

**FSL NOMINEES (AUST) PTY LTD (ACN 159 237 724)
t/as MELBOURNE MARKETS CREDIT SERVICE (the MMCS)****BUYERS AGREEMENT**

This Buyers Agreement forms part of the Agreement between the Buyer, Seller or Buyer/Seller as the case may be and the MMCS.

THIS BUYERS AGREEMENT dated 20

BETWEEN:

FSL NOMINEES (AUST) PTY LTD ACN 159 237 724 (T/AS MELBOURNE MARKETS CREDIT SERVICE) of Store 36, Melbourne Market, 35 Produce Drive, Epping ("MMCS")

AND

the person described in the Schedule as the Buyer ("Buyer")

RECITALS:

- A. The MMCS operates a credit service known as the Melbourne Markets Credit Service.
- B. When providing its credit services, the MMCS acts as agent for both Buyers and Sellers.
- C. The Buyer has requested to participate in the credit services provided by the MMCS.
- D. The MMCS has agreed to act as the Buyer's agent on the terms set out in the Agreement:

NOW IT IS AGREED:**1. DEFINITIONS & INTERPRETATION**

1.1 In this Buyers Agreement, unless inconsistent with the context or subject matter hereof:

"Agreement" means the agreement made up of the Contract Documents.

"Contract Documents" means:

- (a) the Trading Terms Application submitted by a Buyer or a Buyer/Seller to MMCS to participate in the MMCS's credit service;
- (b) the Buyer Application Form or the Buyer/Seller Application Form as the case may be, being the application form submitted by the Buyer to MMCS to participate in the MMCS's credit service;
- (c) in respect of a Buyer, any Trading Terms notified by the MMCS to the Buyer as a condition of MMCS acceptance of the Buyer's trading term Application;
- (d) the Agency Agreement, which in the case of the Buyer is the Buyer Agreement and in the case of the Seller is the Seller Agreement;
- (e) the Rules including any schedules to the Rules; and
- (f) the Privacy Policy being the MMCS's privacy policy as varied from time to time.

"Buyer" means the person described in the Schedule as the Buyer and where the context permits, also refers to all Buyer as defined under the Rules.

"Commencement Date" means the commencement date specified in the Schedule.

"Confidential Information" means the information, statements, financial documentation concerning:

- (a) the operations and dealings of the Buyer's business; and
- (b) the operations, finances, suppliers, customers, trading patterns and general dealings of customers of the MMCS including the Buyer and other Buyers and Sellers, which has been acquired by the MMCS in the course of dealing with its customers in its business operations,

which is not in the public domain, or which is brought into the public domain by the failure of a party to perform and observe its agreements and obligations under this

Buyers Agreement and which has been obtained by the MMCS in the course of providing its services to its customers;

"Guarantors" means the persons referred to in the Schedule as guarantors.

"MMCS" means FSL Nominees (Aust) Pty Ltd ACN 159 237 724 (t/as Melbourne Markets Credit Service Joint Venture).

"Parties" means and includes all the Parties to this Buyers Agreement both jointly and each of them severally and **"Party"** means one of them.

"Rules" means the rules as varied from time to time which govern the credit services provided by the MMCS in respect of which compliance by Buyers, Sellers and Buyer/Sellers is obligatory.

Seller means a person who is a seller under the Rules.

1.2 Interpretation

Any capitalised term or definition which appears in this Buyers Agreement and which is defined in the Rules shall, where the context permits have the same meaning as that term or definition has in the Rules.

1.3 Where there is any inconsistency between the Rules and this Buyers Agreement, the provisions of this Buyers Agreement will prevail.

2. COMMENCEMENT

2.1 This Buyers Agreement comes into operation on the date that the MMCS gives written approval to the Buyer of the Buyer's Trading Terms. That date is the Commencement Date specified in the Schedule.

3. APPOINTMENT AS AGENT

3.1 The Buyer appoints the MMCS as its agent from the Commencement Date until the termination of this Buyers Agreement to perform services on behalf of the Buyer in accordance with the Agreement.

In all correspondence and other dealings relating directly or indirectly to the MMCS other than when acting for the Buyer as its agent, the MMCS confirms it acts in its own right.

4. **RULES**

4.1 The Buyer acknowledges that the Buyer:

- (a) has received a copy of the Rules prior to the execution of this Buyer Agreement
- (b) understands the terms, obligations and conditions imposed on the Buyer by the Rules.
- (c) agrees to be bound by the Rules including any future amendments to the Rules.
- (d) understands that the Rules shall form part of the Agreement if a Rule is breached by the Buyer, then that breach shall constitute a breach of the Agreement.

5. **LEGAL PROCEEDINGS COMMENCED BY FSL NOMINEES**

5.1 The Buyer expressly acknowledges that if required by Sellers, the MMCS may commence legal proceedings in the name of the MMCS against the Buyer on behalf of all or any Sellers specified in an Invoice Statement issued to the Buyer for the recovery of the amount stipulated in the Invoice Statement.

5.2 The Buyer expressly agrees and irrevocably consents to the right of the MMCS to commence legal proceedings in the name of the MMCS in the one Court proceeding against the Buyer, as an agent for, or on behalf of all, or any Sellers specified in the Invoice Statement issued to the Buyer, for the recovery of the amount stipulated in the Invoice Statement even though the MMCS may not have been a party to any contract or agreement made between the Buyer and Sellers, or any one of them, for the sale of produce or hire of goods on Trading Terms.

5.3 The Buyer shall not in any proceedings instituted by the MMCS on behalf of Sellers dispute the right of the MMCS to proceed against the Buyer on behalf of the Sellers nor shall the Buyer raise any defence of failure of consideration and this Buyers Agreement may be pleaded by the MMCS in such proceedings as a bar against any application by the Buyer:-

(a) to dispute the right of the MMCS to issue proceedings against the Buyer for the recovery of amounts due to Sellers; or

(b) claiming that there is a failure or want of consideration.

5.4 For the purposes of commencing proceedings against the Buyer, the Invoice Statement(s) issued by the MMCS to the Buyer shall be conclusive evidence and proof of the Buyer Terms and the amount of monies outstanding by the Buyer which may be recovered by the MMCS on behalf of Sellers.

6. FSL NOMINEES TO COLLECT & DISTRIBUTE AND REPORT TO SELLERS

6.1 The Buyer authorises the MMCS to do all things specified in the Rules, including to collect payment of monies from the Buyer for Credit Sales and distribute those monies to the Sellers.

6.3 In consideration of this Buyer Agreement and in consideration of the MMCS agreeing to grant the Buyer a Buyer Classification, the Buyer expressly agrees and irrevocably consents to the right of the MMCS to publish the Buyer's name on the Warning Bulletin in accordance with the Rules and this Clause will continue to apply even if this Buyer's Agreement is terminated, until all monies due by the Buyer have been paid in full.

7. CONFLICT OF INTEREST

7.1 The Buyer acknowledges that the MMCS also acts as the agent of Sellers and a potential conflict may arise. The Buyer acknowledges and agrees that if there is a conflict:

(a) the agreement between the MMCS and the Seller(s) prevail over the Agreement between the MMCS and the Buyer;

(b) The MMCS may cease to act as the Buyer's agent but may continue to act as the agent of the Sellers

8. FSL NOMINEES MAY SET OFF AMOUNTS

8.1 If the Buyer is also a Seller (**Buyer/Seller**) and the MMCS collects monies due to the Buyer/Seller from other Buyers, the Buyer/Seller irrevocably authorises the MMCS to apply any and all monies collected by the MMCS for the Buyer/Seller, (including monies held by the MMCS for the Buyer in the Trust Account), towards payment of amounts owed by the Buyer/Seller to other Sellers.

8.2 If the Buyer/Seller has not paid the MMCS any amounts payable to the MMCS by the due date, the Buyer/Seller acknowledges that the MMCS shall not be obliged to pay the Buyer/Seller the whole or any part of any monies due to it from the Trust Account unless and until the whole of the amounts due by the Buyer/Seller to other Sellers have been paid and satisfied first and in full.

10. VARIATION

10.1 Subject to the provisions of this Clause, this Buyers Agreement may be varied or novated by the MMCS at any time.

10.2 The Buyer agrees that subject always to its rights of termination, it appoints the MMCS as its limited attorney to execute a varied or novated agreement for and on behalf of the Buyer provided that the MMCS must give the Buyer 21 days written notice of the proposed change(s) and the varied or novated agreement will not take effect until the MMCS provides an executed copy to the Buyer. If the Buyer does not agree to the varied or amended agreement, it may elect to discontinue using the MMCS's services and close their account with the MMCS as a Buyer before the varied or novated agreement become effective. If the Buyer continues using the MMCS's services after the varied or novated agreement become effective, the Buyer is taken to accept the varied or novated agreement and will to be bound by it.

11. LIABILITY OF FSL NOMINEES

11.1 The liability of the MMCS for any Costs suffered by the Buyer as a direct or indirect consequence of any act, error or omission or obligations oral or written expressed or implied by the MMCS is limited to the extent provided in the Rules.

11.2 The MMCS not liable in Defamation

Without limiting the general effect of Clause 11.1 or the Rules, the MMCS shall not be liable to the Buyer whether as agent or as principal for any damages or losses whatsoever suffered by the Buyer arising from defamation because the MMCS has published the Buyer's name on the Warning Bulletin.

12. **CONFIDENTIAL INFORMATION**

12.1 Subject only to the right of the MMCS to disclose information in accordance with the Rules concerning the financial standing of the Buyer or where the Buyer is a Defaulting Buyer, the MMCS hereby undertakes that it will not at any time after the making of this Buyers Agreement divulge any of the Confidential Information and further agrees not at any time during or after the term of this Buyers Agreement to divulge or allow to be divulged to any person any Confidential Information and the MMCS will use its best endeavours to ensure that its employees and agents will not divulge or allow to be divulged to any person any Confidential Information.

13. **FEES**

13.1 The MMCS shall be entitled to charge and be paid a fee for providing its services to the Buyer in accordance with the Rules.

14. **TERMINATION**

14.1 This Buyers Agreement may be terminated by either party by giving 14 days written notice to the other party. The MMCS will then cease its services on the last day of the Trading Week after the month has expired.

14.2 In the event of a breach of the Agreement by a party (**breaching party**), the other party may give the breaching party written notice:

- (a) requiring the breaching party to remedy the breach within seven (7) days and
- (b) stating that if the breach is not remedied with the seven (7) day period, the party that is not in breach may terminate the Agreement by written notice to the other party but without prejudice to any rights the party not in breach may have.

14.3 Notwithstanding termination of the Agreement the Buyer's obligations under this Buyers Agreement shall continue until all monies due to the MMCS by the Buyer have been paid in full.

15. **INFORMATION ABOUT THE BUYER IS TRUE**

15.1 The MMCS has entered into this Buyer Agreement and has agreed to allocate a Buyer Classification to the Buyer relying on the information provided to the MMCS by the Buyer and each of the signatories in the Buyer Application.

15.2 If, at any time after this Buyer Agreement is signed any information provided to the MMCS is found by the MMCS to be false, misleading or incorrect, then the MMCS shall be entitled to terminate the Agreement forthwith without prejudice to any other rights that the MMCS may have against the Buyer and/or the signatories.

16. **SECURITIES**

16.1 To secure the payment of monies that may be owing from time to time by the Buyer to the MMCS and Sellers, the Buyer shall give or procure to be given the security or securities specified in the Schedule

16.2 **Buyer to procure Guarantee**

The Buyer also agrees to procure the signatures of the persons named in the Schedule as Guarantors to the Guarantee annexed to this Buyer Agreement guaranteeing the Buyer's obligations under the Agreement.

17.1 Entire Agreement

The Agreement embodies the entire understanding of the parties and there are no promises, terms, conditions or obligations oral or written expressed or implied other than those contained in the Agreement.

17.2 The MMCS does not Provide Credit

The Agreement does not expressly or impliedly authorise the MMCS to grant any credit to the Buyer in any way and the Buyer acknowledges that the MMCS is not providing any credit to the Buyer.

17.3 Relationship of Parties

Other than the authorities conferred by the Buyer to the MMCS as herein contained, the Agreement does not in any way create any partnership or joint venture between the MMCS and the Buyer.

17.4 Stamp Duty

The Buyer must pay any stamp duty payable on the Agreement or any securities thereon.

17.5 Costs

If required by the MMCS, the Buyer shall pay the costs of preparation and stamping of the Agreement otherwise each party bears their own costs.

17.5 Time

In all respects, time shall be the essence of this Buyers Agreement.

17.6 Jurisdiction

The Agreement shall be governed by and construed in accordance with the laws of Victoria and each Party submits to the non-exclusive jurisdiction of the Courts of or exercising jurisdiction in Victoria.

If any provision of the Agreement shall be invalid and not enforceable in accordance with its terms, all other provisions which are self-sustaining and capable of separate enforcement without regard to the invalid provisions shall be and continue to be valid and enforceable in accordance with their terms.

SCHEDULE

Buyer:	
Address:	
Commencement Date:	
Security or Securities	<i>List securities here:</i>
Guarantors:	Name:
	Address:
	Name:
	Address:
	Name:
	Address:

EXECUTED AS AN AGREEMENT:

SIGNED for and on behalf of **FSL NOMINEES (AUST) PTY LTD** ACN 159 237 724 by its duly authorised representative In the presence of:

Signature of Witness	Signature of Authorised Representative
Full name of witness (use block letters)	Full name of Authorised Representative (use block letters)

THE BUYER TO COMPLETE ONE OF THE FOLLOWING APPLICABLE EXECUTION CLAUSES:

SOLE DIRECTOR COMPANY: Complete this execution clause where the Buyer is a Sole Director company:

EXECUTED by
ACN

pursuant to Section 127 of the Corporation Act

Signature of Sole Director	Full name of Sole Director (use block letters)
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MORE THAN ONE DIRECTOR: Complete this execution clause where the Buyer is a company with more than one Director:

EXECUTED by
ACN

pursuant to Section 127 of the Corporation Act

Signature of Director/Secretary (delete one)	Signature of Director
Full name (use block letters)	Full name (use block letters)

PARTNERSHIP OR INDIVIDUAL: Complete this execution clause where the Buyer is a partnership or individual:

SIGNED by THE BUYER in the presence of:

Signature witness	Signature of Buyer
Full name of witness (use block letters)	Full name of seller (use block letters)