

## Some Key Risk Allocation Provisions in Sale of Asset Agreements

Murray Thornhill  
Director, HHG Legal Group

## Warranties and Representations

- Remove to the fullest possible extent
- Example – Joint Form clauses 9, 10, 11.3, 13, 15, 18, 19, 20.2(b), 20.3(b), (c), 24.16(f), 25.3

## Buyer should assume all risk both generally and specifically

**HHG** LEGAL  
GROUP<sup>®</sup>  
TRUSTED SINCE 1919

### ▸ General

*“The Buyer acknowledges that it has carried out extensive due diligence in relation to the land and this contract and it has not relied upon any statement, representation, warranty, condition or promise made or given by or on behalf of the Seller (including, without limitation, by way of any brochure, information memorandum or any due diligence material provided to the Buyer) except as specifically set out in this contract or provided by any legislation which cannot be excluded”*

## Buyer should assume all risk both in general and specifically (continued...)

**HHG** LEGAL  
GROUP<sup>®</sup>  
TRUSTED SINCE 1919

### ▸ Specific

*“Without limiting the generality of clause X, the Buyer acknowledges that neither the Seller nor any person on the Seller’s behalf has made any representation, promise or warranty as to any financial return or income to be derived from the [land], the fitness or suitability of the [land] for any particular use, and the completeness and accuracy of any due diligence material and the information memorandum .....*

*“The Buyer is not entitled to object as a result of, in relation to or arising out of any contamination or environmental hazard located at, migrating from or effecting the land or any contamination or environmental hazard located at the land which has affected or is affecting any surrounding property .....*

*“The Buyer has entered into this contract in reliance upon the Buyer’s own environmental audit and assessment of any contamination in, on or under the land and the advice of the Buyer’s consultants in relation to the extent and impact and consequence of any contamination in, on or under the land .....*



**Liquidator as agent**

**No occupation of property**

**Conduct of Business provisions**



**Competing Bids and meaning of “Best Possible Price”**

- *Wentworth Metal Group Pty Ltd –v- Leigh and Owen (as liquidator of Bonython Metals Group) [2013] FCA 349*
- Different duties on a controller (s420A) and a liquidator (s477(2)(c))



## Jurisdictional clauses



- Conflicts of laws where assets multi-locational

## Title to property being sold and defects in title

- *THC Holding Pty Ltd v CMA Recycling Pty Ltd [2014] NSWSC 1136*
- Only sell “such right title and interest (if any)” which the seller has in the property at completion
- The Buyer should take all risks as to title

## Employment obligations



- Statutory obligations and entitlements under the array of employment legislation
- Incoming and outgoing staff

## Lease obligations

## Insurance policies and insurable risks

- Safety and health
- Environmental hazards and contamination

Thank you

