



GENERAL CONDITIONS FOR RESIDENTIAL AGENCY AGREEMENT

1 AUCTION (if applicable)

The Agent will offer the Property for sale by public auction at the time and in the manner detailed herein and or as further detailed in any auction direction forms of the Society or otherwise in writing.

2 AGENTS AUTHORITY

- 2.1 The Vendor authorises the Agent to accept the deposit or other moneys due to the Vendor under the contract for the sale of the Property and the Agent will hold any moneys received in accordance with the provisions of the Land Agents Act 1994. The Agent will be entitled to receive a deposit guarantee in lieu of a cash deposit.
- 2.2 The Vendor irrevocably authorises the Agent to transfer to itself from trust all professional fees and expenses and all claimed interest and costs upon settlement.
- 2.3 The Agent is not authorised to sign a Contract for the Sale of the Property unless expressly instructed and authorised in writing by the Vendor to do so either prior to auction or otherwise for a Contract by private treaty.

3 FORM OF AGENCY

- 3.1 The Agent will be the Sole Agent (unless the initial appointment is as a General Agency) for the sale of the Property during the Term. The Agent may determine this Agency Agreement at any time.
- 3.2 The Vendor will not be entitled to withdraw the Sole Agency granted during the term agreed unless the Agent is in fundamental breach of this Agreement and is not using its reasonable endeavours to market the Property after prior written notice from the Vendor. If there is a dispute as to this clause and entitlements the parties will arbitrate the dispute pursuant to clause 15. If the Vendor was not entitled to terminate then the Agent will be paid damages by the Vendor for wrongful termination to be determined by the arbitrator.
- 3.3 A General Agency will entitle the Agent to promote the Property and introduce or procure a Purchaser for the Property and the Vendor will in all things assist the Agent in the Agent's endeavours to sell the Property.
- 3.4 The Vendor warrants that no other agent will be appointed during the period of any Sole Agency unless otherwise specified herein.

4 WARRANTY BY AGENT

The Agent will at all times act in the best interests of the Vendor and comply with the provisions of the Act and the ethics of the Society.

5 DEEMED SALE

The Agent will be deemed to have effected a sale of the Property;

- 5.1 if during the term of the Agency the Agent introduces a prospective Purchaser who does not settle on the Property as a result of the Vendor failing to enter into a contract for an amount at or above the Vendor's Selling Price in the Schedule or at (or more than) the price later agreed to be offered or the auction reserve price (for whatever reason), or failing to use its best endeavours as required by Clause 13 of this Agreement; or
 - 5.2 if the Vendor sells to a Purchaser not introduced by the Agent which sale is entered into during the Sole Agency, and which sale is not effected by the Vendor exercising its right to sell privately; or
 - 5.3 if during the term of the Agency the Agent introduces a Purchaser who enters into a contract after the expiry of the Sole Agency but before the Vendor enters into another Sole Agency with another Agent.
- 6** In the event there is a transfer of the beneficial ownership of the Property to a Purchaser introduced or procured by the Agent and the transfer is effected by some means other than a transfer of legal ownership from the Vendor, then that transfer of the beneficial interest will be deemed a sale effected by the Agent and in particular but without limiting the effect thereof:
- 6.1 in the event one of the Vendors is a corporation, a transfer of the shares of that corporation giving control to another will be deemed a transfer of that Vendor's interest in the Property;
 - 6.2 in the event one of the Vendors owns its interest in the Property as trustee, a transfer of the beneficial interest of that trust will be deemed to be a transfer of that Vendor's interest in the Property; and the Agent's Professional Fee will be calculated by reference to the 'Professional Fee' in the Schedule and calculated to the value of the Property to the extent of the beneficial interest transferred.



7 TRANSFER NOT FOR MONEY

Should the consideration to be given by a Purchaser be expressed other than in monetary terms, the Professional Fee will be calculated by reference to the scale or amount under 'Professional Fee' in this Agreement.

8 VALUATION

For the purposes of clauses 6 and 7 above and in the absence of agreement between the parties as to the value of the Property, either party may request the President of the Society to appoint a valuer to ascertain the value of the Property. The costs of the valuation will be borne equally by the parties.

9 EXPENSES AND PROFESSIONAL FEE

- 9.1 The Agent is authorised by the Vendor to incur the expenses set out in this Agreement. The Agent may expend more on one expense than another in the Agent's discretion but such that the total is not exceeded without the consent of the Vendor.
- 9.2 The Vendor will pay the amount of the expenses and Professional Fee within 7 days after invoice, or at settlement whichever is the earlier, and in the event they are not paid then the Agent may issue a written notice by letter or other form requiring immediate payment.
- 9.3 In the event any moneys demanded by a notice issued pursuant to clause 9.2 are not paid within the time stipulated in the notice, those moneys will then upon such default become a charge over the Property and any other real property the Vendor may own from time to time until paid in full to the Agent. The Agent will not be entitled to caveat the Property or such other real property owned by the Vendor to secure payment of the moneys due under the charge herein granted but may apply to register a mortgage over any land owned by the Vendor to secure the charge and the Vendor will consent and not object if the debt is due and outstanding even pending any dispute between the parties. All costs incurred by the Agent in collecting the moneys demanded in the notice issued pursuant to clause 9.2 including stamp duty and all legal costs of any applications and recovery costs on a solicitor client basis will be payable by the Vendor and the Agent will be entitled to \$300 for each notice issued.
- 9.4 The Agent may receive rebates on advertising and associated expenses from 3rd parties as disclosed under the Act and the Vendor acknowledges and agrees the Agent will not be required to account for any disclosed rebates. The Vendor acknowledges any rebates are in addition to the Professional Fees payable. Any prepaid expenses not expended by the settlement date will be repaid to the Vendor.
- 9.5 Notwithstanding the above, the Vendor agrees to pay all expenses and Professional Fees no later than settlement if the property is sold.
- 9.6 The Vendor will pay interest on any outstanding monies payable to the Agent calculated at 10% per annum.
- 9.7 In the event GST is imposed on any service in respect of this Agency Agreement, any amount payable by the Vendor to the Agent or a third party (for all other goods and services to include advertising) in respect of those services will be increased by the rate at which GST is imposed at that time. The Vendor will pay the increased amount to the Agent at the same time payment is due under this Agency Agreement to the Agent for the services and the Agent will render a tax invoice.

10 FORM OF CONTRACT

The Agent will offer the Property for sale in the form of the contract authorised and approved by the Society as varied from time to time.

11 INDEMNITY TO AGENT

The Vendor indemnifies the Agent against all costs, expenses, damages and loss (including any loss of fees) suffered by the Agent and holds harmless the Agent against claims, demands, actions and losses arising from the Agent acting for the Vendor save and except to the extent that the costs, expenses, damages and losses are a result of the negligence of the Agent.

The Vendor indemnifies and holds harmless the Agent for any loss or damage whatsoever to the Property or to any goods and chattels of the Vendor or any third party in or on the Property arising from the act or omission of any third party during any inspection of the Property or during the auction. The Vendor further warrants the Vendor has or will provide suitable insurance cover for the Property, the Vendors (or any tenant's) personalty therein and for all persons invited onto the Property for the purpose of offering the Property for sale directly or indirectly.



12 VENDOR'S WARRANTIES

- 12.1 The Vendor warrants the Vendor has good authority and full capacity to sell the Property.
- 12.2 The Vendor warrants all information detailed in this Agency Agreement and otherwise provided to the Agent is accurate and correct. The Vendor will promptly advise the Agent of any changes to the information given which comes to the Vendor's knowledge or attention.
- 12.3 The Vendor warrants there is no other information material to the sale which the Vendor is aware of and should be brought to the attention of the Agent and all equipment and operating fixtures are in good working condition.

13 BEST ENDEAVOURS

In the event the Agent introduces a prospective Purchaser offering to purchase the property at or above the price to be offered, the auction reserve price or such lower price as may be agreed with the Vendor, the Vendor undertakes to enter into a contract of sale of the Property. The Vendor further undertakes to observe, perform and carry out any contract of sale of the Property effected by the Agent and will use its best endeavours to ensure that settlement occurs.

14 TERMINATION

Where the Vendor has contracted to purchase another property marketed by the Agent and that contract is terminated for any reason the Vendor may withdraw the Property from sale and terminate this Agency Agreement.

15 ARBITRATION

Disputes involving the sum of \$40,000 or less will be determined by an independent arbitrator appointed by the President of the Law Society at the request of either party. The determination of the arbitrator will be final and binding between the parties and the provisions of the Commercial Arbitration Act will apply. The costs of the arbitration will be paid by the party/s as directed by the arbitrator. The arbitrator will advise of procedures and will request payment of reasonable fees prior to acting and in default of payment may refuse to act. The parties will have no right of appeal under section 38(2) or to apply with respect to a question of law under section 39(1) of the Commercial Arbitration Act.

16 AFTER AUCTION AGENCY BECOMES STANDARD PRIVATE TREATY AGENCY

If this Agency is for and specifies an Auction Sale Program then immediately after the Auction or if the property is withdrawn from Auction by the Vendor and is not an Auction Agency then this Agency Agreement automatically becomes a standard Agency Agreement for Sale by Private Treaty and is not an Auction Agency Agreement from that time onwards.



INTERPRETATION

Unless this Agency Agreement otherwise requires-

'a Contract' means the sale agreement between a transferee and the Vendor for the transfer of the Property. **'Corporation'** means a corporation as defined under the Corporations Act. **'documentation fees'** means fees charged by the Agent for and incidental to opening files and preparing documents for the Vendor. **'expenses'** means those costs set out above in Vendors Marketing Costs to include any interest, costs and other expenses properly payable in addition to any GST payable for those services.

'Statutory Forms' means and includes all forms detailing the property searches required to be served and delivered under the Land and Business (Sale & Conveyancing) Act 1994 (as amended) or the Act. **'General Agency'** means more than one Agent may be appointed and the Vendor may act. **'GST'** means *A New Tax System (Goods and Services Tax) Act 1999* or any other Act or Regulation amending, replacing or directly associated with that Act and any goods and services or similar tax imposed thereby. **'land'** and **'Property'** means the freehold land (including a strata unit), leasehold land, or community title, together with all buildings and other improvements thereon the subject of this Agency Agreement. **'Professional Fee'** means that amount agreed as the Professional Fee calculated on the gross price excluding any GST and includes any Administration Fee payable and all expenses payable and any interest accrued. **'Purchaser'** includes the Purchaser's assignee or nominee disclosed. **'Services'** has the same meaning as supply for all purposes of the GST including supply as defined therein and to mean and include Professional Fees and all other fees and costs payable under this Agency Agreement. **'Settlement'** means the date referred to in any contract for the sale of the Property or upon a transfer of the Property. **'Sole Agency'** means the Agent appointed is the only appointed Agent for the period. **'the Agent'** means the Agent registered under the Land Agents Act 1994 and any employee or representative of the Agent. **'the Act'** means the Land Agent's Act 1994 as amended from time to time and or the Land & Business (Sale and Conveyancing) Act 1994. **'the Society'** means the Society of Auctioneers and Appraisers (SA) Incorporated. A reference to an Act of Parliament or to a section of an Act includes any amendment thereto or re-enactment thereof for the time being in force. Where two (2) or more persons are named in this Agency Agreement as the Vendor or the Agent their liability under this Agency Agreement is joint and several.

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Authority to accept an offer

The sales agency agreement must specify whether or not the agent has authority to accept an offer on your behalf, for example when circumstances make it difficult to contact you at the time an offer to buy the property is made.

If an agent signs a contract of sale on your behalf, then the contract is binding on you. So, if you think it is appropriate for the agent to be able to accept an offer on your behalf then the contract should clearly state when and in what circumstances you consider it acceptable for the agent to accept an offer.

If, on the other hand, you retain the right to accept an offer yourself, then your property cannot be sold unless you agree to the offer.

Disputes and complaints

If you have a dispute with an agent you should first try to resolve it with the agent. If that is unsuccessful, you can contact Consumer and Business Services on **131 882** for advice

Disclaimer: This publication is a plain language guide to your rights and responsibilities. It must not be relied upon as legal advice. For more information please refer to the appropriate legislation or seek independent legal advice.