

# Helen Ogle Pty Ltd ATF The Ogle Family Superannuation Fund

## INVOICE

ABN: 75 930 219 741

Phone 02 49267100

Email

Address PO Box 1798, Newcastle NSW 2300

Invoice No.: 0134

Invoice Date: 28/08/2020

Due Date: 28/08/2020

### BILL TO:

Chic Property Pty Ltd  
Newcastle West NSW 2302

DESCRIPTION	AMOUNT
<i>Supply of Property:</i>	
Supply of Property at 3/8 pennant Road Cardiff NSW 2285	\$400,000.00
<i>Adjustments:</i>	
Per Settlement Statement	\$3,019.57
<hr/>	
Total Fees	\$403,019.57
Plus: GST	\$40,301.96
<b>TOTAL FEE INCLUDING GST</b>	<b>\$443,321.53</b>
Less payment made	\$0.00
<b>TOTAL PAYABLE</b>	<b>\$443,321.53</b>

Make all checks payable to Helen Ogle Pty Ltd ATF The Ogle Family Superannuation Fund

Our bank account details for direct debit are BSB 182512 Account 964039135

**Thank you for your business!**

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**SETTLEMENT ADJUSTMENT SHEET**

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**Matter:** Helen Ogle Pty Limited sale to Chic Property Pty Ltd  
**Property:** 3/8 Pennant Road Cardiff 2285

**Adjustment:** 20/07/20  
**Settlement:** 28/08/20

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<b>Purchase price</b>	\$400,000.00
less deposit	\$40,000.00
<b>Balance</b>	<u>\$360,000.00</u>

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**Adjustments**

	Vendor	Purchaser
Council rates	From 01/07/20 to 30/06/21 - \$1,621.95 Treated as paid - purchaser allows 345/365 days	\$1,533.08
Water rates	From 01/07/20 to 31/10/20 - \$242.23 Treated as paid - purchaser allows 103/123 days	\$202.84
Water Usage	From 16/07/20 to 20/07/20 Vendor allows 4 days at 0.47 kL/day at \$2.46/kL	\$4.62
Strata Levies	From 07/08/20 to 06/11/20 - \$1,087.35 Treated as paid - purchaser allows 109/92 days	\$1,288.27
Purchaser allows s.184 certificate		\$119.90
GST on price		\$40,000.00
GST on adjustments		\$301.96
Totals	<u>\$4.62</u>	<u>\$403,446.05</u>
less amount payable by vendor		\$4.62
<b>Balance due to Vendor</b>		<b><u>\$403,441.43</u></b>

**Vendor destinations**

Helen Ogle Pty Limited	\$398,062.08
Lake Macquarie City Council	\$1,621.95
Hunter Water Corporation	\$407.58
Scott Ayerst Solicitor	\$2,148.40
Vendor PEXA fee	\$114.07
The Owners - Strata Plan No. 52069	\$1,087.35

**Total Vendor Destinations** **\$403,441.43**

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# COMMERCIAL / INDUSTRIAL SALES INSPECTION REPORT AND AUCTION AGENCY AGREEMENT AND CONTINUING AGENCY

Raine &amp; Horne

The Property, Stock &amp; Business Agents Act 2002 and Regulations requires all Agent's instructions to be in the form of a written agreement.

SALES INSPECTION REPORT

**PARTIES****Principal**

Helen Ogle Pty Ltd  
 ABN / ACN 129 348 438 GST Registered  Yes  No  
 Address 26/304 Wharf Rd  
Newcastle Postcode  
 Phone: Work Mobile 0408 860 126  
 Phone: Home Fax  
 Email fiduciahelen1@gmail.com

**Agent**

Maxwell Estate Agents Pty Ltd (atf The Trustee for Maxwell Estate Agents Unit Trust)  
 Licensee's Licence No.\* (see note) 1075992  
 ABN / ACN ACN 091 654 689 (ABN 16 184 382 265) GST Registered  Yes  No  
 Trading as Raine & Horne Newcastle  
 Address 92-94 Darby Street  
 Cooks Hill, NSW Postcode 2300  
 Phone: Work 4915 3000 Mobile  
 Fax 4915 3444 Email sales@rhplus.com.au

\* Note: If the Agent trades as a corporation the licensee's licence number is the corporation's licence number.

**PROPERTY****Address of Property for Sale**

3/8 Pennant St Cardiff  
 Postcode

**Together with inclusions as specified in the Contract for Sale**

Nil known to Agent

**Covenants/easements/defects/notices/orders as specified in the Contract for Sale, if known**

Nil known to Agent

Offered:  with vacant possession  subject to existing tenancies

Special Conditions (if any) as specified in the Contract for Sale

The Additional Conditions set out in Annexure A form part of this agreement

Refer to Clauses 6 &amp; 7 regarding special instructions about the inspection of and promotional activities for the Property.

**PRICE**

Price at which the Property is to be offered (including GST, if any) \$ Auction sale by way of Open Negotiation Method

Recommended method of sale The Sale to be conducted by way of auction by means of the Open Negotiation method as referred to and set out in Annexure A

Agent's opinion as to current estimated selling price (or price range) (including GST, if any) \$ 450,000 to \$495,000 + GST  
(this opinion is not to be construed as a valuation)PRINCIPAL'S  SOLICITOR  CONVEYANCER

Firm  
 Name of Solicitor/Conveyancer Scott Ayerst  
 Address 1. Business Level 4 16a Bolton St Newcastle  
 2. Document Service  
 Phone: Work Mobile 0423 555 609  
 Fax Email scott@sasolicitor.com.au

Signature of Agent  Date of report 25/5/20

**AUCTION AGENCY AGREEMENT**

**Agency Period**

- In consideration of the Agent promising to use their best endeavours to sell the subject Property, the Principal hereby grants to the Agent exclusive selling rights of the Property for a period from 15 / 05 / 2020 to 11 / 09 / 2020 inclusive now called the "Exclusive Agency Period".
- In addition to the exclusive selling rights granted to the Agent under Clause 1, the Principal also grants to the Agent non-exclusive selling rights of the Property commencing on the expiry of the Exclusive Agency Period specified in Clause 1 and until such time as either the Property is sold or this agreement is terminated by either party giving notice in writing, but without prejudice to either party's rights accrued or obligations incurred prior to the effective termination, now called the "Continuing Agency Period".

**Reserve Price**

- The Agent is authorised to sell the property for not less than the reserve price of \$ 550,000 + GST or such other price as the Principal may agree to accept. In the event that a reserve price is not specified in this agreement the Principal shall advise the Agent in writing of the reserve price before the start of bidding for the Property at the auction.

**Auction Date**

- The Agent is authorised to submit the Property to public auction on 11 / 06 / 2020 or such other date as agreed to by the Principal. (See Annexure A)

**Agent's Remuneration**

- The Agent shall be entitled to a fee of 2% + GST (GST incl.) if during the Exclusive Agency Period the Property is sold either: (a) by the Agent; (b) by any other agent; or (c) by the Principal.
- The Agent shall be entitled to a fee at the agreed amount if at any time following the expiration of the Exclusive Agency Period the Principal enters into a Contract for the Sale of the Property with a purchaser effectively introduced to the Principal or the Property during the Exclusive Agency Period by the Agent, by any other agent, or by the Principal.
- The Agent shall be entitled to a fee at the agreed amount if during the Continuing Agency Period the Agent effectively introduces to the Principal or the Property a purchaser who subsequently enters into a binding contract.
- The Agent's fee is calculated on the selling price. If the sale is subject to GST then the Agent's fee is calculated on the GST inclusive selling price.

**Inspection**

- Unless otherwise instructed by the Principal, any prospective purchaser is entitled to inspect the Property in the following circumstances:  
By appointment with Agent

**Promotional Activities**

- The sale of the Property is to be advertised and/or otherwise promoted  
 as per the attached schedule OR  not advertised  
 OR as follows:


For Sale Sign: Permission is hereby granted for the Agent to erect "For Sale" signage  Yes  No  
 It is acknowledged that the Agent is not responsible for any liability, damages or injuries incurred as a result of the erection of the signage.

**Expenses**

- The Agent shall be entitled to reimbursement for the following expenses incurred by them:

Item	Amount	When due and payable
Administration Services and Advertising	\$ 3,208.16	On signing of Agency Agreement
	\$	
	\$	
	\$	
	\$	
	\$	

TOTAL amount of expenses or charges the Agent expects to incur and for which the Agent is entitled under this agreement to be reimbursed (incl GST where applicable).

**Variation of Fees and Expenses**

9. The services to be provided by the Agent and any fees and expenses payable by the Principal to the Agent pursuant to this agreement cannot be varied except as agreed by the Principal in writing.

**Principal's Fee Obligation**

10. The fee to which the Agent is entitled shall be due and payable on completion of the sale or upon demand if the sale is not completed owing to the default of the Principal after the parties have entered into a binding contract.

**Deposit**

11. It is irrevocably agreed that all monies paid by the purchaser as deposit monies shall be held by the Agent in trust as stakeholder pending completion.

**Authority to Deduct**

12. If any money is received by the Agent on behalf of the Principal, then the Principal authorises the Agent to deduct all of the Agent's above mentioned fees, expenses and charges before accounting to the Principal or the Principal's solicitor/ conveyancer.

**Payment to Principal**

13. If money held by the Agent becomes due to the Principal, then the Principal directs the Agent to pay that money by:

Cheque  Yes  No      Electronic Funds Transfer (EFT)  Yes  No

If by EFT: Account Name \_\_\_\_\_

BSB \_\_\_\_\_ / \_\_\_\_\_ Account No. \_\_\_\_\_

**Financial Institution Taxes or Deductions**

14. The Agent shall be entitled to be reimbursed for any taxes or deductions debited by banks or other financial institutions against the Agent's account that are attributable to the affairs of the Principal.

**Contract For Sale**

15. The auctioneer at the auction is authorised to sign the Contract for Sale on behalf of the Principal in terms to be provided by the Principal or their solicitor / conveyancer to the Agent.

**Conjunction**

16. Unless otherwise instructed, the Agent may allow other agents to act in conjunction with them in order to effect a sale but only one fee will be payable.

**Limit of Agent's Services**

17. The Agent does not undertake to perform any other services in connection with the sale .

**GST**

18. i Any amounts referred to in this agreement which are payable by the Principal to the Agent in respect of services provided by the Agent under this agreement, including reimbursement of expenses, are expressed inclusive of the Goods and Services Tax ("GST"), at the rate of 10% (the current rate). If the current rate is increased or decreased, the parties agree that any amounts referred to in this agreement will be varied accordingly.

ii The parties agree that the time of supply for GST purposes shall be the completion date of the sale.

**Agent's Indemnity and Liability**

19. The Principal will hold and keep indemnified the Agent against all actions, suits, proceedings, claims, demands, costs and expenses whatsoever which may be taken or made against the Agent in the course of or arising out of the proper performance or exercise of any of the powers, duties or authorities of the Agent under this agreement.

**Financial and Investment Advice**

20. The Principal acknowledges that any financial or investment advice provided by the Agent to the Principal is of a general nature only whose preparation does not take into account the individual circumstances, objectives, financial situation or needs of the Principal. The Principal is advised to consult with their own independent financial and/or investment advisor.

**Material Fact**

21. i The Principal warrants that the Principal has supplied the Agent in writing with all the relevant details and information pertaining to all the material facts in respect of the Property.

ii The Principal acknowledges that the Property, Stock and Business Agents Act 2002 requires the Agent to disclose all material facts to prospective and actual purchasers.

iii The Principal directs the Agent to disclose all of the material facts provided in writing by the Principal to the Agent to all prospective and actual purchasers of the Property.

iv In this clause "material fact" has the same meaning as it has in Section 52 of the Property, Stock and Business Agents Act 2002.

**AUCTION AGENCY AGREEMENT**

**Privacy Policy**

22. The *Privacy Act 1988* (Cth) (the **Act**) allows personal information to be collected, used and disclosed for the purposes which it was collected, and otherwise in accordance with the Act. This Privacy Policy does not form part of this agreement and only applies to the extent the Agent collects, uses and discloses personal information. The Agent may amend, or amend and restate, this Privacy Policy from time to time and may subsequently notify the Principal of any changes to this Privacy Policy by updating it on the Agent's website or by other written notification to the Principal. Any changes to this Privacy Policy take effect upon the earlier of the update to the website or other notification to the Principal.

The personal information the Principal provides the Agent in connection with this agreement or collected from other sources is necessary for the Agent to: (a) identify and verify the Principal and the Property; (b) act on behalf of the Principal in accordance with this agreement; (c) where applicable, advertise, promote and, otherwise, market the Property for sale; (d) negotiate any prospective sale of the Property; (e) liaise and exchange information with the Principal, the ultimate purchaser, prospective purchasers and each of their legal and other advisors in relation to or in connection with any sale of the Property (including with respect to the Contract for Sale of Land); (f) comply with this agreement, any applicable law and any dispute resolution process; and (g) manage any sale of the Property (including assisting with the exchange of the Contract for Sale of Land and the preparation of any required statements of account).

If the personal information is not provided by the Principal, the Agent may not be able to act on behalf of the Principal effectively or at all.

Personal information collected about the Principal may be disclosed by the Agent for the purpose for which it was collected to other parties including actual or prospective purchasers, the legal and other advisors of the Agent, Principal, purchaser and/or prospective purchasers, and any Agent (if applicable), clients of the Agent both existing and potential, advertising and media organisations, property data service providers, valuers, parties engaged to evaluate the Property, owners' corporations, government and statutory bodies, financial institutions, as required by law and as otherwise instructed by the Principal.

The Agent may also use the Principal's information including personal information for marketing and research purposes to inform the Principal of products and services provided by the Agent, which the Agent considers may be of value or interest to the Principal, unless the Principal tells the Agent (see opt out option below) or has previously told the Agent not to. If the Principal does not wish to receive any information about such products and services then please tick this box:  or otherwise notify the Agent using the Agent's contact details set out earlier in this agreement.

The Principal has the right to request access to any personal information held by the Agent which relates to it, unless the Agent is permitted by law (including the Act) to withhold that information. Any requests for access to the Principal's personal information should be made in writing to the Agent at the contact details included in this agreement. The Agent may charge a reasonable fee where access to personal information is provided (no fee may be charged for making an application to access personal information). The Principal has the right to request the correction of any personal information which relates to the Principal that is inaccurate, incomplete or out-of-date.

The Agent will take reasonable precautions to protect the personal information it holds in relation to the Principal from misuse, loss, and unauthorised access, modification or disclosure.

By signing this agreement, the Principal acknowledges that it has read, understands and accepts the terms of this Privacy Policy and the permissions to collect, use and disclose personal information, and the Principal authorises the Agent to collect, use and disclose, in accordance with the Act, their personal information for the purposes specified in this Privacy Policy.

**Principal's Authority**

23. The Principal warrants that the Principal has authority to enter into this agreement.

**Acknowledgements**

24. The Principal acknowledges being served with a copy of this agreement.

25. The Principal acknowledges that by signing this agreement the Principal is denied the right to sell the property without paying a fee.

**Occupational Health and Safety**

26. The Principal acknowledges that  
 i at all material times the Principal has sole control of the Property listed for sale.  
 ii the Agent acts under the direction of the Principal to facilitate the transfer of the Property between Principal and purchaser.

27. The Principal acknowledges that the Principal has thoroughly inspected the Property prior to sale and that the Property is  
 i free from harm  Yes  No

28 **Further Conditions:** The Sale to be conducted by way of auction by means of the Open Negotiation method as referred to and set out in Annexure A

Signature of Principal



Date

25 / 5 / 20  
 / /

Signature of Agent



Date

25 / 5 / 20

# Annexure A: Authority to Conduct the Sale of Land by Openn Negotiation and Seller's Contract Execution and Exchange Authority (NSW)



## Parties

Seller(s): Helen Ogle Pty Ltd ACN: 129 348 438  
 Address: 26/304 Wharf Rd Newcastle  
 Phone: \_\_\_\_\_ Mobile: 0408 860 126 Email: fiduciayahelen1@gmail.com  
 The person specified in the Sales Inspection Report  
 Seller/Principal: Helen Ogle (Director)  
 The real estate agent duly authorised to act on behalf of the Seller pursuant to the *Property Stock and Business Agents Act 2002 (NSW)* and the *Property Stock and Business Agents Regulations 2014 (NSW)* specified in the Sales Inspection Report  
 Agent/Licensee: Steven Dick

## Property for Sale

Property Address: 3/8 Pennant St Cardiff  
 Title details (lot and folio details) 3/SP52069

## It is agreed

- 1.1 The Parties note and confirm the Seller has engaged the Agent to act on the sale of the Property by means of public auction, conducted through the Openn Negotiation process (as defined herein) in accordance with the App Terms and Conditions (as defined herein).  
 1.2 The Parties acknowledge where there is a conflict between any additional or special condition normally inserted by the Seller's solicitor/conveyancer into the Contract for Sale of Land, the App Terms and Conditions will prevail to the extent of any inconsistency.  
 1.3 The Seller will be bound by the App Terms and Conditions during the Openn Negotiation Period.

## 2 Definitions and Interpretation

- In this document:
- 2.1 **Act** means the *Property Stock and Business Agents Act 2002 (NSW)* and includes the *Property Stock and Business Agents Regulations 2014 (NSW)*;  
 2.2 **Address** means the address of the Property specified in the Sales Inspection Report;  
 2.3 **App** means the specialised software program designed to facilitate the Openn Negotiation and known as "Openn";  
 2.4 **App Terms and Conditions** means the terms and conditions set out in the App Terms and Conditions, which are to be read in conjunction with this Annexure A;  
 2.5 **Auctioneer** means the auctioneer appointed by the Agent to conduct the Openn Negotiation, who must be an accredited auctioneer pursuant to the Act;  
 2.6 **Campaign Bidding Stage** means the stage of the Openn Negotiation that commences when the Property is listed on the App and ends at the commencement of the Final Bidding Stage;  
 2.7 **Developer** means PP Valley Pty Ltd ACN 612 338 477;  
 2.8 **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;  
 2.9 **Land** means the Property specified in the Sales Inspection Report;  
 2.10 **Openn Negotiation** means the process for selling the Property set out in the App Terms and Conditions;  
 2.11 **Openn Negotiation Period** means the Exclusive Agency Period set out in clause 1 of the Sales Inspection Report;  
 2.12 **Owner of Openn Negotiation** means Cleverbons Pty Ltd ACN 607 908 636;  
 2.13 **Property** means the property described in the Sales Inspection Report;  
 2.14 **Qualified Bidder** has the meaning set out in the App Terms and Conditions;  
 2.15 **Reserve Price** means the minimum price nominated by the Seller to the Agent in writing that the Seller will sell the Property;  
 2.16 **Sales Inspection Report** means the Sales Inspection Report and Auction Agency Agreement and Continuing Agency entered into between the Parties;  
 2.17 **Vendor Bid** means a bid made by or on behalf of the seller;  
 2.18 Reference to:  
 a. one gender includes the others;  
 b. the singular includes the plural and the plural includes the singular;  
 c. a person includes a body corporate;  
 d. a party includes the party's executors, administrators, successors and permitted assigns;  
 e. a statute, regulation or provision of a statute or regulation (Statutory Provision) includes:  
 i. the Statutory Provision as amended or re-enacted from time to time, and  
 ii. a statute, regulation or provision enacted in replacement of that Statutory Provision;  
 f. money is in Australian dollars, unless otherwise stated;  
 g. clauses, subclauses, subclauses and schedules by number are references to clauses, subclauses, subclauses and schedules respectively so numbered in this agreement;  
 h. anything (including any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually, and  
 i. writing includes typewriting and lithography and other methods of producing words in a visible form;  
 2.19 Including and similar expressions are not words of limitation  
 2.20 Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.  
 2.21 Headings are for convenience only and do not form part of this agreement or affect its interpretation.  
 2.22 Apportionment of this agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the agreement or the inclusion of the provision in the agreement  
 2.23 If an act must be done on a specified day which is not a business day, it must be done instead on the next business day.

## 3 Agreement to sell by Openn Negotiation

- 3.1 In addition to clause 1 and clause 2 of the Sales Inspection Report, the Seller appoints the Agent to offer the Property for sale by Openn Negotiation during the Openn Negotiation Period in accordance with the Act, with the Openn Negotiation to take place at the date and time specified in clause 10 of this Annexure A  
 3.2 The Seller acknowledges that Openn Negotiation is a type of auction within the meaning of that term in the Act.  
 3.3 The Seller acknowledges that Vendor Bids as defined are not compatible with Openn Negotiation and agrees not to make or seek to make a Vendor Bid or instruct the Agent and/or Auctioneer to make a Vendor Bid during the Openn Negotiation  
 3.4 The Seller acknowledges that in the event of the Final Bidding Stage taking place the Seller must be available to provide instructions to the Agent and Auctioneer at such time.

## 4 Conditions of Sale

- 4.1 The sale of the Property is to be conducted in accordance with the App Terms and Conditions and the Seller agrees to be bound by the terms of the Openn Negotiation as described in those App Terms and Conditions, including, but not limited to, the Campaign Bidding Stage and the Final Bidding Stage (as those terms are defined in the App Terms and Conditions)  
 4.2 The Seller acknowledges that the Openn Negotiation will be primarily conducted through the App in accordance with the App Terms and Conditions.  
 4.3 The Openn Negotiation is to be subject to the Reserve Price and the Seller must provide a Reserve Price to the Agent before the Final Bidding Stage and if, during the Final Bidding Stage, the highest bid is at or above the Reserve Price, the Seller must sell the Property to that bidder  
 4.4 The Final Bidding Stage will commence on the auction date and time set out in clause 10 or at such other date and time nominated by the Seller.

**5 Authorities Granted to Auctioneer**

5.1 The Seller authorises the Auctioneer to sign the Contract for Sale of Land for the Property on the Seller's behalf immediately following the sale of the Property during the Final Bidding Stage.

**6 Liability**

- 6.1 The Seller releases and holds harmless the Agent, Auctioneer, the Owner of Openn Negotiations 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 technical failure of the App
- 6.2 The Seller releases the Agent, Auctioneer, the Owner of Openn Negotiation and the Developer against all actions, claims, demands arising from or in connection with a failure by a purchaser or registered bidder to complete a sale.
- 6.3 Nothing in these Annexure A terms and conditions (including this clause 6) excludes, restricts or modifies any rights or statutory guarantees that the Seller may have under applicable laws that cannot be excluded, restricted or modified, including any such rights or statutory guarantees under the Australian Consumer Law. To the extent that these terms and conditions are found to exclude, restrict or modify any such rights or statutory guarantees, those rights and/or statutory guarantees prevail to the extent of the inconsistency.
- 6.4 The Agent discloses and the Seller acknowledges the Developer will use reasonable efforts to maintain an uninterrupted service for the App but neither the Agent or the Developer guarantee this and, to the extent permitted by law, neither the Agent or the Developer give any promises or warranties (whether express or implied) about the availability of the App that the App will be uninterrupted or error-free. Notification functionality in the App may not occur in real time. That functionality is subject to delays beyond the control of the Agent and the Developer, including without limitation, delays or latency due to the Seller's physical location or the Seller's wireless data service provider's network
- 6.5 To the extent permitted by law, and without limiting any rights that the Seller may have under the Australian Consumer Law, the Agent's and the Developer's liability to the Seller for any failure by the Agent or the Developer to comply with any statutory guarantee under the Australian Consumer Law is limited to the Agent and/or the Developer supplying the Services again or paying you the cost of having the Openn Negotiation process supplied again.

**7 Warranty**

- 7.1 The Developer and the Agent do not warrant, guarantee or make any representation that
  - a. The Openn website ('the Website'), the App, or the servers that make them available are free of software viruses;
  - b. The functions effected by the software contained on the Website or the App will operate uninterrupted or are error-free; and
  - c. Error and defects in the Website or the App or the software contained in them will be corrected in a timely manner or at all
- 7.2 The Agent warrants that
  - a. He/she is a licensed Real Estate Agent;
  - b. He/she will comply with all applicable laws in each jurisdiction in respect of the sale of the Property uploaded onto the App,
  - c. The content he/she posts in respect of the Property is true and correct to the best of their knowledge,
  - d. He/she have obtained all necessary documents pursuant to the applicable laws in each jurisdiction to sell the Property on the App,
  - e. He/she have obtained all necessary documents from Qualified Bidders to allow them to bid on the Property; and
  - f. He/she will maintain all necessary records as required by the applicable laws in each jurisdiction

**8 Seller's Warranty**

- 8.1 The Seller warrants that the Seller has the authority to enter into this agreement and that no other person holds an agency agreement for the Property
- 8.2 The Seller warrants it will not make any false or fictitious bids or participate in any bidding practices prohibited by the Act, including encouraging or permitting any other party to make any false or fictitious bids

**9 Disputes**

9.1 The Seller has the right to refer any dispute that arises with the Agent to a number of different institutions. Depending upon the nature of the dispute these institutions may include The Real Estate Institute of New South Wales (REINSW), a Dispute Resolution Centre, the civil and criminal legal systems, the Australian Competition and Consumer Commission and Office of Fair Trading, New South Wales

**10 Time and Date of Openn Negotiation**

The Final Bidding Stage of the Openn Negotiation will commence at 6pm am/pm on 11 06 2020 or at such other date and time initials [Signature] nominated by the Seller

**11 Execution – Seller / Vendor**

- In the event I am/we are unable to be present at the location from where the 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, execution and unconditional exchange of Contract for Sale of Land of the property
  - 2. I/We confirm my/our instructions to nominate, authorise and direct the Seller's Agent/Auctioneer to complete front-page details of the Contract for Sale of Land
  - 3. I/We confirm my/our instructions to nominate, authorise and direct the Auctioneer to execute the Contract for Sale of Land on my/our behalf in accordance with clause 5.1 of Annexure A to the Agency Agreement and clause 5.11 of the App Terms and Conditions
  - 4. I/We confirm my/our instructions to complete the unconditional exchange of Contracts for Sale of Land.
  - 5. I/We also confirm our instructions to the Selling Agent to deliver to our solicitor/conveyancer the executed contract in this matter.
  - 6. I/We warrant that in providing this authority I/We have obtained independent legal advice.

Seller's Signature  
X [Signature]

Name of Seller

Date

Agent or Agent's Representative Signature  
X [Signature]

Name of Agent or Agent's Representative, Steven Dick

Date 25/5/20

Seller's Signature  
X [Signature]

Name of Seller Helen Ogle

Date 25/5/20

Witness Signature  
X [Signature]

Name of Witness: Steven Dick

Address of Witness 92-94 Darby St  
Cooks Hill

Date 25/5/20

# Openn Negotiation App Terms and Conditions (NSW)



<b>1 Acknowledgement</b>	
1.1 The Users acknowledge that Openn Negotiation: a. will be conducted through the Openn Negotiation App in accordance with the Terms and Conditions set out below;	b. is a type of auction as defined in the applicable laws for the relevant jurisdiction; and c. is an extended Auction with a flexible completion date
<b>2 Terms and Conditions</b>	
2.1 Cleverbons Pty Limited owns the App that conducts the Openn Negotiation Process and provides the App for Sellers and Seller's Agents to list property for sale and for Qualified Bidders to purchase the property	2.5 If You do not agree to comply with these App Terms and Conditions, do not use (or continue to use) the App.
2.2 These App Terms and Conditions outline the Agreement between Users and the Owner of the App.	2.6 The Owner reserves the right to terminate Your access to the App if You breach any term or condition, or if Your ongoing use of the App is unacceptable to it.
2.3 By registering to use the App, You agree to be bound by these Terms and Conditions as amended from time to time.	2.7 Users acknowledge that these App Terms and Conditions are to be read in conjunction with the Openn Negotiation Bidding Rules and Terms of Use signed by the bidder or Annexure A of the relevant agency agreement signed by the Seller.
2.4 Your continued use of the App acknowledges Your agreement to these App Terms and Conditions.	
<b>3 Owner's Service</b>	
3.1 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.	3.2 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 d. for verifying the Property listed on the App.
<b>4 Commencement of the Openn Negotiation/Auction Process</b>	
4.1 The Openn Negotiation process and Auction Conditions commence once the Property has been uploaded onto the App and will prevail until the Fall of the Hammer.	4.3 The sale of the Property within the Openn Negotiation process will occur in accordance with the Auction Conditions and no cooling off period applies in respect of the purchase of the Property.
4.2 At the commencement of the Openn Negotiation process, the agent will make the following will be available for public inspection; a. These App Terms and Conditions; b. Openn Negotiation Bidding Rules and Terms of Use; and c. Auction Conditions.	4.4 The Seller and Buyer acknowledge that, pursuant to a CEEA, the Contract will be signed on their behalf by the Auctioneer immediately following the Final Bidding Stage and the parties will be bound to that Contract.
<b>5 The Openn Negotiation Process</b>	
5.1 A prospective bidder must become a Qualified Bidder to participate in the Openn Negotiation process.	5.6 The Campaign Bidding Stage finishes at the commencement of the Final Bidding Stage
5.2 Once the prospective bidder has inspected the Property, the bidder must: a. download the App; b. register their contact details in the App; c. select a Password to access the App; d. select the Property in the App as a bidder; e. become a Qualified Bidder, and f. input their Pending Bid in the App.	5.7 The Property can only be sold to a Sole Bidder pursuant to clause 7. 5.8 Throughout the Final Bidding Stage, Qualified Bidders will make competing bids to purchase the Property through the App. A time limit will apply to the making of bids, and the process concludes when the Property is sold or all bids are exhausted.
5.3 In the Campaign Bidding Stage, other Qualified Bidders can join the Openn Negotiation process.	5.9 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
5.4 Throughout the Campaign Bidding Stage, any Qualified Bidder may increase their Pending Bid by providing further bids through the App.	5.10 No negotiation as to the terms and conditions in the Contract will occur after the bidder has been accepted as a Qualified Bidder.
5.5 Each Qualified Bidder will be able to see all Bids made on the Property.	5.11 The Auctioneer will execute the Contract on behalf of the Buyer and Seller immediately following the Final Bidding Stage.
<b>6 Final Bidding Stage</b>	
6.1 The Final Bidding Stage will commence at the date and time nominated by the Seller for the Final Bidding Stage to begin, which can be at any time, 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 (at that Qualified Bidder's contact details) no less than 12 hours prior to the commencement of the Final Bidding Stage to advise when the Final Bidding Stage will commence.	e. if any dispute arises in relation to any bid, such dispute may be determined by the Auctioneer; f. the Seller may not bid personally, unless a bid is made in the Seller's capacity as a co-owner or executor or administrator of the estate. Any bid made in that capacity will be announced by the Auctioneer before the commencement of the Final Bidding Stage, namely i. that bids to purchase the interest of another co-owner or to purchase as executor or administrator of the estate may be made by or on behalf of the Seller, and ii. the bidder registration number (Unique Identification Number) of any co-owner, executor or administrator or any person registered to bid on behalf of any co-owner, executor or administrator, in addition to any other announcements or notices required to be given under each jurisdiction's relevant Legislation; g. once commenced the Final Bidding Stage cannot be terminated by the Seller or any other party until: i. all bids are exhausted; or ii. if there is one or more bids at or exceeding the Reserve Price and the Property is sold;
6.2 During the Final Bidding Stage: a. in order to bid each Qualified Bidder must be logged onto the App; b. 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 limit during which further bids may be made before the current bid is final and successful, as set by the App c. the App will display the current highest bid. Qualified Bidders may choose to make a further bid exceeding what is then the highest bid in increments determined by the Auctioneer; d. the Auctioneer may withdraw bids, at his or her complete discretion, if he or she thinks are likely to have been made in error or bad faith,	6.3 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

## 7 Purchase of the Property by a Sole Bidder

- 7.1 The Seller may sell the Property prior to the Final Bidding Stage when there is only one Qualified Bidder (they will then be the Sole Bidder), as follows:
- a. all bids by the Sole Bidder must be made through the App;
  - b. the Seller's Agent or Auctioneer will request an acknowledgement from the Sole Bidder, through the App, that
    - i. the Seller is willing to sell the Property to the Sole Bidder at its current bid;
    - ii. upon acknowledgement from the Sole Bidder of the Seller's intention to sell the Property at the Sole Bidder's current bid the Sole Bidder will have the Winning Bid at the Fall of the Hammer
- 7.2 If the Reserve Price has not yet been met, the Auctioneer must receive in writing from the Seller they will accept a lower reserve price.

## 8 Purchase of the Property otherwise than during the Campaign Bidding Stage or Final Bidding Stage

- 8.1 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, the sale must be on the same terms and conditions (other than price) as negotiated between the bidder and Seller prior to the bidder being approved as a Qualified Bidder, in accordance with clause 5.10.

## 9 Reserve Price

- 9.1 The Property is offered for sale subject to a Reserve Price.
- 9.2 If no bid exceeds the Reserve Price in the Final Bidding Stage, the Seller is not obliged to sell the Property to any Qualified Bidder.
- 9.3 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.
- 9.4 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 but is under no obligation to do so.

## 10 Dummy Bidding

- 10.1 Dummy Bidding and/or encouraging another party to engage in Dummy Bidding constitutes a breach of these Terms and Conditions and may also constitute fraud and misleading or deceptive conduct and attract serious consequences.
- 10.2 Any party who becomes aware of the occurrence of Dummy Bidding must inform the Agent and/or the Auctioneer as soon as possible.
- 10.3 The Qualified Bidders and Sellers warrant that they will not engage in Dummy Bidding nor encourage or permit any other party to engage in Dummy Bidding.

## 11 Use of the App

- 11.1 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.
- 11.2 If a User becomes aware of any unauthorised use of the App, the User agrees to immediately notify the Owner.
- 11.3 Users must ensure that they have adequate mobile and/or internet coverage to allow access to the App;
- 11.4 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.
- 11.5 The Owner reserves the right to deny access to the App:
- a. in the event any false or fraudulent information is provided;
  - b. in the event of any unauthorised use of the App; and
  - c. at its sole discretion.
- 11.6 Qualified Bidders will be approved by the Agent, upon providing all required documentation.
- 11.7 The App will:
- a. notify the Qualified Bidder that they are a Qualified Bidder;
  - b. show when the Final Bidding Stage will commence;
  - c. provide the Qualified Bidder with a Unique Identification Number that will be used to identify them in the App; and
  - d. notify the Qualified Bidder of any change to the Final Bidding Stage commencement.
- 11.8 A Qualified Bidder must be provided with 12 hours' notice of any change to the commencement of the Final Bidding Stage.
- 11.9 Any bid made in the App using a Qualified Bidder's Unique Identification Number will be deemed to have been made by that Qualified Bidder, and the Qualified Bidder is solely responsible for ensuring that each bid is in fact made by the Qualified Bidder.
- 11.10 The Auctioneer may withdraw bids that he or she thinks are likely to have been made in error or bad faith, at his or her complete discretion.

## 12 Withdrawal of Property from Sale

- 12.1 The Seller may withdraw the Property from Openn Negotiation at any point by selecting the "Cancel Openn Negotiation" button on the App until the earlier of:
- a. the Commencement of the Final Bidding Stage; or
  - b. a bid being made through the App by any Qualified Bidder that equals or exceeds the Reserve Price,
- otherwise the Seller cannot withdraw the Property from sale unless all bids are exhausted at the Final Bidding Stage without the Reserve Price having been reached.

## 13 Suspension of Openn Negotiation

- 13.1 The Auctioneer may cancel the Openn Negotiation including, but not limited to, the Final Bidding Stage, if:
- a. he or she reasonably considers that a technical problem has occurred with the App such that the Openn Negotiation cannot properly proceed; or
  - b. 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.
- 13.2 If the Auctioneer cancels the Openn Negotiation in accordance with clause 13.1 above, the Seller'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 Qualified Bidder shall be bound by any prior bid and shall be free to recommence bidding at any amount the Qualified Bidder wishes.
- 13.3 The Auctioneer may also pause the Final Bidding Stage for the purpose of taking instructions from the Seller or conferring with Qualified Bidders. This pause will be displayed on the App and visible to all Qualified Bidders.

## 14 Further Auction Rules

- 14.1 It is agreed that in the event that any of these App Terms and Conditions conflict with the conditions of sale by auctions prescribed by the applicable laws in each jurisdiction then that rule will not apply but all the other rules will apply.
- 14.2 The Auctioneer reserves the right to refuse to accept consecutive bids made by a Qualified Bidder where there has not been a further bid made by another Qualified Bidder.
- 14.3 The Auctioneer reserves the right to refuse to accept further bids from a Qualified Bidder if that Qualified Bidder has withdrawn a bid made during the Campaign Bidding Stage or the Final Bidding Stage.

## 15 Liability and Indemnity

- 15.1 The Developer, 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:
- 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.
- 15.2 The Qualified Bidders and the Sellers release and hold harmless the Seller's Agent, Auctioneer, 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.
- 15.3 Users of the App will indemnify and keep indemnified the Seller's Agent, Auctioneer, 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 App Terms and Conditions by You.

## 16 Compliance with Law

- 16.1 These App Terms and Conditions are to be interpreted so that they comply with all applicable laws in each jurisdiction.
- 16.2 If any part of these App Terms and Conditions are unenforceable, illegal or void then it is severed and the remainder of these App Terms and Conditions remain in force.

## 17 Intellectual Property

- 17.1 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 Openn Negotiation App
- 17.2 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 the Owner and Developer.

## 18 Privacy

- 18.1 The Developer's Privacy Policy (available at <https://www.openn.com.au/privacy-policy>) forms part of these Terms and Conditions. By using the App, You consent to the Developer collecting, handling and using Your personal information in accordance with the Privacy Policy.

## 19 Governing Laws

- 19.1 These App Terms and Conditions are governed by the laws of the State, and all Users submit to the exclusive jurisdiction of the State's Court.

## 20 Definitions

- 20.1 **App** means the specialised software program designed to facilitate the Openn Negotiation and known as "Openn";
- 20.2 **Auction** has the same meaning provided to it in the relevant Legislation in each jurisdiction;
- 20.3 **Auctioneer** means the Auctioneer appointed by the Seller's Agent to conduct the Openn Negotiation, who must be a licensed auctioneer pursuant to the relevant Legislation in each jurisdiction;
- 20.4 **Bidders Guide** means an information guide produced by NSW Fair Trading or its statutory equivalent, as amended from time to time, and which must be provided to each bidder, Qualified Bidder or otherwise when the Property is in New South Wales, at the commencement of the Openn Negotiation;
- 20.5 **Bidders Record** means a record kept and maintained by the Agent or Auctioneer which, pursuant to the Legislation must be made of the persons who will be entitled to bid;
- 20.6 **Buyer** means the buyer described in the Contract;
- 20.7 **Campaign Bidding Stage** means the stage of the Openn Negotiation that commences when the Property is listed on the App and ends at the commencement of the Final Bidding Stage;
- 20.8 **Contract** means the relevant contract in respect of the Property;
- 20.9 **Contract Execution and Exchange Authority (CEEA)** means an authority granted by both:
- the Qualified Bidder to the Auctioneer permitting the Auctioneer to sign the Contract on behalf of the Qualified Bidder and for the Seller's Agent to effect exchange of contracts in the event that the Qualified Bidder has become the eventual purchaser of the Property; and
  - the Seller to the Auctioneer permitting the Auctioneer to sign the Contract for Sale of Land on behalf of the Seller and for the Seller's Agent to effect exchange of contracts in the event that the Qualified Bidder has become the eventual purchaser of the Property;
- 20.10 **Developer** means PP Valley Pty Ltd ACN 612 338 477;
- 20.11 **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;
- 20.12 **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;
- 20.13 **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;
- 20.14 **Legislation** means unless the context indicates otherwise, the relevant legislation and regulations in the State;
- 20.15 **Openn Negotiation** means the process set out in these conditions according to which the sale is to be conducted;
- 20.16 **Owner** means Cleverbons Pty Ltd ACN 607 908 636;
- 20.17 **Password** means the unique word or combination of letters, number and other characters used to access the App;
- 20.18 **Pending Bid** means the opening bid made by each Qualified Bidder through the App, which may be increased during the Campaign Bidding Stage;
- 20.19 **Property** means the Property described in the Contract;
- 20.20 **Qualified Bidder** means a bidder who has fulfilled the requirements set out in the Openn Negotiation Bidding Rules and Terms of Use and has been approved by the Seller in accordance with those Bidding Rules and Terms of Use;
- 20.21 **Reserve Price** means the reserve price specified by the Seller;
- 20.22 **Seller** means the vendor of the Property described in the Contract;
- 20.23 **Seller's Agent** means the real estate agent duly authorised to act on behalf of the Seller;
- 20.24 **Sole Bidder** means a Qualified Bidder who is the only Qualified Bidder in relation to the Property;
- 20.25 **State** means the state or territory in which the Property is located;
- 20.26 **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;
- 20.27 **User(s), You, Your** means Seller(s), Seller's Agent(s), Auctioneer(s), Qualified Bidder(s), any person(s) who creates a login for the App and any other person(s) who accesses the App for whatever reason, and
- 20.28 **Winning Bid** means the successful bid made in the App which will be confirmed by the Auctioneer as the price for which the Property will be sold.