

SALES INSPECTION REPORT AND EXCLUSIVE SELLING AGENCY AGREEMENT (BUSINESS BROKING)

Item

Item Schedule - Sales Inspection Report

1. VENDOR

Clauses 2 and 7

Name/s:

Business Name: ACN:

Address: ABN:

Phone: Mobile: GST Registered:

Email:

2. VENDOR'S SOLICITOR / CONVEYANCER

Clause 7.5

Solicitor/Conveyancer:

Company:

Business Address:

Service of Documents Address:

Phone: Mobile:

Email:

3. AGENT **(Where the Agent trades as a corporation, include the corporation's licence number)*

Name:

Address: ACN:

Phone: Mobile: ABN:

Email: GST Registered:

Licence Number/s*:

4. BUSINESS DETAILS

Clauses 1.1(3), 1.1(5), 1.1(13) and 1.1(14)

4.1 Business Details:

Business Name:

Business Registration No.: ABN:

Type of Business:

Address:

Phone: Email:

Website: Domain:

4.2 Items included in the sale:

(ie. Goodwill, plant and equipment, fittings and fixtures, furniture, intellectual property, Stock and other Assets)

4.3 Encumbrances affecting the inclusions:

4.4 Items excluded from the sale:

4.5 Details of any defects, local government notices or orders affecting the Business that are known to the Agent:

5. AGENT OPINION *NOTE: Item 5.1 is not a valuation and excludes GST*

Clauses 7.4 and 11

5.1 Estimated Selling Price (or range): plus Stock

5.2 Most suitable method of Sale:

NOTE: The effect of GST on the sale price must be considered before entering into a Contract of Sale.

WARNING: This is general advice and its preparation has not taken into account the individual circumstances of the Vendor or the Vendor's objectives, financial situation or needs.

6. TERMS AND CONDITIONS OF SALE

6.1 Price the Business is to be listed at: / / GST plus Stock

6.2 Deposit: / / GST

6.3 Balance monies payable: / / GST

6.4 Payable: (Payable on signing of contract, by buyer)

6.5 Business sold as a Going Concern: / /

6.6 Identify any other Special Terms and Conditions of sale to be included in the contract:

7. ACT / REGULATION REQUIREMENTS

The Agent must, not act on behalf of the Vendor unless the Agent, in accordance with Clauses 1 and 2 of Schedule 2 of the Regulations to the Act:

(1) has conducted a preliminary physical inspection of the Business (unless the Vendor has indicated in writing that such an inspection is not required).

(2) has given to the Vendor a completed copy of this Sales Inspection Report for the Business.

8. SIGNATURE OF INSPECTION REPORT

Items 1 to 7 make up the inspection report required by the Act and has been completed by the Agent in Item 3.

Agent's Signature: Date of Report:

Item Item Schedule - Exclusive Selling Agency Agreement

A. TERM OF AGREEMENT (EXCLUSIVE AGENCY PERIOD)

Clauses 3, 9.1(1) and 9.1(3)

The Term of this Exclusive Agency Agreement commences on and concludes on unless extended in writing by the Vendor.

B. COMMISSION *NOTE: Prices for goods and services are GST inclusive. See Clause 9.6.*

Clauses 6.5 and 9

(1) Subject to this Agreement the Agent shall be entitled to a Commission determined as follows:

..... (incl. GST)

(2) Based on the Agent's estimated selling price (Item 5.1) the Commission (Item B(1)) in dollars would be:

..... (incl. GST)

(Where a range of value is entered into Item 5.1 the estimated selling price is based on the maximum value in that range)

(Note: the Commission will vary based on the actual Sale Price of the Business)

IMPORTANT: This is an exclusive agency agreement. This means you may have to pay the agent commission even if another agent (or you) sells the business or introduces a buyer who later buys the business.

WARNING: Have you signed an agency agreement for the sale of this business with another agent? If you have you may have to pay 2 commissions (if this agreement or the other agreement you have signed is a sole or exclusive agency agreement).

(The Agent's Commission is based on the selling price of the Business together with Stock and includes GST if applicable)

C. SELLING PRICE

Authorised Selling Price: (incl. GST if applicable)

D. FEES FOR SERVICES*Clauses 1.1(4), 1.1(11), 6.5 and 6.6*Fees payable to the Agent for any additional services performed on behalf of the Vendor: *[Enter details of Fees]*

Description of Service	Fee (Incl. GST)	Due and Payable

E. EXPENSES*Clauses 6.5 and 9.5*

The Vendor shall reimburse the Agent for the following authorised expenses incurred during this Agreement:

Expense	Amount (Incl. GST)	Due and Payable*

* When Due and Payable is left blank, Charges and Expenses are payable on receipt by the Vendor of an itemised invoice.

F. SPECIFIC INSTRUCTIONS

Details of specific instruction regarding:

- (1) Arrangements for the transfer to the purchaser of any liability for the leasing or hire purchase of goodwill, plant, fittings or stock in inventory included in the sale:

- (2) Marketing of the Business: *(see Item H)*
 (3) Prospective purchaser's inspection of the Business Premises: *(see Item G)*
 (4) Prospective purchaser's inspection of the Business Records:

G. INSPECTIONS

- (1) The Agent is authorised to allow a prospective purchaser to inspect the Premises of the Business according to the following instructions (unless the Vendor instructs otherwise):

- (2) The Agent is authorised to allow a prospective purchaser to inspect the records, books of account and other documents concerning the business according to the following instructions:

H. ADVERTISING / MARKETING

Clause 8(1)

The Agent shall advertise/market the Business for sale in the following manner:

.....

Signage erected at the Premises advertising the sale is permitted: Yes No

I. VENDOR'S BANK DETAILS (if required)

Bank: Branch: BSB No.:
Account Name: Account No.:

J. ADDITIONAL INSTRUCTIONS

.....

K. SPECIAL CONDITIONS

Clause 15

Special Conditions to this Agreement where inserted at the direction of the Vendor were prepared by the Vendor or an Australian Legal Practitioner instructed by the Vendor and not by the Agent. No warranty is given by the Agent with respect to such clauses. Legal advice should be sought.

.....

L. CAPITAL GAINS WITHHOLDING PAYMENT (To be completed by the Vendor)

Note: Where the sale of the business includes real property with a market value of, at or more than, \$750,000 a buyer must withhold 12.5% of the market value of the real property and pay such monies to the Australian Taxation Office (ATO) on or before settlement, unless the Vendor has obtained a Clearance Certificate from the ATO (*Taxation Administration Act 1953 (Cth)* - Subdivision 14-D). Where such real property is included and the Vendor is an Australian Resident it would be advisable for the Vendor to obtain a Clearance Certificate from the ATO to avoid purchase monies being withheld.

- (1) Does the Vendor have a Clearance Certificate? Yes No N/A
- (2) If 'No' above has the Vendor applied? Yes on No

M. SIGNATURES

Clause 9.8

By signing below the parties acknowledge and confirm having read and understood this Agreement.

Signature of Vendor(s) Date: Date:
.....
.....

Note: Where signed by Vendor's authorised representative or the Vendor is a corporation evidence of authority to sign must be provided.

Signature of Agent Date:
.....

Terms of Agreement

1. Definitions

1.1 In this Agreement the following terms mean:

- (1) **Act:** the *Property and Stock Agents Act 2002* and Regulations thereto as amended from time to time.
- (2) **Agreement:** this Agency Agreement, consisting of:
 - (a) the Item Schedule - Sales Inspection Report;
 - (b) the Item Schedule - Exclusive Selling Agency Agreement;
 - (c) the Terms of Agreement; and
 - (d) any additional annexures, schedules or documents that may be attached.
- (3) **Assets:** the assets of the Business agreed to be sold or assigned as listed in Item 4.2. This may include Plant and Equipment that is wholly owned, leased or rented by the Vendor.
- (4) **Assignment or Subletting Fee:** monies paid to the Agent as detailed in Item D, for the assignment or subletting of the Premises (if leasehold) to the purchaser subject to the terms of any current Lease.
- (5) **Business:** the said Business detailed in Item 4.1 together with all Assets as listed in Item 4.2.
- (6) **Data Collection Agency:** means an agency or organisation that collects real estate data to provide information to the real estate, finance and property valuation industries to enable data analysis.
- (7) **Electronic Document:** means any electronic communication (including Notices) as defined in the *Electronic Transactions Act 2000 (NSW)* including any electronically generated document situated on an external server readily accessible via a link within an electronic communication or other electronically generated document.
- (8) **GST:** where used in this Agreement, has the meaning used in *A New Tax System (Goods and Services Tax) Act 1999* and "GST" includes any applicable rulings issued by the Commissioner of Taxation.
- (9) **Item:** an Item in the attached Item Schedules forming part of this Agreement.
- (10) **Material Fact:** where used in this Agreement, means facts as are to be disclosed in accordance with Section 52(1)(b) of the Act, and of a kind more particularly detailed in clause 54 of the Regulation.
Note: Refer to 'Misrepresentation Guidelines - NSW Fair Trading' for more details on what may constitute a material fact.
- (11) **New Lease Negotiations Fee:** monies paid to the Agent as detailed in Item D, for the negotiation of a new lease of the Premises where an existing lease of the Premises is not or unable to be assigned to the Purchaser.
- (12) **Personal Information:** means personal information as defined in the *Privacy Act 1988 (CTH)*.
- (13) **Plant and Equipment:** the plant and equipment, machinery, motor vehicles, furniture, fixtures, fittings and such other items owned by the Seller forming part of the Assets.
- (14) **Premises:** the land and building as per Item 4.1 used for carrying on the Business.
- (15) **Related Document:** means any written communication (including Notices) with regard to this matter between the parties, including any Electronic Documents.
- (16) **Stock:** all merchantable stock at the landed value including stock to be used or sold in connection with carrying on the Business.

1.2 Other words and phrases not defined in this Agreement take on those meanings given to them in the Act.

2. Vendor's Confirmation

By signing this Agreement the Vendor(s) warrants and confirms:

- (1) it is the owner of the Business; and
- (2) it has authority to enter into this Agreement.

3. Exclusive Selling Appointment

The Vendor by this Agreement appoints the Agent as Exclusive Selling Agent for the duration of this Agreement and will refer any prospective purchasers of which the Vendor becomes aware to the Agent.

4. Non-Exclusive Appointment

Both parties agree that on the conclusion of the Exclusive Agency Period (Item A) this Agreement will continue as a Non-Exclusive Agency Agreement until terminated in writing by either party, or the Business is sold (the Non-Exclusive Agency Period). Such termination will be without prejudice to either party's existing rights, duties or obligations.

5. Appointment of Agent

5.1 In consideration of and in accordance with the terms of this Agreement, the Vendor appoints the Agent (and its permitted Assigns) for the duration of this Agreement to sell the Business for the Vendor and the Agent agrees.

5.2 Authority vested in the Agent by this Agreement shall be deemed to be vested in the Agent's authorised employees.

5.3 In carrying out the duties and services specified in this Agreement the Agent is authorised to utilise the services of any suitable person or company, provided however where required under the Act such duties or services must be carried out by a licensed person.

5.4 The Agent (licensee) in charge of the business must properly supervise, in accordance with the guidelines issued by the Commissioner for Fair Trading, all persons (employee or otherwise) engaged in the business carried on by the Agent.

6. Agent's Obligations and Authority

6.1 The Agent must and is authorised and directed, by the Vendor, to disclose all relevant and material facts in relation to the Business.

6.2 The Agent must, in compliance with Section 52 of the Act, not induce any other person to enter into a contract or arrangement by any statement, representation or promise that the Agent knows to be false, misleading or deceptive or by any failure to disclose a material fact of a kind prescribed by the Regulation.

6.3 The Agent will be responsible for ensuring all persons engaged by the Agent to perform functions in respect of this Agreement hold, where required, appropriate licenses and comply with relevant legislation and regulations.

6.4 The Agent will take reasonable steps to ensure goods and services obtained for the Vendor are at competitive prices.

6.5 The Agent is authorised to deduct from monies received by the Agent on behalf of the Vendor all Fees, Commission and authorised Expenses owing to or incurred by the Agent in association with this Agreement, including those authorised in Items B, D and E.

6.6 (1) The Agent must provide financial statements and account to the Vendor/Vendor's Solicitor with respect to all monies collected, received, paid or used by the Agent carrying out the Agent's Obligations under this Agreement.

(2) The Agent will issue tax invoices when necessary or requested in respect of all monies owing by the Vendor to the Agent.

6.7 Money received by the Agent from the Purchaser as deposit shall be paid into the Agent's trust account as stakeholder in accordance with the Act.

6.8 The Agent's authority does not extend beyond the terms of this Agreement and the Agent will not be required to provide services not authorised by this Agreement.

- 6.9 This Agreement does not authorise the Agent to contract on behalf of the Vendor with respect to the Business.
- 6.10 Should the Agent act in conjunction with other agents to effect a sale, only one Commission will be payable.
- 7. Vendor's Obligations and Authority**
- 7.1 The Vendor has at the time of entering into this Agreement disclosed to the Agent all relevant and material facts about the Business and has not provided information that is or is likely to be misleading or deceptive.
- 7.2 The Vendor will at the commencement and at all times during the currency of this Agreement keep the Agent advised of and disclose to the Agent in writing all relevant and material facts and changes thereto in relation to the Business.
- 7.3 There is a positive obligation on the Vendor to disclose relevant and material facts. Any failure to disclose information known to the Vendor which may detract from this sale will be a breach of this Agreement.
- 7.4 The Vendor will provide such information as may be necessary to establish whether the sale is inclusive or exclusive of GST.
- 7.5 By completing Item 2 the Vendor confirms it has authorised and instructed the Solicitor or Conveyancer named therein to act on their behalf and to:
- (1) carry out all necessary searches;
 - (2) prepare the contract; and
 - (3) forward the contract to the Agent for completion.
- 7.6 The Vendor must retain a signed copy of this Agreement.
- 7.7 Where a product, fixture or fitting provided with the Business has a warning label or safety instructions attached the Vendor is not to deface, damage or remove such label.
- 8. Indemnity**
- The Agent having complied with its obligations under this Agreement and not having been negligent, the Vendor indemnifies the Agent, its officers and employees from and against all actions, claims, demands, losses, costs, damages and expenses arising out of this Agreement in respect of:
- (1) authorised sales advertising and signage; or
 - (2) the Vendor's failure to comply with this Agreement; or
 - (3) the Vendor's failure to give the Agent prompt and appropriate authority or instruction, or sufficient funds to carry out an instruction or authority; or
 - (4) a warning label or safety instructions having been removed, damaged or defaced where a product or fitting has been supplied to the Business with such a label or instruction attached.
- 9. Agent's Commission and Reimbursement**
- 9.1 The Vendor acknowledges the Agent is entitled to Commission if:
- (1) during the Exclusive Agency Period (Item A) or any extension thereof, the Business is sold; or
 - (2) during the Non-Exclusive Agency Period (Clause 4) the Business is sold to a purchaser who has been effectively introduced by the Agent; or
 - (3) after the conclusion of the Exclusive or Non-Exclusive Agency Period (Item A and Clause 4) the Business is sold to a purchaser who has been effectively introduced by the Agent during either of those Agency Periods.
- 9.2 Should a binding contract be entered into but not completed due to:
- (1) any default by the Vendor; or
 - (2) the Vendor, as Seller, releasing the Purchaser (by mutual agreement or otherwise) from the Purchaser's contractual obligations; or
- (3) the deposit forfeited to the Seller due to the Purchaser's non performance,
- the Vendor agrees the Commission is payable to the Agent forthwith. Provided however, where Clause 9.2(3) applies, Commission will remain due but monies payable shall (subject to the Seller's rights to claim damages for breach of contract) be limited to the receipted deposit monies.
- WARNING:** *The term immediately above provides that a commission is payable under this agreement even if the sale of the business is not completed.*
- 9.3 The Commission will be payable to the Agent if the Business is sold during the Exclusive Agency Period irrespective of whether the Business is sold by the Agent, Vendor or another person.
- 9.4 The Commission as detailed in Item B will be payable on settlement of the sale or if Clause 9.2 applies, on demand.
- 9.5 The Agent shall be entitled to Commission, Fees for services and reimbursement of Expenses (including any taxes or deductions debited by financial institutions against the Agent's account and attributable to the affairs of the Vendor) as set out in Items B, D and E, for the execution of services under this Agreement.
- 9.6 Unless otherwise stated, all prices of Goods and Services under this Agreement include (where applicable) GST.
- 9.7 Failure to comply with the Act, Regulations or this Agreement may result in penalties against the Agent and prevent the Agent from recovering Commission and other monies under this Agreement.
- 9.8 In accordance with Section 55 of the Act, there will be no entitlement to commission or expenses for services performed unless a copy of this Agreement is served on the Vendor not more than 48 hours after being signed by the Vendor.
- 10. Financial and Investment Advice**
- 10.1 The Agent makes no representation as to being a financial or investment advisor.
- 10.2 The Vendor acknowledges any financial and investment advice provided by the Agent is general advice and its preparation has not taken into account the individual circumstances of the person or the person's objectives, financial situation or needs.
- 10.3 An intending buyer should assess the suitability of any investment in the Business in the light of the buyer's own needs and circumstances, which the buyer can do personally or by consulting an appropriately licensed financial adviser.
- 10.4 If there is any conflict of interest the Agent may have in connection with the provision of the advice referred to above the Agent must disclose full details of any benefits that may accrue to the Agent as a result thereof.
- 11. Agent's Opinion (Item 5)**
- 11.1 In respect of the Agent's estimated selling price (ESP) (Item 5.1) it is:
- (1) applicable as at the date of this Agreement; and
 - (2) the Agent's honest and fair opinion.
- 11.2 Should the Agent be called upon by the Vendor to provide supporting evidence of the ESP's reasonableness, the Agent must provide such evidence.
- 12. Selling Price**
- 12.1 The Selling Price of the Business in Item C includes the said Business in Item 4.1 together with all Assets sold with the Business which includes Stock.
- 12.2 For the purposes of calculating the Agent's Commission, the Selling Price of the Business in Item C shall include the said Business in Item 4.1 together with Stock and the value of all Assets as detailed in Schedule Item 4.2.
- [In determining such value, leased, hired or otherwise encumbered Assets shall be taken into account at a figure equal to the monies owing under such lease or hiring agreement or encumbrance and any residual value.]

13. Work Health and Safety Requirements

13.1 The Assets detailed in Item 4.2 of the Item Schedule are the property of and are at all times (notwithstanding the appointment of the Agent) under the control of the Vendor.

13.2 The Vendor, in selling or transferring the Assets will:

- (1) with respect to new plant:
 - (a) ensure there are no risks arising from the plant or where this is not reasonably practicable, such risks are controlled; and
 - (b) ensure the new Owner is provided with all available information concerning health and safety received by the Vendor from the manufacturer of any plant.
- (2) where the plant is used:
 - (a) advise the purchaser in writing of any faults detected in plant being transferred and if appropriate, advise that the plant is not to be used until the faults are rectified; and
 - (b) provide the purchaser with all available information concerning health and safety about the plant received by the person from the designer and manufacturer and any record kept by the previous owner of the plant in accordance with the requirements of the regulation.
- (3) if plant is suitable only for scrap, advise the purchaser prior to sale.
- (4) provide to the purchaser:
 - (a) information, data or certificates kept in accordance with standards covering design and manufacture of the plant; and
 - (b) information necessary to enable the Purchaser to eliminate or control risk in respect of plant, the subject of a sale.

13.3 Any hazardous goods must comply with the *Work Health and Safety Regulation 2017 (NSW)* and containers must be appropriately labeled in accordance with the regulations.

13.4 Where the Business being offered for sale is or includes a workplace as defined under the *Work Health and Safety Act 2011 (NSW)*, and the Vendor is the person with management or control of the workplace, the Vendor confirms, unless otherwise disclosed in the Item Schedule hereto, that the Vendor, to the extent required, has complied with the requirements of the current Code of Practice for the Management and Control of Asbestos in the Workplace. Note: Section 428 of the *Work Health and Safety Regulation 2017 (NSW)* requires a person with management or control of the workplace to ensure, so far as is reasonably practicable, that a copy of the Asbestos Register for the workplace is given to the person who is assuming management or control of the workplace.

14. Provision of Agreement

14.1 Each party has received a signed copy of and understands this Agreement or has had the opportunity to obtain professional advice with respect to this Agreement and each party acknowledges it is bound by the terms of this Agreement.

14.2 This Agreement cannot be varied without agreement in writing signed by the parties.

15. Special Conditions

Any Special Conditions to this Agreement shall form part of this Agreement. Should there be inconsistency between the terms of this Agreement and a Special Conditions, the Special Condition shall apply.

16. Privacy

16.1 The Agent must comply with the provisions of the Australian Privacy Principles (*Privacy Act 1988 (CTH)*) and where required maintain a Privacy Policy.

16.2 The Privacy Policy outlines how the Agent collects and uses Personal Information provided by you as the Vendor, or obtained by other means, to provide the services required by you or on your behalf.

16.3 You as Vendor agree the Agent may, subject to the *Privacy Act 1988 (CTH)* (where applicable), collect, use and disclose such information to:

- (1) potential buyers, to the extent required to prepare a contract for the sale of the Business; and/or
- (2) Owner's Corporations and financial institutions; and/or
- (3) other third parties as may be required by the Agent for the purposes of marketing, sales promotion and administration relating to the use of the Agent's products and services, but must do so in compliance with legislative and regulatory requirements.

16.4 Documents or copies of documents provided to establish the identity of the Vendor or persons entitled to deal on behalf of the Vendor, will be retained by the Agent in accordance with the Australian Privacy Principles and will not be used for any purpose other than confirming the identity of such person/s.

16.5 Without provision of certain information the Agent may not be able to act effectively or at all on the Vendor's behalf.

16.6 The Vendor has the right to access such Personal Information and may require correction or amendment of any inaccurate, incomplete, out of date or irrelevant information.

16.7 The Agent will provide (where applicable), on request, a copy of its Privacy Policy.

17. Data Collection

Upon signing this Agreement the parties agree the Agent, and the form completion service provider providing this form, may without disclosing Personal Information collect, use and disclose to Data Collection Agencies information contained in this Agreement and any subsequent sales contract.

18. Related Documents / Notices / Electronic Communication

18.1 The parties agree and confirm any documents and communications in relation to this Agreement may be forwarded electronically and where this Agreement has been forwarded electronically (either for signing or otherwise) the party receiving the Agreement confirms having consented to the delivery of the Agreement (and any other materials) by way of the electronic means of delivery before receiving the documentation.

18.2 A Related Document to be served on any party under this Agreement shall be in writing and may be served on that party:

- (1) by delivering it to the party personally; or
- (2) by leaving it for the party at that party's address as stated in this Agreement; or
- (3) by posting it to the party by ordinary mail or security mail as a letter addressed to the party at the address as stated in this Agreement; or
- (4) by email to the party at the appropriate email address as stated in this Agreement; or
- (5) by delivery to an alternative address, provided in writing by the party, by any of the methods outlined in Clauses 18.2(1) to (4) above.

18.3 A document posted shall be deemed to have been served, unless the contrary is shown, at the time when, by the ordinary course of post, the document would be delivered.

18.4 A document sent by electronic communication will be deemed to have been received in accordance with Section 13A of the *Electronic Transactions Act 2000 (NSW)*.

18.5 Documents given by a party's solicitor will be deemed to have been given by and with the authority of the party.

18.6 Documents must be served before 5pm on a business day, failing which, such document will be deemed to have been served on the next business day.

- 18.7 The parties acknowledge and agree an Electronic Document readily accessible via a link within a Related Document is received when the Related Document is served and will be opened when the Related Document is opened.
- 18.8 The parties agree and consent to execution, by any party, of documents electronically using a method provided by an electronic signing service provider.

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Sample