

# Grays Sale of Property User Agreement

Grays Real Estate Australia Pty Ltd ABN 16 643 206 268 trading as Grays Real-Estate Australia owns this website and all Grays mobile apps and provides the Services at the Site for and on behalf of and at the direction of the licensed real estate agent appointed by the Seller to sell the Property.

This User Agreement governs the Services relating to Property that we offer at the Sites, including Online Auction sales and Private Treaty Sales. For all non-Property sales, refer to Grays' User Agreement available here: <https://www.grays.com/content.aspx?block=Terms>

Please read this User Agreement carefully and if applicable, obtain independent legal and/or financial advice in relation to this User Agreement and the Property transactions which it regulates.

## 1. General

- (a) Capitalised terms used throughout this User Agreement are defined in clause 13.
- (b) This User Agreement contains the following schedules which you agree to comply with and be bound by:
  - (i) **Schedule 1: Online Auction**
  - (ii) **Schedule 2: On The Floor Auction**
  - (iii) **Schedule 3: Private Treaty Sales**
  - (iv) **Schedule 4: Post Sale Purchase Procedure**
- (c) The terms and conditions contained in this User Agreement set out your obligations when using the Service. This User Agreement also sets out our obligations to you.
- (d) If you have any questions regarding this User Agreement, please contact our customer service team at [customerservice@grays.com.au](mailto:customerservice@grays.com.au).
- (e) We may amend this User Agreement from time to time by posting an updated version of it on the Site. The updated version will become effective on the date(s) specified on the Site. You should review this User Agreement from time to time. Your continued use of the Service following any amendments to this User Agreement will constitute your acceptance of this User Agreement as amended.
- (f) Further terms and conditions may apply in relation to particular sales, and will be set out on the Sale Overview, Lot Page or Item Page.
- (g) The terms and conditions contained in this User Agreement are to be interpreted so that they comply with all Applicable Law. If any part of these terms and conditions:
  - (i) are unenforceable, illegal or void then it is severed and the remainder of these terms and conditions remain in force; and/or
  - (ii) conflict with the conditions of sale by auction or private treaty (as applicable) prescribed by the Applicable Law, then that term and condition will not apply but all the other terms and conditions will apply.
- (h) Grays' Privacy Policy (available at: [grays privacy policy](#)) forms part of these terms and conditions. By using the Site, you consent to Grays collecting,

handling and using your personal information in accordance with Grays' Privacy Policy.

- (i) In these terms:
  - (i) a word denoting the singular includes the plural and vice versa;
  - (ii) a word denoting a gender includes each other gender;
  - (iii) a word denoting a natural person includes an entity and vice versa;
  - (iv) a reference to a clause is a reference to a clause in this form; and
  - (v) headings are for ease of reference only and shall be ignored in construing these terms.
- (j) Grays does not waive a right, power or remedy if it fails to exercise of delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

## **2. Registration**

### **2.1 Registering for use**

- (a) You must register your details and create an account with us to use the Service. If you are a registered User but not a Qualified Bidder or Qualified Offeror, then certain features on the Site will not be available for you (e.g. viewing the bidding and offer status for a Property). However, in accordance with clause 2.4, you must become a Qualified Bidder or Qualified Offeror in order to participate (including making bids and/or offers) in an Online Auction and/or a Private Treaty Sale. Registration is free and does not oblige you to purchase anything. In the case of a Live Auction, if you register for a Live Auction, then your details will be registered with us and an account created with us to use the Service both during and after the Live Auction.
- (b) You must not use any false or misleading information when registering for an account or using the Service. Your obligations to us will not be reduced in the event that you do provide us with such information.
- (c) You must update your account if any of your details change. We are not responsible for any loss or damage (including misdirected emails) which may occur because you did not provide us with complete or accurate or updated information.
- (d) When you register for the Service, you must choose a user name and password. You are responsible for the security of your user name and password. You will be responsible for any use of the Service where we can prove that access to and use of the Service was authorised by you or caused by your failure to properly secure your account and password details. This may include if you have failed to choose a strong password, or you have kept a written record of your account details that can be viewed by others. You must notify us immediately if you become aware of any unauthorised use of your user name or password or of any other security breach.
- (e) We will send any relevant notices and communications to you via email, including information regarding:

- (i) the status of an Online Auction in which you are participating, such as 'you have been outbid' e-mails, or 'you are the Winning Bidder' (or with equivalent wording) emails;
  - (ii) the status of a Private Treaty Sale in which you are participating, such as 'your offer has not been accepted' emails, or 'you are the Winning Offeror' (or with equivalent wording) emails;
  - (iii) offers, newsletters and promotional events, unless you tell us you do not wish to receive these communications; and
  - (iv) requests for customer feedback.
- (f) We accept no responsibility for any loss or damage incurred if you do not receive a notification or communication from us.
- (g) You can request to close your account by emailing us at [customerservice@grays.com.au](mailto:customerservice@grays.com.au). You may not close your account while you are the highest bidder on an Online Auction or highest offeror on a Private Treaty Sale.
- (h) We will only close your account if:
- (i) any Online Auction in which you have bid has closed;
  - (ii) any Private Treaty Sale in which you made an offer has closed; and
  - (iii) we have received, in cleared funds, all amounts you owe us.

## **2.2 Eligibility to use the Service**

You may only create an account and use the Service if you are:

- (a) 18 years of age and over;
- (b) not an undischarged bankrupt;
- (c) (if you are a company), not under any type of insolvency proceedings or administration;
- (d) legally able to enter into a contractual agreement to purchase a Property in Australia;
- (e) able to provide an Australian residential address or documentation with an overseas address proving you are an Australian resident;
- (f) able to provide correct Verification of Identity information of the User to us when undertaking registration of an account; and/or
- (g) able to meet any other requirements of Grays as determined and advised by us from time to time.

## **2.3 Registration process**

You must provide us with details of a valid Credit Card in order to register for, and use, the Service. We may, on registration, charge a nominal amount of \$1 to your Credit Card and then re-credit that amount to the same Credit Card. This process usually takes no more than one week. By registering for the service, you authorise us to process these transactions.

## 2.4 **Becoming a Qualified Bidder and/or Qualified Offeror to participate in an Online Auction and/or Private Treaty Sale**

- (a) A prospective bidder or offeror must become a Qualified Bidder or Qualified Offeror in order to participate (including making bids and/or offers) in an Online Auction and/or Private Treaty Sale.
- (b) Qualified Bidders and/or Qualified Offerors will be approved by the Agent, upon providing all required documentation.
- (c) With respect to when you may become a Qualified Bidder or Qualified Offeror:
  - (i) for Online Auctions conducted in the Australian Capital Territory (ACT), you can only become a Qualified Bidder during the Campaign Stage. For all other States and Territories, you can become a Qualified Bidder at any time once the Online Auction has commenced up until immediately before the Online Auction concludes; and
  - (ii) for a Private Treaty Sale, you can become a Qualified Offeror at any time once the Private Treaty Sale has commenced up until immediately before the Private Treaty Sale has closed.
- (d) Prior to requesting to become a Qualified Bidder or Qualified Offeror, a bidder or offeror should:
  - (i) carefully read and review the Contract (and if required, seek independent legal, financial, taxation and other appropriate advice) and consider whether the bidder or offeror wishes to negotiate the terms and conditions contained in the Contract; and
  - (ii) contact the Agent or the Seller's Solicitor (as applicable) to discuss whether the Contract is negotiable and if so, negotiate and agree the Contract directly with the Agent or the Seller's Solicitor (as applicable) ('**Amended Terms**'). Grays will not be involved in any process or matter relating to the negotiation, acceptance or approval of amendments to the Contract.
- (e) If the Qualified Bidder or Qualified Offeror is the eventual buyer of the Property, then the Amended Terms will be incorporated into and form part of the Contract entered into by the Seller and the Qualified Bidder or Qualified Offeror (as applicable) who has become the Winning Bidder or Winning Offeror (as applicable).
- (f) Each User (including each Qualified Bidder and Qualified Offeror) will be able to see bids or offers (as applicable) made on the Property.
- (g) The Site will:
  - (i) notify the Qualified Bidder or Qualified Offeror that they are a Qualified Bidder or Qualified Offeror (as applicable); and
  - (ii) provide the Qualified Bidder or Qualified Offeror with a Unique Identification Number that will be used to identify them on the Site.
- (h) Any bid or offer made in the Site using a Qualified Bidder's or Qualified Offeror's Unique Identification Number will be deemed to have been made by that Qualified Bidder or Qualified Offeror (as applicable), and the Qualified Bidder or Qualified Offeror (as applicable) is solely responsible for ensuring that each bid or offer (as applicable) is in fact made by the Qualified Bidder or Qualified Offeror (as applicable).

### **3. Your rights**

Upon registration of an account on the Site, you may free of charge from Grays:

- (a) view Property listed for Auction or Private Treaty Sale;
- (b) if you are a Qualified Bidder, place bids on Property during an Online Auction (provided that the Agent permits online bids made on the Site) in accordance with the terms contained in this User Agreement;
- (c) if you are a Qualified Offeror, place offers on Property during a Private Treaty Sale (provided that the Agent permits online offers made on the Site) in accordance with the terms contained in this User Agreement; and
- (d) utilise the features provided in your account.

### **4. Your responsibilities**

#### **4.1 Use of the Service**

The Service is provided to you. You must:

- (a) not re-sell or distribute access to the Service to another person;
- (b) not use your account to bid on any Online Auction and/or make offers on any Private Treaty Sale for or on behalf of any other person, in any capacity whatsoever; and/or
- (c) not allow any other person to use your account.

#### **4.2 Obligation to maintain system integrity**

- (a) You must not interfere or attempt to interfere with the proper working of the Site, the Service or any Online Auction or Private Treaty Sale being conducted on or through a Site.
- (b) You must not take any action which imposes an unreasonable or disproportionately large burden on our system, Service or the Site.
- (c) You must not disclose your user name and password to anyone else.
- (d) You must notify us immediately if you become aware that your account has been hacked or otherwise compromised or if you become aware of any unauthorised use of the Service or the Site.
- (e) You must not use your account for an unauthorised purpose (including for commercial or criminal use).
- (f) You are solely responsible for your transmissions through the Service. You must:
  - (i) not forge communications or take any action to disguise your location when communicating on our Service and/or the Site (either by direct message or email);
  - (ii) not allow another person to send communications that falsely identify your account as the origin;
  - (iii) not interfere with or disrupt networks connected to the Service or the Site;

- (iv) not use the Service or the Site for any illegal or criminal purpose;
  - (v) ensure that you have adequate internet coverage to allow access to the Site and Service; and
  - (vi) comply with all regulations, policies and procedures of networks connected to the Service which either apply by operation of law or are referred to on the Site.
- (g) With respect to content on the Site, you must not modify, copy, reproduce, frame, upload to a third party, post, transmit or distribute in any way except as expressly provided for on the Site, or as expressly authorised in writing by us.

#### **4.3 Information published on the Site**

You must ensure that any information you provide to us at any time:

- (a) is true, accurate and complete;
- (b) is not false or misleading;
- (c) does not infringe upon any other person's rights (for example, intellectual property rights);
- (d) is not contrary to any Applicable Law;
- (e) is not defamatory, threatening or harassing;
- (f) is not obscene or pornographic; and
- (g) is free of any viruses or malware, (including 'Trojan horses', 'worms', 'time bombs', 'cancelbots' or any other computer software that may damage or interfere with our systems, the Service or the Site).

#### **4.4 Your bids and offers**

Any bids and/or offers made through your account are binding on you and non-retractable unless otherwise permitted by the Applicable Law.

#### **4.5 If you are a Winning Bidder or Winning Offeror**

If you are a Winning Bidder or Winning Offeror, then you must take all steps necessary to effect the exchange/formation of the Contract for the Property, including:

- (a) signing the Contract;
- (b) paying the deposit within the time frame as required under the Contract after the Online Auction or Private Treaty Sale concludes in accordance with the Contract;
- (c) abiding by the Post Sale Purchase Procedure;
- (d) taking all other steps necessary to effect the exchange/formation of the Contract; and
- (e) taking all other steps necessary to effect completion of the Contract.

## **5. Our rights**

### **5.1 Suspension from use of Service**

We may suspend, permanently refuse you the right to use the Service or terminate your access to the Service if:

- (a) you do not pay for a Property or any other item sold on the Service;
- (b) you give information which is untrue, inaccurate or incomplete;
- (c) you have engaged in any form of bid manipulation;
- (d) we reasonably suspect that you have engaged in fraudulent or criminal activity in connection with a Site or use of the Service; and/or
- (e) if you breach any of clauses 2.1(b), 2.2, 4.3, 5.1(d), 1(h), 4.1, 4.2 and 5.1 (a) - (d) of Schedule 1, 1(g) of Schedule 2 and 1(h) of Schedule 3 of this User Agreement, or any other material term. Further, we reserve the right to bring a claim against you if the breach causes loss or damage.

### **5.2 False or Misleading Conduct**

It is illegal to use a false name or to buy Property or make bids with an invalid or stolen Credit Card or PayPal account or any other method which you are not authorised to use. We will refer any fraudulent use of the Service and/or the Site to the relevant law enforcement authorities.

### **5.3 Rights as agent**

- (a) We may at any time withdraw and/or re-offer a Property for sale at any time if the Property:
  - (i) becomes unavailable for any reason;
  - (ii) has uncertain ownership, or is withdrawn by us or the Seller;
  - (iii) has been erroneously listed more than once;
  - (iv) is incorrectly described; or
  - (v) is incorrectly priced.
- (b) With respect to Live Auctions, we may re-offer a Property for sale at any time if the Auctioneer, acting reasonably, determines that the Property should be re-offered for sale.
- (c) In order to comply with our legal obligations, and if requested by a law enforcement agency or government body, we may remove a Property and/or information from the Site.
- (d) We also reserve the right to change, with respect to any Online Auction, the nominated bid increment amount during an auction, at any time before an Online Auction is completed.

## **6. Liability and indemnities**

### **6.1 Our liability to you**

- (a) Your rights in this User Agreement are in addition to any rights you have as a consumer under the Australian Consumer Law. Nothing in this User Agreement restricts or excludes any rights you may have under the Australian Consumer Law.
- (b) In an Online Auction, we are not responsible for bids not received, processed or accepted which is reasonably due to technical difficulties, including bids placed by AutoBid. In particular, we are not responsible for any loss, liability or damage incurred by you as a result of a bid not received, processed or accepted which is reasonably due to technical difficulties.
- (c) Without limiting clause 6.1(b), in respect of any Live Auction, we accept no liability for any loss or damage arising out of, or in connection with, the performance or failure of the Live Auction software. We do not warrant that the Live Auction software will meet your requirements, operate without interruptions, or operate without errors. We are not responsible for bids attempted to be placed on any Live Auction which are not received, processed or accepted due to technological or software issues. If you have concerns about the operation of the Live Auction software, there may be the option of attending an On The Floor Auction in person.
- (d) With respect to any Private Treaty Sale, we are not responsible for offers not received, processed or accepted which is reasonably due to technical difficulties. In particular, we are not responsible for any loss, liability or damage incurred by you as a result of an offer not received, processed or accepted which is reasonably due to technical difficulties.
- (e) Grays, the Seller, the Agent, the Auctioneer and each of their officers, directors and employees will not be held liable, in any circumstances, for any loss or damages which arise out of:
  - (i) any use, attempted use and/or any technical failure of the Site and/or the Service;
  - (ii) acting, or failing to act, on any information contained on or referred to on the Site and/or the Service; and/or
  - (iii) any errors or defects on the Site and/or the Service.
- (f) Subject to our obligations under the Australian Consumer Law, we provide the Site and the Service without any express or implied warranty or condition concerning capacity or availability.
- (g) Neither we nor our suppliers or the Seller, Agent or Auctioneer are liable for any lost profits or any consequential damages arising out of or in connection with the delivery of the Site, the Service or the sale of any Property.
- (h) We do not guarantee continuous, uninterrupted or secure access to the Service or the Site. Operation of the Site and/or the Service may be restricted by factors outside of our control or maintenance.
- (i) Unless expressly stated the information on the Site is provided for information purposes, general interest and enquiry only. Before relying on the information on the Site, you should verify the accuracy of the information and consult with appropriate legal, financial, taxation or other appropriate professionals for specific advice tailored to your situation.



## 6.2 Limitation of our liability to you

- (a) In relation to a Property sold on the Site, and subject to the Australian Consumer Law, we will endeavour to:
  - (i) provide accurate descriptions to fairly reflect each Property; and
  - (ii) ensure that each Property listed on the Site is in fact available and ready for purchase.
- (b) Subject to this clause, and to the extent permitted by law, all express or implied conditions or warranties in connection with the Service, the Site and the sale of any Property are excluded.
- (c) In no case will Grays incur liability for any loss or damage exceeding the relevant sale or purchase price paid by you for a Property nor on account of losses or damages suffered by you including loss of profit, damage to property, or personal injury arising from that supply or that agreement, whether arising directly, incidentally or consequentially.
- (d) Without limiting clause 6.2(b), Grays does not own any Property listed on the Site and Grays role is limited to providing the Site and the Service for the sale of a Property and Grays is therefore not liable or responsible:
  - (i) in the event that a Seller, Winning Bidder or Winning Offeror fails to complete a transaction;
  - (ii) for completion of the sale of the Property;
  - (iii) for the state and/or condition of any Property listed on the Site; and/or
  - (iv) for verifying the Property listed on the Site.
- (e) We do not exclude liability under any guarantee, condition or warranty which cannot be excluded by law.

## 6.3 Indemnities

- (a) You waive, release, discharge and relinquish any and all claims that you now have or may have against us, our affiliates, subsidiaries, parents, shareholders, directors, officers, employees, agents and representatives, the Seller, the Agent and/or the Auctioneer which are connected with, arise out of, relate to or are incidental to the use of the Service, except to the extent that any claim arises directly from our fraud, gross negligence or wilful misconduct.
- (b) You agree to indemnify and hold us, our affiliates, subsidiaries, parents, shareholders, directors, officers, employees, agents and representatives (the **Indemnified Parties**) harmless from and against any and all claims, loss, damage, tax, liability and/or expense that may be incurred by the Indemnified Parties arising out of or in connection with the performance of their obligations under this User Agreement including any legal costs, fees and expenses of defending ourselves against any claim by any or all of the parties to any transaction and/or by any other person and/or as a result of your negligent act or omission.
- (c) You further agree to indemnify and hold us, and the Indemnified Parties, the Seller, the Agent and the Auctioneer harmless from any claim or demand, including legal fees on a full indemnity basis, made by any third party due to or arising out of a breach of this User Agreement by you.

## **7. Representations and statements**

All statements by Grays or employees, agent or representatives of Grays in a catalogue (if available), website, or made orally or in writing elsewhere, are statements of opinion and are not to be relied on as statements of fact. Such statements do not constitute a representation, warranty or assumption of liability by us of any kind. Grays is not responsible for errors or omissions in the lot description or any supplemental material, including but not limited to photographs.

## **8. Non-disparagement**

You agree that you, your agents and employees shall not, in any communications with the press or other media or any customer, client, or supplier Grays, any affiliates of Grays or any other person, criticise, ridicule or make a statement which unreasonably disparages or is derogatory of Grays, its products, services or its employees.

## **9. Governing law**

**9.1** This User Agreement is governed by and will be construed according to the Applicable Law and is subject to the jurisdiction of the courts in the state or territory in which the Property is located.

**9.2** To the extent permitted by the, the parties exclude the operation of Proportionate Liability in relation to any claims rights, obligations and liabilities arising under or in connection with this agreement (however arising).

## **10. Trust**

**10.1** If you are the trustee of a trust (whether disclosed to Grays or not), you warrant to Grays that:

- (a) you enter into the Agreement in both your capacity as trustee and in your personal capacity;
- (b) you have the right to be indemnified out of trust assets;
- (c) you have the power under the trust deed to enter into the Agreement; and
- (d) you will not retire as trustee as the trust or appoint any new or additional trustee without advising Grays.

**10.2** You must give Grays a copy of any relevant trust deed upon request.

## **11. Force Majeure**

Grays is not liable for the cancellation of any Property if performance by Grays is prevented or delayed directly or indirectly by any cause beyond the reasonable control of Grays whether such cause existed or was foreseeable by the date of the bid on or purchase of the Property. For the avoidance of any doubt, a preventing or delaying factor includes any effects of COVID-19 or related virus.

## **12. GST and Duty**

- (a) The Contract, Sale Overview, Lot Description, Lot Page or Item Page may state whether the sale price of a Property is inclusive, exclusive or exempt from any GST.

- (b) You acknowledge and agree that: if the sale price is stated to be GST exclusive, GST will be calculated on and added to the sale price.
- (c) You acknowledge and agree that you are liable to pay transfer duty on the Contract.
- (d) Grays makes no warranty or representation regarding whether GST is payable in relation to the Property, You acknowledge and agree that You have sought the relevant advice in relation to any GST payable.

### 13. Definitions

Capitalised terms in this User Agreement (which includes for the avoidance of doubt, each of the Schedules) shall have the following meaning:

- (a) **Absentee Bid** means a bid for a Property in an On The Floor Auction or Live Auction which you submit to us for us to execute on your behalf during the auction.
- (b) **Agent** means the Seller's listing agent for a Property named in the Contract and has the same meaning given to that term in the Applicable Law.
- (c) **Applicable Law** means the law/s applying in the relevant jurisdiction in which the Property is located.
- (d) **Auctioneer** means the auctioneer at an On The Floor Auction and it has the same meaning given to that term in the Applicable Law.
- (e) **Australian Consumer Law** means the law outlined in Schedule 2 of the *Competition and Consumer Act 2010*.
- (f) **AutoBid** means the process by which you elect and submit a maximum bid amount and our Online Auction system will automatically incrementally increase your existing bid in the event that your existing bid is exceeded by another bidder up to your maximum bid amount on the Site.
- (g) **Business Day** means a day that is not, (a) Saturday or Sunday; or (b) a public holiday, special holiday or bank holiday in the place in which the Property is located.
- (h) **Campaign Stage** means with respect to an Online Auction, the stage that commences upon us listing on the Site, a Property for sale by Online Auction and ends at the commencement of the Online Auction.
- (i) **Contract** means the contract for the sale and purchase of a Property.
- (j) **Credit Card** means the credit card that you have registered on your account with Grays, which must be either American Express, Diners Club, MasterCard and/or Visa.
- (k) **Dummy Bidding** means false or fictitious bids or offers made by non-genuine bidders or offerors with no intention of buying the Property and also includes any bidding practices prohibited by the Applicable Law.
- (l) **Grays** means Grays Real Estate Australia Pty Ltd ABN 16 643 206 268 trading as Grays Real-Estate Australia of 376 Newbridge Road, Moorebank NSW 2170

- (m) **GST** means goods and services tax determined in accordance with the *A New Tax System (Goods and Services Tax) Act 1999*.
- (n) **Item Page** means the specific page on the Site that contains the special terms and conditions attached to a particular Property for sale.
- (o) **Live Auction** means a live stream on a Site of an On The Floor Auction.
- (p) **Lot Description** means the description of a Property contained within the sale catalogue and identified with its individual lot number.
- (q) **Lot Page** means a page that describes a particular Property for sale by an Online Auction or a Private Treaty Sale and may include special terms and conditions.
- (r) **Minimum Bid Threshold** means, if a minimum bid threshold for an Online Auction applies to an Auction, the minimum amount that each bid placed must be equal to or greater than.
- (s) **On The Floor Auction** means a physical auction we hold before an audience of bidders at physical premises.
- (t) **On The Floor Auction Terms and Conditions** means the terms and conditions that apply to the On The Floor Auction, which are available at the physical premises where the auction is conducted and as required by the Applicable Law and otherwise available from us upon request.
- (u) **Online Auction** means a sale or prospective sale of a Property by auction on a Site, including a Live Auction.
- (v) **Online Auction Terms and Conditions** means the terms and conditions that apply to the Online Auction which are available on the Site during the Campaign Stage.
- (w) **Paypal** means the PayPal service provided by PayPal Australia Pty Limited (ABN 93 111 195 389)
- (x) **Post Sale Purchase Procedure** means the procedure contained in Schedule 4.
- (y) **Private Treaty Sale** means a sale or prospective sale of a Property on a Site by way of sale by private treaty which involves you clicking the button called 'Make an Offer' when offering to purchase a Property.
- (z) **Property** means real property being the land and anything fixed, immovable, or permanently attached to it. Title to real estate normally includes title to air rights, mineral rights, and surface rights.
- (aa) **Property Information** means any information in the Contract or posted by us on the Site in relation to any Property posted by us for sale on the Site.
- (bb) **Proportionate Liability** means the relevant part of the 'Civil Liability Act' in each State or territory where such provision can be excluded, being:
  - (i) Part 4, *Civil Liability Act 2002* (NSW);
  - (ii) Part 9A, *Civil Liability Act 2002* (Tas); and
  - (iii) Part 1F, *Civil Liability Act 2002* (WA).

- (cc) **Qualified Bidder** means a bidder who has fulfilled the registration requirements required by the Applicable Law, as set out in this User Agreement and has been approved by the Agent to participate in an Online Auction.
- (dd) **Qualified Offeror** means an offeror who has fulfilled the registration requirements required by the Applicable Law, as set out in this User Agreement and has been approved by the Agent to participate in a Private Treaty Sale.
- (ee) **Refresh Period** means the time between nine minutes and one second and nine minutes and fifty-nine seconds (inclusive), being the period that the Site's timing mechanism has entered the tenth minute. For example:
  - (i) where a bid is placed at 2:53:00 pm, assuming there are no further bids placed, the auction will close at 3:03:00 pm;
  - (ii) where a bid is placed at 2:53:45 pm, assuming there are no further bids placed, the auction will close at 3:03:00 pm;
  - (iii) where a bid is placed at 2:54 pm, assuming there are no further bids placed, the auction will close at 3:04:00 pm.
- (ff) **Sale Overview** means any special terms and conditions and product specifications attached to a particular Property and/or a Contract.
- (gg) **Seller** refers to the seller of the Property sold on the Site, including through an Online Auction or Private Treaty Sale, who is not Grays or a related entity of Grays. For the purposes of this User Agreement, 'Seller' also includes the Agent, Auctioneer and the Seller's Solicitor.
- (hh) **Service** means any of the services offered by Grays with respect to the sale of Property (including any Online Auction sale and any Private Treaty Sale).
- (ii) **Site** means the Grays' website including grays.com and liveauction.grays.com and Grays' mobile apps.
- (jj) **Sole Bidder** means a Qualified Bidder who is the only Qualified Bidder in relation to the Property.
- (kk) **Solicitor** means a legal representative being the holder of a current Australian legal practice certificate issued by an Australian law society.
- (ll) **Unique Identification Number** means the unique identifying number provided by the Site to each Qualified Bidder or Qualified Offeror (as applicable) to allow them to be identified on the Site.
- (mm) **User** means a user of the Service offered by Grays on the Site who has successfully registered in accordance with the requirements of this User Agreement.
- (nn) **User Agreement** refers to these terms and conditions.
- (oo) **Us/we/our** means Grays Real Estate Australia Pty Ltd ABN 16 643 206 268 trading as Grays Real-Estate Australia of 376 Newbridge Road, Moorebank NSW 2170.
- (pp) **Verification of Identity** means the requisite amount of personal identification required to identify an individual or company or trust in accordance with the requirements of the Applicable Law as amended from time to time and as required by Grays at its discretion.

- (qq) **Winner's Bid Amount** means the amount of the highest bid.
- (rr) **Winning Bidder** means the bidder who has the highest bid at the conclusion of the Online Auction.
- (ss) **Winner's Offer Amount** means the amount offered by a person and accepted by Grays during a Private Treaty Sale.
- (tt) **Winning Offeror** means a person whose offer has been accepted by Grays during a Private Treaty Sale.

## Schedule 1 – Online Auction

### 1. Bidding at Online Auctions

- (a) When you use the Service to bid at an Online Auction, you are making an offer to buy the Property at your bid price. If your bid price is the Winner's Bid Amount, you will be the Winning Bidder and must purchase the Property and pay any applicable additional fees, taxes and charges.
- (b) Once your bid is placed at an Online Auction, it cannot be cancelled or withdrawn. Unless otherwise prevented by law, the parties agree to exclude the right of the bidder to retract from a bid if such a right exists under applicable laws.
- (c) If You are utilising the AutoBid function, You authorise Grays to make bids on the Property on your behalf in the increments nominated by You or as stipulated by Grays up to the maximum bid.
- (d) If you have set up the AutoBid function on your account, once your AutoBid is placed, it cannot be altered or withdrawn.
- (e) Property offered by Online Auction is sold on an 'As is, Where is' basis. You must not rely solely on the title summary or any photographs of the Property. It is your responsibility to do the following during the Campaign Stage and before bidding:
  - (i) read the Property Information, Sale Overview, Lot Page and any other information we or the Agent provide relating to any Property listed for auction on the Site;
  - (ii) do your own due diligence (including, but not limited to, building and pest inspections and property searches) so that you understand what it is that you are bidding for; and
  - (iii) read the information provided and attend any advised physical inspections, to assess the suitability of a Property for you.
- (f) You must make sure you understand the Post Sale Purchase Procedure, including any amendment to those terms and conditions as outlined in the Property's description or in the Sale Overview and Lot Page.
- (g) Grays and/or the Agent and/or the Auctioneer has the authority to reject or not accept any bid at its discretion.
- (h) You must not engage in any form of bid manipulation or betting. You acknowledge that it is against the law to participate in Dummy Bidding and agree not to do so. If you become aware of the occurrence of Dummy Bidding, you must inform the Agent and/or the Auctioneer and/or us as soon as possible.
- (i) In relation to any Live Auction, bidding for an auction can take place both online on the Site and in person at the On The Floor Auction.
- (j) The Online Auction will be conducted in accordance with the rules and regulations as set out in the prescribed conditions of auction relevant to the jurisdiction in which the Property is located (if any). As a registered Qualified Bidder you agree to comply with these rules and regulations along with any other terms and conditions as specified by us.

- (k) The Online Auction will commence at the advertised date and time and the parameters of the Online Auction will be set up and operated by the Agent and/or the Auctioneer for the Seller.
- (l) Grays gives Seller the right to place one Seller bid (only) during the course of the Online Auction ('**Seller Bid**') and if placed:
  - (i) such Seller Bid will be placed by Grays (being the auctioneer) on behalf of the Seller during the course of the Online Auction; and
  - (ii) Grays will advise all other bidders that the Seller Bid is made on behalf of the Seller,in accordance with applicable laws.
- (m) You must only place a bid if you have the intention of purchasing the Property. If you place a bid, you acknowledge that you are prepared and able to pay that amount for the Property and any duty should you be successful.
- (n) The sale of the Property by Online Auction is an 'auction' as defined in the Applicable Law which will occur in accordance with auction conditions and no cooling off period applies in respect of the purchase of the Property. It is the Agent's responsibility to:
  - (i) maintain and update any relevant information or documentation with regards to the Property; and
  - (ii) notify any bidders of any changes to the Contract, terms of sale, auction details or the Property itself prior to or during the Online Auction.

## **2. Procedure**

### **2.1 How to bid**

- (a) Only registered Users who have had their accounts activated by us and who are Qualified Bidders will be able to bid via the Site.
- (b) You may bid in an Online Auction by:
  - (i) placing a manual bid; or
  - (ii) except in relation to any Live Auction, using AutoBid.
- (c) If you bid at an Online Auction using AutoBid, you are responsible for monitoring the Online Auction in which you are participating.
- (d) An Online Auction will start at the specified time and at the minimum starting price nominated by us. The minimum starting price is nominated by us to commence the auction and is not a Seller bid.
- (e) With respect to all bids placed at an Online Auction:
  - (i) all bids must be made on a per-property basis;
  - (ii) each initial bid placed for a Property must be equal to or greater than the nominated starting bid amount (if any);



- (iii) subject to clause 2.1(f) of this Schedule, if a Minimum Bid Threshold applies to a Property, then each bid placed for a Property must be equal to or greater than the Minimum Bid Threshold amount; and
- (iv) your bid must always be in excess of the current highest bid.

For example:

- (v) if a Property's starting bid is \$750,000 and the Minimum Bid Threshold is \$50,000, the initial bid placed must be at least \$800,000; and
  - (vi) if, for that same \$750,000 starting bid Property, a bidder made an initial bid of say \$810,000, then each subsequent bid must continue to be at least \$50,000 (being the Minimum Bid Threshold) above the previous bid. So the next bid would be \$860,000 or higher than the Minimum Threshold Bid.
- (f) The Minimum Bid Threshold will not apply if you place a bid using Autobid and such bid then reaches its maximum Autobid amount and is the current winning bid. For example:
- (i) a Property's starting bid is \$500,000 and the Minimum Bid Threshold is \$100,000;
  - (ii) bidder 1 uses Autobid to place a bid with a maximum Autobid amount of \$800,000 which increases the current winning bid to \$600,000;
  - (iii) bidder 2 then places a standard bid of \$750,000; and
  - (iv) the final bid placed using Autobid from bidder 1 can only increase to their maximum Autobid amount of \$800,000 (so bidder 1's final bid placed via Autobid will be \$50,000 rather than reflecting the \$100,000 Minimum Bid Threshold).
- (g) We may close an Online Auction before the scheduled closing time if:
- (i) we suspect there is or may be fraudulent or malicious bidding;
  - (ii) there are or may be processing or systems errors;
  - (iii) there are or may be technological errors or Site failure;
  - (iv) we are not satisfied as to the proof of ownership of the Property the subject of that auction; or
  - (v) we consider it necessary in order to comply with law enforcement requirements or requests or in accordance with applicable Australian laws
- (h) Subject to clause 5 (Floor Priority) of Schedule 2, which relates to a Live Auction, bids will be ranked in the order of bid price.
- (i) If you are the current highest bidder on an Online Auction, you will not be permitted to change your current bid to a lower bid.

## **2.2 Reserve Prices**

- (a) During the Campaign Stage, the Seller will give the Agent the reserve price that the Seller has set for the Property in writing.

- (b) The Seller is entitled to reduce the reserve price during the course of the Online Auction.
- (c) If your bid is lower than the reserve price a notification of 'Reserve not met' will appear.
- (d) Once bidding during an auction meets or exceeds the reserve price:
  - (i) the Property will be deemed 'on the market';
  - (ii) the 'Reserve not met' label will be removed; and
  - (iii) the highest bid for the Property at the end of the auction will win.
- (e) When you confirm your bid, it will be accepted as a valid bid, even when the 'Reserve not met' label is shown.

### **2.3 Reserve Price not met at end of auction**

If the Property's reserve price has not been met at end of the Online Auction, then:

- (a) the Seller is not obligated to sell the Property to any Qualified Bidder and the Property will be 'passed in';
- (b) the Seller must contact and negotiate with the highest bidder below the reserve price or commence a Private Treaty Sale for the Property; and
- (c) if an offer is made by a Qualified Bidder that is accepted by the Seller or the Agent, then:
  - (i) if contracts are exchanged/formed within a time specified by the Applicable Law of an Online Auction (after the Property has been passed in), then the sale will occur in accordance with auction conditions and no cooling off period applies in respect of the purchase of the Property;
  - (ii) if contracts are exchanged/formed after a time specified by the Applicable Law of an Online Auction (after the Property has been passed in), then the sale will be a private sale and the sale will occur in accordance with Private Treaty Sale terms and conditions and any further negotiated terms and conditions comprised in the Contract; and
  - (iii) if the Qualified Bidder negotiated and agreed Amended Terms directly with the Seller, Agent or Seller's Solicitor in accordance with clause 2.4 of the User Agreement, then these Amended Terms will apply to sale and purchase of the Property.

### **2.4 Conclusion of Online Auction**

- (a) An Online Auction, excluding a Live Auction, will close at the end of the time period specified for that Online Auction, provided there are no new successful bids during the 10 minutes immediately preceding the end of the time period specified. If there are any successful bids on a particular Property within 10 minutes of the time specified for the close of the Online Auction (the going, going, gone period), the auction will continue to be extended until there are no more within the Refresh Period. We accept no responsibility for any missed or unsuccessful bids resulting from any slight variations that may occur in the length of the Refresh Period.

- (b) When an Online Auction in which you have participated closes and you are the Winning Bidder, we will notify you of this by e-mail, including the amount of your winning bid and the Property number and description.
- (c) Non-receipt of a Winning Bidder (or any other) email from us will not release you from your obligation to complete the purchase of the auction sale Property.
- (d) If you are the Winning Bidder for a Property at an Online Auction, you must:
  - (i) complete the transaction and purchase the Property;
  - (ii) sign the Contract via the electronic software, docusign or in any other manner agreed to between you, your Solicitor and Agent;
  - (iii) pay the deposit as soon as practicable after the completion of the Online Auction and as required by the Contract; and
  - (iv) abide by the Post Sale Purchase Procedure.
- (e) We are not responsible for ensuring any further communication between you and the Agent after the close of the Online Auction.
- (f) Unless otherwise stated all prices are quoted in Australian dollars.

## **2.5 Purchase of the Property by a Sole Bidder**

The Property may be sold if 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 Site;
- (b) if the reserve price is met, then at the conclusion of the Online Auction, the Sole Bidder will be the Winning Bidder;
- (c) if the reserve price is not met, then Grays may contact the Sole Bidder and clause 2.3 of this Schedule applies.

## **2.6 Technological errors**

With respect to Online Auctions, if any errors or delays arise as a result of or in connection with technological difficulties, including technological difficulties associated with our servers, data hosting centre, internet service provider or software for Live Auctions, we may, acting reasonably:

- (a) prior to or after the original time set for conclusion of the Online Auction, extend an Online Auction for a period of time we choose;
- (b) prior to or after the original time set for conclusion of the Online Auction, re-open an Online Auction for a period of time we choose;
- (c) prior to or after the conclusion of an Online Auction, retract any Winning Bidder's emails which may have been sent out to bidders;
- (d) prior to or during an Online Auction, amend the start price allocated to a Property for sale online; and/or
- (e) cancel an Online Auction and conduct the auction again.

## **2.7 Time**

When bidding on an Online Auction, the time, referred to as 'GraysTime', will be approximately equal to Australian Eastern Standard Time (**AEST** or **AEDT**).

## **2.8 Price Indication**

Any indication given by Grays of the value or price of a Property for sale is indicative only and may not be relied upon by the bidder as any representation of the reserve price or likely reserve price.

## Schedule 2 – On The Floor Auction

### 1. Bidding at an On The Floor Auction

- (a) When you bid at an On The Floor Auction, you are making an offer to buy the Property at your bid price. If your bid price is the Winner's Bid Amount, you will be the Winning Bidder and must purchase the Property and pay any applicable additional fees, taxes and charges.
- (b) Once your bid is placed at an On The Floor Auction, it cannot be cancelled or withdrawn unless otherwise permitted by the Applicable Law.
- (c) The Auctioneer will be responsible for the conduct of the Live Auction and will be the sole arbitrator of the process.
- (d) Property offered by an On The Floor Auction is sold on an 'As is, Where is' basis. You must not rely solely on the title summary or any photographs of the Property. It is your responsibility to do the following prior to the commencement of the On The Floor Auction and before bidding:
  - (i) read the Property Information, Sale Overview, Lot Page and any other information we or the Agent provide relating to any Property listed for auction on the Site;
  - (ii) do your own due diligence (including, but not limited to, building and pest inspections and property searches) so that you understand what it is that you are bidding for; and
  - (iii) read the information provided and attend any advised physical inspections, to assess the suitability of a Property for you.
- (e) You must make sure you understand the Post Sale Purchase Procedure, including any amendment to those terms and conditions as outlined in the Property's description or in the Sale Overview and Lot Page.
- (f) Grays and/or the Agent and/or the Auctioneer has the authority to reject or not accept any bid at its discretion.
- (g) You must not engage in any form of bid manipulation or betting. You acknowledge that it is against the law to participate in Dummy Bidding and agree not to do so.
- (h) In relation to Live Auctions, bidding for an auction can take place both online on the Site and in person at the On The Floor Auction.
- (i) The On The Floor Auction will be conducted in accordance with the rules and regulations as set out in the prescribed conditions of auction relevant to jurisdiction in which the Property is located. As a registered Qualified Bidder you agree to comply with these rules and regulations along with any other terms and conditions as specified by us.
- (j) The On The Floor Auction will commence at the advertised date and time and the parameters of the On The Floor Auction will be set up and operated by the Agent for the Seller.
- (k) Grays gives Seller the right to place one Seller bid (only) during the course of the On The Floor Auction ('**Seller Bid**') and if placed:

- (i) such Seller Bid will be placed by the Auctioneer on behalf of the Seller during the course of the On The Floor Auction; and
- (ii) the Auctioneer will advise all other bidders that the Seller Bid is made on behalf of the Seller,

in accordance with applicable laws.

- (l) You must only place a bid if you have the intention of purchasing the Property. If you place a bid, you acknowledge that you are prepared and able to pay that amount for the Property and any duty should you be successful.
- (m) The sale of the Property via On The Floor Auction is an 'auction' as defined in Applicable Law which will occur in accordance with auction conditions and no cooling off period applies in respect of the purchase of the Property.
- (n) It is the Agent's responsibility to:
  - (i) maintain and update any relevant information or documentation with regards to the Property; and
  - (ii) notify any bidders of any changes to the Contract, terms of sale, auction details or the Property itself prior to or during the On The Floor Auction.

## **2. Procedure**

- (a) You may bid in an On The Floor Auction by:
  - (i) on the Site:
    - (A) placing a manual bid during a Live Auction; or
    - (B) placing an Absentee Bid for a Live Auction on the Site in accordance with clause 4 (Absentee Bidding) of this Schedule 2; or
  - (ii) attending the On The Floor Auction in person and:
    - (A) placing a bid in person in accordance with the On The Floor Auction Terms and Conditions; or
    - (B) placing an Absentee Bid in person in accordance with clause 4 (Absentee Bidding) of this Schedule 2.
- (b) The Auctioneer regulates the bidding at the On The Floor Auction. The Auctioneer may exercise his or her reasonable discretion to refuse to accept any bid or to exclude any person from placing a bid, including bids made through a Live Auction. At any time, the Auctioneer is permitted to pause the On The Floor Auction and if required by the Auctioneer, no bids will be able to be placed during this time. In the event of any dispute arising during a Live Auction, the Auctioneer is the arbitrator and his or her decision is final.

## **3. Registration for Live Auctions**

You must register for each Live Auction where you wish to make a bid.

#### **4. Absentee Bidding**

- (a) An Absentee Bid may be placed for a Live Auction if you are unable to either:
  - (i) attend the On The Floor Auction; or
  - (ii) bid live online on the day of the Live Auction.
- (b) For Absentee Bids placed on the Site, these Absentee Bids may be submitted on the Site before the Live Auction begins or during the Live Auction, provided that the relevant Property is not currently being offered or has not already been sold. We are not responsible for Absentee Bids which are not received because of technical issues.
- (c) For Absentee Bids placed in person, these Absentee Bids may be submitted in person before the On The Floor Auction begins provided that the relevant Property is not currently being offered or has not already been sold. These can be placed by attending the premises at which the On The Floor Auction is to be held and placing an Absentee Bid by completing a hard-copy absentee bid form and lodging it with us in accordance with any requirements set out in the On The Floor Auction Terms and Conditions. We are not responsible for Absentee Bids which have not been completed in accordance with any requirements set out in the On The Floor Auction Terms and Conditions.
- (d) If you have placed an Absentee Bid on a Property and another bidder has placed a higher Absentee Bid on the same Property, we may send you a notification that you have been outbid, so that you have the opportunity to increase your Absentee Bid.

#### **5. Floor Priority**

If an Auctioneer receives a bid by a person at the On The Floor Auction around the same time that a bid is made through a Live Auction, the Auctioneer may give the person at the On The Floor Auction priority. In these circumstances, you may make another bid at the next asking price.

## Schedule 3 – Private Treaty Sales

### 1. Making an offer under the Private Treaty Sale process

- (a) When you use the Service to make an offer for a Private Treaty Sale, you are making an offer to buy the Property at your offer price. If your offer price is the Winner's Offer Amount, you will be the Winning Offeror and you must purchase the Property and pay any applicable additional fees, taxes and charges.
- (b) Once your offer is placed for a Private Treaty Sale, it cannot be cancelled or withdrawn.
- (c) There is no AutoBid function, or equivalent, for a Private Treaty Sale.
- (d) Property offered by Private Treaty Sale are, to the extent permitted by law, generally sold on an 'As is, Where is' basis. You must not rely solely on the title summary or any photographs of the Property. It is your responsibility to do the following **before** making an offer:
  - (i) read the Property Information, Sale Overview, Lot Page and any other information we or the Agent provide relating to any Property listed on the Site;
  - (ii) do your own due diligence (including, but not limited to, building and pest inspections and property searches) so that you understand what it is that you are making an offer for; and
  - (iii) read the information provided and attend any advised physical inspections, to assess the suitability of a Property for you.
- (e) You must make sure you understand the Post Sale Purchase Procedure, including any amendment to those terms and conditions as outlined in the Property's description or in the Sale Overview and Lot Page.
- (f) Grays and/or the Agent and/or the Auctioneer has the authority to reject or not accept any offer at its discretion.
- (g) You must not engage in any form of manipulation or betting with respect to the Private Treaty Sale process. You acknowledge that it is against the law to participate in Dummy Bidding and agree not to do so. If you become aware of the occurrence of Dummy Bidding, you must inform the Agent and/or the Auctioneer and/or us as soon as possible.
- (h) The Private Treaty Sale will be conducted in accordance with the rules and regulations as set out in the prescribed conditions of Sale relevant to jurisdiction in which the Property is located. As a registered Qualified Offeror you agree to comply with these rules and regulations along with any other terms and conditions as specified by us.
- (i) The Private Treaty Sale will commence at the advertised date and time and the parameters of the Private Treaty Sale will be set up and operated by the Agent for the Seller.
- (j) You must only make an offer if you have the intention of purchasing the Property. If You make an offer, you acknowledge that you are prepared and able to pay that amount for the Property and any duty should you be successful.
- (k) It is the Agent's responsibility to:



- (i) maintain and update any relevant information or documentation with regards to the Property; and
- (ii) notify any offeror of any changes to the Contract, terms of sale, sale details or the Property itself prior to or during the Private Treaty Sale.

## **2. The Private Treaty Sale Process**

### **2.1 Procedure for making offers**

- (a) Only registered Users who have had their accounts activated by us and who are Qualified Offerors will be able to make offers for Private Treaty Sales via the Site.
- (b) You may make an offer to purchase a Property through a Private Treaty Sale by submitting a manual offer on the Site.
- (c) A Private Treaty Sale will start at the specified time and at the minimum starting price nominated by us.
- (d) Any offer placed during a Private Treaty Sale made may be increased by any amount unless the Private Treaty Sale has closed. Your offer must always be in excess of the current highest offer.
- (e) We may close a Private Treaty Sale before the scheduled closing time if:
  - (i) an offer has been accepted in accordance with clause 2.2(b)(iv) of this Schedule;
  - (ii) we suspect there is or may be fraudulent or malicious offers;
  - (iii) there are or may be processing or systems errors;
  - (iv) there are or may be technological errors or Site failure;
  - (v) we are not satisfied as to the proof of ownership of the Property the subject of that Private Treaty Sale; or
  - (vi) we consider it necessary in order to comply with law enforcement requirements or requests or in accordance with applicable Australian laws
- (f) Offers will be ranked in the order of offer price.
- (g) If you are the current highest offeror on a Private Treaty Sale, you will not be permitted to change your current offer to a lower offer.
- (h) Offers made by offerors during a Private Treaty Sale will not be displayed on Sale Overview, Lot Page or Item Page.

### **2.2 Negotiable Offer**

- (a) If an offer is made for a Property that does not meet or exceed the reserve price and/or is in Grays' view, not a reasonably competitive offer, then a notification of 'Unsuccessful offer' will ordinarily appear.
- (b) If an offer is made for a Property that either meets or exceeds the reserve price and/or is in Grays' view, a reasonably competitive offer (**Negotiable Offer**), then:

- (i) Grays may contact that offeror in order to negotiate or further discuss the Negotiable Offer (**Negotiation Period**) and the offeror may increase its Negotiable Offer during the Negotiation Period;
- (ii) any other offer(s) for the Property may be made by other offerors during the Negotiation Period and Grays may negotiate each Negotiable Offer;
- (iii) Grays is not bound to negotiate exclusively with any one offeror at any one time; and
- (iv) Grays may accept a Negotiable Offer and in that event:
  - (A) the offeror that has made such Negotiable Offer will immediately win the Private Treaty Sale for that Property and the offer will be the Winning Offer;
  - (B) the relevant Private Treaty Sale will immediately close, even if such closure occurs before the scheduled closing time, and no further offers will be accepted by Grays; and
  - (C) a notification of 'Private Treaty Sale closed' will ordinarily appear.
- (c) If at the end of the Private Treaty Sale period there has been no Winning Offer in accordance with clauses 2.2(b)(iv) of this Schedule, the highest offeror may be contacted by Grays.
- (d) If Grays contacts an offeror in relation to a Negotiable Offer, any negotiations or discussions undertaken during the Negotiation Period may be on instruction by the Seller or its Agent.
- (e) Grays, acting on the Seller's instructions, determines the Winning Offer.
- (f) When you confirm your offer, it will be accepted as a valid offer, even when the 'Unsuccessful offer' label is shown.

### **2.3 Property Prices**

- (a) The prices for the Properties for sale by Private Treaty will be displayed in the following manner:
  - (i) The proposed purchase price;
  - (ii) 'Offers over' a nominated purchase price;
  - (iii) 'Expressions of Interest'; or
  - (iv) Other manner as agreed between the Seller, the Agent and Grays.
- (b) Before the Private Treaty Sale, the Agent may give the Seller an indicative price range for which the Seller may be able to sell the Property and during the Private Treaty Sale the Seller may instruct the agent as to the price and terms and conditions the Seller is willing to accept for the sale of the Property.
- (c) When you confirm your offer, it will be accepted as a valid offer, even when the 'Reserve not met' label is shown.

## **2.4 Conclusion of a Private Treaty Sale**

- (a) A Private Treaty Sale will ordinarily end at the time period specified on the Site. However, Grays may extend this time period in its discretion, including if there are multiple offerors submitting offers. Grays also has the discretion to close any Private Treaty Sale prior to the time period specified on the Site for any reason including if an offer has been accepted.
- (b) When a Private Treaty Sale in which you have participated closes and you are the Winning Offeror, we will notify you of this by e-mail, including the amount of your Winning Offer and the Property number and description.
- (c) Non-receipt of a Winning Offeror (or any other) email from us will not release you from your obligation to complete the purchase of the Property.
- (d) If you are the Winning Offeror for a Private Treaty Sale Property, you must:
  - (i) complete the transaction and purchase that Property;
  - (ii) sign the contract via the electronic software, docusign or in any other manner agreed to between you and the Agent;
  - (iii) pay the deposit as soon as practicable after the completion of the Private Treaty Sale and as required by the Contract; and
  - (iv) abide by Post Sale Purchase Procedure.
- (e) We are not responsible for ensuring any further communication between you and the Agent after the close of the Private Treaty Sale.
- (f) Unless otherwise stated all prices are quoted in Australian dollars.

## **2.5 Technological errors**

With respect to a Private Treaty Sale, if any errors or delays arise as a result of or in connection with technological difficulties, including technological difficulties associated with our servers, data hosting centre or internet service provider, we may, acting reasonably:

- (a) prior to or after the original time set for conclusion of the Private Treaty Sale, extend the Private Treaty Sale for a period of time we choose;
- (b) prior to or after the original time set for conclusion of the Private Treaty Sale, re-open a Private Treaty Sale for a period of time we choose;
- (c) prior to or after the conclusion of the Private Treaty Sale, retract any Winning Offeror's emails which may have been sent out to bidders;
- (d) prior to or during the Private Treaty Sale, amend the start price allocated to a Property for sale online; and/or
- (e) cancel the Private Treaty Sale and conduct an auction or Private Treaty Sale again.

## **2.6 Time**

When making an offer on a Private Treaty Sale, the time, referred to as 'GraysTime', will be approximately equal to Australian Eastern Standard Time (**AEST** or **AEDT**).

## Schedule 4 – Post Sale Purchase Procedure

The following procedure shall apply if you are a Winning Bidder or Winning Offeror:

- (a) The Agent will complete the particulars in the Contract to include the following:
  - (i) the Winner's Bid Amount or the Winner's Offer Amount (as applicable) as the purchase price for the Property payable by the Winning Bidder or Winning Offeror (as applicable);
  - (ii) if applicable, any Amended Terms in accordance with clause 2.4; and
  - (iii) any other blanks or variables in the Contract which are not material.
- (b) The Contract will be sent to you electronically by the Seller, Seller's Solicitor or the Agent as soon as practicable after the close of the Online Auction or Private Treaty Sale.
- (c) You must sign the Contract via the electronic software, docusign or in any other manner agreed to between you, your Solicitor and Agent immediately after close of the Online Auction or the Private Treaty Sale.
- (d) The deposit (being a specific percentage of the purchase price or such other amount agreed to in writing by the Seller prior to the close of the Online Auction or the Private Treaty Sale), will need to be paid by you in accordance with the Contract and as directed by the Seller, the Seller's Solicitor or Agent as soon as practicable after the close of the Online Auction or the Private Treaty Sale.
- (e) Once the Contract has been exchanged/formed and the deposit has been paid any further communication regarding the Property will take place directly between you and the Seller or the Seller's Agent or the Seller's Solicitor.
- (f) The Winning Bidder or Winning Offeror (as applicable) agrees that they will do everything legally and contractually required to enable the Seller to transfer the Property to the Winning Bidder or Winning Offeror (as applicable).
- (g) Title in any Property will only pass to you once you have paid the full purchase price for the Property in accordance with the terms of the Contract and complied with each and any other terms and conditions of the Contract and the requirements of any Applicable Law.