

Website terms of use

By accessing www.auctionsplus.com.au (**Website**) you (**Visitor**) agree with AuctionsPlus Pty Ltd ABN 73 072 403 984 (**we/us**) the following terms and conditions. If you do not agree to these terms and conditions, you must not access the Website. We may amend these terms from time to time and will place a notice of any change on the Website. You agree that this will be sufficient notice of the variation of these terms. If you continue to use the Website after 30 days of that notice then you are deemed to have accepted that change.

If terms of another agreement between us and you also apply, then to the extent of any inconsistency between those terms and these terms of use, the former will prevail.

Agreed terms

1 The Website

Security

- 1.1 The Visitor acknowledges that the Visitor must ensure that its computer network is secure, and we are not responsible for the security of the Visitor Material or the Visitor's computer network.

Visitor requirements

- 1.2 The Visitor must:
- (a) without limiting clause 5, ensure that the Visitor has necessary consents for us to store and use any Personal Information entered in the Website, including to disclose that Personal Information outside Australia; and
 - (b) cooperate with us, act reasonably and follow our directions in connection with these terms.

Acknowledgment

- 1.3 The Visitor acknowledges and agrees that:
- (a) the Visitor is responsible for approving and controlling the information that is made available by way of the Website; and
 - (b) if the Visitor does not comply with these terms then we are not obliged to provide Website access to the Visitor.
- 1.4 Subject to clause 6.7, the Visitor acknowledges and agrees that:
- (a) the Website may contain errors and may not be available from time to time;
 - (b) we exclude any warranty or representation not expressly set out in these terms, and specifically make no representation and give no warranty that use of the Website will:
 - (i) not infringe the Intellectual Property Rights or other rights of any third party;
 - (ii) be free from defects, fit for any particular purpose or function,or, about the suitability or performance of any third party service provider referred to the Visitor by us.

Prohibited conduct

- 1.5 The Visitor must not use the Website:
- (a) to engage in unlawful or fraudulent behaviour;
 - (b) to defame or harass any third party;
 - (c) to gain unauthorised access to or interfere with any third party's online resources or systems including by any form of hacking or other malicious interference;
 - (d) to circumvent any security measures;
 - (e) to distribute, view or create any material that:
 - (i) is or may be pornographic, defamatory, offensive, obscene, illegal or unlawful; or
 - (ii) infringes any third party's Intellectual Property Rights;
 - (f) in a way that infringes any third party's Intellectual Property Rights;
 - (g) in a way that disrupts, misuses or excessively uses the hardware, bandwidth access, storage space or other resources of us or our other customers;
 - (h) use automated data gathering, extraction or publication tools on this Website;
 - (i) through act or omission, mislead or deceive others; or
 - (j) in any other manner that is unacceptable to us.

Suspension

- 1.6 Without limiting any other remedy we may have under these terms or at law, we may suspend the Visitor's access to the Website at any time including if:
- (a) we suspect that the Visitor has done or may do any of the things described in clause 1.5;
 - (b) a third party alleges that the Visitor has done or threatened to do any of the things described in clause 1.5; or
 - (c) we receive a request or notice from a third party (including any regulatory body) requiring us to cease providing the Website access to the Visitor or remove any content the Visitor makes available through the Website.

2 Intellectual property

Licence of Visitor Material

- 2.1 The Visitor grants to us a non-exclusive, revocable, global licence to exercise the Intellectual Property Rights in any Visitor Material it provides to us, including to use and modify the Visitor Material.
- 2.2 The licence granted under clause 2.1 includes the right to sublicense to third parties.

Third Party Material

- 2.3 The Visitor acknowledges and agrees that we do not grant the Visitor a licence to use any Third Party Material.

No use of our marks

- 2.4 The Visitor must not use our trade marks or logos except with our prior written consent.

Infringement

- 2.5 The parties agree that although copyright in the Website is not infringed in circumstances contemplated by sections 47D, 47E and 47F *Copyright Act 1968* (Cth), the Visitor agrees not to:
- (a) decompile, disassemble or reverse engineer the whole or any part of the Website;
 - (b) make any modification to the Website; or
 - (c) merge all or any part of the Website with any other website.

3 Warranties

Visitor warranties

- 3.1 The Visitor warrants that use of the Visitor Material and Third Party Material by us as set out in these terms will not infringe the Intellectual Property Rights or other rights of any third party.
- 3.2 The Visitor warrants, and it is a condition of these terms, that the Visitor has all necessary permissions, licences, regulatory approval or other authorities needed to use the Visitor Materials and Third Party Material with the Website or otherwise in connection with these terms.
- 3.3 The Visitor acknowledges that the Visitor is responsible for its use of material that is made available by way of the Website.

Repeating warranties

- 3.4 The representations made and warranties given in clauses 3.1, 3.2 and 3.3 are regarded as repeated each day during the Term with respect to the facts and circumstances then subsisting.

4 Term and termination

Term

- 4.1 These terms commence on the Commencement Date and continue until terminated under clause 4.

Termination for breach

- (a) We may terminate these terms by written notice to the Visitor if the Visitor commits a breach of these terms and fails to remedy that breach within 5 days of being given notice of that breach; or
 - (b) an Insolvency Event occurs in relation to the Visitor,
- in which case these terms are terminated on the date specified in that written notice or, if no date is specified, immediately.
- 4.2 The Visitor may terminate these terms immediately by written notice to us if we:
- (a) commit a material breach of a fundamental term of these terms that has a material and adverse effect on the Visitor; and
 - (b) do not remedy that breach within 30 days of receiving written notice from the Visitor requiring us to do so,
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Termination on notice of new terms

- 4.3 Where we give the Visitor notice of changes to these terms by placing a notice on the Website, the Visitor is entitled to give notice to terminate these terms with immediate effect prior to 30 days following the date we place notice of the change on the Website. From the time of such notice, you must not use the Website.

Termination for convenience

- 4.4 Either party may terminate these terms by one month's written notice given to the other. The Visitor is not permitted to access the Website on and from the effective date of any such termination.

Survival

- 4.5 Termination of these terms will not affect clauses 2.1, 2.4, 2.5 and 5 or any provision of these terms which is expressly or by implication intended to come into force or continue on or after the termination.

5 Privacy

Use of Personal Information

- 5.1 The Visitor must process, use and disclose all Personal Information:
- (a) in compliance with our Privacy Policy and the Privacy Laws (regardless of whether or not the Visitor is otherwise obliged to comply with the Privacy Laws); and
 - (b) only for the purposes of performing its obligations under these terms.

Treatment of Personal Information

- 5.2 The Visitor must obtain any necessary consents from, and make any necessary disclosures to, all relevant individuals for the purpose of disclosing their Personal Information to us under these terms, and must otherwise comply in all respects with its obligations under the Privacy Act in respect of any Personal Information disclosed to us.
- 5.3 The Visitor must give all assistance required and comply with all directions given by us from time to time in relation to compliance with the Privacy Act, or any investigation, request or enquiry (formal or otherwise) from the Australian Information Commissioner regarding the Personal Information disclosed to us under these terms.
- 5.4 The Visitor must immediately notify us if it becomes aware that a disclosure of Personal Information may be required by law.
- 5.5 The Visitor must notify us immediately if it becomes aware of any breach of clause 5.

De-identified data

- 5.6 Despite any other clause in these terms, we and our suppliers may use any data which is de-identified for any purpose.

6 Limitation of liability

Limitation

- 6.1 Subject to clauses 6.3 and 6.6 and to the extent permitted by law, we exclude any liability for any loss or damage, however caused (including by our negligence), suffered by the Visitor in connection with these terms.
- 6.2 Subject to clause 6.3, any claim by the Visitor against us for loss or damage however caused (including by our negligence), suffered by the Visitor in connection with these terms must be made within 12 months of the Visitor becoming entitled to make the claim and any claim not made within 12 months is absolutely barred.

Consequential Loss

- 6.3 Subject to clause 6.7, we are not liable for any Consequential Loss however caused (including by our negligence), suffered or incurred by the Visitor in connection with these terms.
- 6.4 Consequential Loss in clause 6.3 means:
- (a) loss of bargain;
 - (b) loss of revenues;
 - (c) loss of reputation;
 - (d) indirect loss;
 - (e) loss of profits;
 - (f) consequential loss;
 - (g) loss of actual or anticipated savings;
 - (h) lost opportunities, including opportunities to enter into arrangements with third parties;
 - (i) loss or damage in connection with claims against the Visitor by third parties; and
 - (j) loss or corruption of data.

Seriousness or nature

- 6.5 For clarity and without limiting clauses 6.1 and 6.3 the parties agree that clauses 6.1 and 6.3 are to apply in connection with a breach of these terms, anticipated breach of these terms and other conduct regardless of the seriousness or nature of that breach, anticipated breach or other conduct.

Australian consumer law

- 6.6 Except as contemplated by clause 6.7, nothing in these terms is intended to limit any rights of the Visitor under the *Competition and Consumer Act 2010* (Cth).
- 6.7 If the *Competition and Consumer Act 2010* (Cth) or any other legislation states that there is a guarantee in relation to any goods or services supplied by us in connection with these terms and our liability for failing to comply with that guarantee cannot be excluded but may be limited, then clauses 6.1 and 6.3 do not apply to that liability. Instead our liability for that failure is limited to (at our election):
- (a) in the case of a supply of goods, our replacing the goods or supplying equivalent goods, repairing the goods, paying the cost of replacing the goods or of acquiring equivalent goods, or paying the cost of having the goods repaired; or
 - (b) in the case of a supply of services, our supplying the services again or paying the cost of having the services supplied again.

Third parties

- 6.8 Where we recommend a third party service or product to the Visitor, you should always review the corresponding terms and conditions and privacy policy of the third party provider. We are not responsible or liable for the provision of any third party product or service, or for any loss the Visitor suffers in connection with a service or product the Visitor chooses to take from a third party provider.

7 Force majeure

- 7.1 We will not be:
- (a) in breach of these terms as a result of; or
 - (b) liable for,
- any failure or delay in the performance of our obligations under these terms 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 Visitor.

8 General

- 8.1 The laws of New South Wales, Australia govern these terms.
- 8.2 Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia and courts competent to hear appeals from those courts.
- 8.3 Nothing in these terms prevents us from applying to a court of competent jurisdiction for injunctive or other urgent interlocutory relief.
- 8.4 The Visitor must not assign, in whole or in part, or novate the Visitor's rights and obligations under these terms without our prior written consent.
- 8.5 We may assign our interest under these terms.
- 8.6 Time is not of the essence in the performance of obligations under these terms.
- 8.7 Unless expressly stated otherwise, these terms do not create a relationship of employment, trust, agency or partnership between the parties.
- 8.8 A clause or part of a clause of these terms that is illegal or unenforceable may be severed from these terms and the remaining clauses or parts of the clause of these terms continue in force.
- 8.9 If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction, it is to be treated as being severed from these terms in the relevant jurisdiction, but the rest of these terms will not be affected.
- 8.10 These terms supersede all previous agreements about their subject matter. These terms embody the entire agreement between the parties.
- 8.11 We may subcontract the performance of all or any part of our obligations under these terms.
- 8.12 A right under these terms may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in the waiver.
- 8.13 The Visitor must comply with all applicable laws in connection with the Website.

9 Definitions and interpretation

Definitions

- 9.1 In these terms:

Commencement Date means the date you first access the Website.

Confidential Information of a party means any information:

- (a) relating to the business and affairs of that party;
- (b) relating to the customers, clients, employees, sub contractors or other persons doing business with that party;

- (c) which is by its nature confidential;
- (d) which is designated as confidential by that party; or
- (e) which the other party knows or ought to know, is confidential,

and includes all trade secrets, knowhow, financial information and other commercially valuable information of that party.

Consequential Loss has the meaning given to that term by clause 6.4.

Force Majeure Event means any occurrence or omission outside a party's reasonable control, as a direct or indirect result of which the party relying on the event is prevented from or delayed in performing its obligations under these terms (other than a payment obligation), and includes

- (a) law taking effect after the date of these terms;
- (b) disruption or unavailability of the internet; and
- (c) failure of a third party service provider to us to provide services, including hosting services.

Insolvency Event means any of the following events:

- (a) the party becomes bankrupt;
- (b) the party or the party's property becomes subject to a personal insolvency arrangement under part X Bankruptcy Act or a debt agreement under part IX Bankruptcy Act;
- (c) the party is unable to pay its debts when they become due and payable;
- (d) any event happens in Australia or any other country or territory in respect of a party that is similar to any of the events or circumstances referred to in this definition.

Any event that takes place as part of a solvent reconstruction, amalgamation, merger, or consolidation, on terms approved in writing by the other party beforehand and in compliance with those terms is excluded from this definition.

Intellectual Property Rights means all industrial and intellectual property rights, both in Australia and throughout the world, and includes any copyright, moral right, patent, registered or unregistered trade mark, registered or unregistered design, trade secret, knowhow, trade or business or company name, or right of registration of such rights.

Personal Information has the meaning given to that term by the Privacy Act.

Privacy Act means the *Privacy Act 1988* (Cth) and any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued under it, as amended from time to time.

Privacy Laws means:

- (a) the Privacy Act;
- (b) the Australian Privacy Principles (or APPs) contained in schedule 1 Privacy Act; and
- (c) all other applicable laws, regulations, registered privacy codes, privacy policies and contractual terms in respect of the processing of Personal Information.

Visitor Material means any material (including Third Party Material) and data provided by or to which access is given by the Visitor to us including data stored by any means.

Term means the term contemplated by clause 4.

Third Party Material means any material that is owned by a third party including data stored by any means.

Interpretation

9.2 In these terms:

- (a) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as' or 'for example' (or similar phrases) do not limit what else might be included;
- (b) a reference to these terms includes the agreement recorded by these terms;
- (c) no rule of construction applies in the interpretation of these terms to the disadvantage of the party preparing the document on the basis that it put forward these terms or any part of it;
- (d) a reference to 'month' means calendar month;
- (e) a reference to '\$' or 'dollar' is to Australian currency;
- (f) a reference to a party is a reference to us or the Visitor, and a reference to the parties is a reference to both us and the Visitor; and
- (g) a reference to applicable law is to any relevant law (including any subordinate or delegated legislation or statutory instrument of any kind) of a jurisdiction in or out of Australia, and also to any relevant judgment, order, policy, guideline, official directive, code of conduct, authorisation or request (even if it does not have the force of law) of any government agency or regulatory body, such as a stock exchange, within or outside Australia.