

Particulars of Appointment:

Agent: James Buyer Advocates Pty Ltd T/A James Buy Sell
Address: 3/122 Gardenvale Road, Gardenvale VIC 3185
Attention: Malcolm James

ABN: 77 098 640 745
Email: accounts@james.net.au
Phone: 03 9804 3133 or 0408 107 988

Vendor Details

Name: _____

Address: _____

Phone: _____ **Phone:** _____

Email: _____ **Email:** _____

Identification checked

Property Details

Property: _____

Goods Included: with goods being as per contract of sale

Goods Excluded: _____

Exclusive Authority Period: _____ **Continuing Authority Period:** _____

The Property is being sold with: with vacant possession OR subject to a tenancy

and upon payment of: full purchase price OR terms of payment

Vendor's Price: _____ **Payable in:** _____ days

Agent's estimate of selling price

Agent's estimate of selling price (section 47A of the *Estate Agents Act 1980*). Note: if a price range is specified, the difference between the upper and lower amounts cannot be more than 10% of the lower amount.

Single amount: \$ _____ or a range between \$ _____ and \$ _____

Commission

A fixed commission (including GST) of \$ _____ OR

A commission (including GST) being the following % of the sale price or calculated as follows:

Dollar amount of estimated commission:

\$ _____ which includes GST of \$ _____

if sold at a GST inclusive Price GST exclusive price Price not subject to GST of \$ _____

Marketing expenses

All marketing and similar expenses will be paid directly by the vendor to the relevant third party

Date: _____

Agent: _____

Vendor/s: _____

TERMS OF APPOINTMENT

1. Entitlement to Commission

You agree to pay the Agent the Commission on the terms of this Authority if the Property is sold:

- 1.1. by the Agent to a person introduced to the Property before You signed this Authority and to whom, as a result of the introduction, the Property is sold; or
- 1.2. within 120 days after the expiration of the exclusive authority period to a person introduced to the Property by the Agent within the exclusive authority period and to whom the Property is sold, as a result of the introduction; or
- 1.3. by the Agent during the exclusive authority period or by any other person (including You or another agent); or
- 1.4. by the Agent during the continuing authority period; or

The Commission is due and payable by You on the Property being sold if the Agent is the effective cause of the sale.

Clauses 1.2, 1.3 and 1.4 will not apply if You incur a liability to pay an agent a Commission under an exclusive agency agreement signed by You with another agent after the expiration of the exclusive authority period.

2. Exclusive Authority Period

If this Authority does not state when the exclusive authority period is to end, the exclusive authority period ends:

- 2.1. in the case of a sale by auction, 30 days after the date of the auction;
- 2.2. in any other case, 60 days after the date this Authority is signed by You or on Your behalf.

3. Continuing Authority Period

3.1. If there is a continuing authority period, it starts on the day after the day on which the exclusive authority period ends and:

- 3.1.1. lasts for the number of days specified in the Particulars of Appointment, unless cancelled by You; and
- 3.1.2. on the day it starts, the Agent's exclusive authority period ends.

3.2. You may cancel the continuing authority period at any time by written notice to the Agent.

3.3. Clause 1 continues to apply, if the continuing authority period is cancelled.

4. Your Acknowledgements

You acknowledge:

- 4.1. being informed by the Agent before signing this Authority that the Commission is negotiable;
- 4.2. Commission is payable in accord with this Authority, if the Property is sold;
- 4.3. at the date of this Authority no other agent holds an exclusive authority for the sale of the Property;
- 4.4. dummy bidding is illegal;
- 4.5. it is illegal for an agent to accept bids/offers after the Property has been knocked down at auction to the successful bidder;
- 4.6. the Agent has relied on the information provided by You to prepare this Authority and the Agent will not be liable for any incorrect information;
- 4.7. Your personal information will be collected and may be used by the Agent, as provided in this Authority;
- 4.8. being informed by the Agent before signing this Authority that the Agent has procedures for resolving complaints and disputes; and
- 4.9. receipt of a copy of this Authority at the time of signing this Authority or as soon as practicable either by electronic means or hard copy.

5. Rebate

The Agent will not, or is not likely to be, entitled to any rebates. A rebate includes any discount, commission or other benefit and includes non-monetary benefits. The Agent is not entitled to retain any rebate and must not charge You an amount for any expense that is more than the cost of those expenses. The Agent must pay You any rebate the Agent receives in relation to the sale of Your property. If the Agent is entitled to a rebate, the rebate Statement Form approved by Director of Consumer Affairs Victoria will be completed at the time of signing this Authority. The form can be downloaded at www.consumer.vic.gov.au.

6. Authority to Receive Notices

You authorise the Agent to receive a cooling off notice given under Section 31 of the Sale of Land Act 1962. This authorisation is effective even if this Authority to act for You formally expires on the sale of the Property.

7. Commission Sharing

You acknowledge that the Agent may enter into an arrangement to share commissions with another entity after You sign this authority. You agree to sign a Notice of Commission Sharing and any other documents necessary in order to permit the Agent to share such commissions, if requested by the Agent.

8. Agent May Sign Contract

On Your written request, the Agent may sign a contract of sale for the Property which contains terms of sale agreed to by You.

9. Signatory Bound

A person signing this Authority for or on behalf of You is personally responsible for the due performance of Your obligations as if that person was You. If required by the Agent, that person will procure the execution of a guarantee and indemnity in favour of the Agent by the directors of a vendor that is a corporation or the committee members of a vendor that is an incorporated association, in a form acceptable to the Agent's legal practitioner.

10. Right to Commission

You agree with the Agent that an agreement between You and the Purchaser to bring an enforceable contract of sale for the Property to an end or the ending of an enforceable contract of sale as a result of a default by You or the Purchaser shall not relieve You of the obligation to pay the Commission and any other moneys due and payable by You to the Agent in connection with the sale of the Property.

11. Role as Stakeholder

If while a stakeholder the Agent is requested to transfer the deposit moneys to Your legal practitioner or conveyancer or to another estate agent acting on behalf of You, You agree the Agent may retain out of the deposit moneys an amount equal to the Agent's Commission that the Agent are then or will become entitled to and any other moneys that the Agent are or will become entitled to by law in relation to the sale of the Property.

12. Making a Complaint

Any complaint relating to commission or outgoings can be made to the Director, Consumer Affairs Victoria (CAV), GPO Box 4567, Melbourne, Victoria 3001 or by telephoning 1300 55 81 81. Unless there are exceptional circumstances Consumer Affairs Victoria cannot deal with any dispute concerning commission or outgoings unless it is given notice of the dispute within 28 days of You receiving an account for, or notice that the Agent has taken the amount in dispute, whichever is later.

13. Collection and use of personal information

- 13.1. The Agent may collect personal information in relation to You and use it in relation to selling the Property. The Agent may provide it to others with whom the Agent need to have contact in connection with performing the Agent's role as estate agent.
- 13.2. The Agent may also use Your personal information in connection with:
 - 13.2.1. providing details of the sale of the Property to third parties to collect and/or disseminate details of the sale of real estate;
 - 13.2.2. to enable the Agent to promote the Agent's services and seek out potential purchasers;
 - 13.2.3. to respond to enquiries received from Consumer Affairs Victoria and/or the REIV relating to this Authority and/or the sale of the Property.
- 13.3. You can contact the Agent during normal business hours Monday to Friday (excluding public holidays) to gain access to or amend any of Your personal information. The Agent's contact details are incorporated in the Particulars of Appointment in this Authority.
- 13.4. If any part of Your personal information is not provided to the Agent, then the Agent may not be able to act for You and/or effectively perform the Agent's role as estate agent.
- 13.5. The Agent will use personal information in accordance with the Privacy Act 1988.

GENERAL CONDITIONS

14. Vendor Obligations

- 14.1. If the Purchaser does not complete the purchase of the Property and forfeits the deposit, You will take all reasonable steps to recover any unpaid deposit from the Purchaser and/or any other person who may be liable for payment of the deposit and to pay the Commission and any other moneys due and payable to the Agent from the sum of the deposit paid or recovered.
- 14.2. If You fail to pay the Agent any moneys due under this Authority within 30 days of receipt of the Agent's invoice ("the due date for payment"), then if demanded by the Agent You must pay interest at the rate fixed from time to time under Section 2 of the Penalty Interest Rates Act 1983 on the unpaid money (or the balance owing from time to time) calculated from the due date for payment to and including the day on which the unpaid money is paid in full.
- 14.3. If You are a natural person, a corporation or an incorporated association and a person signs on Your behalf, the person signing is responsible for the due performance of Your obligations as if that person was You.
- 14.4. If You are a corporation or an incorporated association, and the Agent require You to do so the person signing this Authority will in addition have the directors of the corporation or the committee of the incorporated association sign a guarantee and indemnity in the Agent's favour in a form acceptable to the Agent's legal practitioner.
- 14.5. You irrevocably authorise the Agent to deduct from any deposit moneys held by the Agent the Commission and any other money due to the Agent pursuant to this Authority and any State and Federal taxes required to be deducted by law, including GST.
- 14.6. If the Property is sold and no deposit moneys are held by the Agent, You will pay the Commission and any other money due to the Agent pursuant to this Authority and any State and Federal taxes required to be deducted by law, including GST.
- 14.7. If any deposit moneys are held by Your conveyancer or legal practitioner, You appoint the Agent as Your attorney under power to direct and authorise the conveyancer or legal practitioner to pay to the Agent on demand the Commission and any other money due to the Agent pursuant to this Authority and any State and Federal taxes required to be deducted by law, including GST. You agree to promptly ratify and confirm any exercise of the power of attorney if the Agent request You to do so.

15. GST

If this Authority requires You to pay or reimburse or contribute to an amount paid or payable by the Agent in respect of an acquisition from a third party to which the Agent are entitled to an input tax credit, the amount for payment or reimbursement or contribution will be the GST exclusive value of the acquisition by the Agent plus the GST payable in respect of that supply but only if the Agent's recovery from You is a GST taxable supply.

16. Legal Compliance

This Authority shall be interpreted so that it complies with all applicable laws. If any provision does not comply with any law then it must be read down so as to give it as much effect as possible. You agree to help facilitate the Agent complying with the law in so far as it relates to the terms of this Authority. You agree to do all things necessary to rectify any part of this Authority that does not comply with any law insofar as it is necessary to give effect to the terms of this Authority including (but not limited to) amending any provision of this Authority that is not compliant with any law or sign a new Authority. If that is not possible You agree to rectify any aspect of this Authority that does not comply with the law.

17. Definitions and Interpretation

In this Authority unless otherwise required by the context or subject matter:

17.1. "Act" means the Estate Agents Act 1980.

17.2. "Authority" means this document as signed by You and as may be varied from time to time.

17.3. "amount owing under the security" means principal, interest, costs, and expenses payable by the legal or equitable owner of the Property under the terms of the security pursuant to which You are disposing of the Property.

17.4. "binding offer" means an offer in a contract of sale signed by the Purchaser at Your Price and on the terms set out in the Particulars of Appointment which would result in an enforceable contract of sale, if signed by You and exchanged with the Purchaser.

17.5. "Commission" means the commission specified or calculated at the rate specified in the Particulars of Appointment.

17.6. "continuing authority period" means the number of days specified as such in the Particulars of Appointment commencing on expiry of the exclusive authority period.