



Offer Document

NOTE: OFFERS MUST BE RECEIVED AT DMS DAVLAN BY 5pm Thursday 6 May 2010

OFFER 1. – LUCERNE DEHYDRATION PLANT

OFFER 2. – INDUSTRIAL SHED

OFFER 3. – OFFICE BLOCK

OFFER 4. ANCILLARY EQUIPMENT

1. Invitation for Offers

AlphaGro Inglewood Pty Ltd (In Liquidation) ACN 123 458 506 (**Vendor**) invites offers to purchase any or all of the above sections (**Asset**) in accordance with the conditions set out in this offer document.

2. Definitions and Interpretation

(a) In this document, unless the context otherwise requires the following definitions apply :

Acceptance Date means 5pm Thursday 6 May 2010;

Agent means DMS Davlan Pty Ltd;

Asset has the meaning given in clause 1;

Business Day means any day on which trading banks are open for business in Brisbane, other than a Saturday, Sunday or Brisbane public holiday;

Buyer's Premium has the meaning given in clause 5.3;

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

Completion means completion of the sale and purchase of the Asset pursuant to the terms of this document;

Completion Date means the date being 5 Business Days from notification of acceptance pursuant to clause 7.1;

Final Date means 13 May 2010;

GST means any tax, levy, charge or impost implemented under the *A New Tax System (Goods and Services Tax) Act (GST Act)* or an Act of the Parliament of the Commonwealth of Australia substantially in the form of, or which has a similar effect to, the GST Act;

Offer means an offer to purchase the Asset pursuant to the terms of this document;

Offer Form means the offer form attached to this document;

Premises means the place at which the Asset is situated at Completion;

Liquidator means Adam Shepard;

Tenderer means the person making an Offer;

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 Liquidator

3.1 Liquidator Sale Acknowledgments

The Tenderer acknowledges that the Liquidator:

- (a) have been appointed as Liquidator of the Company and its Assets;
- (b) act only as agents of the Vendor in the sale of the Asset; and
- (c) accept no personal liability whatsoever in relation to any aspects of the Asset or its sale (including the sale process).

3.2 Execution by Liquidator

Without limitation to clause 3.1, the Liquidator execute this document :

- (a) to the extent permitted by law, as agents and attorneys of the Vendor; and
- (b) in any event, in their capacity as Liquidator of the Asset and not in their personal capacity.

3.3 No Liability

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

3.4 Indemnity for Liquidator

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

4. How to Lodge a Confirming Offer

4.1 Closing time for Offers

Offers must be received by the Agent by no later than 5pm on the Acceptance Date.

4.2 Method of Delivery

The delivery address for the purpose of submitting Offers is :

- (a) if delivered by post: DMS Davlan, 29-35 Chorlton St, East Brisbane, Qld, 4169
- (b) if delivered in person: DMS Davlan, 29-35 Chorlton St, East Brisbane, Qld, 4169
- (c) if delivered by facsimile: (07) 3391 8577 (to be marked to the attention of Lance Smith)
- (d) if delivered by email: lsmith@dmsdavlan.com.au

It is the responsibility of the Tenderer to ensure successful submission of any Offer. Without limiting the strict effect of this clause, Tenderers are invited to contact Lance Smith on (07) 3391 8277 to confirm receipt by the Agent of an Offer.

4.3 Vendor Discretion

Without limiting the strict effect of clauses 4.1 and 4.2, the Vendor may accept or reject Offers submitted other than in accordance with clauses 4.1 and 4.2 in its absolute discretion.

4.4 Form of Offers

A Tenderer can make a conforming Offer by lodging with the Agent in accordance with clauses 4.1 and 4.2 :

- (a) this document, including the Offer Form, properly and legibly completed and signed and initialed on every page;
- (b) a legible copy of :
 - (i) for individuals, their photographic driver's licence or passport, which must be current;
 - (ii) for corporations, a current ASIC search of the corporation.

4.5 How Documents are to be signed

The Offer Form must be signed :

- (a) by each Tenderer;
- (b) subject to subparagraph 4.5(c), where a Tenderer is a corporation, by two directors or a director and secretary of the corporation;
- (c) where a Tenderer is a corporation with a sole director or sole director and secretary, by that person; and
- (d) where the Offer Form is executed under power of attorney, a certified copy of that power must accompany the form.

The Tenderer as identified on the Offer Form shall be deemed to be acting in its own right and not as agent for a third party unless upon lodgment of this document the agency is disclosed to the Agent, in which event the name and address of the principal shall be disclosed on the Offer Form.

5. Effect of Making an Offer

5.1 Effect of Lodgment

Lodgment of an Offer will constitute an offer by the Tenderer to purchase the Asset for the purchase price as stated in the Offer Form and subject in all respects to the terms set out in this document.

5.2 Offers Irrevocable

The offer as set out in the Offer Form will remain open for acceptance by the Vendor until 5pm on the Final Date.

5.3 Buyer's Premium

The Tenderer acknowledges and agrees that a buyer's premium of 5.5% (inclusive of GST) (**Buyer's Premium**) applies to the price offered by the Tenderer for the Asset or Assets.

5.4 Acknowledgments by Tenderer

The Tenderer acknowledges and agrees with the Vendor 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 an Offer is accepted by the Vendor, this document, which includes the completed Offer Form, will constitute the only contract between the Vendor and the Tenderer;
- (c) the Asset is sold “as-is, where-is” with all faults and defects (if any);
- (d) it has satisfied itself as to the condition of the Asset and its suitability for any purpose;
- (e) it does not rely in making its Offer on any warranty or representation made by or on behalf of the Vendor or the Liquidator about the Asset except as expressly set out in this document;
- (f) it has relied entirely on its own enquiries and inspection of the Asset in offering to purchase the Asset;
- (g) neither the Vendor nor the Liquidator will be responsible for any costs or expenses incurred by the Tenderer in preparing and lodging an Offer or, if applicable, acquiring the Asset; and
- (h) any Offer 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 Offer is not accepted and despite acceptance of any other Offer.

6. Vendor's Rights Regarding Tenders

6.1 Vendor's Rights

The Vendor reserves the right in its absolute discretion to:

- (a) withdraw the Asset from this tender process at any time prior to the Acceptance Date;
- (b) not accept the highest or best Offer;
- (c) elect to consider or refuse to consider any non-conforming Offer; and
- (d) negotiate with any Tenderer or prospective Tenderer prior to the Final 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 proposed amendments to or additions to this document which may be negotiated by any Tenderer.

6.3 No Claim by Tenderers

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

7. Acceptance of Tenders, Obligation of Parties and Risk

7.1 Acceptance, risk and obligation of Vendor

- (a) The Vendor will notify the successful Tenderer (hereinafter referred to as the **Purchaser**) before 5.00 pm on the Final Date.
- (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 Asset (**Purchase Price**) shall be the amount referred to as the purchase price in the Offer Form; and
 - (iii) the Vendor shall sell to the Purchaser, and the Purchaser will purchase from the Vendor the Asset for the Purchase Price on the Completion Date.
- (c) Unsuccessful Tenderers will not be notified that their Offer was not successful.
- (d) Risk in the Asset 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 effect the obligations of the Purchaser under this document.
- (g) Notwithstanding the above, title in the Asset 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 Premium to the Vendor by cash, unendorsed bank cheque or electronic transfer.

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Branches (Brisbane Cairns Devonport Dubbo Mildura Moree Perth Shepparton Toowoomba Townsville Wagga Wagga)

- (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 cash, unendorsed bank cheque or electronic transfer to the Agent's account, being :

Account Name : DMS Davlan Pty Ltd Trust Account

Bank : Bank of Queensland

Branch : Brisbane

BSB : 124 001

Account no. : 20387782

- (c) If the Purchaser does not pay any part of the Deposit when it is due, or the Purchaser pays by cheque that is dishonoured, 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 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.
- (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 (if this has not already occurred).
- (f) If the agreement herein is terminated without default by the Purchaser, the Deposit must be refunded to the Purchaser.
- (g) The Purchaser acknowledges and agrees that it will not be entitled to possession of the Asset and, for the avoidance of doubt, will have no right to remove the Asset from the Premises, until either the Vendor or the Agent are in receipt of the Purchase Price and the Buyer's Premium in clear funds.

8. Completion

- (a) On Completion :
- (i) subject to subclause 8(b), the Vendor will deliver the Asset to the Purchaser; and

- (ii) if it has not already done so, the Purchaser shall pay the Purchase Price and the Buyer's Premium to the Vendor in accordance with clause 7.2.
- (b) The Purchaser acknowledges and agree that the Vendor will have complied with its obligations under subparagraph 8(a)(i) by leaving the Assets at the place or places where they are situated at the date hereof.

9. Collection of Asset by Purchaser

- (a) Subject to subclause 7.3(g), the Purchaser must at its cost collect the Asset and remove it from the Premises by no later than 6 weeks after completion.
- (b) In removing the Asset pursuant to sub-clause 9(a), the Purchaser shall comply with all reasonable requests of the manager of the Premises.
- (c) In the event that the Purchaser fails to comply with subclause 9(a) :
 - (i) ownership of the Asset 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 Liquidator in respect of any fact matter or thing associated with the Asset, including payment of the Purchase Price.
- (d) Without limitation to the rights of the Vendor pursuant to subclause 9(c), the Purchaser hereby indemnifies and shall keep indemnified the Vendors and the Liquidator and their respect agents and employees against any loss or damage suffered by them as a consequence of 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 Asset 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, forfeit 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 Asset 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 Asset pursuant to subparagraph 10(c) above, the Purchaser must pay any deficiency in price payable to the Vendor on re-selling the Asset as against the price to be paid under the Offer Form and the Vendor's costs associated with such re-sale or attempt to re-sell.

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 Receivers and their respective agents 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 Queensland, 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 Queensland, 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 Asset, 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 for service of the Tenderer; or
 - (ii) faxing it to the facsimile number,

shown on the Offer 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.



Offer Form

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

of _____
(Address in Full)

Driver's License Number and State or Passport Number _____

By my/our execution of this Offer Form offer to purchase the Assets on the terms of this Offer Document for the sum as set out immediately below.

Purchase Amount : The total amount (inclusive of GST) for this Sale, being for the purchase of is the lump or bulk sum of:

_____ **(Purchase Price)**
(Amount in words and figures)

Plus the Buyer's Premium of 5.5% (GST incl.)

Amount Offered (GST incl.)	\$
Section 1. Lucerne Dehydration Plant	
Section 2. Industrial Shed	
Section 3. Office Block	
Section 4. Ancillary Equipment	
Plus 5½% Buyer's Premium	\$
TOTAL (GST incl.)	\$

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

Address _____

E-Mail _____

Phone No. _____

Fax _____

Intended Method of Deposit Payment _____

Intended Method of Full Payment _____

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 Offeror (body corporate)

Signed by the Tenderer in accordance
with s127 of the Corporations Act 2001
in the presence of :

.....
Signature of Director

.....
Signature of Director or Secretary

.....
Name of Director (please print)

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

Date of execution by Tenderer : This day of 2010

Acceptance and execution provision for Vendor

By its execution hereof, AlphaGro Inglewood Pty Ltd (In Liquidation) ACN 123 458 506 hereby accepts the offer as given above on the terms of this Offer Document

Signed for and on behalf of
AlphaGro Inglewood Pty Ltd (In Liquidation)
(In Liquidation)
ACN 123 458 506
by the Liquidator in the presence of:

.....
Adam Shepard

.....
Signature of Witness

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

Date of execution by Vendor : This day of 2010