

**FSL NOMINEES (AUST) PTY LTD ACN 159 237 724
t/as Melbourne Markets Credit Service(MMCS)****SELLER'S AGREEMENT**

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

THIS SELLERS AGREEMENT dated 20

BETWEEN:

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

("MMCS")

AND

the person described in the Schedule as the Seller

("Seller")

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 Sellers and Buyers.
- C. The Seller has requested to participate in the credit services provided by the MMCS.
- D. The MMCS has agreed to act as the Seller's agent on the terms set out in the Agreement:

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

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

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

“Breaching Party” means a breach of the Agreement by a party.

“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/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.

“Commencement Date” means the commencement date specified in the Schedule;

“Confidential information” means the information, statements, financial documentation, trade secrets and know how concerning:

- (a) the operations and dealings of the Seller's business;
- (b) the operations, finances, suppliers, customers, trading patterns and general dealings of customers of the MMCS including the Seller 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 Seller’s Agreement and which has been obtained by the MMCS in the course of providing its services to Buyers and Sellers;

“MMCS” means FSL Nominees (Aust) Pty Ltd ACN 159 237 724 (t/as Melbourne Market Credit Service Joint Venture);

“Parties” means and includes all the Parties to this Seller’s Agreement both jointly and each of them severally and **“Party,”** means one of them;

“Rules” means the rules (including any schedule of fees) 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 the person described in the Schedule as the Seller and where the context permits, also refers to all Sellers as defined under the Rules.

1.2 Any capitalised term or definition which appears in this Seller’s Agreement and which is defined in the Rules shall, where the context permits have the same meaning as set out in the Rules.

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

2. **APPOINTMENT AS AGENT**

2.1 The Seller appoints the MMCS as its agent from the Commencement Date until the termination of this Seller’s Agreement to perform services on behalf of the Seller in accordance with the Agreement including to collect monies from Buyers in respect of Credit Sales.

2.2 In all correspondence and other dealings relating directly or indirectly to the MMCS other than when acting on behalf of Seller as its agent, the MMCS confirms that it acts in its own right.

3. **RULES**

3.1 The Seller acknowledges that the Seller:

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

4. **VARIATION**

4.1 Subject to the provisions of this Clause, this Seller’s Agreement may be varied or novated by the MMCS at any time and each party will bear its own costs, if any.

4.2 The Seller, subject always to its rights of termination, appoints the MMCS as its limited attorney to execute a varied or novated agreement for and on behalf of the Seller 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 Seller. If the Seller 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 Seller before the varied or novated agreement become effective. If the Seller continues using the MMCS's services after the varied or novated agreement become effective, the Seller is taken to accept the varied or novated agreement and will to be bound by it.

5. COMMENCEMENT OF LEGAL PROCEEDINGS

Where the MMCS elects to commence a legal proceeding on behalf of the Seller in accordance with the Rules:

- (a) The Seller agrees to indemnify and keep indemnified the MMCS for all Costs. Prior to the commencement of legal proceedings by the MMCS, the Seller, if required by the MMCS, shall contribute towards the cost of recovery of the debt from the Buyer.
- (b) Where the MMCS determines in its absolute discretion that it is appropriate to commence a legal proceeding (including the taking of pre-litigation steps) against a Buyer for the recovery of unpaid monies, the Seller unconditionally and irrevocable agrees to assign at law or in equity in favour of the MMCS any amounts owing by the Buyer to the Seller, such assignment to occur immediately upon the giving of written notice by the MMCS to the Seller.
- (c) In consideration of the Seller agreeing to the foregoing, the MMCS agrees to pay to the Seller the amount (if any) recovered from the Buyer after deducting all Costs of and incidental to such recovery.

6. WARRANTIES EXCLUDED

The MMCS disclaims any express or implied warranty, promise or representation by the MMCS to the Seller that:

- (a) the MMCS guarantees to the Seller the payment of monies due to the Seller by a Buyer;
- (b) the MMCS indemnifies the Seller for any loss suffered by the Seller as a result of the non-payment by a Buyer of an amount due to the Seller;
- (c) the MMCS becomes the principal debtor or an assignee of the debt due pursuant to any Credit Sale by the Seller to a Buyer.

7. LIABILITY OF THE MMCS

- 7.1 The liability of the MMCS for any loss or damage suffered by the Seller as a direct or indirect consequence of any act, error, omission or obligation, oral or written, expressed or implied, by the

MMCS is limited to the extent as set out in the Rules.

8. **CONFIDENTIAL INFORMATION**

8.1 The MMCS hereby undertakes that it will not at any time after the making of this Seller's Agreement divulge any of the Confidential Information and further agrees not at any time during or after the term this Seller's Agreement to divulge or allow to be divulged to any person any Confidential Information and will use its best endeavors to ensure that its employees and agents will not divulge or allow to be divulged to any person any Confidential Information.

9. **FEES**

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

10. **TERMINATION**

10.1 The Agreement may be terminated by either party by giving 14 days written notice to the other party.

10.2 In the event of a breach of the Agreement by a 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 within the seven (7) days period, the Agreement will terminate without prejudice to any other rights that the party not in breach may have.

10.3 Notwithstanding the termination of the Agreement for any reason, the MMCS may continue to act on the Seller's behalf until it has done all things reasonably necessary to ensure that all uncollected accounts and monies due to the Seller are in the Seller's control.

11. **GENERAL**

11.1 **Relationship of Parties**

Other than the authorities conferred by the Seller to the MMCS as in this Seller's Agreement, this Seller's Agreement does not in any way create any partnership or joint venture between the Parties hereto.

11.2 **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.

11.3 **Costs**

If required by the MMCS, the Seller shall pay the costs of preparation and stamping of the Seller's Agreement otherwise each party shall bear their own costs.

11.4 **Governing Law**

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.

11.5 **Severance of Invalid Provisions**

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.

11.6 **Legal advice**

The Parties each acknowledge and agree that:

- (a) they have obtained or have otherwise been provided with a reasonable opportunity to obtain independent legal advice prior to signing of the Agreement;
- (b) they have read and fully understand the consequences of any failure and/or omission by a party under the Agreement; and
- (c) they execute the Agreement of their own free will and volition.



melbourne markets
credit service

ABN: 47 270 707 814

T: 03 9408 6627 | F: 03 8405 3746 | E: office@melbmcs.com.au | W: melbmcs.com.au

SCHEDULE

Seller:	
Name:	
Address:	
Commencement Date:	

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 SELLER TO COMPLETE ONE OF THE FOLLOWING APPLICABLE EXECUTION CLAUSES:

SOLE DIRECTOR COMPANY: Complete this execution clause where the Seller 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 Seller 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 Seller is a partnership or individual:



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SIGNED by THE SELLER in the presence of:

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