**Openn Negotiation Bidding Rules Limited Power of Attorney and Offer Terms of Use**

1. **Parties**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Bidder** | Full Name/s: | buyer\_full\_name | | |
| Address: | buyer\_current\_street\_address | | |
| Suburb: | buyer\_current\_suburb | Postcode: | buyer\_current\_postcode |
| Mobile: | buyer\_mobile | Email: | buyer\_email |
| Mobile: |  | Email: |  |

ADDITIONAL\_BIDDERS

and

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

|  |  |
| --- | --- |
| **Agent** | agent\_full\_name |
| agency\_details | |

(collectively referred to as **the parties**)

1. **The Bidder**
   1. 2.1 Intends to become a qualified bidder and bid on the following property by way of Openn Negotiation:

|  |
| --- |
| Property property\_address  Lot wa\_lot Deposited/Survey/Strata/Diagram/Plan wa\_deposited  Whole/Part Vol wa\_whole\_part\_lot Folio wa\_folio  (**property)** |

* 1. 2.2 Acknowledges that Openn Negotiation:
     1. 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 3.7 and/or in relation to the purchase of the property by a sole bidder pursuant to clause 3.9.
     2. Will be primarily conducted through the Openn Negotiation App (**App**) in accordance with the Terms set out below.
  2. 2.3 Releases and holds harmless the Agent, Auctioneer, Owner of Openn Negotiation and related parties against all actions, suits, demands, claims, losses, damages and costs whatsoever at law arising out of any technical failure of the Openn Negotiation App.
  3. 3. **Terms of use**
  4. The phrases and terms used here are defined on the Openn Negotiation website (**insert\_website\_address**)
  5. 3.1 Compliance with Law and Jurisdiction
     1. If any part of these Terms and Conditions are unenforceable, illegal or void then it is severed and the remainder of these Terms and Conditions remain in force
     2. The parties agree that the laws of the state will apply to the sale of the Property on the App (including, but not limited to, the laws of the state that govern the sale of real property by public auction).
     3. The parties agree to submit to the courts of the state to determine any dispute of these Terms and Conditions
  6. 3.2 Qualified Bidders

In order to become a Qualified Bidder, the Bidder must, prior to the final bidding stage:

* + 1. access and register their details in the App;
    2. enter their Starting Bid in the App;
    3. complete the Offer Terms in clause 5;
    4. pay the nominated deposit as per the Offer in clause 5 to the nominated stakeholder in cleared funds; and
    5. provide their contact details to the Agent.

The Offer must state all terms upon which the Bidder is prepared to purchase the Property other than the proposed purchase price.

* 1. 3.3 Prior to the Final Bidding Stage, the Seller will determine whether:
     1. 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
     2. the Seller will agree to any specific changes and amendments to the terms and conditions of the Contract for Sale and Purchase of Land 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
     3. if the now Qualified Bidder is the eventual purchaser the conditions set out in the accepted Offer Form as agreed to by the Seller, will be incorporated into the Contract for Sale and Purchase of Land entered into by the Seller and the Qualified Bidder who has become the purchaser.
  2. 3.4 Once the Agent approves the Qualified Bidder on the App, the App will:
     1. send a confirmation notification to the Qualified Bidder;
     2. show when the Final Bidding Stage will commence as provided for in clause3.7; and
     3. provide them with a Unique Identification Number that will be used to identify them in the App.
  3. 3.5 Qualified Bidders are entitled to participate in the Openn Negotiation on the basis that:
     1. other than the price, the Seller and Qualified Bidders are bound by the terms of the offer contained in clause 5;
     2. 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;
     3. 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;
     4. 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;
     5. the Auctioneer may withdraw bids, at his or her complete discretion;,
     6. the Seller may not bid personally, either directly or by an agent or other representative;
     7. 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.
     8. subject to clauses 3.8 and 3.9, once commenced the Openn Negotiation cannot be terminated by the Seller or any other party until:
        1. all bids are exhausted; and
        2. if there is one or more bids at or exceeding the Reserve Price, the Bidder or their Attorney has provided the Price Confirmation by recording the Winning Bid in the in the area marked Purchase Price Confirmation as the price for which the Bidder will purchase the Property;
     9. 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;.
     10. 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. 3.6 Commencement of the Final Bidding Stage

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

* + 1. the Final Bidding Stage must commence between 8.00am and 9.00pm; and
    2. if the date and time for the Final Bidding Stage has changed since the Qualified Bidder entered their Starting 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.
  1. 3.7 Conduct of Final Bidding Stage

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

* + 1. 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, in accordance with clause 3.5(d));
    2. 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;
    3. 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 in accordance with clause 3.5(c)); and

ii.the time period during which further bids may be made before the current bid is successful;

* + 1. the Final Bidding Stage will proceed, with the Qualified Bidders increasing their bids, until each Qualified Bidder declines to make any further bid within the time period set by the App;
    2. 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 Limited Power of Attorney) will provide the Price Confirmation;
    3. if any dispute arises in relation to any bid, such dispute will be determined by the Auctioneer.
    4. 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
  1. 3.8 Reserve Price

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

* + 1. If no bid exceeds the Reserve Price in the Final Bidding Stage, the Seller is not obliged to sell the Property;
    2. 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;
    3. 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.

* 1. 3.9 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:
     1. all bids by the Sole Bidder must be made through the App;
     2. the Seller may accept any bid made by a Sole Bidder through the App without commencing the Final Bidding Stage;
     3. 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
  2. 3.10 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 at the following times:

Western Australia, Victoria and Queensland: until noon the following day

New South Wales: until midnight on the same day

New Zealand:

* + 1. The sale must be on the terms and conditions (other than price) set out in clause 5; and
    2. 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
  1. 3.11 Suspension of Openn Negotiation
     1. The Auctioneer may Suspend the Openn Negotiation at any time during the Openn Negotiation, if:
        + 1. He or she reasonably considers that a technical problem has occurred with the App such that the Openn Negotiation cannot properly proceed; or
          2. 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.
     2. If the Auctioneer cancels the Openn Negotiation in accordance with clause 3.11a 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.

1. **Power of Attorney**

4.1 The Qualified Bidder irrevocably appoints the Auctioneer to be the Buyer’s Attorney solely to exercise the powers described below.

* 1. 4.2 The Auctioneer has the right, upon receipt of the Price Confirmation, to accept the Highest Bidder’s Offer on behalf of the Seller in the case of the Property being sold via normal process, Sole Bidder, and conclusion of the Openn Negotiation process, where the property is sold in accordance with auction law.
  2. 4.3 In the event that the Bidder makes the Winning Bid, the Attorney is authorised to complete and sign an agreement for sale and purchase in the appropriate form, on behalf of the Highest Bidder recording the terms set out in clause 5 and the Winning Bid as the purchase price.

GENERAL NON-ENDURING[POWER OF ATTORNEY](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/vic/num_act/poaa201457o2014286/s3.html#general_non-enduring_power_of_attorney)

This [general non-enduring power of attorney](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/vic/num_act/poaa201457o2014286/s3.html#general_non-enduring_power_of_attorney) is made under Part 2 of the **Powers of Attorney Act 2014** and has effect as a deed.

This general non-enduring power of attorney is made on: Bidder\_Signature\_SignDate (*insert date of making*)

**I**, buyer\_full\_name ( *insert name of person making power of attorney* ) of buyer\_current\_address ( *insert address of person making power of attorney*) **appoint** auctioneer\_full\_name ( *insert name of attorney*) of auctioneer\_address ( *insert address of attorney*) to be my attorney.

I authorize my attorney to do the following things on my behalf, in respect of the property located at

property\_address (the Property’)

if I am the highest bidder for the sale of the Property via the Openn Negotiation App:

1. complete the ‘particulars’ page on the Contract of Sale of Real Estate in respect of the Property, in accordance with any terms that I have previously provided in writing to the attorney; and
2. execute the Contract of Sale of Real Estate in respect of the Property and exchange such contract with the vendor of the Property.

I specify that this power of attorney begins immediately.

**Signed as a deed by:**

Bidder\_Signature\_SignHere\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_

Print name: sign\_buyer\_full\_name

ADDITIONAL\_BIDDERS\_SIGNATURE

1. **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:

* + 1. Deposit:

|  |
| --- |
| $ deposit\_now (First Instalment)  $ deposit\_remainder (Deposit remaining)  $ deposit\_total (Total Deposit)  (to be deposited in the nominated stakeholder’s trust account at the time of completion of this form) |

* + 1. Possession and/or settlement date

|  |
| --- |
| txt\_settlement |

* + 1. Finance:

|  |
| --- |
| Lender: lender\_name  Amount required: loan\_amt  Finance Date: finance\_date |

* + 1. Vacant possession  Subject to Tenancies
    2. Other special conditions:

|  |
| --- |
| additional\_terms |

**Bidders’s Signature:** Bidder\_Signature\_SignHere **Dated:** Bidder\_Signature\_SignDate

ADDITIONAL\_BIDDERS\_SIGN\_HERE

**Buyer / Sole Bidder / Purchaser Declaration**

1. 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 unconditional exchange of Contract for Sale of Land of the property.
2. I/we confirm we understand and agree that on unconditional exchange there is no cooling-off period.
3. I/We warrant that I/we have had an opportunity to obtain independent legal advice in relation to this document and the Openn Negotiation General Terms and Conditions

**Bidders’s Signature:** Bidder\_Signature\_SignHere **Dated:** Bidder\_Signature\_SignDate

ADDITIONAL\_BIDDERS\_SIGN\_HERE

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**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:

1. 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 for the sale and purchase of land of the property.

2. I/we confirm my/our instructions to nominate, authorise and direct the Seller’s Agent:

a. complete front page details of the Contract for the sale and purchase of land;

b. complete the Purchase Price Confirmation in accordance with clauses 3.6(e), 6.1(9), and 9.

3. I/we confirm my/our instructions to nominate, authorise and direct the Auctioneer to:

a. Complete the purchase Price Confirmation

b to execute the Contract for the sale and purchase of land on my/our behalf.

4. I/we warrant not to engage in Dummy Bidding as set out in Clause 3.4(g)

5. I/We warrant that I/we have had an opportunity to obtain independent legal advice in relation to this document and the Openn Negotiation General Terms and Conditions

**Seller’s Signature:** Seller\_Signature\_SignHere **Dated:** Seller\_Signature\_SignDate

ADDITIONAL\_SELLERS\_SIGN\_HERE