THIS AGREEMENT

*Specify any other term attached hereto by identifying letter or any other identification.*

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# Business Sale Contract: Terms and Conditions



## 1. Sale and Purchase of Business

The Vendor agrees to sell the Business and the Stock in Trade (if any) to the Purchaser and the Purchaser agrees to purchase the Business from the Vendor:

- 1.1 for the Purchase Price; plus
  - 1.2 the cost of the Stock in Trade (if any) determined in accordance with clause 5 or clause 6 (whichever is applicable) of this Agreement; and
  - 1.3 together with any GST applicable;
- in accordance with the terms and conditions of this Agreement.

## 2. Definitions and Interpretation

### 2.1 Definitions

In this Agreement, unless a contrary intention appears:

- 2.1.1 "Agent" means the person or organisation specified in Item 3 of the Schedule;
- 2.1.2 "Annexure" means an Annexure to this Agreement;
- 2.1.3 "Business" means the Vendor's Business specified in Item 4 the Schedule and conducted from the address specified in Item 5 of the Schedule including:
  - 2.1.3.1 the Business Name (if any);
  - 2.1.3.2 the Goodwill;
  - 2.1.3.3 the Plant, Equipment, Fixtures and Fittings and the Encumbered Plant, Equipment, Fixtures and Fittings for Unencumbered Transfer;
  - 2.1.3.4 all intellectual property (including patents, copyrights and trade marks) used by the Vendor in connection with the conduct of the Business and all rights exercised by the Vendor under licence which are capable of assignment;
  - 2.1.3.5 the Other Business Assets;free from any encumbrance, charge or lien together with the Vendor's interest in the Encumbered Plant, Equipment, Fixtures and Fittings for Encumbered Assignment;
- 2.1.4 "Business Day" means any day other than a Saturday or a Sunday or a day that is a public holiday in South Australia;
- 2.1.5 "Business Name" means all of the names of the Business, trading names and trademarks included in the sale and specified in Item 4 the Schedule;
- 2.1.6 "Business Premises" means the land or interest specified in Item 5 of the Schedule;
- 2.1.7 "Date of Possession" means:
  - 2.1.7.1 if the Purchaser obtains possession of the Business from the Vendor before Settlement is effected, the Date of Possession is the date and time on which the Purchaser obtains such possession;
  - 2.1.7.2 if the Purchaser does not obtain possession of the Business from the Vendor before Settlement is effected, the Date of Possession is the Settlement Date;
- 2.1.8 "Default Rate" means the rate of interest on the date default occurs, five (5) percentage points above the cash rate notified by the Reserve Bank of Australia;
- 2.1.9 "Deposit" means the sum of money specified in Item 8 of the Schedule;
- 2.1.10 "Encumbered Plant, Equipment, Fixtures and Fittings for Unencumbered Transfer" means the encumbered plant, equipment, fixtures and fittings which are to be transferred to the Purchaser free of any encumbrance at Settlement specified in Item 14 of the Schedule;
- 2.1.11 "Encumbered Plant, Equipment, Fixtures and Fittings for Encumbered Assignment" means the encumbered plant, equipment, fixtures and fittings which are to be assigned to the Purchaser subject to any existing encumbrances at Settlement specified in Item 15 of the Schedule;
- 2.1.12 "Excluded Plant, Equipment, Fixtures and Fittings" means the plant, equipment, fixtures and fittings excluded from sale pursuant to this Agreement specified in Item 16 of the Schedule;
- 2.1.13 "Goodwill" means all of the goodwill of the Business including but not limited to:
  - 2.1.13.1 the trade of the customers of the Business together with all further business or orders flowing from those customers; and
  - 2.1.13.2 the right to carry on the Business;
- 2.1.14 "GST" means any goods and services or similar or comparable tax imposed by and defined in the GST Law;
- 2.1.15 "GST Law" means the *New Tax System (Goods and Services Tax) Act 1999* and any other Act or Regulation pursuant to, associated with, amending or replacing that Act. Any expression used in this Agreement that is also defined in the GST Law shall have the meaning used in or attributed to that expression by the GST Law;
- 2.1.16 "Land Contract" means the contract (if any) for the sale of the freehold interest in the Business Premises which is dated or intended to be dated contemporaneously with this Agreement;
- 2.1.17 "Other Business Assets" means the assets specified in Item 11 of the Schedule;
- 2.1.18 "Period of Assistance" means the period in which the Vendor or its representative shall (at no cost to the Purchaser) remain in the Business after the Settlement Date for the purpose of assisting the Purchaser specified in Item 19 of the Schedule;
- 2.1.19 "Plant, Equipment, Fixtures and Fittings" means the unencumbered plant, equipment, fixtures and fittings used by the Vendor in connection with the conduct of the Business specified in Item 13 of the Schedule;
- 2.1.20 "Prior Book Debts" means the trade debts due to the Vendor in connection with the Business as at the close of business on the Date of Possession and disclosed by the Vendor to the Purchaser in accordance with clause 9.2.5 of this Agreement;
- 2.1.21 "Purchase Price" means the sum of money specified in Item 6 of the Schedule;
- 2.1.22 "Purchaser" means the person or organisation specified in Item 2 of the Schedule;
- 2.1.23 "Settlement" means the completion of the sale and purchase of the Business in accordance with clause 9 of this Agreement;
- 2.1.24 "Settlement Date" means the date specified in Item 10 of the Schedule;
- 2.1.25 "Special Condition" means a Special Condition set out in or attached to this Agreement;
- 2.1.26 "Stock in Trade" means the trading stock of the Business;
- 2.1.27 "Third Party Plant, Equipment, Fixtures and Fittings" means the plant, equipment, fixtures and fittings used by the Vendor in connection with the conduct of the Vendor's Business but which are not owned by the Vendor and will not be assigned to the Purchaser specified in Item 17 of the Schedule;
- 2.1.28 "Vendor" means the person or organisation specified in Item 1 of the Schedule.

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# Business Sale Contract: Terms and Conditions



## 2.2 Interpretation

In this Agreement, unless a contrary intention appears:

- 2.2.1 words which denote the singular include the plural and vice versa;
- 2.2.2 words which denote natural persons include corporations and vice versa and:
  - 2.2.2.1 reference to a natural person includes that person and that person's personal representatives, assigns and permitted nominees; and
  - 2.2.2.2 reference to a corporation includes such corporation and its successors, assigns and permitted nominees;
- 2.2.3 where a party to this Agreement consists of more than one person then:
  - 2.2.3.1 any covenant or obligation to be performed by that party shall bind each of those persons jointly and severally; and
  - 2.2.3.2 any reference to that party shall include any one or more of those persons;
- 2.2.4 headings are included in this Agreement for convenience and do not form any part of this Agreement or affect its interpretation.
- 2.2.5 may be signed in any number of counterparts and by different persons on separate counterparts. The combination of all counterparts will together constitute the one Agreement.

## 3. Passing of ownership of Business

- 3.1 The legal ownership of the Business and the Stock in Trade (if any) shall not pass to the Purchaser until Settlement is effected (notwithstanding clause 14 of this Agreement).
- 3.2 The keys (if any) to the Business Premises shall be handed to the Purchaser by the Vendor on the Date of Possession, notwithstanding clause 14.2 of this Agreement

## 4. Purchase Price and Obligations of the Purchaser

### Payment of Deposit and balance of Purchase Price

- 4.1 The Purchase Price shall be paid as follows:
  - 4.1.1 the Purchaser shall pay the Deposit into the Agent's trust account on the date specified in Item 8 of the Schedule;
  - 4.1.2 the Purchaser shall pay an amount equal to the balance of the Purchase Price (as adjusted in accordance with this Agreement including any Special Condition) together with the Vendor's estimate of cost of the Stock in Trade less any monies which are to be borrowed by the Purchaser in accordance with any Special Condition to the Purchaser's conveyancer or legal practitioner or the Agent on or before 3.00pm on the last business day prior to the Date of Possession provided that the Purchaser's conveyancer or legal practitioner shall provide to the Agent and to the Vendor's conveyancer or legal practitioner written verification of the receipt of that payment;
  - 4.1.3 the Date of Possession shall be deferred until after the terms of clause 4.1.2 of this Agreement have been performed;
  - 4.1.4 on the Settlement Date the Purchaser shall pay to the Vendor:
    - 4.1.4.1 an adjustment (if any) in respect of the amount to be paid for the Stock in Trade pursuant to clause 4.1.2 of this Agreement; and
    - 4.1.4.2 all other monies payable by the Purchaser pursuant to this Agreement;
  - 4.1.5 on the Settlement Date all monies referred to in clause 4.1.1 and 4.1.2 of this Agreement shall be paid to the Vendor by the Purchaser or the person holding such monies pursuant to this Agreement.

### Application of the Deposit

- 4.2 The Agent shall hold the Deposit as a stakeholder pending Settlement and the Deposit shall be applied as follows:
  - 4.2.1 if the sale is not completed in circumstances whereby the Deposit is forfeited to the Vendor in accordance with clause 19 of this Agreement, the Deposit (less any amounts due to the Agent) shall be paid to the Vendor;
  - 4.2.2 if the sale is not completed by reason of failure of any Special Condition, the Deposit shall be applied as set out in such Special Condition or in the absence of the same in accordance with the terms of this Agreement.
- 4.3 The Vendor and Purchaser acknowledge that for the purpose of completing this Agreement each of them authorises the Agent to pay (prior to Settlement) the Deposit and any other monies held in trust by the Agent (less the commission and expenses due to the Agent) to the conveyancer or legal practitioner acting for the Vendor upon the request of such conveyancer or legal practitioner.

### Method of payment

- 4.4 All payments pursuant this clause shall be made and accepted either in cash or by a cheque drawn on a bank as defined by the *Banking Act 1959*.

## 5. Stock in Trade - Private Stocktake

[Strike out clause 5 if NOT applicable]

- 5.1 The cost of the Stock in Trade shall be agreed by the Vendor and Purchaser by a private stocktake conducted as at the close of business on the Date of Possession.
- 5.2 In the event that the Vendor and Purchaser are unable to agree on a cost, the Agent will appoint an independent appraiser to determine the cost of the Stock in Trade. The cost of such appraisal shall be borne equally by the Vendor and the Purchaser and paid to the appraiser in cash immediately upon completion of the stocktake.

## 6. Stock in Trade - Independent Appraisal

[Strike out clause 6 if NOT applicable]

The cost of the Stock in Trade shall be appraised by an independent appraiser appointed by the Agent by a stocktake conducted as at the close of business on the Date of Possession (or such other date and time as may be agreed in writing between the parties) in the presence of the Purchaser and the Vendor or their respective representatives. The cost of such appraisal shall be borne equally by the Vendor and the Purchaser and paid to the appraiser in cash immediately upon completion of the stocktake.

## 7. Value of Plant, Equipment, Fixtures and Fittings

The purchase price of the Plant, Equipment, Fixtures and Fittings (including, if applicable, the Encumbered Plant, Equipment, Fixtures and Fittings for Unencumbered Transfer) shall be its depreciated value as at the Settlement Date based upon its historical cost to the Vendor and as allowed for income tax purposes by any relevant legislation including the *Income Tax Assessment Act 1936* (as amended).

## 8. Adjustment of Outgoings

All rents, rates, taxes and other outgoings in respect of the Business Premises shall be borne by the Vendor either:

- 8.1 up to and including the Date of Possession; or
  - 8.2 the date specified in the Land Contract (if any);
- (whichever is the earlier) and shall thereafter be borne by the Purchaser. The value of such adjustments shall be paid in accordance with clause 4.1.2 of this Agreement and shall be calculated on a daily basis as at the Date of Possession.

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## 9. Settlement and Obligations of the Vendor at Settlement

- 9.1 Settlement shall be effected on the Settlement Date at the office of the Vendor's conveyancer or legal practitioner or such other place as may be nominated by the Vendor's conveyancer or legal practitioner.
- 9.2 At Settlement the Vendor shall deliver to the Purchaser or the Purchaser's conveyancer or legal practitioner:
  - 9.2.1 duly executed transfers or assignments (as the case requires and in such legal binding form as may be required by the Purchaser) of:
    - 9.2.1.1 the Business Name;
    - 9.2.1.2 the lease, sub-lease, underlease or licence (if any) of the Business Premises;
    - 9.2.1.3 the Encumbered Plant, Equipment, Fixtures and Fittings which are to be transferred in accordance with clause 10 of this Agreement; and
    - 9.2.1.4 any other assets of the Business which are capable of transfer or assignment;
  - 9.2.2 at the Purchaser's cost and expense in respect of such documentation;
  - 9.2.3 where the Vendor is a company and the Business Name includes part of the name of that company, such duly executed documents as may be necessary to change the name of that company or otherwise enable the registration of the Business Name by the Purchaser;
  - 9.2.4 where this Agreement is conditional upon the Purchaser obtaining a new lease, sublease, underlease or licence as set out in a Special Condition, a duly executed surrender of any existing lease, sub-lease, underlease or licence of the Business Premises at the Purchaser's cost and expense in all things except where precluded by law; and
  - 9.2.5 a written summary of all the Prior Book Debts (if any).
- 9.3 At Settlement the Vendor shall pay to the Agent all commission and expenses due to the Agent in respect of the sale of the Business.

## 10. Encumbered Plant, Equipment, Fixtures and Fittings

- 10.1 The Vendor shall arrange for the Encumbered Plant, Equipment, Fixtures and Fittings for Unencumbered Transfer to be discharged from their respective encumbrances and transferred to the Purchaser at Settlement.
- 10.2 The Vendor shall take all reasonable steps to obtain the necessary consents to assign to the Purchaser all of the Vendor's estate and interest in the Encumbered Plant, Equipment, Fixtures and Fittings for encumbered assignment and to assign them to the Purchaser subject to the existing encumbrances at Settlement.
- 10.3 The Purchaser shall on and from the Date of Possession indemnify and keep indemnified the Vendor against all actions, claims and demands in respect of the Encumbered Plant, Equipment, Fixtures and Fittings for encumbered assignment.

## 11. Excluded Plant, Equipment, Fixtures and Fittings

- 11.1 The Excluded Plant, Equipment, Fixtures and Fittings are excluded from the plant, equipment, fixtures and fittings which are to be sold pursuant to this Agreement.
- 11.2 The Vendor shall remove the Excluded Plant, Equipment, Fixtures and Fittings from the Business Premises prior to the Date of Possession. If the buildings or structures on the Business Premises are damaged by the removal of the Excluded Plant, Equipment, Fixtures and Fittings the Vendor shall either:
  - 11.2.1 repair or make good such damage before the Date of Possession; or
  - 11.2.2 pay the reasonable cost of repairing or making good such damage to the Purchaser at Settlement.

## 12. Third Party Plant, Equipment, Fixtures and Fittings

Ownership of the Third Party Plant, Equipment, Fixtures and Fittings will not be transferred to the Purchaser at Settlement.

## 13. Maintenance of the Business

- 13.1 Between the date of this Agreement and the Date of Possession the Vendor shall use its best endeavours to:
  - 13.1.1 carry on the Business in a proper, efficient, businesslike and profitable manner so as to maintain the Goodwill;
  - 13.1.2 maintain all of the Plant, Equipment, Fixtures and Fittings which are agreed to be sold pursuant to this Agreement in their current state of repair and condition with the exception of fair wear and tear;and the Purchaser shall assume the same duties between the Date of Possession and the Settlement Date.
- 13.2 The Vendor shall use its best endeavours to introduce the Purchaser to the customers of the Vendor (and to encourage such customers to become customers of the Purchaser) during the Period of Assistance.
- 13.3 The Vendor and Purchaser agree that prior to the Date of Possession they shall not disclose the intended sale of the Business to the Vendor's customers or clients in the absence of a written agreement between the Vendor and the Purchaser to inform such persons of the intended sale of the Business.
- 13.4 The Vendor shall remain responsible for all debts and liabilities arising out of the conduct of the Business prior to the Date of Possession. The Vendor shall indemnify the Purchaser against any demands or claims made against the Purchaser for goods, services or charges supplied to or incurred by the Business prior to the Date of Possession (except for agreements specified in Item 18 of the Schedule where the liability shall be that of the Purchaser and in respect of which the Purchase Price may be adjusted in accordance with clause 4.1.2 of this Agreement).
- 13.5 The Purchaser shall be responsible for all debts and liabilities arising out of the conduct of the Business from the Date of Possession.

## 14. Possession and Risk

- 14.1 The Vendor shall retain possession of the Business and the right to control the conduct and management of the Business until the Date of Possession.
- 14.2 If the Purchaser obtains possession of the Business prior to Settlement being effected the Business shall be at the risk of the Purchaser as and from the time that the Purchaser obtains possession of the Business.
- 14.3 If the Purchaser does not obtain possession of the Business prior to Settlement being effected the Business shall remain at the risk of the Vendor in all respects until Settlement is effected.

## 15. Costs and Stamp Duty

- 15.1 The Purchaser shall pay all costs and disbursements including Government fees and stamp duties in connection with all documents necessary to complete this Agreement (including Settlement) other than conveyancer's fees, legal practitioner's fees and disbursements properly payable by the Vendor for work performed on behalf of the Vendor.
- 15.2 The Purchaser shall pay all administration and application costs of and incidental to obtaining the assignment or grant of a lease, sub-lease, underlease or licence in respect of the Business Premises where required by the lessor of those premises except where precluded by law.
- 15.3 For the purposes of any relevant legislation the Purchaser agrees with the Vendor that the Purchaser will present this Agreement for assessment of duty and pay such duty within the time prescribed by such legislation.

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## 16. Prior Book Debts

The assets agreed to be purchased in accordance with this Agreement do not include the Prior Book Debts (if any). The Prior Book Debts shall be dealt with as follows:

- 16.1 the collection of all book debts shall be the responsibility of the Vendor but the Vendor shall not issue legal proceedings for recovery of the Prior Book Debts within thirty (30) days after Settlement without the prior written consent of the Purchaser (which consent shall not be unreasonably withheld); and
- 16.2 in the event of the Purchaser receiving any monies from any debtor of the Vendor in relation to the Prior Book Debts the Purchaser will account for and pay the same to the Vendor within seven (7) days from the date of receipt of such monies.

## 17. Special Conditions

- 17.1 This Agreement is subject to and conditional upon each Special Condition which is set out in or attached to this Agreement.
- 17.2 Each party must use best endeavours to comply with the requirements of a Special Condition.
- 17.3 If a Special Condition is not satisfied within the time specified and neither party is in default of such Special Condition then, unless the Special Condition has been waived in writing by the party for whose benefit it was inserted, either party may terminate this Agreement in accordance with the procedure set out in such Special Condition or in the absence of such procedure upon serving written notice of termination on the other party.
- 17.4 If a Special Condition is not satisfied due to the default of the Vendor or the Purchaser then the party who is not in default may in addition to its other legal rights terminate this Agreement as follows:
  - 17.4.1 if the Vendor is in default the Purchaser may upon seven (7) days written notice to the Vendor terminate this Agreement in which event all monies paid by the Purchaser under this Agreement must be repaid to the Purchaser;
  - 17.4.2 if the Purchaser is in default then the Purchaser's obligations shall be determined by the provisions in clause 19 of this Agreement.
- 17.5 If a Special Condition is not satisfied in circumstances where the Purchaser and Vendor have otherwise performed their obligations under this Agreement and termination has occurred in accordance with clause 17.3 of this Agreement then all monies paid by the Purchaser under this Agreement shall be repaid to the Purchaser and all rights and liabilities under this Agreement shall cease.
- 17.6 In the event of an inconsistency between any of the terms and conditions of this Agreement (including this clause) and any of the terms and conditions of a Special Condition, then the term and condition of such Special Condition shall prevail.

## 18. Default by Vendor

Subject to clause 17 of this Agreement, if the Vendor defaults in complying with any of the terms of this Agreement:

- 18.1 the Purchaser may without prejudice to any other legal rights or remedies of the Purchaser give the Vendor written notice requiring such default to be remedied within a period of seven (7) days after the service of the notice and stating that:
  - 18.1.1 if the default is not remedied within that seven (7) day period then, if the Vendor's default amounts to a fundamental breach of this Agreement, the Purchaser may within a further three (3) business days terminate this Agreement by written notice to the Vendor; and
  - 18.1.2 if this Agreement is thereby terminated then without prejudice to any other legal rights or remedies of the Purchaser, the Deposit shall be repaid to the Purchaser.

## 19. Default by Purchaser

- 19.1 Subject to clause 17 of this Agreement, if the Purchaser defaults in complying with any of the terms of this Agreement including due payment of any part of the Purchase Price or the Deposit:
  - 19.1.1 the Purchaser shall pay interest to the Vendor at the Default Rate on the portion of the Purchase Price which remains unpaid from the date such payment fell due until either:
    - 19.1.1.1 the date that the payment due is made; or
    - 19.1.1.2 the date of termination of this Agreement;
  - 19.2.2 the Vendor may without prejudice to any other legal rights or remedies of the Vendor give the Purchaser written notice requiring such default to be remedied within a period of seven (7) days after the service of the notice and stating that:
    - 19.2.2.1 if the default is not remedied within that seven (7) day period then, if the Purchaser's default amounts to a fundamental breach of this Agreement, the Vendor may within a further three (3) business days terminate this Agreement by written notice to the Purchaser; and
    - 19.2.2.2 if this Agreement is thereby terminated then, without prejudice to any other legal rights or remedies of the Vendor, the Deposit shall be forfeited to the Vendor and upon expiry of the seven (7) day period the Vendor may elect to either:
      - (a) retain the Business and recover damages for breach of contract from the Purchaser; or
      - (b) liquidated damages any resulting deficiency in price as compared to the Purchase Price together with all charges and expenses of and incidental to the re-sale or attempted re-sale of the Business provided that:
        - (i) the Purchaser shall receive credit for any portion of the Purchase Price (including the Deposit) which had been paid by the Purchaser prior to the termination of this Agreement; and
        - (ii) the Vendor shall retain any surplus arising from a successful re-sale of the Business together with any interest paid by the Purchaser.
- 19.2 Time shall be of the essence in all respects in respect of the period specified in any notice given pursuant to this clause.

## 20. Warranties by Vendor

The Vendor warrants that:

- 20.1 in relation to the Plant, Equipment, Fixtures and Fittings:
  - 20.1.1 the Vendor has unencumbered title; or
  - 20.1.2 at the time of Settlement the Vendor will be the sole beneficial owner free from all encumbrances, mortgages, liens, charges and other interests of any nature whatsoever;
- 20.2 the financial details provided to the Purchaser give a true and fair view of the financial position of the Business;
- 20.3 to the Vendor's knowledge there are no claims, demands, litigation, disputes or judgments in respect of the Business other than those specified in Item 20 of the Schedule nor are there any other disputes, claims or demands in respect of which litigation may arise;

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- 20.4 the Vendor has complied with (or will prior to the Date of Possession comply with) all orders, notices or requirements of any government or local government authority or provisions of any Act or Regulation affecting the Business or the Business Premises which have been received by the Vendor (including the orders, notices or requirements specified in Item 21 of the Schedule) except for:
- 20.4.1 the payment of unpaid current rates and taxes and outgoings which will be adjusted in accordance with this Agreement; and
  - 20.4.2 any such orders, notices or requirements which the Purchaser has agreed to comply with at the Purchaser's cost as set out in Item 22 of the Schedule;
- 20.5 the Vendor is not aware of any circumstances which may give rise to any further such orders, notices or requirements PROVIDED HOWEVER that if the Vendor receives any such order, notice or requirement prior to the Date of Possession then either:
- 20.5.1 the Vendor (at its option) shall bear all costs and expenses involved in complying with such order, notice or requirement; or
  - 20.5.2 if the Vendor is not willing to meet such cost and expense the Vendor may give written notice to the Purchaser to that effect and that such notice shall effect rescission of this Agreement seven (7) days after the service of such notice PROVIDED THAT at any time within the said seven (7) days the Purchaser may by written notice served on the Vendor or the Vendor's conveyancer or legal practitioner or the Agent indicate that subject to Settlement being effected in accordance with this Agreement the Purchaser will accept responsibility for the cost and expense of compliance with such order, notice or requirement in which case the Vendor's right of rescission conferred by this sub-clause shall be of no effect;
- 20.6 all information provided by the Vendor to the Purchaser in writing pursuant to the terms of this Agreement is true and accurate in all respects.

## 21. Restriction on Competition

- 21.1 This Agreement is subject to and conditional upon the Vendor and the Associated Persons (as defined in this clause) agreeing to enter into and duly executing (contemporaneously with this Agreement) a deed of restraint in the form of the deed of restraint annexed hereto (if any).
- 21.2 In this Agreement, the term "Associated Persons" shall mean a director, officer, servant, agent, partner, manager, spouse, child, trustee or beneficiary of the Vendor or a company in which the Vendor is a director, officer or shareholder who is named in the deed of restraint.

## 22. Further Acts

Each party agrees to do all such things and execute all such deeds, instruments, transfers and other documents as may be necessary or desirable to give full effect to the provisions of this Agreement and the transactions contemplated by it.

## 23. Waiver

- 23.1 No waiver by either party of any default in the compliance with any provision of this Agreement shall constitute a waiver of strict compliance (by either party) with any other provision of this Agreement or constitute a release of the other party from strict compliance with any provision of this Agreement in the future.
- 23.2 No delay or omission by a party to exercise any right under this Agreement shall prevent or restrict the exercise of any such right accruing at a later time or any other right under this Agreement.

## 24. Notices

Notices under this Agreement:

- 24.1 must be in writing and signed by the party giving notice, or its authorised agent;
- 24.2 may be served:
- 24.2.1 by being left at the last known residence or place of business of the intended recipient; or
  - 24.2.2 by being sent by Registered Post to the address of the party set out in this Agreement; or
  - 24.2.3 by being transmitted by facsimile machine to the intended recipient's facsimile machine at the number specified in the Schedule;
- 24.3 if served by post, will be deemed served by post two (2) business days after posting;
- 24.4 if served by facsimile, will be deemed served by facsimile machine on the first business day after the sending party's facsimile machine reports completion of the transmission of the notice to the intended recipient; and
- 24.5 will be deemed sufficiently served if served in accordance with this clause on one of several persons comprising the Vendor or the Purchaser.

## 25. No Merger

The provisions of this Agreement will continue to subsist and have effect notwithstanding that Settlement may have been effected and none of the provisions of this Agreement shall be deemed to have been discharged, waived by or merged in such Settlement to the intent that completion of Settlement shall not of itself be deemed to be completion of this Agreement.

## 26. Purchaser's Warranties as to Reliance

The Purchaser declares that in entering into this Agreement it has conducted its own investigations and has not relied upon any statement, representation, warranty or condition made or given by the Vendor or anyone on their behalf in respect of the subject matter of this Agreement other than those that are expressly herein contained unless such further statement, representation, warranty or condition has been made in writing and signed by the parties or their respective conveyancer or legal practitioner or the Agent.

## 27. Purchaser's Continuing Liability

The Purchaser who executes this Agreement shall remain bound by this Agreement and liable to perform its terms and conditions notwithstanding that the Purchaser may subsequently nominate another person as the Purchaser or assign its interest in this Agreement to another person.

## 28. Goods and Services Tax (GST)

The Vendor and the Purchaser acknowledge and agree that:

- 28.1 If GST applies to any supply made under or in connection with this Agreement by the Vendor:
- 28.1.1 the amount payable in respect of the supply is exclusive of GST;
  - 28.1.2 the Vendor may, in addition to any amount or consideration expressed as payable in respect of the supply, recover from the Purchaser an additional amount on account of GST;
  - 28.1.3 the Purchaser shall pay to or reimburse to the Vendor or to a third party (as the case may be), any additional amount on account of any GST that is or was incurred, paid or payable by the Vendor in respect of that supply;
  - 28.1.4 the amount payable by the Purchaser to the Vendor or to a third party in respect of that supply shall be increased by the product of:

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# Business Sale Contract: Terms and Conditions



- 28.1.4.1 the rate at which GST is imposed at that time; and
- 28.1.4.2 the amount or consideration payable for the relevant supply;

28.1.5 the Purchaser shall pay any additional amount on account of GST at the same time as the payment for the relevant supply is payable or at such other time as the Vendor directs.

28.2 The Purchaser acknowledges and agrees that if GST applies to any supply made under or in connection with this Agreement by the Purchaser, that the Purchaser shall be responsible for the payment of any additional amount on account of any GST in respect of that supply;

28.3 This clause shall survive Settlement and any termination of this Agreement by either the Vendor or the Purchaser.

## 29. Going Concern

**[Strike out clause 29 if NOT applicable]**

29.1 The Vendor and the Purchaser mutually agree that the sale of the Business under or in connection with this Agreement is the supply by the Vendor to the Purchaser of a going concern within the meaning of the GST Law and that the sale is GST free.

29.2 The Purchaser represents and warrants that it is registered or required to be registered under the GST Law.

29.3 The Vendor agrees that it will carry on the Business until the Settlement Date.

29.4 If for any reason the sale of the Business under this Agreement is not GST free as contemplated by clause 29.1, then the Purchaser shall on demand pay to the Vendor by way of further consideration for the sale of the Business, an amount calculated in a similar way to clause 28 including any penalties and/or interest incurred by the Vendor under the GST Law.

29.5 If the Vendor incurs any penalties and/or interest under the GST Law because the sale of the Business under this Agreement has been treated by the parties as being GST free then:

29.5.1 if the reason for the sale not being GST free is solely because of some fault on the part of the Vendor, the Vendor shall bear those penalties and/or interest;

29.5.2 if the reason for the sale not being GST free is solely because of some fault on the part of the Purchaser, the Purchaser shall pay to or reimburse to the Vendor (as the case may be) those penalties and/or interest on demand;

29.5.3 in any other case, the penalties and/or interest shall be borne by the parties equally and any amount of penalties and/or interest that is borne by the Purchaser shall be payable to the Vendor on demand.

29.6 This clause shall survive Settlement and any termination of this Agreement by either the Vendor or the Purchaser.

## 30. Going Concern Not to Apply

**[Strike out clause 30 if NOT applicable]**

*The following clause may be used if the parties do not want the GST free concession for the supply of a going concern to apply.*

Notwithstanding clause 29 of this Agreement, the Vendor and the Purchaser acknowledge that the sale of the Business by the Vendor to the Purchaser is not to be treated as the supply of a going concern within the meaning of the GST Law.

## 31. Privacy Act 1988

31.1 The parties agree and acknowledge that the Agent uses personal information collected from the Purchaser and Vendor to act as the Vendor's agent and to perform their obligations under this Agreement. The Agent may also use such information collected for research purposes, to promote the services of the Agent and/or seek potential clients.

31.2 The Agent may disclose this information to other parties including conveyancers, legal advisers, financial institutions and government bodies.

31.3 The Agent will only disclose information in this way to other parties as required to perform their duties under this Agreement, to achieve the purposes specified above or as otherwise allowed under the *Privacy Act 1988*.

31.4 If the Vendor or Purchaser would like to access this information, they can do so by contacting the Agent at the address and telephone number provided in this Agreement. The parties can also correct this information if it is inaccurate, incomplete or out of date.

## 32. Other Conditions

This Agreement includes such other terms and conditions as specified in or attached to this Agreement

## 33. Governing Law

This Agreement is governed by and construed in accordance with the laws from time to time in force in South Australia and the parties submit to the non-exclusive jurisdiction of the Courts of South Australia.

## 34. General

34.1 If any provision of this Agreement shall be found by a Court of competent jurisdiction to be invalid or unenforceable in law, then in such case the parties hereby request and direct such court to sever such provision from this Agreement.

34.2 This Agreement together with the Land Contract (if any) contains the whole agreement between the parties in respect of the matters referred to herein.

34.3 This Agreement must not be amended in any way subsequent to its execution except in writing, signed by all the parties.

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# Business Sale Contract: Execution Page



## EXECUTED AS AN AGREEMENT

Dated this  Day of

## EXECUTION BY VENDOR

**SIGNED** by the Vendor

on the  day of

Signature of Vendor

Full name of Vendor

Signature of Witness

Full name of Witness

**EXECUTED** by

ABN  in accordance  
with section 127 of the *Corporations Act 2001*

on the  day of

Director / Sole Director / Secretary  
(strike out as applicable)

Full name

Director / Secretary  
(strike out as applicable)

Full name

OR

**SIGNED** by the Vendor

on the  day of

Signature of Vendor

Full name of Vendor

Signature of Witness

Full name of Witness

**EXECUTED** by

ABN  in accordance  
with section 127 of the *Corporations Act 2001*

on the  day of

Director / Sole Director / Secretary  
(strike out as applicable)

Full name

Director / Secretary  
(strike out as applicable)

Full name

OR

**SIGNED** by or on behalf of

on the  day of

by its duly authorised officer in the presence of:

Signature of Witness

Full name of Witness

Authorised Officer's signature

Full name of Authorised Officer

Position held

INITIALS

# Business Sales Contract: Execution Page



## EXECUTION BY PURCHASER

**SIGNED** by the Purchaser

on the  day of

\_\_\_\_\_

Signature of Purchaser

Full name of Purchaser

\_\_\_\_\_

Signature of Witness

Full name of Witness

**SIGNED** by the Purchaser

on the  day of

\_\_\_\_\_

Signature of Purchaser

Full name of Purchaser

\_\_\_\_\_

Signature of Witness

Full name of Witness

OR

**EXECUTED** by

ABN  in accordance  
with section 127 of the *Corporations Act 2001*

on the  day of

\_\_\_\_\_

Director / Sole Director / Secretary  
(strike out as applicable)

Full name

\_\_\_\_\_

Director / Secretary  
(strike out as applicable)

Full name

**EXECUTED** by

ABN  in accordance  
with section 127 of the *Corporations Act 2001*

on the  day of

\_\_\_\_\_

Director / Sole Director / Secretary  
(strike out as applicable)

Full name

\_\_\_\_\_

Director / Secretary  
(strike out as applicable)

Full name

OR

**SIGNED** by or on behalf of

on the  day of

by its duly authorised officer in the presence of:

\_\_\_\_\_

Signature of Witness

Full name of Witness

\_\_\_\_\_

Authorised Officer's signature

Full name of Authorised Officer

Position held

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# Business Sales Contract: Execution Page



## RECEIPT

Receipt of a copy of this Agreement is acknowledged by:

Purchaser(s) initials:

Dated: \_\_\_ / \_\_\_ / \_\_\_\_\_

## OFFICE USE ONLY

Copy of Agreement provided to Purchaser

Agent's initials:

Dated: \_\_\_ / \_\_\_ / \_\_\_\_\_

## VENDOR / PURCHASER PLEASE NOTE:-

1. REISA recommends that you should not sign any document unless you are satisfied that you understand its terms.
2. Use of this Agreement by a non-member of REISA is a breach of Copyright.

**NOTE: ALL PARTIES SHOULD INITIAL ALL PAGES**

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