



### 3. Definitions (continued)

28. **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.
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;
30. **Winning Bid** means the successful bid made in the App which will be confirmed by the Purchaser or the Auctioneer (pursuant to the Authority granted by the buyer set out in clause 6) 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:
- Download the app or visit [www.openn.com.au](http://www.openn.com.au)
  - access and register their details in the App;
  - Provide to the Seller's Agent this form, being fully completed and signed including the proof of identity;
  - 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;
  - select the property in the App
  - enter their Pending Bid in the App;
  - complete the Offer Terms in clause 5;
  - provide their contact details to the Agent.
  - be confirmed as a Qualified Bidder on the Bidder Record as defined where applicable in relevant jurisdiction;
  - 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..
  - A prospective bidder may waive their right to have the Contract of Sale of Real Estate, Authority and these Terms of Use reviewed by their solicitor/conveyancer.
  - If a prospective bidder waives their right to have the Contract of Sale of Real Estate and Authority 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 Contract of Sale of Real Estate, Authority 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:
- 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
  - the Seller will agree to any specific changes and amendments to the terms and conditions of the Contract of Sale of Real Estate 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 Contract of Sale of Real Estate entered into by the Seller and the Qualified Bidder who has become the purchaser (or the Agent acting under authority for the Qualified Bidder pursuant to any authority granted by the Qualified Bidder in clause 6 of this document)
- 4.2 Once the Agent approves the Qualified Bidder on the App, the App will:
- send a confirmation notification to the Qualified Bidder;
  - show when the Final Bidding Stage will commence as provided for in clause 4.4; and
  - 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:
- 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;
  - other than the price, the Seller and Qualified Bidders are bound by the terms of The Offer contained in clause 5;
  - 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;
  - 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;
  - 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;
  - 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;
  - the Auctioneer may withdraw bids, at his or her complete discretion;
  - the Seller may not bid personally, either directly or by an agent or other representative;
  - 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.
- 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:
- the Final Bidding Stage must commence between 8.00am and 9.00pm; and
  - 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:
- 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;
  - 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;
  - during the Final Bidding Stage, the App will indicate:
    - the minimum sum by which any bid must exceed the previous bid determined by the Auctioneer through the App; and
    - the time period during which further bids may be made before the current bid is successful;
  - 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;
  - 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.
  - Once commenced the Final Bidding Stage cannot be terminated by the seller or any other party until:
    - all bids have been exhausted; or
    - if there are one or more bids at or exceeding the reserve price
  - 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
  - as soon as practicable after the App records that the Highest Bidder has made the Winning Bid, the Highest Bidder or Auctioneer (on behalf of the Highest Bidder pursuant to the Authority) will provide the Price Confirmation;
  - if any dispute arises in relation to any bid, such dispute will be determined by the Auctioneer.
  - 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
  - No negotiation as to the Terms of the Contract 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:
- If no bid exceeds the Reserve Price in the Final Bidding Stage, the Seller is not obliged to sell the Property;
  - 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;
  - 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.
- 4.7 Purchase of the Property by a Sole Bidder
- The Seller may accept an offer made by a Qualified Bidder during the Campaign Bidding Stage without commencing the Final Bidding Stage where there is only one Qualified Bidder (they will then be the Sole Bidder), as follows:
- all bids by the Sole Bidder must be made through the App;
  - the Seller may accept any bid made by a Sole Bidder through the App without commencing the Final Bidding Stage;
  - If the Reserve Price has not yet been met, the Auctioneer must receive in writing from the Seller confirmation they will accept a lower reserve price.
  - This bid will then become the Winning Bid upon acknowledgement from the Sole Bidder of the Seller's intention to accept their bid as the Winning Bid. The sole bidder or auctioneer (on behalf of the sole bidder, pursuant to the Authority in clause 6) will provide the Price Confirmation and authorise the completion, execution and unconditional exchange of Contract of Sale of Real Estate of the property. Or the Sole Bidder may withdraw their current bid.

**4. Declaration and Terms (continued)**

- 4.8 Purchase of the Property otherwise than during the Campaign Bidding Stage or Final Bidding Stage
If the Property does not sell during the Final Bidding Stage, but an offer is made by a Qualified Bidder that is accepted by the Vendor by noon the following day:
a. The sale must be on the terms and conditions (other than price) set out in clause 5; and
b. The sale will be conducted in accordance with these conditions such that the Purchaser and the Vendor must record in writing the price agreed by the parties using the Price confirmation or any other written format;
4.9 Suspension or withdrawal of Openn Negotiation
a. The Auctioneer may Suspend or withdraw the Openn Negotiation at any time during the Openn Negotiation, if:
i. He or she reasonably considers that a technical problem has occurred with the App such that the Openn Negotiation cannot properly proceed; or
ii. He or she reasonably considers that one or more Qualified Bidders are experiencing difficulties with the use of the App such that the Openn Negotiation cannot properly proceed.
b. If the Auctioneer cancels the Openn Negotiation in accordance with clause 4.9a above, the Vendor's Agent will contact the Qualified Bidders at their Contact Details to advise them of a new Openn Negotiation (and a new Final Bidding Stage) provided that upon the Openn Negotiation restarting in these circumstances, no bidder shall be bound by any prior bid and shall be free to recommence bidding at any amount the bidder wishes.

**5. Offer Terms**

The Bidder's offer to purchase the Property is subject to the following conditions to be incorporated into any agreement for sale and purchase should the Bidder make the Winning Bid:

**5.1 Deposit:**

A deposit of \$\_\_\_\_\_ of which \$\_\_\_\_\_ is paid at the fall of the hammer, and \$\_\_\_\_\_ to be paid within \_\_\_\_\_ days of acceptance.

**5.2 Possession and/or Settlement Date \_\_\_\_\_**

**5.4 Other special conditions: \_\_\_\_\_**

**5.3 Finance**

Lender: \_\_\_\_\_

Amount required: \_\_\_\_\_

Latest Date: \_\_\_\_\_

The contract otherwise incorporates the Contract of Sale set out in Appendix A.

**6. Authority**

- 6.1 In the event the Bidder makes the Winning Bid, the Bidder agrees to sign the Contract and do everything else necessary to transfer the Property to the Bidder.
6.2 The Bidder irrevocably appoints the Auctioneer as the Bidder's agent to incorporate the Offer Terms set out in clause 5 and the Winning Bid as the Price and to sign the Contract on the Bidder's behalf.
6.3 Further to clause 6.2, the Bidder authorises the Auctioneer to do the following things on their behalf, in respect of the Property if the Bidder makes the Winning Bid as the Highest Bidder or Sole Bidder for the purchase of the Property via the App:
1. complete the reference schedule pages on the Contract in respect of the Property, to incorporate the Offer Terms and the Price; and
2. sign the Contract in respect of the Property and exchange the Contract with the Seller of the Property.
6.4 The Bidder specifies that this authority begins immediately and expires automatically and without further effect on the day that is one day after the Final Bidding Stage.
6.5 The Bidder agrees to ratify and confirm anything the Auctioneer lawfully does in accordance with this clause 6.
6.6 The Auctioneer, Seller Agent and the Seller Agent's directors or licensed sales representatives (as the case may be) have the right, upon confirmation of the Winning Bid in the App, to accept the Highest Bidder or Sole Bidder's offer on behalf of the Seller on the Fall of the Hammer, and the conclusion of the Openn Negotiation process.

Signed by (print name) \_\_\_\_\_

X

Signed by (print 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**

**8.1 Use of the Openn Negotiation App**

The use of the Openn Negotiation App and all information and data provided on or through the Openn Negotiation App is entirely at your own risk. You are responsible for all of your activity in connection with accessing and using the Openn Negotiation App. We do not warrant, guarantee or make any representation that:

- a. the Openn Negotiation App, or the server that makes the Openn Negotiation 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 Openn Negotiation App will operate uninterrupted or are error-free;
c. any errors and defects in the Openn Negotiation App will be corrected; and
d. unless expressly stated, the information provided on or through the Openn Negotiation App is suitable, reliable, accurate, current, complete or fit for any particular purpose.
Unless expressly stated, the information on the Openn Negotiation App is provided for information purposes, general interest and enquiry only. Before relying on the information on the Openn Negotiation App, you should verify the accuracy of the information and consult with an appropriate professional for specific advice tailored to your situation.
To the extent permitted by law, we exclude all liability for any loss or damage (including direct and consequential loss) arising from or in connection with:
a. your use of the Openn Negotiation App;

- b. your reliance on any information provided on or through the Openn Negotiation App;
c. any delay or inability to use any part of the Openn Negotiation App; and/or
d. any failure to provide services or any information through the Openn Negotiation App.

**8.2 Owners Service**

- 8.2.1 The Owner does not conduct the Openn Negotiation process, 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. 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 a Seller or Buyer 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 for verifying the Property listed on the App.

**8.3 Liability and Indemnity**

- 8.3.1 The Operator, the 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. Disclaimers and limitation of liability (continued)

- 8.3.2 The Qualified Bidders and the Sellers release and hold harmless 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 use, attempted use and/or any technical failure of the App;
  - acting, or failing to act, on any information contained on or referred to

- on the App; and
  - 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.

## 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

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

## 10. Intellectual property

Unless otherwise indicated, we own or are 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 Openn Negotiation App.

Content on the Openn Negotiation 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 Openn Negotiation App, or as expressly authorised in writing by us.

## 11. Privacy

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

By using the Openn Negotiation App, you consent to us collecting, handling and using your personal information in accordance with our Privacy Policy.

## 12. Termination of access

We may terminate access to the Openn Negotiation App at any time without giving any explanation or justification for the termination of access. We are not liable to you for any costs, losses or damages of any kind arising as a consequence of terminating access to the Openn Negotiation 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. Buyer / Sole Bidder / Purchaser Declaration

- I/we confirm that if I am/we are the purchasers of the above-mentioned property I/we confirm my/our agreement for the sale, execution and exchange of the Contract of Sale of Real Estate of the property.
- I/we confirm we understand and agree that this contract shall be subject only to any other special conditions set out in clause 5.4 as agreed to by the Bidder and the Seller and there is no cooling off period.
- I/we warrant that I/we have had an opportunity to obtain independent legal advice in relation to this document.
- 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.
- If the Primary Bidder is also bidding on behalf of another person then:
  - 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
  - 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;
  - 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.
- 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

X

Dated: \_\_\_\_\_

Other Bidder's Signature

X

Dated: \_\_\_\_\_

## 15. Seller/s Declaration

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

- I/we confirm that I am/we are the seller/s of the above-mentioned property and confirm my/our agreement for the sale, and execution and exchange of Contract of Sale of Real Estate of the property.
- I/we confirm my/our instructions to nominate, authorise and direct the Seller's Agent:
  - complete the reference schedule pages of the Contract for the sale and purchase of land;
  - complete the Purchase Price Confirmation in accordance with clauses 4.5(h).
- I/we confirm my/our instructions to nominate, authorise and direct the Auctioneer to:
  - Complete the purchase Price Confirmation
  - to execute the Contract for the sale and purchase of land on my/our behalf.
- I/we warrant not to engage in Dummy Bidding as set out in clause 4.3(i)
- I/we warrant that I/we have had an opportunity to obtain independent legal advice in relation to this document.

Seller's Signature

X

Dated: \_\_\_\_\_

Seller's Signature

X

Dated: \_\_\_\_\_

## APPENDIX A

Insert a copy of the Contract for the Sale of Real Estate and any conditions of auction.