

**FURTHER TERMS OF SALE**  
**Prestons Park**  
**(Mairehau Road Lots except Substage R3)**  
**Pre title issuing**

**21. Subdivision**

- 21.1 Title for the Property has not yet issued. There are a range of documents available on the Prestons Park website ([www.prestonspark.co.nz](http://www.prestonspark.co.nz)) including a list which provides up to date information on when titles are expected to issue.
- 21.2 The Vendor has obtained the subdivision consent(s) referred to in the Appendix, as varied or replaced from time to time (**Subdivision Consent**), which, along with subdivision consents on neighbouring land provide for a subdivision known as Prestons Park (**Subdivision**).
- 21.3 The Vendor will use its best endeavours to complete the subdivision generally in accordance with the subdivision plan **attached** to this Agreement (**Subdivision Plan**), and in accordance with the Subdivision Consent, in order to provide a separate title for the Property. However, if a search copy for the separate title for the Property is not available within 12 months after the date of this Agreement, then either party may by notice in writing to the other avoid this Agreement, at any time prior to a search copy of a separate title for the Property becoming available. If the Agreement is avoided under this clause 21.3, the Purchaser will be entitled to a refund of any deposit paid, and any net interest earned thereon.
- 21.4 The Purchaser acknowledges and accepts that:
- (a) Easements, consent notices, covenants and other interests may be registered or noted against the title to the Property as part of the Subdivision, to the extent these are required by the Subdivision Consent, or are shown as required or proposed on the Subdivision Plan, or are referred to in clause 22, or are shown on the head title;
  - (b) Any other interest required by the Vendor for the benefit of the Subdivision may also be registered or noted against the title to the Property, and the Purchaser will raise no objection to such interests, except as stated in clause 21.5 below; and
  - (c) The Vendor may also make changes to the Subdivision Plan if these are required or desirable for completion of the Subdivision, and the Purchaser will raise no objection to such interests, except as stated in clause 21.5 below.
- 21.5 However, if an interest to be registered or noted under clause 21.4(b), or a change to the Subdivision Plan under clause 21.4(c), would have a material adverse effect on the ability to use the Property for residential purposes, the Purchaser may avoid this Agreement by notice in writing within 5 Working Days after the date of being notified of the interest or change (time being of the essence). To avoid doubt, the following will not constitute a material adverse effect:
- (a) a reduction in land area of the Property of 5% or less;
  - (b) removal of an existing or proposed easement, consent notice, covenant or other interest which only burdens and does not benefit the Property;
  - (c) changes in the staging of the Subdivision;
  - (d) the removal or waiver of any existing land covenant burdening any head title;
  - (e) modification of any existing consent notice burdening any head title, in the manner contemplated in the Subdivision Consent.
- 21.6 If this Agreement is avoided the Purchaser shall be entitled to the immediate return of the deposit and any other moneys paid by the Purchaser under this Agreement and neither party shall have any right or claim against the other arising from this Agreement or its termination.
- 21.7 If there is any disagreement between the Vendor and the Purchaser as to whether there has been a "material adverse effect" on the ability to use the Property for residential purposes

under clause 21.5, then such disagreement may be referred by either party to an independent person nominated by the President of the New Zealand Law Society (**Expert**) for determination. The Expert shall act as an expert and not as an arbitrator and his or her decision shall be final and binding upon the parties. The costs of the Expert shall be borne equally by the parties. No notice of avoidance by the Purchaser pursuant to clause 21.5 will be effective until determination by the Expert if the Vendor disputes the validity of the notice.

## **22. Land Covenants and Fencing**

- 22.1 Land covenants burdening the Property, substantially in the form **attached (Land Covenants)**, will be noted against the new titles for the residential lots within the substage that the Property forms part of, as shown on the Subdivision Plan. The benefit of the Land Covenants will be noted against these same titles, as well as on the titles of any other lot intended to benefit, as determined by the Vendor.
- 22.2 Subject to the terms of the Land Covenants, the Purchaser (while it is a registered owner of the Property) and the Vendor (as Developer) will be able to enforce the Land Covenants from the Settlement Date against the registered owners of other residential lots in the same substage that the Property forms part of.
- 22.3 The Purchaser must comply with the Land Covenants from the date possession of the property is made available to the Purchaser.
- 22.4 If the Purchaser transfers, assigns or otherwise disposes of its interest under this Agreement prior to becoming the registered owner of the Property, then the Purchaser shall procure from the recipient of the Property a deed of covenant in favour of the Vendor under which the recipient of the Property undertakes to fulfil the Purchaser's obligations under clause 22.3.
- 22.5 The Land Covenants include provisions regarding fencing. These fencing covenants are additional to the fencing provisions in the Christchurch City Council district plan and the fencing provisions contained in the Subdivision Consent. Approval of fencing under the Land Covenants does not mean that the fencing complies with district plan requirements.
- 22.6 The Purchaser must not remove any fencing between the Property and any adjoining reserve if the fence exists when the Purchaser is granted possession of the Property, unless the written consent of the Christchurch City Council is first obtained.
- 22.7 If the Property is Lot 935 on DP 603641 (in Stage J1) or Lot 312 on DP 603127 (in Stage S3) of the Subdivision, the Purchaser accepts that:
- (a) an entrance feature/wall with associated signage and landscaping (together, the **Entrance Feature**) will be constructed by the Vendor on the Property prior to the Settlement Date; and
  - (b) the Purchaser will have an obligation to maintain the Entrance Feature, as more particularly set out in clause 3(ah) of the Land Covenants.

## **23. Indemnity**

- 23.1 The Purchaser must indemnify (and keep indemnified) the Vendor against:
- (a) Any liability the Vendor suffers as a result of the Purchaser breaching this Agreement or the Land Covenants;
  - (b) Any damage caused by the Purchaser to any roads within the Subdivision (including berms, footpaths, curbs, trees/shrubs, and easement facilities within or above those roads) or any land of the Vendor or any fixture or chattel situated on the Vendor's land, and will upon demand pay the Vendor the cost of making good any damage so caused.
- 23.2 The Purchaser must indemnify (and keep indemnified) a registered owner of land purchased directly from the Vendor against any damage caused by the Purchaser to that land of the owner or to any fixture or chattel situated on that land of the owner, and will upon demand pay that owner the cost of making good any damage so caused.

23.3 For the purposes of clause 23.1 and 23.2, the actions and omissions of the Purchaser's contractor and suppliers will be deemed to be the acts and omissions of the Purchaser.

#### **24. Rates, Possession, Force Majeure**

24.1 Despite any other provision of this Agreement, the Purchaser will be responsible for local authority rates (including water rates, if any) from the date of the last of the Purchaser's conditions being satisfied (other than any conditions relating to the issue of title) or from the date of issue of the section 224c certificate, whichever is the later (**Effective Date**).

24.2 From the Effective Date until the Property is separately rated the Purchaser will, on demand, refund to the Vendor rates on the basis of an estimate of \$850.00 plus GST per annum.

24.3 Possession is granted to the Purchaser from the later of the Effective Date and the date the deposit is paid.

24.4 If this Agreement is cancelled due to the default of the Purchaser:

(a) ownership of all improvements constructed on or under the Property (including, but not limited to, any buildings and any landscaping on the Property) vest in the Vendor on the date of cancellation;

(b) the Purchaser assigns to the Vendor, on the date of cancellation, the benefit of any resource consents, building consents, and any licences or intellectual property rights in any building plans, relating to the Property, that are in the name, possession, or control of the Purchaser;

(c) the Purchaser must immediately give the Vendor any consents, plans, certificates, contracts, or other documents relating to the construction of any buildings and any landscaping on the Property, that are in the name, possession, or control of the Purchaser;

(d) if and to the extent requested by the Vendor, the Purchaser must assign any of the contracts referred to in clause 24.4(c) to the Vendor, and seek the consent to assignment of the counterparties to those contracts if assignment requires their consent, and if counterparty consent is required for assignment but not granted, hold the benefit of the contract as bare trustee for the Vendor; and

(e) no compensation or other sum shall be payable to the Purchaser for the matters set out in this clause 24.4.

24.5 If due to the effects of an epidemic, emergency, unusually inclement weather, or other event outside the reasonable control of the Vendor (**Force Majeure Event**) the Vendor is unable to give vacant possession to the Purchaser when obliged to do so under this Agreement, the Vendor will be excused from providing vacant possession for so long as the impact of the force majeure event continues. The Vendor must provide written notice to the Purchaser of the happening of any Force Majeure Event that the Vendor believes will affect the Vendor's ability to provide vacant possession and how long the impact of the Force Majeure Event is expected to last. The Vendor must also provide written notice to the Purchaser once the impact of the Force Majeure Event is over and vacant possession has become available (**Resumption Notice**).

24.6 If the provision of vacant possession is delayed by the Vendor due to a Force Majeure Event under clause 24.5, and settlement was due to occur during the delay period, settlement will be delayed until 2 working days after the Resumption Notice is given, unless the Purchaser elects to settle at the original Settlement Date.

#### **25. Accruals**

25.1 The parties agree for the purposes of the Income Tax Act that the purchase price is the lowest price for which the Vendor would have sold the Property if the purchase price had been paid in full on the date of execution of this Agreement and that there is no element of interest contained in the purchase price.

**26. No Warranties**

26.1 The Purchaser acknowledges reading this Agreement and the attachments to it and purchases the Property solely in reliance upon its judgment and not upon any representation or warranty made by the Vendor or any employee or agent of the Vendor.

**27. Negotiations**

27.1 Where the Purchaser wishes to negotiate matters such as minor contract variations, extensions of time, and related issues with the Vendor, the Purchaser shall correspond with the Vendor directly ([admin@cdli.co.nz](mailto:admin@cdli.co.nz)) unless requested otherwise by the Vendor.

**28. No impediments to Vendor's completion of Subdivision**

28.1 The Purchaser must not lodge a caveat in relation to its interest in the Property under this Agreement.

28.2 The Purchaser must not oppose, obstruct or object in any way, or provide support in any form to any person in opposition to, methods employed by the Vendor in its endeavours to complete and sell other parts of the Subdivision.

28.3 The Purchaser must not at any time oppose, obstruct or object in any way, or provide support in any form to any person in opposition to, any planning proposal by the Vendor or its successors in title in respect of the Subdivision. In particular, the Purchaser must not (without limitation):

- (a) make, lodge, be party to or finance any request, complaint, submission, application, appeal or other proceeding which is designed, intended or likely to limit, prohibit or restrict the completion of the Subdivision;
- (b) bring any proceedings in any Court or tribunal for damages, negligence, nuisance, trespass or interference or otherwise arising as a result of the completion of the Subdivision; or
- (c) object to the development by the Vendor or any other party of the commercial lots contained in the Subdivision.

28.4 The Purchaser hereby provides affected party approval to any planning application referred to in this clause in accordance with the provisions of section 95D(e) Resource Management Act 1991 (and the Purchaser acknowledges this subclause shall constitute such affected party approval without the need for a separate approval).

28.5 The Purchaser hereby irrevocably appoints the Vendor or any nominee of the Vendor to be the Purchaser's true and lawful attorney for the purposes of making all applications and executing all consents, approvals and other documents and plans and performing all acts, matters and things as may be necessary:

- (a) to complete the Subdivision; and
- (b) to provide affected party approval (if necessary);
- (c) to obtain the documentation, and complete the assignments, referred to in clause 24.4; and
- (c) to have any caveat lodged by the Purchaser in breach of clause 28.1 withdrawn.

28.6 Where reasonably required for the completion of the Subdivision, the Vendor may have access to, and undertake works on, the Property (but not within any buildings on the Property) after possession has been granted to the Purchaser, provided at least two weeks' written notice is given to the Purchaser, the Vendor complies with all applicable laws, and the Vendor immediately thereafter makes good any damage caused to any property of the Purchaser including reinstating any affected landscaping and plantings.

**29. Electronic signature**

29.1 In addition to clause 17, the parties consent to receiving this Agreement by email and to both parties signing this Agreement using an electronic signature (as may be the case), as defined in the Contract and Commercial Law Act 2017, and acknowledge that an electronic signature to this Agreement is binding and valid. If such an electronic signature is used, such party warrants for the benefit of the other party that the means of creating their electronic signature was linked to and was under the control of the signatory or signatories only and to no other person.

**30. Stockpiled Soil**

30.1 If at the date of this Agreement there is surplus stockpiled soil on the Property, the Vendor undertakes to remove the surplus stockpiled soil from the Property by the Settlement Date or as soon as weather conditions permit (whichever is the later).

**Please also refer to the "Further Terms of Sale" within the ADLS printed form.**

**Appendix: Subdivision Information**

The Purchaser acknowledges that the following documents are available **on request to the agent:**

- (a) Subdivision Consent;
- (b) Subdivision Plan for the substage the Property forms part of;
- (c) Template Land Covenants which will be registered in relation to each substage;
- (d) LIM;
- (e) Update on timing for the expected issue of titles; and
- (f) Site/Lot specific geotechnical reports.