

**Tender
Document
Plastics & Closures
Equipment, Receiver's
Sale**



Australasian Asset Management Pty Ltd

ABN 70 135 836 270

Level 10, 32 Martin Place

Sydney NSW 2000

Tender Document

1. Invitation Tender Process

Upturn Trading Pty Ltd (Receivers and Managers Appointed) (Administrator Appointed) ACN: 115260298 (**Vendor**) invites Tender Bids to purchase the equipment identified in the attached schedules (**Equipment**) in accordance with the terms and conditions set out in this Tender Document.

2. Definitions

In this document, the following definitions apply:

- Tender Bid Close Date:** means 4 PM, Friday, 14th October, 2011
- Agent:** means Australasian Asset Management Pty Ltd ABN 70 135 836 270 (**AAM**)
- Business Day:** means a business trading day other than a Saturday, Sunday or public holiday in either New South Wales or Victoria
- Buyer's Processing Fee:** means a 11% (inclusive of GST) fee that will be added to all accepted bids and subsequent Sales Invoices as contemplated by clause 5.3
- 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 this document
- Completion Date:** means the date being five Business Days after notification of Acceptance of Tender Bid
- Equipment:** means the equipment identified in the attached schedule
- GST:** means any tax, levy, charge or impost implemented under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**), which at the date of this document is levied at the rate of 10% of the Tender Bid Price
- Premises:** means S&K Plastics, 1 Cope Street, Preston, Victoria, Australia
- Purchase Price:** has the meaning given in clause 7.1(b)(ii)
- Tender Bid Form:** means the offer form that is attached to this document

Tender Document

- Tender Bid Price:** means the price bid by a Tenderer in a Tender Bid Form to purchase the Equipment
- Tender Document:** means this document including the Tender Bid Form
- Tenderer:** means the person or corporation making the Bid, whose details are set out in the Tender Bid Form
- 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; and
 - (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 connection with the sale of the Equipment; and
- (c) accepts no personal or corporate liability whatsoever in relation to any aspect or item 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 and representatives of the Vendor and not in their personal capacity.

3.3. No Liability

Except to the extent required by law, the Vendor and Agent will not be personally liable to the Tenderer, or any of its employees, officers, agents or contractors, in respect of this document, including its performance, the Equipment and the process for the sale, removal and delivery 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 latest relevant ON-LINE Bid Schedule or PDF lists from the AAM web site). Complete your name and or company name in the Buyer ID section next to your bid price, this must be submitted with the attached form and be received by the Agent by no later than 4pm, 14th October, 2011 (**Tender Bid Close Date**).

4.2 Method of Delivery

(a) by e-mail: john.leftwich@aamanagement.com.au

(b) by fax: (61)-2-4237 6942, to the attention of : John Leftwich.

Important Note:

All Tenderers should contact John Leftwich on (61)-419-438 372 to ensure that Tender Bids have been successfully submitted and received by the Agent in accordance with this document.

4.3 Vendor Discretion

Without limitation , the Vendor may instruct the Agent to accept or reject any Tender bid in its absolute discretion and without giving reasons, cause or notice.

4.4 Tender Documents are to be completed as follows (By On-Line Format or Faxed/ Scanned hand completed PDF):

- (a) The Tender Document must be read in full, the On-Line Buyer Identity and Bid Summary Form must completed and submitted via e-mail as instructed or the complete the Tender Document PDF and Equipment Bid Schedules by hand, signed and initialed on every page and faxed to AAM.
- (b) Where the Tenderer is a corporation, and unless a company with either a Sole Director or a Sole Director and Sole Secretary (who are one and the same) it must be signed/ completed by either two Directors or by a Director and a Secretary of the corporation.
- (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 as a principal in its own right and not as agent for any third party. If acting as an agent for any third party, the name and address and contact details of the Agent's principal or principals, together with a written authority to act as agent, must be submitted in advance of submitting the Tender Bid.

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 in all respects to the terms and conditions contained in this document.

5.2 Tender Bids are Irrevocable

Any Tender Bid submitted on a Tender Bid Form will remain open for acceptance by the Vendor until 4pm, 21st October, 2011

5.3 Buyer's Processing Fee:

The Tenderer acknowledges and agrees that a buyer's premium or processing fee of 11% (inclusive of GST) (**Buyer's Processing Fee**) applies to the Tender Bid Price and the processing of the Tender Bid Form.

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;
- (b) to the exclusion of everything else, 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, the Agent 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 and 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 applicable, in acquiring the Equipment; and
- (h) any Bid that is accepted by the Vendor will be accepted in reliance of the acknowledgements at subparagraphs (a) to (g) inclusive above.

5.5 Continuation of Tender Conditions

The terms and conditions in this document will continue to bind the Tenderer even if 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 in 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 to do so, or otherwise;
- (b) not accept the highest, best or any Bid or Offer that it considers is not in the best interests of the Vendor.
- (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, officers, agents and 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 4pm, 19th October, 2011
- (b) Upon notification of acceptance pursuant to sub-clause 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 sub-clause 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 and the Buyer's Processing Fee have been received by the Agent in full 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 Agent by electronic funds transfer only.
- (b) Immediately upon notification pursuant to clause 7.1, the Purchaser shall pay to the Agent a deposit (**Deposit**) equal to 10% of the aggregate of Purchase Price, GST and the Buyer's Processing Fee. The Deposit shall be paid by electronic transfer only to the Agent's Trust 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

Tender Document

- (c) If the Purchaser does not pay any part of the Deposit by 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 immediately by written notice to the Purchaser terminate the agreement under this document;
 - (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 under this document 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 is terminated without default by the Purchaser, the Deposit must be refunded in full to the Purchaser less applicable bank fees.
- (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 both the Purchase Price and the Buyer's Processing Fee, in clear funds.

8. Completion

- (a) On Completion:
 - (i) subject to sub-clauses 8(a)(ii) and 8(b), the Vendor will issue a tax invoice as contemplated by clause 11 and make available the Equipment to the Purchaser at the 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 Agent in accordance with clause 7.2.
- (b) The Purchaser acknowledges and agrees that the Vendor will have complied sub-clause 8(a)(i) by leaving the Equipment at the place or places where they are situated at Completion.

9. Collection of Equipment by Purchaser

- (a) Subject to sub-clause 7.3(g), the Purchaser must at its cost collect the Equipment and remove it from the Premises by no later than one week after Completion.
- (b) The Vendor has appointed a sole expert machinery removals company to lift the equipment and load it onto the purchaser's truck. The fixed costs of this, per machine, have been calculated and are available on the web page or from the Agent. This fixed cost plus the 10% (GST Excl) Processing fee will be added to the Buyer's Purchase invoice. No other contractor will be

Tender Document

permitted on site. All equipment will be de-commissioned, ready for removal, at the Vendor's cost.

- (c) When collecting the Equipment as contemplated by sub-clause 9(a), the Purchaser agrees to comply with all reasonable requests of all the Vendor's and the Agent's employees, officers, agents and contractors, including any engineering and site security manager, at the Premises.
- (d) In the event that the Purchaser fails to comply with sub-clause 9(a) in respect of an item of Equipment:
 - (i) ownership of the relevant Equipment will, at the discretion of the Vendor, revert to the Vendor; and
 - (ii) the Purchaser will not be entitled to make any objection, requisition or Claim against the Vendor or the Agent, or any of their respective employees, officers or agents, in respect of any fact, matter or thing associated with any item of Equipment, including payment of the whole or any part of the Purchase Price.
- (e) Without limitation to the rights of the Vendor pursuant to sub-clause 9(c), the Purchaser indemnifies and agrees to keep indemnified the Vendor and the Agent and their respect employees, officers, agents and contractors against any loss or damage suffered by them as a consequence of the failure by the Purchaser to comply with its obligations under sub-clauses 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, in 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 whole or any part of the Equipment in the manner and on the terms the Vendor thinks fit; or
- (d) do any one or more of the above things.

If the Vendor sells or attempts to sell the Equipment pursuant to sub-clause 10(c), 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 agrees to keep indemnified the Vendor and the Agent and their respective employees, officers, agents and contractors against any loss or damage that they sustain as a result of the Purchaser's breach of any term of this document.

11. GST

- (a) The Purchase Price does not include any GST payable by the Vendor.
- (b) The Purchaser must pay an additional amount, sufficient that the total amount payable by the Purchaser, after discounting for the amount of any GST liability of the Vendor that total, is equal to the Purchase Price, less the amount of any input tax credit to which the Vendor is entitled in relation to any reimbursable cost.
- (c) Each party must at any time comply with any GST law in performing this agreement.
- (d) The Vendor agrees to issue to the Purchaser a tax invoices in proper form and in compliance with any GST Law connected with the sale and purchase of the Equipment.

12. Limitation of Liability

12.1 Purchaser acknowledgments

The Purchaser acknowledges and agrees that:

- (a) any liability of the Vendor under this agreement arises only to the extent that liability is based on any fact, matter or circumstance that is fairly and reasonably disclosed in or otherwise identifiable or ascertainable from this agreement;
- (b) the Purchaser, or any employee or agent of the Purchaser, has had an adequate opportunity to conduct and has undertaken prior to Completion, and relied upon its own due diligence, inspection, investigation or inquiry relative to any Equipment;
- (c) the Purchaser, or any employee or agent of the Purchaser, has had an adequate opportunity to request from the Vendor and has diligently reviewed and considered any document or information provided by or on behalf of the Vendor to the Purchaser at the request of the Purchaser, together with any fact, matter or circumstance referred to or apparent in, or deducible from, that document or information, which the Purchaser has treated as sufficient disclosure without need for any further or additional explanation by the Vendor;
- (d) the Purchaser relies only on the express provisions of this agreement and that no other conduct, representation, warranty, promise, statement, forecast or undertaking has been made or provided by the Vendor or any employee or agent of the Vendor or has been:
 - (i) an inducement to or influence on the Purchaser to enter into and execute this agreement;
 - (ii) relied upon by the Purchaser or any employee or agent of the Purchaser;

- (iii) represented or warranted by the Purchaser as being accurate;
- (iv) considered by the Purchaser or any employee or agent of the Purchaser as being or important or relevant to or affecting the decision of the Purchaser to agree to the provisions of, or enter into and execute, this agreement;
- (e) any provision, term, condition, representation or warranty, whether express, implied, written, oral, collateral, statutory or otherwise, not being expressly specified in this agreement is excluded from or in connection with this agreement, to the fullest extent permitted by law, and the Purchaser does not rely upon and disclaims any right or remedy against the Vendor in relation to that provision, term, condition, representation or warranty;
- (f) the sole remedy of the Purchaser is and that the Purchaser in no event or circumstance has any right to terminate this agreement because of that warranty breach or other default;
- (g) the Purchaser:
 - (i) will not commence, and waives any right to commence, any legal action against the Vendor;
 - (ii) releases the Vendor, or any employee or agent of the Vendor from,
 - (iii) any liability or claim, including any liability or claim under the *Competition and Consumer Act 2010* (Cth) or any comparable legislation in any foreign country or jurisdiction outside Australia; and
- (h) the Purchaser has negotiated and agreed to the provisions of this agreement, including this clause 12, with the advice and assistance of the legal advisers and agents of the Purchaser.

12.2 Purchaser Claim Limitation

The Vendor is not liable to the Purchaser for or in relation to any Claim by the Purchaser, or any loss resulting from any default by the Vendor under this agreement specified in or calculated under that Claim, despite any contrary provision of this agreement:

12.3 Separate Limitations: (Intentionally left blank)

12.4 Tax Benefit Reduction

The Purchaser must reduce the amount of any Claim by the amount of any Tax benefit that will accrue to the Purchaser, or any related body corporate of the Purchaser, resulting from the facts giving rise to that Claim.

12.5 Third Party Reimbursement

The Purchaser must reimburse the Vendor for any amount previously paid by the Vendor to the Purchaser in relation to any Claim to the extent that the Purchaser receives any payment, benefit or

credit from any third person, including any tax deduction, credit or benefit, in relation to or because of any fact or circumstance which gave rise to that Claim.

13. General

- (a) Each party must pay its own legal, professional and other 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 is liable for and agrees to promptly pay within the initial applicable period prescribed by law, any stamp duty payable in respect of this agreement and its subject matter, and in relation to the execution, performance and registration of this agreement, or any agreement, document or transaction 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 laws in the State of New South Wales , 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, 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 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:
 - (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.

Tender Document

Tender Bid Form (Use this Form for hand completion and Faxing or the Online Form and attach the completed Bid Schedule)

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

of _____
(Address in Full)

Driver's Licence 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 Bid: A\$ _____ (exclusive of GST) for this Sale as per the completed Equipment Bid Schedules:

(Purchase Price)

(Amount in words and figures):

Plus 11% Buyer's Processing Fee (GST inclusive): A\$ _____

Equipment:

Refer to the attached Equipment Bid 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

Tender Document

Execution - 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: 20

Execution - Tenderer (if a Corporation)

Signed by the Tenderer in accordance with section 127 of the *Corporations Act 2001* (Cth) in the presence of :

.....

Signature of Director or Secretary

.....

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

.....

Signature of Director or Secretary

.....

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

Date of execution by Tenderer: 2011

Tender Document

Acceptance and execution - Vendor

By its execution, The Receiver on behalf of Upturn Trading Pty Ltd (Receivers and Managers Appointed) Administrator Appointed) accepts the offer as made above, on the terms of this Tender Document

Date of execution by **Vendor**: 2011

Tender Document

Execution - Agent

Signed for and on behalf of

Australasian Equipment Management Pty Ltd ABN 70 135 836 270

by its Sole Director and Sole Secretary:

Date of execution by **Agent**: 20