



SYDNEY MARKETS

ACN 077 119 290

OCCUPANCY AGREEMENT

EFFECTIVE APRIL 2022

OCCUPANCY AGREEMENT

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OCCUPANCY AGREEMENT

Parties:

- 1. Sydney Markets Limited**
ABN 51 077 119 290
of Level 3, Market Plaza Building, Parramatta Road,
Sydney Markets NSW 2129
(SML)
- 2. The person in Item 2 of Schedule 1 – Stand/Store Details**
(You)

Background

- A** SML is responsible for the management and operation of the Markets.
- B** You wish to Sell Goods in the Markets and require the Premises for that purpose.
- C** SML agrees to allow You to Sell Goods in the Markets and to occupy the Premises on the terms set out in this Occupancy Agreement.

Agreement

You and SML agree to the terms and conditions attached to this Occupancy Agreement.



OCCUPANCY AGREEMENT

PART A - INTRODUCTION

1 Definitions and Interpretation

1.1 Definitions

In this Occupancy Agreement, unless the context requires otherwise:

Access Hours means the days and times when You may use and occupy the Premises and/or be in the Markets or any part of the Markets as advised by SML or as amended at any time by SML by reasonable notice in writing to You;

Act means *A New Tax System (Goods and Services) Act 1999 (Cth)* and any related or amending legislation;

Administration Fee means the administration fee as determined by SML from time to time;

Advertising Levy means the amount charged by SML to You as a contribution to the cost of advertising and promoting the Markets or any part of the Markets as advised by SML or as amended at any time by SML by 30 days' notice in writing to You;

Annexure means an annexure to the Occupancy Agreement;

Approved Forklift means a Forklift:

- (a) the subject of a current SML Forklift Approval; and
- (b) displaying a label issued by SML in a prominent position indicating that the Forklift is the subject of a current SML Forklift Approval;

Assessed Value means the value of Stands and/or Stores in the Markets where determined by SML from time to time;

Attendance Time means the time by which You must be present and occupying the Premises as advised by SML or as amended at any time by SML by reasonable notice in writing to You;

Authorisation means any authorisation, licence or permit an Occupier is required to have by any Authority to occupy and use the Premises;

Authorised Goods means Goods approved for sale, by SML or an Authorised Officer, from the Premises as set out in Item 6 of Schedule 1 or in the Occupancy Agreement or as varied by SML at any time by 30 days' notice in writing to You;

Authorised Officer means any person recorded as such on the SML Authorised Officers' list;

Authority means any:

- (a) government or governmental, semi-governmental or judicial authority; or
- (b) minister, department, office, delegate, instrumentality, agency, commission, board, authority or organisation of any government,

and includes any regulatory organisation established under statute;

Breach means any failure by You to comply with:

- (a) the Occupancy Agreement;
- (b) the Rules; and/or
- (c) the Further Conditions;

Breaching Person means the person who committed the Non-compliance or who SML alleges committed the Non-compliance;

Casual Standholder means a person SML has allowed to occupy a Stand on a daily basis, including Stands designated by SML as casual stands and Stands a regular Standholder has failed to attend pursuant to clause 6.8 of the Occupancy Agreement;

Cleaning Levy means the amount charged by SML to You as a contribution to the cost of cleaning the Markets and removing waste from the Markets as advised by SML or as varied by SML at any time by 30 days' notice in writing to You;

Commencement Date means, if You commenced occupation and use of the Premises after the Effective Date, the date SML permits You to enter into use and occupation of the Premises;

Common Area means those parts of the Markets provided for common use, including but not limited to roads, unreserved car parking areas, footpaths, access ways, entrances, stairs, elevators, toilets and loading docks;

Comply Notice means a notice issued by SML in accordance with Rule 22 in the event of a Non-compliance, which:

- (a) requires the Non-compliance to be rectified; and
- (b) advises the Damages relating to the Non-compliance;

Constitution means the constitution for SML;

Damages means any damage, expense or loss suffered or incurred or to be suffered or incurred by SML or for which SML is responsible or liable in relation to a Non-compliance, including:

- (a) issuing and delivering the Comply Notice;
- (b) carrying out any repair or replacement or any other reasonably necessary act to remedy or attempt to remedy the Non-compliance;
- (c) notification by and to any Authority or taking any steps considered by SML to be necessary in connection with the Non-compliance;
- (d) communicating or dealing with the Breaching Person and the Responsible Occupier in relation to the Non-compliance; and/or
- (e) all costs of SML in respect of legal proceedings arising from the Non-compliance on an indemnity basis;

Dispute Notice has the meaning given in Rule 25.1;

Dues means the amounts payable by You to SML pursuant to clause 13.1 of the Occupancy Agreement;

Effective Date means April 2022;

Environment means:

- (a) land, air and water;
- (b) any layer of the atmosphere;
- (c) any organic or inorganic matter and any living organism; and
- (d) human-made or modified structures and areas,

and includes interacting natural ecosystems that include components referred to in paragraphs (a)–(c);

Environmental Law means any law that has the effect of controlling, prohibiting or otherwise regulating the impact of activities on the Environment and includes the following statutes and the regulations made pursuant to them:

- (a) *Protection of the Environment Operations Act 1997*;
- (b) *Contaminated Land Management Act 1997*; and
- (c) *Environmental Planning & Assessment Act 1979*;

Equipment includes bins, boxes, mobile offices, cartons, containers, packaging materials, tables, counters, racks, buckets, scales, pallets, trolleys, plant and machinery or any other item determined by SML to be equipment;

Food Safety Law means any law or regulation relating to food safety and standards applicable in New South Wales and includes:

- (a) *Food Act 1983*;
- (b) *Food Production (Safety) Act 1998*;
- (c) *Australia New Zealand Food Authority Act 1991*; and
- (d) *Food Standards Code*;

Forklift means a forklift or other motorised vehicular device, including those powered by electric motors, used or intended to be used for the loading, unloading or handling of Goods;

Forklift Application means an application by an Occupier to SML for an SML Forklift Approval in respect of a Forklift made in accordance with the procedure determined at any time by SML;

Further Conditions means any conditions issued by SML relevant to the Premises;

Goods means goods, farm produce and merchandise of any description and where relevant includes Services;

Growers Storage Space means any storage space licensed to You by SML in accordance with the paragraph entitled "Growers Storage Space" in Schedule 2 for the Sydney Growers Market;

Intellectual Property means all intellectual property of SML, including copyright, know-how and the Trade Marks;

Interest means the interest payable by You to SML under clause 14.1.

Interest Rate means Westpac Indicator Lending Rate from time to time plus 3%.

Lease means a lease between SML and a Leaseholder in respect of Leased Premises;

Leaseholder means any person who has leased from SML any part of the Markets;

Leased Premises means any part of the Markets leased by a Leaseholder from SML;

Licence means your right to use and occupy the Premises and to Sell Goods in the Markets pursuant to the terms set out in this Occupancy Agreement;

Liquid Waste means any liquid, and any substances contained in it, which may be produced or brought onto the Premises from an industrial or commercial activity and which is unwanted or surplus and is to be discarded;

Markets means any land including the Premises, Common Areas, buildings, structures and property used, owned and/or controlled by SML;

Market Category means each of the markets conducted by SML at the Markets and commonly known as:

- (a) Paddy's Markets;
- (b) Sydney Flower Market;
- (c) Sydney Fresh Food Market;
- (d) Sydney Growers Market;
- (e) Sydney Produce Market; and
- (f) Paddy's Swap & Sell Market;

Non-compliance means any non-compliance with the Rules;

Occupancy Agreement means:

- (a) the occupancy agreement entered into between SML and a Standholder or otherwise determined by SML to apply in respect of the Standholder's use and occupation of a Stand; and/or
- (b) the occupancy agreement entered into between SML and a Storeholder or otherwise determined by SML to apply in respect of the Storeholder's use and occupation of a Store; and/or
- (c) where that term appears in the Rules, an occupancy agreement referred to in paragraphs (a) and (b) above, a Lease and/or a Parking Licence;

Occupier means any person who:

- (a) occupies a Stand or Store pursuant to an Occupancy Agreement;
- (b) leases any part of the Markets pursuant to a Lease;
- (c) occupies any part of the Markets pursuant to a licence; and/or
- (d) occupies a Parking Area pursuant to a Parking Licence,

and where relevant includes any employees, officers, agents, contractors and/or invitees of a Standholder, Storeholder, licence holder, Parking Licence Holder and/or Leaseholder;

Offensive Noise means noise:

- (a) that, by reason of its level, nature, character or quality, or the time at which it is made, or any other circumstances:
 - (1) is harmful to (or is likely to be harmful to) a person who is outside the Premises from which it is emitted; or
 - (2) interferes unreasonably with (or is likely to interfere unreasonably with) a person who is outside the Premises from which it is emitted; or
- (b) that is of a level, nature, character or quality prescribed by Environmental Law;

WH&S Law means any law regulating occupational health and safety issues and includes the following statutes and the regulations made pursuant to them:

- (a) *Occupational Health and Safety Act 2000*;
- (b) *Occupational Health and Safety Regulation 2001*;
- (c) *Dangerous Goods Act 1975*;
- (d) *Dangerous Goods (General) Regulation 1999*; and
- (e) *Smoke Free Environment Act 2000*;

Parking Area means an area of the Markets licensed to a person by SML pursuant to a Parking Licence for use as a parking area for:

- (a) a Vehicle; or
- (b) a Forklift (commonly known as a forklift enclosure);

Parking Licence Holder means a person holding a Parking Licence;

Parking Licence means a licence between SML and a Parking Licence Holder for a Parking Area;

Party means a party to the Occupancy Agreement;

Pollution means:

- (a) the introduction of any matter, whether solid, liquid or gas, into the Environment so that the material exceeds any relevant standard prescribed by Environmental Law and, in circumstances where no standard is prescribed, the introduction of that matter into the environment in any quantity; and
- (b) Offensive Noise;

Premises:

- (a) in the Occupancy Agreement, has the meaning given in paragraph (a) of the definition of Trading Premises; or
- (b) in the Rules, means the Leased Premises, Trading Premises and/or Parking Areas;

Redevelopment has the meaning given in clause 19.1;

Redevelopment Notice means a redevelopment notice issued under clause 19.3 pursuant to clause 19 of the Occupancy Agreement;

Relevant Interest has the same meaning as in the *Corporations Act 2001*;

Relocation has the meaning given in clause 20.1;

Relocation Notice means a relocation notice issued under clause 20.2 pursuant to clause 20 of the Occupancy Agreement;

Rent means the amount charged by SML to You for the use and occupation of the Premises (excluding Dues) during a calendar month as advised by SML or as varied by SML at any time by 30 days' notice in writing to You in accordance with clause 12 of the Occupancy Agreement;

Responsible Occupier means the Occupier who:

- (a) is the Breaching Person;
- (b) is the employer of the Breaching Person;
- (c) has engaged the Breaching Person to undertake any work, to perform any service, or to deliver, cart or pick up any Goods; or
- (d) exercises any direction or control over the Breaching Person;

Rules mean the Sydney Markets Rules effective as at 1 October 2002 and as amended at any time pursuant to clause 8.4 of the Occupancy Agreement;

Schedule means a schedule to the Occupancy Agreement;

Sell or Sale includes:

- (a) barter or exchange;
- (b) agree to sell, barter or exchange;
- (c) offer or expose for sale, barter or exchange;
- (d) send, forward or deliver for sale, barter or exchange;
- (e) have in possession for sale, barter or exchange;
- (f) cause or suffer to be sold, bartered, exchanged, offered for sale, exposed for sale or sent, forwarded or delivered for sale, barter or exchange; and
- (g) attempt to sell, barter, exchange, expose for sale or send, forward or deliver for sale, barter or exchange;

Services means services of any description;

Share means the share in SML referred to in clause 3 of the Occupancy Agreement;

SML means Sydney Markets Limited ABN 51 077 119 290;

SML Forklift Approval means a Forklift:

- (a) the subject of a successful Forklift Application;
- (b) inspected and approved by SML for use in the Markets for the period of the approval, subject to any conditions imposed by SML on the approval; and
- (c) in respect of which the fee determined by SML at any time for the approval referred to in paragraph (b) has been paid;

SML's Plant means all equipment, plant and machinery of SML in or servicing the Markets;

Stand means any open floor space or other space in the Markets identified by SML as a stand;

Standard means any standard in respect of which compliance is required by You by law or any optional industry standard that SML requires You to comply with by written notice;

Standholder means any person occupying a Stand pursuant to an Occupancy Agreement or other arrangement with SML;

Store means an enclosed space of one or more storeys in the Markets identified by SML as a store;

Storeholder means any person occupying a Store pursuant to an Occupancy Agreement or other arrangement with SML;

Supply has the meaning appearing in the Act;

Surrender Fee means the surrender fee as set out in Item 5 of Schedule 1 or as varied by SML at any time by 30 days' notice in writing to You;

Paddy's Fresh Food Market means the retail market conducted by SML for the sale of fresh fruit, vegetables, meat, fish, other fresh produce and general goods and merchandise approved by SML;

Paddy's Markets means the retail markets conducted by SML for the sale of general goods, services, merchandise and food items;

Paddy's Swap & Sell Market means the retail market conducted by SML for the sale of second hand goods and other goods and merchandise approved by SML;

Sydney Flower Market means the market conducted by SML for the sale of flowers, artificial flowers, floral accessories and potted plants;

Sydney Growers Market means the market conducted by SML for the sale of farm produce by growers;

Sydney Produce Market means the market conducted by SML for the sale of farm produce by wholesalers;

Trade Mark means any trade mark (as defined in the *Trade Marks Act 1995 (Cth)*) whether registered or unregistered, and any word, device, logo, depiction or brand representation used by SML in relation to the Markets or any Market Category;

Trading Hours means:

- (a) the days as indicated in Items 7 to 12 of Schedule 1; and
- (b) the times as advised by SML or as amended at any time by SML, when an Occupier may Sell Goods from the Premises;

Trading Premises means:

- (a) the Stand or Store occupied by You pursuant to the terms of the Occupancy Agreement as indicated in Item 3 of Schedule 1 and in the Market Category as indicated in Item 4 of Schedule 1; and
- (b) the Leased Premises occupied by You to the extent the Lease permits You to Sell Goods from your Premises;

Vehicle means any device, including a Forklift, for the transportation or carriage of persons or Goods and includes any equipment attached to the device;

Warning Notice has the meaning given in Rule 21;

Waste includes:

- (a) any substance commonly known as rubbish;
- (b) any substance that is discharged, emitted or deposited in the Environment in such volume, constituency or manner as to cause an alteration in the Environment;
- (c) any discarded, rejected, unwanted, surplus or abandoned substance;
- (d) any otherwise discarded, rejected, unwanted, surplus or abandoned substance intended for sale or for recycling, reprocessing, recovery or purification by a separate operation from that which produced the substance; or
- (e) any other substance prescribed by the Rules to be waste;

You includes your employees, officers, agents, contractors and/or invitees and a reference to an Occupier includes a reference to You; and

Your Property means your property inside the Premises and/or the Markets and includes your Goods, Equipment, fixtures, fittings, signs.

1.2 Interpretation

In this Occupancy Agreement, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes the other genders;
- (c) the index and the headings are used for convenience only and do not affect the interpretation of the Occupancy Agreement and the Rules;
- (d) a reference to a thing includes a reference to a part of that thing;
- (e) a reference to a document includes the document as modified at any time and any document replacing it;
- (f) a reference to a Business Day means a day on which banks are open for retail banking business other than a Saturday or Sunday in Sydney and if something is to be done on a day which is not a Business Day then that thing must be done on the next or following Business Day;
- (g) the word "person" includes a natural person and any body or entity whether incorporated or not;
- (h) the word "month" means calendar month and the word "year" means twelve months;
- (i) the words "in writing" include any communication sent by letter, facsimile transmission, telegram or electronic mail;
- (j) a reference to any statute, proclamation, rule, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, regulation or ordinance replacing it. A reference to a specified section, clause, paragraph, schedule or item of any statute, proclamation, rule, regulation or ordinance means a reference to the equivalent section of the statute, proclamation, rule, regulation or ordinance which is for the time being in force;
- (k) wherever "include" or any form of that word is used it must be construed as if it were followed by "(without being limited to)";

- (l) a reference to any agency or body, if that agency or body ceases to exist or is reconstituted renamed or replaced or has its powers or functions removed ("defunct body"), means the agency or body which performs most closely the functions of the defunct body;
- (m) a reference to a Party includes that Party's successors and permitted assigns; and
- (n) a reference to dollars is a reference to Australian dollars.

2 Acknowledgment

2.1 Existing occupiers

If You commenced your occupation and use of the Premises before the Effective Date then:

- (a) You agree any conditions of occupancy, standholders' guide or other agreement with SML in respect of your use and occupation of the Premises are revoked and replaced with this Occupancy Agreement as at the Effective Date; and
- (b) You acknowledge that You received, read and understood this Occupancy Agreement prior to the Effective Date.

2.2 New occupiers

If You commenced your occupation and use of the Premises after the Effective Date then You acknowledge that You received, read and understood this Occupancy Agreement, the Rules and any Further Conditions before the Commencement Date.

PART B – YOUR PREMISES

3 Shares in SML

3.1 Your right to shares in SML

The Licence granted to You pursuant to this Occupancy Agreement entitles You to hold 1 fully paid ordinary share in SML (**Share**) for each of the Premises held by You.

3.2 Stapling of the Premises

The Premises are stapled pursuant to clause 2.9 of the Constitution to each Share held by You.

3.3 Equity entitlement

The Share held by You carries a right to vote, receive a dividend (if any) and participate in any surplus profit on a winding up in accordance with the equity entitlement applicable to the Share as determined under clause 2.4 of the Constitution.

4 Your Licence

4.1 Right to occupy

Subject to the terms of this Occupancy Agreement, SML grants You the right to:

- (a) use and occupy the Premises; and
- (b) enter and remain in the Markets,
during Access Hours.

4.2 Access

Your Licence only allows You to use and occupy the Premises and be present in the Markets during Access Hours.

4.3 Outside of Trading Hours

Notwithstanding clauses 4.1 and 4.2, outside of Trading Hours but during Access Hours, the following persons have the right to use and occupy the Premises:

- (a) a bona fide employee of You engaged in the business being conducted at the Premises;
- (b) an officer of You; or
- (c) a person permitted by SML or an Authorised Officer to enter or be in the Premises outside of Trading Hours.

4.4 No interest in the Markets

Nothing in this Occupancy Agreement is to be construed as granting You any interest in either the Markets or the Premises or any part of the Markets or the Premises.

4.5 SML's right of entry

SML may enter the Premises with materials and equipment at reasonable times and on reasonable notice (but at any time and without notice in an emergency):

- (a) to inspect the Premises to ascertain their repair, condition and value or to determine whether there has been a breach of this Occupancy Agreement;
- (b) to carry out any repairs, maintenance and other works to the Premises;
- (c) to clean, install, inspect, change, maintain, repair, replace, remove, test or use any part of the Markets and SML's Plant, fixtures, fittings, services and utilities in or adjacent to the Premises and to inspect, maintain and repair the fabric or structure of the Markets or any part of the Markets; and/or
- (d) to comply with any approval, direction, law, licence, notice, order, permit, regulation, requirement or request affecting the Premises or the Markets.

In exercising its rights under this clause, SML agrees not to interfere with your use and occupation of the Premises more than is reasonably necessary.

4.6 SML may do things on your behalf

SML may carry out any of your obligations under this Occupancy Agreement on your behalf if You fail to do the same. You must reimburse to SML any costs incurred by it pursuant to this clause within 14 days of a request by SML for reimbursement.

5 Dealing with the Premises

5.1 No assignment

You must not assign, sublet, licence, part with possession of or otherwise deal with your Licence or the Premises unless you have the written approval of SML. You may mortgage or charge your Licence with the approval in writing of SML.

5.2 Sale of your business

If You wish to sell the business You conduct from the Premises, SML may, in its absolute discretion, accept a surrender of your Licence and grant to your purchaser a Licence for the Premises.

5.3 Fee

- (a) SML may charge You the Surrender Fee as a condition of its acceptance of the surrender of your Licence and grant to another person of a Licence pursuant to clause 5.2.
- (b) SML may charge your purchaser the Administration Fee as a condition of its granting to your purchaser a Licence pursuant to clause 5.2.
- (c) There is no Surrender Fee in respect of stands in Paddy's Market at Haymarket.
- (d) The Surrender Fee will not be increased if the sale price of your Licence is greater than the Assessed Value.

5.4 Death

If You are a natural person then in the event of your death, SML will (subject to clause 5.5):

- (a) deem You to have surrendered your Licence and the Premises;
- (b) grant to your executor or administrator a Licence effective for the period of time between your death and the grant of a Licence pursuant to paragraph (c) below; and
- (c) grant to the person:
 - (1) entitled by your will to the Premises; or
 - (2) determined by your executor or administrator,a Licence in respect of the Premises.

5.5 Refusal of Licence

Despite clause 5.4(c) SML may, in its absolute discretion, refuse to grant to the person entitled by your will, or determined by your executor or administrator, a Licence to the Premises.

5.6 Waiver of the Surrender Fee

SML will not charge You the Surrender Fee if the Licence is surrendered pursuant to clause 5.4(c)(1).

5.7 Partnerships

If your Licence is held by a partnership You must not, without the consent in writing of SML, change the ownership in the partnership. SML may charge You the Surrender Fee and the Administration Fee as a condition of its consent pursuant to this clause. If only some members of your partnership change, SML will charge You a proportionate part of the Surrender Fee.

5.8 Companies and changes in shareholding

If the Licence is held by a company You must not take or allow to be taken any action which has the effect that the Relevant Interest held by a shareholder in You is different to the Relevant Interest held by that shareholder as at the date of this Occupancy Agreement and recorded by SML, without the consent in writing of SML. SML may charge You the Surrender Fee as a condition of its consent pursuant to this clause. SML will charge You only a proportionate part of the Surrender Fee equal to the proportion of change in the Relevant Interest from that recorded by SML.

5.9 Share

If your Licence is surrendered by You in any way pursuant to this clause 5 and another person obtains an interest in your Licence or any replacement Licence in any way pursuant to this clause 5, You agree to transfer the Share, or your interest in the Share, to that other person.

5.10 Sale price

You must provide evidence reasonably satisfactory to SML, by statutory declaration if required by SML, in respect of:

- (a) the sale price of your Licence if you sell the Licence;

- (b) the sale price of the partnership interest, if there is a change in the persons holding a partnership interest in You; or
- (c) the sale price of the Relevant Interest, if there is a change in the persons holding the Relevant Interest in You.

Your compliance with this clause will be a condition of SML's acceptance of the surrender of your Licence and grant to your purchaser of a Licence for the Premises pursuant to clause 5.2 or SML's consent pursuant to clause 5.8.

6 Use of the Premises

6.1 Occupation

- (a) No person other than You may use or occupy the Premises.
- (b) You may not have a beneficial interest in any other Premises other than these Premises or other Premises in respect of which You have a Licence without the informed written consent of SML.
- (c) You must not conduct business or Sell from any part of the Markets except from your Premises.

6.2 SML may refuse entry to the Markets

SML may refuse entry to the Markets to your officers, partners, employees, agents, contractors, customers, invitees and all other persons if for any reason it considers their entry to the Markets to be undesirable. Without limiting the reasons SML may use to exclude persons from the Markets pursuant to this clause, SML may exclude persons for the following reasons:

- (a) they have been found guilty by a competent court of committing an indictable offence or an offence relating to property under Part 4 of the *Crimes Act 1900* and the offence occurred at the Markets or in connection with the conduct of your business at the Markets;
- (b) they have infringed the Intellectual Property rights of SML or any other person and the infringement occurred in connection with the Markets;

- (c) they have used the Trade Marks or any part of them or any depiction or representation which is substantially identical or deceptively similar to them without the prior written approval of SML;
- (d) they have made a nuisance of themselves, created a disturbance or acted in a way that was unsafe and threatened the person or property of others in the Markets; or
- (e) they have breached any law, regulation or Rule such that their continued presence in the Markets is undesirable in the reasonable opinion of SML.

6.3 Use of Premises only

You must contain all Your Property within the boundaries or limits of the Premises and must not use the Common Areas to store or place Your Property without the written permission of an Authorised Officer.

6.4 Outside of Access Hours

- (a) If the Premises the subject of your Licence is a Store then You may leave Your Property in the Premises outside of Access Hours provided always Your Property does not obstruct access to the Premises and is left in such a way it is safe and does not present a risk to any person entering the Premises. You acknowledge and agree Your Property left at the Premises is left at your risk and remains at all times your responsibility.
- (b) If the Premises the subject of your Licence is a Stand then You may not leave Your Property at the Premises outside of Access Hours without the approval in writing of SML or an Authorised Officer. If You receive this approval, You acknowledge and agree Your Property left at the Premises is left at your risk and remains at all times your responsibility.

6.5 Location of the Premises

- (a) If the Premises the subject of your Licence is a Store then the location of your Store will be as set out in Item 3 of Schedule 1.
- (b) If the Premises the subject of your Licence is a Stand then the location of your Stand will be as set out in Item 3 of Schedule 1.

- (c) SML may vary the location of your Stand for any particular day without notice or permanently with 30 days' notice in writing at its discretion.
- (d) SML may vary the location of your Store with 30 days' written notice in writing at its discretion.

6.6 Trading

You must operate the Premises and Sell the Authorised Goods during Trading Hours.

6.7 Attendance

You must be present and in occupation of the Premises by no later than the Attendance Time on each day You are required to operate the Premises pursuant to clause 6.6. You must remain present and in occupation after the Attendance Time up until the conclusion of Trading Hours for that day.

6.8 Failure to attend

Without limiting, restricting or prejudicing the rights, remedies or powers available to SML pursuant to clause 23.3 following your breach of clause 6.7, if You fail to be present and in occupation of the Premises by the Attendance Time:

- (a) You must still pay the Rent and the Dues; and
- (b) if the Premises are a Stand, SML may, at any time after the Attendance Time, decide to:
 - (1) allot the Premises to a Casual Standholder for use on that day; and/or
 - (2) not allow You to use and occupy the Premises or be in the Markets for that day.

6.9 Building works by You

You must not without SML's prior approval:

- (a) alter or add to the Premises or any other part of the Markets, including marking, painting, drilling or otherwise defacing any walls, ceiling, partitions, floors, wood, stone, concrete, iron or metal work; or

- (b) install, add to or alter or bring onto the Premises or any other part of the Markets any partitioning, fixture or fitting including gas or electrical fixtures, equipment or appliances, or any illumination, heating, cooling or ventilation apparatus for the Premises.

SML may withhold its approval at its own discretion and require You to pay all reasonable costs and expenses incurred by SML in providing its approval.

6.10 Bringing Equipment into the Markets

You must not bring any plant or equipment (including but not limited to heavy machinery) into the Premises or the Markets unless You:

- (a) have the approval of SML;
- (b) comply with any directions of SML in regard to the routing, installation and location of all such equipment; and
- (c) pay SML's reasonable costs incurred in providing its approval and issuing directions under clauses 6.10(a) and (b).

6.11 General restrictions on use

You must not at any time:

- (a) store chemicals, inflammable liquids, acetylene, alcohol or any solid, liquid or gas of an inflammable, volatile or explosive nature nor use the same or any of them in the Premises or the Markets for any purpose without the consent in writing of SML nor otherwise than in accordance with the law;
- (b) install or connect any equipment or do any act that overloads any of the system through which electricity is conveyed to the Markets;
- (c) use the Premises or the Markets in any noisy, noxious, noisome, offensive, unlawful or illegal manner;
- (d) obstruct any of the Common Areas or the entrances and exits to the Premises or any walkways, pavements, passage, corridors, conveniences or other part of the Markets or use any of them other than for the purposes designed by SML;

- (e) cause or allow any part of the Premises to be strained or weakened including walls or floors in the Premises to sag or deflect from their right lines or whereby damage may be caused to the Premises or the Markets or part of the Markets;
- (f) obstruct or cover any windows or other means of illumination of the Common Areas generally; nor
- (g) place or display any Goods in any part of the Common Areas.

6.12 Further Conditions

You will at all times:

- (a) observe and continuously comply with the Further Conditions; and
- (b) not do, or permit or suffer to be done, anything contrary to the Further Conditions.

6.13 Authorisations

- (a) You must obtain all necessary Authorisations to conduct your business from the Premises.
- (b) You must not make an application to any Authority for an Authorisation unless You have notified SML and obtained its consent in writing to the application.
- (c) The holding by You of any Authorisation does not confer any greater rights to You than are provided for in this Occupancy Agreement.

7 Selling from the Premises

7.1 You must sell in accordance with the Rules

Without limiting the generality of clause 8, You must conduct your business from the Premises in accordance with the Rule entitled "Selling in the Markets" in the Rules.

7.2 Product Mix and Restricted Goods

SML will determine policies in relation to product mix and restrictions on goods in the Market.

PART C – YOUR OBLIGATIONS

8 Rules

8.1 Acknowledgment

The Rules effective as at 1 October 2002 and made pursuant to the Conditions of Occupancy and the Constitution are the Rules deemed to have been made under this Occupancy Agreement. You acknowledge that You have received, read and understood the Rules.

8.2 Comply with Rules

You agree that You will at all times:

- (a) observe and comply with and will cause your employees, servants, agents and invitees to continuously comply with the Rules; and
- (b) not do, or permit or suffer to be done, anything contrary to Rules.

8.3 Breach of Rules

You acknowledge and agree that a failure by You or your employees, servants, agents and invitees to observe and comply with the Rules:

- (a) will result in SML suffering or incurring damage, expense or loss;
- (b) will entitle SML to payment by You of the Damages in accordance with section entitled “Non-Compliance and Damages” in the Rules; and
- (c) constitutes a breach of this Occupancy Agreement and may entitle SML to give You notice of its intention to terminate your Licence in accordance with clause 23.3.

8.4 Amendment of Rules

SML reserves the right to at any time amend, cancel, add to or suspend all or any of the Rules and to make such other Rules, either in lieu of or in addition to the Rules existing at any time, as are, in the opinion of SML required for:

- (a) the management, safety, care or cleanliness of the Markets;
- (b) the preservation of good order in the Markets; or

(c) the convenience of the Occupiers and invitees in the Markets.

Any amendment to the Rules will be binding on You when notice of the amendment is served on You by SML.

8.5 Liability of SML

SML is not liable for any loss or damage caused or arising out of any non-enforcement of the Rules.

9 Your Behaviour

9.1 Behaviour in the Markets

Without limiting the generality of clause 8, You must not do anything that in the opinion of SML or an Authorised Officer is in breach of the Rule entitled “Behaviour in the Markets” in the Rules.

9.2 Behaviour of others

You acknowledge You are responsible for your employees, officers, agents, contractors and/or invitees and agree to ensure their compliance with this Occupancy Agreement, the Rules and the Further Conditions at all times.

9.3 SML staff

You must at all times co-operate with Authorised Officers and any other employee, agent, contractor or officer of SML and treat such persons with courtesy and decency.

9.4 You must obey the law

You must comply with all laws, regulations and approvals, consents, directions, licences, notices, orders, permits and requirements of any Authority in respect of this Occupancy Agreement, the Markets, the Premises, Your Property and the health and safety of people in the Premises and the Markets.

9.5 Standards

You must follow and comply with all Standards.

9.6 Environmental Law

You must conduct all operations on the Premises and in the Markets in accordance with the requirements of relevant Environmental Law.

9.7 WH&S Law

You must comply with all relevant WH&S Law.

9.8 Food Safety Law

You must comply with all relevant Food Safety Law.

9.9 Indemnity

You indemnify SML in respect of any penalty imposed on SML pursuant to any law or regulation, including Environmental Law, WH&S Law and Food Safety Law, arising out of any act or omission by You to meet your own obligations under any law or regulation.

10 Cleanliness and Hygiene

10.1 Cleaning the Premises

Without limiting the generality of clause 8, You must keep the Premises clean in accordance with the section entitled “Markets Cleanliness and Hygiene” in the Rules.

10.2 Waste management

Without limiting the generality of clause 8, You must manage all Waste of any nature generated by You in the Markets in accordance with section entitled “Markets Cleanliness and Hygiene” in the Rules.

11 Property

11.1 Maintaining Your Property

You must:

- (a) maintain, repair and keep the Premises and Your Property in good order, repair and condition; and
- (b) ensure all repair and fixing work conforms to the standard notified by SML.

11.2 SML's Plant

You must:

- (a) not interfere with or impair the operation of SML's Plant; and
- (b) at all times comply with all reasonable requests and directions of SML in relation to SML's Plant.

11.3 You must pay for damage

You must not do any thing that causes or is likely to cause damage to any property of SML or any building or other structure in the Markets and acknowledge You will be liable to SML for any such damage. You must pay to SML the cost of rectifying any such damage within 14 days of receiving a request from SML for payment.

11.4 SML's Intellectual Property

You acknowledge:

- (a) that the Intellectual Property is the property of SML; and
- (b) You may not use the Intellectual Property or any part of it or any depiction or representation which is substantially identical or deceptively similar to it without the prior written approval of SML.

PART D – RENT AND DUES PAYABLE BY YOU

12 Rent for the Premises

12.1 Rent

You must pay SML the Rent for your Licence and the Premises.

12.2 Payment of Rent

The Rent is to be paid by You to SML monthly in advance before the last business day of the previous month.

12.3 Variation of Rent

SML may vary the Rent at any time by 30 days' notice in writing to You.

13 Dues and Costs

13.1 Dues

You must pay to SML:

- (a) the amount for any electricity supplied to the Premises;
- (b) the Advertising Levy;
- (c) the Cleaning Levy;
- (d) the amount for any telecommunication services provided to the Premises; and
- (e) any other amount (excluding Rent) requested by SML in respect of your use and occupation of the Premises,

as stated on SML's invoice to You. This amount must be paid by the time specified in the relevant invoice.

SML will invoice you for these Dues as applicable to your Market Category and Premises.

13.2 Costs

You must pay SML's reasonable costs (including legal costs) and all charges, duties, expenses and fees of or incidental to:

- (a) any dealing with the Premises by You pursuant to clause 5;
- (b) any request by You for the consent or approval of SML;
- (c) any Breach; and
- (d) the exercise or attempted exercise of any right, power, privilege, authority or remedy of SML under this Occupancy Agreement.

14 Overdue Amounts

14.1 Interest

If, any Rent, Dues, or any other amount payable by You to SML has not been received by SML by its due date, Interest will accrue on that amount on and from the due date, and all accrued Interest is payable to SML until that amount including all interest accrued under this clause 14.1, is paid to SML.

14.2 Preservation of rights

Nothing in this clause 14 limits, restricts or prejudices any other right, remedy or power of SML pursuant to Part G of this Occupancy Agreement.

15 No attendance

15.1 Payment required

You must pay the Rent and the Dues regardless of whether or not You attend the Markets and use and occupy the Premises during Access Hours.

15.2 No exceptions

Clause 15.1 applies notwithstanding:

- (a) You may have good reason for not attending the Markets and using and occupying the Premises, including but not limited to illness, injury or holiday; and
- (b) SML allotted the Premises to a Casual Standholder pursuant to clause 6.8.

16 GST

16.1 GST exclusive

All amounts payable by You to SML for, or in connection with, any Supply under this Occupancy Agreement are GST exclusive. This includes but is in no way limited to the Rent and the Dues.

16.2 Gross up for GST

You must pay SML an additional amount on account of GST equal to the amounts payable by You under this Occupancy Agreement multiplied by the prevailing GST rate.

16.3 Time of GST payment

The additional amount on account of GST is payable at the same time and in the same manner as the amounts payable by You under this Occupancy Agreement are required to be paid to SML.

PART E – YOUR USE OF THE MARKETS

17 Markets

17.1 SML's obligations

SML will:

- (a) manage and operate the Markets in a professional and competent way;
- (b) obey any law that requires SML to do anything concerning the Markets; and
- (c) keep the Markets clean, tidy and in good condition.

17.2 Common Areas

You may use the Common Areas in common with other Occupiers and/or people in the Markets subject to this Occupancy Agreement, the Rules, the Further Conditions and the directions of Authorised Officers.

17.3 Parking

Without limiting the generality of clause 8, You may only park in the Markets in accordance with the Rule entitled "Parking of Vehicles" in the Rules and the Further Conditions.

17.4 Reporting of accidents

You must immediately on becoming aware of the same notify SML of:

- (a) any damage, injury, death or loss occurring in the Premises or in the Markets;
- (b) any defect or lack of repair in the Premises, the Markets or any of the services or facilities provided by SML to the Premises or the Markets; and
- (c) any circumstance likely to cause danger, damage, injury or loss in the Premises or the Markets.

17.5 Fire drills

If required by SML, You and the persons under your control will perform fire drills and observe all necessary and proper emergency evacuation procedures.

18 SML's Rights

18.1 Closure of Markets

SML may decide at any time not to conduct the Markets or any part of the Markets, on any day or days, or for part of any day or days.

18.2 SML's right to deal with the Markets

SML may:

- (a) increase or reduce the area of the Markets or carpark or any part of the Markets or carpark;
- (b) change the location of any part of the Common Areas;
- (c) change the nature or location of any of the facilities on the Common Areas;
- (d) change the direction, area, layout or level of any walkways, pathways, driveways or carpark;
- (e) change the traffic patterns in the Markets;
- (f) relocate the vehicular entrances and exits to and from the Markets or any part of the Markets;
- (g) sell, transfer, lease, mortgage or otherwise deal with any of the Markets; or
- (h) deal with the Markets in any other way as permitted under the Constitution.

18.3 Access to the Markets

SML reserves the right to control access to and exit from the Markets, including:

- (a) the right to close one or more of the entrances giving access to the Markets or any part of the Markets;
- (b) the right to charge fees in respect of persons or vehicles entering through the entrances referred to in clause 18.3(a);
- (c) the right to specify over what ways You have access to and exit from the Premises; and
- (d) the right to exercise general control and supervision over all persons entering the Markets.

18.4 Emergencies

SML may enter the Premises with materials and equipment at any time without notice in an emergency to carry out any repairs, maintenance and other works to the Premises. If the emergency repairs, maintenance and other works are such as to make your continued use and occupation of the Premises not possible (in the reasonable opinion of SML), SML may suspend the rights and obligations under your Licence (including but not limited to the right to use and occupy the Premises and Sell Goods in the Markets) for the necessary period required for SML to complete the emergency repairs, maintenance and other works.

18.5 No liability

You acknowledge SML will not be liable to You for loss of profits or consequential loss suffered by You as a result of the exercise of its rights in accordance with this clause.

19 Redevelopment

19.1 Right to redevelop

SML may demolish, refurbish, repair, redevelop or extend the Premises or the Markets or any part of the Markets (**Redevelopment**). For the avoidance of doubt, a Redevelopment does not include the Markets relocating to an alternate site. This is dealt with at clause 20.

19.2 Redevelopment affecting the Premises and/or the Markets

If the Redevelopment will affect the Premises and/or the Markets:

- (a) SML may require You to move temporarily to an alternative Stand or Store; or
- (b) if there are no suitable alternative Stands or Stores available, and provided SML has made reasonable efforts to make available suitable alternative Stands or Stores, SML may suspend the rights and obligations under your Licence (including but not limited to the right to use and occupy the Premises and Sell Goods in the Markets) for the necessary period required for SML to complete the Redevelopment,

by issuing to You a Redevelopment Notice.

19.3 Redevelopment Notice

SML will provide you with a Redevelopment Notice, which will:

- (a) give You at least 60 days' notice in writing of:
 - (1) the date upon which the rights and obligations under your Licence will be suspended; or
 - (2) the date by which You will be required to move to an alternate Stand or Store;
- (b) provide details of:
 - (1) the estimated period of time for which the rights and obligations under your Licence will be suspended; or
 - (2) the alternate Stand or Store to which You will be moving and the estimated period of time you will be required to occupy the alternate Stand or Store; and
- (c) detail the Redevelopment as it affects the Premises, including notification that in the event the rights and obligations under your Licence are suspended pursuant to clause 19.2(b) then during this suspension period:
 - (1) You will not be able to use and occupy the Premises or Sell Goods in the Markets; and
 - (2) You will not be liable for the Rent and the Dues.

19.4 Estimate and return

For the avoidance of doubt:

- (a) the suspension period referred to in the Redevelopment Notice is an estimate only and SML may continue the suspension period until such time that it has completed the Redevelopment; and
- (b) if you are moved to an alternate Stand or Store You will be required to return to the Premises at the date set out in the Redevelopment Notice or such other date advised by SML with 30 days' notice.

19.5 SML liability

SML will not be liable to You for any claims for damages, including claims for consequential or economic loss and loss of profits, arising from or as a result of any Redevelopment.

19.6 Shareholding

Nothing in this clause will affect your right to hold the Share or your rights under the Constitution.

20 Relocation

20.1 Right to relocate

SML may relocate the Premises or the Markets or any part of the Markets from Flemington and/or Haymarket to an alternate location (**Relocation**).

20.2 Relocation Notice

SML must give You written notice of the Relocation (**Relocation Notice**). This Relocation Notice will:

- (a) provide details of the Relocation;
- (b) offer You a licence at the new location; and
- (c) require You to surrender your current Licence and vacate the Premises on a specified date (which must be at least 90 days after the date of the Relocation Notice).

SML will offer you new premises that are, as a minimum, reasonably comparable to the Premises. In this case, SML will charge you rent at the same rate per square metre. In the event the new premises provide you with enhanced facilities (in the reasonable opinion of SML), SML reserves the right to set the rent at a higher level.

20.3 Surrender of current Licence

The surrender of your current Licence under clause 20.2(c) applies whether or not You accept an offer of a licence at the new location.

20.4 Acceptance of new licence

You must give notice in writing to SML within 30 days of receiving the Relocation Notice if You wish to accept SML's offer of a licence at the new location and if You fail to do so, the offer of a licence at the new location will no longer be open to you.

20.5 Costs of Relocation

SML will pay your reasonable costs of relocating from your existing Premises to your premises at the new location, including fitting out your new premises to substantially the same standard as your existing Premises at the date of the Relocation Notice.

20.6 SML liability

SML will not be liable to You for any claims for damages, including claims for consequential or economic loss and loss of profits, arising from or as a result of any Relocation (other than those costs SML agrees to pay under clause 20.5).

For the avoidance of doubt, SML will not be liable to pay You any compensation or payment if you do not accept a licence at the new location.

20.7 Shareholding

- a) If you accept SML's offer of a licence at the new location in accordance with clause 20.4, your Share will be stapled to the premises at the new location and a replacement Share certificate issued to you pursuant to clause 2.15 of the Constitution.

- b) If you do not accept SML's offer of a licence at the new location in accordance with clause 20.4, you will cease to be entitled to remain a member of SML pursuant to clause 3.2 of the Constitution and your Share will be dealt with pursuant to clauses 2.4 and 3.5 of the Constitution.

PART F – YOUR LIABILITY

21 Risk and Insurance

21.1 Your liability

- (a) You occupy and use the Premises and the Markets at your own risk.
- (b) You are accountable for the health and safety of people for whom you have responsibility while they are in the Markets.
- (c) You are accountable for health and safety within your Premises.

21.2 SML to hold insurance

SML will maintain public liability insurance for the Markets for at least \$20 million.

21.3 Storeholders to hold insurance

If You are a Storeholder You must maintain public liability insurance in respect of your Premises for at least \$20 million and produce a certificate of currency in respect of that insurance upon request by SML.

21.4 Insurance not to be made void

You must not do anything that may:

- (a) prejudice or render void or voidable any insurance effected by SML; or
- (b) increase any insurance premium for any insurance effected by SML.

21.5 No liability

SML will have no liability to contribute to any liability of yours which might arise by reason of any insurance effected by SML under this clause being inadequate or insufficient to fully cover You against liability.

21.6 Workers' compensation insurance

If You employ people You must comply at all times with all statutory requirements in respect of workers' compensation insurance and produce certificates of currency in respect of any such insurance effected by You as and when requested by SML.

22 Release and Indemnity

22.1 Release

You release SML and its officers, agents, contractors, employees and sub-contractors from all actions, claims, costs, damages, demands, expenses, liabilities and losses arising in respect of any damage, death, loss or injury occurring in the Premises or in the Markets or as a result of any use of the Premises or any part of the Markets, except to the extent that the same is caused by the negligent or wrongful act or omission of SML.

22.2 Indemnity

You indemnify SML and its agents, contractors, employees and sub-contractors from all actions, claims, costs, damages, demands, expenses, liabilities and losses which SML suffers in respect of or arising out of:

- (a) your acts or negligence;
- (b) your use and occupation of the Premises or the Markets; or
- (c) services to the Premises or the Markets,

except to the extent that the same is caused by the negligent or wrongful act or omission of SML.

PART G – TERMINATION & VARIATION OF YOUR LICENCE

23 Term and Termination

23.1 Term

This Occupancy Agreement commences on the Effective Date or the Commencement Date, whichever occurs later in time, and continues until it is terminated pursuant to this clause 23.

23.2 Termination by You

You may terminate this Occupancy Agreement and surrender your Licence to SML at any time by 30 days' notice in writing to SML. You acknowledge and agree that if You surrender your Licence to SML pursuant to this clause You will not be entitled to any compensation or payment by SML for your Licence. You further acknowledge that termination of this Occupancy Agreement by You will be without prejudice to the rights of SML against You in respect of anything done or omitted under this Occupancy Agreement prior to such termination or in respect of any sums or claims outstanding at the time of termination.

23.3 Termination by SML

(a) If at any time during the term of this Occupancy Agreement:

- (1) any Rent, Dues, or any other moneys payable by You remains unpaid 14 days after the due date for that amount, although no formal demand has been made; or
- (2) in case of default by You in respect of any of your obligations arising out of a term of the Occupancy Agreement and such default continues for 14 days or in the case of repairs required to be effected by You such repairs are not completed within a reasonable time; or
- (3) Execution is levied against any of your assets; or
- (4) You (not being a company) become bankrupt or assign your estate or enter into a deed of arrangement for the benefit of creditors; or

- (5) You (being a company) either:
- [i] goes into liquidation (other than voluntary liquidation for the purposes of re-organisation); or
 - [ii] is wound up or dissolved; or
 - [iii] enters into a scheme of arrangement with your creditors or any class thereof; or
 - [iv] a receiver, receiver and manager or provisional liquidator of any of your assets is appointed;

SML may terminate this Occupancy Agreement pursuant to the terms of clause 24.1 of this Occupancy Agreement.

- (b) SML may terminate this Occupancy Agreement and cancel your Licence with 90 days' notice in writing if it becomes necessary for any reason to permanently close the Markets or the Market Category in which the Premises are located.

23.4 Immediate termination by SML

SML will have the right to terminate this Occupancy Agreement and cancel your Licence immediately by notice in writing to You upon the occurrence of any of the following events:

- (a) You become insolvent or have a receiver, liquidator or administrator appointed over any of your assets or enter into a scheme of arrangement or make an assignment for the benefit of your creditors;
- (b) an order or a resolution is passed for the winding up or liquidation of You; or
- (c) You enter into bankruptcy; or
- (d) You are found guilty by a competent court of committing an indictable offence or an offence relating to property under Part 4 of the *Crimes Act 1900* and the offence occurred at the Markets or in connection with the conduct of your business at the Markets.

24 Rights on Termination

24.1 Effect of termination

If any of the events referred to in clause 23.3 occurs, then SML may do any one or more of the following:

- (a) terminate this Occupancy Agreement and end your right to occupy and use the Premises;
- (b) re-enter and take possession of the Premises;
- (c) recover from You any loss SML suffers due to the Breach and all moneys owing to SML by You under this Occupancy Agreement; and
- (d) exercise any of its other legal rights,

without notice to You.

You acknowledge that termination of this Occupancy Agreement by SML will be without prejudice to the rights of SML against You in respect of anything done or omitted under this Occupancy Agreement prior to such termination or in respect of any sums or claims outstanding at the time of termination.

24.2 Use of Trade Marks

Upon termination of this Occupancy Agreement for any reason whatsoever You will immediately cease to use the Trade Marks. You will at your own expense either destroy or deliver to SML any materials in your possession bearing the Trade Marks.

24.3 No liability

SML will not be liable to You for any claims for damages, including claims for consequential or economic loss and loss of profits, arising from or as a result of termination of this Occupancy Agreement. In particular You acknowledge and agree that if your Licence is terminated pursuant to clause 23, You will not be entitled to any compensation or payment by SML.

24.4 Return of the Premises

Upon the termination of this Occupancy Agreement You must:

- (a) yield up the Premises clean, free from rubbish and in good order, repair and condition; and
- (b) remove all Your Property from the Premises and the Markets.

If You fail to meet your obligations under this clause within a reasonable period, SML may do the same on your behalf at your risk and cost.

24.5 Share

If this Occupancy Agreement is terminated pursuant to clause 23, You agree to immediately surrender the Share pursuant to clause 3.19 of the Constitution for SML.

25 Suspension of Licence Following Breach

25.1 SML may suspend your Licence

SML may suspend your Licence in its absolute discretion:

- (a) If You are in breach of this Occupancy Agreement until such time as You rectify the breach; or
- (b) For any other reason as SML sees fit.

25.2 Suspension only for material Breaches

SML will not suspend your Licence pursuant to clause 24.1(a) unless the Breach, in the opinion of SML, was sufficiently material to make the suspension of your Licence reasonable in the circumstances.

Without limitation to SML's rights under clause 25.1, it will be sufficiently material if the Breach:

- (a) presented a reasonable danger or hazard to other persons in the Markets; or
- (b) entitles SML to terminate this Occupancy Agreement; or
- (c) is a breach of the Rules.

25.3 Effect of suspension

You agree that during any suspension period pursuant to clause 25.1:

- (a) You will not be able to use and occupy the Premises or Sell Goods in the Markets; and
- (b) You will remain liable to SML for the Rent and the Dues.

25.4 Acknowledgment by You

You acknowledge that any suspension of your Licence pursuant to this clause 25:

- (a) Is for the reasonable protection of SML's rights pursuant to this Occupancy Agreement; and
- (b) is in lieu of SML exercising its right to terminate this Occupancy Agreement and your Licence.

26 Variation of this Occupancy Agreement

SML may by 30 days' notice in writing:

- (a) vary;
- (b) add to; or
- (c) suspend,

all or any part of this Occupancy Agreement.

PART H – GENERAL PROVISIONS

27 General

27.1 Schedule 2

You must at all times observe and comply with Schedule 2.

27.2 Notices

Any notice or other communication to or by a Party to this Occupancy Agreement:

- (a) must be in writing, legible and in English addressed as shown in Item 1 and Item 2 of Schedule 1 or to any other address last

notified by the Party to the sender by notice given in accordance with this clause;

- (b) must be signed by a person duly authorised by the sender or under the *Corporations Act*, except in the case of SML where the notice may be signed by an Authorised Officer;
- (c) is deemed to be given by the sender and received by the addressee:
 - (1) if delivered in person, when delivered to the addressee;
 - (2) if posted, 2 Business Days (or 6, if addressed outside Australia) after the date of posting to the addressee whether delivered or not;
 - (3) if sent by facsimile transmission, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety and in legible form to the facsimile number of the addressee notified for the purposes of this clause; or
 - (4) if sent by electronic communication, on production of a report by the computer from which the electronic communications was sent which indicates the communication was received by the intended recipient,

but if the delivery or receipt is on a day which is not a Business Day or is after 4.00pm (addressee's time) it is deemed to have been received at 9.00am on the next Business Day.

27.3 Change of details

You must immediately advise SML in writing:

- (a) of any change to your details appearing in Item 2 of Schedule 1; and
- (b) if You are a company, of any change to your office holders, registered address and/or shareholders.

Forms are available at any Market office.

27.4 Nature of obligations

- (a) Any provision in this Occupancy Agreement which binds more than one person binds all of those persons jointly and each of them individually.
- (b) Each obligation imposed on a Party by this Occupancy Agreement in favour of another is a separate obligation.

27.5 Not to permit or suffer prohibited matters

Wherever in this Occupancy Agreement You are prohibited from doing any act, matter or thing, You are also prohibited from permitting or suffering the act, matter or thing.

27.6 No waiver

A failure, delay, relaxation or indulgence by a Party in exercising any power or right conferred on the Party by this Occupancy Agreement does not operate as a waiver of the power or right. A single or partial exercise of the power or right does not preclude a further exercise of it or the exercise of any other power or right under this Occupancy Agreement. A waiver of a breach does not operate as a waiver of any other breach.

27.7 Severability

If any provision of this Occupancy Agreement offends any law applicable to it and is as a consequence illegal, invalid or unenforceable then:

- (a) where the offending provision can be read down so as to give it a valid and enforceable operation of a partial nature it must be read down to the extent necessary to achieve that result; and
- (b) in any other case the offending provision must be severed from this Occupancy Agreement in which event the remaining provisions of the Occupancy Agreement operate as if the severed provision had not been included.

27.8 Counterparts

If this Occupancy Agreement consists of a number of counterparts, each is an original and all of the counterparts together constitute the same document.

27.9 Conflicting provisions

If there is any conflict between the main body of this Occupancy Agreement and the Schedules comprising it, then the provisions of the main body of this Occupancy Agreement prevail.

27.10 Non-merger

A term or condition of, or act done in connection with, this Occupancy Agreement does not operate as a merger of any of the rights or remedies of the parties under this Occupancy Agreement and those rights and remedies continue unchanged. Each term of this Occupancy Agreement that has not been carried into effect at the termination of this Occupancy Agreement survives the termination.

27.11 No adverse construction

This Occupancy Agreement is not to be construed to the disadvantage of a Party because that Party was responsible for its preparation.

27.12 Consents and approvals

Where anything depends on the consent or approval of a Party, then, unless this Occupancy Agreement provides otherwise, that consent or approval may be given conditionally or unconditionally or withheld, in the absolute discretion of that Party.

27.13 Execution binding

This Occupancy Agreement binds each Party signing it even though:

- (a) there is an irregularity in execution or a forgery or invalidity in relation to execution; or
- (b) this Occupancy Agreement is unenforceable, void or voidable against any named Party.

27.14 Governing law and jurisdiction

This Occupancy Agreement is governed by and must be construed in accordance with the laws of the State of New South Wales. The Parties submit to the non-exclusive jurisdiction of the Courts of that State and the Commonwealth of Australia in respect of all matters or things arising out of this Occupancy Agreement.

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