

APAX BIDDER TERMS AND CONDITIONS

1. Definitions

Unless otherwise specified, in these Bidder Terms:

APAX means APAX.com.au Pty Ltd (ACN 620 124 334);

APAX Platform means the online real estate auction platform known as “APAX” or “Australia’s Property Auction Exchange”, which is operated by APAX and accessible at www.apax.com.au;

Auction means the auction of the Property conducted by the Auctioneer on the APAX Platform;

Auctioneer means the auctioneer of the Property, who will be nominated on the APAX Platform in respect of the Auction and will be Patrick Booth of Level 1, 39-41 Mount Street, Prahran VIC 3181, (Victorian Licence No. 077204L, NSW Licence No. 20146278, Queensland Licence No. 14104131, South Australian Licence No. 228176) or such other licensed auctioneer as notified on the APAX Platform prior to the commencement of the Auction;

Auction Conditions means the terms and conditions applicable to the conduct of the Auction on the APAX Platform, which will be published on the APAX Platform prior to the commencement of the Auction;

Bidder means a person registered on the APAX Platform as a bidder in respect of the Auction, in accordance with these Bidder Terms;

Bidder Terms means the terms and conditions set out in this document;

Business Day means any day except a Saturday or a Sunday or other public holiday or bank holiday in either South Australia or the Relevant Jurisdiction for the Auction;

Claim means any claim, cost, damages, debt, expense, tax, liability, loss, allegation, suit, action, demand, cause of action, proceeding or judgment of any kind;

Code of Conduct means the code of conduct published by the Real Estate Institute in the Relevant Jurisdiction, excluding New South Wales and the Northern Territory;

Conclusion of the Auction means an announcement made by the Auctioneer on the APAX Platform that the Auction has concluded;

Corporations Act means the *Corporations Act 2001* (Cth);

Details means the details in respect of the Auctioneer, Vendor, Vendor’s Agent, Property and the proposed Auction submitted to the APAX Platform by the Vendor’s Agent or the Auctioneer, or generated by the APAX Platform and notified to the Auctioneer and the Vendor’s Agent via the APAX Platform;

Insolvency Event means the happening of any of the following events in relation to a person:

- (a) where the person is a body corporate: (i) the body corporate becomes an externally-administered body corporate under the Corporations Act; steps are taken by a third person towards making the body corporate an externally-administered body corporate (but not where the steps taken consist only of making an application to a court and the application is withdrawn or dismissed within 28 days); (iii) a controller (as defined in section 9 of the Corporations Act) is appointed over any of the property of the body corporate or any steps are taken for the appointment of a controller (but not where the steps taken are reversed or abandoned within 28 days); (iv) the body corporate is taken to have failed to comply with a statutory demand within the meaning of section 459F of the Corporations Act; (v) a secured creditor of the body corporate or a related body corporate of the body corporate exercises its security in relation to its debt; or (vi) the body corporate is, or its directors state that it is, unable to pay its debts as and when they become due and payable; or

- (b) where the person is a natural person: (i) the person authorises a registered trustee or solicitor to call a meeting of his or her creditors or proposes or enters into a deed of assignment or deed of arrangement or a composition with any of his or her creditors; (ii) a person holding a security interest in assets of the person enters into possession of or takes control of any of those assets or takes any steps to enter into possession of or take control of any of those assets; (iii) the person commits an act of bankruptcy; (iv) the person has a bankruptcy notice issued against them; (v) a receiver or trustee for creditors or in bankruptcy is appointed to any of the person's property; (vi) the person becomes an "insolvent under administration" within the meaning of the Corporations Act; or (vii) the person dies, is imprisoned or becomes incapable of managing his or her own affairs;

Law means any statute, regulation, order, rule, subordinate legislation or other document enforceable under any statute, regulation, rule or subordinate legislation (and, for the avoidance of doubt, includes all Real Estate Laws);

parties means you, APAX and the Auctioneer and **party** means any one of them (as applicable);

Privacy Policy means the privacy policy (howsoever described) published on the APAX Platform from time to time;

Property means the parcel of real property (and improvements if applicable) to be auctioned on the APAX Platform in respect of which you register (or have registered) to bid for as a Bidder, as specified in the Registration;

Real Estate Laws means (as applicable): (a) in South Australia - *Land Agents Act 1994, Land Agents Regulations 2010, Land and Business (Sale and Conveyancing) Act 1994, Land and Business (Sale and Conveyancing) Regulations 2010*, Real Estate Institute of South Australia - *The Real Estate Code*; (b) in New South Wales - *Property, Stock and Business Agents Act 2002, Property, Stock and Business Agents (Auctioneers Qualifications) Order 2009, Property, Stock and Business Agents Regulations 2014, Licensing and Registration (Uniform Procedures) Act 2002*, Real Estate Institute of New South Wales Code of Practice; (c) in Victoria - *Sale of Land Act 1962, Sale of Land (Infringements) Regulations 2014, Sale of Land (Public Auctions) Regulations 2014, Estate Agents Act 1980, Estate Agents (Professional Conduct) Regulations 2008, Estate Agents (Retirement Villages) Regulations 2016, Real Estate Institute of Victoria Rules of Practice 2006*; (d) in Queensland - *Property Occupations Act 2014, Property Occupations Regulation 2014, Property Law Act 1974, Real Estate Institute of Queensland Standards of Business Practice*; (e) in Western Australia - *Auction Sales Act 1973, Auction Sales Regulations 1974, Real Estate and Business Agents Act 1978, Real Estate and Business Agents (General) Regulations 1979, Code of Conduct for Agents and Sales Representatives 2011, Real Estate Institute of Western Australia Auction Code of Conduct, Property Law Act 1969*; (f) in Tasmania - *Property Agents and Land Transactions Act 2016, Property Agents and Land Transactions Regulations 2017, Property Agents Board - Code of Conduct*; (g) in Australian Capital Territory - *Civil Law (Sale of Residential Property) Act 2003, Civil Law (Sale of Residential Property) Regulation 2004, Agents Act 2003, Agents Regulation 2003*; (h) in Northern Territory - *Auctioneers Act 1996, Law of Property Act 2000, Agents Licensing Act, Agents Licensing Regulations, Real Estate Institute of Northern Territory Code of Conduct*; (i) in New Zealand – *Auctioneers Act 2013, Fair Trading Act 1986, Real Estate Agents Act 2008, Real Estate Agents Authority, and Real Estate Institute of New Zealand Best Practice Guide – Auction*, and in each Relevant Jurisdiction includes all other laws, regulations, instruments and codes that apply in respect of the Auction;

Registration has the meaning given to that term in clause 3.1.1;

Registration Date means, in respect of a person, the date on which that person registers as a Bidder on the APAX Platform in accordance with these Bidder Terms;

Relevant Jurisdiction means the jurisdiction in which the Property is situated, being a state or territory of Australia, or New Zealand;

Reserve Price means the price designated as such in the Details;

Sale Agreement means an agreement for the sale and purchase of the Property between the Vendor and the Winning Bidder, substantially in the form published on the APAX Platform in respect of the Property prior to the commencement of the Auction (completed by inserting the purchase price and Winning Bidder's details);

Terms of Use means the Website Terms of Use and the Privacy Policy;

Vendor means the owner of the Property;

Vendor's Agent means the "real estate agent" (howsoever defined in the Relevant Jurisdiction) appointed by a Vendor in respect of the sale of the Property;

VOI Document means any document prescribed by the Real Estate Laws as necessary to verify the identity of a Bidder;

Website Terms of Use means the website terms of use referred to as "APAX Terms and Conditions of Use" or howsoever described published on the APAX Platform from time to time;

Winning Bidder means the Bidder who is announced on the APAX Platform at or around the Conclusion of the Auction as the "Winning Bidder" (being Bidder who made the highest bid during the Auction equal to or exceeding the Reserve Price); and

You or **your** is a reference to a Bidder, a prospective Bidder or a person who is or intends to apply for registration as a Bidder (as the context requires).

2. Interpretation

In these Bidder Terms:

- 2.1 unless the context otherwise requires: headings do not affect interpretation; singular includes plural and plural includes singular; a reference to "dollars", "\$A", "A\$" or "\$" is a reference to Australian currency; a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them; a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, these Bidder Terms, and a reference to these Bidder Terms includes any schedule or annexure; reference to a person includes a corporation, body corporate, joint venture, association, government body, firm and any other entity; a reference to a party is to a party to this agreement, and a reference to a party to an agreement includes the party's executors, administrators, successors and permitted assigns and substitutes; reference to two or more people means each of them individually and all of them jointly; a provision must not be construed against a party only because that party prepared it; a provision must be read down to the extent necessary to be valid (and if it cannot be read down to that extent, it must be severed); the meaning of general words or provisions shall not be limited by references to specific matters that follow them (for example, introduced by words such as "including" or "in particular") or precede them or are included elsewhere in this agreement; if a thing is to be done on or by a day which is not a Business Day, it must be done on or by (as applicable) the next Business Day; another grammatical form of a defined expression has a corresponding meaning; an expression defined in the Corporations Act has the meaning given by that Act at the Registration Date; and
- 2.2 if a party comprises two or more people: a promise by that party binds each of them individually and all of them jointly; a right given to that party is given to all of them jointly; and a representation, warranty or undertaking by that party is made by each of them individually.

3. Registration

- 3.1 You must register as a Bidder in order to bid for the Property on the APAX Platform. In order to do so, you must:
- 3.1.1 complete the online Bidder registration form on the APAX Platform (**Registration**);
 - 3.1.2 provide all of the details required by the APAX Platform in the Registration; and
 - 3.1.3 if you are an individual, be at least 18 years of age.
- 3.2 Your registration as a Bidder, and any unique identifier, security codes or other credentials (**Credentials**) you are issued by APAX to access the APAX Platform, are not transferrable to any other person. You must keep your Credentials secure and confidential and must not allow

any other person to use them. You must notify APAX as soon as practicable after becoming aware that your Credentials have been lost or stolen. However, you will be liable for the actions of any person using your Credentials prior to APAX having had a reasonable period of time to cancel your Credentials after you have notified APAX they have been lost or stolen.

- 3.3 By registering as a Bidder and/or bidding at an Auction, you agree to these Bidder Terms and the Auction Conditions. On registration as a Bidder, these Bidder Terms take effect as a contract between you, APAX and the Auctioneer. If and to the extent provisions of these Bidder Terms are expressed to benefit (or partially benefit) the Vendor or the Vendor's Agent, APAX and the Auctioneer each hold the benefit of those provisions on trust for the Vendor or the Vendor's Agent (as applicable) to that extent (as well as holding the benefit of these Bidder Terms in their own right and for their own benefit as applicable).
- 3.4 By registering as a Bidder, you represent and warrant to APAX, the Auctioneer and the Vendor's Agent that:
- 3.4.1 all information provided by you via the APAX Platform is and will at all relevant times true, accurate, current, and complete;
 - 3.4.2 you will maintain and promptly update such information via the APAX Platform to keep it true, accurate, current and complete;
 - 3.4.3 you are not subject to an Insolvency Event; and
 - 3.4.4 you have the full legal capacity and authority to use the APAX Platform and to enter any transaction contemplated under the APAX Platform, including the purchase of the Property.
- 3.5 APAX, the Auctioneer or the Vendor's Agent, each reserves the right to refuse your Registration for any reason, and are not required to provide reasons for any such refusal.
- 3.6 You acknowledge and agree that the VOI Documents you have provided in in order to register as a user on the APAX Platform, and otherwise via the APAX Platform (as updated by you from time via the APAX Platform) will be used by the Vendor's Agent for the Property in order to verify your identity.

4. **Term**

These Bidder Terms will apply from the Registration Date until you cancel your registration as a Bidder on the APAX Platform (which you may do at any time before the start of the Auction) or your registration as a Bidder is otherwise cancelled in accordance with these Bidder Terms.

5. **The Auction**

- 5.1 Details of the Auction will be published on the APAX Platform.
- 5.2 Bidders who have registered in accordance with these Bidder Terms to bid in the Auction will be entitled to log on to the APAX Platform and bid to purchase the Property.
- 5.3 The Auction will be conducted over a period of time and there will be a finish time for the Auction as shown by the timer provided on the APAX Platform.
- 5.4 The Auction will be conducted in accordance with the Auction Conditions and applicable Real Estate Laws in the Relevant Jurisdiction.
- 5.5 At the Conclusion of the Auction, the Property will be sold to the Winning Bidder.
- 5.6 If a bid is received within three minutes of the Auction finish time (as shown by the timer provided on the APAX Platform), then the timer will be re-set such that the Auction finish time will be three minutes after the time of such bid. The Auction will continue and the timer re-set in the manner described in this clause 5.6 until no more bids are made within the re-set three minute time period prior to the revised finish time for the Auction. The Auction finish time, as shown by the timer provided on the APAX Platform (which may be re-set in accordance with

this clause 5.6), is conclusive as to when the Auction ends and the Property is either sold in accordance with clause 5.5 or passed in.

- 5.7 Mock auctions are prohibited and will not be conducted.
- 5.8 You acknowledge that:
- 5.8.1 the Auction will be conducted in accordance with the Auction Conditions and such additional rules and conditions made available for inspection on the APAX Platform in respect of the Auction prior to the start of the Auction;
 - 5.8.2 the Auction Conditions prohibit the Auctioneer from accepting bids or offers for the Property after it has been knocked down to the successful bidder;
 - 5.8.3 the Auctioneer must indicate bidders on request;
 - 5.8.4 the law-
 - (a) prohibits false bids; and
 - (b) prohibits major disruptions by Bidders; and
 - (c) prohibits Bidders attempting to prevent others bidding; and
 - (d) provides fines for the conduct referred to in this clause 5.8.4; and
 - 5.8.5 where the Auction comprises more than one lot, the conditions of sale for some of those lots may differ from others.

6. Representations and warranties

You represent and warrant that:

- 6.1 you are not the Vendor or an associate of the Vendor, and will not make any bid in the Auction on behalf of, at the direction of or in association or collusion with, the Vendor;
- 6.2 you will not bid on behalf of any other person unless otherwise disclosed in the Registration, in which case you represent and warrant you have provided to the Vendor's Agent all evidence required under Law of your authority to bid on behalf of that person;
- 6.3 you have obtained (or have had the opportunity to obtain and chosen not to obtain) independent professional advice regarding these Bidder Terms, the Auction Conditions, and any other issue relevant to your bidding for the Property;
- 6.4 you will not make dummy bids or bids not otherwise allowed by the Real Estate Laws in the Relevant Jurisdiction;
- 6.5 you will not engage in any collusive practices;
- 6.6 you will not otherwise disrupt the Auction (but you may submit questions in the "live chat" (or equivalent) function on the APAX Platform during the Auction);
- 6.7 you will only make legitimate and genuine bids;
- 6.8 you will otherwise comply with all Laws in participating as a Bidder in any Auction;
- 6.9 you will sign a Sale Agreement in respect of the Property if you are the Winning Bidder and pay the deposit to or at the direction of the Vendor's Agent immediately after the Conclusion of the Auction in accordance with the directions of the Vendor's Agent;
- 6.10 you have downloaded and read all documents made available to you on the APAX Platform;

- 6.11 you have undertaken appropriate due diligence on the Property and have not relied on any representations about the Property by APAX or the Auctioneer; and
- 6.12 you are not related to the Auctioneer in a way that could cause the Auctioneer to contravene Law.

7. **Acknowledgements**

You acknowledge that:

- 7.1 the Auctioneer will only accept bids from Bidders registered in accordance with these Bidder Terms;
- 7.2 you have read and understood the guide published for the benefit of auction bidders in each Relevant Jurisdiction (if applicable);
- 7.3 you understand that the APAX Platform may be integrated with other related services from which APAX or an Auctioneer derives a benefit;
- 7.4 there is no right to cooling off and that you will be bound to sign the Sale Agreement in respect of the Property if you are the Winning Bidder;
- 7.5 the Auctioneer is not permitted to, and will not, disclose:
 - 7.5.1 the Reserve Price;
 - 7.5.2 any amount the Auctioneer considers is a price likely to result in a successful, or acceptable bid for the Property; or
 - 7.5.3 a price guide for the Property,
 and the Bidder agrees it will not request that the Auctioneer do so;
- 7.6 any Real Estate Laws which are expressed to apply as contractual conditions between the Auctioneer and a Bidder or Winning Bidder (as applicable) will apply as such;
- 7.7 the Auctioneer has no interest whatsoever in the purchase of the Property by you; and
- 7.8 you will comply with the Auction Conditions and the Terms of Use (insofar as they apply to you).

8. **Bidder indemnity and release**

- 8.1 To the extent permitted by Law, you indemnify and hold APAX and the Auctioneer harmless against all Claims (including third party Claims) arising in connection as a result of your acts or omissions, including without limitation due to:
 - 8.1.1 your breach of these Bidder Terms;
 - 8.1.2 your failure to comply with any Law;
 - 8.1.3 the Auctioneer being held to be liable under Law as a result of your relationship to the Auctioneer.
- 8.2 The indemnity in clause 8.1 does not apply to the extent that any Claims arise as a result of fraud, dishonesty or breach of these Bidder Terms or the Auction Conditions by APAX or the Auctioneer (as applicable).
- 8.3 To the extent permitted by Law, you release the Auctioneer from any Claims arising in connection with the proper performance by the Auctioneer of these Bidder Terms or the Auction Conditions.

8.4 The indemnity and release in this clause 8 each survive termination of these Bidder Terms and cancellation of your registration as a Bidder.

9. **Auctioneer obligations**

The Auctioneer will use reasonable endeavours to arrange the sale of the Property during the Auction conducted in accordance with these Bidder Terms and the Real Estate Laws (as applicable and as modified by these Bidder Terms and the Auction Conditions).

10. **GST**

In addition to amounts payable under other provisions of these Bidder Terms, the recipient of a taxable supply (within the meaning of the law imposing GST) must pay all GST on the supply, subject only to the receipt of a valid tax invoice.

11. **Legal liability and other claims**

Nothing in these Bidder Terms is intended to exclude, restrict or modify rights which the Bidder may have under the *Competition and Consumer Act 2010* (Cth), Real Estate Laws or any other legislation which may not be excluded, restricted or modified by these Bidder Terms, and these Bidder Terms must be read down to the extent required by Law.

12. **Force majeure**

If, due to any event beyond the Auctioneer's or APAX's normal control, including but not limited to war, national emergency, national medical crisis, flood, fire, earthquake, cyclone or other natural catastrophe, import or export embargo, boycott, strike or lockout, the Auctioneer or APAX fails to fulfil its obligations in the manner and within the time required by the terms of these Bidder Terms the Auctioneer and APAX shall not be held responsible for any loss or damage which may be incurred by you as a result of such failure.

13. **Dispute resolution**

The parties acknowledge that in the event of a dispute occurring between the parties any party shall be entitled to issue proceedings in any appropriate jurisdiction, however, the parties will first endeavour to resolve any dispute between them in the following manner:

13.1 Where applicable, in accordance with the relevant Code of Conduct;

13.2 Where clause 13.1 does not apply:

13.2.1 if any dispute arises between the parties and is not resolved within seven (7) days after any party gives the other party to the dispute written notice of the dispute, such dispute will be immediately referred to the most senior executive or representative of each party; and

13.2.2 if such executives or representatives fail to resolve the dispute within seven (7) days of a referral to them, such dispute will be referred to a mediation process by a person and within a time limit and in accordance with procedures to be agreed to by the executives or representatives. If the executives or representatives do not promptly agree on the identity of the mediator and the relevant timetable and procedures for the mediation, then the identity of the mediator and the relevant timetable and procedures for the mediation will be determined at the request of any party by the chairman of the chapter in the Relevant Jurisdiction of the Resolution Institute (ABN 69 008 651 232).

14. **Termination and suspension**

14.1 The obligations of APAX and the Auctioneer under these Bidder Terms will cease with immediate effect at the Conclusion of the Auction.

- 14.2 The Auctioneer or APAX may terminate these Bidder Terms with immediate effect by notice in writing to you if you: (a) suffer an Insolvency Event; or (b) breach these Bidder Terms or the Auction Conditions. Your registration as a Bidder and entitlement to bid in the Auction will be cancelled immediately on termination of these Bidder Terms.
- 14.3 You may cancel your registration as a Bidder via the APAX Platform at any time prior to the start of the Auction.
- 14.4 The Auctioneer may cancel or suspend your registration as a Bidder at any time with immediate effect by notice in writing if the Auctioneer (acting reasonably) considers it necessary or desirable to do so in order to prevent a breach of these Bidder Terms or the Auction Conditions or to preserve the integrity of the Auction or the APAX Platform.

15. **Assignment**

You must not assign your rights or obligations under these Bidder Terms without the prior written consent of APAX and the Auctioneer.

16. **Amendment**

These Bidder Terms may only be amended by APAX on no less than 7 days' written notice in writing to the parties. An amendment will take effect:

- 16.1 from the date specified in the notice; or
- 16.2 where the Auction has started when the notice is issued and where the Auction finish time is later than the date specified in the notice, from the Conclusion of the Auction.

17. **No merger**

Accrued rights and obligations under these Bidder Terms continue after expiry or termination of these Bidder Terms, cancellation or your registration as a Bidder and/or the Conclusion of the Auction.

18. **Further action**

Each party must do all things necessary to carry out these Bidder Terms, including executing documents and ensuring its employees and agents perform their obligations. A party must not do anything that will prevent these Bidder Terms from being carried out.

19. **Entire agreement**

This document records the entire agreement between the parties about its subject matter. The parties exclude all terms implied by law, where possible. No party has given any warranty or made any representation to the other party about the subject matter of these Bidder Terms, other than those warranties and representations appearing in this document.

20. **Consents and approvals**

Unless otherwise provided, APAX and/or the Auctioneer may give or withhold its determination, consent, agreement, authorisation or approval:

- 20.1 in that party's absolute discretion;
- 20.2 with or without conditions and without giving reasons; and
- 20.3 when that party chooses.

21. **Notice**

- 21.1 Notice must be in writing and in English, and may be given by an authorised representative of the sender. Notice may be given to a person: (a) via a communications facility (or publically accessible notice) on the APAX Platform; (b) by leaving it at the person's address last notified; (c) by sending it by pre-paid mail to the person's address last notified; or (d) by sending it by electronic mail to the person's email address last notified.
- 21.2 Notice is deemed to be received by a person: (a) if given via the APAX Platform, when properly submitted on the APAX Platform; (b) if sent by pre-paid mail, six Business Days after posting; (c) if sent by electronic mail, on the day after the day the message is showing on the sender's electronic mail system as having been properly transferred or transmitted.
- 21.3 If two or more people comprise a party, notice to one is effective notice to all.

22. **Governing law**

These Bidder Terms are governed by the law of Relevant Jurisdiction. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of the Relevant Jurisdiction.

23. **Trustee provisions**

- 23.1 If any party to these Bidder Terms enters into these Bidder Terms in their capacity as trustee of any trust under any trust deed, deed of settlement or other instrument, and whether or not the other parties have notice of that trust, then that party (**Trustee Party**) enters into these Bidder Terms both as trustee of the relevant trust and in its personal capacity.
- 23.2 The Trustee Party represents and warrants that: it has the power to enter into and execute this agreement and to perform the obligations imposed under this agreement as trustee; all necessary resolutions have been passed in order to make this agreement fully binding on it; the execution of this agreement is for the benefit of the trust of which it is the trustee; it is not in default under the instrument pursuant to which the relevant trust was created; there is not now, and it will not do anything by virtue of which there will be in the future, any restriction or limitation on its right to be indemnified out of the assets of the trust of which it is the trustee; and there is no material fact or circumstance relating to the assets, matters or affairs of the trust of which it is the trustee that might, if disclosed, be expected to affect the decision of the other parties, acting reasonably, to enter into this agreement.

24. **Electronic signatures**

You acknowledge and agree that: (a) execution of these Bidder Terms through an electronic signature is appropriate in the circumstances; (b) you have consented to the requirement of a signature being met by electronic means; and (c) by clicking "I accept", you have indicated its willingness to be bound to the terms of these Bidder Terms.

EXECUTION BY ELECTRONIC SIGNATURE ("CLICK TO ACCEPT/AGREE")