

COMMERCIAL / INDUSTRIAL SALES INSPECTION REPORT AND EXCLUSIVE AGENCY AGREEMENT AND CONTINUING AGENCY

The Property and Stock Agents Act 2002 (NSW) and Regulation require all agents' instructions to be in the form of a written agreement.



PARTIES

Principal

SMB 1 PTY LTD C/- ROBERT JOHN CURTIS		
ABN / ACN 602 301 351	GST Registered <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Address 4 NULLABURRA ROAD NEWPORT NSW		
		Postcode 2106
Phone: Work -	Home -	Mobile 0414 825 545
Email* (see note) robcurtis001@gmail.com		
* Note: By including your email address, you consent to service of any documents, including this agreement and any documents required to be served under or because of this agreement, by way of email.		

Agent

Delmege IP Holdings Pty Ltd		
Licensee's Licence No.** (see note) 10027731		
ABN / ACN 94 115 651 593	GST Registered <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Trading as Delmege Property Group		
Address Suite G01, 1753 Pittwater Road		
Mona Vale, NSW		Postcode 2103
Phone: Work (02) 9997 1111	Mobile 0402 99 22 77	
Email*** (see note) robbie@delmege.com.au		
** Note: If the Agent trades as a corporation the licensee's licence number is the corporation's licence number.		
*** Note: By including your email address, you consent to service of any documents, including this agreement and any documents required to be served under or because of this agreement, by way of email.		

PROPERTY

Address of Property for sale

19/SP70187 90 MONA VALE ROAD MONA VALE	
	Postcode 2103

Together with inclusions as specified in the contract for sale

As per Contract

Covenants/easements/defects/notices/orders as specified in the contract for sale, if known

As per Contract

Offered: ☒ with vacant possession ☐ subject to existing tenancies

Special Conditions (if any) as specified in the contract for sale

As per Contract

Refer to Clauses 4 & 5 regarding special instructions about the inspection of and promotional activities for the Property.

PRICE

Price at which the Property is to be offered (including GST, if any) \$525,000

The Principal instructs the Agent that the price at which the Property is to be offered is:

☐ GST inclusive or ☐ GST exclusive or ☒ GST free

The Agent's recommended method of sale Offers to Purchase

The Agent's opinion as to current estimated selling price (or price range) (including GST, if any) \$525,000
(this opinion is not to be construed as a valuation)

PRINCIPAL'S ☐ SOLICITOR ☐ CONVEYANCER

Firm		
Name of Solicitor/Conveyancer		
Address 1. Business		
2. Address for Service of Documents		
Phone: Work	Mobile	Email

DATE REPORT WAS PREPARED: 12 / 09 / 2022

I agree to be legally bound by the terms of this agreement even if I sign this agreement electronically.

Signature of Agent / Authorised Representative Name of Signatory

Date

Note: This part of the agreement may be signed by an assistant agent.

EXCLUSIVE AGENCY AGREEMENT**Agency Period**

1. In consideration of the Agent promising to use their reasonable endeavours to sell the subject Property, the Principal hereby grants to the Agent the exclusive right to act as agent on behalf of the Principal to sell the Property for a period from 12 / 09 / 2022 to 11 / 12 / 2022 inclusive now called the "Exclusive Agency Period".
2. During the Exclusive Agency Period either party may, by giving one (1) month's written notice to the other party:
- i terminate the exclusive agency agreement on or after the expiry of the Exclusive Agency Period, but without prejudice to either party's rights accrued or obligations incurred prior to the effective termination; or
 - ii convert the exclusive agency agreement into a non-exclusive agency agreement commencing immediately upon the expiry of the Exclusive Agency Period and continuing from month to month ("Continuing Agency Period"),
- however, in the absence of any such written notice from either party to the other party, the exclusive agency agreement shall continue unchanged as an exclusive agency agreement from month to month (and the Exclusive Agency Period shall continue on from month to month accordingly) which can be terminated or converted to a non-exclusive agency agreement by either party giving one (1) month's written notice to the other party without prejudice to either party's rights accrued or obligations incurred prior to the effective termination.

Agents Remuneration

3. i The Agent shall be entitled to a fee of 2% of the gross selling price (GST incl.) if during the Exclusive Agency Period the Property is sold: (a) by the Agent; (b) by any other agent or buyer's representative, or (c) by the Principal.
- ii The Agent shall be entitled to a fee at the amount stated in Clause 3(i) if at any time following the expiration of the Exclusive Agency Period the Principal enters into a contract for the sale of the Property with a purchaser introduced to the Principal or the Property during the Exclusive Agency Period by the Agent, by any other agent or buyer's representative, or by the Principal or with any person or entity related to or introduced by the introduced purchaser.
- iii The Agent shall be entitled to a fee at the amount stated in Clause 3(i) if during the Continuing Agency Period the Agent introduces to the Principal or the Property a purchaser who subsequently enters into a binding contract or if the Principal enters into a contract with any person or entity related to or introduced by the introduced purchaser.
- iv The Agent's fee is calculated on the selling price. If the sale is not subject to GST, the selling price is GST exclusive. If the sale is subject to GST then for the purposes of calculating the Agent's fee the parties agree that the selling price will be:

☐ GST inclusive or ☐ GST exclusive

Note: if no box is ticked then the parties agree that the selling price is GST inclusive.

Inspection

4. Unless otherwise instructed by the Principal, any prospective purchaser is entitled to inspect the Property in the following circumstances:

In the company of a representative of Delmege Property Group

Promotional Activities

5. The sale of the Property is to be advertised and/or otherwise promoted

☐ as per the attached schedule **OR** ☐ not advertised

OR as follows: As agreed between the Parties

For Sale Sign: Permission is hereby granted for the Agent to erect "For Sale" signage ☐ Yes ☒ No

It is acknowledged that the Agent is not responsible for any liability, damages or injuries incurred as a result of the erection of the signage. The Principal is responsible to arrange for any consents of the local council and/or the strata owners' corporation in respect of the signage.

Services, Charges and Expenses

6. The Agent shall perform the following services and be entitled to reimbursement of the following charges and expenses incurred by them:

Service	Amount	When due and payable by the Principal
As agreed between the Parties	\$	
	\$	
	\$	
	\$	
	\$	
TOTAL amount of expenses or charges the Agent expects to incur and for which the Agent is entitled under this agreement to be reimbursed (incl GST where applicable).	\$	

Variation of Services, Charges and Expenses

7. The services to be provided by the Agent and any charges or expenses payable by the Principal to the Agent pursuant to this agreement cannot be varied except as agreed by the Agent and the Principal in writing.

Principal's Fee Obligation

8. The fee to which the Agent is entitled shall be due and payable upon demand:
- i on completion of the sale (unless the Principal and Agent have otherwise agreed in writing); or
 - ii if the sale is not completed owing to the default of the Principal after the parties have entered into a binding contract; or
 - iii if after the entering into of the contract the Principal and the purchaser mutually agree not to proceed with the contract; or
 - iv upon the termination of the contract by the Principal if the sale is not completed owing to the default of the purchaser and the fee is the same or less than the amount of the deposit which is forfeited to the Principal.

Deposit

9. It is irrevocably agreed that all monies paid by the purchaser as deposit monies shall be held by the Agent in trust as stakeholder pending completion.

Authority to Deduct

10. If any money is received by the Agent on behalf of the Principal, then the Principal authorises the Agent to deduct all of the Agent's fees, expenses and charges set out in this agreement before accounting to the Principal or the Principal's solicitor/conveyancer.

Payment to Principal

11. If money held by the Agent becomes due to the Principal, then the Principal directs the Agent to pay that money by:

Cheque ☐ Yes ☐ No Electronic Funds Transfer (EFT) ☐ Yes ☐ No

If by EFT: Account Name

BSB / Account No.

Financial Institution Taxes or Deductions

12. The Agent shall be entitled to be reimbursed for any taxes or deductions debited by banks or other financial institutions against the Agent's account that are attributable to the affairs of the Principal.

Contract For Sale

13. Unless otherwise instructed in writing by the Principal or a solicitor or conveyancer acting for the Principal, the Agent is not authorised to enter into, amend or sign a contract for sale on behalf of the Principal.

Conjunction

14. Unless otherwise instructed, the Agent may allow other agents to act in conjunction with the Agent in order to effect a sale but only one fee will be payable.

Limit of Agent's Services

15. Unless permitted in this agreement or as otherwise agreed in writing by the Agent and the Principal, the Agent does not undertake to perform any other services in connection with the sale.

GST

16. i Any amounts referred to in this agreement which are payable by the Principal to the Agent in respect of services provided by the Agent under this agreement, including reimbursement of expenses, are expressed inclusive of the Goods and Services Tax ("GST"), at the rate of 10% (the current rate). If the current rate is increased or decreased, the parties agree that any amounts referred to in this agreement will be varied accordingly.
- ii The parties agree that the time of supply for GST purposes shall be the completion date of the sale.

Agent's Indemnity and Liability and Release

17. The Principal will hold harmless and keep indemnified the Agent against, and release the Agent from, all actions, suits, proceedings, claims, demands, costs and expenses whatsoever which may be taken or made against the Agent in the course of or arising out of the proper performance or exercise of any of the powers, duties or authorities of the Agent under this agreement.

Financial, Investment, Taxation or Other Advice

18. **WARNING:** The Principal acknowledges that any financial, investment, taxation or other advice provided by the Agent to the Principal is of a general nature only whose preparation does not take into account the individual circumstances, objectives, financial situation or needs of the Principal. The Principal is advised to consult with their own independent financial, investment and/or taxation advisor or other appropriately qualified expert.

Material Fact

19. i The Principal warrants that the Principal has supplied the Agent in writing with all the relevant details and information pertaining to all the material facts in respect of the Property and the common areas and will keep the Agent updated in writing of any changes to any material facts.
- ii The Principal acknowledges that the *Property and Stock Agents Act 2002* (NSW) requires the Agent to disclose all material facts to prospective and actual purchasers.
- iii The Principal directs the Agent to disclose all of the material facts provided in writing by the Principal to the Agent to all prospective and actual purchasers of the Property.
- iv In this clause "material fact" has the same meaning as it has for the purposes of section 52 of the *Property and Stock Agents Act 2002* (NSW).

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EXCLUSIVE AGENCY AGREEMENT

Privacy

20. i The *Privacy Act 1988* (Cth) (the **Privacy Act**) allows personal information to be collected, held, used and disclosed for the purposes which it was collected as notified to users, and otherwise in accordance with the Privacy Act.
- ii This clause outlines how the Agent collects, holds, uses and discloses the Principal's personal information (as that term is defined in the Privacy Act). This clause only applies to the extent the Agent collects, holds, uses and discloses personal information.
- iii The Agent may collect, hold, use and disclose personal information the Principal provides the Agent in connection with this agreement or collected from other sources for the following purposes: (a) identifying and verifying the Principal and the Property; (b) acting on behalf of the Principal in accordance with this agreement; (c) where applicable, advertising, promoting and, otherwise, marketing the Property for sale; (d) negotiating any prospective sale of the Property; (e) liaising and exchanging information with the Principal, the actual purchaser, prospective purchasers and each of their legal and other advisors in relation to or in connection with any sale of the Property (including with respect to the contract for sale of land); (f) complying with this agreement, any applicable law and any dispute resolution process; (g) managing any sale of the Property (including assisting with the exchange of the contract for sale of land and the preparation of any required statements of account); (h) serving and signing (or arrange signing of) this agreement; and (i) contacting and liaising with third parties (including, without limitation, goods and services providers and insurers) and to provide those third parties with the Principal's personal information.
- iv If the personal information outlined in this agreement or requested by the Agent is not provided by the Principal, the Agent may not be able to act on behalf of the Principal effectively or at all. The Agent may also not be able to discharge its obligations in this agreement. It is impracticable for the Agent to deal with a Principal who has not identified him, her or itself or used a pseudonym.
- v Personal information collected about the Principal may be disclosed by the Agent for any of the purposes for which it was collected (as outlined above) to other parties including actual or prospective purchasers, the legal and other advisors of the Agent, Principal, actual purchaser and/or prospective purchasers, and any agent (if applicable), clients of the Agent both existing and potential, advertising and media organisations, property data service providers, valuers, parties engaged to evaluate the Property, owners' corporations, government and statutory bodies, financial institutions, REINSW (which provides technical and other assistance to the Agent to effect the matters set out above), government agencies, courts, regulatory bodies, and law enforcement agencies, and other third parties (including, without limitation, goods and services providers and insurers) or as required, authorised or permitted by any applicable law.
- vi The Agent may also use the Principal's information including personal information for marketing and research purposes to inform the Principal of products and services provided by the Agent, which the Agent considers may be of value or interest to the Principal, unless the Principal tells the Agent (by ticking the box below) or has previously told the Agent not to.
- vii If the Principal **does not** wish to receive any information about such products and services then please tick this box: ☐ or otherwise notify the Agent using the Agent's contact details set out earlier in this agreement.
- viii The Principal has the right to request access to any personal information held by the Agent which relates to it, unless the Agent is permitted by law (including the Privacy Act) to withhold that information. The Principal also has the right to make a complaint about the way in which the Agent has handled the Principal's personal information or that the Agent may have breached this clause or the Privacy Act. The Principal also has the right to request the correction of any personal information which relates to the Principal that is inaccurate, incomplete or out-of-date.
- ix Any requests for access to the Principal's personal information or any complaints should be made in writing to the Agent at the contact details included in this agreement.
- x The Agent may charge a reasonable fee where access to personal information is provided (no fee may be charged for making an application to access personal information).
- xi The Agent will take reasonable precautions to protect the personal information it holds in relation to the Principal from misuse, loss, unauthorised access, modification or disclosure.
- xii The Agent may disclose the Principal's personal information outside of Australia. In doing so, the Agent will take reasonable steps that are reasonable in the circumstances to ensure that any overseas recipient will deal with such personal information in a way that is substantially similar to, or consistent with, the way in which the relevant Australian Privacy Principles in the Privacy Act protects such personal information.
- xiii By signing this agreement, the Principal: (a) acknowledges that it has read, understands and accepts the terms of this clause; and (b) provides express permission to the Agent to collect, hold, use and disclose personal information in the manner described in this clause.

Disclosure of Rebates, Discounts, Commissions or Benefits

21. In respect of any expenses to be incurred by the Principal or by the Agent on behalf of the Principal pursuant to the agreement or if the Agent refers a person to a non-independent service provider, the Agent discloses that the Agent may receive, or expects to receive, the following rebates, discounts, commissions or other benefits from third parties as specified below or as notified by the Agent to the Principal in writing from time to time after the date of this agreement:

Name of Third Party	Nature of relationship with Third Party	Estimated amount of rebate, discount, commission or benefit
Nil		\$
		\$

If no rebate, discount, commission or benefit, write "nil".

Principal's Authority

22. The Principal warrants that the Principal has authority to enter into this agreement.

Signing and Service

23. The Principal acknowledges being served with a copy of this agreement.

EXCLUSIVE AGENCY AGREEMENT

24. If the Agent causes this Agreement to be electronically served on and/or signed by the Principal by way of electronic communication (including the use of a third party platform to facilitate the service and signing of this agreement), the Principal agrees that the Principal's electronic signature and initials created for the purpose of signing this agreement will be the electronic representation of the Principal's signature and initials for all purposes when the Principal electronically signs this agreement, just the same as a pen-and-paper signature or initial.

25. The Principal acknowledges that by signing this agreement the Principal is denied the right to sell the Property without paying a commission.

Work, Health and Safety

26. The Principal acknowledges that, at all material times:

- i the Principal has sole management and control of the Property listed for sale, to the exclusion of the Agent;
- ii the Agent acts under the direction, management and control of the Principal to facilitate the real estate transaction between the Principal and the purchaser; and
- iii the Principal is the person conducting a business or undertaking for the purposes of all work, health and safety laws, regulations and other requirements.

27. The Principal acknowledges, so far as reasonably practicable, that the Principal has thoroughly inspected the Property prior to sale and that the Property is:

- i without risk to health and safety ☐ Yes ☐ No

OR

- ii subject to the defects and risks outlined in the contract for sale ☐ Yes ☐ No

Defects

28. The Principal acknowledges that the Principal has thoroughly inspected the Property prior to sale and that the Property is

- i free from harm or contamination ☐ Yes ☐ No

OR

- ii subject to the defects and risks or contamination outlined in the contract for sale ☐ Yes ☐ No

Warranty

29. The Principal warrants that all information provided by it to the Agent and in this agreement is true, correct and complete and that the Agent can rely on the information provided. The Principal agrees to keep the Agent updated, in writing, of any changes to such information to ensure that it remains up-to-date and accurate at all times.

Joint and Several

30. If a party consists of more than one person or legal entity, this agreement binds them jointly and each of them severally.

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EXCLUSIVE AGENCY AGREEMENT

PRINCIPAL

If Principal is an individual

I agree to be legally bound by the terms of this agreement even if I sign this agreement electronically.

Signature of Principal /
Authorised Representative

Date

Name of Signatory

Authority of Signatory (delete whichever is not applicable)

Power of Attorney / Authority Letter
(attach a copy)

Note: The "Authority of Signatory" box above only needs to be completed if the signatory is an Authorised Representative of the Principal signing this agreement on behalf of the Principal. If so, please attach either a copy of the power of attorney or authority letter.

If Principal is a corporation (to be signed by 2 directors, or 1 director and 1 secretary, or sole director and sole secretary, or authorised officer or Attorney)

I agree to be legally bound by the terms of this agreement even if I sign this agreement electronically.

EXECUTED for and on behalf of

ACN

pursuant to section 127 of the *Corporations Act 2001* (Cth);

Signature of Director / Secretary /
Authorised Representative

Date

Name of Signatory

Authority of Signatory (delete whichever is not applicable)

Director / Secretary / Authorised Officer /
Attorney (attach a copy of Power of Attorney
if applicable)

Signature of Director / Secretary /
Authorised Representative

Date

Name of Signatory

Authority of Signatory (delete whichever is not applicable)

Director / Secretary / Authorised Officer /
Attorney (attach a copy of Power of Attorney
if applicable)

SIGN
HERE

AGENT

I agree to be legally bound by the terms of this agreement even if I sign this agreement electronically.

Signature of Agent /
Authorised Representative

Date

Name of Signatory

Note: This part of the agreement MUST NOT be signed by an assistant agent.

SIGN
HERE