

## **FURTHER TERMS OF SALE**

### **21.1 Deposit**

- 21.1 Immediately following confirmation of the purchaser conditions or, in the absence of any purchaser conditions, on execution of this Agreement by both parties, the Purchaser will pay to the Vendor's solicitor's trust account (via the Purchaser's solicitor's trust account) the deposit as specified on the front page of this Agreement. The Vendor's solicitor shall hold the deposit as stakeholder until the Settlement Date (as defined in clause 25).
- 21.2 The Purchaser acknowledges that the entire deposit is in all respects to be regarded as a deposit on account of the purchase price and does not include any penalty component, so that upon a cancellation entitling the Vendor to forfeit and retain the deposit, the entire deposit may be forfeited and retained, and if at the time of cancellation only part of the deposit has been paid, the Vendor may (among other remedies) forfeit and retain that part and sue the Purchaser for the balance of the deposit.
- 21.3 Subject always to the provisions of this Agreement, the stakeholder will hold the deposit as stakeholder for the benefit of both parties.
- 21.4 The parties acknowledge that the stakeholder will not be liable to any party provided the stakeholder acts in a professional and timely manner in respect of its obligations relating to the deposit paid pursuant to this Agreement.

### **22.0 Deposit of Plan**

- 22.1 On satisfaction of the Vendor condition contained in clause 44.1, the Vendor will take all reasonable steps to finalise and deposit the subdivision plan in the Wellington Land Registry Office to enable a separate fee simple record of title for the property to be issued under the Land Transfer Act 2017 (**Subdivision Plan**).
- 22.2 The Vendor reserves the right to grant or receive the benefit of any easements, building or other encumbrances, consent notices, land covenants or rights which may be required in order to satisfy any conditions of Council approvals or which in the sole discretion of the Vendor are deemed to be necessary or desirable in respect of the property or any part or parts of the property. The Purchaser shall take title to the property subject to any such easement or encumbrance.
- 22.3 The property is sold subject to all existing easements, building line restrictions, restrictive covenants, consent notices or other encumbrances, rights or obligations affecting the existing titles for the land together with any easements, building line restrictions, restrictive covenants, consent notices or other encumbrances, rights or obligations that may be required by the Council or that the Vendor deems necessary or desirable for the better or more effective development of the land and issuing of a new title for the property.

22.4 The Purchaser shall not be entitled to make any objection or requisitions or claim for compensation by reason of:

- (a) any variation between the scheme plan and the actual Subdivision Plan to be deposited in the Wellington Land Registry;
- b) any minor alteration or variation of the plans and specifications or any consequential changes thereto;
- (c) any variation or alteration to the dwelling to be constructed on the property as may become necessary during the course of construction of the dwelling by reason of matters beyond the control of the Vendor which may result from (amongst other things), the requirements and directions of any territorial or Governmental authority having jurisdiction or as may be required by practical exigencies of construction either by (without limitation, and by way of example), the dictates of good building practice or the availability of materials, provided however the Vendor shall take all reasonable steps to adhere wherever possible to the plans and specifications **attached** hereto (the **plans and specifications**).

22.5 The Purchaser shall have no right of objection to title. General Term 6.2 of this Agreement shall not be applicable.

22.6 The area of the property shown in the draft subdivision plan is approximate only and is subject to adjustment on final survey and approval of the Subdivision Plan. In the event of any variation being made to the total area of the property, no adjustment is to be made to the purchase price and no compensation should be payable to or by either party to this Agreement.

22.7 For the avoidance of doubt, any alterations to the area, shape or size of the property which are permitted under this Agreement, will not be an error or misdescription under sections 36 to 42 of the Contract and Commercial Law Act 2017 and will not give rise to any right of cancellation or claim or compensation or damages by the Purchaser.

### **23.0 Vendor to Construct Dwelling**

23.1 The Vendor shall as soon as practicable after satisfaction of the Vendor condition contained in clause 44.1 (subject to any bona fide delays beyond the control of the Vendor) upon obtaining the necessary approvals, with all due diligence, proceed to build and complete the dwelling on the property in a proper and workmanlike manner in accordance with the plans and specifications all approvals and the provisions of this Agreement. In building and completing the dwelling, the Vendor and the Vendor's surveyors, agents, consultants, engineers, contractors, sub-contractors, employees or any of them shall have the right to enter the property at all times prior to settlement with such plant, machinery, vehicles and equipment and to do such work as shall in the opinion of the Vendor, the Vendor's engineers or the Vendor's contractors, be necessary or desirable to complete construction of the dwelling.

## **24.0 Practical Completion**

24.1 Practical completion ("**Practical Completion**") shall be the stage when the dwelling, in the opinion of the Vendor's project manager, architect or engineer acting in a professional capacity is complete, except for minor omissions and minor defects which (notwithstanding the Vendor's obligation to remedy the same) in the opinion of the Vendor's project manager, architect or engineer:

- (a) the Vendor has reasonable grounds for not properly correcting; or
- (b) do not prevent the dwelling from being used for its intended purpose; or
- (c) rectification of which will not prejudice the convenient use of the dwelling.

24.2 The date of Practical Completion of the dwelling shall be the date that the Vendor's project manager, architect or engineer acting in a professional capacity issues a certificate of practical completion (**Practical Completion Certificate**) certifying that the dwelling has reached Practical Completion.

## **25.0 Settlement**

25.1 The balance of the purchase price shall be paid, and possession of the property shall be given on the date (**Settlement Date**) which shall be the later of:

- (a) the second working day after the Purchaser receives a copy of the Practical Completion Certificate and Code Compliance Certificate (**CCC**); and
- (b) the 10<sup>th</sup> working day after the Vendor's solicitor has given the Purchaser's solicitor notice that the new record of title for the property has issued.

25.2 Should there be no separate assessment for rates for the property on the Settlement Date then the Vendor's solicitor will apportion rates for the property based on an annual assessment of \$1,000.00 plus GST.

25.3 In terms of clause 3.2 the Purchaser will only be entitled to have one pre-settlement inspection of the property no sooner than seven days prior to the Settlement Date.

## **26.0 Code Compliance Certificate**

26.1 A CCC will be provided by the Vendor to the Purchaser prior to the Settlement Date.

## **27.0 No Money to be Retained on Settlement**

27.1 The Purchaser shall not retain any money for extras, set off, deduction or otherwise unless the Vendor expressly consents to the same in writing.

## **28.0 Defects and Maintenance Period**

28.1 There shall be a maintenance period of 12 months from the Settlement Date or from the date the Purchaser obtains possession of the dwelling (whichever is the earlier) **(Maintenance Period)**.

28.2 The Maintenance Period will consist of two remedial dates being:

- a. 90 days from the earlier of:
  - i. the Settlement Date; or
  - ii. the date possession of the property is given and taken;
  
- b. 12 months from the earlier of:
  - i. the Settlement Date; or
  - ii. the date possession of the property is given and taken.

28.3 Prior to the expiry of each remedial date comprising the Maintenance Period, the Purchaser shall notify the Vendor, in writing, of any defects in the dwelling which the Purchaser considers the Vendor is liable to remedy.

28.4 The Vendor will rectify and make good at its cost by or within a reasonable time from the expiry of the remedial dates in clause 28.2 any defects or other faults in the dwelling due to faulty materials or workmanship (**Defects**) notified by the Purchaser or its agent in writing to the Vendor prior to the expiry of the remedial dates in clause 28.2 (time being of the essence). In the case of a dispute, the matter will be determined by an Architect appointed by the Vendor who will act as an expert and his/her decision will be final and binding on the parties. The Vendor will not be liable to repair any damage caused to the dwelling by the Purchaser, its agents or invitees or any damage arising out of fair wear and tear of the dwelling.

28.5 The parties agree that a Defect includes:

- (a) anything that does not comply with the Building Code;
- (b) variations from consented drawings that have not been agreed;
- (c) failure to meet specifications agreed in the building contract;
- (d) product failure earlier than anticipated;
- (e) failure to achieve acceptable industry levels of quality or performance on items not covered by (a) to (d) above,

and that a Defect does not include damage:

- (a) that is not within human control (for example, natural disaster)
- (b) done by a person outside the control of the builder;
- (c) resulting from a failure to undertake normal maintenance (by the purchaser);
- (d) resulting from a failure to carry out repairs as soon as practical after the

- defect became apparent;
- (e) which are included within the tolerances detailed in the build contract (including but not limited to buildings being subject to the weather, shaking from traffic, minor earthquakes and ground settlement which result in the gradual deterioration of materials and often development of non-structural cracks at joints and junctions in sheet materials (particularly internal wall and ceiling linings).

28.6 The Vendor shall carry out at the Vendor's cost, during or within a reasonable time from the expiry of the remedial dates in clause 28.4, the maintenance work notified by the Purchaser in writing to the Vendor in accordance with clause 28.4 which is agreed by the Vendor to be Defects. The Vendor shall not be required to repair damage caused by fair wear and tear or which is normally covered by a comprehensive insurance policy.

28.7 For the avoidance of any doubt, the purpose of the Maintenance Period is to provide a timeframe for the Purchaser to bring to the Vendor's attention any Defects promptly so the Vendor can rectify and make good those Defects in the most efficient and timely manner.

28.8 The Vendor acknowledges that the Maintenance Period does not substitute or in any way vary the Purchaser's rights contained within section 362Q of the Building Act 2004.

### **29.0 Caveat**

29.1 The Purchaser shall not register a caveat against the Vendor's title(s) to the property (whether before or after completion of the subdivision). The Purchaser acknowledges that this obligation is an essential term of this Agreement, breach of which will entitle the Vendor to terminate this Agreement if the caveat is not withdrawn within two (2) working days after the service by the Vendor of a written notice on the Purchaser requiring the Purchaser to withdraw the caveat. If the Purchaser registers a caveat or procures the registration of any caveat in breach of this clause, the Purchaser will pay to the Vendor liquidated damages of \$10,000.00 per day for so long as the caveat prevents the deposit of the Subdivision Plan or settlement under this Agreement or settlement of any of the other lots comprised within the Vendor's development.

### **30.0 Lowest Price Clause**

30.1 The purchase price for the property is the lowest price that the parties would have agreed upon for the property under the rules relating to the accrual treatment of income and expenditure in the Income Tax Act 2007 and on that basis no income or expenditure arises under those rules.

### **31.0 Variations**

31.1 The Vendor may (but shall not be obliged to) consider written requests from the Purchaser to carry out variations to the plans and specifications. If the Vendor agrees

in writing to carry out the required variation, the purchase price specified in this Agreement shall be adjusted to take into account the cost of incorporating into construction any variation from the plans and specifications (**Purchaser Variations**).

31.2 Upon completion of construction of such Purchaser Variations the Vendor shall submit to the Purchaser an account detailing the additional costs of the Purchaser Variations (less any credit available in respect of the original items included in the plans and specifications amended or amended as a result of the Purchaser Variations) and the Purchaser shall complete payment of such sum for the Purchaser Variations within five (5) working days of receiving the Vendor's account.

31.3 Prior to settlement the Purchaser will not:

- (a) attend to any of the contractual works (or works of any kind in or upon the underlying land for the property) themselves;
- (b) instruct any contractor to attend any work on the dwelling; and/or
- (c) supply any appliance, fixture, fitting or chattel.

If the Purchaser breaches this obligation, then the aggregate amount equivalent to 30% of the cost price and the cost price for attending on the above matters or supplying any such appliance, fixture, fitting or chattel will be added to the purchase price specified in this Agreement and shall be payable by the Purchaser on the Settlement Date. Should there be any dispute as to what the cost price of any such item is, then this will be determined by the Vendor's architect whose decision will be final and binding on both parties.

31.4 Purchaser Variations agreed to by the Purchaser and the Vendor will be at the sole risk of the Purchaser to the extent that it is the responsibility of the Purchaser to have researched all aspects of the actual and consequential effects of any Purchaser Variations to the plans and specifications and to this extent the Purchaser shall not be entitled to claim compensation or hold the Vendor responsible for any such Purchaser Variations.

## **32.0 Unprocurable Materials**

32.1 In the event of any materials, as set out in the plans and specifications, being unprocurable or prohibited by law, or the consequences of strict adherence being financially impractical, or if it becomes necessary or expedient for the Vendor to undertake or incorporate an amendment in respect of anything shown or described in the plans and specifications, the Vendor may, in accordance with the building contract entered into by the Vendor and its builder, substitute such materials with materials that are of a value and quality as near as reasonably practicable to the specified materials, provided that the changes and amendments to do result in any material adverse effect on the use, occupation or enjoyment or value of the property by the Purchaser.

### **33.0 Discrepancies**

33.1 If any discrepancy or conflict occurs between the provisions contained in this Agreement, any schedules and the plans and specifications, then the Vendor shall be entitled to, in its sole discretion, determine which of the documents shall prevail.

### **34.0 Parties Understanding**

34.1 This Agreement records the entire Agreement and understanding between the Vendor and Purchaser in respect of matters relating to this Agreement. This Agreement supersedes any prior Agreement, correspondence, discussions, marketing brochures, advertisements or undertaking between the Vendor and Purchaser and their respective agents.

34.2 In deciding to purchase the property the Purchaser has relied on its own judgement and not on any statement, warranty or representation (verbal or otherwise) made by the Vendor or by any person on the Vendor's behalf. The Purchaser will raise no objection to, or requisition in respect of, the property, its condition or any matters affecting the property. The Purchaser specifically acknowledges that the renders included within this Agreement or provided to the Purchaser by the Vendor or its agent are provided solely to assist the Purchaser in visualising the completed property, and that colours, finishes and certain products in the completed property may differ from those depicted in the renders.

### **35.0 Residents' Association**

35.1 The Purchaser acknowledges that the Vendor intends to incorporate Ngarara Villas Residents' Association (**Residents' Association**) prior to the Settlement Date. The Purchaser will be required to join the Residents' Association on the Settlement Date and the Purchaser agrees to be bound by all rules applicable to the Residents' Association which the Vendor deems desirable for the benefit of all residents, or which may be required by Council.

35.2 It is the Vendor's intention that the Residents' Association will (amongst other things) operate and manage, maintain and upkeep all communal facilities to be comprised within the Vendor's development, in accordance with the constitution (**Constitution**) and the rules (**Rules**) of the Residents' Association. The Constitution and the Rules shall be substantially in the form **attached** to this Agreement, provided that prior to the Settlement Date, the Vendor shall be entitled in its sole discretion to alter to or amend the Rules and/or the Constitution to provide for the better or more efficient management of the Residents' Association and/or to include further and/or amended provisions that the Vendor considers appropriate or as may be required by Council.

### **36.0 Sunset Date and Force Majeure**

36.1 If for any reason the Vendor has not obtained a separate record of title for the property by the date which is 30 months from the date that the Vendor condition

in clause 44.1 has been satisfied (the **Sunset Date**) then either party may cancel this Agreement by notice in writing to the other. Notwithstanding this, in the event there is a delay in the commencement, continuation or undertaking of the Development as a result of a force majeure event (being a **Specified Event** as defined in clause 36.2), then the Sunset Date shall be extended for the same corresponding period attributable to the delay caused by that force majeure event, on a daily basis. The parties agree that the Purchaser will not be entitled to cancel this Agreement under this Clause unless the Purchaser has first given the Vendor sixty (60) working days' notice in writing after the Sunset Date has passed of its intention to cancel, and the Vendor has failed within that sixty (60) working day period to provide the Purchaser with a search copy of the new record of title for the property. No notice of cancellation will be effective if, before notice is received the Vendor's solicitor, or the Vendor gives to the Purchaser's solicitor a search copy of the new record of title to issue for the property. Upon cancellation the Purchaser will be entitled to a refund of the deposit paid and neither party will have a claim against the other.

- 36.2 In the event that war, acts of terrorism, civil disorder, monetary or economic developments, act of Government, pandemic, epidemic, difficulties with the land (as a building site or the process of construction of the development) or other factors beyond the reasonable control of the Vendor whether similar or not (**Specified Event**) prevents the Vendor from commencing, continuing, or completing the subdivision of which the property forms part or renders it impracticable for the Vendor to commence, continue or complete the subdivision, then the Vendor may by notice in writing to the Purchaser advise of the Specified Event and cancel this Agreement and the deposit will be returned in full to the Purchaser.

### **37.0 Assignment of Vendor's Interest**

- 37.1 The Purchaser acknowledges that the Vendor may assign all its rights, powers, remedies and obligations under this Agreement and the Purchaser consents to any such assignment.
- 37.2 Immediately on completion of the assignment referred to in Clause 37.1 above, the Vendor will no longer be liable to the Purchaser for the performance or observance of any of the Vendor's obligations imposed under this Agreement.

### **38.0 Guarantee - Company**

- 38.1 Where the Purchaser is a company, in consideration of the Vendor entering into this Agreement at the request of the directors and shareholders of the Purchaser, each of those directors and shareholders jointly and severally guarantees to the Vendor the performance of all the Purchaser's obligations under this Agreement, and has separately executed this Agreement in that capacity in recognition of this obligation.



**39.0 Guarantee – Trust**

39.1 Where the Purchaser is a trust, in consideration of the Vendor entering into this Agreement at the request of the trustees of the Purchaser, each of those trustees jointly and severally guarantees to the Vendor the performance of all the Purchaser's obligations under this Agreement, and has separately executed this Agreement in that capacity in recognition of this obligation.

**40.0 Assignment Of Warranties**

40.1 The Vendor agrees that on and from the Settlement Date, the Vendor shall assign to the Purchaser the benefit of all warranties and guarantees as may be available relating to the supply of services, materials and equipment installed in the property as contemplated by the plans and specifications, and which are capable of assignment. If any warranties or guarantees are incapable of assignment, the Vendor will hold such warranties and guarantees on trust for the benefit of the Purchaser and will use reasonable endeavours to enforce those on request by the Purchaser.

40.2 On and from the Settlement Date the Vendor will assign to the Purchaser to the fullest extent possible, any guarantee and warranty that it holds in respect of the chattels, fixtures and fittings contemplated by the plans and specifications. In this regard, the Vendor shall use all reasonable endeavours to obtain all guarantees and warranties on relevant industry terms that are reasonably available in respect of those chattels, fixtures and fittings.

**41.0 Purchaser Disposition**

41.1 The Purchaser will not assign, transfer or otherwise dispose of or alienate the benefit of this Agreement without the prior written consent of the Vendor.

41.2 If the Vendor consents to the assignment, transfer, disposal or alienation of the benefit of this Agreement by the Purchaser the Purchaser shall execute a deed in a form acceptable to the Vendor pursuant to which the assignee, transferee or dispossesee covenants with the Vendor that the assignee, transferee, or dispossesee is bound by the provisions contained or implied in this Agreement and on the part of the Purchaser to be observed and performed, provided however that the Purchaser executing this Agreement shall at all times remain liable for all obligations on the part of the Purchaser hereunder. The Purchaser shall bear all costs of the Vendor and the Vendor's solicitor in relation to these matters.

**42. Overseas Investment Office (OIO) Consent**

42.1 The Purchaser confirms that OIO consent is not required, and hereby warrants to the Vendor that every individual Purchaser has completed the OIO Residential Land Statement to that effect.

**43. Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML Act)**

- 43.1 The Purchaser shall, as an essential term of this Agreement, prior to payment of the deposit, in accordance with section 33 of the AML Act, procure the Purchaser's solicitors to undertake to the Vendor's solicitors that the Purchaser's solicitors:
- a. are a reporting entity for the purposes of the AML Act;
  - b. have a business relationship with the Purchaser;
  - c. have conducted relevant customer due diligence procedures to at least the standards required by the AML Act and Regulations; and
    - i. have provided to the Vendor's solicitors relevant identity information with respect to the Purchaser; and
    - ii. as soon as practicable on request from the Vendor's solicitors, will provide relevant verification information, but in any event, within five (5) working days of request; and
  - d. consent, pursuant to s33 of the AML Act, to conducting the customer due diligence procedures for the Vendor's solicitors and to providing all relevant information to the Vendor's solicitors to comply with the AML Act and Regulations and the Vendor's solicitors may rely upon the information provided by the Purchaser's solicitors.

**44. Vendor Condition**

- 44.1 This Agreement is subject to and conditional upon the Vendor confirming by 5pm on **Friday, 31 January 2025** that the subdivision and development contemplated by this Agreement is, in the Vendor's sole opinion, a suitable and commercially viable project. This condition is inserted for the sole benefit of the Vendor.

**45. Due Diligence**

- 45.1 This Agreement is subject to and conditional upon the Purchaser carrying out a due diligence investigation and being satisfied in the Purchaser's absolute and sole discretion with all and any matters arising out of such investigation. The due diligence investigation may include (but will not be limited to) all conveyancing and legal issues and the commissioning of reports relating to the purchase. As part of the Purchaser's due diligence investigation, the Purchaser shall be entitled to make inquiries as to whether finance on terms and conditions satisfactory in all respects to the Purchaser can be obtained. This condition is to be satisfied by 5pm on the date that is **10 working days after the date of this Agreement**. This condition is inserted for the sole benefit of the Purchaser.