

STATEMENT OF PROPERTY DETAILS AND BUYERS AGENCY AGREEMENT

Item

Item Schedule - Statement of Property Details

1. BUYER

Clauses 2 and 5

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

2. BUYER'S SOLICITOR / CONVEYANCER

Clause 5.1

Solicitor/Conveyancer:
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/s:
Address: ACN:
..... ABN:
Phone: Mobile:
Email:
Licence Number/s*: GST Registered: **/**

4. PROPERTY *Note: These details can be changed by agreement between the parties*

4.1 Type of Property:
4.2 Location:
4.3 Property Description (e.g. size, improvements):
.....
4.4 Special Instructions (e.g. vacant possession):
.....

5. PURCHASE PRICE *Note: Prices are GST Exclusive*

Maximum Price or Price Range the Buyer is prepared to pay for a Property similar to the Property described in Item 4:
Maximum Price: OR
Approximate Price Range: to

6. STATEMENT SIGNATURES

Items 1 to 5 make up the Statement of Property Details required by the Act and have been completed by the Agent in Item 3.

Agent's Signature: Date of Statement:

Item

Item Schedule - Buyers Agency Agreement

A. TERM OF AGREEMENT

The Agents authority to act commences on
and concludes on or at such time when a contract
for the purchase of a Property becomes unconditional. Either party may terminate this Agreement in writing on the giving of not
less than days notice. Such termination will be without prejudice to either party's existing rights, duties or obligations.

B. AGENT'S INSTRUCTIONS AND AUTHORITY *Note: If insufficient room, attach schedule.**Clauses 4.3, 4.9 and 5.3*

1. The Buyer authorises the Agent, in accordance with the Buyer's instructions as more particularly set out in this Agreement, to undertake the following duties. *[Tick authorised option/s]*

- (1) ☐ Locating and recommending suitable potential properties to the Buyer
- (2) ☐ Enter into negotiations for the purchase of a Property on the Buyer's behalf
- (3) ☐ Participate in negotiating and exchange of a Contract for the purchase of a Property on the Buyer's behalf
- (4) ☐ Bid on a prospective Property at auction on the Buyer's behalf
- (5) ☐
- (6) ☐
- (7) ☐
- (8) ☐
- (9) ☐

2. Other authorisations/limitations:

C. COMMISSION*Clause 7*

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

..... (Incl. GST)

(2) Based on the Buyer's maximum Purchase Price (Item 5) the Commission (Item C(1)) in dollars would be:

..... (Incl. GST)

(Where a range of value is entered into Item 5 the purchase price is based on the maximum value in that range)

(Note: the Commission will vary based on the actual Purchase Price of a Property)

D. FEES FOR SERVICES*Clauses 1.1(10) and 1.1(11)*

Fees payable to the Agent for Services *[Enter details of Fees]*

Description of Service/Fee	Fee (incl. GST)	* Due and Payable
Retainer Fee		
Termination Fee		

* When Due and Payable is left blank, Fees for services are payable on receipt by the Buyer of an itemised invoice.

E. CHARGES AND EXPENSES*Clause 7.4*

The Buyer shall reimburse the Agent for the following authorised Expenses incurred during this Agreement:

Description of Expense	Amount (incl. GST)	* Due and Payable

* When Due and Payable is left blank, Fees for services are payable on receipt by the Buyer of an itemised invoice.

F. AGENT'S DISCLOSURE

Clause 9

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

G. ADDITIONAL INSTRUCTIONS**H. SPECIAL CONDITIONS**

Clause 11

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

I. CAPITAL GAINS WITHHOLDING PAYMENT

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).

J. GST WITHHOLDING

All sales of 'residential property' will require the Vendor to complete a notice in accordance with section 14-255 of the *Taxation Administration Act 1953 (Cth)*.

K. SIGNATURES

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

Signature of Buyer(s)

Date:

Date:

.....

.....

Note: Where signed by Buyer's authorised representative or the Buyer 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 - Statement of Property Details;
 - (b) the Item Schedule - Buyers 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) **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 Schedules 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) **Personal Information:** means personal information as defined in the *Privacy Act 1988 (CTH)*.
- (9) **Related Document:** means any written communication (including Notices) with regard to this matter between the parties, including any Electronic Documents.
- (10) **Retainer Fee:** a non-refundable fee paid to the Agent, as detailed in Item D for the provision of services under this Agreement.
- (11) **Termination Fee:** monies payable to the Agent as detailed in Item D where the Buyer terminates this Agreement prior to entering into an enforceable Contract to purchase.

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

2. Buyer's Confirmation

By signing this Agreement the Buyer(s) warrants and confirms it has authority to enter into this Agreement.

3. Appointment of Agent

- 3.1 In consideration of and in accordance with the terms of this Agreement, the Buyer appoints the Agent (and its permitted Assigns) for the duration of this Agreement to carry out the agreed services as listed in Item B and the Agent agrees.
- 3.2 Authority vested in the Agent by this Agreement shall be deemed to be vested in the Agent's authorised employees.
- 3.3 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.
- 3.4 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.

4. Agent's Obligations and Authority

- 4.1 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.
- 4.2 The Agent will use its best efforts to obtain the best possible purchase price, without breaching standards of ethical conduct or engaging in conduct that is contrary to good agency practice.
- 4.3 The Agent is authorised to undertake the duties more particularly set out in Item B and in so doing will have reference to the agreed established criteria in Items 4 and 5.
- 4.4 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.
- 4.5 Where an Australian Legal Practitioner is or will be acting for the Buyer, the Agent must not participate in the exchange or making of the Contract unless expressly authorised to do so by the Buyer or the Solicitor, and the Agent is aware of the liability under Section 64 of the Act.
- 4.6 Should the Agent act in conjunction with other Agents to effect a purchase, only one Commission will be payable.
- 4.7 In negotiations for the purchase of a property, the Agent must not exceed the maximum or agreed price fixed by the Buyer without the express authorisation of the Buyer or the Buyer's representative.
- 4.8 When the bidding at an Auction exceeds the maximum or agreed price fixed by the Buyer, the Agent must not continue bidding without the express authorisation of the Buyer or Buyer's representative.
- 4.9 If authorised by Item B to bid at auctions the Agent must comply with the Act in particular Section 67 and all requirements with respect to bidder's record.
- 4.10 The Agent must keep the Buyer informed of each stage of the negotiation of a purchase price, as instructed by the Buyer. This Clause does not apply to bids made in the course of an auction.
- 4.11 In so far as applicable, Schedule 2 of the *Property and Stock Agents Regulation 2014* applies to this Agreement.

5. Buyer's Obligations and Authority

- 5.1 By completing Item 2 the Buyer confirms it has authorised and instructed the Solicitor or Conveyancer named therein to act on their behalf.
- 5.2 The Buyer must retain a signed copy of this Agreement.
- 5.3 Where the Agent is authorised in Item B to bid at auction, the Buyer must provide proof of identification to complete the bidder's record in accordance with the requirements of the Act.

6. Indemnity

The Agent having complied with its obligations under this Agreement and not having been negligent, the Buyer 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) the Buyer's failure to comply with this Agreement; or
- (2) the Buyer's failure to give the Agent prompt and appropriate authority or instruction, or sufficient funds to carry out an instruction or authority; or
- (3) the Agent acting on behalf of the Buyer under this Agreement; or
- (4) the Agent incurring legal costs of employing the services of a credit collection agency to recover unpaid debts.

7. Agent's Commission and Reimbursement

7.1 The Buyer acknowledges the Agent is entitled to Commission if during the Agency Period (Item A) the Agent introduces the Buyer to a Vendor of a Property, or a Property and where:

- (1) a binding contract is entered into by the Buyer (or nominee) and completed; or
- (2) a binding contract is entered into by the Buyer (or nominee) and not completed due to default on the part of the Buyer (or nominee) to complete the purchase of the Property,

regardless, in either case, of whether the contract is entered into after the term of this Agreement.

7.2 For the purposes of Clause 7.1 the purchase of a Property shall include the purchase of shares in a company where that company is the owner of the Property.

7.3 The Commission as detailed in the Item C of the Item Schedule will be due and payable on settlement of the purchase or if Clause 7.1(2) applies, on demand.

7.4 The Agent is 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 Buyer) as set out in Items C, D and E, for the execution of services under this Agreement.

7.5 Unless otherwise stated, all prices of goods and services under this Agreement include (where applicable) GST.

- 7.6
- (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 Buyer not more than 48 hours after being signed by the Buyer.

8. Financial and Investment Advice

8.1 The Agent makes no representation as to being a financial or investment advisor.

8.2 The Buyer 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.

8.3 The 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.

8.4 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.

9. Agent's Disclosure

The Agent shall not be entitled to retain any Rebates, Discounts and Commissions, except as disclosed in Item F, in connection with expenses incurred by the Agent in the capacity of Agent for or on behalf of the Buyer.

10. Provision of Agreement

10.1 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.

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

11. 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.

12. Privacy

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

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

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

- (1) potential vendors, to the extent required to prepare a contract for the purchase 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.

12.4 Documents or copies of documents provided to establish the identity of the Buyer or persons entitled to deal on behalf of the Buyer, 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.

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

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

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

13. 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.

14. Related Documents / Notices / Electronic Communication

14.1 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.

14.2 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 14.2(1) to (4) above.

14.3 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.

14.4 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)*.

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

- 14.6 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.
- 14.7 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.
- 14.8 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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