



# AuctionsPlus

## AuctionsPlus Forward Contract Terms and Conditions – Sheep

Effective 1 July 2016

1. The following terms and conditions govern online forward contract sales facilitated by AuctionsPlus through the AuctionsPlus System (Forward Contract Terms). The Forward Contract Terms apply to users of the AuctionsPlus System, including but not limited to Selling Agents, Vendors and Purchasers (referred to in this document as 'you'). Where indicated by Selling Agent, these Forward Contract Terms may also form part of the Selling Agent's Terms of Trade.
2. Please read the Forward Contract Terms carefully. When you participate in the AuctionsPlus System, you are deemed to have accepted and will be bound by the Forward Contract Terms and the Operating Terms and Conditions, as amended and varied by AuctionsPlus from time to time and any other laws or regulations that apply to the AuctionsPlus System. Where not specified in the Forward Contract terms, the AuctionsPlus Operating Terms and Conditions will apply.
3. The AuctionsPlus System allows users to offer, sell and buy sheep or lambs in a variety of pricing formats and locations. The actual Contract of Sale is directly between the Selling Agent or Vendor and Purchaser. AuctionsPlus does not buy, sell, or market any livestock.
4. The Vendor or Selling Agent may in its sole discretion attach the Vendor's or Selling Agent's Terms of Trade to these Forward Contract Terms. If the Vendor's or Selling Agent's Terms of Trade are provided, the Vendor's or Selling Agent's Terms of Trade will apply. AuctionsPlus does not attach or incorporate the Vendor's or Selling Agent's Term and Conditions into the Forward Contract Terms. If the Vendor or Selling Agent does not provide its own Terms of Trade, then the Operating Terms and Conditions will apply to the sale and purchase.

### Disclaimer

5. While AuctionsPlus may provide the AuctionsPlus System relating to the sale of sheep or lambs, AuctionsPlus has no control over and does not guarantee nor accept any responsibility for:
  - a. the existence, quality, safety or legality of the sheep or lambs advertised;
  - b. the truth, completeness, or accuracy of a Selling Agent's, Vendor's or Purchaser's content, specifications or listings;
  - c. the capacity of a Selling Agent or Vendor to sell sheep or lambs;
  - d. the capacity of Purchasers to pay for sheep or lambs;
  - e. that a Selling Agent, Vendor or Purchaser will complete a transaction;
  - f. the completeness, truth or accuracy of any content or information on the AuctionsPlus website whether provided by AuctionsPlus, any Selling Agent, Vendor or any other person.
6. The information on the AuctionsPlus System is not, and is not intended to constitute advice or the making of any recommendation or representation of whatever nature. You should not act or refrain to act on the basis of any of the information on the AuctionsPlus System



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7. without first satisfying yourself as to the truth or accuracy of all information given. You should take your own independent legal advice.
8. AuctionsPlus does not accept responsibility for loss suffered as a result of reliance by you on the accuracy or currency of information contained on the AuctionsPlus System.
9. You must take your own precautions to ensure that the process that you employ for accessing and using the AuctionsPlus System does not expose you to the risk of viruses, malicious computer code, or other forms of interference which may damage your own computer or communications systems or networks. For the avoidance of doubt, AuctionsPlus does not accept responsibility to you or any third party for any hacking, interference or damage to your own computer or communications systems or networks which arises in connection with your use of the AuctionsPlus System or any linked website.

## **Access and use**

10. While using the AuctionsPlus System, you agree that you will not:
  - a. post content or items in connection with livestock in inappropriate categories or areas on the AuctionsPlus System;
  - b. infringe any laws, third party rights or AuctionsPlus policies;
  - c. use the AuctionsPlus System if you are not able to form legally binding contracts, are under the age of 18 or are suspended from using the AuctionsPlus System;
  - d. fail to deliver payment for livestock purchased, unless the Selling Agent or Vendor has materially changed the description after the Purchaser's bid, or a clear typographical error is made or the Purchaser cannot authenticate the Selling Agent or Vendor's identity;
  - e. fail to deliver livestock, unless the Selling Agent or Vendor fails to meet the Contract of Sale terms or the Selling Agent or Vendor cannot authenticate the Purchaser's identity;
  - f. manipulate the price of livestock or interfere with other users' listings;
  - g. post false, inaccurate, misleading, defamatory or offensive content (including personal information);
  - h. distribute or post spam or unsolicited or bulk electronic communications;
  - i. distribute viruses or any other technologies that may harm the AuctionsPlus System or the interests or property of AuctionsPlus users;
  - j. copy, modify or distribute content from the AuctionsPlus System, or AuctionsPlus' copyrights and trademarks;
  - k. harvest or otherwise collect information about users, including email addresses, without their consent;
  - l. engage in screen-scraping activities.



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## Limitation of liability and release

11. You accept that there are risks when trading online and using the AuctionsPlus System, including dealing with fraudulent persons. You will not hold AuctionsPlus responsible for the information, content or acts, errors, omissions, fault or negligence of any third party.
12. You acknowledge that the AuctionsPlus System allows anyone to offer, sell, and buy livestock and other items at any time, from anywhere, in a variety of pricing formats and locations. AuctionsPlus is not involved in the actual transaction between Selling Agents or Vendors and Purchasers.
13. When you enter into a transaction you create a legally binding contract with another user. You must ensure that you comply with your obligations to that other user and are aware of any laws relevant to you as a Selling Agent, Vendor or Purchaser. If another user breaches any obligation to you, you – not AuctionsPlus – are responsible for enforcing any rights that you may have.
14. You alone, and not AuctionsPlus, are responsible for ensuring that your listing, marketing, bidding and selling and any other activities conducted on the AuctionsPlus System are lawful. You must ensure that you comply with all applicable laws in Australia and other countries. You must also ensure that you strictly comply with these Forward Contract Terms, Operating Conditions and any other policies as notified by AuctionsPlus from time to time.
15. AuctionsPlus does not take ownership of the sheep or lambs at any time and does not transfer legal ownership of sheep or lambs from the Selling Agent or Vendor to the Purchaser.
16. AuctionsPlus cannot guarantee continuous or secure access to the AuctionsPlus System and operation of the AuctionsPlus System may be interfered with by numerous factors outside of AuctionsPlus' control.
17. AuctionsPlus excludes all implied warranties, terms and conditions to the maximum extent permitted by law. AuctionsPlus shall not be liable to you or any third party for any loss of whatever nature however arising including, but not limited to, loss of contracts, loss of business, loss of revenue, loss of profits, loss of anticipated savings, loss of goodwill or reputation, or any special, indirect or consequential damages arising, directly or indirectly, out of your use of, or your inability to use, the AuctionsPlus System.
18. To the extent that AuctionsPlus is able to limit the remedies available under these Forward Contract Terms in accordance with the law, AuctionsPlus expressly limits its liability for breach of a non-excludable statutory guarantee to the following remedies: a. the supply of the services again; or b. the payment of the cost of having the services supplied again.
19. If you have a dispute with one or more users, you release AuctionsPlus (and AuctionsPlus' officers, directors, agents, subsidiaries, joint venturers and employees) from all claims, demands and damages (actual and consequential) of whatever nature, known and unknown, arising out of or in any way connected with such disputes.



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## Breach

20. Without limiting other remedies available to AuctionsPlus at law or in equity, AuctionsPlus may, without notice to you, without limitation and in AuctionsPlus' sole discretion (which shall be exercised reasonably, having regard to the circumstances), delay listing your item of livestock, issue you a warning, restrict your activities through the AuctionsPlus System (including, but not limited to, any buying, selling and posting activities relating to livestock), temporarily suspend, indefinitely suspend or terminate your use of the AuctionsPlus System without notice, and refuse to provide AuctionsPlus services to you for any reason including if:
- a. you have, or AuctionsPlus believes that you have, breached the Forward Contract Terms, which includes the Operating Conditions or any of our policies in any way;
  - b. AuctionsPlus is unable to verify or authenticate any information you provide to AuctionsPlus;
  - c. AuctionsPlus believes that your actions may cause loss or damage to or otherwise harm you, AuctionsPlus' users, third parties or AuctionsPlus, AuctionsPlus' related bodies corporate or affiliates, directors, employees or agents; or
  - d. if AuctionsPlus reasonably believes that any of your information (which includes sheep or lambs or an item listed on the AuctionsPlus System) is inappropriate or of an offensive nature.
21. You agree to indemnify AuctionsPlus (and AuctionsPlus' officers, directors, agents, subsidiaries, joint venturers and employees) on demand against any loss, claim, demand, award, costs and expenses incurred by AuctionsPlus or any third party due to or arising out of your breach of these Forward Contract Terms or Operating Conditions, or your infringement of any law or the rights of a third party in the course of using the AuctionsPlus System or any other act, error, omission, default or negligence by you. Intellectual property rights
22. All intellectual property rights in the AuctionsPlus System, including but not limited to, formats, concepts, design, text, graphics, logos, icons, livery, get up, sound recordings and all software including, but not limited to, all codes and algorithms relating to the AuctionsPlus System belong to or are licensed by AuctionsPlus.
23. You may not in any form or by any means copy, adapt, reproduce (other than for the purpose of accessing and using the AuctionsPlus System), store, modify, reverse engineer, distribute, print, upload, display, perform, remove any credits, publish post frame within another website or create derivative works from any part of the AuctionsPlus System or commercialise any information or content obtained from any part of the AuctionsPlus System without AuctionsPlus' prior written permission or, in the case of third party material, from the owner of the intellectual property rights or relevant in that material. Governing law and jurisdiction
24. If a dispute arises regarding the Forward Contract Terms or Operating Conditions, the laws of New South Wales will apply. In relation to any such dispute, you agree to submit to the exclusive jurisdiction of the courts of New South Wales.
25. If you access this website in a jurisdiction other than New South Wales, you are responsible for compliance with the laws of that jurisdiction, to the extent that they apply.



# AuctionsPlus

## Assessment of sheep by Accredited Assessor

- 26. All sheep or lambs are to be assessed by an appropriately endorsed Accredited Assessor prior to auction. Forward Contract Assessment endorsement may only be obtained from AuctionsPlus.
- 27. At the time the Selling Agent lists the sheep or lambs on the AuctionsPlus System, the Selling Agent or Vendor will nominate the delivery specifications for the sheep or lambs.
- 28. All sheep or lambs are to be offered on a c/kg live or carcass weight basis only
- 29. Sheep or lambs are to be delivered to the purchaser within the minimum and maximum weight range indicated on the assessment. Any sheep or lambs delivered outside of the nominated specifications will be discounted as per the Purchaser's regular discount schedule, to be provided within two business days of the conclusion of the sale or if the Purchaser does not provide a matrix of penalties for sheep or lambs outside delivery specifications, then the tolerances will apply as per the table below (unless the Selling Agent or Vendor and Purchaser agree otherwise):

Specification	Tolerance
Number of head outside the specified weight range (but within the tolerance on weight range)	+/- 5%
Weight tolerance outside of specified weight range	+/- 5%
Average Weight	No claim available on average weight in forward contract sales

- 30. In the event that sheep or lambs exceed the tolerances in Clause 3, and the purchaser does not provide a matrix of penalties, the discount schedule in the table below will apply (unless the Selling Agent or Vendor and Purchaser agree otherwise):

Variation on Weight	Price Adjustment
Up to 5%	5%
5.1%-7.5%	7.5%
7.5%-10%	10%
>10%	15%



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31. For sheep or lambs sold on a c/kg Liveweight basis, weights on arrival at the purchaser's destination are to be adjusted to the pay weight to determine if any price adjustment is applicable

Example 1: 400 lambs specified to weigh 30kg-40kg at delivery. When weighed following delivery to determine pay weight, average weight on trucks is 36kg. On arrival at purchaser's property, after 800km journey, average weight is 34.2kg – a loss of 5%.

10 lambs weigh 27.5kg, 20 lambs weigh 29kg. To determine the number outside spec and the variance on spec, the 5% weight loss is added on to the arrival weight to determine what the lambs weighed at time of delivery.

The 10 lambs at 27.5kg on arrival, actually weighed  $27.5\text{kg} + 5\% = 28.9\text{kg}$  at delivery. The 20 lambs at 29kg on arrival, actually weighed  $29\text{kg} + 5\% = 30.5\text{kg}$  at delivery.

There are 10 lambs outside spec, but the number (2.5%) and the weight variance (4%) both fall within the allowed tolerance, so there is no claim.

32. For sheep or lambs sold on a c/kg carcass weight basis, an acceptable assessment requires at least 90% of the number of sheep or lambs to be in the fat score designated in the assessment and the balance in the adjacent score, otherwise price adjustment may be sought.
33. Unless otherwise specified in the assessment, any c/kg carcass weight purchases by processors are exclusive of skin value. Skins are to be tendered post slaughter and the value paid to the vendor.
34. Mutton purchased for immediate slaughter must be slaughtered within 48 hours of receipt at the abattoir
35. Lambs and hoggets purchased for immediate slaughter must be slaughtered within 24 hours of receipt at the abattoir
36. Any carcass seed contamination not disclosed in the assessment will be discounted as per the purchaser's regular schedule of discounts. Photographic evidence must be provided to the selling agent within 24 hours of completion of slaughter to make a claim.
37. Lambs purchased for immediate slaughter that are delivered with one or more permanent incisors will be discounted according to the purchaser's regular discount schedule.
38. For sheep or lambs sold on a c/kg carcass weight basis, the carcass will be at the purchaser's risk at the place and time when the carcass is weighed over the abattoir scales. The purchaser shall ensure their nominated carrier has appropriate insurance to cover events outside the vendor's control (including but not limited to rollover, fire, theft and delays in travel). The vendor is responsible for transit insurance in relation to losses due to death from natural causes or injury occurring in transit that prevents the slaughter of any lamb or sheep.
39. If the Purchaser requests an extension of the delivery date, and the Selling Agent or Vendor agrees to the extension of the delivery date, the Purchaser forfeits all delivery assessment protections on factors that change over time, including weight, fat score and dentition.
40. For sheep or lambs sold on a c/kg carcass weight basis, kill sheets must be provided to AuctionsPlus within two working days of slaughter.



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41. For sheep or lambs sold on a c/kg live weight basis, the Purchaser must provide AuctionsPlus with feedback in relation to the livestock delivered within a week after the Purchaser has received the livestock.
42. Any variations to the Contract of Sale, including but not limited to delivery date, weight specifications to be supplied, breed, age, dentition, accreditations or certifications and number of head may only be permitted if agreed to in writing by the Selling Agent or Vendor and the Purchaser.
43. AuctionsPlus will not be in breach of these Forward Contract Terms or be liable for any failure or delay in the performance of AuctionsPlus' obligations under these Forward Contract Terms or Operating Terms and Conditions to the extent that the failure or delay is wholly or partially caused, directly or indirectly by a Force Majeure event or any act or omission of the Selling Agent, Vendor or Purchaser.
44. The delivery date of sheep or lambs is binding unless a Force Majeure event applies or a written alternative agreement is made between the Vendor or Selling Agent and the Purchaser. "Force Majeure" is defined as an extraordinary event or circumstance beyond the control of the affected party which prevents the affected party's performance of its obligations, such as a war, strike, riot, crime or an event described as an act of God.
45. Force majeure does not include no delivery because of:
  - a. market supply or price variance to the Selling Agents Terms and Conditions at the time of delivery;
  - b. adverse seasonal conditions not physically preventing delivery;
  - c. protocol changes;
  - d. mechanical failures;
  - e. delayed shipping.
46. The Selling Agent is liable for any misdescription or transcription error of livestock provided in connection with the assessment of livestock.
47. Non-delivery by the Vendor gives the Purchaser the right to recover its loss from the Vendor.
48. The Purchaser's invalid refusal to accept delivery gives the Vendor or Selling Agent the right to recover its loss from the Purchaser (Operating Terms and Conditions).
49. Notwithstanding any other provision of these Forward Contract Terms, AuctionsPlus may terminate or suspend a user's access to the AuctionsPlus System for failure to comply with the Forward Contract Terms or the Operating Conditions at any time without notice.
50. The Selling Agent, Vendor or Purchaser must not assign the performance or any part of these Forward Contract Terms without the prior written consent of AuctionsPlus.
51. The Selling Agent, Vendor and Purchaser must comply with their respective obligations under the Contract of Sale, including in relation to payment obligations of the Purchaser.

## Definitions

'Accredited Assessor' means a person who has been accredited as an assessor to level 1, 2 or 3 status by AuctionsPlus under the Operating Terms and Conditions.

'AuctionsPlus' means AuctionsPlus Pty Ltd ACN 072 403 984.



# AuctionsPlus

'AuctionsPlus System' means the computer based communication facility for the sale of livestock provided by AuctionsPlus.

'Contract of Sale' means the terms governing the sale of livestock, including but not limited to the Selling Agents Terms and Conditions.

'Delivery' means the voluntary transfer of livestock or carcasses from the Vendor, or the Vendor's Agent or nominee into the custody of the Purchaser or the Purchaser's Agent or nominee.

'Selling Agent' means the agent who lists the sheep or lambs in an action on behalf of the vendor.

'Selling Agents Terms and Conditions' means the terms and conditions of the Selling Agent that is listing the stock on behalf of the Vendor.

'Purchaser' includes an agent who is deemed to be purchasing as a principal.

'Operating Terms and Conditions' means the operating conditions that govern a user's use of the AuctionsPlus System.