

# Openn Tender Terms of Use

## 1. Acknowledgement

- 1.1 The User acknowledges that the Openn Tender process is facilitated by the Agent.
- 1.2 The Owner owns the App that conducts the Openn Tender process and provides the App for Sellers and Agents to list property for sale by tender and
- 1.3 The Owner owns the App that conducts the Openn Tender process and provides the App for Sellers and Agents to list property for sale by Private Treaty and for Qualified Buyers to purchase the Property.

## 2. Terms of Use

- 2.1 These terms of use and the terms of service located at <https://www.openn.com.au/terms-of-service> (except those terms that apply to auctions) govern the agreement between Users and the Owner of the App in relation to the Openn Tender process.
- 2.2 These terms of use apply to the extent of any inconsistency between the terms of service located at <https://www.openn.com.au/terms-of-service> in relation to the Openn Tender process.
- 2.3 Words and phrases used in these terms of use have the same meaning as the terms of service located at <https://www.openn.com.au/terms-of-service> except as otherwise defined in these terms of use.

## 3. Owner's Service

- 3.1 The Owner does not conduct the Openn Tender process. The Owner:
- is not an auctioneer or a real estate agent and does not claim to be;
  - does not own or offer for sale the Property or any property listed on the App; and
  - role is limited to providing the App for the sale of the Property.
- 3.2 The Owner is therefore not responsible or liable:
- in the event that a Seller or Buyer fails to complete a Contract;
  - for the completion of the sale of a Property;
  - for the state and condition of any Property listed on the App; and
  - for verifying a Property listed on the App.

## 4. Commencement of Openn Tender

- 4.1 The Openn Tender process commences once a Property has been launched on the App and will prevail until the Property has been sold or withdrawn from the App.
- 4.2 Prior to using the App to place an Offer, it is recommended that Buyers:
- obtain independent legal advice on the Contract; and
  - undertake their own due diligence on a Property including without limitation building, pest and strata inspections and searches.

## 5. The Openn Tender Process

- 5.1 A Buyer must become a Qualified Buyer to participate in the Openn Tender process and use the App.
- 5.2 In order to become a Qualified Buyer, the Buyer must, prior to the Final Submission Date:
- download the App or visit [www.openn.com.au](http://www.openn.com.au) (if the Property is in Australia) or [www.openn.co.nz](http://www.openn.co.nz) (if the Property is in New Zealand);
  - create an account;
  - select the Property in the App; and
  - enter their Offer in the App including the Offer Price, their contact details and any terms and conditions.
- 5.3 In taking the steps to become a Qualified Buyer, the Buyer warrants to the Seller, the Agent and the Owner of the App that the Buyer previously had the opportunity to:
- inspect the Property and undertake due diligence on the Property and is satisfied with the Property (subject to any terms and conditions in their Offer);
  - obtain independent legal advice on the Contract and in relation to purchasing the Property.
- 5.4 In the Tender Submission Stage on the App, other Qualified Buyers can join the Openn Tender process.
- 5.5 Throughout the Tender Submission Stage, any Qualified Buyer may improve their Offer Price through the App.
- 5.6 The Final Submission Date and time will be displayed on the App to Qualified Buyers.
- 5.7 Prior to the Final Submission Date, the Agent will determine whether:
- the Buyer is eligible to participate in the negotiation for the Property based on the Seller's instructions; and
  - If so, the Buyer will become a Qualified Buyer and the Agent will approve the Qualified Buyer on the App.
- 5.8 Once the Agent approves the Qualified Buyer on the App, the App will:
- send a confirmation notification to the Qualified Buyer;
  - show the Final Submission Date; and
  - provide them with a Unique Identification Number that will be used to identify them in the App.
- 5.9 Qualified Buyers are entitled to participate in the Openn Tender on the basis that:
- any Offer made on the App using a Qualified Buyer's Unique Identification Number will be deemed to have been made by that Qualified Buyer;
  - during the Tender Submission Stage the Agent may determine a minimum sum above any existing Offer by which any new Offer must exceed and no Offer will be accepted that does not meet that requirement;
  - (subject to the laws in the State) the Agent may reveal on the App the Offer Price made by a Qualified Buyer or that an Offer has been made on the Property;
  - each Qualified Buyer will submit their best Offer before the Final Submission Date such that the Winning Buyer of the Property will be the Qualified Buyer who has had their Offer accepted by the Seller as the Winning Offer;
  - the Seller may not make an offer on the Property either directly or through an agent or other representative;
  - Dummy Offers and/or encouraging another party to engage in Dummy Offers constitutes a breach of these terms of use and may have serious legal consequences; and
  - the Qualified Buyer is solely responsible for the operation of the App, internet access, access to their account, and the making of each Offer in the Openn Tender process.

## 6. Final Submission Date

- 6.1 The Final Submission Date on the App will show the deadline nominated by the Seller by which Offers must be submitted. The Final Submission Date can be changed by the Agent but only before any Offers have been made, and
- 6.2 The ultimate Buyer of the Property will be the one who has had their Offer accepted by the Agent and has completed a Contract.

## 7. Formation of Contract

- 7.1 The Winning Buyer must sign (and return to the Agent) a Contract for the Property incorporating the terms and conditions of the Winning Offer within a reasonable timeframe after notice that the Winning Offer has been accepted
- and no later than any timeframe provided by the Agent.
- 7.2 If the Winning Buyer fails to comply with clause 7.1 then the Seller is under no obligation to sell the Property to the Winning Buyer.

## 8. Dummy Offers

- 8.1 Dummy Offers and/or encouraging another party to engage in Dummy Offers constitutes a breach of these terms of use and may also constitute fraud and misleading or deceptive conduct and attract serious consequences.
- 8.2 Any party who becomes aware of the occurrence of Dummy Offers must inform the Agent as soon as possible.
- 8.3 The Qualified Buyers and Sellers warrant that they will not engage in Dummy Offers nor encourage or permit any other party to engage in Dummy Offers.

## 9. Users of the App

- 9.1 Users of the App must not disclose their password to any other person nor allow any other person to access the App on his or her behalf.
- 9.2 If a User becomes aware of any unauthorised use of the App, the User agrees to immediately notify the Owner.
- 9.3 Users must ensure that they have adequate mobile and/or internet coverage to allow access to the App;
- 9.4 Users of the App will not hold the Owner responsible for any loss or damage arising from the misuse, improper use, or unauthorised use of their username and / or password for the App.
- 9.5 The Owner reserves the right to deny access to the App:
- in the event any false or fraudulent information is provided;
  - in the event of any unauthorised use of the App; and
  - at its sole discretion.

## 10. Withdrawal of Property from Sale

10.1 The Seller may instruct the Agent to withdraw the Property from the App at any point.

## 11. Withdrawal or Suspension of Openn Tender

11.1 The Agent may cancel the Openn Tender including, but not limited to, where:

- the Agent reasonably considers that a technical problem has occurred with the App such that the Openn Tender cannot properly proceed; or
- the Agent reasonably considers that one or more Qualified Buyers are experiencing difficulties with the use of the App such that the Openn Tender cannot properly proceed.

11.2 The Agent will contact the Qualified Buyers to advise them of a new Openn Tender Campaign (and a new Final Submission Stage) provided that upon the Openn Tender restarting in these circumstances, no Qualified Buyer shall be bound by any prior Offer and shall be free to make an Offer at any amount the Qualified Buyer wishes

## 12. Liability and Indemnity

12.1 The Developer, the Owner, Agent and their officers, directors and employees will not be held liable, in any circumstances, for any loss or damages which arise 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.

12.2 The Qualified Buyers and the Sellers release and hold harmless the Agent, the Owner and the Developer 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.

12.3 Users of the App indemnify and keep indemnified the Agent, the Owner and the Developer 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 terms of use by the User.

## 13. Compliance with Law

13.1 These terms of use are to be interpreted so that they comply with all applicable laws in each Jurisdiction.

13.2 If any part of these terms of use are unenforceable, illegal or void then it is severed and the remainder of these terms of use remain in force.

## 14. Intellectual Property

14.1 Unless otherwise indicated, the Owner and the Developer owns or has a license 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.

14.2 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.

## 15. Electronic Communication

15.1 All the relevant parties (including Users and Buyers) agree and consent to the provision and receipt of information and signatures, to the production of documents, to the recording of information and to the retention of documents by way of electronic communication or in electronic form.

## 16. Privacy

16.1 All the relevant parties (including Users and Buyers) agree and consent to the provision and receipt of information and signatures, to the production of documents, to the recording of information and to the retention of documents by way of electronic communication or in electronic form.

16.2 The Developer's Privacy Policy (available at <https://www.openn.com.au/privacy-policy>) forms part of these terms of use. By using the App, the User consents to the Developer collecting, handling and using the User's personal information in accordance with the Privacy Policy.

## 17. Governing Laws

17.1 These terms of use are governed by the laws of the State, and all Users submit to the exclusive jurisdiction of the State's Court.

## 18. Definitions

(a) **Agent** means the licenced real estate agent appointed by the Seller to sell a Property.

(b) **App** means the specialised software program designed to facilitate the Openn Tender process and known as "Openn".

(c) **Buyer** means person intending to make an Offer on a Property.

(d) **Contract** means a contract for the sale and purchase of a Property.

(e) **Developer** means Openn Pty Ltd ACN 612 338 477.

(f) **Dummy Offers** means false or fictitious Offers made by non-genuine Buyers with no intention of buying the Property and also includes any real estate offer practices prohibited in the Jurisdiction.

(g) **Final Submission Date** means the final date and time by which Qualified Buyers must submit Offers to purchase the Property through the App;

(h) **Offer** means an offer, including the Offer Price, contact details and any terms and conditions made by a Buyer, through the App, done during the process to become a Qualified Buyer and any Offer Price improvements.

(i) **Offer Price** means the purchase price offered for the Property within any Offer.

(j) **Openn Tender** means the process set out in these terms of use according to which the sale of the Property is to be conducted using the App;

(k) **Owner** means Openn Tech Pty Ltd ACN 607 908 636 being the owner of the App;

(l) **Property** means a property offered for sale by the Agent on the App.

(m) **Qualified Buyer** means a Buyer who has fulfilled the requirements set out in clause 5;

(n) **Seller** means the person entitled to sell a Property and who has appointed the Agent to sell a Property.

(o) **State** means the state or territory in Australia in which the relevant Property is located, or if the Property is in New Zealand, then New Zealand.

(p) **Tender Submission Stage** means the stage of the Openn Tender process that commences when the Property is listed on the App and ends when the Final Submission Date is reached;

(q) **Unique Identification Number** means the unique identifying number provided by the App to each Qualified Buyer to allow them to be identified in the App.

(r) **Winning Buyer** means the Qualified Buyer who makes the Winning Offer;

(s) **Winning Offer** means the Offer for the Property made in the App which has been accepted by the Seller.