

AUCTION AND EXCLUSIVE AGENCY AGREEMENT FOR THE SALE OF GOODS

Item

Item Schedule

1. VENDOR

Clauses 2 and 7

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

2. AGENT / AUCTIONEER **(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: /

3. GOODS FOR SALE

The Goods will be put to public auction on or a date later submitted by the Vendor.

Description of The Goods	Reserve Price (if any)	Tick if GST included

Unless indicated, sale of The Goods will not constitute a taxable supply as defined in the purposes of A New Tax System (Goods and Services Tax) Act 1999.

NOTE: Reserve price must be given in writing to the Agent prior to Auction.

4. TERM OF AGREEMENT

Clauses 3, 6.1(1) and 6.1(3)

This Agreement commences on and concludes unless extended in writing by the Vendor. Either party can terminate this Agreement (without penalty) by giving the other party 7 days notice in writing.

5. NON-EXCLUSIVE AGENCY

Clause 6.1(2)

Both parties agree that on the conclusion of the Exclusive Period (Item 4) this Agreement will continue as a Non-Exclusive Agreement until terminated in writing by either party, or The Goods are sold. Such termination will be without prejudice to either party's existing rights, duties or obligations.

6. COMMISSION *Note: Prices for goods and services are GST inclusive. See Clause 6.5*

Clauses 5.5 and 6

Subject to this Agreement on the sale of The Goods (at the Price listed in Item 3) the Agent shall be entitled to a fee of:

(incl. GST)

7. EXPENSES*Clauses 5.5, 6.4 and 13.2*

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, Expenses are payable on receipt by the Vendor of an itemised invoice.

8. INSPECTIONS

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

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9. ADVERTISING / MARKETING*Clause 8(1)*

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

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9.2 Signage erected advertising the sale is permitted: ☐ Yes ☐ No

9.3 Maximum expenditure on advertising and/or marketing, unless otherwise directed is:

10. AGENT DISCLOSURE*Clause 10*

The Agent shall not be entitled to retain Rebates, Discounts, and Commissions except as disclosed below:

Source and Details of Rebates, Discounts and Commissions	Estimated Amount

11. THIRD PARTY INTERESTS*Clause 7.3*

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12. ADDITIONAL INSTRUCTIONS

13. SPECIAL CONDITIONS

Clause 12

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 the Agent. No warranty is given by the Agent with respect to such clauses. Legal advice should be sought.

14. SIGNATURES

Clause 6.6(2)

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:

A copy of the Auctioneer's standard terms and conditions has been read and understood by both parties prior to the signing of this Agreement and agree The Goods are to be sold at Auction in accordance with these terms.

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 - Auction and Exclusive Agency Agreement for the Sale of Goods;
 - (b) the Terms of Agreement; and
 - (c) any additional annexures, schedules or documents that may be attached.
- (3) **Duty Holder:** has the meaning given to it under Chapter 3 of the *Work Health and Safety Regulation 2017 (NSW)*.
- (4) **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.
- (5) **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.
- (6) **Item:** an Item in the attached Item Schedule forming part of this Agreement.
- (7) **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.
- (8) **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 has having authority to enter into this Agreement;
- (2) The Goods will be transferred to the Buyer free of encumbrance or any third party interest;
- (3) it is the sole owner of The Goods; and
- (4) any Material Facts in relation to The Goods have been disclosed.

3. Exclusive Appointment

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

4. Appointment of Agent

- 4.1 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 Goods for the Vendor and the Agent agrees.
- 4.2 Authority vested in the Agent by this Agreement shall be deemed to be vested in the Agent's authorised employees.
- 4.3 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.

- 4.4 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.

5. Agent's Selling Obligations and Authority

- 5.1 The Agent must and is authorised and directed, by the Vendor, to disclose all relevant and Material Facts in relation to The Goods.
- 5.2 The Agent must, in compliance with Section 52 of the Act, not make any promise that is false, misleading or deceptive or fail to disclose any Material Facts.
- 5.3 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.
- 5.4 The Agent will account to the Vendor for the net proceeds from the sale of The Goods within 7 days of the receipt of monies from the Purchaser.
- 5.5 The Agent is authorised to deduct from monies received by the Agent on behalf of the Vendor authorised Fees, Commissions and other outlays owing to or incurred by the Agent in association with this Agreement, including those fees, charges and payments authorised in Items 6 and 7.

6. Agent's Commission and Reimbursement

- 6.1 The Vendor acknowledges the Agent is entitled to Commission if:
 - (1) during the initial or any extended Exclusive Agency Period (Item 4), The Goods are sold; or
 - (2) during the Non-Exclusive Agency Period (Item 5) The Goods are 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 (Items 4 and 5) The Goods are sold to a purchaser who has been effectively introduced by the Agent during either of those Agency Periods.
- 6.2 The Commission will be payable to the Agent if The Goods are sold during the Exclusive Agency Period irrespective of whether The Goods are sold by the Agent, Vendor or another person.
- 6.3 The Commission as detailed in Item 6 will be payable on settlement of the sale.
- 6.4 The Agent is entitled to Commissions, 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 6 and 7, for the execution of services under this Agreement.
- 6.5 Unless otherwise stated, all prices of goods and services under this Agreement include (where applicable) GST.
- 6.6 (1) 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.
(2) 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.
- 6.7 The parties acknowledge Section 36 of the Act provides that an application to review a statement of claim or itemised account may be made to the Tribunal under the *Fair Trading Act 1987* by the Vendor. If such application is not made within 28 days of a statement of claim or itemised account being served upon the Vendor, the Agent may commence action for recovery.
7. **Vendor's Obligations and Authority**
 - 7.1 To effect and maintain insurance of The Goods.
 - 7.2 To provide to the Agent, at the time of listing, full details of The Goods and relevant information indicating liability for GST or otherwise.

- 7.3 To notify the Agent in writing of all third party interests in The Goods and advise in relation to consent of such parties to release of their interest in the sale of The Goods.
- 7.4 To notify the Agent of all offers for the sale of The Goods known to the Vendor.
- 7.5 The Vendor has at the time of entering into this Agreement disclosed to the Agent all relevant and Material Facts about The Goods and has not provided information that is or is likely to be misleading or deceptive.
- 7.6 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 Goods.
- 7.7 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.
- 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.
- 9. Agent's Opinion**
- 9.1 The Agent makes no representation as to being a financial or investment advisor.
- 9.2 The provision by the Agent of financial and investment advice 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. In relation to financial and investment advice the Vendor should consult their accountant or financial adviser.
- 10. Agent's Disclosure**
The Agent shall not be entitled to retain any Rebates, Discounts and Commissions, except as disclosed in Item 10, in connection with expenses incurred by the Agent in the capacity of Agent for or on behalf of the Vendor.
- 11. Work Health and Safety**
- 11.1 The Goods as detailed in Item 3 are the property of, and are at all times, notwithstanding the appointment of the Agent, under the control of, the Vendor as Duty Holder.
- 11.2 The Vendor confirms having inspected any plant and equipment, both new and used, included in the sale in accordance with its obligations under the *Work Health and Safety Act 2011 (NSW)*, regulations and relevant codes of practice thereto.
- 11.3 The Vendor will at the time of entering into this Agreement provide, in compliance with the *Work Health and Safety Act 2011 (NSW)*, Regulations and codes of practice thereto, all available information and records to the Agent concerning health and safety with respect to The Goods and advise the Agent in writing of any faults, defects or likely risk of injury detected in or arising from The Goods.
- 11.4 The Vendor confirms the provision of information required by Clause 11.3 is to enable the Agent to make such information available to prospective purchasers, which the Vendor authorises and directs, and further confirms the information is in all respects true and correct.
- 11.5 The Vendor indemnifies the Agent against any claim or loss the Agent may sustain in relying on the information provided by the Vendor.
- 11.6 The Vendor acknowledges at all times it remains the Duty Holder in respect to The Goods and the Agent is only to deal with The Goods in accordance with the Vendor's instructions.
- 11.7 The Agent acting in accordance with the Vendor's directions and/or exercising proper care and responsibility shall not be liable for damage or loss to The Goods whilst in the Agent's possession.
- 11.8 It shall be the responsibility of the Vendor to instruct the Agent in respect of proper presentation of The Goods for sale taking into account, in such presentation, any requirements of the *Work Health and Safety Act 2011 (NSW)*, Regulations and codes of practice thereto.
- 12. Special Conditions**
Any Special Condition 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.
- 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 the 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. Privacy Statement**
The Agent/Auctioneer must deal with personal information in accordance with the *Privacy Act 1988 (CTH)*.
- 15. Related Documents / Notices / Electronic Communication**
- 15.1 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.
- 15.2 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 15.2(1) to (4) above.
- 15.3 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.
- 15.4 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)*.
- 15.5 Documents given by a party's solicitor will be deemed to have been given by and with the authority of the party.
- 15.6 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.
- 15.7 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.
- 15.8 The parties agree and consent to execution, by any party, of documents electronically using a method provided by an electronic signing service provider.