

14 May 2018

Dear Goods Owner/Consignor

**Sobraz Nominees Pty Ltd ACN 007 327 737 (“Landlord”)  
Appointment of Agent for dealing with warehouse goods (“Goods”) abandoned  
by the voluntary administrators of Mossgreen Pty Ltd (in Liquidation) (“Mossgreen”  
or “the Company”)**

We advise that on 14th May 2018, Andrew Beck and Ben Verney, both partners at Grey House Partners Pty Ltd (“Greyhouse”), were appointed Agents/receivers to the Goods abandoned at 1 Torteval Place, Clayton (“the Premises”) by the voluntary administrators of Mossgreen. Further background to our appointment is set out at the end of this letter.

**1. What does this mean to you?**

As Agents, we have inspected the Premises and confirm that the Goods located therein are secure.

We do not have any Company books and records in our possession that would enable us to accurately identify the owners of the Goods located at the Premises, but we have received assistance from former staff of Mossgreen with knowledge as to the origination of some of the Goods. We are grateful to the team, led by former Mossgreen CEO Paul Sumner, who have all volunteered their time at no cost in order to assist owners of Goods and ourselves in this process.

**2. What is the purpose of the appointment of Agents by the Landlord?**

The purpose of our appointment as Agent is to either:

- a) make the Goods available for collection by any purchaser who can prove that they purchased the Goods from Mossgreen to the Agents’ reasonable satisfaction;
- b) make the Goods available for collection by any owner of the Goods who can prove that they own the Goods to the Agents’ reasonable satisfaction;
- c) negotiate with the owners of the Goods to voluntarily sell the Goods at auction;
- d) determine that remaining Goods will be “*uncollected goods*” for the purposes of the Act

We have viewed the Goods located at the Premises and have formed the view that there are potentially 4 “groups” of Goods as follows:

- i. Goods that have been sold at auction and not yet collected by the purchaser (“Sold Goods”)
- ii. Goods that are being prepared for auction for which an auction agreement has been signed between Mossgreen and the owner of the Goods (“Auction Goods”)
- iii. Goods that are on the premises for assessment or valuation (“Assessment Goods”)
- iv. Goods that have been abandoned (“Abandoned Goods”)

We propose dealing with each group of Goods separately, as follows:

**i. Sold Goods**

Purchasers are to provide evidence of the purchase (i.e. receipt, sale note, etc.) and provide a signed deed of release to Greyhouse. Owner details and supporting documentation are to be provided via our website ([www.greyhouse.com.au](http://www.greyhouse.com.au)) via the tab “Mossgreen Goods”. We will then be in contact with the purchaser/s to arrange for collection of the Sold Goods. Should we incur any costs in organising the collection of these Goods then these will be on-charged at cost (e.g. forklift charges).

**ii. Auction Goods**

We intend holding a public auction at the Premises within eight weeks to sell the Auction Goods as we understand that many consignors of Auction Goods still wish to sell their asset/s.

Note: If owners/consignors of Auction Goods no longer wish to sell the Goods at auction they will be entitled to collect the goods after providing the necessary details and documentation via our website ([www.greyhouse.com.au](http://www.greyhouse.com.au)). Further details for consignors wanting to collect their Goods are set out below.

To facilitate a public auction, we have engaged with Dominion Auctioneers and Valuers Pty Ltd (“Dominion”), which is an independent auction house and is unrelated to any current or former directors of Mossgreen. With Dominion’s skill and expertise, we will conduct an auction on the Premises and deposit all sale proceeds into our trust account.

The fees and costs associated with the auction will be equivalent to those of Mossgreen. In summary, Mossgreen’s terms were as follows:

- a) Mossgreen recovered insurance costs by charging a fee of 2.5% plus GST of:
  - i. the hammer price, i.e. the price the item sold at auction;
  - ii. the mean of Mossgreen’s pre-sale estimates if the item is not offered for sale;  
or
  - iii. the reserve price if the item was not sold at auction.

- b) Mossgreen generally charged commission in the range of 15% to 20% plus GST. For larger collections Mossgreen may have agreed to charge a lower commission (in the range of 15% to 20%) but for smaller lots or sales of individual items generally charged in the range of 17.5%-20.0%;
- c) Mossgreen was also entitled to recover out of pocket expenses incurred; and
- d) to defray some of these costs, buyers paid a buyer's premium of 24% of the hammer price plus GST.

Consignors will be no worse off than if their Goods had been sold by Mossgreen as was originally intended. By participating in the forthcoming public auction on the Premises, the owners/consignors of Auction Goods would not be exposed to further costs and risk of damage associated with relocating their asset/s to another site.

It would be necessary for the owners of the Auction Goods to sign a new auction agreement with the Agents as per the document on our website. Owners/consignors will also need to provide proof of ownership documents and provide a signed deed of release to the Agents.

Any commission or fees from the auction would be used to pay auction costs, including insurance, storeman costs, marketing and other associated costs including the Agents fees.

Alternatively, owners/consignors may wish to collect their Auction Goods. Consignors will need to satisfy the Agents of their ownership of the assets and sign a deed of release releasing the Agents from any future claim. Should we incur any costs in organising the collection of the Auction Goods then these will be on-charged at cost (e.g. forklift charges).

The Agents are treating this as a cost recovery exercise, not a fee earning exercise, and anticipate that they will not be able to recover their full remuneration for the time associated with managing this process from fees charged.

The Agents anticipate that owners/consignors not wishing to participate in the forthcoming auction can collect their Auction Goods within 2 business days of provision of the necessary documents.

### **iii. Assessment Goods**

The owners of Assessment Goods can choose to:

- collect their Goods; or,
- place their Goods into the auction referred to above.

The owners of the Assessment Goods who choose not to participate in the auction will need to satisfy the Agents of their ownership of the assets, sign a deed of release and pay a fee to cover the costs of the returns process (such as forklift charges). The costs would be commensurate to the standard charges charged by an auction house for out of pockets cost

as per the rates provided on our website. The Agents intend only recovering direct costs in this process as opposed to charging a fee and/or margin.

The Agents anticipate that goods can be collected within 2 business days of the provision of the necessary documents.

#### **iv. Abandoned Goods**

According to the Administrators' s439A report dated 24 April 2018, the Administrators' agents removed all Abandoned Goods on 23<sup>rd</sup> April 2018 pursuant to an equitable lien.

It is highly likely that there will be further Abandoned Goods at the Premises which will lawfully be dealt with by the Agents.

Please refer to our website ([www.greyhouse.com.au](http://www.greyhouse.com.au)) which has the appropriate links to information.

### **3. Background**

On the 21st of December the Director of Mossgreen appointed Voluntary Administrators to the Company. The Administrators were subsequently appointed Liquidators at a meeting of creditors held on the 4th of May 2018.

The Administrators have produced a section 439A report which details the work performed to date.

On the 7th of March 2018, the Administrators sought directions and orders from the Federal Court of Australia in relation to a number of matters, including how to manage the assets held by the company.

On the 29th of March 2018 a hearing in respect of the consignor issues (i.e. the imposition of a levy and the process for dealing with goods where the levy was unpaid) was conducted.

On the 9th of April 2018 Justice Perram delivered judgment and declined to rule that the Administrators were entitled to an equitable lien over the warehouse assets and therefore they could not charge a levy to consignors.

The Administrators filed a notice of appeal to the full Federal Court on the 12th of April 2018.

On the 19th of April 2018 the Appeal was dismissed by the full Federal Court.

The Administrators then made the decision to return the Company's leasehold properties in Clayton and Armadale to the respective landlords.

The landlord of the Clayton property wishes the Goods contained within the Premises to be dealt with in accordance with the law and as per the owners/consignors wishes.

On the 2nd of May 2018 an application by the Landlord to appoint Receivers to any Goods in the Premises was heard before Justice Robson who adjourned the application until the 8th of May 2018 so that he could consider his views and also give the Administrators (now Liquidators) an opportunity to present to the Court.

At the hearing on the 8th of May 2018, the Judge noted that he would decline to appoint a Court Appointed Receiver to the goods held at the Premises.

Therefore, the Landlord, in following the provisions contained within the Australian Consumer Law and Fair Trading Act 2012, appointed us as Agents in order to resolve this matter on the 14<sup>th</sup> May 2018.

For further information please contact Andrew Beck on 0407039533

Yours faithfully,



Andrew Beck  
Partner



Ben Verney  
Partner