

SPECIAL CONDITIONS

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In these special conditions, unless the contrary intention appears, the following meanings apply:

Approved Valuer means an independent valuer with at least 10 years' experience in valuing residential property from one of the following firms:

- (a) Charter Keck Cramer;
- (b) Opteon;
- (c) Herron Todd White; and
- (d) CBRE.

Final Valuation means the market value of the property as determined in accordance with special condition 4.

Market Value means \$ <<insert original market value agreed between vendor and purchaser>>

1.2 Terms defined in general conditions

Unless the contrary intention appears, a term which has a defined meaning in the general conditions has the same meaning when used in these special conditions.

1.3 Inconsistency between general conditions and special conditions

- (a) If a provision of these special conditions is inconsistent with a provision of the general conditions, the provisions of these special conditions will prevail to the extent of the inconsistency.
- (b) If a provision of special conditions 2 to 7 (inclusive) is inconsistent with another special condition, the provision in special conditions 2 to 7 (inclusive) will prevail to the extent of the inconsistency.

2 DEPOSIT

2.1 General conditions

- (a) General conditions 14.1(b) and 14.1(c) are deleted
- (b) In general condition 14.3(a)(ii) the words "80% of the sale price" are deleted and replaced with "70% of the Market Value".

2.2 Release of deposit

- (a) The purchaser acknowledges that:
 - <<insert settlement period – eg, 2 years>> will pass before settlement is due under this contract;
 - (ii) part of the benefit the vendor expects to receive from this contract is access to the deposit money before settlement; and
 - (iii) the vendor intends to apply for a release of the deposit as permitted by section 27 of the Sale of Land Act 1962.
- (b) The vendor acknowledges that in order for the deposit to be released the purchaser must be satisfied (or deemed to be satisfied) with the statement provided under section 27(3) of the Sale of Land Act 1962.
- (c) If, after the vendor provides the purchaser a statement complying with section 27(3) of the Sale of Land Act 1962, the purchaser does anything to prevent the release of the deposit to the vendor, the vendor may end this contract by notice to the purchaser.
- (d) If the vendor ends this contract under special condition 2.2(c), any part of the deposit that has been paid must be returned to the purchaser.

2.3 No excess debt

The vendor agrees that it must not obtain debt secured against the property for more than 70% of the Market Value.

3 CAVEAT

The vendor acknowledges and agrees that the purchaser is entitled to lodge a caveat on the title to the property and to maintain that caveat until settlement occurs or this contract ends.

4 FINAL VALUATION

4.1 Valuations

- (a) No earlier than 100 days but no later than 85 days before the due date for settlement, the vendor must, at its cost:
 - (i) appoint and notify the purchaser that it has appointed, an Approved Valuer to assess the market value of the Property; and
 - (ii) provide a copy of the valuation produced by its Approved Valuer (Vendor's Independent Valuation) to the purchaser.

The vendor may not provide a Vendor's Independent Valuation after the date that is 85 days before the due date for settlement.

- (b) If the purchaser wishes to do so, the purchaser may, at its cost, by the date that is 70 days prior to the due date for settlement:

- (i) appoint and notify the vendor that it has appointed an Approved Valuer to assess the market value of the Property; and
- (ii) provide a copy of the valuation produced by its Approved Valuer (Purchaser's Independent Valuation) to the vendor.

The purchaser may not provide a Purchaser's Independent Valuation after the date that is 70 days before the due date for settlement.

- (c) If the purchaser accepts the market value of the Property in the Vendor's Independent Valuation or does not provide a Purchaser's Independent Valuation, the market value of the Property in the Vendor's Independent Valuation is the Final Valuation.
- (d) If the purchaser provides a Purchaser's Independent Valuation and the vendor has provided a Vendor's Independent Valuation, the Final Valuation is the midpoint of:
 - (i) the market value of the Property in the Vendor's Independent Valuation; and
 - (ii) the market value of the Property in the Purchaser's Independent Valuation,
- (e) If the purchaser provides a Purchaser's Independent Valuation and the vendor has not provided a Vendor's Independent Valuation, the market value of the Property in the Purchaser's Independent Valuation is the Final Valuation.
- (f) If the purchaser does not provide a Purchaser's Independent Valuation and the vendor does not provide a Vendor's Independent Valuation, the Market Value is the Final Valuation.

4.2 Valuation instructions

In determining the Final Valuation, an Approved Valuer must:

- (a) determine the market value of the property:
 - (i) as at the date on which they inspect the property;
 - (ii) as the amount for which the property should exchange between willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion;
- (b) assume the property is offered with vacant possession;
- (c) apply commonly accepted valuation standards;
- (d) give a written valuation;
- (e) provide a fixed figure as the market value and not a range; and
- (f) act as an expert and not as an arbitrator.

5 PRICE

5.1 Acknowledgement

Both parties acknowledge that the price depends on valuation of the property under special condition 4 and that the market value of the property may increase or decrease between the day of sale and when the property is valued under special condition 4.

5.2 Calculation of price

The price is determined by this formula:

$$P = MV + [(FV - MV) \times 50\%]$$

where:

P = price

MV = Market Value

FV = Final Valuation

For example, if MV is \$1,000,000 and FV is \$1,100,000, then P will be determined as follows:

$$P \qquad \qquad MV \qquad \qquad FV \qquad \qquad MV$$
$$\$1,050,000 = \$1,000,000 + [(\$1,100,000 - \$1,000,000) \times 50\%]$$

For example, if MV is \$1,000,000 and FV is \$900,000, then P will be determined as follows:

$$P \qquad \qquad MV \qquad \qquad FV \qquad \qquad MV$$
$$\$950,000 = \$1,000,000 + [(\$900,000 - \$1,000,000) \times 50\%]$$

6 CONDITION REPORT

For the purposes of general condition 31.2, the vendor and purchaser agree that the condition report forming part of the section 32 statement includes an accurate description of the condition of the property on the day of sale.

7 VENDOR TO MAINTAIN INSURANCE

The vendor must:

- (a) maintain insurance for full replacement and reinstatement of the property for at least its estimated replacement cost; and
- (b) on the purchaser's request, give the purchaser a certificate of currency for such insurance no more than once in any 12-month period after the day of sale until the due date for settlement.