

Disclaimer:

The following pages contain various clauses drafted by members to assist them to negotiate contracts where the parties and/or property may be affected or potentially affected by the Covid19 virus.

The clauses are **suggestions only** and should not be relied on as legal advice. These clauses have been provided by members to assist other members in formulating their own clause.

CAUTION:

It is not possible to draft a "one size fits all" clause.

The clauses provided are suggestions only and should be regarded by licensees as a *starting point* towards drafting their own clause. Any clause will need to be adjusted/negotiated as necessary on a case by case basis as appropriate to each transaction.

Please remember that licensees are responsible for their own work and cannot rely on the sample clauses and the original drafters can in no way be held responsible for any repercussions for their use.

Special Condition: Covid-19 (Coronavirus)

This Clause applies whilst ever the Federal, NSW State, or Local Government area in which the dwelling is situated, is managing the Covid-19 outbreak as a Health Emergency or a State Emergency:

1. In the event any party to the Contract is required to undertake self isolation or quarantine, such party will notify the other party immediately and
 - a. In the event that completion does not take place by the completion date as provided for in Clause 15 of this Contract due to such self-isolation or quarantine, then the completion date is extended by 21 days
2. In the event any party is admitted to hospital as a consequence of Covid-19 Coronavirus, such party will notify the other party as soon as possible and
 - a. In the event that completion does not take place by the completion date as provided for in Clause 15 of this Contract due to such hospitalisation, then on and from the date of the that party's discharge from hospital, the completion date is extended by 21 days.

For the benefit of both parties, should either party:

1. contract the Covid-19 virus;
2. be placed in isolation in the property;
3. directed to self-isolate in the property; or
4. need to care for an immediate member of their household or family in the property,

then the parties agree that the following provisions shall apply:

1. The other party cannot issue a Notice to Complete on that party until such time that the person or persons have been medically cleared by a general practitioner or other specialist and permitted to leave the property.
2. The party seeking the benefit of this clause must provide suitable documentation to provide evidence of the need for isolation immediately upon diagnosis.
3. Completion shall take place within seven (7) days from the date from which the party is permitted to leave the property.
4. The party seeking the benefit of this clause shall do all things reasonably possible to vacate the property a minimum of 24 hours prior to completion.
5. It is an essential term of this contract that the party seeking the benefit of this clause shall thoroughly disinfect the property prior to completion. For the purpose of clarity, thoroughly disinfect includes, but is not limited to, vacuuming carpets, cleaning air conditioning filters and using disinfectant products to clean door handles, light switches, hard surfaces, remote controls, windows, appliances and mop floors.

14. COVID 19

Should either of the parties to this Contract, or immediate household members residing in the property, be *quarantined or are required to be placed in *self-isolation during the crisis period of the COVID 19 Coronavirus, should the settlement date fall within the quarantine or self- isolation period, then the affected party must notify the other party's conveyancer/solicitor by notice in writing of the period of quarantine or self-isolation & it is agreed between the parties that

a. In the event that completion does not take place by the completion date as provided for in Clause of this Contract due to such quarantine or self-isolation, then the completion date is extended by 21 days.

b. In the event any party is admitted to hospital as a consequence of COVID-19 Coronavirus, such party will notify the other party as soon as possible and;

c. In the event that completion does not take place by the completion date as provided for in Clause 15 of this Contract due to such hospitalisation, then on and from the date of that party's discharge from hospital, the completion date is extended by 21 days.

*

Quarantine

- You are at risk of having the COVID-19 infection (coronavirus), but not actually known to be infected. You may or may not end up with it
- You are asked to wait it out in isolation until 14 days have passed if you remain well. This reduces the chances of the infection spreading and applies if you have come back from the growing list of countries with a lot of infection or if you have had contact with someone who is positive
- If you become unwell during the 14 days, testing is done and if *positive* you move into isolation phase (or into hospital if very unwell)
- If unwell but testing is *negative*, we still want you to stay in quarantine until the 14 days are up, as the infection may take that long to show
- If well at the end of the 14 days, you may resume normal contact, providing you stay well

Self-Isolation

- You have tested positive for COVID-19
- You are well enough to be looked after at home
- At time of initial publication in Australia, you can come out of self-isolation if all of the following apply
 - more than seven days since you became unwell
 - at least two days with no fever
 - at least one day of feeling better/having no symptoms
 - two tests 24 hours apart that are both negative

1. Covid-19 outbreak - Completion date

This Clause applies whilst ever the Federal, NSW State, or Local Government area in which the dwelling is situated, is managing the Covid-19 outbreak as a Health Emergency or a State Emergency:

- (a) In the event any party to the Contract is required to undertake self isolation or quarantine, such party will notify the other party immediately AND in the event that completion cannot take place by the due date for completion, due to such self-isolation or quarantine, then the completion date is extended by 21 days.
- (b) In the event any party is admitted to hospital as a consequence of Covid- 19 Coronavirus, such party will notify the other party as soon as possible AND in the event that completion cannot take place by the due date, due to such hospitalisation, then the completion date is extended by 21 days from the date of the party's discharge from hospital.

15 The parties agree that if settlement of this matter is delayed as a direct consequence of matters arising from the CoronaVirus pandemic, whether direct infection to a vendor or purchaser or solicitor or conveyancer for a vendor or purchaser or by virtue of a government directive or because of the failure or inability of a financial institution or electronic conveyancing platform to settle on the agreed date then both parties agree;

- 1 The affected party or parties may delay completion upon provision of documentary evidence of the cause of the delay
- 2 Each party agrees not to issue a Notice to Complete to the other party in respect of such unavoidable delay
- 3 The vendor cannot claim interest from the purchaser for any delay
- 4 The purchaser cannot make a claim against the vendor for any delay
- 5 The purchaser must not make any *requisition* or claim (for compensation or otherwise), *rescind* or otherwise delay and
- 6 Completion is to proceed without delay once the issue is resolved
- 7 In the event;
 - a. the purchaser is ready willing and able to complete this matter; and
 - b. the vendor is unable to complete as a result of the Coronavirus; and
 - c. prior to the Vendor being ready willing and able to complete, the purchasers financing is withdrawn and the financial institution refuses to reapprove the purchasers finance, provided documentary evidence of such refused approval is supplied, then
- 8 The Purchaser may rescind the contract and Clause 19 shall apply.

OTHERWISE INCAPACITATED

1 Without affecting any rights or remedies available to either party at law or in equity had this Additional Clause not be included, if either party (or any one of them) prior to completion, or at the time required for Completion under this Contract:

- a) Is confirmed to have contracted the COVID-19 Virus and produces a letter confirming same by a medical practitioner or the Australian Government Department of Health.;
- b) Is confirmed to be in self isolation for a period of 14 days and such exposure dates and exposure circumstances are advised to the other parties' representative in writing;
- c) Is confirmed to be appointed as a carer for a related person who has been directed to self isolate, details of the person for whom the party is appointed as carer and the period for which they are to be self isolated must be served on the other parties representative in writing;

then the parties agree that, should any party to the contract be in any of the above- mentioned circumstances set out in this Clause, the period the subject party is either in self-isolation or in treatment for the COVID-19 Virus will be referred to as the 'Isolation Period'.

The parties agree and acknowledge that, during the Isolation Period, no party is to issue a Notice to Complete until such time as the subject party produces a letter from a medical practitioner or the Australian Government Department of Health confirming that the subject party is medically cleared to no longer remain in self isolation or is no longer infected by the COVID-19 Virus and is cleared from quarantine for same.

2 The parties agree and acknowledge that should the vendor be the party to will be subject to any of the conditions or circumstances listed in Additional Clause 1 above, then the parties agree that the vendor will arrange for the Property to be cleaned by an approved Forensic Cleaner prior to settlement and the Purchaser taking occupation of the property.

38. The Parties hereby acknowledge as at the date of this Contract that the Covid-19 pandemic may compel the Federal Government and/or the NSW State Government to gazette a lockdown of services that may affect the completion of this Contract ('lockdown'). In the event of a lockdown directly affecting the completion of this Contract, both parties hereby agree that until the Federal Government and/or the NSW State Government have gazetted that the lockdown directly affecting the completion of this Contract has expired ('lockdown expiry date'):

38.1 Neither party shall be entitled to serve a Notice to Complete on the other until 28 days after the lockdown expiry date;

38.2 Neither party shall be entitled to claim liquidated damages on the other until 28 days after the lockdown expiry date;

38.3 Neither party shall be entitled to make any requisition or claim for compensation on the other until 28 days after the lockdown expiry date;

38.4 Neither party shall be entitled to make a claim for rescission or termination of this Contract for Sale until 28 days after the lockdown expiry date;

The date for completion shall be the later of:

38.5 The date for completion of this Contract; and

38.6 28 days after the lockdown expiry date.

In the event that the date for completion of this Contract is delayed for more than 3 months after the due date for completion of this Contract, as a direct result of a lockdown, then either party is entitled to rescind this Contract and the terms of Clause 19 hereof shall apply and the parties shall release and indemnify each other against any further claim for damages, costs and expenses pursuant to such rescission of this Contract. This Additional Clause shall not merge upon completion of this Contract.

39. This Contract is subject to and conditional upon the Vendor, at no expense to the Purchaser, arranging for a suitably licensed and insured tradesperson to professionally clean the property prior to completion of this Contract and after the Vendor has vacated the property.

Annexure – Special Condition: COVID-19 Virus
Covid-19 Event

1. The Vendor and Purchaser acknowledge and agree that in the event prior to the Settlement Date either party (including that party's company directors or secretary where the context permits):
 - 1.1.1 contracts or suffers the Covid-19 Virus;
 - 1.1.2 is placed in Quarantine or directed to Quarantine by a Relevant Authority;
 - 1.1.3 is placed in Self-Isolation or directed to Self-Isolate by a Relevant Authority;
 - 1.1.4 needs to care for an immediate member of their household or family who is directly affected by special conditions 1.1.1 to 1.1.3 above; or
 - 1.1.5 (in the case of the Vendor) needs to remain on the Land for any reason related to special conditions 1.1.1 to 1.1.3 above;

(collectively and each being a "**Covid-19 Event**") and such Covid-19 Event impacts the Vendor's or the Purchaser's ability to settle under this Contract by the Settlement Date, then such party may, subject to compliance with the terms of special condition 2, extend the Settlement Date by a reasonable period equal to the delay caused (or expected to be caused) by the Covid-19 Event, but being not more than fourteen (14) ordinary days, upon giving written notice to the other party.

2. The rights of the Vendor and Purchaser to extend the Settlement Date in accordance with special condition 1 are subject to the following conditions:
 - 2.1 the affected party must notify the other party by notice in writing as soon as reasonably practicable upon becoming aware of the Covid-19 Event, and in any event before the Settlement Date;
 - 2.2 the affected party must provide reasonable evidence of the Covid-19 Event to the other side; and
 - 2.3 (in the case of the Vendor) if the Vendor is seeking to rely on this special condition and has had or permitted any person to be Quarantined or Self-Isolated on the Land at any time within a period of fourteen (14) days prior to the Settlement Date, then the Vendor must either:
 - a) cause for the Improvements and Included Goods on the Land to be Disinfected by a cleaning contractor approved by the Purchaser (acting reasonably); or
 - b) (at either party's election) pay to the Purchaser or provide an adjustment in favour of the Purchaser at settlement an amount equal to \$500.

Time Extensions

3. The Vendor and Purchaser agree that for so long as the Covid-19 Virus has known cases in South Australia, then:
 - 3.1.1 (**Default Before Settlement**) the time period specified in Clause 16.1(b)(ii) of the Contract shall be extended from "3 Business Days" to "10 Business Days"; and
 - 3.1.2 (**Default At Settlement**) the time period specified in Clause 16.2(b)(ii) of the Contract shall be extended from "10 Business Days" to "20 Business Days".

Defined Terms

4. In these Special Conditions:
 - 4.1 "**Covid-19 Virus**" means the strain of virus more fully described as coronavirus disease 2019 as declared by the World Health Organisation.
 - 4.2 "**Disinfected**" means:
 - a) steam cleaning all carpets and mopping of all hard-surface floors using a disinfectant cleaning agent capable of killing the Covid-19 Virus; and
 - b) cleaning air conditioning filters and using disinfectant products to clean all hard surfaces including without limitation all door handles, light switches, remote controls, windows and appliances using a disinfectant cleaning agent capable of killing the Covid-19 Virus.
 - 4.3 "**Quarantine**" means the isolation of an individual from other members of the public due to or related to the restriction on the movement of people in order to stop or prevent the spread of Covid-19 Virus.
 - 4.4 "**Relevant Authority**" includes the Australian Government (including any health department of the same), the New South Wales Government (including any health department of the same), the Office of Local Government (including any individual local government council) and the World Health Organisation.

- 4.5 **“Self-Isolate”** or **“Self-Isolation”** means the isolation of an individual from other members of the public due to:
- a) having a confirmed case of Covid-19 Virus;
 - b) being in close contact with a person with a confirmed case of Covid-19 Virus; or
 - c) arriving in Australia after midnight on 15 March 2020.