

# REINZ Book Of STANDARD CLAUSES

Section B of the Agreement for  
Buying and Selling Real Estate



REAL ESTATE INSTITUTE OF NEW ZEALAND INC

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PLAIN ENGLISH  
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# REINZ BOOK OF STANDARD CLAUSES

## Section B: Standard Clauses

### Contents

1.	Meaning of words and phrases, and interpretation	page 1
2.	Notices	page 2
3.	Priorities for sections of the agreement	page 3
4.	Faxed signatures and extra copies	page 3
5.	When trustees sign the agreement	page 3
6.	Signing by an agent	page 3
7.	Another buyer	page 3
8.	Changing the agreement	page 4
9.	When something has been incorrectly described	page 4
10.	Lowest price	page 4
11.	Interest on overdue payments	page 4
12.	Deposit	page 4
13.	Rules applying to the conditions in the agreement	page 5
14.	Giving approvals or consents	page 6
15.	Goods and services tax	page 7
16.	Property title	page 9
17.	Unit titles	page 9
18.	Boundaries and fences	page 10
19.	Promises	page 10
20.	What happens if the property is damaged before settlement	page 12
21.	Buyer can inspect the property	page 14
22.	New title to be issued for the property	page 14
23.	Settlement of the sale and purchase	page 15
24.	Possession of the property	page 17
25.	Essential terms of the agreement	page 18
26.	The seller's right to re-sell	page 19
27.	Other rights under the agreement	page 20
28.	How the agreement can end and when it ends	page 20
29.	Sorting out disputes	page 20
30.	Auctions and tenders	page 21
31.	Conveyancing practitioners	page 21
32.	Agent's commission	page 21

# 1. Meaning of words and phrases, and interpretation

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## 1.1 Meaning of words and phrases

Words or phrases given a meaning in the agreement have their given meaning, unless the meaning does not make sense in the context of the agreement.

**Agent** means the real estate agent named on the front page of the agreement.

**Buyer** includes purchaser.

**Conditional time** and **Conditional date** are the time and date for the satisfaction of a condition.

**Lawyer** includes a conveyancing practitioner (but note clause 31.1 PLS Guidelines and conveyancing practitioner).

**New title to be issued** A new title is 'issued' when the title is available for searching and the seller notifies the buyer it is available.

**Person** includes any legal entity, such as a company.

**PLS guidelines** are property sale and purchase guidelines prepared for lawyers by the Property Law Section (PLS) of the New Zealand Law Society. (The relevant PLS guidelines are available on [www.propertylawyers.org.nz](http://www.propertylawyers.org.nz))

**Promise** includes warranty.

**Property** includes all fixtures that are part of the property except any fixtures that are specifically excluded from the sale.

**REINZ** is the Real Estate Institute of New Zealand Incorporated.

**REINZ Book of Standard Clauses** means this Section B—Standard Clauses.

**Seller** includes vendor.

**Settlement** is completed when the amount due on settlement is paid by the buyer and the seller's lawyer electronically releases the instruments in accordance with clause 23.16.

**Settlement date and possession date** are the same if one of them has not been shown in Section A.

**Signed** means the agreement is 'signed' when any offer or counter offer made by either party is legally accepted by the other party. The agreement will be treated as 'signed' on the agreement date (if any) shown in Section A. However, the agreement will not be treated as 'signed' on that date if either party proves it was signed on a different date.

**The agreement** includes Section A (REINZ Agreement Form), Section B (REINZ Book of Standard Clauses), and any attachments intended to be part of the agreement.

**Title to the property** includes:

- any new title to be issued for the property, and
- all titles to the property if there is more than one.

**Working day means any day of the week other than:**

- Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, and Labour Day
- a day in the period that begins on 24 December and ends on 6 January in the following year
- the day observed as the anniversary of any province in which the property is situated.

A **working day** starts at 9am and ends at 5pm.

## 1.2 Interpretation

The interpretations in this clause 1.2 have their given meaning, unless the meaning does not make sense in the context of the agreement.

**Clause headings and warnings** are for information purposes only. They are not part of the agreement.

**Clause references** refer to clauses in Section B unless otherwise stated.

### Payment

- A payment cannot be treated as made until the party receiving it has been notified of the payment by the person or bank making the payment.
- An entry recorded in the payee's bank account will not be notification of payment.
- A payment cannot be treated as having been made if it is later dishonoured or reversed.
- Payments made after the end of a working day will be treated as having been made at 9am on the next working day.

## 2. Notices

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**Give** Anything either party must or may 'give' to the other party in accordance with this agreement must be given by notice if it is possible to do so.

**Notice** Anything described as a 'notice' in the agreement must be in writing and must be delivered or sent in one of the ways allowed by this clause 2.

**Notify/notification** A notification must be sent by notice.

**Notices** can be given to a party or the party's lawyer or to any other person authorised by the party to receive them by:

- delivering them to the appropriate person or to an appropriate address
- posting them by ordinary mail to an appropriate address
- sending them by DX to an appropriate address
- faxing them to an appropriate fax number
- sending signed and scanned notices by email to an appropriate email address.

**Notices** will be treated as being received by a party by:

- delivery—when they are delivered
- ordinary post or DX—at 9am 3 working days after the day on which they are posted or sent
- fax or email—when they are sent, unless either party can prove that the party did not receive them at that time because of a technical defect.

A party will not be **notified**, or **given a notice**, until the party has received the notice (or is treated by the agreement as having received it).

All periods starting after a notice is given exclude the day on which the notice is given.

Notices given after the end of a working day will be treated as having been given at 9am on the next working day. The actual time the notices were given will decide priority if more than one notice is treated as being given at the same time and date.

### 3. Priorities for sections of the agreement

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3.1 The following priorities apply if there is a conflict between different parts of the agreement.

First	Section A—Part 3: Agreement
Second	Section A—Part 2: Additional clauses
Third	Section A—Part 2: Conditions
Fourth	Section A—Part 1: Essential information
Fifth	Section B—REINZ Book of Standard Clauses

Any attachments that are part of the agreement will be treated as part of Section A—Part 2.

### 4. Faxed signatures and extra copies

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4.1 A faxed signature on the agreement is as valid as the original signature.

4.2 Two or more identical copies of the agreement will be treated as one agreement if everyone required to sign the agreement has signed at least one copy.

### 5. When trustees sign the agreement

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5.1 In this clause 5 the following apply.

**Independent trustee** A trustee is an independent trustee of a trust unless the trustee is a beneficiary of the trust or the relative of a beneficiary. However, a trustee who is a beneficiary or relative will be an independent trustee if the trustee is described as an independent trustee somewhere in the agreement.

**Relative** means:

- a grandparent, parent, spouse, de facto partner, brother, sister, child or grandchild of a beneficiary, and
- a company controlled by one or more of those persons including a beneficiary.

**Trust** means a trust that is named in the agreement.

**Trustee** is a person named as a buyer or a seller who is described as a trustee of a trust.

5.2 An independent trustee's liability under the agreement is limited to the assets of the trust available to cover the liability. However, an independent trustee will be personally liable if the other party suffers a loss as the result of the trustee's dishonesty or deliberate breach of the trust.

### 6. Signing by an agent

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6.1 A person signing as the buyer's agent will be treated as the buyer and not just the buyer's agent if the person signs the agreement on behalf of:

6.1.1 a company yet to be formed, or

6.1.2 a person whose name is not disclosed to the seller before the seller signs the agreement.

### 7. Another buyer

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7.1 The buyer can notify the seller that another named person (or 'nominee') will complete the purchase in the buyer's place.

7.2 However, the buyer will still have to comply with the agreement as buyer if the person named fails to do so when required. This clause 7.2 will apply whether or not the words 'or nominee' (or similar) appear after the buyer's name in Section A.

## **8. Changing the agreement**

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- 8.1 The agreement cannot be changed after it is signed unless both parties agree in writing to the change.

## **9. When something has been incorrectly described**

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- 9.1 The buyer cannot end the agreement because of an incorrect description in it unless something in the agreement allows the buyer to do so.
- 9.2 The buyer may claim compensation from the seller for any incorrect description either before or after settlement. However, the claim must be made within 6 months of the buyer first becoming aware of the incorrect description.

## **10. Lowest price**

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- 10.1 In this clause 10.1 'lowest price' has the meaning given to it by section EW 32 of the Income Tax Act 2007.
- The parties agree that the price is the lowest price for everything sold in the agreement.

## **11. Interest on overdue payments**

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- 11.1 Each party must pay interest to the other party on any overdue payments owed to the other under the agreement.
- 11.2 Interest is calculated on a daily basis at the interest rate (see Section A, Part 1) from the due date for payment to the date of actual payment.
- 11.3 In this clause 11.3 the 'taxpayer's paying rate' is the rate of interest charged by the Inland Revenue Department from time to time for late payment of income tax.

The interest rate will be the taxpayer's paying rate as at the due date for payment plus 2 percent per annum if the interest rate is not recorded in Section A, Part 1.

## **12. Deposit**

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- 12.1 In this clause 12 a party is 'at fault' if the party wrongly fails to carry out any of the party's obligations under the agreement.
- 12.2 The deposit is both a deposit and part payment of the price.

### **Information about the deposit for the buyer**

- 12.3 The buyer must pay the deposit as soon as the agreement is signed, unless the agreement has a different requirement for payment.
- 12.4 The deposit must first be paid to the agent or, if there is no agent, to the seller's lawyer (note clause 31.1). The seller must immediately pay the deposit to the agent or lawyer if the deposit is first paid to the seller.
- 12.5 The agent or seller's lawyer must hold the deposit as a stakeholder for both parties until one of the parties is entitled to receive it.
- 12.6 The deposit must be refunded to the buyer in full if the agreement ends before settlement and the buyer is not at fault. Payment must be made within the 5 working days after the agreement ends.

### **Information about the deposit for the seller**

- 12.7** The deposit can be paid to the seller when all the conditions in the agreement are satisfied. However, if the agent has the deposit, the agent must first be allowed by law to release it.
- 12.8** The seller can keep the deposit when all the conditions in the agreement are satisfied if the agreement ends because the buyer is at fault and the seller is not at fault. But the amount kept cannot exceed 10 percent of the price (excluding GST, if any).

### **Interest on the deposit**

- 12.9** In this clause 12.9 'interest' is the net interest (if any) earned on the deposit while it is held by the agent or the seller's lawyer.

The interest must be paid to the party entitled to receive the deposit when the deposit is paid in accordance with clause 12.5.

## **13. Rules applying to the conditions in the agreement**

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### **Rules**

- 13.1** Each party must make a reasonable effort to try and satisfy any condition included anywhere in the agreement for the party's benefit.
- 13.2** A condition for a party's benefit cannot be treated as satisfied until the other party is notified it is satisfied, or treated as satisfied in accordance with clause 13.3.

### **A condition can be treated as satisfied in some circumstances**

- 13.3** A party can notify the other party that a condition can be treated as satisfied even if it has not been. But in this case:

**13.3.1** the condition must be for the party's benefit only, and

**13.3.2** the other party must be notified that the condition is treated as satisfied (or waived) before the agreement is ended by the other party.

### **The agreement can be ended if a condition is not satisfied**

- 13.4** Either party can notify the other party at any time that the agreement is ended if any condition is not satisfied by the time shown on the relevant conditional date (but note clause 14.5). However, notification must be given before the condition is satisfied.

The time will be 5pm if a time is not shown for a condition.

If the conditional date is not completed or is uncertain, the conditional date will be 15 working days after the date the agreement is signed.

Time is of the essence for the satisfaction of a condition.

### **No delay in agreement coming into force**

- 13.5** None of the conditions in the agreement will delay the agreement coming into force.

## 14. Giving approvals or consents

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14.1 This clause 14 applies to:

14.1.1 the title, LIM, builder's report and tenancy conditions in Section A, Part 2, and

14.1.2 any other conditions in the agreement to which this clause 14 expressly applies.

In this clause 14:

**Approve** includes 'consent to', 'to be satisfied', 'acceptable to' and words or expressions having a similar meaning.

The **approver** is the party required to approve something, or have something approved, as part of a condition in the agreement.

### Giving approvals

14.2 The approver cannot unreasonably withhold approval and must promptly give a 'refusal notice' to the other party if the approver decides not to give approval.

### Giving a refusal notice

14.3 A refusal notice must include reasons for not giving approval and explain what is reasonably required to rectify the problems disclosed in the notice, if they can all be rectified.

### Approver can end agreement

14.4 The approver can end the agreement because approval is not given if:

14.4.1 the refusal notice includes problems that cannot be rectified, or

14.4.2 all the problems in the refusal notice can be rectified but the other party refuses to rectify them.

Otherwise the approver cannot end the agreement, because a refusal notice is given, before the end of the 5th working day after the other party is given the refusal notice.

However the approver cannot end the agreement if the approver has unreasonably withheld approval.

### Approver cannot end the agreement

14.5 The approver cannot end the agreement under clause 13.4 because the required approval has not been given without first giving a refusal notice in accordance with clause 14.2.

### Extension to the condition date

14.6 The other party may extend the conditional date to a date set by the approver if the buyer does not have enough time to do what is required before giving approval.

The fact that the approver does not have enough time is not a 'problem' for the purposes of clause 14.7.

### Other party may rectify

14.7 The other party may within 5 working days of being given a refusal notice agree to rectify all the problems disclosed in the refusal notice. Then:

14.7.1 approval will be treated as given, and

14.7.2 the other party must rectify the problems as required by the refusal notice before the settlement date.  
This clause 14.7.2 is an essential term for the approver's benefit.

The other party may refuse to rectify but give the approver a specified time within which to withdraw the refusal notice (but note clause 14.4.2).

### Refusal notice can be withdrawn

14.8 The approver may notify the other party, at any time before the agreement ends, that a refusal notice is withdrawn. The relevant approval will then be treated as having been given (note clause 14.10).

### **Approval treated as given**

- 14.9** In this clause 14.9 a 'warning' is a notice given to the approver that the other party requires a refusal notice for a particular condition. A warning cannot be given before the relevant conditional date.

An approver who fails to give a refusal notice within 3 working days of being given a warning will be treated as having given the required approval.

### **Other party's rights to end the agreement are not affected**

- 14.10** Nothing in this clause 14 prevents the other party from ending the agreement under clause 13.4 or when the other party is given a refusal notice.

### **Settlement date can be extended**

- 14.11** The other party can extend the settlement date if the other party agrees to rectify and the 5 working day period in clause 14.7 ends on or after the settlement date. Then:

**14.11.1** the other party must notify the approver of the extended settlement date within 5 working days of receiving the refusal notice, and

**14.11.2** the extended settlement date cannot be more than 10 working days after the notification.

### **Time is of the essence**

- 14.12** Time is of the essence for the periods allowed in this clause 14 and for any periods extended by agreement between both parties.

## **15. Goods and services tax**

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- 15.1** In this clause 15 the following apply.

**Act** is the Goods and Services Tax Act 1985 (the Act).

**Dwelling** has the meaning given to it by section 2 of the Act.

**GST** is goods and services tax.

**GST amount** is an amount equal to a percentage of the deposit which is the same percentage as the rate the seller is charged for GST for this sale.

**Invoice payment date** is the later of:

- 10 working days after the buyer receives a tax invoice from the seller, or
- 10 working days before the seller's payment date.

**IRD** is the Inland Revenue Department.

**Tax invoice** is a tax invoice that complies with the Act.

**Required to pay GST** The buyer is required to pay GST if the price is plus GST and the seller has to account to IRD for the GST.

**Seller's payment date** is the last date on which the seller has to account to IRD for the GST.

### **GST options for the price**

- 15.2** The price is inclusive of GST (if any) if neither GST option has been chosen for the price in Section A, Part 1.

But the price will be plus GST (if any) when neither GST option has been chosen if:

**15.2.1** the buyer is registered for GST on settlement and the buyer is entitled to a GST credit for the purchase, or

**15.2.2** the 'Yes' option has been chosen for a sale as a going concern.

### **Seller must give the buyer a tax invoice**

- 15.3** The seller cannot, despite anything else in this clause 15, require payment of any GST before the buyer has been given a tax invoice. This clause 15.3 does not apply to payment of the GST amount with the deposit.

### **Buyer's extra payment with the deposit when the deposit is 'plus GST'**

- 15.4** The buyer must pay the GST amount in addition to the deposit when the deposit is paid in full if:

**15.4.1** the buyer is required to pay GST, and

**15.4.2** the 'plus GST' option has been chosen for the deposit in Section A, Part 1.

**Buyer's GST payment when the seller is not on an invoice basis**

15.5 The buyer must pay the GST then unpaid on settlement if:

15.5.1 the buyer is required to pay GST, and

15.5.2 the seller is not shown as paying GST on an invoice basis in Section A, Part 1.

**Buyer's GST payment when the seller is on an invoice basis**

15.6 The buyer must pay the GST then unpaid on or before the invoice payment date (see clause 15.1) if:

15.6.1 the buyer is required to pay GST

15.6.2 the seller is shown as paying GST on an invoice basis in Section A, Part 1, and

15.6.3 the seller has given the buyer the seller's payment date (see clause 15.1).

But the buyer must pay the GST then unpaid on settlement if it has not already been paid.

15.7 The buyer's payment of GST under clause 15.6 will not be treated as having been paid unless and until the payment cannot be dishonoured or reversed. For the purposes of this clause 15.7, a settlement payment as defined in clause 23.1 cannot be dishonoured or reversed.

**When the buyer does not pay GST on time**

15.8 In this clause 15.8 'loss' includes, among other things, any IRD penalties or interest.

The buyer must pay the seller an amount equal to the seller's loss if the buyer does not pay GST on time and the seller suffers a loss as a result, and

15.8.1 the amount of the loss will be in addition to any amount payable under clause 11 (Interest on overdue payments), and

15.8.2 the seller does not have to take any steps to reduce the seller's loss if the GST is not paid on time.

**Seller's GST obligations**

15.9 The seller must give the buyer a tax invoice within 5 working days of the buyer notifying the seller that a tax invoice is required.

But the buyer cannot require the seller to give the buyer a tax invoice before the GST time of supply.

15.10 The seller cannot require the buyer to pay GST on the value of any dwelling (see clause 15.1) included in the sale.



**Warning:** In some cases it may be appropriate for GST to be paid on the value of a dwelling. An appropriate clause should then be included in Section A, Part 2.

**Sale as a going concern**

15.11 The agreement is for a sale as a going concern and zero-rated for GST purposes, if:

15.11.1 the going concern 'Yes' option has been chosen in Section A, Part 1, and

15.11.2 the sale meets all the requirements of the Act for a sale as a going concern.

15.12 The buyer must pay GST when the going concern 'Yes' option has been chosen, if:

15.12.1 the sale does not meet all the requirements of the Act for a sale as a going concern

15.12.2 the buyer is required to pay GST, and

15.12.3 the seller gives the buyer a written explanation of why payment of GST is required, with the seller's tax invoice.

- 15.13** The sale will be treated as not meeting all the requirements of the Act (clause 15.12.1) if, among other things, at any time before or after settlement:
- 15.13.1** IRD refuses to accept that the agreement is for the sale of a going concern for GST purposes, or
  - 15.13.2** the seller genuinely doubts that the sale can properly be treated as a sale of a going concern for GST purposes.
- 15.14** The buyer must, if payment of GST must be made in accordance with clause 15.12, pay the GST on or before the later of:
- 15.14.1** the date on which the GST is payable in accordance with this clause 15, or
  - 15.14.2** 10 working days after the buyer receives the seller's tax invoice.



**Warning:**

**Sale as a going concern**—As buyer you give the seller a promise that you are registered for GST purposes at the time of supply in clause 19.13.

Both seller and buyer should get professional advice before treating the sale as a sale of a going concern.

## 16. Property title

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### Buyer's title obligations

- 16.1** The buyer cannot object to or requisition the title to the property once the buyer has approved it or is treated by the agreement as having approved it.
- 16.2** The buyer cannot withhold approval of a crosslease title for the property just because a structure other than a 'flat' is not included in the crosslease.

However, the structure must not be enclosed and attached to a flat and all of it must be within an 'exclusive use area' for the property owner's benefit. The exclusive use area must be shown on a flats plan and referred to in the crosslease.

### Seller's title obligations

- 16.3** Clause 16.1 does not allow the seller to ignore the seller's obligations in the agreement that relate to title to the property. (See clauses 19.4 and 19.5 for an example of these obligations.)

## 17. Unit titles

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- 17.1** The seller authorises the buyer to get from the body corporate secretary all information and certificates the buyer reasonably requires if the title to the property is a unit title.
- 17.2** If the property being sold is a unit title, the seller must, at least 2 working days before settlement, give the buyer's lawyer:
- 17.2.1** a current certificate under Section 36 of the Unit Titles Act 1972 (or its equivalent in any other Act) for the property being sold, and
  - 17.2.2** details of all body corporate insurance policies affecting the property.

This clause 17.2 is an essential term for the buyer's benefit.



**Warning:** As seller you make the buyer a promise about the unit title in clause 19.12.

## 18. Boundaries and fences

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- 18.1** The seller does not have to contribute to the cost of fencing any boundary of the property even if the seller owns neighbouring property. However, future owners of the neighbouring property cannot rely on this clause 18.1.
- 18.2** The seller can register a 'fencing covenant' against the title to the property to protect the seller's rights under clause 18.1.
- 18.3** The seller does not have to locate any boundary of the property for the buyer (but note clause 19.10).

## 19. Promises

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### When a promise is not carried out or is not correct

- 19.1** If either party makes a promise to the other party that is not carried out or is not correct, the party must carry it out or make it correct. The promise may be made anywhere in the agreement.



**Warning:** You may incur financial and other penalties if you do not make your promise correct or you fail to carry it out.

### Essential terms for promises

- 19.2** Clause 19.1 is an essential term for the benefit of the other party when the promise is made:

**19.2.1** in clauses 19.3, 19.4, 19.5, or 19.6; or

**19.2.2** in any other clause in the agreement that is described as, or is in fact, an essential term.

Clause 19.1 will otherwise be an essential term for the benefit of the other party only if failure to comply with it is material and unfavourable to the other party.

### Overseas Investment Act 2005

- 19.3** The buyer promises Overseas Investment Act 2005 (OIA) consent is not required for the buyer to complete the purchase unless:

**19.3.1** the OIA 'Yes' option has been chosen in Section A, Part 1, or

**19.3.2** OIA consent has already been given.

### Securities and notices of interest registered against the title

- 19.4** The seller promises that any securities over all or any part of the property, or anything else included in the sale, will be released on settlement.

- 19.5** In this clause 19.5 'caveat' includes similar notices of interest.

The seller promises any caveat registered against the title to the property will be removed on settlement.

### Council code compliance certificates

- 19.6** The seller promises that the seller has, or will have by settlement, a council code compliance certificate for any work done on the property when:

**19.6.1** the work has been done by or for the seller, and

**19.6.2** a code compliance certificate is required for the work.

This clause 19.6 applies to work done both before and after the agreement is signed.

### **Other council requirements**

**19.7** In this clause 19.7 'rules' means statutory and council requirements in force when the work was or is done.

The seller promises that any work done on the property by or for the seller requiring a building permit or consent complied, or will comply, with all relevant rules.

This clause 19.7 applies to work done both before and after the agreement is signed.

### **Seller's debts and other obligations**

**19.8** The seller promises the seller will indemnify the buyer if the buyer becomes, or will become, liable for any of the seller's debts or other obligations after settlement. The debts or obligations must relate to the property.

This clause 19.8 applies to the seller's debts and obligations that arise both before and after the agreement is signed. But it does not apply to any debt or obligation that the buyer has agreed to pay or carry out.

### **Notices affecting the property**

**19.9** The seller promises that the seller will promptly give the buyer a copy of any notice given as part of a statutory requirement that:

**19.9.1** affects, or might affect, the buyer's future use or benefit of the property, and

**19.9.2** is received by the seller either before or after the agreement is signed.

### **Work done on the property**

**19.10** The seller promises that all permanent structures built by or for the seller on the property lie completely within the area they are legally entitled to occupy. This clause 19.10 applies to everything built both before and after the agreement is signed.

### **Other matters that may affect the buyer**

**19.11** In this clause 19.11 an 'unfavourable agreement' is one that will:

- let another person do, or not do, something that will reduce the value of the property, or
- create an obligation for the buyer in favour of another person, or
- unfavourably affect the buyer's future use or benefit of the property.

The seller promises that:

**19.11.1** the seller has already given the buyer full details of any unfavourable agreement between the seller and any other person.

**19.11.2** the seller will not enter into any unfavourable agreement with any other person after the agreement is signed.

### **Unit title promise**

**19.12** In this clause 19.12 an 'unfavourable effect' will:

- unfavourably affect the buyer's future use and benefit of the body corporate common property, or
- result in an increase in the buyer's body corporate payments.

The seller promises that the seller has already given the buyer full details of anything the seller is aware of that will, or might, have an unfavourable effect.

This clause 19.12 only applies when the title to the property is a unit title.

### **GST—Sale as a going concern**

**19.13** The buyer promises that the buyer is, or will be, registered for GST purposes if the going concern 'Yes' option has been chosen in Section A, Part 1 (see Clause 15.11). Registration must be completed before the GST time of supply.

## 20. What happens if the property is damaged before settlement

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20.1 In this clause 20 the following apply.

**Damage** is damage to the property that occurs when the property is at the seller's risk (see clause 20.2). Damage does not include fair wear and tear.

**Damage is serious** when the estimate is more than the maximum damage cost or if a council building consent is required for any necessary repairs.

**Damaged** includes destroyed.

**Estimate** is a reasonable estimate of the reduction in value. The estimate must be in writing and made by a suitably qualified person if both parties cannot agree on the amount of the estimate.

**Maximum damage cost** is 5 percent of the price excluding GST, if any, with a maximum of \$200,000.00.

**Property** includes everything included in the sale.

**Reduction in value** is the reduction in value of the property caused by the damage. The reduction in value is the cost of repairing the damage if all the damage can reasonably be repaired.

**Repaired** Damage is 'repaired' when the property is put in the same condition (or better) that it was in when the agreement was signed.

### **The property is at seller's risk**

20.2 The property is at the seller's risk between the time the agreement is signed and the time the buyer pays the seller the amount due on settlement.



**Warning:** As buyer you should make your own insurance arrangements when you take possession of the property if you take possession before settlement even though the property is at the seller's risk.

### **Parties' rights and obligations when the property is damaged**

20.3 The seller must give the buyer full details of any damage as soon as the seller becomes aware of it.

20.4 The seller must, when necessary, allow people access to the property to obtain the estimate and check if a building consent is needed for any necessary repairs.

20.5 The buyer must get an estimate in writing (see clause 20.1) when the buyer is given details of the damage by the seller, unless:

20.5.1 the parties agree on the estimate

20.5.2 the parties agree the damage is serious, or

20.5.3 it is obvious that the damage is serious.

20.6 However, the seller may get the estimate in writing (when needed) if the buyer does not get it as soon as is reasonably possible.

### **Buyer can refuse to complete settlement**

20.7 The buyer can refuse to complete settlement until the estimate is available.

### **When the damage is serious**

20.8 The agreement will end if any part of the property is damaged and the damage is serious.

20.9 However, the agreement will not end if the buyer notifies the seller that the buyer will continue with the agreement, despite the serious damage, and pay the full price. Notification must be given by the buyer as soon as is reasonably possible and before the settlement date.

20.10 When the buyer completes settlement after notifying the seller in accordance with clause 20.9 that the buyer will continue with the agreement:

20.10.1 the seller must pay the buyer an amount equal to the insurance payments made by the seller's insurers (if any) for the damage, and

20.10.2 the seller must make the payment on settlement, or within 5 working days of the insurance payment being made when the insurance payment is made after settlement.

### **Reduction in price when the damage is not serious**

20.11 The seller must reduce the price by an amount equal to the actual reduction in value if the damage is not serious and the damage is not repaired before settlement.

20.12 The actual reduction in value must be decided by a formal dispute resolution process unless both parties agree on the amount of the reduction (see clause 29).

### **Buyer's insurance obligations**

20.13 The buyer must comply with any reasonable requirements of the seller's insurers that relate to the repair of the damage and are given to the buyer. The cost of complying (if any) must be paid by the seller.

### **Buyer's rights on settlement**

20.14 The buyer can require the seller's lawyer (note clause 31.1) to hold an amount equal to 150 percent of the estimate, out of the settlement proceeds, on the buyer's behalf after settlement if:

20.14.1 the damage is not serious and it has not been repaired before settlement, and

20.14.2 the actual reduction in value has not been decided before settlement.

20.15 The amount must be held by the seller's lawyer until the actual reduction in value has been decided or the seller has repaired the damage. Then:

20.15.1 the seller will get a credit for any cost of repairing the damage that is paid by the seller, and

20.15.2 the seller's lawyer must pay the buyer what the buyer is entitled to (if anything) from the amount held. The rest of the amount held (if any) can then be paid to the seller.

20.16 The seller must pay any shortfall to the buyer if the amount the buyer is entitled to is more than the amount paid to the buyer by the seller's lawyer.

### **Costs**

20.17 The parties must each pay half the cost of any fees payable to any third party for any required estimate or valuation. The seller must pay the seller's lawyer's costs for holding and paying out the money.

## 21. Buyer can inspect the property

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### Buyer's inspection rights

- 21.1 After the agreement is signed, the buyer can inspect the property and anything else included in the sale once at any reasonable time before settlement.
- 21.2 But, the buyer can inspect the property again, as necessary, to check if any required repairs have been completed (see clause 20).
- 21.3 The buyer must tell the seller when the inspection will take place a reasonable time before each inspection.

### Buyer cannot inspect without tenant's permission

- 21.4 However, the buyer cannot inspect any part of the property occupied by a tenant without the tenant's permission, if the property is sold as a tenanted property.

## 22. New title to be issued for the property

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### Settlement date

- 22.1 The settlement date will be extended to a date 10 working days after the new title is issued if:

22.1.1 a new title has to be issued for any part of the property, and

22.1.2 the new title has not been issued at least 10 working days before the settlement date.

### Resource Management Act condition

- 22.2 The condition in section 225 of the Resource Management Act 1991 (subdivision plan to deposit) is a condition of the agreement if it applies to the agreement.



**Warning:** You cannot legally remove the condition in clause 22.2.

### When ownership of the property has to be transferred to the buyer before settlement

- 22.3 In this clause 22.3 the 'undertakings' are undertakings by the buyer's lawyer that:
- the buyer's lawyer holds the difference between the unpaid balance of the price and any necessary loan in trust
  - the buyer has signed, and done, everything required to uplift any necessary loan
  - the buyer's lawyer holds an irrevocable authority from the buyer to uplift the loan (if any) and pay all money due on settlement to the seller on the settlement date
  - no deduction will be made from the amount due on settlement
  - the buyer's lawyer is not aware of anything that might prevent the buyer from completing settlement on the settlement date.

The seller does not have to transfer ownership of the property to the buyer before settlement, for a new title to be issued, until the buyer gives the undertakings.

This clause 22.3 is an essential term for the seller's benefit (see clause 25).

## 23. Settlement of the sale and purchase

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23.1 In this clause 23 the following apply.

**Bank** does not include any bank treated as unacceptable for settlement purposes by the PLS guidelines (see clause 1.1).

**Instruments** are the Land Information New Zealand electronic instruments necessary to give title to the property to the buyer in accordance with:

- the agreement for sale and purchase, and
- any other agreement made between the parties.

The instruments must, among other things, be signed and certified by the seller's lawyer before they can be treated as having been completed.

**Other securities** are securities over anything being sold that is not land.

**Other securities notice** is a list of other securities the buyer wants released on settlement.

**Pre-settlement undertakings** are undertakings that:

- the instruments have been completed
- the instruments can be electronically released immediately the settlement payment is made if the buyer's lawyer has complied with clause 23.12
- the instruments will be electronically released as soon as is reasonably possible (note clause 23.15)
- the seller's lawyer will obtain releases of the other securities included in the other securities notice (if any) as soon as is reasonably possible after settlement
- the agent will be authorised to release the keys (if any) to the buyer immediately the settlement payment has been made.

**Seller's bank account** means the bank account chosen by the seller's lawyer for settlement purposes.

**Settlement payment** is payment of the amount due on settlement by:

- a payment described in the PLS guidelines as a same day cleared payment
- a payment made by a bank which confirms in writing to the seller's lawyer that the payment is in cleared funds and will not be reversed, or
- a payment made by bank cheque direct into the seller's nominated bank account when payment is otherwise made in accordance with PLS guidelines for payment by bank cheque.

**Settlement statement** A settlement statement must include, among other things:

- the price
- the amount of the price already paid (including the deposit)
- adjustments for any outgoings like rates (but not insurance premiums)
- adjustments for any incomings like rent
- the GST that must be paid (if any)
- the amount due on settlement.

**Settlement to be carried out by lawyers**

23.2 Settlement must be carried out (as an electronic settlement) by the seller's lawyer and the buyer's lawyer acting on behalf of the seller and the buyer respectively.

**Client authorities**

23.3 The parties must each sign the appropriate client authority and instruction forms before settlement.

### **Payment of the amount due on settlement**

- 23.4** The buyer must pay the amount due on settlement on the settlement date (but note clauses 20.7 and 25.2).
- 23.5** Payment for settlement purposes must be made by a settlement payment into the seller's bank account (see clause 23.1).
- 23.6** Notification of the payment must include the relevant payment details set out in the PLS guidelines.

### **Seller's obligations before settlement**

- 23.7** The seller must prepare a settlement statement and send it to the buyer's lawyer before the settlement date.
- 23.8** The seller's lawyer must, before the settlement date, give the buyer's lawyer:
- 23.8.1** the information necessary to enable the buyer's lawyer to prepare the dealing electronically, and
  - 23.8.2** a copy of an encoded deposit slip for the seller's bank account.

### **Buyer's rights and obligations before and after settlement**

- 23.9** The buyer may give the other securities notice to the seller's lawyer (see clause 23.1) if there are any other securities.
- 23.10** The buyer's lawyer must, before the settlement date, create the appropriate electronic dealing in the electronic workspace, and give the eDealing number to the seller's lawyer.
- 23.11** The buyer must give the seller's lawyer a notice of sale for the property before the settlement date.
- 23.12** The buyer's lawyer must sign and certify the instruments (when necessary) before settlement.
- 23.13** The buyer's lawyer must register the instruments as soon as is reasonably possible after settlement.

### **Seller's pre-settlement undertakings**

- 23.14** The seller's lawyer must give the buyer's lawyer the pre-settlement undertakings before settlement.

### **Seller's obligations after payment is made**

- 23.15** The seller's lawyer must not pay out any part of the settlement payment until the instruments are electronically released for the buyer's benefit. However, payment can be made if the buyer's lawyer has not complied with clause 23.12.
- 23.16** The seller's lawyer must electronically release the instruments for the buyer as soon as is reasonably possible after the settlement payment is made. However, the buyer's lawyer must first notify the seller's lawyer that clause 23.12 has been complied with if it has not been complied with before settlement.
- 23.17** The seller must give the relevant local and regional authorities notices of sale when settlement has been completed if the seller has received them from the buyer.
- 23.18** The seller's lawyer must arrange releases of the other securities included in the other securities notice as soon as is reasonably possible after settlement.

### **Conveyancing practitioners**

- 23.19** The PLS guidelines include separate requirements for settlement when a conveyancing practitioner acts for a party on settlement (note clause 31.1).

### **Essential terms**

- 23.20** Clauses 23.7, 23.8, and 23.14 are essential terms for the buyer's benefit. Clause 23.10 is an essential term for the seller's benefit. Clause 23.19 is an essential term for the other party's benefit (see clause 25).

## 24. Possession of the property

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### **Settlement date and possession date remain the same**

- 24.1 When the settlement date and the possession date are the same they will remain the same if the settlement date is extended in accordance with clauses 14.11 or 22.1.

### **Buyer's rights to possession of the property**

- 24.2 The buyer is entitled to possession of the property on the possession date.
- 24.3 The buyer is entitled to vacant possession on the possession date if the property is not sold as a tenanted property.
- 24.4 But the buyer will not be entitled to possession until the buyer has first done everything then required of the buyer, by the agreement, for the seller's benefit.
- 24.5 However, the buyer will be entitled to possession when:
- 24.5.1 the possession date and the settlement date are the same
  - 24.5.2 the buyer is ready willing and able to complete settlement and notifies the seller accordingly, and
  - 24.5.3 the seller then fails to complete settlement when required to do so.

### **Buyer's rights if possession not given**

- 24.6 The seller must pay the buyer an amount equal to any loss the buyer has, as a result of not getting possession when the buyer is entitled to it, and:
- 24.6.1 the loss may include, among other things, all accommodation, storage, and extra legal costs the buyer has to pay
  - 24.6.2 the buyer may take into account, among other things, the nature and value of the property and its buildings when deciding what is reasonable in the circumstances
  - 24.6.3 the buyer does not have to take into account any interest received by the buyer on money held, and
  - 24.6.4 the buyer does not have to take any steps to reduce the amount of the buyer's loss.

However, if any amount claimed by the buyer is well in excess of what is reasonable in the circumstances, the excess cannot be included in the loss.

- 24.7 When the seller must pay the buyer for any loss in accordance with clause 24.6 and the amount of the loss has not been decided before settlement, then:
- 24.7.1 the buyer can make a reasonable estimate of the buyer's possible loss ('the estimated loss')
  - 24.7.2 the buyer can require the seller's lawyer (note clause 31.1) to hold an amount equal to 150 percent of the estimated loss, on the buyer's behalf after settlement, from the settlement proceeds
  - 24.7.3 the amount must be held until the amount of the loss has been agreed to by the parties or decided by a formal dispute resolution process (see clause 29), and
  - 24.7.4 the seller's lawyer must then pay the money held to the parties as required by the agreement or the decision.

**24.8** The seller must pay any shortfall to the buyer if the amount the buyer is entitled to is more than the amount paid to the buyer by the seller's lawyer.

#### **Costs**

**24.9** The seller must pay the seller's lawyer's costs for holding and paying out the money.

## **25. Essential terms of the agreement**

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**25.1** Essential terms of the agreement include:

- For the seller's benefit: the buyer's obligation to make any payment to the seller as required by the agreement.
- For the buyer's benefit: the seller's obligations to complete settlement, and to give the buyer possession of the property, both as required by the agreement.
- For the buyer's benefit: the seller's obligation to make any payment to the buyer and to have money held on behalf of the buyer, both as required by the agreement.
- Anything else in the agreement that is described as, or is in fact, an essential term for the benefit of either party.

#### **Refusal to complete settlement**

**25.2** A party can refuse to complete settlement unless, and until, the other party has complied with an essential term for the party's benefit.

#### **Failure to meet an essential term might end agreement**

**25.3** A party can notify the other party that the agreement is ended if it is not possible for the other party to comply with an essential term for the party's benefit.

#### **Default notice must first be issued in some cases**

**25.4** A party must first give the other party a default notice if:

**25.4.1** the party wants to end the agreement because the other party has not complied with an essential term for the party's benefit, and

**25.4.2** it is still possible for the other party to comply with the essential term.

**25.5** The party can then notify the other party the agreement is ended unless the other party does what is required by the default notice:

**25.5.1** within the time allowed, or

**25.5.2** before the other party is notified that the agreement is ended.

**25.6** A default notice must:

**25.6.1** describe how the other party has failed to comply with an essential term for the party's benefit, and

**25.6.2** allow the other party at least 10 working days after receiving the default notice to comply. But only 3 working days need be allowed if the default notice only requires the buyer to pay the deposit.

The party may extend the time allowed for the other party to comply.

### **Restriction on giving default notice**

**25.7** A party cannot give the other party a default notice, unless:

**25.7.1** the party has first done everything then reasonably required of the party by the agreement, and

**25.7.2** the party is willing and able to do what is still required of the party.

### **Time is of the essence**

**25.8** Time is of the essence to comply with an essential term unless a default notice must be issued in accordance with clause 25.4.

**25.9** Time is of the essence for any time allowed in a default notice and any extended time allowed by the party giving the default notice (see clause 25.6).

### **Complying with clause 25**

**25.10** A party must comply with this clause 25 before the party can end the agreement because the other party has failed to comply with an essential term.

## **26. The seller's right to re-sell**

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### **Seller may re-sell**

**26.1** The seller may re-sell the property and claim damages from the buyer if the seller has ended the agreement because the buyer has failed to complete settlement. The re-sale must be genuine.

### **Seller's damages**

**26.2** In this clause 26.2 the 'price' does not include GST (if any).

The damages may include all losses the seller has as the result of the buyer not completing settlement. The losses may include, among other things:

**26.2.1** an amount equal to any reduction in the price for the property

**26.2.2** any real estate agent's commission paid or payable for the agreement

**26.2.3** interest on the price at the interest rate (see clause 11) for the period from the settlement date to the settlement date for the re-sale. However, the seller may not claim more than 12 months interest.

**26.2.4** all reasonable legal, advertising and other costs and commissions paid, or payable, by the seller for ending this agreement and re-selling or trying to re-sell the property.

### **When the seller ends the agreement**

**26.3** The seller will be treated as having ended the agreement if:

**26.3.1** the seller is entitled to end it, and

**26.3.2** the seller signs another agreement for the sale, or possible sale, of the property.

### **Profit from the re-sale**

**26.4** The seller may keep any profit made from the re-sale of the property.

## 27. Other rights under the agreement

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- 27.1 Each party may use any legal or equitable remedies against the other party that are available in relation to the agreement.
- 27.2 A party's rights under the agreement do not limit the party's other legal and equitable remedies except to the extent that the agreement specifically does not allow them to be used.

## 28. How the agreement can end and when it ends

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28.1 The agreement will end:

28.1.1 when either party notifies the other party it is ended as allowed by the agreement, or

28.1.2 in any other way set out in the agreement, or

28.1.3 in any other lawful way.

### Existing rights will not be lost

28.2 A party will not lose any rights the party already has against the other party just because the agreement has been completed in all or any respects.



### Warning:

- Each of you might lose remedies you otherwise have against the other party if you end the agreement without first getting professional advice.
- If you are the seller, you must comply with the Property Law Act 2007 before you can end the agreement if the buyer has moved in or taken possession of the property.

## 29. Sorting out disputes

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### Mediation

- 29.1 All disputes between the parties concerning the agreement must be referred to mediation before any other formal dispute resolution process is used.
- 29.2 The mediation should include any disputes arising from negotiations before the agreement is signed.
- 29.3 The chairperson of the Property Law Section of the New Zealand Law Society, or the chairperson's nominee, will appoint the mediator if the parties cannot agree on one.
- 29.4 Each party must take part in the mediation in good faith and make a genuine attempt to resolve the dispute by the mediation process.
- 29.5 The mediator will decide how and when the mediation will otherwise be conducted.
- 29.6 Nothing in this clause 29 prevents either party giving a default notice to the other party under clause 25.6.

### Mediation not required

29.7 A party applying to any court for urgent interlocutory (interim) relief does not have to first refer that matter to mediation.

## **30. Auctions and tenders**

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**30.1** In this clause 'the documents' are, as appropriate, auction sale requirements or tender requirements, or their equivalent.

### **Auction or tender process**

**30.2** The agreement will be treated as having been signed as part of an auction or tender process if Section A is described as being for auctions or for tenders.

**30.3** The buyer will be treated as having approved the title to the property if the agreement is signed as part of an auction or tender process.

**30.4** When the agreement has been signed as part of an auction or tender process:

**30.4.1** anything in the documents intended to apply after the auction or tender has finished will be part of the agreement, and

**30.4.2** the relevant parts of the documents will have priority over the rest of the agreement except for the additional clauses in Section A, Part 2 - Additional Clauses and Section A, Part 3 - Agreement.

## **31. Conveyancing practitioners**

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**31.1** The PLS guidelines (see clause 1.1) include separate requirements for dealings with and by conveyancing practitioners. The lawyers for each of the parties must comply with the relevant guidelines when they apply.

## **32. Agent's commission**

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**32.1** The seller agrees to pay the agent's standard commission plus GST for the sale of the property.

The commission is payable as soon as the agreement is unconditional.

Any other written agreement between the seller and the agent for payment of commission has priority over this clause.

