

# **Tender Document**

**Pacific Brands Clothing  
Pty Ltd & Bonds  
Industries Pty Ltd**



**Australasian Asset Management Pty Ltd**

**Level 10, 32 Martin Place  
Sydney NSW 2000**

# Tender Document

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## 1. Invitation Tender Process

Pacific Brands Clothing Pty Ltd & Bonds Industries Pty Ltd (**Vendor**) invites Tender Bids to Purchase the equipment identified on the attached schedules ( **Equipment**) in accordance with the terms and conditions outlined in this Tender Document.

## 2. Definitions

In this document, the following definitions apply:

**Tender Bid Close Date:** means 5pm Wednesday 4<sup>th</sup> August 2010

**Agent:** means Australasian Asset Management ( **AAM**) Pty Ltd

**Equipment:** means the assets identified in the attached schedule

**Business Day:** means a business trading day other than a Saturday, Sunday or NSW public holiday

**Buyer's Processing Fee:** means a 11% (inclusive of GST) fee that will be added to all accepted bids and subsequent Sales Invoices

**Claim:** means a claim, action, proceeding, damage, loss, cost, expense or liability incurred by or made or recovered by or against the person, however arising and whether present, unascertained, immediate, future or contingent

**Completion:** means completion and final settlement/ payment of the Sales Invoice in accordance with the terms and conditions of this document

**Completion Date:** means the date being 5 Business Days from notification of Acceptance of Tender Bid

**GST:** means any tax, levy, charge or impost implemented under the (*Goods and Services Tax*) Act (**GST Act**) and shall be calculated at 10% of the Tender Bid price

**Tender Bid Form:** means the offer form that is attached to this document

**Premises:** means the Pacific Brands Clothing Pty Ltd & Bonds Industries Pty Ltd sites at 190 Dunmore St, Wentworthville, NSW,. 1 Norcal Rd Nunawading and 23-49 Maffra St Coolaroo, Victoria Australia

**Tender Document:** means this document including the Tender Bid Form

**Tenderer:** means the person or Company making the Bid

**Vendor:** has the meaning given in clause 1.

- (b) In this document, unless the context otherwise requires:
  - (i) the singular includes the plural and vice versa;
  - (ii) each gender includes each other gender;
  - (iii) references to persons include corporations and other legal entities and vice versa;
  - (iv) references to clauses are references to clauses in this document;
  - (v) a reference to \$ or dollars is a reference to Australian currency.

### **3. Sale by the Agent**

#### **3.1. Agent Sale Acknowledgments**

The Tenderer acknowledges that the Agent:

- (a) has been appointed by the Vendor as its exclusive selling Agent
- (b) acts only as an agent of the Vendor in the sale process of the equipment; and
- (c) accepts no personal or Corporate liability whatsoever in relation to any aspects of the equipment or its sale (including the Tender sale process).

#### **3.2. Execution by Vendor**

Without limitation to clause 3.1, the Vendor executes this document :

- (a) to the extent permitted by law, and
- (b) in any event, in their capacity as authorised persons/ representatives of the Vendor and not in their personal capacity.

#### **3.3. No Liability**

Except to the extent required by law, the Vendor and or Agent will not be personally liable to the Tenderer in respect of this document, including its performance, the equipment and the process for the sale and removal of the equipment.

#### **3.4. Indemnity for the Vendor and Agent**

The Tenderer agrees (to the maximum extent permitted by law) to indemnify the Vendor, the Agent and their agents, contractors and employees and to keep them indemnified from and all loss, damage or liabilities in arising from or in connection with any breach of this document by the Tenderer.

## 4. How to Submit a Conforming Tender Bid:

### 4.1 Closing time for Tender Bids

Tender Bids ( please use the relevant latest PDF list from the AAM web site and mark your name or company in the Buyer ID section next to your bid price) must be submitted on the attached form and be received by the Agent by no later than 5pm, Wednesday, August 4<sup>th</sup> ( **Tender Bid Close Date**)

### 4.2 Method of Delivery

- (a) by e-mail : [tender.textile@aamanagement.com.au](mailto:tender.textile@aamanagement.com.au)
- (b) by fax: (61)-2-42376942, to the attention of John Leftwich

### **Important Note:**

All Tenderers should contact John Leftwich on (61)-419-438372 to ensure that Tender Bids have been successfully submitted and received by the Agent in accordance with the terms and conditions of this document.

### 4.3 Vendor Discretion

Without limiting any clause in this Document, The Vendor may or instruct the agent to accept or reject any Tender bid at its absolute discretion and without giving cause or notice.

### 4.4 Tender Documents are to be completed as follows:

- (a) the Tender Document must be signed and initialed on every page
- (b) where the Tenderer is a corporation, it must be signed by 2 Directors or a Director and the Secretary
- (c) where the Tender Bid Form is executed under power of attorney, a certified copy of that power of Authority, must accompany the form.
- (d) The Tenderer as identified on the Tender Bid Form shall be deemed to be acting in its own right and not as agent for third parties. If acting as an agent for Third Parties, the name and address and contact details of the Agent's Principals together with a written authority to act as agent, must be submitted in advance of submitting the Tender Bids.

## 5. Effect of Submitting a Tender Bid:

### 5.1 Tender Bid Submission:

Submission of a Tender Bid will constitute an undertaking by the Tenderer to purchase the Equipment nominated at the bid price stated in the Tender Bid Form and will be subject to all aspects of the terms and conditions contained in this document.

### **5.2 Tender Bids are Irrevocable**

The Tender Bid submitted on this form will remain open for acceptance by the Vendor until 5pm on Friday 6<sup>th</sup> August ,2010.

### **5.3 Buyer's Processing Fee:**

The Tenderer acknowledges and agrees that a buyer's premium of 11% (inclusive of GST) (Buyer's Premium) applies to the price bid by the Tenderer for the Equipment.

### **5.4 Acknowledgments by Tenderer**

The Tenderer acknowledges and agrees with the Vendor and the Agent that :

- (a) it does not rely on any representation, letter, document or arrangement (whether oral or in writing) or other conduct as adding to or amending the terms and conditions in this document; To the exclusion of everything else:
- (b) if a Bid is accepted by the Vendor, this document, which includes the completed Tender Bid Form, will constitute the only contract between the Vendor and the Tenderer;
- (c) the Equipment is sold "as-is, where-is" with all faults and defects (if any);
- (d) it has satisfied itself as to the condition of the Equipment and its, fitness, suitability for any purpose;
- (e) it does not rely in making its Bid on any warranty or representation made by or on behalf of the Vendor or the Agent about the equipment except as expressly set out in this document;
- (f) it has relied entirely on its own enquiries and inspection of the Equipment in offering to purchase the Equipment;
- (g) neither the Vendor nor the Agent will be responsible for any costs or expenses incurred by the Tenderer in preparing and lodging a Bid/ Tender or, if
- (h) applicable, in acquiring the Equipment; and
- (i) any Bid that is accepted by the Vendor will be accepted in reliance of the acknowledgements at subparagraphs (a) to (h) inclusive above.

### **5.5 Continuation of Tender Conditions**

The terms and conditions in this document will continue to bind the Tenderer even if

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the Tenderer's Bid is not accepted and despite acceptance of any other Bid or Offer.

## 6. Vendor's Rights in respect to Tenders

### 6.1 Vendor's Rights

The Vendor reserves the right at its absolute discretion to:

- (a) withdraw or alter the Equipment in this tender process at any time prior to the Tender Bid Closing Date and has no obligation to give notice of its actions or intentions;
- (b) not accept the highest, best or any Bid or Offer that it considers is not in the best interests of the Vendor including those items subject to a minimum reserve price;
- (c) elect to consider or reject any non-conforming Tender Bid; and
- (d) negotiate with any Tenderer or interested party prior to the Tender bid close date, without reference back to any Tenderer.

### 6.2 Variations to the Tender Contract

The Vendor may, in its absolute discretion, consider and agree to any proposed amendments to or additions to this document.

### 6.3 No Claim by Tenderers

No Tenderer may make any objection, requisition or Claim against the Vendor or the Agent or their respective employees and agents/ contractors arising out of the proposed sale of the Equipment, including the sale process.

## 7. Acceptance of Tenders, Obligation of Parties and Risk

### 7.1 Acceptance, risk and obligation of Vendor

- (a) In respect of each piece of Equipment, the Vendor will notify the successful Tenderer (hereinafter referred to as the **Purchaser**) before 5.00 pm on the 6<sup>th</sup> August, 2010.
- (b) Upon notification of acceptance pursuant to subclause 7.1(a) :
  - (i) the Vendor and Purchaser shall be bound to this document as an agreement between them;
  - (ii) the purchase price for the sale and purchase of the relevant Equipment (**Purchase Price**) shall be the amount referred to as the purchase price in the Tender Bid Form; and
  - (iii) the Vendor shall sell to the Purchaser, and the Purchaser will purchase from the Vendor the relevant Equipment for the Purchase Price on the Completion Date.
- (c) Unsuccessful Tenderers will not be notified that their Bid was unsuccessful.

- (d) Risk in the relevant Equipment passes to the Purchaser on notification of acceptance pursuant to sub-clause 7.1(a).
- (e) Immediately upon notification pursuant to this clause 7.1 the Vendor will execute this document and forward a copy of the executed document to the Purchaser.
- (f) Failure by the Vendor to comply with subclause 7.1(e) or delay will not affect the obligations of the Purchaser under this document.
- (g) Notwithstanding the above, title in the relevant Equipment shall not pass to the Purchaser until the Purchase Price has been received by the Vendor in cleared funds.

### 7.2 Purchase Price

- (a) Subject to this clause 7, the Purchaser shall on or before the Completion Date, pay the Purchase Price and the Buyer's Processing Fee to the Vendor's Agent by electronic transfer only.
- (b) Immediately upon notification pursuant to clause 7.1, the Purchaser shall pay to the Agent a deposit on the Purchase Price of no less than 10% of the Purchase Price (**Deposit**). The Deposit shall be paid by electronic transfer only to the Agent's account, being :

**Account Name :** Australasian Asset Management Pty Ltd **Trust Account**

**Bank :** St George Bank Limited

**Branch :** Kogarah, NSW, Sydney , Australia

**BSB :** 112-879

**Account no. :** 420028798

**Swift Code:** SGBLAU2S

- (c) If the Purchaser does not pay any part of the Deposit when it is due, the Purchaser is immediately and without notice in default of an essential obligation under this document and, without limitation :
  - (i) the Vendor may terminate the agreement herein;
  - (ii) the Vendor may, in addition to any other remedy, recover the unpaid Deposit and or shortfall on re-sale as a liquidated debt.
- (d) If the sale and purchase are completed as contemplated by this document, the Deposit must be paid to the Vendor via the Agent's Trust Account.
- (e) If the agreement herein is terminated due to the Purchaser's default, the Vendor (in addition to any other rights which it may have) will be entitled to forfeit the Deposit and the Deposit must be paid to the Vendor via the Agent (if this has not already occurred).
- (f) If the agreement herein is terminated without default by the Purchaser, the Deposit must be refunded in full to the Purchaser.

- (g) The Purchaser acknowledges and agrees that it will not be entitled to possession of the relevant Equipment and, for the avoidance of doubt, will have no right to remove the equipment from the Premises, until either the Vendor or the Agent are in receipt of the Purchase Price and the Buyer's Processing fee, in clear funds.

### 8. Completion

(a) On Completion :

- (i) subject to subclause 8(b), the Vendor will make available the relevant Equipment to the Purchaser at the Vendor's Premises and
- (ii) if it has not already done so, the Purchaser shall pay the Purchase Price (less any Deposit already paid) and the Buyer's Processing fee to the Vendor's Agent in accordance with clause 7.2.

(b) The Purchaser acknowledges and agrees that the Vendor will have complied with its obligations under subparagraph 8(a)(i) by leaving the Equipment at the place or places where they are situated at the date hereof.

### 9. Collection of Equipment by Purchaser

To comply with the Vendor's Safety and Insurance requirements, all Purchasers must use the incumbent Crane/ Rigging Company, Francrane to remove and load its relevant Equipment at the sites:

- (a) Subject to sub-clause 7.3(g), the Purchaser must at its cost collect the relevant Equipment and remove it from the Premises by no later than 2 weeks after Completion.
- (b) The Agent is authorized to collect the fixed price Lift and Load charge on behalf of Francrane and will charge a Processing fee of 11% of the Lift and Load charge.
- (c) In removing the Asset pursuant to sub-clause 9(a), the Purchaser shall comply with all reasonable requests of the Engineering and Security managers of the Premises.
- (d) In the event that the Purchaser fails to comply with subclause 9(a) :
  - (i) ownership of the relevant Equipment shall, at the discretion of the Vendor revert to the Vendor; and
  - (ii) the Purchaser shall not be entitled to make any objection requisition or Claim against the Vendor or the Agent in respect of any fact matter or thing associated with the equipment, including payment of the Purchase Price.
- (e) Without limitation to the rights of the Vendor pursuant to subclause 9(c), the Purchaser hereby indemnifies and shall keep indemnified the Vendor and the Agent and their respect agents, contractors and employees against any loss or damage suffered by them as a consequence of

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the failure by the Purchaser to comply with its obligations under subclauses 9(a) and 9(b), and against all any Claims arising as a consequence of the process of the removal of the Equipment from the Premises.

### 10. Default

Without limitation to any other provision of this document, if the Purchaser defaults in the performance of any term of this document, the Vendor may, at its discretion:

- (a) terminate this agreement, retain the Deposit and sue the Purchaser for damages;
- (b) affirm this agreement and sue the Purchaser for damages and specific performance;
- (c) without notice to the Purchaser re-sell the Equipment in the manner and on the terms the Vendor thinks fit; or
- (d) at the Vendor's choice, do any one or more of the above things.

If the Vendor sells or attempts to sell the Equipment pursuant to subparagraph 10(c) above, the Purchaser must pay any deficiency in price payable to the Vendor on re-selling the relevant Equipment as against the price to be paid under the Tender Bid Form and the Vendor's costs including Agent's commission and fees associated with such re-sale or attempt to resell. Amounts payable under this clause 10 may be recovered as liquidated damages.

This clause 10 does not limit any other rights the Vendor has at law for a breach of this document. The Purchaser indemnifies and shall keep indemnified the Vendor and the Agent and their respective agents, contractors and employees against any loss that they sustain as a result of the Purchaser's breach of any term of this document.

### 11. General

- (a) Each Party must pay its own costs in relation to this Agreement, including the performance of any action by that party in compliance with any liability arising under this Agreement.
- (b) The Purchaser shall be liable for and shall pay promptly within the initial applicable period prescribed by law, any stamp duty payable in respect of this agreement and in relation to the execution, performance and registration of this agreement, or any agreement or document executed or effected under this agreement.
- (c) The Purchaser may not assign or otherwise deal with any right or liability under this document without the prior written consent of the Vendor.
- (d) This document is governed by and construed under the law in the State of New South Wales and Victoria, Australia.
- (e) Any legal action in relation to this document against any party or its property may be brought in any court of competent jurisdiction in the State of New South Wales and Victoria, Australia.

- (f) Each party by execution of this document irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.
- (g) Subject to the rights of the Vendor under clause 6, any modification, alteration, change or variation of any term or condition of this document shall only be made in writing and executed by all the parties to it.
- (h) Otherwise than as stipulated in this document, the agreement herein confers rights only upon a person expressed to be a party to the sale and purchase agreement, and not upon any other person.
- (i) Each party must execute any document and perform any action necessary to give full effect to the sale and purchase of the Equipment, whether before or after Completion.
- (j) The provisions of this document do not merge with any action performed or document executed by any party for the purposes of performance of this document.
- (k) Any representation in this document survives the execution of any document for the purposes of, and continues after, performance of the agreement of the parties herein.
- (l) Any indemnity agreed by any party under this document:
  - (i) constitutes a liability of that party separate and independent from any other liability of that party under this document or any other agreement; and
  - (ii) survives and continues after performance of the agreement herein.
- (m) Any failure by the Vendor to exercise any right or require the performance of any obligation under this document does not operate as a waiver and the single or partial exercise of any right by the Vendor does not preclude any other or further exercise of that or any other right by the Vendor.
- (n) The rights of a party under this document are cumulative and not exclusive of any rights provided by law.
- (o) Any provision of this document which is invalid in any jurisdiction is invalid in that jurisdiction to that extent and may be severed from this document in that jurisdiction, without invalidating or affecting the remaining provisions of this document or the validity of that provision in any other jurisdiction.
- (p) This document may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same document.
- (q) The Vendor may deliver any written notification required or permitted to be made by it under this document to a Tenderer by:

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- (i) leaving it or causing it to be left at the address of the Tenderer shown on the Tender Bid Form; or
  - (ii) faxing it to the facsimile number, shown on the Tender Bid Form lodged by that Tenderer. A successful transmission report from the sender's facsimile machine will be conclusive evidence of a successful transmission of a facsimile notice.
- (r) Any notice to be given by a Tenderer to the Vendor will only be effective if in writing and hand delivered to the Agent. Notice will only be deemed given once actually received by the Agent in accordance with this clause.

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## Tender Bid Form

I/We \_\_\_\_\_  
(Name in Full and Trading Name and company number if Applicable)

of \_\_\_\_\_  
(Address in Full)

Driver's License Number and State or Passport Number \_\_\_\_\_

By my/our execution of this Tender Bid Form, agree to purchase the Equipment nominated on the terms of this Tender Document for the sum as set out immediately below.

### **Purchase Amount**

The total amount (exclusive of GST) for this Sale, being for the purchase of :

### **(Purchase Price)**

(Amount in words and figures):

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Total Amount Bid (GST exclusive.) A\$

Plus 11% Buyer's Premium ( GST inclusive):

### **Equipment:**

Refer to the attached Equipment Schedule and the individually marked Tender Bids:

I/We hereby agree to the terms as set out in this Document.

Address: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Phone No: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Intended method of Deposit Payment: Electronic funds transfer

Intended Method of Full Payment: Electronic funds transfer

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## Execution provision for Offeror (natural person)

Signed by the Tenderer in the presence of:

.....

Signature of Witness      Signature of Tenderer

.....

Name of witness (please print)

.....

Address of witness (please print)

.....

Date of execution by Tenderer: This ..... day of ..... 2010

## Execution provision for Tenderer (if a Corporation)

Signed by the Tenderer in accordance with relevant Corporations Act and legislation, in the presence of :

.....

Signature of Director or Secretary

.....

Name of Director (please print or Secretary (please print)

Date of execution by Tenderer: This ..... day of ..... 2010

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**Acceptance and execution provision for Vendor**

By its execution hereof, Pacific Brands Clothing Pty Ltd & Bonds Industries Pty Ltd hereby accepts the offer as given above on the terms of this Tender Document

Signed for and on behalf of

**Pacific Brands Clothing Pty Ltd ABN: 40098742655 & or Bonds Industries Pty Ltd, ABN: 21000022426**

by the Commercial Manager in the presence of:

.....  
Signature of Witness

.....  
Name of Witness (please print)

Date of execution by **Vendor** : This ..... day of ..... 2010

