

BUILDERS TERMS

33. Early Possession

- 33.1 The terms contained in General Terms of Sale 1.1(42), 3.1-3.4 (inclusive), 5.2 and 6.1 are hereby varied so far as the term "Settlement Date" shall be read as "Possession Date".
- 33.2 In these Further Terms of Sale, unless the context otherwise permits or requires "Possession Date" means the date that the Vendor gives and the Purchaser takes possession.
- 33.3 Notwithstanding that possession is given and taken prior to settlement, the Purchaser shall not build, erect or place any buildings or carry out any building works on the Property without the Vendor's written consent which will not unreasonably be withheld provided:
- (a) The Purchaser has paid the deposit.
 - (b) The Purchaser provides the Vendor with full details of the nature and scope of the works to be carried out.
 - (c) The works comply in all respects with the Protective Covenants.
 - (d) The works are unlikely to adversely affect the value of the Property.
 - (e) The Purchaser has provided to the Vendor a full copy of the Purchaser's contractors all risk insurance policy noting the Vendor's interest as unpaid Vendor.
- 33.4 For the avoidance of doubt the Vendor (and anyone authorised by the Vendor) will have access to the Property at all times prior to the date that the Vendor has given the Purchaser notice that a search copy (as defined by Section 60 of the Land Transfer Act 2017) of the record of title to the Property is available in order to inspect any works undertaken by the Purchaser, verify insurances and check compliance with the requirements of any authority.
- 33.5 Any improvements that the Purchaser makes prior to settlement ("the Improvements") are the property of the Purchaser and ownership of such Improvements shall not revert to the Vendor or any mortgagee of the Vendor provided that if the Vendor cancels this Agreement as a result of the Purchaser's default, title in the Improvements will pass to the Vendor without any compensation or other amount being payable to the Purchaser.
- 33.6 The Purchaser shall not commence any building works on the Property until the Purchaser has obtained all relevant building consents and approvals. All work will be carried out at the Purchaser's sole risk. The Purchaser shall ensure that all building work is carried out in a good and tradesmanlike manner and in accordance with all consents and relevant legislation.
- 33.7 The giving and taking of possession under the Agreement and the granting of any consent for the Purchaser to commence building works will not prejudice or fetter any of the Vendor's rights and remedies that apply in the event that the Purchaser defaults on its obligations under the Agreement.

33.8 The Purchaser shall not occupy or permit any person or persons to occupy any dwelling erected on the Property at any time prior to Settlement Date.

33.9 The Purchaser shall not, without the Vendor's prior written consent (which consent may be withheld at the Vendor's sole discretion) offer the Property for resale except as a land and building package or with a completed dwelling on the Property.

33.10 It is recorded that:

(a) The Settlement Date is the earliest date on which the parties would in any circumstance have agreed that the balance of the Purchase Price has to be payable; and

(b) Neither the period between the date of this Agreement and the Settlement Date nor any other provision in this Agreement evidences any deferment of the Purchaser's obligation to pay the Purchase Price for the purposes of Section 6 of the Credit Contracts and Consumer Finance Act, and

accordingly this Agreement is not a Credit Contract for the purposes of or within the meaning of that Act.

34. Health and Safety at Work Act 2015 (HSW Act)

34.1 If the Purchaser, pursuant to the terms of this Agreement or otherwise, takes or enters into possession of the Property prior to Settlement Date (including, without limitation, by commencing any layout or site works, storing any materials on the Property or commencing building works) then:

(a) Risk in the Property passes to the Purchaser upon the Purchaser taking or entering into possession of the Property;

(b) The Purchaser is solely responsible for the management and control of the Property and all activities carried out on the Property;

(c) The Purchaser is responsible for identifying any hazards or risks on the Property; and

(d) If the Property is used as a workplace (whether by commencing building works or otherwise), the Purchaser is solely responsible for implementing a health and safety management plan and for complying with all duties imposed on PCBU's under the HSW Act;

notwithstanding that the Vendor may still be the registered proprietor of the Property.

34.2 To the extent permitted by law, the Purchaser indemnifies the Vendor and any officer of the Vendor against all liability, costs, losses, penalties or otherwise suffered by the Vendor (and its officers) arising directly or indirectly from any breach of the HSW Act in respect of the Property.