

Contract for the sale and purchase of business — 2021 edition

(a choice printed in BLOCK CAPITALS applies unless a different choice is marked)

Vendor's agent (if more than one, the first named)	Name Auction Advantage Address Unit 6 80 Emu Bank, Belconnen, ACT, 2617	Phone 0422 002 099 Fax Ref Maya Zielinski
Vendor	Name Rea Brett Address 10 Hume Street, Gunning, NSW, 2581	ACN/ARBN ABN 38 674 799 003
Vendor's <input checked="" type="checkbox"/> SOLICITOR <input type="checkbox"/> conveyancer	Name Harrington Hall Lawyers Address and DX Ethos House Level 2 28 Ainslie Place Canberra ACT 2601 e-mail address duncan@harringtonhall.com.au	Phone 02 6185 0999 Fax Ref 31870
Purchaser	Name Address	ACN/ARBN ABN
if more than one, as	<input type="checkbox"/> joint tenants <input type="checkbox"/> TENANTS IN COMMON (in equal shares unless otherwise stated)	
Purchaser's <input type="checkbox"/> SOLICITOR <input type="checkbox"/> conveyancer	Name Address and DX e-mail address	Phone Fax Ref
Depositholder	Vendors Agent	Invest deposit <input type="checkbox"/> NO <input type="checkbox"/> yes (clause 3)
Completion date	42nd	day after the contract date (clause 19)
Business name	Merino Café ABN 386 747 990 03 Registered: <input type="checkbox"/> no <input checked="" type="checkbox"/> YES	(clause 20)
Premises	62 YASS ST, GUNNING NSW 2581	
Contact Numbers	(include landline, fax, mobile numbers, e-mail address, domain name, webpages and social media being transferred with business) 0458 533 532, merinocafeinvoices@outlook.com, Facebook page (clause 20)	
Type of business	Café and Bakery	
Restraint time	Years (if not stated, no restraint time) (clause 17)	
Restraint distance	Kilometres (if not stated, no restraint distance) (clause 17)	
Training period	Pre-completion: 2 weeks at \$40 per hour days	Post-completion: 6 weeks at \$40 per hour, 38 hours per week days (clause 26)
Price	\$	
Deposit	\$ (10% of the price, unless otherwise stated)	
Balance	\$	
Trading stock maximum sum	\$ (clause 4)	
Asset and price apportionment	Goodwill: Equipment: (or as set out in attached apportionment schedule)	
Interdependent Contract	<input type="checkbox"/> NO <input checked="" type="checkbox"/> yes (clause 19) If yes – Vendor: Contract for Sale of Real Property 62 Yass Street, Gunning Vendor Rea Brett and see Special Conditions Purchaser:	
Contract date	(if not stated, the date this contract was made)	

NOTE: Subject to clause 13, the price INCLUDES goods and services tax (if any) payable by the vendor.

Vendor

Purchaser

DOCUMENTS (copy of document attached if marked) (some copies are required by *legislation*)

<input type="checkbox"/> profit and loss statement of the <i>business</i>	<input type="checkbox"/> current lease of <i>premises</i>
<input type="checkbox"/> balance sheet of the <i>business</i>	<input type="checkbox"/> proposed lease of <i>premises</i>
<input type="checkbox"/> schedule setting out asset and price apportionment	<input type="checkbox"/> memorandum setting out lease covenants
<input type="checkbox"/> inventory of <i>equipment</i>	<input type="checkbox"/> document evidencing a variation of lease
<input type="checkbox"/> depreciation schedule	<input type="checkbox"/> headlease affecting <i>premises</i>
<input type="checkbox"/> list of <i>stock-in-trade</i>	<input type="checkbox"/> property certificate for the land
<input type="checkbox"/> list of <i>work in progress</i>	<input type="checkbox"/> plan of the land
<input type="checkbox"/> promise, statement or representation made by (or on behalf of) <i>vendor</i> and relied on by <i>purchaser</i>	<input type="checkbox"/> strata by-laws
<input type="checkbox"/> promise, statement or representation made by (or on behalf of) <i>purchaser</i> and relied on by <i>vendor</i>	<input type="checkbox"/> notice or order affecting the premises
<input type="checkbox"/> license affecting the <i>business</i>	<input type="checkbox"/> lessor's disclosure statement (<i>Retail Leases Act 1994</i>)
<input type="checkbox"/> notice or order affecting the <i>business</i>	<input type="checkbox"/> lessor's disclosure update (<i>Retail Leases Act 1994</i>)
<input type="checkbox"/> list of continuing agreements (for example, equipment and service agreements)	<input type="checkbox"/> lessee's disclosure statement (<i>Retail Leases Act 1994</i>)
<input type="checkbox"/> equipment and service agreement	<input type="checkbox"/> assignor's disclosure statement (<i>Retail Leases Act 1994</i>)
<input type="checkbox"/> franchise agreement	<input type="checkbox"/> <i>business name</i> registration certificate
<input type="checkbox"/> franchisor's disclosure statement (<i>Competition and Consumer Act 2010</i>)	<input type="checkbox"/> certificate of registration of trade mark
<input type="checkbox"/> assignor's disclosure statement (<i>Competition and Consumer Act 2010</i>)	<input type="checkbox"/> certificate of registration of patent
<input type="checkbox"/> PPS Act Register search	<input type="checkbox"/> certificate of registration of design
<input type="checkbox"/> development approval	<input type="checkbox"/> document evidencing rights to internet domain name
<input type="checkbox"/> document evidencing restraint affecting <i>business</i>	<input type="checkbox"/> document evidencing rights to internet web site
<input type="checkbox"/> list of key persons and persons who will sign the restraint deed	<input checked="" type="checkbox"/> schedule A - employees
	<input type="checkbox"/> service or other agreement with employee
	<input type="checkbox"/> particulars of <i>superannuation fund</i> for employees of <i>business</i> (name of fund, trustee, members)

CHOICES

<i>Business</i> sold on a stock inclusive basis	<input type="checkbox"/> NO	<input checked="" type="checkbox"/> YES	if yes, <i>price</i> includes trading stock (clause 4)
<i>Stock-in-trade</i> on consignment	<input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES	(clause 10.1.5)
Special completion address	<input type="checkbox"/> NO	<input type="checkbox"/> YES	address (clause 20)
Sale subject to the grant of a new lease	<input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES	(clause 27 and 28)
<i>Landlord's</i> mortgagee's consent required	<input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES	(clause 27)
<i>Landlord's</i> mortgagee's consent obtained	<input type="checkbox"/> NO	<input type="checkbox"/> YES	(clause 27)
<i>Purchaser</i> must provide a suitable guarantee	<input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES	(clause 27.2.3)
<i>Franchisor's</i> consent required	<input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES	(clause 30)
<i>Franchisor's</i> consent obtained	<input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES	(clause 30)
<i>Purchaser</i> requires audit	<input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES	(clause 8)
Adjustment for accrued but untaken personal/carer's leave	<input type="checkbox"/> NO	<input type="checkbox"/> YES	If yes, (clause 35.4.2)
Long service leave multiplier applies	<input type="checkbox"/> NO	<input type="checkbox"/> YES	If yes, (clause 35.10)
Electronic transaction	<input type="checkbox"/> NO	<input checked="" type="checkbox"/> YES	If yes, (clause 28)

GST PROMISES (A New Tax System (Goods and Services Tax) Act 1999) (clause 13)

This sale is a taxable supply (Subdivision 9-A)	<input type="checkbox"/> NO <input type="checkbox"/> YES
This sale is the supply of a going concern (Subdivision 38-J)	<input type="checkbox"/> no <input checked="" type="checkbox"/> YES

LEASE PARTICULARS

Date lease starts:
Date lease ends:
Current rent (show monthly/annually):
Current outgoings (show monthly/annually):
Review dates:
Option period:
Date(s) on which option to renew lease exercised:
Date(s) on which option to renew lease to be exercised:
Last day for exercise of option to renew lease:
Guarantee or security deposit:

VENDOR'S ACCOUNTANT - NAME, ADDRESS AND PHONE NUMBER

SCHEDULE A - EMPLOYEES

Name	Position Title Classification	Modern Award / Enterprise Agreement Coverage	Date of Com- mencement of Employment	Salary / Wage level	Employment Status e.g. full time, part time or casual	Service Contracts and Agreements Attached	Employee Entitlements e.g. personal/carer's leave, annual leave, long service entitlements, paid rostered days off, bonuses/commissions

Entitlement Balance [Summary]

1/07/2025 To 29/01/2026

Entitlement	Opening Hours	Hours Accrued	Hours Taken	Available Hours	Value
Brett, Lilybelle					
			*None		
Annual Leave Accrual	181.14	84.58	190.50	75.22	\$2,407.01
Personal Leave Accrual	206.38	42.30	0.00	248.67	\$7,957.57
Total:	387.52	126.87	190.50	323.89	\$10,364.58
Mantell, Tessarna					
			*None		
Annual Leave Accrual	105.12	84.73	141.50	48.34	\$1,026.34
Personal Leave Accrual	63.57	42.38	9.50	96.45	\$2,047.65
Total:	168.69	127.11	151.00	144.80	\$3,074.00
Watt, Tess					
			*None		
Annual Leave Accrual	0.00	46.65	20.50	26.15	\$836.90
Personal Leave Accrual	0.00	23.33	6.50	16.83	\$538.59
Total:	0.00	69.98	27.00	42.98	\$1,375.49

WARNINGS

1. Various Acts of Parliament and other matters can affect the rights of the parties to this contract. Some important matters are actions, claims, consents, decisions, licences, notices, orders or proposals involving –

Australian Competition and Consumer Commission	Franchising Code of Conduct	Privacy law compliance
Council	Independent Liquor and Gaming Authority	SafeWork NSW
Department of Education, Skills and Employment	IP Australia	Telecommunications Authority
Electricity Authority	Landlord of premises	Transport for NSW
Environment Protection Authority	Mortgagee of premises	Water, sewerage or drainage authority
	NSW Fair Trading	
	Owner of adjoining land	

If you think that any of these matters affects the business, tell your solicitor or licensed conveyancer. The parties should consider whether it is appropriate to disclose matters which are material to the business.

2. The sale and purchase of a business can have important taxation consequences. Vendors and purchasers should seek advice before entering into a contract about the tax implications (for example, capital gains tax, income tax, goods and services tax and payroll tax) of the transaction(s).
3. When the parties are negotiating the completion date of this contract, the parties should take into account the time taken to obtain necessary consents (for example, from landlords and mortgagees).
4. The vendor should continue the vendor's insurance until completion. If the vendor wants to give the purchaser possession before completion, the vendor should first ask the insurer to confirm this will not affect the insurance.
5. The purchaser should arrange insurance.
6. If the purchaser intends to re-employ people currently employed in the business, the purchaser may be assuming liabilities relating to the entitlements of those employees and those employees will need to agree to their new employment.
7. Assets may be affected by the *Personal Property Securities Act 2009* (Cth).
8. The purchaser will usually have to pay duty on this contract. If the purchaser does not pay the duty within 3 months after the date of the making of this contract, the purchaser may incur penalties.

DISPUTES

If you get into a dispute with the other party, the Law Society of NSW and Real Estate Institute of NSW encourage you to use informal procedures such as negotiation, independent expert appraisal or mediation (for example, mediation under the Law Society Mediation Rules).

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The *vendor* sells and the *purchaser* buys the *business* for the *price* under these provisions, subject to any *legislation* that cannot be excluded.

1 Definitions (a term in italics is a defined term)

1.1 The business means the business identified on page 1 of the contract and includes the chattels, fittings, fixtures and furniture, goodwill, intellectual and industrial property, licences, permits, plant, quotas and software of the business, together with any other items referred to in this contract as forming part of the business.

1.2 In this contract, these terms (in any form) mean –

<i>adjustment date</i>	the earlier of the giving of possession to the <i>purchaser</i> or completion;
<i>bank</i>	the Reserve Bank of Australia or an authorised deposit-taking institution which is a bank, a building society or a credit union;
<i>business</i>	the business described in provision 1.1;
<i>business day</i>	any day except a bank or public holiday throughout NSW or a Saturday or Sunday;
<i>cheque</i>	a cheque that is not postdated or stale;
<i>document of title</i>	document relevant to the title or the passing of title;
<i>employees</i>	the persons whose names and particulars of employment as being employed in the <i>business</i> and are specified in Schedule A;
<i>employee entitlements</i>	the variable and fixed entitlements of <i>employees</i> of the <i>business</i> , including <i>wages</i> , annual leave, personal/carer's leave, long service leave, superannuation and entitlements under any <i>legislation</i> , modern award, enterprise agreement, service agreement, or other contract or arrangement;
<i>equipment</i>	the chattels, fittings, furniture, plant and vendor's fixtures forming part of the <i>business</i> ;
<i>FW Act</i>	<i>Fair Work Act 2009</i> (Cth);
<i>GST Act</i>	<i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth);
<i>landlord</i>	the landlord (lessor) of the <i>premises</i> ;
<i>legislation</i>	an Act or a by-law, industrial award or instrument, ordinance, regulation or rule made under an Act;
<i>normally</i>	subject to any other provision of this contract;
<i>party</i>	each of the <i>vendor</i> and the <i>purchaser</i> ;
<i>PPS Act</i>	<i>Personal Property Securities Act 2009</i> (Cth);
<i>requisition</i>	an objection, question or requisition (but the term does not include a claim);
<i>rescind</i>	rescind this contract from the beginning;
<i>serve</i>	serve in writing on the other <i>party</i> ;
<i>settlement cheque</i>	an unendorsed <i>cheque</i> made payable to the person to be paid – <ul style="list-style-type: none"> • issued by a <i>bank</i> and drawn on itself; or • if authorised in writing by the <i>vendor</i> or the <i>vendor's solicitor</i>, some other <i>cheque</i>;
<i>solicitor</i>	in relation to a <i>party</i> , the <i>party's</i> solicitor or licensed conveyancer named in this contract or in a notice served by the <i>party</i> ;
<i>stock-in-trade</i>	goods owned or agreed to be bought by the <i>vendor</i> which are to be sold to third parties (either wholesale or retail) as part of the conduct of the <i>business</i> ;
<i>superannuation fund</i>	a superannuation fund, retirement benefit scheme or other pension scheme or arrangement;
<i>tenant</i>	the tenant (lessee) of the <i>premises</i> ;
<i>terminate</i>	terminate this contract for breach;
<i>terminating employee</i>	an <i>employee</i> who is not a <i>transferring employee</i> ;
<i>trading stock</i>	<i>stock-in-trade</i> or <i>work in progress</i> ;
<i>transferring employee</i>	an <i>employee</i> who prior to completion accepts the <i>purchaser's</i> offer of employment referred to in clause 33.2;
<i>wages</i>	wages, salary, commissions, bonuses and allowances;
<i>within</i>	in relation to a period, at any time before or during the period;
<i>work in progress</i>	any of the following – <ul style="list-style-type: none"> • goods which are not <i>stock-in-trade</i> but have a process of manufacture, treatment or other application applied to them which adds value to the goods and are then used in the conduct of the <i>business</i>; • benefits under a contract or other agreement for the <i>vendor</i> to provide services to a third party for value in connection with the <i>business</i>; or • anything specified as work in progress in this contract; and
<i>work order</i>	a valid direction, notice or order that requires work to be done or money to be spent on or in relation to the <i>business</i> or arising from the occupation as lessee of the premises or any adjoining footpath or road.

2 Deposit and other payments before completion

2.1 The *purchaser* must pay the *deposit* to the *depositholder* as stakeholder.

- 2.2 The *purchaser* must pay the *deposit* on the making of this contract and this time is essential.
- 2.3 If this contract requires the *purchaser* to pay any of the *deposit* by a later time, that time is also essential.
- 2.4 The *purchaser* can pay any of the *deposit* only by unconditionally giving cash (up to \$2,000) or a *cheque* to the *depositholder* or to the *vendor*, *vendor's agent* or *vendor's solicitor* for sending to the *depositholder*.
- 2.5 If any of the *deposit* is not paid on time or a *cheque* for any of the *deposit* is not honoured on presentation, the *vendor* can *terminate*. This right to *terminate* is lost as soon as the *deposit* is paid in full.

3 Investment of deposit

If this contract says that the *deposit* is to be invested, the *depositholder* is to invest the *deposit* (at the risk of the *party* who becomes entitled to it) with a *bank*, in an interest-bearing account in NSW, payable at call, with interest to be reinvested, and pay the interest to the *parties* equally, after deduction of all proper government taxes and bank charges and other charges.

4 Trading stock

- 4.1 The *vendor* sells and the *purchaser* buys the good and saleable *trading stock* of the *business* for the sum agreed on by both *parties* or determined under this clause.
- 4.2 *Normally*, the *purchaser* must pay for the *trading stock* on completion in addition to the *price*.
- 4.3 If this contract states the *business* is sold on a stock inclusive basis, the *price* includes the value of the *trading stock*.
- 4.4 If the value of the *trading stock* is greater than the *trading stock sum*, the *purchaser* does not have to purchase the part of the *trading stock* in excess of the sum, and the *purchaser* can *serve* a notice identifying the part of the *trading stock* which the *purchaser* wants withdrawn from the sale.
- 4.5 If the *parties* do not agree on the sum payable for *trading stock* or if any other dispute arises about *trading stock* –
- 4.5.1 the dispute must be finalised by a stocktaker appointed by the *parties* or, if an appointment is not made *within 28 days* of completion, by a stocktaker appointed by the President of the Real Estate Institute at the request of a *party*;
- 4.5.2 each *party* must pay half the cost of the appointment and determination of the stocktaker; and
- 4.5.3 a *party* does not have to complete until the date 7 days after the *purchaser* receives written notice of the decision of the stocktaker and clause 25.3 does not apply to this provision.

5 Passing of risk

Until the *adjustment date* the *business* and all its assets are at the risk of the *vendor*.

6 Confidentiality

A *party* must not disclose the terms of this contract or anything connected with or related to this contract unless –

- 6.1 the disclosure is to any of a financial adviser or lender to that *party*, or to a franchisor or the *landlord*;
- 6.2 the disclosure is required under a court order or *legislation*; or
- 6.3 the other *party* has agreed in writing to the disclosure.

7 Certificates and inspections

The *vendor* must do everything reasonable to enable the *purchaser*, subject to the rights on any *tenant* –

- 7.1 to have the *premises* inspected to obtain any certificate or report reasonably required;
- 7.2 to apply (if necessary, in the name of the *vendor*) for –
- 7.2.1 any certificate that can be given in respect of the *premises* under *legislation*; or
- 7.2.2 a copy of any approval, certificate, consent, direction, notice or order in respect of the *premises* given under *legislation*, even if given after the *contract date*; and
- 7.3 to have any accounting records relating to the *business* inspected.

8 Audit

If this contract says the *purchaser* requires an audit the *purchaser* is entitled to have the records of the *business* audited.

9 How the vendor must conduct the business until completion

- 9.1 It is an essential provision of this contract that the *vendor* must, between the *contract date* and completion –
- 9.1.1 maintain the goodwill of the *business* and carry on the *business* in a proper and business like way;
- 9.1.2 stay in possession of the *business* and the *premises*, ensuring the *business* is run as a going concern;
- 9.1.3 maintain the equipment in the same state of repair as at the *contract date* (except for any fair wear and tear); and
- 9.1.4 comply with the lease of the *premises* and exercise any option to renew the lease of the *premises*

which is required under the lease to be exercised before the date of completion.

- 9.2 It is an essential provision of this contract that the *vendor* must not, without the prior written consent of the *purchaser* –
- 9.2.1 offer *stock-in-trade* for sale in any way other than in the usual course of business (for example, by advertising a closing down sale or by selling *stock-in-trade* at less than the prevailing retail price);
- 9.2.2 cancel any existing franchise arrangements, leases (including the lease of the *premises*), licences, services or other similar facilities of the *business* referred to in this contract, or breach any of those facilities in a way which would allow the supplier to cancel the supply contract; or
- 9.2.3 grant or vary any *employee entitlements* (unless required to do so under *legislation* or in accordance with the rules of a *superannuation fund* the existence of which is disclosed in the contract).

10 Vendor's promises

- 10.1 The *vendor* promises that, to the best of the *vendor's* knowledge and other than as disclosed in this contract –
- 10.1.1 the *vendor* has full authority and capacity to enter into this contract and sell the *business*;
- 10.1.2 the *vendor* has absolute title to the *business*;
- 10.1.3 the *business* is not subject to any charge, encumbrance, lease, mortgage, security interest under the *PPS Act* or other liability or security;
- 10.1.4 the *equipment* is in proper working order;
- 10.1.5 the *business* does not include any *stock-in-trade* acquired on terms that property in it does not pass until full payment has been made (for example, *stock-in-trade* acquired on consignment);
- 10.1.6 there is no subsisting breach by the *vendor* of a lease, franchise agreement, or other agreement with a third party which would entitle the lessor, franchisor or third party to terminate the agreement or refuse to grant an option to renew the agreement or refuse to transfer the benefit of the agreement to the *purchaser*;
- 10.1.7 the *vendor* has complied with all requirements under *legislation* relating to the *business*;
- 10.1.8 there is no current dispute or litigation relating to the *business* between the *vendor* and any other person (for example, any lessor, franchisor, supplier of goods or services to the *business*, current or former employee, trade union, council, government department, or the Fair Work Ombudsman);
- 10.1.9 each *superannuation fund* named in this contract –
- is fully funded and solvent; and
 - complies in all other respects with *legislation*;
- 10.1.10 the *vendor* does not have any other *superannuation fund*;
- 10.1.11 there is no superannuation guarantee charge or liability accrued or payable to employees of the *business*;
- 10.1.12 anything attached to this contract is accurate and complete; and
- 10.1.13 there are no workers compensation claims by any employees of the *business* for the past three years.
- 10.2 These promises are made as at the *contract date* and are also made as at completion.
- 10.3 If the *vendor* becomes aware before completion of any fact which makes a promise in clause 10.1 incorrect or misleading, the *vendor* must disclose that fact to the *purchaser* promptly and before completion.

11 Foreign Acquisitions and Takeovers Act 1975

- 11.1 The *purchaser* promises that the Commonwealth Treasurer cannot prohibit and has not prohibited the transfer of the *business* to the *purchaser* under the *Foreign Acquisitions and Takeovers Act 1975* (Cth).
- 11.2 This promise is essential and breach of it entitles the *vendor* to *terminate*.

12 Restrictions of rights of parties

- 12.1 The *parties* cannot make a claim or *requisition* or *rescind* or *terminate* in respect of a promise, representation or statement about this contract or the *business* not set out or referred to in this contract; and
- 12.2 The *purchaser* cannot make a claim or *requisition* or *rescind* or *terminate* in respect of anything the substance of which is disclosed in this contract.

13 Goods and services tax (GST)

- 13.1 In this clause, input tax credit, registered, supply of a going concern, tax invoice and taxable supply have the same meanings as in the *GST Act*.
- 13.2 *Normally*, if a *party* must pay the *price* or any other amount to the other *party* under this contract, GST is not to be added to the *price* or amount.
- 13.3 If under this contract a *party* must make an adjustment, pay an expense of another party or pay an amount payable by or to a third party (for example under clauses 4 or 18) –
- 13.3.1 the *party* must adjust or pay at that time any GST added to or included in the amount; but
- 13.3.2 if this contract says this sale is a taxable supply, and payment would entitle the *party* to an input tax credit, the adjustment or payment is to be worked out by deducting any input tax credit to which the

- party receiving the adjustment is or was entitled and then adding 10%.
- 13.4 If this contract says this sale is the supply of a going concern –
- 13.4.1 the *parties* agree that the sale of the *business* is a supply of a going concern;
- 13.4.2 *normally*, the *purchaser* promises that, by the *completion date* –
- the *purchaser* will be registered; and
 - the *purchaser* will produce written confirmation from the Australian Taxation Office of registration;
- 13.4.3 if the *purchaser* is not registered by the *completion date*, the *parties* must complete and the *purchaser* must pay on completion, in addition to the *price*, an amount of 10% of the *price* ("the retention sum"). The retention sum is to be held by the *depositholder* and dealt with as follows –
- if *within* 3 months of completion the *purchaser* serves a letter from the Australian Taxation Office stating the *purchaser* is registered, and the registration took effect from the date on or before the time of the supply, the *depositholder* is to pay the retention sum to the *purchaser*; but
 - if the *purchaser* does not serve that letter within 3 months of completion, the *depositholder* is to pay the retention sum to the *vendor*; and
- 13.4.4 if the *vendor*, despite clause 13.4.1, serves a letter from the Australian Taxation Office stating the *vendor* has to pay GST on the *price*, the *purchaser* must pay to the *vendor* on demand the sum of 10% of the *price*.
- 13.5 If this contract says the sale is not a taxable supply, the *purchaser* promises that the *business* will not be conducted and represents that the *purchaser* does not intend the *business* to be conducted in a way that could make the sale a taxable supply.
- 13.6 If this contract says this sale is not a taxable supply, the *purchaser* must pay the *vendor* on completion in addition to the *price* an amount of 10% of the *price* if this sale is a taxable supply because of –
- 13.6.1 a breach of clause 13.5; or
- 13.6.2 something else known to the *purchaser* but not the *vendor*.
- 13.7 If this contract says this sale is a taxable supply, the *vendor* must pay the *purchaser* on completion an amount of one-eleventh of the *price* if this sale is not a taxable supply.
- 13.8 On completion the *vendor* must give the *purchaser* a tax invoice for any taxable supply by the *vendor* by or under this contract.
- 14 Requisitions**
- If the *purchaser* is or becomes entitled to make a *requisition*, the *purchaser* can make it only by *servicing* it –
- 14.1 if it arises out of this contract or it is a general question about the *business* - *within* 10 days after the *contract date*;
- 14.2 if it arises out of anything *served* by the *vendor* - *within* 10 days after the later of the *contract date* and that *service*; and
- 14.3 in any other case - *within* a reasonable time.
- 15 Rescission by vendor and termination by purchaser**
- 15.1 The *vendor* can *rescind* if –
- 15.1.1 the *vendor* is, on reasonable grounds, unable or unwilling to comply with a *requisition*;
- 15.1.2 the *vendor* serves a notice of intention to *rescind* that specifies the *requisition* and those grounds; and
- 15.1.3 the *purchaser* does not *serve* a notice waiving the *requisition* *within* 10 days after that *service*.
- 15.2 If the *vendor* does not comply with this contract (or a notice under or relating to it) in an essential respect, the *purchaser* can *terminate* by serving a notice. After the *termination* –
- 15.2.1 the *purchaser* can recover the *deposit* and any other money paid by the *purchaser* under this contract;
- 15.2.2 the *purchaser* can sue the *vendor* to recover damages for breach of contract; and
- 15.2.3 if the *purchaser* has been in possession a *party* can claim for a reasonable adjustment.
- 16 Compliance with work orders**
- 16.1 *Normally*, the *vendor* must by completion comply (or cause someone else to comply) with a *work order* made on or before the *contract date* and, if this contract is completed, the *purchaser* must comply with any other *work order*.
- 16.2 If the *purchaser* has to comply with a *work order*, and the cost of compliance is greater than 10% of the *price*, the *purchaser* can *rescind* (but only before completion).
- 16.3 If the *purchaser* complies with a *work order*, and this contract is *rescinded* or *terminated*, the *vendor* must pay the expense of compliance to the *purchaser*.
- 17 Restriction on vendor's competition**
- 17.1 In this clause –

- 17.1.1 'be involved' includes being involved as a sole trader, partner, joint venturer, manager, agent, appointor, assistant, clerk, director, financier, majority shareholder or person with the capacity to exercise substantial control of a corporation;
- 17.1.2 'key person' means –
- if the *vendor* is a corporation, an officer of the *vendor*, a majority shareholder of the *vendor*, or a person capable of exercising substantial control over the *vendor*; and
 - a person named in this contract as a key person.
- 17.2 The *vendor* must not, without the prior written consent of the *purchaser* –
- 17.2.1 be involved in a business which is the same type of business, or a similar type of business;
- 17.2.2 during the *restraint time*;
- 17.2.3 within the *restraint distance* (measured radially).
- 17.3 The *vendor* must not during the *restraint time* engage in any conduct derogating from the *purchaser's* right to obtain the full benefit of the goodwill of the *business*.
- 17.4 The *vendor* acknowledges that the *restraint time* and the *restraint distance* are no greater than are reasonably required to protect the goodwill sold to the *purchaser*.
- 17.5 *Normally*, the *vendor* must cause every key person to sign a deed with the *purchaser* in the same terms as the restraint of trade in this clause and give the deed to the *purchaser* by completion.
- 17.6 If this contract says a key person will not sign a restraint deed, clause 17.5 does not apply to that person.
- 18 Adjustments**
- 18.1 The *vendor* is entitled to the profits and takings of the *business* and will be liable for all rent, gas, electricity and telecommunications charges and all other periodic outgoings up to (but not including) the *adjustment date* from which the *purchaser* will be entitled and liable.
- 18.2 The *parties* must make any necessary adjustment on completion.
- 18.3 The *vendor* can direct the *purchaser* to produce a *settlement cheque* on completion to pay an amount adjustable under this contract and if so –
- 18.3.1 the amount is to be treated as if it were paid; and
- 18.3.2 the *cheque* must be forwarded to the payee immediately after completion (by the *purchaser* if the *cheque* relates only to the *business* or by the *vendor* in any other case).
- 19 Completion date**
- 19.1 The *parties* must complete by the *completion date* and, if they do not, a *party* can serve a notice to complete if that *party* is otherwise entitled to do so.
- 19.2 If a consent is required from a franchisor, *landlord* or *landlord's* mortgagee, the *purchaser* does not have to complete earlier than 7 days after *service* of the consent (and if more than one, the last of the required consents) and clause 25.3 does not apply to this provision.
- 19.3 This clause applies only if this contract says there is an *interdependent contract* –
- 19.3.1 the completion date will be the later of the *completion date* and the completion date in the *interdependent contract*;
- 19.3.2 if the *interdependent contract* is *rescinded* by the *purchaser* or the *vendor*, this contract is also *rescinded*; and
- 19.3.3 if the *interdependent contract* is *terminated* by the *purchaser* or the *vendor*, this contract is also *terminated* by that *party*.
- 20 Completion**
- **Vendor**
- 20.1 On completion the *vendor* must give the *purchaser* –
- 20.1.1 possession of the *business* and the *premises*;
- 20.1.2 the certificate of registration of each *business name* associated with the *business*, the Australian Securities and Investments Commission notice containing the transfer number and any other information needed to transfer each *business name* to the *purchaser*;
- 20.1.3 any document evidencing tenure of the *premises*;
- 20.1.4 any other document needed to effect registration of the *business* under *legislation*; and
- 20.1.5 any other *document of title* that relates only to the *business*.
- 20.2 If on completion the *vendor* has possession or control of a *document of title* that relates also to property other than the *business*, the *vendor* must produce it as and where necessary.
- 20.3 On completion the *vendor* must –
- 20.3.1 sign all necessary forms and make all necessary applications to –
- allow the *contact numbers* to be transferred to the *purchaser*; and
 - make all other services to the *business* and the *premises* available to the *purchaser* (subject to the consent of the suppliers of the services); and
- 20.3.2 cause the legal title to the *business* to pass to the *purchaser* (subject to any necessary registration), free of any mortgage or other interest.

- 20.4 By completion, the *vendor* must serve –
- 20.4.1 the consent of any mortgagee or head lessor of the land to the transfer or grant of the lease of the *premises*; and
- 20.4.2 the consent of any franchisor to the sale of the *business*.
- **Purchaser**
- 20.5 On completion the *purchaser* must –
- 20.5.1 pay to the *vendor*, by cash (up to \$2,000) or *settlement cheque*, the *price* (less any *deposit* paid) and any other amount payable by the *purchaser* under this contract (less any amount payable by the *vendor* to the *purchaser* under this contract); and
- 20.5.2 take over the burden and benefit of the continuing agreements listed in this contract and indemnify the *vendor* against any liability under those agreements arising after completion.
- 20.6 If the *vendor* requires more than 5 *settlement cheques*, the *vendor* must pay \$10 for each extra *cheque*.
- 20.7 On completion the *purchaser* must give the *vendor* an order signed by the *purchaser* authorising the *depositholder* to account to the *vendor* for the *deposit*.
- 20.8 On completion the *deposit* belongs to the *vendor*.
- **Place for completion**
- 20.9 *Normally*, the *parties* must complete at the completion address, which is –
- 20.9.1 if a special completion address is stated in this contract - that address; or
- 20.9.2 in any other case - the *vendor's solicitor's* address stated in this contract.
- 20.10 The *vendor* by reasonable notice can require completion at another place, if it is in NSW, but the *vendor* must pay the *purchaser's* additional expenses, including any agency or mortgagee fee.
- 20.11 If the *purchaser* requests completion at a place that is not the completion address, and the *vendor* agrees, the *purchaser* must pay the *vendor's* additional expenses, including any agency or mortgagee fee.
- 21 Book debts**
- 21.1 The *vendor* is entitled to payment of all debts of the *business* owing to the *vendor* at completion.
- 21.2 The *purchaser* must promptly account to the *vendor* for payment of those debts received after completion.
- 22 Purchaser's default**
- If the *purchaser* does not comply with this contract (or a notice under or relating to it) in an essential respect, the *vendor* can *terminate* by serving a notice and after the *termination* –
- 22.1 keep or recover the *deposit* (to a maximum of 10% of the *price*);
- 22.2 hold any other money paid by the *purchaser* under this contract as security for anything recoverable under this clause –
- 22.2.1 for 12 months after the *termination*; or
- 22.2.2 if the *vendor* commences proceedings under this clause *within* 12 months, until those proceedings are concluded; and
- 22.3 sue the *purchaser* either –
- 22.3.1 where the *vendor* has resold the *business* under a contract made *within* 12 months after the *termination*, to recover –
- the deficiency on resale (with credit for any of the *deposit* kept or recovered and after allowance for any capital gains tax and GST payable on anything recovered under this clause); and
 - the reasonable costs and expenses arising out of the *purchaser's* non-compliance with this contract or the notice and of resale and any attempted resale; or
- 22.3.2 to recover damages for breach of contract.
- 23 Rescission of contract**
- 23.1 If this contract expressly gives a *party* a right to *rescind*, the *party* can exercise the right –
- 23.1.1 only by *servicing* a notice before completion; and
- 23.1.2 in spite of any making of a claim or *requisition*, any attempt to satisfy a claim or *requisition*, any arbitration, litigation, mediation or negotiation or any giving or taking of possession.
- 23.2 *Normally*, if a *party* exercises a right to *rescind* expressly given by this contract or any *legislation* –
- 23.2.1 the *deposit* and any other money paid by the *purchaser* under this contract must be refunded;
- 23.2.2 a *party* can claim for a reasonable adjustment if the *purchaser* has been in possession;
- 23.2.3 a *party* can claim for damages, costs or expenses arising out of a breach of this contract; and
- 23.2.4 a *party* will not otherwise be liable to pay the other *party* any damages, costs or expenses.
- 24 Miscellaneous**
- 24.1 The *parties* acknowledge that anything stated in this contract to be attached was attached to this contract by the *vendor* before the *purchaser* signed it and is part of this contract.

- 24.2 If a *party* consists of 2 or more persons, this contract benefits and binds them separately and together.
- 24.3 A *party's solicitor* can receive any amount payable to the *party* under this contract or direct in writing that it is to be paid to another person.
- 24.4 A document under or relating to this contract is –
- 24.4.1 signed by a *party* if it is signed by the *party* or the *party's solicitor*;
 - 24.4.2 served if it is served by the *party* or the *party's solicitor*;
 - 24.4.3 served if it is served on the *party's solicitor*, even if the *party* has died or any of them has died;
 - 24.4.4 served if it is served in any manner provided in s170 of the *Conveyancing Act 1919*;
 - 24.4.5 served if it is sent by email or fax to the *party's solicitor*, unless in either case it is not received;
 - 24.4.6 served on a person if it (or a copy of it) comes into the possession of the person; and
 - 24.4.7 served at the earliest time it is served, if it is served more than once.
- 24.5 An obligation to pay an expense of another *party* of doing something is an obligation to pay –
- 24.5.1 if the *party* does the thing personally - the reasonable cost had someone else done it;
 - 24.5.2 if the *party* pays someone else to do the thing - the amount paid, to the extent it is reasonable.
- 24.6 Rights under clauses 10, 13, 16, 18 and 36 continue after completion, whether or not other rights continue.
- 24.7 A reference to any *legislation* includes a reference to any corresponding later legislation.

25 Time limits in these provisions

- 25.1 If the time for something to be done or to happen is not stated in these provisions, it is a reasonable time.
- 25.2 If there are conflicting times for something to be done or to happen, the latest of those times applies.
- 25.3 The time for one thing to be done or to happen does not extend the time for another thing to be done or to happen.
- 25.4 If the time for something to be done or to happen is the 29th, 30th or 31st day of a month, and the day does not exist, the time is instead the last day of the month.
- 25.5 If the time for something to be done or to happen is a day that is not a *business day*, the time is extended to the next *business day*, except in the case of clause 2.
- 25.6 *Normally*, the time by which something must be done is fixed but not essential.

26 Training before and after completion

- 26.1 This clause applies only if a *training period* is specified in this contract.
- 26.2 The *purchaser* (or the *purchaser's* nominee) can attend the *premises* after the *contract date* and before completion for up to the number of working days specified as the pre-completion *training period* to watch the way the *business* is conducted and to receive training in the *business*.
- 26.3 Attending the *premises* under clause 26.2 does not of itself imply that the *vendor* has given possession to the *purchaser*.
- 26.4 The *vendor* (or a nominee of the *vendor* familiar with the *business*) must attend the *premises* after completion for the number of working days specified as the post-completion *training period* to train the *purchaser* in the running of the *business* and to introduce to the *purchaser* the clients, customers and suppliers of the *business*.
- 26.5 The *party* attending the *premises* must do so –
- 26.5.1 at the expense of that *party*; and
 - 26.5.2 during normal operating hours or at such other times as are agreed.

27 Lease of premises – general provisions

- 27.1 This clause applies only if the *premises* are, or are on completion to be, subject to a lease.
- 27.2 The *purchaser* must –
- 27.2.1 supply references and other information reasonably required by the *landlord* to allow the *landlord* to consider the application;
 - 27.2.2 pay or bear the costs and expenses of the *landlord* (including the costs of a *landlord's* mortgagee) arising from any negotiations between the *landlord* and the *purchaser* for proposed changes to a lease disclosed in this contract, whether or not this contract is completed; and
 - 27.2.3 if this contract says the *purchaser* must provide a suitable guarantee, provide any guarantee reasonably required by the *landlord* to support performance of the obligations of the *tenant* under the lease.
- 27.3 The *vendor* must –
- 27.3.1 apply to the *landlord* for the consent of the *landlord* to the *purchaser* becoming the *tenant*; and
 - 27.3.2 pay or bear the costs and expenses of the *landlord* arising under this contract, apart from those payable under clause 27.2 (including the costs of a *landlord's* mortgagee), whether or not this contract is completed.
- 27.4 If the consent of the *landlord's* mortgagee is required, and the *landlord's* mortgagee does not consent by the *completion date*, a *party* can *rescind*, but only if the *party* has complied with this clause.
- 27.5 A *party* cannot *rescind* under clause 27.4 after the other *party* has served notice of the consent of the *landlord's* mortgagee.

- 28 Electronic transaction**
- 28.1 This *Conveyancing Transaction* is to be conducted as an *electronic transaction* if –
- 28.1.1 this contract says that it is an *electronic transaction*;
- 28.1.2 the *parties* otherwise agree that it is to be conducted as an *electronic transaction*; or
- 28.1.3 the *conveyancing rules* require it to be conducted as an *electronic transaction*.
- 28.2 However, this *Conveyancing Transaction* is not to be conducted as an *electronic transaction* –
- 28.2.1 if the folio of the Register is not *electronically tradeable* or a *relevant dealing* is not eligible to be lodged electronically; or
- 28.2.2 if, at any time after the *effective date*, but at least 14 days before the completion date, a *party* serves a notice stating a valid reason why it cannot be conducted as an *electronic transaction*.
- 28.3 If, because of clause 28.2.2, this *Conveyancing Transaction* is not to be conducted as an *electronic transaction* –
- 28.3.1 each *party* must –
- bear equally any disbursements or fees; and
 - otherwise bear that *party's* own costs;
- 28.3.2 if a *party* has paid all of a disbursement or fee which, by reason of this clause, is to be borne equally by the *parties*, that amount must be adjusted under clause 18.2.
- 28.4 If this *Conveyancing Transaction* is to be conducted as an *electronic transaction* –
- 28.4.1 to the extent that any other provision of this contract is inconsistent with this clause, the provisions of this clause prevail; and
- 28.4.2 *normally*, words and phrases used in this clause 28 (italicised and in Title Case, such as *Electronic Workspace* and *Lodgment Case*) have the same meaning which they have in the *participation rules*;
- 28.4.3 the *parties* must conduct the *electronic transaction* –
- in accordance with the *participation rules* and the *ECNL*; and
 - using the nominated *ELN*, unless the *parties* otherwise agree;
- 28.4.4 a *party* must pay the fees and charges payable by that *party* to the *ELNO* and the *Land Registry* as a result of this transaction being an *electronic transaction*;
- 28.4.5 any communication from one *party* to another *party* in the *Electronic Workspace* made –
- after the *effective date*; and
 - before the receipt of a notice given under clause 28.2.2; is taken to have been received by that *party* at the time determined by s13A of the *Electronic Transactions Act 2000*; and
- 28.4.6 a document which is an electronic document is served as soon as it is first *Digitally Signed* in the *Electronic Workspace* on behalf of the *party* required to serve it.
- 28.5 *Normally*, the *vendor* must *within 7 days of the effective date* –
- 28.5.1 create an *Electronic Workspace*;
- 28.5.2 *populate* the *Electronic Workspace* with *title data*, the *completion date* and, if applicable, *mortgagee details*; and
- 28.5.3 invite the *purchaser* and (if necessary) the *landlord* to the *Electronic Workspace*.
- 28.6 If the *vendor* has not created an *Electronic Workspace* in accordance with clause 28.5, the *purchaser* may create an *Electronic Workspace*. If the *purchaser* creates the *Electronic Workspace* the *purchaser* must –
- 28.6.1 *populate* the *Electronic Workspace* with *title data*;
- 28.6.2 (if clause 30 applies) create and *populate* an *electronic transfer*;
- 28.6.3 *populate* the *Electronic Workspace* with the *completion date* and a nominated *completion time*; and
- 28.6.4 invite the *vendor* and any *incoming mortgagee* to join the *Electronic Workspace*.
- 28.7 *Normally*, *within 7 days of receiving an invitation from the vendor to join the Electronic Workspace*, the *purchaser* must –
- 28.7.1 join the *Electronic Workspace*;
- 28.7.2 (if clause 30 applies) create and *populate* an *electronic transfer*;
- 28.7.3 invite any *incoming mortgagee* to join the *Electronic Workspace*; and
- 28.7.4 *populate* the *Electronic Workspace* with a nominated *completion time*.
- 28.8 If the *purchaser* has created the *Electronic Workspace* the *vendor* must *within 7 days of being invited to the Electronic Workspace* –
- 28.8.1 join the *Electronic Workspace*;
- 28.8.2 *populate* the *Electronic Workspace* with *mortgagee details*, if applicable; and
- 28.8.3 invite any *discharging mortgagee* to join the *Electronic Workspace*.
- 28.9 To complete the financial settlement schedule in the *Electronic Workspace* –
- 28.9.1 the *purchaser* must provide the *vendor* with *adjustment figures* at least 2 *business days* before the *completion date*; and
- 28.9.2 the *vendor* must confirm the *adjustment figures* at least 1 *business day* before the *completion date*.
- 28.10 Before completion, the *parties* must ensure that –
- 28.10.1 all *electronic documents* which a *party* must *Digitally Sign* to complete the *electronic transaction* are *populated* and *Digitally Signed*;

- 28.10.2 all certifications required by the *ECNL* are properly given; and
- 28.10.3 they do everything else in the *Electronic Workspace* which that *party* must do to enable the *electronic transaction* to proceed to completion.
- 28.11 If completion takes place in the *Electronic Workspace* –
- 28.11.1 payment electronically on completion of the *price* in accordance with clause 20.5 is taken to be payment by a single *settlement cheque*;
- 28.11.2 the completion address in clause 20.9 is the *Electronic Workspace*; and
- 28.11.3 clauses 20.6, 20.10 and 20.11 do not apply.
- 28.12 If the computer systems of any of the *Land Registry*, the *ELNO* or the Reserve Bank of Australia are inoperative for any reason at the *completion time* agreed by the *parties*, a failure to complete this contract for that reason is not a default under this contract on the part of either *party*.
- 28.13 If the computer systems of the *Land Registry* are inoperative for any reason at the *completion time* agreed by the *parties*, and the *parties* choose that financial settlement is to occur despite this, then on financial settlement occurring –
- 28.13.1 all *electronic documents Digitally Signed* by the *vendor* and any *electronic document* forming part of the *Lodgment Case* for the *electronic transaction* shall be taken to have been unconditionally and irrevocably delivered to the *purchaser* or the *purchaser's* mortgagee at the time of financial settlement together with the right to deal with the *premises*; and
- 28.13.2 the *vendor* shall be taken to have no legal or equitable interest in the *premises*.
- 28.14 A *party* who holds a certificate of title must act in accordance with any *Prescribed Requirement* in relation to the certificate of title.
- 28.15 If the *parties* do not agree about the delivery before completion of one or more documents or things that cannot be delivered through the *Electronic Workspace*, the *party* required to deliver the documents or things –
- 28.15.1 holds them on completion in escrow for the benefit of; and
- 28.15.2 must immediately after completion deliver the documents or things to, or as directed by; the *party* entitled to them.
- 28.16 In this clause 28, these terms (in any form) mean –
- | | |
|---------------------------------|--|
| <i>adjustment figures</i> | details of the adjustments to be made to the <i>price</i> under clause 18; |
| <i>completion time</i> | the time of day on the <i>completion date</i> when the <i>electronic transaction</i> is to be settled; |
| <i>conveyancing rules</i> | the rules made under s12E of the <i>Real Property Act 1900</i> ; |
| <i>discharging mortgagee</i> | any discharging mortgagee, chargee, covenant chargee or caveator whose provision of a <i>Digitally Signed</i> discharge of mortgage, discharge of charge or withdrawal of caveat is required; |
| <i>ECNL</i> | the <i>Electronic Conveyancing National Law (NSW)</i> ; |
| <i>effective date</i> | the date on which the <i>Conveyancing Transaction</i> is agreed to be an <i>electronic transaction</i> under clause 28.1.2 or, if clauses 28.1.1 or 28.1.3 apply, the <i>contract date</i> ; |
| <i>electronic document</i> | a dealing as defined in the <i>Real Property Act 1900</i> which may be created and <i>Digitally Signed</i> in an <i>Electronic Workspace</i> ; |
| <i>electronic transfer</i> | a transfer of lease under the <i>Real Property Act 1900</i> for the <i>premises</i> to be prepared and <i>Digitally Signed</i> in the <i>Electronic Workspace</i> established for the purposes of the <i>parties' Conveyancing Transaction</i> ; |
| <i>electronic transaction</i> | a <i>Conveyancing Transaction</i> to be conducted for the <i>parties</i> by their legal representatives as <i>Subscribers</i> using an <i>ELN</i> and in accordance with the <i>ECNL</i> and the <i>participation rules</i> ; |
| <i>electronically tradeable</i> | a land title that is Electronically Tradeable as that term is defined in the <i>conveyancing rules</i> ; |
| <i>incoming mortgagee</i> | any mortgagee who is to provide finance to the <i>purchaser</i> on the security of the interest of the <i>purchaser</i> in the <i>premises</i> and to enable the <i>purchaser</i> to pay the whole or part of the <i>price</i> ; |
| <i>mortgagee details</i> | the details which a <i>party</i> to the <i>electronic transaction</i> must provide about any <i>discharging mortgagee</i> of the <i>premises</i> as at completion; |
| <i>participation rules</i> | the participation rules as determined by the <i>ECNL</i> ; |
| <i>populate</i> | to complete data fields in the <i>Electronic Workspace</i> ; |
| <i>relevant dealing</i> | a document to be lodged with the <i>Land Registry</i> whereby an interest in the <i>premises</i> is created, surrendered or transferred; and |
| <i>title data</i> | the details of the title to the property made available to the <i>Electronic Workspace</i> by the <i>Land Registry</i> |
- 29 Grant of new lease**
- 29.1 This clause applies only if this contract says the sale is subject to the grant of a new lease.
- 29.2 The *parties* intend that the *landlord* is to grant to the *purchaser* a lease of the *premises* –

- 29.2.1 in the form of the proposed lease of *premises* attached to the contract; or
 29.2.2 if no proposed lease is attached to the contract, with the lease particulars as set out in this contract, and on other terms substantially similar to those in force between the *landlord* and the *vendor*.

29.3 If the *landlord* does not grant a lease in accordance with this clause –

- 29.3.1 by the *completion date*, the *purchaser* can *rescind*; or
 29.3.2 by the 91st day after the *contract date*, a *party* can *rescind*.

29.4 A *party* cannot *rescind* under clause 29.3 after the *landlord* has granted a lease in accordance with this clause.

30 Transfer of existing lease

30.1 This clause applies only if –

- 30.1.1 the *premises* are subject to a lease; and
 30.1.2 this contract does not say the sale is subject to the grant of a new lease.

30.2 The *parties* intend that the *landlord* is to consent to a transfer of the lease from the *vendor* to the *purchaser*.

30.3 The *purchaser* must *serve* the form of transfer at least 7 days before the *completion date*.

30.4 If the *landlord* does not consent to the transfer of the lease –

- 30.4.1 by the *completion date*, the *purchaser* can *rescind*; or
 30.4.2 by the 91st day after the *contract date*, a *party* can *rescind*.

30.5 A *party* cannot *rescind* under clause 30.4 after the other *party* has *served* notice of the consent of the *landlord*.

31 Consent to transfer of franchise

31.1 This clause applies only if the *vendor* conducts the *business* as a franchisee.

31.2 The *vendor* must –

- 31.2.1 apply to the franchisor for the consent of the franchisor to a transfer of the franchise to the *purchaser*; and
 31.2.2 pay or bear the costs and expenses of the franchisor relating to the application for consent whether or not this contract is completed.

31.3 The *purchaser* must –

- 31.3.1 supply references and other information reasonably required by the franchisor to allow the franchisor to consider the application; and
 31.3.2 comply with any other requirement imposed by the franchise agreement or under *legislation*.

31.4 The *purchaser* promises that, if the franchisor consents to the transfer of the franchise to the *purchaser*, the *purchaser* will comply with the obligations of the franchisee under the franchise agreement.

31.5 If the franchisor does not consent to the transfer of the franchise to the *purchaser* *within* 42 days of the *contract date*, a *party* can *rescind*, but only if the *party* has complied with this clause.

31.6 A *party* cannot *rescind* under clause 31.5 after the other *party* has *served* notice of the consent of the franchisor.

32 Employees – notices

32.1 Unless otherwise agreed with the *purchaser* in writing, the *vendor* must give written notice terminating the employment of each *employee* on and from completion.

32.2 The notice period is the greater of:

- 32.2.1 14 days;
 32.2.2 a period specified in the *FW Act*; or
 32.2.3 a period specified in the *employee's* contract of employment.

33 Proposed transfer of employees

33.1 The *purchaser* must at least 15 *business days* prior to completion notify the *vendor* of the names of the *employees* to whom the *purchaser* wishes to offer employment in the *business* after completion and the election made in accordance with clause 35.3.

33.2 The *purchaser* must promptly offer those employees (the '*prospective transferring employees*') employment in the *business* with the *purchaser* from and conditional on completion. The offer must –

- 33.2.1 be in writing;
 33.2.2 be on terms which accord with any transferable instrument (for example, modern award, enterprise agreement or other relevant statutory instrument) which applies to the prospective *transferring employees*;
 33.2.3 subject to clause 35, be on terms and conditions of employment substantially similar to, and no less favourable overall, to the prospective *transferring employees* when compared with their terms and conditions of employment with the *vendor* as at the *contract date*; and
 33.2.4 unequivocally state –
- whether the *purchaser* will or will not recognise service with the *vendor* (see clause 35) and for what purposes; and

- that employment with the *vendor* will terminate immediately prior to, and employment with the *purchaser* will commence, on completion.

- 33.3 The *vendor* must –
- 33.3.1 encourage any and all *employees* who receive an offer from the *purchaser* to accept the offer, and;
- 33.3.2 release each *transferring employee* from their employment and any post-termination restrictions with effect from completion.
- 33.4 To the extent that any notice period under clause 32.2 has yet to fully expire as at completion, the *vendor* is responsible for any payment in lieu of that notice to *transferring employees*.
- 34 Employee entitlements – terminating employees**
- Normally*, the *vendor* is responsible for the *employee entitlements* of the *terminating employees* and on completion must pay to each *terminating employee* the *employee entitlements* (if any) due to each *terminating employee*, whether arising under any contract, any *legislation*, transferable instrument or otherwise, including in respect of –
- 34.1 accrued *wages*;
- 34.2 accrued entitlements to annual leave and long service leave;
- 34.3 any entitlements to a payment in lieu of notice;
- 34.4 any entitlements to redundancy pay; and
- 34.5 any other remuneration or entitlement arising out of employment or termination of employment; and the *vendor* indemnifies the *purchaser* against any loss or claim against the *purchaser* in respect of the *terminating employees* to the extent that the loss or claim relates to the period prior to completion.
- 35 Employee entitlements – transferring employees**
- 35.1 The *vendor* must deliver to the *purchaser* on completion a document setting out full details of –
- 35.1.1 the *employee entitlements* in respect of each *transferring employee* as at completion;
- 35.1.2 details of any *employee entitlements* which the *transferring employee* was either paid upon the termination of his or her employment with the *business* or to which the *transferring employee* is entitled; and
- 35.1.3 details of provisioning in the *vendor's* accounts for annual leave, personal/carer's leave and long service leave in respect of each of the *transferring employees*.
- 35.2 The *purchaser* must recognise service of *transferring employees* with the *vendor* for the purposes of –
- 35.2.1 Division 4 of Part 2-2 of the *FW Act* (which deals with requests for flexible working arrangements);
- 35.2.2 Division 5 of Part 2-2 of the *FW Act* (which deals with parental leave); and
- 35.2.3 Division 7 of Part 2-2 of the *FW Act* (which deals with personal/carer's leave).
- 35.3 The *purchaser* is not required to, and so must elect whether or not the *purchaser* recognises service with the *vendor*, and in doing so calculate the period of employment as including service with the *vendor*, for the purposes of –
- 35.3.1 Division 2 of Part 3-2 of the *FW Act* (which deals with access to unfair dismissal);
- 35.3.2 Division 6 of Part 2-2 of the *FW Act* (which deals with annual leave); and
- 35.3.3 Subdivision B of Division 11 of Part 2-2 of the *FW Act* (which deals with redundancy pay).
- 35.4 If the *purchaser* elects to recognise service under clause 35.3 –
- 35.4.1 the *vendor* must make the payments set out in clause 34 but for *transferring employees*, except for an entitlement which is adjusted in accordance with this clause;
- 35.4.2 the *vendor* must pay or allow the *purchaser* on completion –
- an amount equal to 70% of the value of the accrued annual leave (including any annual leave loading) for *transferring employees* as at completion (but only if service with the *vendor* counts as service with the *purchaser* for this purpose and no payment is made to *transferring employees* by the *vendor* of such leave entitlements);
 - subject to clause 35.10 the *vendor* must pay or allow the *purchaser* on completion an amount equal to 70% of the nominal long service leave in respect of the *transferring employees*. The nominal long service leave amount will be calculated as if *transferring employees* with in excess of 5 years continuous employment with the *vendor* had accrued long service leave entitlements calculated upon the basis of their periods of employment (but only if service with the *vendor* counts as service with the *purchaser* for this purpose and no payment is made to *transferring employees* by the *vendor* of such leave entitlements); and
 - if this contract says the *vendor* will allow for accrued but untaken personal/carer's leave, the *vendor* must pay or allow the *purchaser* on completion an amount equal to 70% of the value of accrued personal/carer's leave for *transferring employees*.
- 35.5 If the *purchaser* makes an election not to recognise service in any circumstance set out in clause 35.3, the *vendor* must make the payments set out in clause 34 in relation to that circumstance and for *transferring employees*.
- 35.6 If the *purchaser* does not make an election, the *purchaser* is taken to have elected not to recognise service in any circumstance set out in clause 35.3 and the *vendor* must then make all the payments set out in clause 34

in relation to those circumstances and for *transferring employees*.

- 35.7 The *purchaser* must pay to the *vendor* at completion an amount equal to the total amount of *wages* paid by the *vendor* to the *transferring employees* in respect of any period after completion.
- 35.8 The *vendor* indemnifies the *purchaser* against any loss or damage in respect of the *transferring employees* to the extent that the loss or claim relates to any entitlement to a payment under clause 34.
- 35.9 The *purchaser* is responsible for all liabilities of any *transferring employee* arising out of their employment after completion, and indemnifies the *vendor* against any loss or claim in respect of the *transferring employees* to the extent that the loss or claim relates to the period after completion.
- 35.10 If this contract says the adjustment for the nominal long service leave amount is the value of any long service entitlement of each *transferring employee* (calculated in accordance with clause 35.4.2), varied by multiplying that value by the figure shown in column 2 of the Long Service Leave Adjustment Table which corresponds to the length of continuous service shown in column 1 of the Long Service Leave Adjustment Table.

Long Service Leave Adjustment Table	
Column 1	Column 2
Length of continuous service	Adjustment Multiplier
Less than 5 years	0%
At least 5 years but less than 6 years	20%
At least 6 years but less than 7 years	30%
At least 7 years but less than 8 years	40%
At least 8 years but less than 9 years	50%
At least 9 years but less than 10 years	60%
At least 10 years	70%

36 Release of perfected security interest

- 36.1 This clause applies if any personal property forms part of the *business* or is *trading stock* and in either case is subject to a perfected security interest under the *PPS Act*.
- 36.2 Words and phrases used in this clause which are defined in the *PPS Act* have the same meaning in this clause.
- 36.3 The *vendor* must do everything reasonable to enable the *purchaser* to ascertain whether there are any security interests in any personal property forming part of the *business* or *trading stock*.
- 36.4 *Normally*, the *vendor* must ensure that at or before completion, in respect of each item of personal property to which clause 36.1 applies, the *purchaser* receives –
- 36.4.1 one of the following documents –
- a release (the ‘PPS release’) from each secured party releasing the security interest in respect of the property; or
 - a statement in accordance with section 275(1)(b) of the *PPS Act* setting out that the amount or obligation that is secured is nil at completion; or
 - an approval or correction in accordance with section 275(1)(c) of the *PPS Act* indicating that, on completion, the personal property included in the contract is not or will not be property in which the security interest is granted if the security interest is to remain perfected despite completion; and
- 36.4.2 in the case of serial numbered goods a written undertaking from each secured party to register a financing change statement which reflects that undertaking;
and the *purchaser* does not have to complete until the *vendor* has complied with this clause 36.4.
- 36.5 The *vendor* does not have to comply with clause 36.4 in respect of a particular item of personal property to which clause 36.1 applies, if in respect of that item, the contract discloses a security interest and specifically states that clause 36.4 does not apply to that security interest.
- 36.6 *Normally*, the *purchaser* must accept a PPS release that is in a form published by the Australian Bankers’ Association. If the *vendor* proposes to give the *purchaser* another form of PPS release the *purchaser* must accept that form unless it is unreasonable to do so.
- 36.7 If the *vendor* in complying with clause 36.4 proposes to give the *purchaser* a form of statement, approval, correction or undertaking, the *purchaser* must accept that form unless it is unreasonable to do so.
- 36.8 A *party* must provide a copy of any document mentioned in this clause to the other *party* on request.

SPECIAL CONDITIONS - BUSINESS SALE CONTRACT

1. Allocation of Consideration and 75/25 Split

1.1 This contract (the "Business Sale Contract") is interdependent with the contract of the same date (the "Property Sale Contract") under which Rea Brett (as vendor) agrees to sell and the purchaser agrees to buy the whole of the land in Certificate of Title Folio Identifier D/160736 being 62 Yass Street, Gunning (the "Property").

1.2 The parties agree that the total consideration for the transactions under the Business Sale Contract and the Property Sale Contract (the "Total Consideration") is to be allocated on an 75/25 basis, with 75% of the Total Consideration apportioned to the Property Sale Contract (the "Property Apportionment") and 25% of the Total Consideration apportioned to the Business Sale Contract (the "Business Apportionment"). For clarity, if the Total Consideration is \$X (to be specified upon agreement of the price in both contracts), the Property Apportionment shall be \$0.75X and the Business Apportionment shall be \$0.25X.

1.3 The Business Apportionment comprises the sale of the business known as Merino Cafe (ABN 38 674 799 003), including goodwill, equipment, trading stock, and other assets as described in clause 1.1 of this contract, but excludes the Property.

1.4 Any variation to the Total Consideration under either contract (including adjustments under clause 18 or equivalent provisions in the Property Sale Contract) shall maintain the 80/20 ratio, with the varied amount reapportioned accordingly between the Business Apportionment and the Property Apportionment.

2. Deposit Allocation

2.1 The deposit payable under this Business Sale Contract (the "Business Deposit") shall be 25% of the total deposit paid under both contracts (the "Total Deposit"), reflecting the Business Apportionment. The remaining 75% of the Total Deposit shall be allocated to the Property Sale Contract (the "Property Deposit").

2.2 The Business Deposit shall be paid to the deposit holder named in this contract (being the vendor's agent, Auction Advantage) as stakeholder and held in accordance with clause 3 of this contract. If the Total Deposit is \$Y, the Business Deposit shall be \$0.25Y and the Property Deposit shall be \$0.75Y.

2.3 In the event of any refund or forfeiture of the Total Deposit due to rescission or termination under either contract (per clauses 1.3 to 1.5 and 23), the refund or forfeiture shall be apportioned 75/25 between the Property Deposit and the Business Deposit, respectively.

3. Completion Payments

3.1 On completion (which must occur simultaneously under both the Business Sale Contract and the Property Sale Contract per clause 22.1), the purchaser shall pay the balance of the Business Apportionment (being the Business Apportionment less the Business Deposit) to the vendor under this contract.

3.2 Payments under this contract and the Property Sale Contract shall be made by electronic funds transfer, with the vendor directing the purchaser to issue transfers for the Business Apportionment balance and the Property Apportionment balance. The vendor's solicitor (Harrington Hall Lawyers) shall receive all payments and apportion them accordingly.

3.3 Adjustments under clause 18 (including for trading stock under clause 4, rent, outgoings, or employee entitlements under clauses 34 and 35) shall be calculated based on the Business Apportionment and paid on completion, without affecting the 75/25 ratio of the Total Consideration.

4. GST Treatment

4.1 The parties confirm that the sale under this Business Sale Contract is the supply of a going concern under Subdivision 38-B of the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (the "GST Act"), as the business is carried on at completion (per clause 13.4). No GST is payable on the Business Apportionment, provided the purchaser is registered for GST and provides confirmation under clause 13.4.2 by completion.

4.2 The Property Apportionment under the Property Sale Contract is a taxable supply under Subdivision 9A of the GST Act, subject to input tax credits where applicable. The vendor shall issue a tax invoice for the Property Apportionment on completion, but no GST applies to the Business Apportionment.

4.3 If the going concern status for the Business Apportionment fails (e.g., due to purchaser non-registration), the purchaser shall pay GST on the Business Apportionment (10% of that amount) in addition to the price, with the vendor providing a tax invoice. Any such GST payment shall not alter the 75/25 allocation of the Total Consideration.

4.4 All other GST provisions in clause 13 apply, with references to "price" deemed to mean the Business Apportionment.

5. Interdependency and Cross-References

5.1 Completion under this Business Sale Contract is conditional on simultaneous completion under the Property Sale Contract, and vice versa (per clause 22.1). Any breach, rescission, or termination under one contract constitutes a breach under the other (per clauses 1.2, 1.4, and 1.5).

5.2 The purchaser under this Business Sale Contract is the same as under the Property Sale Contract dated on or about the same date as this contract, for the Property at 62 Yass Street, Gunning NSW 2581.

5.3 These special conditions are subject to the laws of New South Wales and any disputes shall be resolved in accordance with New South Wales jurisdiction.