

SALES INSPECTION REPORT AND EXCLUSIVE SELLING AGENCY AGREEMENT (Commercial and Industrial)

Item Schedule - Sales Inspection Report

Item

1. VENDOR

Clauses 2 and 7

Name/s:
Business Name:
Address: ACN:
..... ABN:
Phone: Mobile:
Email: GST Registered: **/**

2. VENDOR'S SOLICITOR / CONVEYANCER

Clause 7.5

Solicitor/Conveyancer:
Firm Name:
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:
..... ABN:
Phone: Mobile:
Email:
Licence Number/s*: GST Registered: **/**

4. PROPERTY *(Includes land and all improvements)*

Clause 1.1(10)

4.1 Address:

4.2 Fittings and Fixtures:

Included Items:

Excluded Items:

4.3 Details of any covenants, easements, defects, local government notices or orders affecting the Property:

4.4 If the Property is occupied or subject to tenancy at time of sale provide details (eg. lease duration, rent amount, etc.)

5. LIST PRICE AND AGENT OPINION *Note: Item 5.2 is an opinion, not a valuation.*

Clauses 7.4 and 11

5.1 Price the Property is to be listed at: (incl. GST if applicable)

5.2 Agent's Opinion - Estimated Selling Price (or range): (incl. GST if applicable)

5.3 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. SPECIAL TERMS AND CONDITIONS

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

7. MARKETING / INSPECTIONS

See Items D and E for special instructions about showing and marketing of the Property.

8. ACT / REGULATION REQUIREMENTS

The Agent must, in accordance with Clauses 2 and 3 of Schedule 2 of the Regulations to the Act:

- (1) conduct an inspection of the Property prior to the Agent acting on behalf of the Vendor under this Agreement.
- (2) give the Vendor a completed copy of this Sales Inspection Report once the inspection is complete.

9. SIGNATURE OF INSPECTION REPORT

Items 1 to 8 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)
(The Agent's Commission is based on the GST / selling price)

- (2) Based on the Agent's estimated selling price (Item 5.2) the Commission (Item B(1)) in dollars would be:

_____ (incl. GST)
(Where a range of value is entered into Item 5.2 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 Property)

IMPORTANT: This is an exclusive agency agreement. This means you may have to pay the agent commission even if-

- (a) you or another agent sells the property, or
- (b) another agent introduces a buyer who later buys the property.

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

C. 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.

D. INSPECTIONS

The Agent is authorised to allow a prospective purchaser to inspect the Property according to the following instructions (unless the Vendor instructs otherwise):

E. ADVERTISING / MARKETING

Clauses 6.11 and 8(1)

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

Signage erected at the Property advertising the Sale is permitted: ☐ Yes ☐ No

F. VENDOR'S BANK DETAILS (if required)

Bank: Branch: BSB No.: | | | | |

Account Name: Account No.: | | | | |

G. BUILDING ENERGY EFFICIENCY DISCLOSURE

Where this Agreement relates to the selling of a Property required under the *Building Energy Efficiency Disclosure Act 2010 (BEEDEA)* to have a valid and current registered Building Energy Efficiency Certificate (BEEC), the Vendor (as Owner) confirms it has such BEEC and agrees to provide the BEEC to the Agent for inclusion in any advertisement of the Property or as otherwise required under the BEEDEA.

H. VENDOR'S DISCLOSURE (Note: Vendor must complete this Item) - section 52(1)(b) of the Act**Material Facts**

For the purposes of section 52(1)(b) of the Act, the following kinds of material facts are prescribed-

- (1) within the last 5 years the property has been subject to flooding from a natural weather event or bush fire: ☐ Yes ☐ No
- (2) the property is subject to significant health or safety risks: ☐ Yes ☐ No
- (3) the property is listed on the register of residential premises that contain loose-fill asbestos insulation that is required to be maintained under Division 1A of Part 8 of the *Home Building Act 1989*: ☐ Yes ☐ No
- (4) within the last 5 years the property was the scene of a crime of murder or manslaughter: ☐ Yes ☐ No
- (5) within the last 2 years the property has been used for the purposes of the manufacture, cultivation or supply of any prohibited drug or prohibited plant within the meaning of the *Drug Misuse and Trafficking Act 1985*: ☐ Yes ☐ No
- (6) the property is, or is part of, a building that contains external combustible cladding-
- (i) to which there is a notice of intention to issue a fire safety order or a fire safety order has been issued requiring rectification of the building regarding the external combustible cladding: ☐ Yes ☐ No
- (ii) to which there is a notice of intention to issue a building product rectification order or a building product rectification order has been issued requiring rectification of the building regarding external combustible cladding: ☐ Yes ☐ No
- (7) the property is, or is part of, a building where a development application or complying development certificate application has been lodged under the *Environmental Planning and Assessment Act 1979* for rectification of the building regarding external combustible cladding: ☐ Yes ☐ No
- (8) in relation to the property, 1 or more of the following orders, within the meaning of the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020*, is in force:
- (i) a building work rectification order: ☐ Yes ☐ No
- (ii) a prohibition order: ☐ Yes ☐ No
- (iii) a stop work order: ☐ Yes ☐ No

Please provide additional information where you have answered 'yes' to any of the above statements:

I. ADDITIONAL INSTRUCTIONS

J. SPECIAL CONDITIONS

Clause 14

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.

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

Note: For properties with a market value of, at or more than, \$750,000 a buyer must withhold 12.5% of the purchase price 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) and provides it to the buyer in a timely manner prior to settlement; or
- the Vendor is a mortgagee exercising power of sale and the residue payable to the mortgagee after payment of sale costs and mortgage debt is not more than zero and the mortgagee provides a written declaration to that effect to the buyer in a timely manner prior to settlement.

(1) Does the Vendor have a Clearance Certificate? ☐ Yes ☐ No ☐ N/A

(2) If 'No' above has the Vendor applied? ☐ Yes on ☐ No

L. 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.

Name of Agent / Authorised Representative

.....

Signature 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) **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.
- (4) **Duty Holder:** has the meaning given to it under Chapter 3 of the *Work Health and Safety Regulation 2017 (NSW)*.
- (5) **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.
- (6) **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.
- (7) **Item:** an Item in the attached Item Schedules forming part of this Agreement.
- (8) **Material Fact:** where used in this Agreement includes, but is not limited to, material facts as set out in Item H. *Note: Refer to 'Misrepresentation Guidelines - NSW Fair Trading' for more details on what may constitute a material fact.*
- (9) **Personal Information:** means personal information as defined in the *Privacy Act 1988 (CTH)*.
- (10) **Property:** the land and improvements there on, the subject of this Agreement (as described in Item 4).
- (11) **Related Document:** means any written communication (including Notices) with regard to this matter between the parties, including any Electronic Documents.

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 Property; 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 Property 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 Property 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 Selling 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 Property.

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, Commissions and other authorised outlays owing to or incurred by the Agent in association with this Agreement, including those Fees, Charges and payments authorised in Items B and C.

6.6 (1) The Agent must provide financial statements and account to the Vendor/Vendor's Solicitor with respect to all monies 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 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 Property.

6.10 Should the Agent act in conjunction with other Agents to effect a sale, only one Commission will be payable.

6.11 Should the Agent have a relevant interest in the sale of the Property, no advertisement relating to the sale of the Property shall be published unless the relevant interest is disclosed in the advertisement in accordance with Section 50 (2) of the Act.

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 Property and has not provided information that is or is likely to be misleading or deceptive.

7.2 The Vendor will 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 Property.

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 Where the Vendor has complied with the *Work Health and Safety Regulation 2017 (NSW) (WHS Regulation)* in accordance with Clause 12.2 of this Agreement, the Vendor must provide copies of documentation referred therein to the Agent prior to entering into this Agency Agreement.
- 7.7 Where a product, fixture or fitting provided with the Property 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) the Agent acting on behalf of the Vendor under this Agreement; or
 - (5) the Agent incurring legal costs of employing the services of a credit collection agency to recover unpaid debts; or
 - (6) any claim for compensation in respect of damage or loss to the Vendor's goods; or
 - (7) a warning label or safety instructions having been removed, damaged or defaced where a product or fitting has been supplied to the Property 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 Property is sold; or
 - (2) during the Non-Exclusive Agency Period (Clause 4) the Property 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 Periods (Item A and Clause 4), the Property 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.
- 9.3 The Commission will be payable to the Agent if the Property is sold during the Exclusive Agency Period irrespective of whether the Property 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) in the amounts set out in Items B and C, 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 Property 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 5.2) 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. Work Health and Safety**
- 12.1 Where the Property being offered for sale is a workplace as defined under the *Work Health and Safety Act 2011 (NSW)*, insofar as either party to this Agreement is, with respect to such Property a - Person Conducting a Business or Undertaking (PCBU) (under the *Work Health and Safety Act 2011 (NSW)*, Regulations or relevant Codes of Practice in relation thereto) such party must comply with the Act, Regulations and relevant Codes of Practice. Provided however, in carrying out such obligations, the Agent acts only as Agent for the Vendor.
- 12.2 A PCBU with management or control of a workplace must ensure:
- (1) so far as is reasonably practicable, that all asbestos or asbestos containing material at the workplace is identified by a competent person or otherwise its presence is assumed;
 - (2) where applicable to the workplace, an asbestos register is prepared, maintained, reviewed and kept at the workplace in accordance with Section 425 of the *WHS Regulation*;
 - (3) where asbestos has been identified at the workplace, an asbestos management plan is prepared, maintained and reviewed in accordance with Section 429 of the *WHS Regulation*; and

- (4) compliance with the relevant provisions of the *WHS Regulation* and relevant Code of Practice relating to management and control of asbestos in the workplace.
- 12.3 The Vendor authorises and directs the Agent to take steps appropriate to ensure compliance with Clause 12.2, at the Vendor's expense, where:
- (1) the Vendor has failed to provide copies of documents in accordance with Clause 7.6 to the Agent within a reasonable time; or
 - (2) the Vendor has not, where required by the *WHS Regulation*, complied with the provisions of Clause 12.2.
- 12.4 The Property as detailed in Item 4 is the property of, and is at all times, notwithstanding the appointment of the Agent, under the control of, the Vendor as Duty Holder.
- 13. Provision of Agreement**
- 13.1 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.
- 13.2 This Agreement cannot be varied without agreement in writing signed by the parties.
- 14. 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 Condition, the Special Condition shall apply.
- 15. Privacy**
- 15.1 The Agent must comply with the provisions of the Australian Privacy Principles (*Privacy Act 1988 (Cth)*) and where required maintain a Privacy Policy.
- 15.2 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.
- 15.3 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 Property; 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.
- 15.4 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.
- 15.5 Without provision of certain information the Agent may not be able to act effectively or at all on the Vendor's behalf.
- 15.6 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.
- 15.7 The Agent will provide (where applicable), on request, a copy of its Privacy Policy.
- 16. 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.
- 17. Related Documents / Notices / Electronic Communication**
- 17.1 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.
- 17.2 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 17.2(1) to (4) above.
- 17.3 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.
- 17.4 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)*.
- 17.5 Documents given by a party's solicitor will be deemed to have been given by and with the authority of the party.
- 17.6 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.
- 17.7 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.
- 17.8 The parties agree and consent to execution, by any party, of documents electronically using a method provided by an electronic signing service provider.