
Library of Special Conditions for REIQ residential contracts (as at 13 March 2019)

**Note: These special conditions can be used for both:
REIQ Contract—Houses and Residential Land and REIQ Contract for
Residential Lots in a Community Title Scheme**

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1. Payment of Commission on settlement

1.1 *Definitions*

In this Special Condition **Commission** means the commission payable by the Seller to the Seller's Agent for the sale of the Property and specified in a tax invoice provided by the Seller's Agent.

1.2 *Approval to pay from Deposit*

If settlement occurs, the parties irrevocably authorise and direct the Deposit Holder to immediately pay from the Deposit:

- (a) the Commission to the Seller's Agent (or as the Seller's Agent directs); and
- (b) the balance of the Deposit (if any) to the Seller after payment of the Commission.

1.3 *Deposit not sufficient*

If the Deposit is less than the Commission, the Seller directs the Buyer to pay to the balance Commission owing to the Seller's Agent at settlement from the Balance Purchase Price.

1. Sale of Buyer's Property (where buyer has signed a contract to sell existing property)

1.1 Definitions

In this Special Condition:

- (a) **Buyer's Property** means the property located at
- (b) **Condition** means settlement of the sale of the Buyer's Property.
- (c) **Condition Date** means days after the Contract date.

1.2 Condition

This contract is conditional upon satisfaction of the Condition by the Condition Date.

1.3 Notice

The Buyer must give notice to the Seller the Condition is:

- (a) not satisfied and the Buyer terminates this contract; or
- (b) satisfied or waived by the Buyer.

1.4 Seller can terminate

The Seller can terminate this contract by notice to the Buyer if notice is not given under Special Condition 1.3 by 5pm on the Condition Date.

1.5 Consequences of termination

If this contract is terminated under Special Condition 1.3(a) or 1.4, the parties agree the Deposit is refunded to the Buyer in full and neither party will have any claim against the other party.

1.6 Buyer's continuing right

The Seller's right under Special Condition 1.4 is subject to the Buyer's continuing right to give notice under Special Condition 1.3.

1. Sale of Buyer's Property (where buyer has not signed a contract to sell existing property)

1.1 Definitions

In this Special Condition:

- (a) **Buyer's Property** means the property located at
- (b) **First Condition** means the Buyer entering into a contract for the sale of the Buyer's Property and any buyer conditions in that contract being satisfied.
- (c) **First Condition Date** means days after the Contract Date.
- (d) **Second Condition** means settlement of the sale of the Buyer's Property.
- (e) **Second Condition Date** means days after the Contract Date.

1.2 Condition

This contract is conditional upon satisfaction of the:

- (a) First Condition by the First Condition Date; and
- (b) Second Condition by the Second Condition Date.

1.3 Notice

The Buyer must give notice to the Seller if either the First Condition or the Second Condition is:

- (a) not satisfied and the Buyer terminates this contract; or
- (b) satisfied or waived by the Buyer.

1.4 Seller can terminate

The Seller can terminate this contract by notice to the Buyer if notice is not given under Special Condition 1.3 for the:

- (a) First Condition, by 5pm on the First Condition Date; and / or
- (b) Second Condition, by 5pm on the Second Condition Date.

1.5 Consequences of termination

If this contract is terminated under Special Condition 1.3(a) or 1.4, the parties agree the Deposit is refunded to the Buyer in full and neither party will have any claim against the other party.

1.6 Buyer's continuing right

The Seller's right under Special Condition 1.4 is subject to the Buyer's continuing right to give a notice under Special Condition 1.3.

1. Buyer's due diligence

1.1 **Definitions**

In this Special Condition:

- (a) **Condition** means the Buyer being satisfied with the results of any investigations the Buyer wishes to make in connection with the Property.
- (b) **Condition Date** means days after the Contract Date.

1.2 **Condition**

This contract is conditional upon satisfaction of the Condition by the Condition Date.

1.3 **Access**

The Seller must, within 48 hours of the Seller's Agent notifying the Seller a request has been made to the Seller's Agent by the Buyer:

- (a) allow the Buyer and its consultants, reasonable access to the Property for the purposes of the Buyer's due diligence investigation; and
- (b) provide to the Buyer any information held by the Seller about the Property relevant to the Buyer's due diligence investigation.

1.4 **Risk**

If the Buyer and/or the Buyer's consultants access the Property before settlement:

- (a) they do so at their own risk; and
- (b) the Buyer must rectify any damage they cause to the Property.

1.5 **Notice**

The Buyer must give notice to the Seller the Condition is:

- (a) not satisfied and the Buyer terminates this contract; or
- (b) satisfied or waived by the Buyer.

1.6 **Seller can terminate**

The Seller can terminate this contract by notice to the Buyer if notice is not given under Special Condition 1.5 by 5pm on the Condition Date.

1.7 **Consequences of termination**

If this contract is terminated under Special Condition 1.5(a) or 1.6, the parties agree the Deposit must be refunded to the Buyer in full and neither party will have any claim against the other party.

1.8 **Buyer's continuing right**

The Seller's right under Special Condition 1.6 is subject to the Buyer's continuing right to give a notice under Special Condition 1.5.

1. Inspection by Buyer

1.1 **Definitions**

In this Special Condition:

- (a) **Condition** means the Buyer and/or its consultants undertaking an inspection of the Property and being satisfied with the inspection.
- (b) **Condition Date** means days after the Contract date.

1.2 **Condition**

This contract is conditional upon satisfaction of the Condition by the Condition Date.

1.3 **Access**

The Seller must, after the Buyer giving the Seller at least 48 hours' notice, allow the Buyer and its consultants, reasonable access to the Property for an inspection.

1.4 **Risk**

If the Buyer and/or the Buyer's consultants access the Property before settlement:

- (a) they do so at their own risk; and
- (b) the Buyer must rectify any damage they cause to the Property.

1.5 **Notice**

The Buyer must give notice to the Seller the Condition is:

- (a) not satisfied and the Buyer terminates this contract; or
- (b) satisfied or waived by the Buyer.

1.6 **Seller can terminate**

The Seller can terminate this contract by notice to the Buyer if notice is not given under Special Condition 1.5 by 5pm on the Condition Date.

1.7 **Consequences of termination**

If this contract is terminated under Special Condition 1.5(a) or 1.6, the parties agree the Deposit is refunded to the Buyer in full and neither party will have any claim against the other party.

1.8 **Buyer's continuing right**

The Seller's right under Special Condition 1.6 is subject to the Buyer's continuing right to give a notice under Special Condition 1.5.

1. Early settlement

1.1 *Buyer's notice*

- (a) The Buyer may give a notice to the Seller at any time calling for an early settlement (**Notice**).
- (b) The Notice must nominate a new date for settlement which is not earlier than seven days after the Buyer gives a Notice.

1.2 *Consequences of notice*

If the Buyer gives a Notice:

- (a) any conditions in the contract which allow the Buyer to terminate the contract (other than for the default of the Seller) are deemed satisfied from the date of the Notice; and
- (b) the Settlement Date is amended to be the new date for settlement nominated in the Notice (time to remain of the essence).

1. Early possession

1.1 *Definitions*

In this Special Condition:

- (a) **Fee** means \$..... per day from the Start Date until the End Date.
- (b) **End Date** means the date the contract is terminated or settled.
- (c) **Licence** means the licence granted under Special Condition 1.2
- (d) **Start Date** means

1.2 *Grant*

At the request of the Buyer, the Seller grants the Buyer a licence to occupy the Property from the Start Date until the End Date on the terms of Standard Condition 8.5 and this Special Condition 1.

1.3 *Fee*

- (a) The Buyer must pay the Seller the Fee in consideration for the Seller granting the Licence.
- (b) The parties agree the Fee is payable where this contract:
 - (i) settles, by way of an adjustment to the Purchase Price in the Seller's favour at settlement; and
 - (ii) is terminated, within two Business Days of the contract being terminated.

1.4 *Addition terms*

In addition to the terms in Standard Condition 8.5, the Buyer acknowledges and agrees:

- (a) if this contract is terminated by either party after the Start Date, the licence will be at an end and the Buyer must immediately vacate the Property, remove all of the Buyer's possessions from the Property and rectify any damage to the Property caused by the Buyer or its invitees (including as a result of the removal of the Buyer's Property);
- (b) the Buyer and its invitees enter the Property at their own risk; and
- (c) the Buyer accepts the Property on settlement in the condition it was in at the Start Date.

1. Unapproved improvements

1.1 **Definitions**

In this Special Condition:

- (a) **Improvements** means _____
- (b) **Object** means to make any requisition or objection, delay settlement, withhold any part of the Purchase Price, rescind or terminate this contract or claim compensation for any loss or expense.

1.2 **Buyer's acknowledgement**

The Seller discloses to the Buyer, as far as the Seller is aware, the Improvements have not been approved by the relevant authority.

1.3 **Notice or orders**

The Seller confirms as at the Contract Date they #**[have / have not]** received any notice or order from any relevant authority requiring the Seller to carry out works in relation to the Improvements.

1.4 **Buyer's agreement**

The Buyer:

- (a) accepts the Improvements as is where is;
- (b) agrees:
 - (i) the Seller is not required to do anything to cause the Improvements to be approved, either before or after settlement;
 - (ii) the Buyer is responsible for any costs required to be incurred to have the Improvements approved after settlement;
- (c) may not Object about or in connection with any matter concerning the Improvements; and
- (d) indemnifies the Seller against any loss or expense suffered or incurred by the Seller in connection with the Improvements after settlement.

1. Sale as is where is (residential house and land)

1.1 **Changes to the standard terms**

The Standard Conditions are amended as set out below.

Clauses	Amendment
4.1, 6.2, 7.4(1)(d), 7.4(2) and 7.4(3), 7.5(2), 7.5(3) and 7.5(4), 7.6, 7.7(1) and 7.7(2)	Delete.
5.6	Delete and replace with: <i>“The Buyer acknowledges the Seller is not required to remove anything from the Property prior to settlement.”</i>
7.4(4)	Delete and replace with: <i>‘If a statement contained in clause 7.4(1) is not accurate and as a result the Buyer is materially adversely affected then the Buyer may terminate this contract by written notice to the Seller, and the Deposit paid under this contract must be refunded to the Buyer by the Deposit Holder in full and final settlement of all Claims’</i>

1.2 **Buyer’s due diligence**

The Buyer acknowledges that the Buyer has:

- (a) conducted its own due diligence concerning the Property or had the opportunity to do so; and
- (b) relied entirely on its own skill and judgment in making the decision to purchase the Property.

1.3 **Buyer’s acceptance**

The Buyer acknowledges, the Buyer:

- (a) buys the Property as is where is; and
- (b) has not relied upon any representation or warranty made by or on behalf of the Seller, except as expressly set out in this contract.

1.4 **Limitation of Buyer’s rights**

The Buyer may not make any requisition or objection, delay settlement, withhold any part of the Purchase Price, rescind or terminate this contract or claim compensation in connection with any matter affecting the Property or this contract unless expressly allowed under this contract.

2. Sale as is where is (residential lots in a community title scheme)

2.1 *Changes to the standard terms*

The Standard Conditions are amended as set out below.

Clauses	Amendment
6.2, 7.4(2), 7.4(3), 7.4(5), 7.4(7) 7.5(2), 7.5(3) and 7.5(4), 7.7(1) and 7.7(2), 8.4	Delete.
5.6	Delete and replace with: <i>“The Buyer acknowledges the Seller is not required to remove anything from the Property prior to settlement.”</i>
7.4(4)	Delete and replace with: <i>‘If a statement contained in clause 7.4(1) is not accurate and as a result the Buyer is materially adversely affected then the Buyer may terminate this contract by written notice to the Seller, and the Deposit paid under this contract must be refunded to the Buyer by the Deposit Holder in full and final settlement of all Claims’</i>

2.2 *Buyer’s due diligence*

The Buyer acknowledges that the Buyer has:

- (a) conducted its own due diligence concerning the Property or had the opportunity to do so; and
- (b) relied entirely on its own skill and judgment in making the decision to purchase the Property.

2.3 *Buyer’s acceptance*

The Buyer acknowledges, the Buyer:

- (a) buys the Property as is where is; and
- (b) has not relied upon any representation or warranty made by or on behalf of the Seller, except as expressly set out in this contract.

2.4 *Limitation of Buyer’s rights*

The Buyer may not make any requisition or objection, delay settlement, withhold any part of the Purchase Price, rescind or terminate this contract or claim compensation in connection with any matter affecting the Property or this contract unless expressly allowed under this contract.

1. Seller may continue to market for sale

1.1 **Application**

This Special Condition applies if clause 3.1 and/or clause 4.1 apply.

1.2 **Buyer's acknowledgement**

The Buyer agrees until the conditions in clause 3.1 and 4.1 (if applicable) are satisfied or waived:

- (a) the Seller may continue to offer the Property for sale on the open market; and
- (b) if the Seller receives an offer from a third party to buy the Property, the Seller may give notice to the Buyer:
 - (i) terminating this contract; or
 - (ii) requiring the Buyer to waive the benefit of clause 3.1 and/or clause 4.1 (as applicable) by giving notice to the Seller.

1.3 **Failure to give notice**

If Special Condition 1.2(b)(ii) applies and the Buyer does not give notice to the Seller waiving the benefit of clause 3.1 and/or clause 4.1 (as applicable) by 5pm on the date 2 Business Days after the Seller gives a notice under clause 1.2(b)(ii), the Seller may, terminate this contract by notice to the Buyer.

1.4 **Consequences of termination**

If this contract is terminated under Special Condition 1.3, the parties agree the Deposit must be refunded to the Buyer in full and neither party will have any claim against the other party.

1. Guarantee and indemnity

1.1 **Application**

This Special condition applies if the Buyer is a company (including a company acting as a trustee).

1.2 **Definitions**

In this Special Condition, Guarantor means the directors and shareholders of the Buyer.

1.3 **Guarantee and Indemnity**

In consideration of the Seller entering into this contract at the Guarantor's request, the Guarantor:

- (a) unconditionally and irrevocably guarantees to the Seller:
 - (i) payment of all money payable by the Buyer under this contract; and
 - (ii) performance of all of the Buyer's other obligations under this contract; and
- (b) indemnifies the Seller against any claim or loss suffered or incurred by the Seller as a result of:
 - (i) a breach of this contract by the Buyer;
 - (ii) this contract being terminated for any reason other than the default of the Seller; or
 - (iii) any money payable by the Buyer under this contract being irrecoverable or refundable.

1.4 **Liability not affected**

The Guarantor's liability under Special Condition 1.23 will not be affected if:

- (a) the Seller allows any concession to the Buyer;
- (b) the Seller does not sue the Buyer;
- (c) the Seller terminates, assigns its interest in or exercises any other right under this contract;
- (d) the Buyer dies or becomes incompetent or insolvent;
- (e) there is more than one Guarantor, if any other of them has not signed this contract;
- (f) any provision in this contract is varied without the consent of the Guarantor; or
- (g) the purported rights the Seller has against the Buyer under this contract are invalid, void or unenforceable.

1.5 **Execution**

The Buyer must cause the Guarantor to sign this contract on the last page of these Special Conditions.

1.6 **Contract conditional upon guarantee**

This contract is not final or binding on the Seller until this contract is signed by the Guarantor.

1.7 **Liability to continue**

The Buyer and the Guarantor acknowledge that the liability of the Guarantor will continue until the Buyer has discharged all of its obligations under this contract.

1. Seller buying another property

1.1 *Definitions*

In this Special Condition:

- (a) **Another Property** means a property satisfactory to the Seller at its discretion.
- (b) **Condition** means #[settlement of the acquisition of the Another Property by the Seller / the Seller entering into a contract to buy Another Property].
- (c) **Condition Date** means days after the Contract Date.

1.2 *Condition*

This contract is conditional upon satisfaction of the Condition by the Condition Date.

1.3 *Notice*

The Seller must give notice to the Buyer the Condition is:

- (a) not satisfied and the Seller terminates this contract; or
- (b) satisfied or waived by the Seller.

1.4 *Buyer can terminate*

The Buyer can terminate this contract by notice to the Seller if notice is not given under Special Condition 1.3 by 5pm on the Condition Date.

1.5 *Consequences of termination*

If this contract is terminated under Special Condition 1.3(a) or 1.4, the parties agree the Deposit must be refunded to the Buyer in full and neither party will have any claim against the other party.

1.6 *Buyer's continuing right*

The Buyer's right under Special Condition 1.4 is subject to the Seller's continuing right to give a notice under Special Condition 1.3.

1. FIRB

1.1 *Definitions*

In this Special Condition:

- (a) **FIRB** means the Foreign Investment Review Board.
- (b) **FIRB Application** means an application for the FIRB Approval in the form required by FIRB and/or any other relevant law or policy.
- (c) **FIRB Approval** means an approval (including a deemed approval) of the Commonwealth Treasurer to the Buyer buying the Property with or without conditions.
- (d) **FIRB Approval Date** means days after the Contract Date.
- (e) **Foreign Person** has the meaning given to it in the *Foreign Acquisitions and Takeovers Act 1975* (Cth).

1.2 *Approval*

If the Buyer is a Foreign Person, this Special Condition 1 applies.

1.3 *Condition*

This contract is conditional on the Buyer obtaining the FIRB Approval by the FIRB Approval Date.

1.4 *FIRB Application*

The Buyer must:

- (a) make the FIRB Application and provide the Seller with a copy within 3 days of the Contract Date;
- (b) promptly give the Seller copies of all correspondence between the Buyer and FIRB in relation to the FIRB Application;
- (c) do everything reasonably necessary to obtain FIRB Approval by the FIRB Approval Date; and
- (d) give the Seller notice the FIRB Application has been approved or refused within two days of receiving notice from FIRB.

1.5 *Right to terminate*

If FIRB:

- (a) refuse to give the FIRB Approval; or
- (b) do not give the FIRB Approval;

by the FIRB Approval Date, then either party may terminate this contract by notice to the other party.

1.6 *Consequences of termination*

If a termination notice is given under Special Condition 1.5 then:

- (a) this contract will terminate on the date the relevant party receives the termination notice;
- (b) the Deposit is refunded to the Buyer; and
- (c) neither party will have any further claim against the other.

1. Seller to arrange professional clean

1.1 *Obligation*

The Seller must, at the Seller's cost, arrange for the property to be professionally cleaned prior to settlement.

1.2 *Adjustment to Purchase Price*

If the Seller fails to comply with Special Condition 1.1, the parties agree the Purchase Price will be adjusted at settlement in favour of the Buyer in an amount of \$750.

1. Condition—Body Corporate consent

1.1 *Definitions*

In this Special Condition:

- (a) **Condition** means the Body Corporate consenting to the Buyer # [keeping its pet in the Lot] [storing and/or parking its in the Lot or the Exclusive Use Areas].
- (b) **Condition Date** means days after the Contract date.

1.2 *Condition*

This contract is conditional upon the Seller procuring satisfaction of the Condition by the Condition Date.

1.3 *Notice*

The Seller must:

- (a) use its best endeavours to procure satisfaction of the Condition as soon as practical after the Contract Date;
- (b) keep the Buyer regularly informed about progress with satisfaction of the Condition; and
- (c) immediately notify the Buyer if the Condition is satisfied or the Seller becomes aware the Condition will not be satisfied and include reasonable evidence of this in the notice.

1.4 *Buyer can terminate*

The Buyer can:

- (a) terminate this contract by notice to the Seller if:
 - (i) notice of satisfaction of the Condition is not given under Special Condition 1.3(c) by 5pm on the Condition Date; or
 - (ii) notice is given by the Seller the Condition will not be satisfied; or
- (b) waive the condition by notice to the Seller given at any time.

1.5 *Consequences of termination*

If this contract is terminated under Special Condition 1.4(a), the parties agree the Deposit is refunded to the Buyer in full and neither party will have any claim against the other party.