

EXPLANATION OF STANDARD CLAUSES IN 2005 CONTRACT, CHANGES IN THE 2014 & 2016 EDITIONS

Clause	Description 2005	2014 changes	2016 changes
Front Page		Rename "Contract for Sale of Land" as "Contract for the Sale and Purchase of Land"	New item "NSW Duty" to facilitate OSR reference notation. Eventually the OSR will no longer hand stamp contracts used in electronic duties returns
		"Completion date" changed to "date for completion" and Clause 15 "Date for completion" better describes the target scheduled date for completion, as distinguished from the date upon which completion actually occurs	
		Storage space added as possible improvement and solar To reflect common occurrence, panels added as possible inclusion.	
		Addition of name and details of buyer's agent.	
		Addition of new tick-a-boxes for: <ul style="list-style-type: none"> • vendor agreeing to accept a deposit bond (clause 3); and 	

		<ul style="list-style-type: none"> • proposed electronic transaction (clause 30) 	
Page 2 and clauses 3 and 4.5		Remove reference to obsolete vendor duty. For ease of use and part of new clauses 3 and 30 respectively.	Addition of documents in list of documents including clearance certificate, land tax certificate, certificate of compliance or non-compliance for swimming pools – the vendor must now provide land tax certificate at least 14 days before completion and if not clear certificate – see standard clause 16.6
Page 2 - List of documents		<p>Update list of documents, including:</p> <ul style="list-style-type: none"> • delete reference to Crown tenure card; • reference to building certificate now generic; • add new documents in relation to changes made to the Swimming Pools Act and new vendor disclosure obligations to commence 29 April 2015, certificate of compliance, evidence of registration and relevant occupation certificate; and • add form of requisitions. 	
Page 3, Warning 1		Update names of Government departments, entities and utilities.	

Page 3, Warning 7		Reword warning in relation to release of deposit.	
Page 3, Warning 9		New warning in relation to Personal Property Act 2009	
Page 3, other non- Warning 10		Warning regarding finance available moved and reworded. In 2005 edition the warning regarding appears with the statutory warnings	
Page 4, warning 1			Updated government department entities and utilities for currency
Page 4, warning 11			New warning added with regard to Foreign Resident capital gains tax withholding measures from 1 July 2016 where sale price \$2million or more
1	Definitions of terms used in the contract	Definitions of "bank", "depositholder" and "settlement cheque" revised. New definition for "deposit-bond" added.	New definitions for clearance cert, remittance amount, TA Act and variation relating to standard clause 31 Foreign Resident capital gains tax withholding. Definition of work order changed to exclude Swimming pools so that a cert of non-compliance can be provided.
2	Clause 2 outlines conditions of payment of the deposit, using cash		

	or deposit bond and interest payments if invested		
3	Clause 3 is referring to vendor duty which is obsolete as there is no vendor duty	New clause added in relation to the use of deposit bonds.	
4	Clause 4 deals with the form and service of the transfer document	New clause 4.1 added obliging the purchaser to provide details to the vendor of the incoming mortgagee to assist the vendor and the discharging mortgagee with the introduction of optional no certificates of title. A discharging mortgagee who holds Control of the Right to Deal (CoRD) requires the details of the incoming mortgagee to complete the required lodgment case	
5	Clause 5 outlines to use of requisitions on title. There are questions a purchaser has the right to ask of the vendor about the property title within 21 days of exchange.	The clause now contemplates that the vendor may attach a form of requisitions to the contract and the purchaser is taken to have made those requisitions	
6	Clause 6 notes that any error or misdescription in the contract, made by the vendor can lead to a purchaser claiming compensation as to the title, property unless the purchaser knew the true position.		
7	Clause 7 grants a right to the purchaser to make a claim against		

	<p>the vendor prior to completion of the contract (Clause 7 Claim). If the amount claimed by the purchaser exceeds 5% of the price, then the vendor can rescind the contract, the deposit is returned to the purchaser and neither party has any further rights under the contract. (Often special conditions change this clause so as to reduce the standard amount of 5% to 1% or \$1.00).</p> <ul style="list-style-type: none"> • A common example of an error or misdescription is where the inclusions stipulated in the contract do not match those which are actually present on the property. • The Clause details what happens if the vendor does not rescind such that the parties must complete the contract and \$ must be held out of the deposit to finalise the claim • If the claim is made and the vendor serves notice to rescind, the purchaser may waive their rights and withdraw the claim 		
8	<p>Clause 8 details the Vendor's rights to rescind if they are unable or unwilling to comply with a</p>	<p>New clause 8.2 provides an express right of termination for the purchaser where the vendor does not comply with the contract.</p>	

	requisition, if they serve a notice of intention to rescind specifying the requisitions and grounds and there is not waiving of the requisition by the purchaser within 14 days.	This clause was introduced to rebalance the respective rights of the parties, having regard to the unfair contract terms provisions of the Australian Consumer Law	
9	<p>Clause 9 provides for the Vendor's remedies if a Purchaser fails to complete, or settle their purchase, on the agreed date. the Vendor has two options:-</p> <ul style="list-style-type: none"> • If the Vendor has re-sold the property under a contract made within 12 months after termination of the contract with the Purchaser, then the Vendor can sue to recover the deficiency on resale of the property. However, the deposit, which the Vendor is entitled to retain on default by a Purchaser, must be taken into account as a credit. Under this option the Vendor can also claim the reasonable costs and expenses arising out of the Purchaser's non compliance with the contract. 		

	<ul style="list-style-type: none"> In the alternative, the Vendor may sue to recover damages under the general law for breach of contract by the Purchaser 		
10	<p>Clause 10 precludes the purchaser from relying on any promises, representations and statements about the property that are not set out in the contract (does not include misrepresentations under TPA). They cannot rescind or make claims in respect of fences, services, walls or party walls, changes due to fair wear and tear before completion, reservations in the crown grant, anything disclosed in the contract, or because of a defect in inclusions title or quality.</p>		
11	<p>Clause 11 provides that if there are any work orders made on or before the contract date, the vendor must comply with them by completion. If a purchaser complies with a work order and the contract is rescinded or termination the vendor must pay for that work.</p>		
12	<p>Clause 12 provides that the vendor must allow inspections (reasonably</p>		

	required) for pre-inspection reports or any other reports reasonably required and allow pre-completion inspection in the 3 days before a settlement date		
13	Clause 13 details the GST provisions. These more of than not do not apply in the majority of residential transactions.		
14	Clause 14 details how adjustments at settlement are to be dealt with for amounts such as rent, rates, water and any other periodic outgoings including land tax where that is adjustable.		
15	Clause 15 explains that the parties must complete on the completion date		
16	Clause 16 provides for what occurs on completion/settlement date for the vendor, purchase and place for completion		<p>Clause 16.6 amended so that no matter who provides the land tax certificate, the vendor must provide a clear certificate on completion if land tax is owed;</p> <p>Clause 16.7 is amended to allow purchaser to withhold any necessary payment in the Foreign Resident capital gains tax withholding and exclude it from the amount payable to the vendor</p>
17	Clause 17 deals with the vendor giving vacant possession on		

	completion subject to existing tenancies which are disclosed in the contract. This clause notes that if there is a protected tenancy the purchase may claim compensation to rescind.		
18	Clause 18 details the circumstances where the parties have agreed to early possession by the purchaser. This is often superseded or added to with the drafting of an agreement called Licence or possession under licence. The clause details what occurs if the contract terminates or is rescind and how adjustments are dealt with.	Clause 18.5.2: Update interest rate reference to s 101 Civil Procedure Currency. Act.	
19	Clause 19 provides for a rescission of the contract noting that where a legal rescission occurs and a written notice of rescission is given, the purchaser is refunded the deposit, adjustments can be made if the purchaser was in possession. Further the contract provides that damages, costs and expenses arising out of a breach are claimable. This is often deleted by way of special conditions.		
20	Clause 20 deals with miscellaneous matters such as:		Clause 20.8 to take into account some clause 31 obligations continue after completion (eg purchaser to provide evidence of payment of remittance amount to ATO

	<ul style="list-style-type: none"> • An area or measurement in the contract is only approximate • Parties if more than one are bound separately and together • Detailing service of a document • Confirms that if there is are choice boxes on the front page and neither box is ticked, the choice in BLOCK CAPITALS applies. 		
21	Clause 21 details time limits for (unless otherwise stated in the contract), how public holidays and end of month days are dealt with.		
22	Clause 22 provides the undertaking by the purchaser that they are not a foreign buyer without permission to purchase under FIRB legislation		
23	Clause 23 provides the parameters for sale/purchase of strata or community title	Clause 23.18 & clause 23.18.2: Insert limitation of right exercisable in such that the purchaser's right only accrues after expiry of the cooling off period. To avoid a purchaser who subsequently exercises its cooling off rights from participating in that general meeting	

24	Clause 24 details what happens in sale of property where there is a tenant in possession including how adjustments are to be made in certain circumstances, transfer of bond monies,	Update in relation to retail lease legislation references	
25	Clause 25 applies where the land is qualified title, limited title and old system title and sets out the details of service of the abstract of title required.		
26	Clause 26 applies only if the purchase money is payable to the Crown		
27	Clause 27 sets out the provisions where there is consent to transfer on land that has restricted title		
28	Clause 28 applies only where the land is described as a lot in an unregistered plan. So Off the Plan Sales type matters. These provisions are generally altered by the vendor by way of special conditions setting their own time limits for the registration of the title and the conditions which will allow any rescission by parties.		Clause 28.3 amended for consistency re vendor's ability to rescind off the plan contracts which commenced after 2 November 2015
29	Clause 29 applies only where the contract part or completions is		

	conditional on an event occurring. For example the contract is condition on the purchaser obtaining finance approval.		
30		<p>This new clause has been added to assist the profession in moving to electronic conveyancing. The clause steps through the new processes required in electronic conveyancing. Matters covered by the clause include:</p> <p>a mechanism for the parties' representatives to confirm it is proposed that the matter will proceed using electronic conveyancing</p> <p>a mechanism for a party's representative to notify the other party that the matter will need to default to the paper environment and the payment of fees and costs associated with that change</p> <p>the manner in which a party would usually <u>create the workspace, populate the workspace</u> with data and send certain invitations to join the workspace and the subsequent communications between the parties as they prepare for settlement</p> <p>time frames for the supply of adjustment figures, completion of the financial settlement schedule and digital</p>	Clause 30.11.3 amended to remove need for cheque to be produced & forwarded to ATO after completion when electronically settling

		<p>signing of all things necessary for settlement</p> <p>a default mechanism for the provision of settlement documents outside the workspace if not otherwise agreed by the parties</p> <p>the consequences of the computer systems of the Land Registry, the RBA or the electronic platform being inoperative at the completion time; and</p> <p>the amendment of other clauses of the contract as necessary, for example clause 16 is amended such that the place for settlement becomes the workspace</p>	
<p>New Clause 31</p> <p>Foreign Resident capital gains tax withholding</p>			<p>This clause details the Foreign Resident capital gains tax withholding measures commencing on 1 July 2016 such as purchaser obliged to complete a purchaser payment notification with ATO and provide to vendor at least 5 days before completion and produce settlement cheque on completion for remittance amount.</p>