

BUYER AGREEMENT

DATE UPDATED: 18 May 2016

1. BACKGROUND

- 1.1 Proppy is the holder of a real estate agent's licence under the Act and is authorised to carry out Real Estate Agency Work. As part of this work Proppy provides a web-based platform that enables the entry into and completion of Transactions and Contractual Documentation using online technology. Specifically:
- (a) Clients enter into Agency Agreements that authorise Proppy to undertake Real Estate Agency Work for them; and
 - (b) Proppy lists and markets Land on its Website and provides tools on its Website so that Transactions and Contractual Documentation are easily understood, are attractive to and can be entered into and completed by Client's and Buyers.
- 1.2 In order to enable Transactions and Contractual Documentation to be entered into and completed through Proppy's Website it is necessary for a Customer to register, enter into this Agreement and be accepted by Proppy as a Buyer. The registration process enables a Customer to agree to the basis on which it will use Proppy's Website, to the process used for enabling the entry into and completion of Transactions and Contractual Documentation using Proppy's Website, and to make all necessary disclosures.

2. BUYER REGISTRATION

- 2.1 To register as a Buyer and enable the entry into and completion of Transactions and Contractual Documentation using the Website you must:
- (a) complete the Buyer's registration process on the Website including the uploading of all required documentation, which will include (but not be limited to) information required to verify your identity being any of the following:
 - (i) New Zealand driver's licence details;
 - (ii) New Zealand or non-New Zealand passport details;
 - (iii) Birth certificate details; or
 - (iv) Certificate of citizenship details;
 - (b) read and enter into this Buyers Agreement by clicking the 'Agree' button.
 - (c) pass the following checking by us:
 - (i) identity checks; and
 - (ii) any other checks Proppy deems appropriate in its sole discretion.
 - (d) receive from us acceptance as a Buyer (at our sole discretion), notification of which shall be sent to you and shall include any terms and conditions on the use of our Website. Acceptance is subject to ongoing checks of your identity which may take place at any time.

3. BUYER ELIGIBILITY CRITERIA

3.1 To qualify as a Buyer you must:

- (a) if natural persons be over the age of 18 years;
- (b) not be bankrupt or insolvent, in receivership or liquidation; and
- (c) otherwise comply with the laws of New Zealand.

3.2 You must satisfy our identity checks, which may take place at any time, and you will be required to provide your:

- (a) full legal name;
- (b) residential address or registered address (whichever is applicable) and address for service;
- (c) date of birth (if applicable);
- (d) occupation (if applicable);
- (e) a copy of passports or driver's licences (if applicable);
- (f) proof of address if not ordinarily resident in New Zealand or not a New Zealand company;
- (g) IRD number (if required);
- (h) New Zealand Bank account number;
- (i) certificate of incorporation if a company or other corporate entity.

4. AGREEMENT

4.1 By registering as a Buyer and Proppy accepting your registration, an agreement is formed between you and Proppy on the terms and conditions set out herein.

4.2 You acknowledge that if Land is sold by "Online Auction" on the Website that the online auction process is not an "auction" as defined in the Auctioneers Act 2013.

5. NOTICES AND COMMUNICATIONS

5.1 Any notices given under or relating to this Agreement may be served or given by hand, mail or email. If there is more than one set of contact details for you, then any notices may be sent to anyone of them and notice to any person that is listed as a Buyer will be notice to all of them. Notices to you may also be sent to your lawyer.

5.2 Notices will be deemed to have been received;

- a. When delivered in person, at the time of delivery; or
- b. If sent by mail, 3 working days after being mailed; or

c. If sent by email, when the email enters the recipient's information system.

5.3 You agree that Proppy may send you communications, including advertising, marketing information, notices and disclosures, by mail or in an electronic form, including by email and SMS messaging.

6. FEES AND CHARGES PAYABLE

6.1 No commission, fees or charges are payable by Buyers to Proppy.

7. WARRANTIES

7.1 You warrant to Proppy that:

- (a) all information you provide to Proppy is true, accurate, and complete, and there is no information which has not been provided which would impact on Proppy's decision to approve you as a Buyer;
- (b) you will provide Proppy with updated information if any of your circumstances materially change;
- (c) you will comply with all New Zealand laws;
- (d) you will seek legal advice before signing any Contractual Documentation;
- (e) you were made aware and advised by Proppy that prior to accepting the terms of this Agreement that:
 - (i) Proppy has written in-house procedures for dealing with complaints and dispute resolution and that a copy of these procedures is available on the Website;
 - (ii) you may access the Authority's complaints process without first using our in-house procedures. Any use of the in-house procedures does not preclude you making a complaint to the Authority;
 - (iii) you may seek legal, technical or other advice and information prior to signing this Agreement and any Contractual Documentation;
 - (iv) you acknowledge that Proppy may not have physically inspected the Land. Where Proppy has not physically inspected the Land, and taking into account Proppy's low commission rate and Website sale methodology you agree that:
 - a. Proppy can rely on an independent valuation and builders report (even if not published on the Website) when preparing its written assessment of the Land and when carry out Real Estate Agency Work in relation to the Land;
 - b. Proppy will disclose this on the Website and advise all Customers and/or Buyers of the same; and

- c. any resulting Contractual Documentation will contain wording whereby both Client and Buyer acknowledge that Proppy has not physically inspected the Land.
- (f) you will make bids and/or offers on the Website only in good faith (and not for the purposes of bidding up prices on property for friends, family or associated persons or parties) and if successful you will complete the Transaction and any required Contractual Documentation.

8. SUSPENSION OR CANCELLATION OF WEBSITE ACCESS

- 8.1 Proppy may by written notice to you, in its absolute discretion, impose conditions at any time that must be fulfilled by you to use the Website.
- 8.2 Proppy does not guarantee that provision of the Website will be continuous or fault free. You acknowledge that access to the Website may not be available from time to time and that Proppy will not be liable to you for any loss whatsoever arising from any inability to access the Website.
- 8.3 Proppy may at any time, and in our absolute discretion, do any one or more of the following, without giving you any reasons or prior notice:
 - (a) suspend your access to the Website;
 - (b) remove you from the Website;
 - (c) remove content from the Website, including but not limited to Land information, bids, offers and any communications made by you; and
 - (d) refuse to publish content on the Website.

9. INTELLECTUAL PROPERTY AND DATA COLLECTION

- 9.1 You acknowledge and agree that we own all of the intellectual property rights in respect of Proppy and the Website.
- 9.2 The details of any completed Transaction may be passed to the Real Estate Institute of New Zealand for the purposes of collecting and compiling sale statistics. You waive any rights you may have under the Privacy Act 1993 in respect of such information.

10. LIABILITY AND INDEMNITY

- 10.1 Proppy and their directors, shareholders, employees, agents, contractors and associated Persons are not liable in any way for:
 - (a) the failure of any Transaction;
 - (b) any failure to provide the Website;
 - (c) any misrepresentation given to you by any Client or other person;
 - (d) the suitability or otherwise of any Land for your specific needs and you acknowledge that you rely upon your own skill and judgment;

- (b) the contents of any LIM, valuation, building report or other expert or technical report published on the Website.
- 10.2 All liability we may have to you, except liability arising under the Consumer Guarantees Act 1993 that cannot be contracted out of, is excluded. We are not liable to you and do not have to pay you for anything else caused by or resulting from any action or inaction by us. This exclusion applies whatsoever you are claiming (including loss of profits, savings, revenue or business) and however liability might arise but for this clause (including for breach of contract or in tort, including negligence).
- 10.3 If we are ever liable to you and, for any reason whatsoever, the maximum combined amount we will have to pay you and anyone else who uses our Website (together) is a total of \$10,000.
- 10.4 You hereby indemnify us against all liabilities, losses and costs, including legal costs, incurred by us arising out of or in connection with any action or inaction we take in relation to you which is in accordance with this Agreement.
- 10.5 You hereby indemnify us against all liabilities, losses and costs, including legal costs, incurred by us arising out of or in connection with any false or inaccurate information provided by you or any material omissions in the information provided by you.
- 10.6 You hereby indemnify us against any liability we incur to any Client or third party arising out of or in connection with a Transaction, any Contractual Documentation, any Real Estate Agency Work, your performance or breach of this Agreement or your use of the Website including in relation to information posted on the Website or provided to any person .
- 10.7 In this clause “we” and “us” includes our licensees, subsidiaries, associated persons, directors, officers, employees, agents and contractors.
- 10.8 In this clause “you” includes your subsidiaries, associated persons, directors, officers, employees, agents and contractors.
- 10.9 If you use our Website in trade, all parties agree that:
- (a) the provisions of the Consumer Guarantees Act 1993; and
- (b) sections 9, 12A, and 13 of the Fair Trading Act 1986;
- will not apply to this Agreement.

11. MISCELLANEOUS

11.1 Assignment

The Buyer shall not assign this Agreement or a right under this Agreement.

11.2 Survival

Any indemnity or obligation of confidentiality under this Agreement is independent from the other obligations of the parties and survives termination of this Agreement. Any other term which by its nature is intended to survive termination of this Agreement survives termination of this Agreement.

11.3 No merger

The rights and obligations of the parties under this Agreement do not merge on completion of any transaction contemplated by this Agreement.

11.4 **Entire agreement**

This Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter. The terms of this Agreement prevail over any other terms that may appear on the Website or in other documents.

11.5 **Amendment**

Proppy may modify this Agreement, and the way in which it provides the Website, at any time by notice on the Website. You should check the notices section of the Website regularly. Any such modifications will apply from the date stated on the Website.

11.6 **Severability**

A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms or parts of the term of this Agreement continue in force.

11.7 **Waiver**

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise by a party of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

11.8 **Governing law and jurisdiction**

This Agreement is governed by the law of New Zealand and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New Zealand.

12. DEFINITIONS

“**Act**” means the Real Estate Agents Act 2008 and the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012.

“**Agency Agreement**” means an agreement under which an agent is authorised to undertake Real Estate Agency Work for a client in respect of a transaction.

“**Agent**” means a real estate agent who holds, or is deemed to hold, a current licence as an agent under the Act.

“**Authority**” means the Real Estate Agents Authority established by section 10 of the Act.

“**Buyer**” means a Customer approved by Proppy with the capacity to enter into a Transaction who has entered into a Buyer Agreement.

“**Buyer Agreement**” means the agreement entered into by a Buyer with Proppy.

“**Client**” means the person/owner on whose behalf an agent carries out Real Estate Agency Work.

“Contractual Documentation” in relation to a Transaction, means a document that contains or records an agreement or a proposed agreement to enter into or effect the Transaction, and includes a document that contains or records an offer that, on its acceptance, gives rise to such an agreement.

“Customer” means a person who is a party or potential party to a Transaction and may include Buyers, purchasers or potential purchasers but excludes a Client or potential Client.

“Land” includes all estates and interests, whether freehold or chattel, in real property, and includes any building and any part of a building, and any licence that is registrable under the Land Transfer Act 1952, and any occupation right agreement within the meaning of the Retirement Villages Act 2003; and, in relation to any transaction relating to land that also relates to any goods, chattels, or other property, also includes those goods or chattels and that other property.

“Proppy” means Vaunt NZ Limited trading as Proppy.

“Real Estate Agency Work”

- (a) means any work done or services provided, in trade, on behalf of another person for the purpose of bringing about a transaction; and
- (b) includes any work done by a branch manager or salesperson under the direction of, or on behalf of an agent to enable the agent to do the work or provide the services described in paragraph (a); but
- (c) does not include:
 - (i) the provision of general advice or materials to assist owners to locate and negotiate with potential buyers; or
 - (ii) the publication of newspapers, journals, magazines, or websites that include advertisements for the sale or other disposal of any land or business; or
 - (iii) the broadcasting of television or radio programmes that include advertisements for the sale or other disposal of any land or business; or
 - (iv) the lending of money on mortgage or otherwise; or
 - (v) the provision of investment advice; or
 - (vi) the provision of conveyancing services within the meaning of the Lawyers and Conveyancers Act 2006.

“Transaction” means any 1 or more of the following:

- (a) the sale, purchase, or other disposal or acquisition of a freehold estate or interest in land:
- (b) the grant, sale, purchase, or other disposal or acquisition of a leasehold estate or interest in land (other than a tenancy to which the Residential Tenancies Act 1986 applies):

- (c) the grant, sale, purchase, or other disposal or acquisition of a licence that is registrable under the Land Transfer Act 1952:
 - (d) the grant, sale, purchase, or other disposal or acquisition of an occupation right agreement within the meaning of the Retirement Villages Act 2003:
 - (e) the sale, purchase, or other disposal or acquisition of any business (either with or without any interest in land).
- (2) To avoid doubt, the sale, purchase, or other disposal or acquisition of shares comes within the definition of transaction in subsection (1) if, and only if, the shares entitle the holder to a licence that is registrable under Part 7A of the Land Transfer Act 1952.

“**We**” or “**Us**” means Proppy.

“**Website**” means the Proppy website being www.proppy.co.nz.

“**You**” means you, the Customer/Buyer.