

AGREEMENT FOR SALE AND PURCHASE OF A BUSINESS

This form is approved by the Real Estate Institute of New Zealand Incorporated and by Auckland District Law Society Incorporated

DATE:

VENDOR: **I saw the sign Limited**

PURCHASER: **Hamish Pepper and Annabel Jeaffreson and/or Nominee**

Address of Business premises: **4673 Main Street, Epsom, Auckland**

Description of Business (subclause 1.1(4)): **Sign writing**

Name of Business: **The Signwriter**

Tangible Assets:	\$	23,319.00	
Intangible Assets:	\$	215,000.00	
Stock in Trade:	\$	313,913.00	
TOTAL PURCHASE PRICE:	\$	582,232	(plus GST, if any (clauses 12.0 and 13.0))
Deposit:	\$	See Clause 18 - 58,223	

The vendor is registered under the GST Act in respect of the transaction evidenced by this agreement and/or will be so registered at settlement:

Yes/No

Possession Date (subclause 3.1): **3 June 2015**

Possession Time (subclause 3.1): **4.00pm**

GST Date (refer clauses 12.0 and 13.0):

Interest for late settlement: **14 %**

Maximum Percentage stock value adjustment (subclause 5.3): **10%%**

Turnover Warranty (subclause 6.5): **\$ 432,205 (excluding GST) covering the period from 1/4/2015 to 31/3/2014**

Vendor's assistance period (subclause 6.4(5)): **15 working days after possession**

Vendor's restraint of trade (subclause 7.1): **3 years** after the possession date within **Auckland Wide** Kilometres of the Premises

LEASE DETAILS

Landlord: **Anderson Family Trust**

Commencement Date: **1 March 2013**

Term : **2 years**

Present Rental: **37,386 plus GST**

Right(s) of Renewal (if any): **2x 2 years**

Rent Review Dates: **1 March 2015**

Date of Landlord's consent (subclause 8.2): **30 May 2015**

FINANCE CONDITION

Lender: **Any suitable lender**

Amount required: **\$ Sufficient to complete this transaction**

Finance Date (subclause 8.1): **30 May 2014**

SALE BY:



Link Business Broking Limited Aaron Toresen (Manager)

Office and Address: **Level 1 401 Great South Road, Ellerslie, AUCKLAND, 1051**

Ph: **09 579 9226**

Salesperson: **Rudy Kokx**

Mobile: **021 421 346**

Email: **aaront@linkbusiness.co.nz**

It is agreed that the vendor sells and the purchaser purchases the business and takes an assignment of the lease of the premises (if any) on the terms set out above and in the general terms of sale, any further terms of sale and the schedules to this agreement.

GENERAL TERMS OF SALE

1.0 Definitions, notices and interpretation

1.1 Definitions

- (1) Unless the context requires a different interpretation, words and phrases not otherwise defined have the same meaning as in section 4 of the Property Law Act 2007.
- (2) "Agreement" means this document including the front page, these general terms of sale, any further terms of sale and any schedules and attachments.
- (3) "Assets" means, collectively, the tangible assets and the intangible assets including those listed in Schedule 1 of this agreement.
- (4) "Business" means the business described on the front page of this agreement, including the assets.
- (5) "Business records" means all existing books, records, files and other relevant information (including electronically stored information) concerning the business, including details of customers, suppliers, agents and distributors excluding the vendor's personal records.
- (6) "Default GST" means any interest, or late payment penalty, or shortfall penalty, or other sum imposed on the vendor under the Tax Administration Act 1994 by reason of non-payment of any GST payable in respect of the supply made under this agreement but does not include any such sum levied against the vendor by reason of a default by the vendor after payment of the GST to the vendor by the purchaser.
- (7) "Incomings" means all revenue receivable as a result of the trading activities of the business.
- (8) "GST" means Goods and Services Tax arising pursuant to the Goods and Services Tax Act 1985 and "GST Act" means the Goods and Services Tax Act 1985.
- (9) "Intangible assets" means the intangible rights, licences and benefits owned or used by the vendor in respect of the business, including:
 - (a) the vendor's rights under all contracts relating to the supply of goods or services to the vendor in connection with the business which, at the settlement date, remain to be performed in whole or in part; and
 - (b) the vendor's rights under any licence agreement or equipment lease entered into in connection with the business which, at the settlement date, remain to be performed in whole or in part; and
 - (c) all intellectual property rights and interests owned or held by the vendor, or used by the vendor in connection with the business, including, without limitation, patents, trademarks, copyrights, software, registered designs, trade names, domain names, symbols, logos and trade secrets; and
 - (d) the goodwill of the business including, where applicable, the benefit of the lease.
- (10) "Lease" means the lease of the premises and includes any formal or informal document or letter evidencing any variation, renewal, extension, review or assignment that will be operative at the settlement date.
- (11) "Outgoings" includes any payments made or to be made by the vendor on or before the settlement date in respect of the lease or of goods or services supplied to the vendor in connection with the business (including but not limited to prepayment of advertising, telephone listings, trade listings), where those goods or services have not been supplied (in whole or in part) by the settlement date or where the vendor has not obtained the full benefit of such services by the settlement date.
- (12) "Premises" means the premises from which the business is conducted, the address of which is stated on the front page of this agreement.
- (13) "Purchase price" means the total purchase price stated on the front page of this agreement, which the purchaser has agreed to pay the vendor for the business.
- (14) "Settlement date" means the possession date or such other date as the parties are to perform their obligations under subclause 3.3. Where the day nominated for settlement is not a working day the settlement date shall be the last working day before the day so nominated.
- (15) "Settlement statement" means a statement showing the purchase price, GST (if any), less any deposit together with apportionments of all incomings and outgoings relating to the sale of the business.
- (16) "Tangible assets" means all of the plant, machinery, equipment, furniture, fittings, motor vehicles and other chattels owned by the vendor at the settlement date and used in connection with the business.
- (17) "Working day" means any day of the week other than:
 - (a) Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, and Labour Day; and
 - (b) a day in the period commencing on the 24th day of December in any year and ending on the 5th day of January in the following year, both days inclusive; and
 - (c) the day observed as the anniversary of any province in which the premises are situated.
 A working day shall be deemed to commence at 9.00 am and to terminate at 5.00 pm.
- (18) Any act done pursuant to this agreement by a party after 5.00 pm on a working day, or on a day which is not a working day, shall be deemed to have been done at 9.00 am on the next succeeding working day.
- (19) Where two or more acts (including service of notices) done pursuant to this agreement are deemed to have been done at the same time, they shall take effect in the order in which they would have taken effect but for subclause 1.1(18).
- (20) Unless a contrary intention appears on the front page or elsewhere in this agreement:
 - (a) the interest rate for late settlement is double the 90 day bank bill buy rate;
 - (b) the applicable 90 day bank bill buy rate is that as advised by the vendor's lawyer's bank and if more than one such rate then the highest rate during the relevant period;
 - (c) a party is in default if it did not do what it has contracted to do to enable settlement to occur, regardless of the cause of such failure.

1.2 Notices

The following apply to all notices relevant to this agreement, whether authorised by this agreement or by the general law:

- (1) All notices must be served in writing.
- (2) Any notice under section 28 of the Property Law Act 2007, where the purchaser is in possession of the premises, must be served in accordance with section 353 of that Act.
- (3) All other notices, unless otherwise required by the Property Law Act 2007, must be served by one of the following means:
 - (a) on the party, as authorised by sections 354 to 361 of the Property Law Act 2007; or
 - (b) on the party or on the party's lawyer:
 - (i) by personal delivery; or
 - (ii) by posting by ordinary mail; or
 - (iii) by facsimile or by email; or
 - (iv) in the case of the party's lawyer only, by sending by document exchange.
- (4) In respect of the means of service specified in subclause 1.2(3)(b), a notice is deemed to have been served:
 - (a) in the case of personal delivery, when received by the party or at the lawyer's office;
 - (b) in the case of posting by ordinary mail, on the second working day following the date of posting to the address for service notified in writing by the party or to the postal address of the lawyer's office;
 - (c) in the case of facsimile transmission, when sent to the facsimile number notified in writing by the party or to the facsimile number of the lawyer's office;
 - (d) in the case of email, when acknowledged by the party or by the lawyer orally or by return email or otherwise in writing;
 - (e) in the case of sending by document exchange, on the second working day following the date of sending to the document exchange number of the lawyer's office.
- (5) Notice served by a party after 5.00 pm on a working day, or on a day which is not a working day, shall be deemed to have been served by that party at 9.00 am on the next succeeding working day.
- (6) Where two or more notices are deemed to have been served at the same time, they shall take effect in the order in which they would have been served but for subclause 1.2(5).
- (7) Any period of notice required to be given under this agreement shall be computed by excluding the date of service.

1.3 Interpretation

- (1) If there is more than one vendor or purchaser, the liability of the vendors or of the purchasers, as the case may be, is joint and several.
- (2) Where the purchaser executes this agreement with provision for a nominee, or as agent for an undisclosed principal, or on behalf of a company to be formed, the purchaser shall at all times remain liable for all of the obligations of the purchaser.
- (3) If any stated term (including any further terms of sale) conflicts with the general terms of sale, the stated term shall prevail.
- (4) Headings are for information only and do not form part of this agreement.

2.0 Deposit

- 2.1 The purchaser shall pay the deposit to the vendor or the vendor's agent immediately upon execution of this agreement by both parties or at such other time as is specified in this agreement, time being of the essence as to each such time.
- 2.2 The vendor shall not be entitled to cancel this agreement for non-payment of the deposit unless the vendor has first given to the purchaser three working days' notice of intention to cancel and the purchaser has failed within that time to remedy the default. No notice of cancellation shall be effective if the deposit has been paid before the notice of cancellation is served.
- 2.3 The deposit shall be in part payment of the purchase price.
- 2.4 Where this agreement is entered into subject to a condition expressed in this agreement, the person to whom the deposit is paid shall hold it as a stakeholder until the agreement becomes unconditional or is avoided for non-fulfilment of any condition under subclause 8.3.

3.0 Possession and settlement

Possession

- 3.1 Possession shall be given and taken on the possession date with effect from the time stipulated on the front page or, where no time is stipulated, with effect from the close of business on the possession date.

Settlement

- 3.2 The vendor shall prepare a settlement statement. The vendor shall tender the settlement statement to the purchaser or the purchaser's lawyer within a reasonable time prior to the settlement date.
- 3.3 On the settlement date:
 - (1) The balance of the purchase price, interest and other moneys, if any, shall be paid by the purchaser in cleared funds or otherwise satisfied as provided in this agreement (credit being given for any amount payable by the vendor under subclause 3.6 or 3.7).
 - (2) The vendor shall concurrently deliver to the purchaser:
 - (a) where the purchaser is to have an assignment of the lease, the lease and a duly executed deed of assignment of the lease in the form described in subclause 9.6, together with the landlord's written consent to the assignment;
 - (b) instruments of title to the assets (if any);
 - (c) a duly executed satisfaction or release of any encumbrance or security interest over any of the assets;
 - (d) duly executed deeds of assignment or other appropriate instruments of transfer in respect of the intangible assets, executed by the vendor and counterparties (where prior written consent to the transfer is required);
 - (e) any duly executed deed of covenant to be provided under subclause 7.2;
 - (f) where any deed is to be delivered to the purchaser under subclause 3.3(2), the vendor must comply with section 9 of the Property Law Act 2007.
 - (3) To the extent that this has not already occurred, the vendor shall deliver to the purchaser:
 - (a) the tangible assets; and
 - (b) stock in trade; and
 - (c) the business records; and
 - (d) all keys, passwords, security codes or similar devices relating to the premises or the business.
- 3.4 All obligations under subclause 3.3 are interdependent.

Last Minute Settlement

- 3.5 If due to the delay of the purchaser, settlement takes place between 4.00 pm and 5.00 pm on the settlement date ("last minute settlement"), the purchaser shall pay the vendor:
 - (1) one day's interest at the interest rate for late settlement on the portion of the purchase price paid in the last minute settlement; and
 - (2) if the day following the last minute settlement is not a working day, an additional day's interest (calculated in the same manner) for each day until, but excluding, the next working day.

Purchaser Default: Late Settlement

- 3.6 If the vendor is not in default and if any portion of the purchase price is not paid upon the due date for payment the purchaser shall pay to the vendor interest at the interest rate for late settlement on the portion of the purchase price so unpaid from the due date for payment until payment; but nevertheless this stipulation is without prejudice to any of the vendor's rights or remedies including any right to claim for additional expenses and damages. For the purposes of this subclause, a payment made on a day other than a working day or after the termination of a working day shall be deemed to be made on the next following working day and interest shall be computed accordingly. The vendor is not obliged to give the purchaser possession of the business or the premises prior to settlement or to pay the purchaser any amount for remaining in possession.

Vendor Default: Late Settlement or Failure to give Possession

- 3.7 If by reason of the default of the vendor possession of the business is not given to the purchaser in accordance with subclause 3.1 and if the purchaser is not in default then the vendor shall pay to the purchaser, at the purchaser's election, either:
 - (1) an amount equivalent to interest at the interest rate for late settlement on the entire purchase price during the default period; or
 - (2) any losses or damages suffered by the purchaser, without prejudice to any other rights or remedies available to the purchaser.

Deferment of Settlement

- 3.8 If neither party is ready, willing and able to settle on the settlement date, the settlement date and the possession date shall be deferred to the second working day following the date upon which one of the parties gives notice that it has become ready, willing and able to settle.

4.0 Risk and insurance

- 4.1 The business shall remain at the sole risk of the vendor until possession is given and taken.
- 4.2 If, prior to the giving and taking of possession, any of the tangible assets is lost, destroyed or damaged and such loss, destruction or damage ("loss") has not been made good by repair or replacement by the possession date, then the following provisions shall apply:
 - (1) If the loss is sufficient to affect the purchaser materially in the carrying on of the business the purchaser may:
 - (a) complete the purchase at the purchase price, less a sum equal to any insurance moneys received or receivable by or on behalf of the vendor in respect of such loss; or
 - (b) complete the purchase at the purchase price if the vendor's insurance company has agreed to reinstate the business to its pre-loss condition; or
 - (c) cancel this agreement by serving notice on the vendor whereupon the purchaser shall be entitled to the immediate return of the deposit and any other moneys paid by the purchaser to the vendor, apart from which neither party shall have any right or claim against the other arising from this agreement or its cancellation.
 - (2) If the loss is insufficient to affect the purchaser materially in the carrying on of the business the purchaser shall complete the purchase at the purchase price less a sum equal to the amount of the diminution in value of the business.

5.0 Stock in trade

- 5.1 Where in this agreement the purchase price is stated as including a sum for stock in trade, that sum is the vendor's estimate of the in-store cost of the stock in trade on the date the vendor executed this agreement and is referred to in this agreement as "the estimated stock value".
- 5.2 The actual value of the stock in trade as at the giving and taking of possession shall be determined by joint stock-take by the vendor and the purchaser or their appointees or, if required by either party, by an independent valuer if one can be agreed upon. Due allowance shall be made for obsolete or damaged stock in trade. If the parties cannot agree on an independent valuer, or in the event of any dispute concerning a joint stock-take, either party may serve on the other party notice in writing requiring that the question be determined by an independent valuer to be appointed by the president for the time being of the New Zealand Law Society and the party serving the notice may at any time thereafter refer the dispute for determination. An independent valuer acting under this clause shall act as an expert in determining any question concerning the stock in trade or the value of the stock in trade. The cost of such valuation shall be borne equally by the parties.
- 5.3 If it is determined that the actual value of the stock in trade exceeds its estimated value by more than the maximum percentage stock value adjustment stated on the front page of this agreement ("the maximum percentage") then the purchaser:
 - (1) shall elect whether or not to accept all or any part of such excess; and
 - (2) may choose which items of stock in trade the vendor shall retain in order to reduce the actual value to the estimated value increased by the relevant maximum percentage.

Unless the purchaser notifies the vendor of the purchaser's choice of the excess stock in trade to be retained by the vendor within five (5) working days of the determination of the actual stock value the purchaser shall be deemed to have elected to accept all the stock in trade.

- 5.4 The vendor shall procure the vendor's lawyer to undertake to the purchaser to retain in trust from the moneys received on settlement a sum equivalent to the total of the maximum percentage of the estimated stock value which sum shall be applied to refund to the purchaser any deficiency in the actual values as compared with the estimated values and any balance shall be paid to the vendor.

- 5.5 The purchaser shall on or before the possession date pay into the purchaser's lawyer's trust account a sum equivalent to the total of the maximum percentage of the estimated stock value and shall procure the purchaser's lawyer to undertake to retain such sum in trust and it shall be applied in payment to the vendor of any excess of the actual value over the estimated value. Any balance shall be refunded to the purchaser.
- 5.6 In this agreement where reference is made to the value of stock in trade, such value shall be net of the GST content of any supply made to the vendor of or in relation to that stock in trade.

6.0 Vendor's warranties and undertakings

- 6.1 The vendor warrants and undertakes that at the date of this agreement the vendor has not:
- (1) received any notice or demand and has no knowledge of any requisition or outstanding requirement:
 - (a) from any local or government authority or other statutory body; or
 - (b) under the Resource Management Act 1991 and its amendments; or
 - (c) from the landlord of the premises; or
 - (d) from any other party,
 which adversely affects the business or the premises and which has not been disclosed in writing to the purchaser; or
 - (2) given any consent or waiver which adversely affects the business or the premises and which has not been disclosed in writing to the purchaser.
- 6.2 The vendor warrants and undertakes that between the date of this agreement and the giving and taking of possession the vendor shall:
- (1) properly carry on and conserve the business as a going concern and use all reasonable endeavours to maintain the turnover, maintain reasonable levels of stock in trade and preserve the goodwill of the business;
 - (2) not enter into any new contracts or arrangements or give any consents or waivers in respect of the business or the premises (other than in the ordinary course of business) without the written consent of the purchaser;
 - (3) promptly pass on to the purchaser or the purchaser's lawyer any notice, demand or requisition received by the vendor relating to the business or the premises and, if so required by the purchaser, comply with any such notice at the vendor's own cost, prior to settlement;
 - (4) promptly notify the purchaser of any lawsuits, claims, proceedings, investigations or adverse events which may occur, be threatened, brought, asserted or commenced against the vendor involving the business or the premises in any way or which may adversely affect the business.
- 6.3 The vendor warrants and undertakes that at the giving and taking of possession:
- (1) The assets and the stock in trade are the unencumbered property of the vendor.
 - (2) The tangible assets are in good operational order and condition taking account of their order and condition as at the date of this agreement.
 - (3) Where the vendor has done or caused or permitted to be done on the premises any works for which a permit or building consent was required by law:
 - (a) all required permits or consents were obtained; and
 - (b) the works were completed in compliance with those permits or consents; and
 - (c) where appropriate, a code compliance certificate was issued for those works; and
 - (d) all obligations imposed under the Building Act 1991 and/or the Building Act 2004 were fully discharged.
- 6.4 The vendor warrants and undertakes that on or immediately after possession:
- (1) The vendor will pay and discharge all debts and liabilities relating to the business incurred or arising prior to the close of business on the possession date in connection with the business or in respect of any contract dealing or occurrence relating to the business and shall indemnify the purchaser from and against all claims, proceedings, expenses and costs in connection therewith.
 - (2) Any adjustments will be paid to the dates stated in the settlement statement to be supplied to the purchaser before the possession date or will be so paid immediately after the possession date and all incomings will be collected by the vendor to the dates stated in that statement.
 - (3) The vendor will at the vendor's cost do and execute all such acts and deeds as may reasonably be required to enable the purchaser to obtain the full benefit of the business.
 - (4) The vendor will take all reasonable steps to enable the purchaser to have the use and benefit of any means of communicating with the business including but not limited to any telephone number including any mobile telephone number, post office box, domain name or email address relating to the business.
 - (5) The vendor, or a suitably experienced person nominated by the vendor and acceptable to the purchaser will, during the vendor's period of assistance stated on the front page of this agreement give the purchaser to such extent as reasonably required by the purchaser the benefit of the vendor's knowledge and experience in the conduct of the business.
- 6.5 The vendor warrants and undertakes that the turnover warranty details stated on the front page of this agreement correctly disclose the turnover of the business (excluding GST) for the period stated.
- 6.6 Breach of any warranty or undertaking contained in this clause does not defer the obligation to settle. Settlement shall be without prejudice to any rights or remedies available to the parties at law or in equity, including but not limited to the right to cancel this agreement under the Contractual Remedies Act 1979.

7.0 Restraint of trade

- 7.1 In consideration of the purchase price the vendor hereby agrees with the purchaser that the vendor will not during the vendor's restraint of trade period stated on the front page of this agreement either directly or indirectly carry on or be interested either alone or in partnership with or as manager, agent, director, shareholder, financier or employee of any other person in any business similar to the business within the radius from the premises stated on the front page of this agreement.
- 7.2 If the vendor is an incorporated company it will on or before the possession date procure its shareholders and its directors, other than any shareholders or directors specifically excluded from this provision in terms of Schedule 2 to this agreement, to enter into a deed of covenant with the purchaser binding themselves to like effect, such deed of covenant to be prepared by and at the expense of the purchaser and tendered to the vendor or the vendor's lawyer for execution a reasonable time before settlement.

8.0 Conditions and terms of securities

Particular conditions

- 8.1 If particulars of any finance condition are stated on the front page of this agreement, this agreement is conditional upon the purchaser arranging finance in terms of those particulars on or before the indicated finance date.
- 8.2 If a lease is to be assigned to the purchaser then this agreement is subject to a condition that on or before the date for the landlord's consent stated on the front page of this agreement:
- (1) The landlord shall at the vendor's cost consent in writing to the assignment to the purchaser of the vendor's interest as tenant.
 - (2) The purchaser shall prepare, at the purchaser's own expense, a deed of assignment of the lease.
 - (3) The deed of assignment shall be executed by the purchaser as assignee and tendered to the vendor or the vendor's lawyer within a reasonable time before settlement.
 - (4) The vendor shall seek the landlord's consent to the assignment of the lease and the purchaser shall provide the vendor with all reasonable assistance in this regard, including providing full and prompt responses to the landlord's reasonable requests for information concerning the purchaser and procuring such guarantees of the proposed assignee's obligations as the landlord may reasonably require.

Operation of conditions

- 8.3 If this agreement is expressed to be subject either to the above or to any other condition(s), then in relation to each such condition the following shall apply unless otherwise expressly provided:
- (1) The condition shall be a condition subsequent.
 - (2) The party or parties for whose benefit the condition has been included shall do all things which may reasonably be necessary to enable the condition to be fulfilled by the date for fulfilment.
 - (3) Time for fulfilment of any condition and any extended time for fulfilment to a fixed date shall be of the essence.
 - (4) The condition shall be deemed not to be fulfilled until notice of the fulfilment has been served by one party on the other party.
 - (5) If the condition is not fulfilled by the date for fulfilment, either party may at any time before the condition is fulfilled or waived avoid this agreement by giving notice to the other. Upon avoidance of this agreement the purchaser shall be entitled to the immediate return of the deposit and any other moneys paid by the purchaser to the vendor and neither party shall have any right or claim against the other arising from this agreement or its termination.
 - (6) At any time before this agreement is avoided the purchaser may waive any finance condition and either party may waive any other condition which is for the sole benefit of that party. Any waiver shall be by notice.

Terms of security

- 8.4 Any security to be arranged pursuant to a finance condition shall (subject to any particulars stated in this agreement and to any further terms of sale):
- (1) if it is to be arranged with a lending institution, be on the customary terms and conditions of that institution; and
 - (2) if it is not to be arranged with a lending institution, be on such reasonable and usual terms as are normally included in securities of the same rank secured over comparable assets.
- 8.5 The security shall be a security of such type as is appropriate to the class or classes of asset(s) over which the security is to be granted and the legal personality of the purchaser and in the case of a mortgage of a registrable interest in land shall be a mortgage registrable under the Land Transfer Act 1952.

9.0 Approval of lease

- 9.1 If the purchaser is to take an assignment of the lease:
- (1) the vendor shall deliver a copy of the lease to the purchaser or the purchaser's lawyer;
 - (2) this agreement is conditional on the purchaser's approval of the lease; and
 - (3) the condition is for the purchaser's sole benefit.
- 9.2 If the purchaser does not approve the lease, the purchaser shall give notice to the vendor (a "purchaser's notice") on or before the fifth working day after either the date of this agreement, or the date of delivery of the lease in terms of paragraph (1) of subclause 9.1 (whichever is the later), stating the particular matters in respect of which approval is withheld and, if those matters are capable of remedy, what the purchaser requires to be done to remedy those matters. If the purchaser does not give a purchaser's notice the purchaser shall be deemed to have accepted the lease and the vendor's title thereto in all respects.
- 9.3 The vendor shall give notice to the purchaser (a "vendor's notice") on or before the seventh working day after receipt of the purchaser's notice advising whether or not the vendor is able and willing to comply with the purchaser's notice by the settlement date.
- 9.4 If the vendor does not give a vendor's notice, or if the vendor's notice advises that the vendor is unable or unwilling to comply with the purchaser's notice, and if the purchaser does not, on or before the twelfth working day after the date on which the purchaser's notice is given, give notice to the vendor that the purchaser waives the objection to the lease, this condition shall not have been fulfilled and the provisions of paragraph (5) of subclause 8.3 shall apply.
- 9.5 If the vendor gives a vendor's notice advising that the vendor is able and willing to comply with the purchaser's notice, this condition is deemed to have been fulfilled and it shall be a requirement that the purchaser's notice shall be complied with before settlement.
- 9.6 Any deed of assignment of the lease shall be in the current form published by the Auckland District Law Society Incorporated and shall contain the indemnities provided in that form, including an indemnity by the assignee in favour of the assignor in respect of any default by the assignee in payment of rent or in the observance or performance of any of the covenants, conditions and provisions in the lease as from the date of assignment.

10.0 Notice to complete and remedies on default

- 10.1 (1) If the sale is not settled on the settlement date either party may at any time thereafter serve on the other party notice ("a settlement notice") to settle in accordance with this clause; but
- (2) the notice shall be effective only if the party serving it is at the time of service either in all material respects ready able and willing to proceed to settle in accordance with the notice or is not so ready able and willing to settle only by reason of the default or omission of the other party.
 - (3) If the purchaser is in possession the vendor's right to cancel this agreement will be subject to sections 28 to 36 of the Property Law Act 2007 and the settlement notice may incorporate or be given with a notice under section 28 of that Act complying with section 29 of that Act.
- 10.2 Subject to subclause 10.1(3), upon service of a settlement notice the party on whom the notice is served shall settle:
- (1) on or before the twelfth working day after the date of service of the notice; or
 - (2) on the first working day after the 13th day of January if the period of twelve working days expires during the period commencing on the 6th day of January and ending on the 13th day of January, both days inclusive,
- time being of the essence, but without prejudice to any intermediate right of cancellation by either party.
- 10.3 (1) If this agreement provides for the payment of the purchase price by instalments and the purchaser fails duly and punctually to pay any instalment on or within seven (7) working days from the date on which it fell due for payment then, whether or not the purchaser is in possession, the vendor may immediately give notice to the purchaser calling up the unpaid balance of the purchase price, which shall upon service of the notice fall immediately due and payable.
- (2) The date of service of the notice under this subclause shall be deemed to be the settlement date for the purposes of subclause 10.1.
 - (3) The vendor may give a settlement notice with a notice under this subclause.
 - (4) For the purpose of this subclause a deposit is not an instalment.
- 10.4 If the purchaser does not comply with the terms of the settlement notice served by the vendor then, subject to subclause 10.1(3):
- (1) Without prejudice to any other rights or remedies available to the vendor at law or in equity the vendor may:
 - (a) sue the purchaser for specific performance; or
 - (b) cancel this agreement by notice and pursue either or both of the following remedies namely:
 - (i) forfeit and retain for the vendor's own benefit the deposit paid by the purchaser, but not exceeding in all 10% of the purchase price;
 - (ii) sue the purchaser for damages.
 - (2) If the vendor is entitled to cancel this agreement the entry by the vendor into a conditional or unconditional contract for the resale of the business or any part thereof shall take effect as a cancellation of this agreement by the vendor if this agreement has not previously been cancelled and such resale shall be deemed to have occurred after cancellation.
 - (3) The damages claimable by the vendor under subclause 10.4(1)(b)(ii) shall include all damages claimable at common law or in equity and shall also include (but shall not be limited to) any loss incurred by the vendor on any bona fide resale contracted within twelve (12) months from the date by which the purchaser should have settled in compliance with the settlement notice. The amount of that loss may include:
 - (a) interest on the unpaid portion of the purchase price at the interest rate for late settlement from the settlement date to the settlement of such resale; and
 - (b) all costs and expenses reasonably incurred in any resale or attempted resale; and
 - (c) all losses incurred by the vendor in carrying on the business from the settlement date to the settlement of such resale.
 - (4) The purchaser shall not be entitled to any of the proceeds of resale.
- 10.5 If the vendor does not comply with the terms of a settlement notice served by the purchaser then without prejudice to any other rights or remedies available to the purchaser at law or in equity, the purchaser may:
- (1) sue the vendor for specific performance; or
 - (2) cancel this agreement by notice and require the vendor to repay to the purchaser any deposit and any other money paid on account of the purchase price and interest on such sum(s) at the interest rate for late settlement from the date or dates of payment by the purchaser until repayment.
- 10.6 The party serving a settlement notice may extend the term of the notice for one or more specifically stated periods of time and thereupon the term of the settlement notice shall be deemed to expire on the last day of the extended period or periods and it shall operate as though this clause stipulated the extended period(s) of notice in lieu of the period otherwise applicable; and time shall be of the essence accordingly. An extension may be given either before or after the expiry of the period of the notice.
- 10.7 Nothing in this clause shall preclude a party from suing for specific performance without giving a settlement notice.
- 10.8 A party who serves a settlement notice under this clause shall not be in breach of an essential term by reason only of that party's failure to be ready and able to settle upon the expiry of that notice.

11.0 Non-merger

- 11.1 The obligations and warranties of the parties in this agreement shall not merge with settlement or with the giving and taking of possession of the business.

12.0 Goods and Services Tax (GST) – Zero-rating

- 12.1 The vendor warrants that the statement on the front page regarding the vendor's GST registration status in respect of the supply under this agreement is correct at the date of this agreement.
- 12.2 The purchaser warrants that any particulars stated by the purchaser in Schedule 3 are correct at the date of this agreement.
- 12.3 Where the particulars stated on the front page and in Schedule 3 indicate that:
- (1) The vendor is and/or will be at settlement a registered person in respect of the supply under this agreement;
 - (2) The recipient is and/or will be at settlement a registered person;
 - (3) The recipient intends at settlement to use the property for making taxable supplies; and
 - (4) The recipient does not intend at settlement to use the property as a principal place of residence by the recipient or a person associated with the recipient under section 2A(1)(c) of the GST Act -
- GST will be chargeable on the supply under this agreement at zero per cent pursuant to section 11(1)(mb) of the GST Act.
- 12.4 If GST is chargeable on the supply under this agreement at zero per cent pursuant to section 11(1)(mb) of the GST Act, then on or before settlement the purchaser will provide the vendor with the recipient's name, address and registration number if any of those details are not included in Schedule 3 or they have altered.
- 12.5 If any of the particulars stated by the purchaser in Schedule 3 should alter between the date of this agreement and settlement, the purchaser shall notify the vendor of the altered particulars and of any other relevant particulars in Schedule 3 which may not have been completed by the purchaser as soon as practicable and in any event no later than two working days before settlement. The purchaser warrants that any altered or added particulars will be correct as at the date of the purchaser's notification. If the GST treatment of the supply under this agreement should be altered as a result of the altered or added particulars, the vendor shall prepare and deliver to the purchaser or the purchaser's lawyer an amended settlement statement if the vendor has already tendered a settlement statement, and a credit note or a debit note, as the case may be, if the vendor has already issued a tax invoice.

- 12.6 If the particulars stated in Schedule 3 indicate that the recipient intends to use part of the property as a principal place of residence by the recipient or a person associated with the recipient under section 2A(1)(c) of the GST Act, the reference in subclauses 12.3 and 12.4 to "the supply under this agreement" shall be deemed to mean the supply under this agreement of the remainder of the property, excluding that part. The supply of that part of the property intended to be used as a principal place of residence will comprise a separate supply in accordance with section 5(15)(a) of the GST Act.
- 12.7 Unless the context otherwise requires, words and phrases used in subclauses 12.1 to 12.6 and in Schedule 3 shall have the same meaning as those words and phrases have in the GST Act.

13.0 Supply of going concern

- 13.1 If there is a supply under this agreement to which section 11(1)(mb) of the GST Act does not apply but which comprises the supply of a taxable activity that is a going concern at the time of the supply, then, unless otherwise expressly stated herein:
- (1) Each party warrants that it is a registered person or will be so by the date of the supply;
 - (2) Each party agrees to provide the other party by the date of the supply with proof of its registration for GST purposes;
 - (3) The parties agree that they intend that the supply is of a taxable activity that is capable of being carried on as a going concern by the purchaser; and
 - (4) The parties agree that the supply made pursuant to this agreement is the supply of a going concern on which GST is chargeable at zero per cent.
- 13.2 If it subsequently transpires that GST is payable in respect of the supply and if this agreement provides for the purchaser to pay (in addition to the purchase price without GST) any GST which is payable in respect of the supply made under this agreement, then the provisions of clauses 13.3, 13.4, 13.5 and 13.6 of this agreement shall apply.
- 13.3 If GST is payable in respect of the supply then:
- (1) the purchaser shall pay to the vendor the GST which is so payable in one sum on the GST date;
 - (2) if the GST date has not been stated on the front page of this agreement the GST date shall be the possession date; and
 - (3) if any GST is not so paid to the vendor the purchaser shall pay to the vendor:
 - (a) interest at the interest rate for late settlement on the amount of GST unpaid from the GST date until payment; and
 - (b) any default GST.
- 13.4 It shall not be a defence to a claim against the purchaser for payment to the vendor of any default GST that the vendor has failed to mitigate the vendor's damages by paying an amount of GST when it fell due under the GST Act.
- 13.5 Any sum referred to in this clause is included in the purchase price, interest and other monies, if any, referred to in subclause 3.3(1).
- 13.6 If the supply under this agreement is a taxable supply the vendor shall deliver a tax invoice to the purchaser on or before the GST date or such earlier date as the purchaser is entitled to delivery of an invoice under the GST Act.

14.0 Dispute resolution

- 14.1 Unless otherwise provided in this agreement, if a party considers that there is a dispute in respect of any matters arising out of, or in connection with this agreement, then that party shall immediately give notice to the other party setting out details of the dispute. The parties will endeavour in good faith to resolve the dispute between themselves within five (5) working days of the receipt of the notice, failing which the parties will endeavour in good faith within a further ten (10) working days to appoint a mediator and resolve the dispute, time being of the essence.
- 14.2 Neither party will commence legal proceedings against the other except for injunctive relief before following the procedure set out in subclause 14.1.

15.0 Agent

- 15.1 If the name of a licensed real estate agent is recorded on this agreement it is acknowledged that the sale evidenced by this agreement has been made through that agent whom the vendor appoints as agent to effect the sale. The vendor shall pay the agent's charges (including GST) for effecting such sale.

16.0 Limitation of Liability

- 16.1 If any person enters into this agreement as trustee of a trust, then:
- (1) The person warrants that:
 - (a) that person has power to enter into this agreement under the terms of the trust;
 - (b) that person has properly signed this agreement in accordance with the terms of the trust;
 - (c) that person has the right to be indemnified from the assets of the trust and that right has not been lost or impaired by any action of that person including entry into this agreement; and
 - (d) all of the persons who are trustees of the trust have approved entry into this agreement.
 - (2) If that person has no right to or interest in any assets of the trust except in that person's capacity as a trustee of the trust, that person's liability under this agreement will not be personal and unlimited but will be limited to the actual amount recoverable from the assets of the trust from time to time ("the limited amount"). If the right of that person to be indemnified from the trust assets has been lost, that person's liability will become personal but limited to the extent of that part of the limited amount which cannot be recovered from any other person.

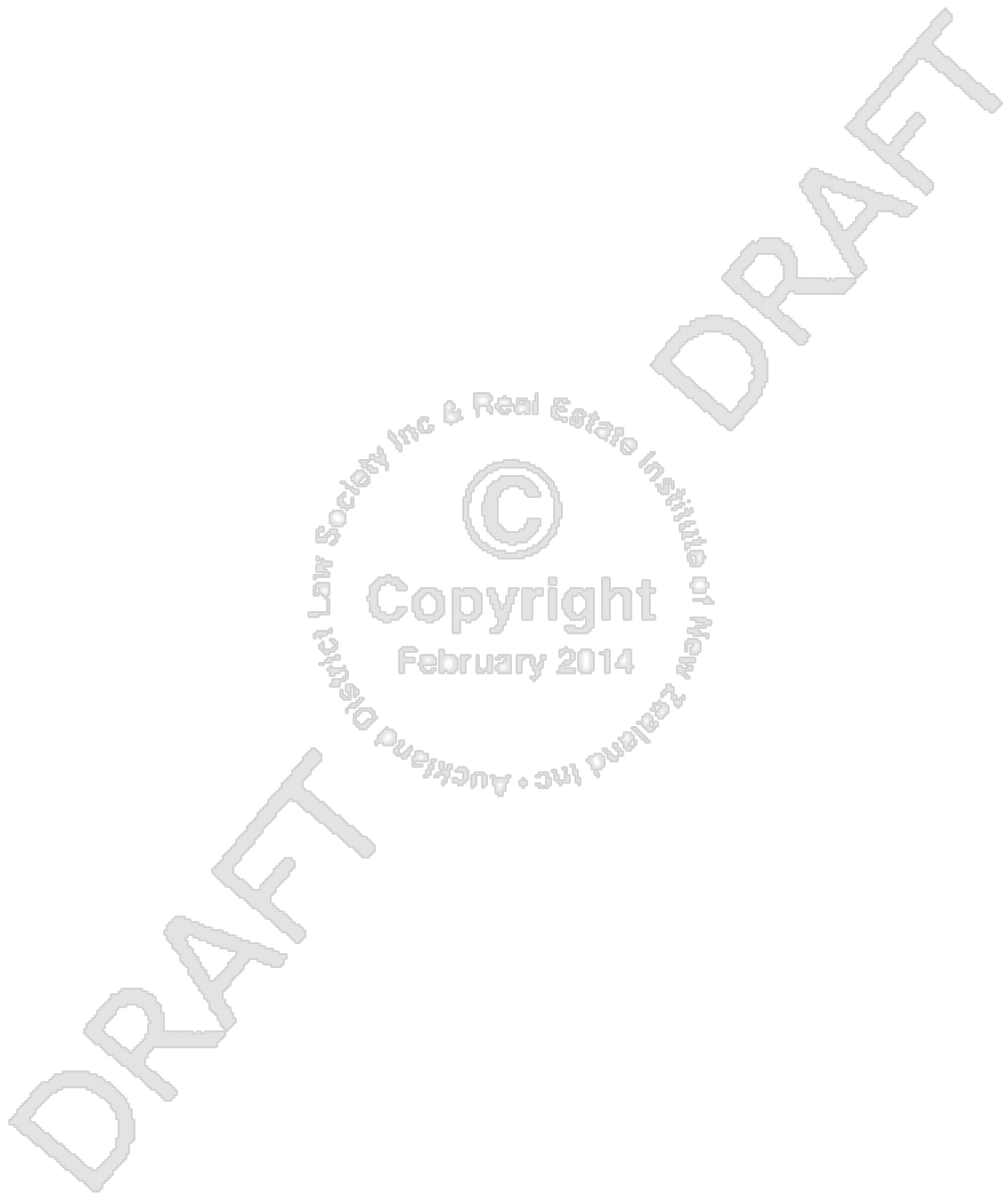
17.0 Counterparts

- 17.1 This agreement may be executed in two or more counterparts, all of which will together be deemed to constitute one and the same agreement. A party may enter into this agreement by signing a counterpart copy and sending it to the other party, including by facsimile or e-mail.

FURTHER TERMS OF SALE

SEE THE APPENDIX PAGE
AS ATTACHED

The Vendor and Purchaser both warrant to provide to each other the information required in Schedule 3 of this agreement prior to this agreement becoming unconditional



SCHEDULE 1

Subclause 1.1(3) - List of Tangible and Intangible Assets

[Empty box for Schedule 1 content]



DRAFT

SCHEDULE 2

Subclause 7.2 - List those directors and shareholders who are excluded from the restraint of trade

[Empty box for Schedule 2 content]

DRAFT

SCHEDULE 3

(GST Information - see clause 12.0)

This Schedule must be completed if the vendor has stated on the front page that the vendor is registered under the GST Act in respect of the transaction evidenced by this agreement and/or will be so registered at settlement. Otherwise there is no need to complete it.

The parties should seek professional advice regarding the GST treatment of the transaction. This treatment depends upon the GST information supplied by the purchaser and could change before settlement if that information changes.

Section 1

1.	The Vendor's registration number (if already registered):	
2.	The purchaser is registered under the GST Act and/or will be so registered at settlement.	Yes/No
3.	The purchaser intends at settlement to use the property for making taxable supplies.	Yes/No

If the answer to either or both of question 2 and 3 is 'No', go to question 6

4.	The purchaser's details are as follows:	
	(a) Full name:	
	(b) Address:	
	(c) Registration number (if already registered):	
5.	The purchaser intends at settlement to use the property as a principal place of residence by the purchaser or a person associated with the purchaser under section 2A(1)(c) of the GST Act (connected by blood relationship, marriage, civil union, de facto relationship or adoption).	Yes/No
	OR	
	The purchaser intends at settlement to use part of the property as a principal place of residence by the purchaser or a person associated with the purchaser under section 2A(1)(c) of the GST Act.	Yes/No
	That part is: (e.g. "the main farmhouse" or "the apartment above the shop")	
6.	The purchaser intends to direct the vendor to transfer title to the property to another party ("nominee")	Yes/No

If the answer to question 6 is "Yes", then please continue. Otherwise, there is no need to complete this Schedule any further.

Section 2

7.	The nominee is registered under the GST Act and/or is expected by the purchaser to be so registered at settlement.	Yes/No
8.	The purchaser expects the nominee at settlement to use the property for making taxable supplies.	Yes/No

If the answer to either or both of questions 7 and 8 is 'No', there is no need to complete this Schedule any further.

9.	The nominee's details (if known to the purchaser) are as follows:	
	(a) Full name:	
	(b) Address:	
	(c) Registration number (if already registered):	
10.	The purchaser expects the nominee to intend at settlement to use the property as a principal place of residence by the nominee or a person associated with the nominee under section 2A(1)(c) of the GST Act (connected by blood relationship, marriage, civil union, de facto relationship or adoption).	Yes/No
	OR	
	The purchaser expects the nominee to intend at settlement to use part of the property as a principal place of residence by the purchaser or a person associated with the purchaser under section 2A(1)(c) of the GST Act.	Yes/No
	That part is: (e.g. "the main farmhouse" or "the apartment above the shop").	

WARNING (These warnings do not form part of this agreement)

1. This is a binding contract. If either party has any doubts professional advice should be sought **before signing**.
2. **Consider whether this agreement needs to deal with work in progress. If so, you may need to add further terms of sale.**

Signature of vendor(s):

Signature of purchaser(s):

AGREEMENT FOR SALE AND PURCHASE OF A BUSINESS

© This form is copyright to the Real Estate Institute of New Zealand Incorporated and
Auckland District Law Society Incorporated

Date:

VENDOR: I saw the sign Limited

Contact Details:

VENDOR'S LAWYERS:

Firm:

Individual Acting:

Contact Details:

PURCHASER Hamish Pepper and Annabel Jeaffreson and/or
Nominee

Contact Details:

PURCHASER'S LAWYERS:

Firm:

Individual Acting:

Contact Details:

LANDLORD'S LAWYERS:

Firm:

Individual Acting:

Contact Details:

Appendix - Additional Clauses

18.0 Deposit

18.0 DEPOSIT

18.1 The Vendor and Purchaser agree that the deposit payable under this Agreement will be lodged with Public Trust, to be held on behalf of the Vendor and the Purchaser. NZ Real Estate Trust is an independent third party trust account service provided by Safekiwi (New Zealand) Limited. Safekiwi (New Zealand) Limited acts as a stakeholder in respect of the deposits paid into NZ Real Estate Trust. Interest earned on the deposit whilst it is held by Public Trust is payable to Safekiwi (New Zealand) Limited. Terms of Use can be viewed at www.realestatetrust.co.nz/termsfuse.

18.2 The deposit is to be paid upon the signing of this agreement by both parties.

