Is a standard form contract of sale not completed throughly valid?

There has been a lot of litigation on Section 2(1) of the Alienation of Land Act, 68 of 1981 in recent years. This section provides as follows:

"No alienation of land … shall … be of any force or effect unless it is contained in a deed of alienation signed by the parties thereto or by their agents acting on their written authority."

In Chretien and Another v Bell [2010] 2 all SA 428 (SCA), the Court had another opportunity to interpret the provisions of this section. The parties had entered into an agreement of sale in respect of a property in Ballito, Kwazulu-Natal. The clause dealing with the payment of the purchase price had special conditions, which were written into the standard form contract. One of the conditions was that the parties would conclude an agreement in writing involving the purchase price details before 30 April 2005. Such written agreement was, however, never concluded. After the buyer had paid the purchase price and requested transfer of the property into her name she was informed by the sellers that they were challenging validity of the contract.

After the buyer had won the case in the High Court, Tshiqi AJA, however, held in the Supreme Court of Appeal that the time within which payment was to be made was a material term of the agreement. It was furthermore an express term of the agreement that the purchase price was required to be paid before the obligation to transfer arose and agreement still had to be reached in respect of the time of payment.

The provisions of section 2(1) of Act 68 of 1981 were consequently not adhered to. The court consequently held that the agreement was invalid.

This case again emphasises the importance of drafting contracts properly or filling in standard form contracts thoroughly to ensure that all material terms are covered. There is, for example, also previous case law where a contract of sale was also found to be invalid because the occupational rental amount was not completed. It also confirms the principle that an agreement to agree on certain terms at a later stage renders the contract unenforceable if those terms are

material.

Also keep in mind that any amendment to a contract after one party has signed constitutes a counter-offer which again has to be accepted and signed by the party having signed first.