



**auctionsplus**  
*agricultural auctions at a click*

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## **AuctionsPlus Forward Contract Terms and Conditions – Cattle**

### **Effective 1 September 2015**

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 cattle 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.
5. Any claims in connection with the sale or purchase of livestock must be made within two (2) business days of delivery of the stock.

### **Disclaimer**

6. While AuctionsPlus may provide the AuctionsPlus System relating to the sale of cattle, AuctionsPlus has no control over and does not guarantee nor accept any responsibility for:
  - a. the existence, quality, safety or legality of the cattle 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 cattle;
  - d. the capacity of Purchasers to pay for cattle;
  - 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.
7. 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 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.

### **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 cattle at any time and does not transfer legal ownership of cattle 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.

#### **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 cattle 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.

### **Assessment of cattle by Accredited Assessor**

26. All cattle are to be assessed by an appropriately endorsed Accredited Assessor prior to auction. Forward Contract Assessment endorsement may only be obtained from AuctionsPlus.
27. A 60 Day National Vendor Declaration will be required to accompany all cattle at the time of delivery to the Purchaser, unless otherwise agreed by the parties.
28. All cattle are to be offered on cents per kilogram basis. No sales will be on a dollars per head basis.
29. Reserve prices will be set in accordance with standard AuctionsPlus Operating Terms and Conditions.
30. At the time the Selling Agent lists the cattle on the AuctionsPlus System, the Selling Agent or Vendor will nominate the delivery specifications for the cattle.
31. Dentition of cattle to be delivered to the Purchaser must be nominated in the catalogue accessed on the AuctionsPlus website. Any cattle 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 cattle outside delivery specifications, then the standard AuctionsPlus Operating Conditions tolerances will apply.

32. Cattle will be weighed at a certified weighbridge or at destination certified weighbridge if within 500 km radius of the Vendor's property. The certified weighbridge must be a registered B-Double weighbridge with no split weighing permitted. The Vendor must pay the weighbridge fees.
33. Shrinkage is to be applied as per the table below unless otherwise stated by the Accredited Assessor in the assessment or mutually agreed upon in writing by the Selling Agent or Vendor and Purchaser.

<b>Distance Travelled</b>	<b>Cattle Shrink Applied</b>
0-100km	5%
101-200km	4%
201-300km	3%
301-400km	2%
401-500km	1%
501+ km	0%

34. Cattle are to be delivered to the Purchaser within the minimum and maximum liveweight range indicated on assessment. Any cattle 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 cattle outside delivery specifications, then the tolerances will apply as per the table below (unless the Selling Agent or Vendor and Purchaser agree otherwise):

<b>Specifications</b>	<b>Tolerance</b>
Number of head outside the specified weight range (but within the tolerance on weight range)	+/- 5%
Weight tolerance outside of specified weight range	+/- 3%
Average Weight	There is no claim available on average weight in forward contracts.

Example 1:

100 cattle specified to weigh 400kg-500kg. 4 head weigh between 392kg and 398kg. No price adjustment is applicable as the cattle outside specifications fall within both the number and the weight tolerances

Example 2:

100 cattle specified to weigh 400kg-500kg. 2 head weigh 330kg. A price adjustment is applicable on the 2 head as they fall outside the allowed tolerance for outside the specified weight range.

Example 3:

100 cattle specified to weigh 400kg-500kg. 8 head weigh between 392kg and 399kg. The allowed tolerance is 5% (5 head) outside weight specification but within weight tolerance – no adjustment will be applicable on 5 head. An adjustment is applicable on the additional 3 head that fall outside the tolerance

If the Purchaser does not provide a matrix of penalties, the discount schedule in the below table will apply.

The discount to be applied to the purchase price for cattle falling outside defined tolerance on weight range, and/or by numbers exceeding the defined tolerance are as follows (unless otherwise specified or agreed between the Selling Agent or Vendor and Purchaser):

Variation on weight	Price Adjustment	Example weight variance on 300kg minimum weight	Example price paid on 300c sale price
Up to 5%	5.0%	285kg	285c
5.1%-7.5%	7.5%	280kg	277.5c
7.5%-10%	10.0%	275kg	270c
>10%	15.0%	265kg	255c

35. Feedlot Induction weights are to be adjusted to the pay weight to determine if any price adjustment is applicable.

Example 1:

Assessment specified cattle to weigh 300kg-400kg at delivery. At delivery, cattle are weighed full less 5% to determine pay weight, to average 350kg

At induction, after travelling 1000km, cattle averaged 332.5kg – a loss of a further 5% on the pay weight

At induction 3 head were outside of specification, weighing 288kg, 290kg and 295kg.

To determine if a claim is applicable due to being outside of specification, these weights are adjusted by the difference in average pay weight and average induction weight, in this case 5%.

After adjustments made, cattle determined to have weighed 303kg, 305kg and 311kg at the delivery point and therefore are not outside of specification, and no price adjustment is applicable.

36. If the Purchaser requests an extension of the delivery date due to shipping or import delays 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 overtime, including in instances where the cattle lose or gain weight or if additional teeth appear on the cattle during the period of the extension of the delivery date.

37. The Purchaser must provide AuctionsPlus with feedback in relation to the livestock delivered within a week after the Purchaser has received the livestock.
38. 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.
39. 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.
40. The delivery date of cattle 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.
41. 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.
42. The Selling Agent is liable for any misdescription or transcription error of livestock provided in connection with the assessment of livestock.
43. Non-delivery by the Vendor gives the Purchaser the right to recover its loss from the Vendor.
44. 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).
45. 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.
46. 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.
47. 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 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 cattle 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.