

Commercial Agency Agreement

Property Address: _____

Suburb: _____

Licensee/s (Name of Individual or Company) _____

Postcode: _____

Listing Number: _____

Agency Type
☐ Sole
☐ General
☐ Master
☐ Off Market

Agency Authority/Marketing ☐ For Sale ☐ For Lease
Listing Commencement Date: _____
Listing Termination Date: _____
Auction/Deadline Date (if applicable): _____
Asking Price / Rent \$: _____
Specific Client Instructions: _____

Listing Party
Legal Entity: _____
Is this a Trust?: ☐ Yes ☐ No
Primary Contact: _____
Phone Number: _____ Email: _____
Other contacts/Trustees: _____ Phone Number: _____ Email: _____
Client Solicitor Firm: _____ Individual: _____
Phone Number: _____ Email: _____
Property Owner (if not the client): _____
Legal Entity: _____
Contact Name: _____
Phone Number: _____ Email: _____

Compliance/Information
LIM supplied: ☐ Yes ☐ No ☐ To be ordered
DSA/DEE supplied: ☐ Yes ☐ No
%NBS: _____
Asbestos Report supplied: ☐ Yes ☐ No
Vendor GST Registered: ☐ Yes ☐ No
GST Number: _____
PPA applicable: ☐ Yes ☐ No
Current BWoF supplied: ☐ Yes ☐ No
Local Authority: _____
Zone: _____
Weather tightness risk factors: ☐ Yes ☐ No

Property Type
(Circle main if more than one)
☐ Industrial
☐ Office
☐ Retail
☐ Land
☐ Special Purpose / Other: _____

Rateable Value
Capital Value \$ _____
Land Value \$ _____
Improvement Value \$ _____

Rentable Areas

Types of Space	Area (m²)/No
Warehouse/Factory	_____ m²
Office	_____ m²
Retail	_____ m²
_____	_____ m²
_____	_____ m²
Total Area (building)	_____ m²
Car parks	_____ m²

Areas supported by Registered Valuation ☐
Areas estimated ☐

Occupancy Details
☐ Vacant Sale
☐ Leased Investment
☐ Design Build
☐ New Lease
☐ Sublease / Assignment
Lease details (if leased):
Tenant: _____
Term: _____
Term Expiry Date: _____
Rights of Renewal: _____
Net Rent (pa excl GST) \$ _____
Opex Recovery _____

(if multi tenanted attach tenancy schedule)

Commercial Agency Agreement

1. Appointment of Agent

I/We, [referred to as "the Client"], hereby appoint _____, a Licensed Real Estate Agent [referred to as "the Agent"], as my/our exclusive agent for the sale, lease, or other disposal of the property described above [referred to as the "Property"]. This appointment is made based on the information provided and in accordance with the terms and conditions set forth in this Agency Agreement ("Agreement").

The Agent is authorized by the Client to act on behalf of the Client in relation to the **(Sale)** and **(Lease)** of the Property **(delete if not applicable)**.

Agency Type: ☐ Sole Agency ☐ General Agency

2. Sole Agency Appointment

The Client appoints the Agent as the **Sole Agent** for the sale/lease of the Property. This Agreement will commence on ____ / ____ / 20 ____ ["Commencement Date"] and will remain in effect until midnight on ____ / ____ / 20 ____ and thereafter, the agency shall continue as a general agency until cancelled by thirty(30) days' written notice of termination by either party ("General Agency Period")

The Sole Agency can be terminated by the Client via written notice to the Agent by 5:00 p.m. on the first working day after the Client receives a copy of this Agreement.

The Client acknowledges being informed of the need to cancel any existing agency agreements and agrees to do so promptly. The Client understands that failure to cancel other agencies may result in a liability for multiple commissions.

The Client acknowledges that, before the Agent accepted its appointment under this Agreement, the Agent advised the Client of the possible need to terminate and the possible consequences of unilateral termination of any existing agency agreement. However, the Client acknowledges that it has not relied upon such advice but rather has relied on its own judgement about any rights to terminate any existing agency agreement and that it was aware of the recommendation of obtaining independent legal advice in this respect.

____ / ____ [Client's initials]

3. General Agency Appointment

The Client appoints the Agent as a **General Agent** for the sale/lease of the Property. This Agreement will commence on ____ / ____ / 20 ____ or upon the expiration of the Sole Agency **(delete if not applicable)** and will continue until either party provides thirty (30) days' written notice of termination.

____ / ____ [Client's initials]

4. Auction/Deadline/Tender Sale

The Client instructs the Agent to offer the Property for sale by: ☐ Auction ☐ Tender ☐ Deadline Sale

The auction/tender/deadline sale date will be ____ / ____ / 20 ____.

Commercial Agency Agreement

The Property will be offered at a reserve price or under agreed terms and conditions. If the sale is via auction, the Client authorizes the Agent to sign a sale contract for the Property at or above the reserve price on or after the auction date.

The Client appoints the Agent as the Sole and Exclusive Selling Agent for the sale under the above terms.

_____ / _____ [Client's initials]

5. Marketing Fees

The Client agrees to pay a marketing fee of \$ _____ plus GST to cover advertising, signage and any other marketing and related costs for the sale or lease of the Property, including any auction / tender / deadline sale-related expenses. Payment is due upon receipt of an invoice.

_____ / _____ [Client's initials]

6. Payment of Commission

The Client agrees to pay commission based on the terms set forth in this Agreement under the following conditions:

- (a) Sole Agency: If the Client enters into an agreement to sell, exchange, or lease the Property (or part of it) during the term of the Sole Agency and the Agreement becomes unconditional (whether during or after the agency term) regardless of whether or not a tenant or purchaser (as the case may be) has been introduced to the Property or the Client by the Agent or whether a tenant was introduced to the Property or the Client prior to the Commencement Date, commission is payable.
- (b) General Agency: If the Client enters into an agreement to sell, exchange, or lease the Property (or part of it) through the Agent's efforts or to a party introduced by the Agent during the term of the General Agency and the Agreement becomes unconditional, commission is payable.
- (c) Post-Agency: If the Client enters into an agreement within 6 months following the termination or expiration of the agency, commission will still be payable if the agreement results from the Agent's efforts or the involvement of a party introduced by the Agent.

7. Commission Rates (Sale)

The agreed commission for the sale of the Property is calculated as follows (exclusive of GST):

- (a) A base fee of \$ _____ plus,
- (b) _____ % of the Sale Price up to \$ _____ plus,
- (c) _____ % of the balance of the Sale Price plus,
- (d) GST on all fees

The Sale Price is defined as the cash value transferred by the owner including the value of any benefit or liability so transferred. In all instances a minimum fee of \$ _____ plus GST shall apply.

Estimate of Sale Commission:

Based on a Sale Price of \$ _____, the estimated commission would be \$ _____ plus GST.

(This is an estimate; actual commission will be calculated based on the final sale price).

Commission shall be due and payable upon the execution of an unconditional and binding agreement between the parties.

Commercial Agency Agreement

8. Commission Rates (Lease)

The agreed commission for the lease of the Property is calculated as follows (exclusive of GST):

- (a) A base fee of \$ _____ plus,
- (b) _____ % of the annual Gross Rent for a lease term of _____ months, plus,
- (c) GST on all fees

Gross Rent is defined as the net annual rent (excluding any rent holidays or inducements) plus the estimated outgoings for the first year of the lease. Where minimum pre-determined rental increases are incorporated, the average rental over the term of the lease shall be used for calculation purposes. ANY amount payable under the lease attributable to specified plant, signage or naming rights, fixtures, fittings, partitions, goodwill, furniture, outgoings and rates will also constitute "annual rent" for the purposes of commission calculation.

For leases exceeding _____ years, an additional commission of _____ % of the annual Gross Rent will be payable for each year exceeding _____ years.

Estimate of Lease Commission: Based on an annual Gross Rent of \$ _____, the estimated commission would be \$ _____ plus GST (this is an estimate; actual commission will be calculated based on the final lease terms).

Commission shall be due and payable upon the earliest of either:

- (a) execution of an Agreement to Lease or a Memorandum of Lease, or a Deed of Assignment, or
- (b) entry by the tenant into possession of the premises leased, or
- (c) commencement of rental payments by the tenant.

9. Lease with Purchase Option/Right of First Refusal

If the tenant has an option to purchase the Property during the term of the lease and exercises that option, the Client agrees to pay the Sale Commission, minus any lease commission already paid to the Agent.

10. Unpaid Commission

If the commission is not paid as agreed, the Client agrees to pay interest at the ANZ standard overdraft rate from the due date until paid, along with all costs of collection, including legal fees. This Agreement constitutes a charge against the Property for any unpaid commission or other fees.

_____ / _____ [Client's initials]

11. General Terms and Conditions

The Client agrees to the following:

- (a) The Agent is authorized to collect and hold the deposit on behalf of the Client in the Agent's trust account.
- (b) The Agent may deduct any fees, commissions, and expenses from the deposit once the Sale or Lease contract becomes unconditional.
- (c) If no deposit is received, the Client agrees to pay the fees and commissions upon receipt of an invoice.
- (d) Any signage, advertising, and promotional materials used by the Agent are subject to the Agent's discretion.
- (e) The Agent is not liable for any loss or damage arising from property viewings or access.
- (f) If the Property is under subdivision or resource consent processes, the Client agrees to keep the Agent informed.
- (g) If the Property is a Unit Title, the Client will provide a Pre-Contract Disclosure Statement.

_____ / _____ [Client's initials]

Commercial Agency Agreement

12. Authority of the Agent

The Agent or any appointed Conjunct Agent may not sign any Sale or Purchase Agreement or contract for the Property. They may, however, receive referral fees or commissions in relation to the transaction, as disclosed in this Agreement.

The Agent is authorized to use property-related information for marketing, statistics, and other legitimate purposes.

13. Health and Safety Provisions

The Client acknowledges their obligations under the Health and Safety at Work Act 2015 and agrees to provide the Agent with all necessary information to ensure the safety of the Property for viewings and inspections.

14. Anti-Money Laundering and Other Regulatory Obligations

The Client acknowledges the Agent's obligations under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 and agrees to provide any required documentation to facilitate the due diligence process. The Agreement will not commence until the AML due diligence is completed.

The Client is also advised to seek legal, taxation, or valuation advice in relation to any Overseas Investment Act 2005 (OIA) requirements.

_____ / _____ [Client's initials]

15. Indemnities and Warranties

- (a) The Client warrants that the Property is free from any encumbrances and has disclosed all relevant information, including any building work, council consents, and structural issues.
- (b) The Client indemnifies the Agent (and its servants and agents) against all costs, claims, damages, expenses, liabilities or proceedings whatsoever which may arise from the agency pursuant to this Agreement.
- (c) The Client undertakes that it has provided to the Agent all material information pertaining to the Property.
- (d) The Client shall, immediately following signature of this Agreement, provide a property description sheet pertaining to the Property and hereby certifies that the information will be correct in all respects. The Client indemnifies the Agent (and its servants and agents) against claims arising from the proper use of that information by the Agent.
- (e) The Client warrants that it is either the registered proprietor, the tenant, the subtenant or an underlessee of the Property and it has or will obtain the requisite head landlord's consent to any agreement entered into (if applicable).

_____ / _____ [Client's initials]

16. Notices

All notices under this Agreement may be delivered by hand, mail, or email. Notices sent to any contact detail provided by the Client will be deemed sufficient.

17. Guarantees and Execution

If the signatory is not the sole owner of the Property, they warrant they have authority from all owners to sign this Agreement. If the Client is a trust or company, the signatory warrants consent from all trustees and/or directors.

_____ / _____ [Client's initials]

Commercial Agency Agreement

18. Disclosure by Agent – Consent & Acknowledgement

The Client acknowledges receipt of the Agreement, appraisal, marketing budget and commission estimate, understands the terms of this Agreement and understands the right to complain or seek advice if dissatisfied.

The Client further:

- (a) confirms having cancelled any existing agency agreement, and understands that failure to cancel an existing agency agreement may render the Client liable to double agency fees;
- (b) if this is a Sole Agency Agreement, understands that if entering into another sole agency agreement prior to the expiry of this Sole Agency Agreement, the Client may become liable to double agency fees;
- (c) understands the right to seek further legal, technical or other advice, or seek further information from the Real Estate Agents Authority (www.rea.govt.nz) prior to signing this Agreement;
- (d) confirms having been given adequate time to consider the contents of the Agreement, appraisal and marketing budget prior to signing the Agreement;
- (e) acknowledges that the information about the agent's complaints procedure can be found at www.rea.govt.nz and understands that if the Client wishes to make a complaint concerning the handling of this agency, the Client can direct this to the Manager of the Agency and/or the Real Estate Authority (www.rea.govt.nz). The Client further acknowledges that any use of the complaints procedure does not preclude lodging a complaint through the Real Estate Authority;
- (f) understands and agrees with the fee calculations as reflected in the appraisal and Commission Rates set out herein, and that the fee calculation is illustrative, to demonstrate how the fee will be calculated. The actual fee payable may differ from these illustrations and will be based on the sale price/lease terms agreed; and
- (g) understands that further information on agency agreements and contractual documents is available from the Real Estate Authority (www.rea.govt.nz).

_____ / _____ [Client's initials]

19. Agent's Disclosure of Benefits

The Agent confirms any rebates, discounts, or commissions received from third-party providers in connection with this transaction are disclosed in the Form 1 set out in the attached Schedule.

20. Deposit

- (a) If the Client enters into an agreement or arrangement described at Clause 6, the Client will ensure that any such agreement or arrangement will record that the deposit is payable to the Agent upon execution of the agreement or implementation of the arrangement by both parties (and the Client will not enter into any such agreement or arrangement where this is not the case). The Agent is authorised to deduct any commission and expenses payable by the Client under Clause 6 from the deposit received upon the earlier of the following:
 - (i) the agreement for the lease of the Property becoming unconditional in all respects;
 - (ii) the occupancy arrangement being implemented;
 - (iii) compliance with section 123 of the *Real Estate Agents Act 2008*.
- (b) In the event that the deposit received is insufficient to cover the Agent's commission and expenses payable by the Client under Clause 6 or if no deposit is received by the Agent (in breach of Clause 20(a)), the Client will pay the Agent its commission and expenses within three (3) working days of receiving the Agent's invoice (which may be issued by the Agent upon the date that the Agent would have been entitled to deduct its commission and expenses pursuant to clause 6 if a sufficient deposit had been received).
- (c) If any portion of the commission and expenses payable pursuant to Clause 20(b) (or the marketing expenditure payable pursuant to Clause 5) is not paid to the Agent by the Client upon the due date for payment, the Client shall pay to the Agent interest at the rate of the ANZ standard overdraft rate on the unpaid amount for the period from the due date for payment until payment is received by the Agent.

Commercial Agency Agreement

21. Miscellaneous

- (a) If there is more than one Principal, those persons or entities have entered into this Agreement jointly and severally and their liabilities and obligations under this Agreement are joint and several liabilities and obligations.
- (b) During the Sole Agency Period or the General Agency Period, the Principal will refer any enquiry or negotiations in respect of the Property:
 - (i) from another agent to the Agent; and
 - (ii) from a prospective tenant to the Agent.
- (c) In this Agreement:
 - (i) "lease" includes sublease and any further underletting;
 - (ii) "leased" includes subleased and any further underletting; and
 - (iii) "Property" means the property located at the Property Address and described in the CT or Legal Description.
- (d) This Agreement does not authorise the Agent to sign an agreement for the lease of the Property on the Client's behalf.
- (e) The Client agrees to the listing information and particulars of the lease of the Property being passed to any person for marketing purposes and for statistics compiled and distributed by the Agent and REINZ.
- (f) The Client has read, understands and agrees to the terms of this Agreement and acknowledges that it has received a copy of this Agreement.
- (g) The person signing this Agreement as or on behalf of the Client warrants that, if he or she is not the Client or the sole Client in respect of the Property, he or she has authority from one or more of the Clients to sign this Agreement on behalf of all Clients.
- (h) Notwithstanding that this Agreement primarily constitutes an appointment to effect the lease of the Property, if the Client elects to offer the Property for sale during the Sole Agency Period or the General Agency Period, the Client appoints the Agent to effect the sale of the Property on the Agent's standard sole agency terms and in the event that the Agent is entitled to receive commission and expenses pursuant to such terms of agency, the Client shall pay the Agent commission and expenses as calculated in accordance with the sale of real estate charges set out in the scale of fees and charges contained in Clauses 7 and 8 herein.

_____ / _____ [Client's initials]

Signatures & Acknowledgments

By signing this Agreement, the Client confirms they have read, understood, and accepted its terms and conditions, and acknowledges they were offered the opportunity to seek legal advice before entering into this Agreement.

Clients: _____ Date: ____ / ____ / 20____
at ____ am / pm

Clients: _____ Date: ____ / ____ / 20____
at ____ am / pm

Clients: _____ Date: ____ / ____ / 20____
at ____ am / pm

Clients: _____ Date: ____ / ____ / 20____
at ____ am / pm

Agent on behalf of the Agency: _____ Date: ____ / ____ / 20____ at ____ am / pm

Commercial Agency Agreement

Real Estate Agents (Licensing) Regulations

Schedule

Form 1

Agent's statement relating to rebates, discounts, and commissions (Section 128, *Real Estate Agents Act 2008*)

Note: This form must be included in every agency agreement.

1. I, the agent, confirm that, in relation to any expenses for or in connection with any real estate agency work carried out by me for the client(s) in connection with the transaction covered by this Agreement -

* (a) I will not receive, and am not entitled to receive, any rebates, discounts, or commissions.

* (b) I will receive, or am entitled to receive, the rebates, discounts and commissions specified below

* Select the paragraph that applies.

2. Omit this paragraph if you selected 1(a) above. If You selected paragraph 1(b) above, provide the specified details for each rebate, discount, or commission.

Note: Expenses to be Provider of Rebate, Amount of Rebate Incurred, discount, or commission:

(Note: Agent to specify goods or services, name of person or organisation and actual or estimated amount (including GST))

AND

Expenses means any sum or reimbursement for expenses or charges incurred in connection with services provided by an agent in the capacity of agent.)

* Estimates must be clearly marked as such.

Date: _____ day of _____, 20_____

Signature: _____