

Openn Negotiation Bidding Rules and Offer Terms of Use (NZ)

1. Parties

BIDDER **Primary Bidder** **Other Bidder(s) (if applicable)**
 Full Legal Name(s): _____ Full Legal Name(s): _____
 Address: _____ Address(es): _____

OR:

Company Name: _____ A.B.N.: _____

Name of the Authorised Officer of the Company: _____ Position Held: _____

Company Address: _____

(if the Property sells at the Openn Negotiation auction, then the Bidder named above is taken to be the successful bidder)

Phone: _____ Mobile: _____ Email: _____

Bidder's Solicitor: _____ Phone: _____ Email: _____

BIDDER ID Proof of Identity

Primary Bidder/Authorised Officer: Document Type: _____ Document identifier: _____

Other Bidder (if applicable): Document Type: _____ Document identifier: _____

ID must include the Bidders name and current address (e.g. driver's licence).

and;

SELLER Full Name(s): _____

Address: _____

Suburb: _____ State: _____ Postcode: _____

Phone: _____ Mobile: _____ Email: _____

Phone: _____ Mobile: _____ Email: _____

and;

The real estate agent or other person duly authorised to act on behalf of the Bidder/Seller in a transaction (as defined in the legislation):

AGENT

Photo ID (proxy bidder): _____

(collectively referred to as **Parties**)

2. The Bidder

2.1 Intends to become a Qualified Bidder and bid on the Property by way of Openn Negotiation:

Number _____ Street _____ Suburb/City _____

Record of Title _____ Lot/Flat/Unit _____ DP _____ (Property);

ESTATE: Freehold Cross Lease Stratum Estate in Freehold Leasehold Stratum Estate in Leasehold

2.2 Acknowledges that Openn Negotiation:

(a) Is a type of auction as defined in the relevant legislation; Openn Negotiation is an extended auction with a flexible completion date pursuant to Clause 4.4 and/or in relation to the purchase of the property by a sole bidder pursuant to Clause 4.7.

(b) Will be primarily conducted through the Openn Negotiation App in accordance with the Terms set out below.

3. Definitions

In these terms the following have these meanings:

1. **Act** means Real Estate Agents Act (2008);
2. **Agreement** means the Agreement for Sale and Purchase of Real Estate in relation to the Property, being an ADLS/REINZ Agreement for Sale and Purchase of Real Estate, Tenth Edition 2019 (2) (or any subsequent version of that agreement).
3. **Auction** has the same meaning provided to it in the relevant legislation in each jurisdiction;
4. **App** means the specialised software program designed to facilitate the Openn Negotiation and known as "Openn";
5. **Auctioneer** means the Auctioneer appointed by the Vendor's Agent to conduct the Openn Negotiation who must be licensed to conduct an auction pursuant to pursuant to the laws of the state that govern the sale of real property by Public Auction;
6. **Bidder** means the bidder or bidders described in clause 1 and includes the Primary Bidder and any Other Bidders
7. **Bidders Record** means a record kept and maintained by the Agent which, pursuant to the Act and the Regulations must be made of the persons who will be entitled to bid, and there must be entered in the Bidders Record in respect of each of those persons:
 - i. the relevant details of the person, and
 - ii. the identifying number allocated to the person for the purposes of identifying the person at the auction; and
 - iii. such other information as the Regulations may require;
8. **Campaign Bidding Stage** means the stage of the Openn Negotiation that commences when the Property is listed on the App and ends at the earlier of the Property being sold or the commencement of the Final Bidding Stage;
9. **Co-owner Bidder** means a bidder whose name is on the certificate of title for the property, where the certificate shows more than one registered proprietor, all the named parties whether as joint owners or tenants in common registered as proprietors
10. **Co-owner Bid** a bid made by a co-owner bidder of the property either directly or on their behalf
11. **Dummy Bidding** means false or fictitious bids made by non-genuine bidders with no intention of buying the Property and also includes any bidding practices prohibited by the relevant legislation in each jurisdiction;
12. **Fall of the Hammer** means the time in the Final Bidding Stage the Auctioneer through the App announces the Final Bidding Stage has ended and no further bids will be accepted from Qualified Bidders;
13. **Final Bidding Stage** means the stage of the Openn Negotiation at which Qualified Bidders make competing bids to purchase the Property through the App, with a time limit applying to the making of bids and the process concluding when the Property is sold or all bids are exhausted;
14. **Highest Bidder** means the Qualified Bidder who makes the highest bid for the Property in the Final Bidding Stage that is accepted by the Auctioneer;
15. **Offer terms** means the terms the Bidder offers for the purchase of the property that are set out in Clause 5, which if accepted by the Seller and made by the Highest Bidder or Sole Bidder as the Winning Bid will constitute part of the binding Agreement entered by the Highest Bidder or Sole Bidder with the Seller for the purchase of the Property;
16. **Openn Negotiation** means the specialised software program designed to facilitate the Openn Negotiation and known as "Openn";
17. **Operator** means Openn Pty Ltd ACN 612 338 477.
18. **Owner** means Openn Tech Pty Ltd ACN 607 908 636 being the owner of the App;
19. **Qualified Bidder** means a bidder who has fulfilled the requirements set out in Clause 4.1.1 and has been approved by the Seller in accordance with Clause 4.1.7;
20. **Pending Bid** means the opening bid made by a Bidder, through the app, that must be accepted by the agent in order to become a Qualified Bidder. This bid may be increased subsequently.
21. **Price Confirmation** means confirmation of the Winning Bid via the App.

3. Definitions (continued)

22. **Regulation or Regulations** means unless the context indicates otherwise the relevant legislation in each jurisdiction;
23. **Reserve Price** is the minimum amount that the Vendor of the property will accept as the Winning Bid in the Openn Negotiation.
24. **Sole Bidder** means a Qualified Bidder who is the only Qualified Bidder in relation to the Property (i.e. the only bidder who has submitted to the Seller's Agent an Offer Form that has been accepted by the Seller such that the bidder may take part in the Openn Negotiation);
25. **Seller** means the seller of the property or his/her representative
26. **Seller's Agent** means the real estate agent duly authorised to act on behalf of the Seller;
27. **Signing Agent** means the signing agent appointed by the Bidder in accordance with clause 6.
28. **State** means the state or territory in which the property is located
29. **Unique Identification Number** means the unique identifying number provided by the App to each Qualified Bidder to allow them to be identified in the App;
20. **Winning Bid** means the successful bid made in the App which will be confirmed by the Purchaser or the Signing Agent via the Price Confirmation as the price for which the Property will be sold and includes, if applicable, the successful bid made by the Highest Bidder and/or any bid made by the Sole Bidder that is accepted by the Vendor.

4. Declaration and Terms

4.1 The Openn Negotiation Process

4.1.1 A prospective bidder must become a Qualified Bidder to participate in the Openn Negotiation Process. In order to become a Qualified Bidder, the Bidder must, prior to the final bidding stage and after inspecting the property:

- a. Download the app or visit www.openn.com.au
- b. access and register their details in the App;
- c. Provide to the Seller's Agent this form, being fully completed and signed including the proof of identity;
- d. if the Primary Bidder is bidding on behalf of another person(s), provide this form to the Seller's Agent fully completed with the Other Bidder(s) details, signed by the Other Bidder(s) and including the proof of identity for the Other Bidders;
- e. select the property in the App
- f. enter their Pending Bid in the App;
- g. complete the Offer Terms in Clause 5;
- h. provide their contact details to the Agent, providing satisfactory evidence of their identity that permits the person being noted on the Bidder's Record, namely, certified copies of either a New Zealand motor vehicle driver's license displaying a photograph of the person and/or a New Zealand Passport or any form of identification that is acceptable as a means of identification pursuant to the Regulations;
- i. be confirmed as a Qualified Bidder on the Bidder Record as defined where applicable in relevant jurisdiction;
- j. The Offer (set out in Clause 5) must state all terms upon which the Bidder is prepared to purchase the Property other than the proposed purchase price.
- k. A prospective bidder may waive their right to have the Agreement and these Terms of Use reviewed by their solicitor/conveyancer.
- l. If a prospective bidder waives their right to have the Agreement and these Terms of Use reviewed by their solicitor/conveyancer, the prospective bidder becomes a Qualified Bidder upon receipt of the documents required by the Seller's Agent.

Openn Negotiation accepts no responsibility for any liability suffered by the prospective bidder for as a result of not electing to have the Agreement and these Terms of Use reviewed by their solicitor/conveyancer.

4.1.2 In the Campaign Bidding Stage, other Qualified Bidders may join the negotiation process.

4.1.3 Throughout the Campaign Bidding Stage, any Qualified Bidder may increase their bid by providing further bids through the App.

4.1.4 All Qualified Bidders will be able to see all accepted bids made on the Property. The Seller has instructed the Agent to only accept bids in accordance with these Terms. Any bids that do not comply with this clause would not be passed to the Seller.

4.1.5 The Campaign Bidding Stage finishes at the commencement of the Final Bidding Stage

4.1.6 The Property can only be sold to a Sole Bidder pursuant to Clause 4.7

4.1.7 Prior to the Final Bidding Stage, the Seller will determine whether:

- a. the conditions in each submitted Offer are such that the Seller agrees to that potential Bidder being eligible to participate in the Openn Negotiation; and
- b. the Seller will agree to any specific changes and amendments to the terms and conditions of the Agreement requested by that potential bidder. If so, that potential bidder will become a Qualified Bidder and the Agent will approve the Qualified Bidder on the App and if the now Qualified Bidder is the eventual purchaser the conditions set out in the Offer Terms (Clause 5) as agreed to by the Seller, will be incorporated into the Agreement entered into by the Seller and the Qualified Bidder who has become the purchaser (or the Signing Agent for the Qualified Bidder).

4.2 Once the Agent approves the Qualified Bidder on the App, the App will:

- a. send a confirmation notification to the Qualified Bidder;
- b. show when the Final Bidding Stage will commence as provided for in Clause 4.4; and
- c. provide them with a Unique Identification Number that will be used to identify them in the App.

4.3 Qualified Bidders are entitled to participate in the Openn Negotiation on the basis that:

- a. they will be solely responsible (at their risk) for ensuring that they have adequate mobile and/or internet coverage to allow access to the App;
- b. other than the price, the Seller and Qualified Bidders are bound by the terms of The Offer contained in Clause 5;
- c. any bid made on the App using a Qualified Bidder's Unique Identification Number will be deemed to have been made by that Qualified Bidder;
- d. during the Campaign Bidding Stage and the Final Bidding Stage the Auctioneer may determine a minimum sum by which any bid must exceed the previous bid and no bid will be accepted that does not meet that requirement;
- e. during the Final Bidding Stage, the App will set a time limit during which Qualified Bidders may consider whether or not to place a bid;

- f. each Qualified Bidder will compete with other Qualified Bidders such that the successful Purchaser of the Property will be the Qualified Bidder who offers the highest price at or in excess of the Reserve Price;
- g. the Auctioneer may withdraw bids, at his or her complete discretion;
- h. the Seller may not bid personally, either directly or by an agent or other representative;
- i. Dummy Bidding and/or encouraging another party to engage in Dummy Bidding constitutes a breach of these conditions and may also constitute fraud and/or misleading or deceptive conduct and may attract serious consequences.
- j. subject to Clauses 4.7 and 4.9, once commenced the Openn Negotiation cannot be terminated by the Seller or any other party until:
 - i. all bids are exhausted; and
 - ii. if there is one or more bids at or exceeding the Reserve Price, the Bidder or their Signing Agent has provided the Price Confirmation by recording the Winning Bid in the Agreement as the price for which the Bidder will purchase the Property;
- k. the Qualified Bidder is solely responsible for the operation of the App, internet access, access to the account, and the making of each bid in the auction;
- l. A co-owner of the property is also eligible to become a Qualified Bidder and participate in the Openn Negotiation. Each Qualified bidder will be notified if a co-owner makes a bid by the letter "V" appearing directly before the Unique Identification Number of the bidder.

4.4 Commencement of the Final Bidding Stage

The Final Bidding Stage will commence at the date and time nominated by the Seller provided that:

- a. the Final Bidding Stage must commence between 8.00am and 9.00pm; and
- b. if the date and time for the Final Bidding Stage has changed since the Qualified Bidder entered their Pending Bid, the Seller's Agent and/or the Auctioneer will use reasonable endeavours to contact that Qualified Bidder no less than 12 hours prior to the commencement of the Final Bidding Stage to advise when the Final Bidding Stage will commence.

4.5 Conduct of Final Bidding Stage

During the Final Bidding Stage, the Openn Negotiation will be conducted as follows:

- a. during the Final Bidding Stage, the App will display the current highest bid. Qualified Bidders may choose to make a further bid exceeding what is then the highest bid by increments determined by the Auctioneer;
- b. the App will display the Unique Identification Number for each Qualified Bidder and show which Qualified Bidder has made the highest bid at any point in the Final Bidding Stage;
- c. during the Final Bidding Stage, the App will indicate:
 - i. the minimum sum by which any bid must exceed the previous bid determined by the Auctioneer through the App; and
 - ii. the time period during which further bids may be made before the current bid is successful;
- d. the Final Bidding Stage will proceed, with the Qualified Bidders increasing their bids, until all bids are exhausted within the time period set by the App;
- e. the ultimate Buyer of the Property will be the Qualified Bidder who bids the highest sum at or in excess of the Reserve Price that is accepted by the Auctioneer at the Fall of the Hammer.
- f. Once commenced the Final Bidding Stage cannot be terminated by the seller or any other party until:
 - i. all bids have been exhausted; or
 - ii. if there are one or more bids at or exceeding the reserve price
- g. the Auctioneer may remove bids at his or her complete discretion if he or she thinks they are likely to have been made in error or bad faith
- h. as soon as practicable after the App records that the Highest Bidder has made the Winning Bid, the Highest Bidder or Signing Agent will complete the Price Confirmation;
- i. if any dispute arises in relation to any bid, such dispute will be determined by the Auctioneer.
- j. The Auctioneer may also pause the time limit for making bids during the Final Bidding Stage for the purpose of taking instructions from the Vendor or conferring with Qualified Bidders, and such a pause will be displayed on the App and visible to all Qualified bidders
- k. No negotiation as to the Terms of the Agreement will occur after the Bidder has been accepted as a Qualified Bidder.

4.6 Reserve Price

The Property is offered for sale subject to a Reserve Price:

- a. If no bid exceeds the Reserve Price in the Final Bidding Stage, the Seller is not obliged to sell the Property;
- b. If one or more bids in the Final Bidding Stage equals or exceeds the Reserve Price, then the Seller must sell the Property to the Highest Bidder;
- c. If none of the bids made by the Qualified Bidders equals or exceeds the Reserve Price, the Seller may choose to negotiate with one or more of the Qualified Bidders to sell the Property.

6. Signing Agent

6.1 In the event that the Bidder makes the Winning Bid, _____ (print Signing Agent name) is hereby authorised by the Bidder to sign the completed Agreement on behalf of the Bidder, incorporating the terms set out in Clause 5 and the Winning Bid as the purchase price.

Signed by _____ (print Bidder name)

X

7. Modification of these Terms

In this disclaimer and terms and conditions (Terms), "we", "us", "our" and "Openn Negotiation" refers to Openn Pty Ltd (ACN 612 338 477) and any related body corporates. The Openn Negotiation App is available for you to access conditional on your acceptance of these Terms. By continuing to access the Openn Negotiation App you are agreeing to these Terms. If you do not agree to these terms, you must not access the Openn Negotiation App

We reserve the right to modify these Terms from time to time. Your use of the Openn Negotiation App following any change constitutes your agreement to the Terms as changed.

8. Disclaimers and limitation of liability and indemnity

8.1 Use of the App

The use of the Openn Negotiation App and all information and data provided on or through the App is entirely at the Bidders risk. The Bidder is responsible for all Bidder activity in connection with accessing and using the App. Neither the Seller, Sellers Agent, Auctioneer, Owner or Operator warrant, guarantee or make any representation that:

- a. the App, or the server that makes the App available on the World Wide Web are completely secure, free of software viruses, disabling code or other harmful components;
- b. the functions contained in any software or applications contained on or integrated with the App will operate uninterrupted or are error-free;
- c. any errors and defects in the App will be corrected; and
- d. unless expressly stated, the information provided on or through the App is suitable, reliable, accurate, current, complete or fit for any particular purpose. Unless expressly stated, the information on the App is provided for information purposes, general interest and enquiry only. Before relying on the information on the App, the Bidder should verify the accuracy of the information and consult with an appropriate professional for specific advice tailored to the Bidders situation. To the extent permitted by law, the Seller, Sellers Agent, Auctioneer, Owner and Operator exclude all liability for any loss or damage (including direct and consequential loss) arising from or in connection with:
 - i. the Bidders use of the App;
 - ii. the Bidders reliance on any information provided on or through the App;
 - iii. any delay or inability to use any part of the App; and/or
 - iv. any failure to provide services or any information through the App.

8.2 Owners Service

- 8.2.1 The Owner does not conduct the Openn Negotiation process and the Owner:
- a. is not an auctioneer or real estate agent and does not claim to be;
 - b. does not own or offer for sale the real estate listed on the App; and
 - c. its role is limited to providing the App for the sale of the Property.

8.2.2 The Owner is therefore not responsible or liable:

- a. in the event that the Seller or Bidder fails to complete a transaction;
- b. for the completion of the sale;
- c. for the state and condition of any Property listed on the App; and/or for verifying the Property listed on the App.

8.3 Liability and Indemnity

- 8.3.1 The Operator, Owner, Seller's Agent, Auctioneer and their officers, directors and employees will not be held liable, in any circumstances, for any loss or damages which arise out of:
- a. any use, attempted use and/or any technical failure of the App;
 - b. acting, or failing to act, on any information contained on or referred to on the App; and
 - c. any errors or defects in the App.
- 8.3.2 The Qualified Bidder and the Seller release and hold harmless the Seller's Agent, Auctioneer, Owner and the Operator and their officers, directors and employees from and against all actions, suits, demands, claims, losses, damages and costs whatsoever, whether at law or in equity arising out of:
- a. any use, attempted use and/or any technical failure of the App;
 - b. acting, or failing to act, on any information contained on or referred to on the App; and
 - c. any errors or defects in the App. Users of the App will indemnify and keep indemnified the Seller's Agent, Auctioneer, the Owner and the Operator and their officers, directors and employees from and against all actions, suits, demands, claims, losses, damages and costs whatsoever, whether at law or in equity arising out of any breach of these App Terms and Conditions by You.
- 8.4 The Seller, Sellers Agent, Auctioneer, Owner and Operator accept no responsibility for any liability suffered by the Bidder as a result of not electing to have the Agreement and these Terms reviewed by their lawyer.

9. Indemnity

You will at all times indemnify us and keep us and our officers, employees and agents indemnified from and against any loss (including direct and consequential loss), damage or liability incurred by us arising from any claim, demand, suit, action or proceeding by any person, arising out of, in connection with or in respect of

- a. any breach of these Terms by you; and/or
- b. your use of the Openn Negotiation App.

10. Intellectual property

Unless otherwise indicated, the Parties acknowledge that:

- a. the Owner owns or is licensed to use all intellectual property (including copyright, trademarks and designs) subsisting in the content (including any graphics, images, logos, text, material, software) on the App; and
- b. the content on the App must not be modified, copied, reproduced, republished, framed, uploaded to a third party, posted, transmitted or distributed in any way except as expressly provided for on the App, or as expressly authorised in writing by the Owner.

11. Privacy

The Privacy Policy (available at <https://www.openn.com.au/privacy-policy>) forms part of these Terms.

By using the App, the Bidder and Seller consent to the collecting, handling and using personal information in accordance with the Privacy Policy.

12. Termination of access

The Seller, Seller Agent, Auctioneer, Owner, Operator may terminate access to the App at any time without giving any explanation or justification for the termination of access. None of them are liable to the Bidder for any costs, losses or damages of any kind arising as a consequence of terminating access to the App.

13. General

If any of these Terms are held to be invalid, unenforceable or illegal for any reason, the remaining Terms will continue to apply. that the laws of the State will apply to the sale of the Property on the App

These Terms are governed by the laws of the State. You agree to the jurisdiction of the relevant courts of State of the Property on the App to determine any dispute arising out of these Terms.

All rights which are not expressly granted in these Terms are expressly reserved.

14. Bidder's Declaration

1. The Bidder confirms that if the Bidder is the purchaser of the Property, they confirm their agreement for the sale and settlement of the Agreement for the Property;
2. The Bidder confirms they understand and agree that the Agreement will be subject only to the Offer Terms set out in Clause 5 and there is no cooling off period; and
3. The Bidder warrants that they have had an opportunity to obtain independent legal advice in relation to this document and the Agreement.
4. The Bidder warrants they have received a copy of REAA approved 'New Zealand Residential Property Sale and Purchase Agreement Guide' and confirm that they have been given adequate time to consider the contents of this guide, prior to signing this agreement.
5. If the Primary Bidder has not completed any details in the Other Bidder(s) section of this form or this form has not yet been signed by the Other Bidder(s) then the Primary Bidder acknowledges that the Primary Bidder is the sole bidder and will be the sole purchaser if they are the successful bidder.
6. If the Primary Bidder is also bidding on behalf of another person then;
 - a. The Primary Bidder acknowledges that they are bidding for themselves and on behalf of the Other Bidder(S) and the Primary Bidder and the Other Bidder(s) will be the purchaser if they are the Successful Bidder; and
 - b. the Primary Bidder warrants that they have authority to bid on behalf of the Other Bidder(S) and if any authority to do so is withdrawn then the Primary Bidder must not thereafter bid on behalf of the other Bidder;
 - c. the Primary Bidder indemnified the Operator, the Owner, the Agent and the Auctioneer from and against all actions, suits, demands, claims, losses, damages and costs whatsoever, whether at law or in equity arising out of any breach of the warranties in this clause by the Primary Bidder.
7. The Other Bidder(S) authorise the Primary Bidder to bid on their behalf to purchase the Property and acknowledges that they will be included as the purchasers if the Primary Bidder is the Successful Bidder

Primary Bidder's Signature Dated: _____

Other Bidder's Signature Dated: _____

15. Seller/s Declaration

In the event the Seller is unable to be present at the location from where the Seller's Agent and/or Auctioneer is conducting this sale, the SELLER:

1. Confirms that they are the Seller of the Property and confirm their agreement for the sale and settlement of the Agreement for the Property;
2. Confirm their instructions to nominate, authorise and direct the Seller Agent to complete the details of the Agreement to incorporate the Offer Terms made by the Highest Bidder or any Sole Bidder who has made the Winning Bid, including the Price;
3. Confirm their instructions to nominate, authorise and direct the Seller Agent to execute the Agreement on the Seller's behalf; and
4. Warrant they will not engage in Dummy Bidding.

Seller/s Signature Dated: _____

Seller/s Signature Dated: _____