

FINANCE CLAUSE (SPECIAL CONDITION)

WARNING:

Vendors should seek advice from their own solicitor/conveyancer concerning the use of this clause.

Inclusion of this "subject to finance" clause means that the purchaser can bring the contract to an end, and obtain a refund of most their deposit, if finance is not obtained.

If you are relying on the sale of your property to be able to settle the purchase of another property, or if you need to complete the sale of your property by a specific deadline, this clause should not be used without careful consideration and appropriate advice.

SUBJECT TO FINANCE

- (a) This contract is conditional upon the purchaser obtaining approval in writing of finance for the purchase of the property:
 - (i) in accordance with this clause; and
 - (ii) by the date specified and as otherwise particularised in the schedule to this clause (the **Schedule**).
- (b) This clause is for the benefit of the purchaser, who may waive the benefit of it by *servicing* notice to that effect at any time before completion, rescission or termination of this contract.
- (c) The purchaser warrants that, not later than the contract date, the purchaser obtained finance pre-approval in writing for finance for an amount adequate to enable the purchaser to complete the purchase of the property and to pay all applicable duties, costs and fees.
- (d) The purchaser must at the purchaser's expense:
 - (i) apply for finance in accordance with the Schedule within three business days after the contract date;
 - (ii) serve notice confirming compliance with paragraph (d)(i) not later than one business day after the application for finance is lodged;
 - (iii) diligently pursue the application for finance and pay all fees, supply all particulars, certificates and valuations, and promptly do all other things as may reasonably be required for the purpose of the application;
 - (iv) inform the vendor regarding the progress of the purchaser's application for finance whenever reasonably requested to do so by or on behalf of the vendor; and
 - (v) within one business day after receipt of notice from the proposed lender approving or refusing the application for finance, *serve* notice informing the vendor of the outcome of the application for finance.
- (e) If:
 - (i) notice under paragraph (d)(v) informing the vendor of approval in writing of the purchaser's application for finance, or
 - (ii) waiver by the purchaser of the benefit of this clause under paragraph (b), has not been *served* by 5.00pm on the date specified in the Schedule (the time for service by that date and time being of the essence of this contract):
 - (iii) the vendor can *rescind*; and
 - (iv) the purchaser can *rescind*, but only if the purchaser:
 - (1) is not in breach of the warranty in paragraph (c) of this clause, and
 - (2) has complied with the purchaser's obligations under paragraph (d) of this clause, provided that if the purchaser *serves* notice under paragraph (d)(v) informing the vendor of approval in writing of the purchaser's application for finance before *service* of notice of *rescission* by either party, both parties' rights to *rescind* lapse at the time of that *service* under paragraph (d)(v).
- (f) If this contract is *rescinded* under this clause:
 - (i) the purchaser will forfeit to the vendor the sum equivalent to 0.25% of the purchase price; the vendor is entitled to recover the amount forfeited from any amount paid by the purchaser as deposit under this contract, and the purchaser is entitled to a refund of any balance of that deposit; and
 - (ii) subject to paragraph (f)(i), clause 19 applies.

SCHEDULE

Lender: _____ [specify]

Amount of Loan: _____ [specify]

Last date for receipt of approval 10/15/20 (delete whichever does not apply)

_____ business days after the contract date