

Summary of main changes made in the Contract for the Sale and Purchase of Business 2021 Edition

ITEM	CHANGE	RATIONALE
Front page	The contract has been renamed. Formerly known as the “Contract for the Sale of Business”, it is now called “Contract for the Sale and Purchase of Business”.	The new name provides greater recognition of both parties to the contract and their respective rights and obligations.
Front page, Business name	Registration number is omitted.	This is no longer necessary to effect a change in registration.
Front page, Contact numbers	After “domain name” in the list of contact numbers “webpages and social media” have been added	Updated for currency.
Front page, Trading stock sum	This item has been moved to appear after the box for price, and the word “maximum” has been deleted and a corresponding change made to clause 4.	The item was moved to below the box for price to reflect the relative importance of the two items.  The term was shortened as the word “maximum” was redundant in this context.
Front page, Interdependent contract	Addition of new tick-a-box to indicate whether there is an interdependent contract with details of “vendor” and “purchaser” to be provided.	If yes is ticked, new subclause 19.3 will apply, which links the completion date with the completion date for the interdependent contract. The new clause also provides a right to terminate or rescind the contract where the interdependent contract is terminated or rescinded.
Page 2, List of documents	Updated List of documents, by: <ul style="list-style-type: none"> <li>• Adding <i>PPS Act</i> Register search</li> <li>• Deleting the box: “list of key persons who will not sign the restraint deed” and inserting the words “and persons” in the box above, to combine the documents referred to in the one list.</li> </ul>	Updated to reflect common practice.
Page 2, Choices	Addition of new tick-a-boxes for: <ul style="list-style-type: none"> <li>• Adjustment for accrued but untaken personal/carer’s leave (clause 35.4.2)</li> <li>• Long service leave - multiplier applies (clause 35.10)</li> <li>• Electronic transaction (clause 28)</li> </ul>	These new boxes allow the parties to elect whether new clauses 35.4.2 and 35.10 and 28 respectively will apply.
Page 2, GST promises	The placement of the ‘Yes’ and ‘No’ boxes has been reversed, with the default options remaining the same.	This is so that the ‘No’ box appears first, which is consistent with the box placement in ‘Choices’ above.
Schedule A, Employees	Several column headings have been amended.	For clarity and completeness.

Summary of main changes made in the Contract for the Sale and Purchase of Business 2021 Edition

Page 3, Warning 1	Update names of Government Departments, entities and utilities.	The names of relevant entities have been updated for currency.
Page 3, Warning 6	Addition of the words: “and those employees will need to agree to their new employment.”	These words have been added for clarity and completeness.
Page 3, Table of contents	Update the Table of Contents by: <ul style="list-style-type: none"> <li>Renaming clause 12: “Restrictions on rights of parties”; and</li> <li>Adding a new clause 28: “Electronic transaction” and renumber the remaining clauses.</li> </ul>	<ul style="list-style-type: none"> <li>The new heading reflects the reciprocal nature of the amended clause.</li> <li>A new clause has been added to assist practitioners to move to electronic conveyancing.</li> </ul>
Clause 1 Definitions	Definitions of “employees”, and “employee entitlements” revised. A new definition has been added for “wages”.	The definitions have been updated for legislative change and clarity of meaning.  New definitions added to give effect to revised clauses 32-35.
Clause 6	Amend clause 6.1 by adding “franchisor” to the list of parties to whom disclosure is permitted.	This addition has been made to reflect common occurrence.
Clause 10	Clause 10.1.8 has been amended to update the list of persons that the vendor promises there is no current dispute or litigation with relating to the business.  Clause 10.3 - add the words “promptly and” before “completion” to ensure any disclosure to the purchaser is made in a timely manner and not just before completion.	Updated for legislative change and clarity of meaning.  This clause has been amended to ensure timeliness of any disclosure by the vendor.
Clause 12	Clause 12 has been amended to make the restrictions on rights to claim apply to both parties rather than just to the purchaser.	This clause was amended to rebalance the respective rights of the parties, having regard to the unfair contract terms provisions of the Australian Consumer Law.
Clause 19	A new subclause 19.3 has been added to link to the new tick-a-box on the front page, to apply where the contract states that there is an interdependent contract. New subclause 19.3 provides that the completion date is linked to the completion date under the interdependent contract and that a termination or rescission under that contract acts as a termination or rescission under the interdependent contract.	To provide for the case where the premises are purchased together with the business, under an interdependent contract.
Clause 24 Miscellaneous	Clause 24.4 <ul style="list-style-type: none"> <li>Clause 24 has been amended by to provide for service by email (minor changes made to 24.4.5, 24.4.6, 24.4.7 and 24.4.8); and</li> <li>Minor wording changes made to clause 24.5.</li> </ul>	Clause 24: The clause has been updated to reflect the common use of email for service of documents.  Clause 24.5: The wording of the clause has been amended for the sake of clarity.

Summary of main changes made in the Contract for the Sale and Purchase of Business 2021 Edition

<p>Clause 28 Electronic conveyancing</p>	<p>This new clause has been added to provide for electronic settlement of the transaction.</p>	<p>The new clause mirrors clause 30 in the latest edition of the contract for the sale and purchase of land. It has been developed to assist practitioners and to make any necessary amendments to other contract terms. For example, the place for settlement in electronic conveyancing is the electronic workspace.</p> <p>Former clauses 28 to 35 inclusive, which follow new clause 28, have been renumbered.</p>
<p>Clause 29 Grant of new lease</p>	<p>Clause 29.3 has been amended by replacing “90<sup>th</sup>” with “91<sup>st</sup>”.</p>	<p>This change is aimed at making the calculation of the final date for something to be done easier, by making it divisible by 7, so it can equate to the number of weeks from the contract date.</p>
<p>Clause 31 Consent to transfer of franchise</p>	<p>Clause 31.2.2 has been amended by deleting the words “arising under the contract “and inserting instead “relating to the application for consent”.</p>	<p>The new phrase better describes the nature of the franchisor’s costs, which the vendor agrees to pay.</p>
<p>Clause 33 Proposed transfer of employees.</p>	<p>Changes have been made to the following clauses:</p> <ul style="list-style-type: none"> <li>• Clauses 33.2.1 to 33.2.4 inclusive; and</li> <li>• A new clause 33.3 has been added.</li> </ul>	<p>The changes to clauses 33.2.1 to 33.2.4 have been made for the sake of precision and to update terminology.</p> <p>The new clause 33.3 has been added to expressly provide for the vendor to encourage current employees to accept the purchaser’s offer of employment and to provide that the vendor releases transferring employees from post-termination restrictions and, where relevant, to provide for payment in lieu of notice.</p>
<p>Clause 34 Employee entitlements – terminating employees.</p>	<p>Minor wording changes have been made to 34.1, 34.2, and 34.5.</p>	<p>To provide additional clarification in relation to the operation of this clause.</p>

Summary of main changes made in the Contract for the Sale and Purchase of Business 2021 Edition

<p>Clause 35 Employee entitlements – transferring employees.</p>	<ul style="list-style-type: none"> <li>• Minor wording changes have been made to 35.1;</li> <li>• New clause 35.2 sets out the service that the purchaser must recognise under the relevant provisions of the <i>Fair Work Act 2009</i> (Cth);</li> <li>• The wording of clauses 35.3, 35.4, 35.6 and 35.7 has been amended to emphasise that the vendor must elect whether to accept service with the vendor for the purposes stipulated in that clause;</li> <li>• Clause 35.4 and 35.10 have been amended to provide two options for the adjustment of nominal long service leave with an election by tick-a-box on page 2 of the contract;</li> <li>• Clause 35.4 also provides that the vendor must make an allowance for accrued but untaken personal/carer's leave (by tick-a-box election on page 2); and</li> <li>• New clauses 35.8 and 35.9 have been added</li> </ul>	<ul style="list-style-type: none"> <li>• Minor wording changes have been made for currency and clarity;</li> <li>• Changes to clause 35.2, 35.3, 35.4, 35.5, 35.6, 35.7 and 35.10 have been made to expressly distinguish between service that a purchaser is obliged to recognise under legislation and service that a purchaser can elect to recognise and to make provision for an allowance to recognise specific employee entitlements.</li> <li>• Attention is drawn to the options for recognition of nominal long service leave and accrued but untaken personal/carers leave by the inclusion of new tick-a-box on page 2 of the contract.</li> <li>• New clause 35.8 provides an express indemnity by the vendor for any claim by transferring employees arising out of clause 34.</li> <li>• New clause 35.9 provides an express indemnity by the purchaser for any loss or claim by transferring employees for loss or claims arising out of the period after completion.</li> </ul>
<p>Clause 36 Release of perfected security interests</p>	<p>Changes have been made to the following clauses:</p> <ul style="list-style-type: none"> <li>• Clause 36.4.2- minor wording changes;</li> <li>• Clause 36.6 including incorporating the former clause 36.7; and</li> <li>• A new clause 36.7 has been added.</li> </ul>	<p>The change to clause 36.4.2 is for clarity.</p> <p>Clause 36.6 has been amended to reflect that the Law Society of NSW and Law Council of Australia no longer publish a form of PPS release and to incorporate the former clause 36.7.</p> <p>A new clause 36.7 has been added to provide that a purchaser must accept the form provided by the vendor under clause 36.4 unless it is not reasonable to do so.</p>