

Vendor Special Conditions and Variation to AuctionsPlus User Agreement and Sale Terms

Background

- A. Will Colwell and Morgan Kelly of KPMG, Riparian Plaza, 71 Eagle Street, Brisbane Queensland 4000 (the Receivers) were appointed as court appointed receivers and managers of certain cattle, embryos and semen straws of the Ireland Family Trust on 24 December 2019 (Initial Appointment Orders).
- B. The Receivers' appointment was extended to certain additional cattle on 6 April 2020 (Further Appointment Orders).
- C. On 6 August 2020, the New South Wales Supreme Court made orders (Sale Orders) giving the Receivers the power to sell the Lot and to pass title to the Lot to a purchaser.
- D. The Receivers amend the terms of the AuctionsPlus User Agreement and Sales Terms in accordance with this Variation and Special Conditions.

Variation to AuctionsPlus User Agreement and Sale Terms

The AuctionsPlus User Agreement and Sale Terms are varied as follows:

AuctionsPlus Clause	Variation
User Agreement	
Clause 1 - Definitions	<p>The following definitions are inserted:</p> <ul style="list-style-type: none"> (a) <i>"Agreement" means the AuctionsPlus User Agreement and Sales Terms amended by the Variation and Special Conditions, including any background, schedules and annexures;</i> (b) <i>"Assets" means the cattle, embryos and semen straws subject to the appointment of the Receivers;</i> (c) <i>"Further Appointment Orders" means the orders made in the Proceedings on 6 April 2020 by Sackar J;</i> (d) <i>"Initial Appointment Orders" means the orders made in the Proceedings on 24 December 2019 by Lindsay J;</i> (e) <i>"Law" includes:</i> <ul style="list-style-type: none"> (i) <i>principles of law or equity established by decisions of courts;</i> (ii) <i>statutes, regulations or by-laws of the Commonwealth of Australia or any State or Territory of the Commonwealth of Australia, or a Government Agency; and</i> (iii) <i>requirements and approvals (including</i>

	<p>conditions) of the Commonwealth of Australia or any State or Territory of the Commonwealth of Australia, or a Government Agency that have the force of law;</p> <p>(f) "Mr Ireland" means Corey Dean Ireland;</p> <p>(g) "Mrs Ireland" means Prudence Jane Ireland;</p> <p>(h) "Orders" means the Initial Appointment Orders, the Further Appointment Orders and the Sale Orders;</p> <p>(i) "Proceedings" means Westpac Banking Corporation v IFTT Pty Ltd ATF Ireland Family Trust & Ors, Supreme Court of NSW proceedings number 2019/00404452;</p> <p>(j) "Receivers" means Will Colwell and Morgan Kelly of KPMG, Riperian Plaza, 71 Eagle Street, Brisbane Queensland 4000;</p> <p>(k) "Related Entity" has the meaning given to that term in the Corporations Act 2001 (Cth);</p> <p>(l) "Sale Orders" means the orders made in the Proceedings on 6 August 2020 by Sackar J, including the power granted to the Receivers to sell the Lot; and</p> <p>(m) "Variation and Special Conditions" means the Vendor Special Conditions and Variation to AuctionsPlus User Agreement and Sale Terms.</p> <p>The following definitions are amended:</p> <p>(a) The definition of "Vendor" is amended to insert the words "the Receivers and" after the word "includes".</p>
<p>Clause 2 - User Agreement</p>	<p>The following subclauses are inserted:</p> <p>(a) as subclause 2(p): "a reference to a party is to a party to this Agreement and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;"</p> <p>(b) as subclause 2(q): "each obligation imposed on a party by this Agreement in favour of another is a separate obligation. Unless specified otherwise, the performance of one obligation is not dependent or conditional on the performance of any other obligation."</p> <p>The following subclauses are amended:</p> <p>(a) Subclause 2(b) is amended to insert the words "the Variation and Special Conditions and" after the word "includes".</p>

Clause 13.17 - Disclaimer	This clause is amended to insert the words " <i>(save for the Receivers)</i> " after the words "Each User".
Clause 18 - Entire agreement	This clause is amended to insert the words " <i>the Variation and Special Conditions,</i> " after the words "Sale Terms".
Sale Terms	
Clause 1 - Terms	This clause is amended to insert the words " <i>the Variation and Special Conditions,</i> " after the words "Sale Terms".
Clause 2.3 - Confirmation and Lots	Deleted
Clause 4.4(c) - Assessment of Lots	Deleted
Conditions of Sale	
Clause 2 - Warranty of Assessment and other information	Deleted
Clause 7 - Livestock sold for immediate slaughter	Deleted
Clause 8 - Transport to abattoir	Deleted
Clause 9 - Quarantine and movement restrictions	Deleted
Clause 12.1 - Title and risk	This clause is amended to remove the words " <i>at the place and time of loading the Lot onto the Purchaser's truck</i> and to replace those words with " <i>the earlier of payment of the full purchase price for the Lot or from midnight on the day of the sale</i> ".
Clause 12.2	Deleted
Clause 14 - Price adjustment for misdescription	Deleted
Clause 15 - Seed Damage	Deleted
Clause 16.2 - Purchaser default	Deleted
Clause 19 - Chemical residues in Slaughter Stock	Deleted

Clause 20 - Hormonal growth promotants	Deleted
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Special Conditions

The following clauses are added to the Agreement:

1. Interpretation

1.1 Definitions

All definitions used in the AuctionsPlus User Agreement and Sales Terms apply to the Variation and Special Conditions.

1.2 Inconsistency

If there is any inconsistency between the terms of the Variation and Special Conditions and the AuctionsPlus User Agreement and Sales Terms, the terms of the Variation and Special Conditions will prevail.

2. Receivers' Capacity

2.1 Receivers' capacity and liability

- (b) All references to the Receivers in this Agreement are references to the Receivers in their capacity as court appointed receivers and managers of the Assets.
- (c) The Purchaser acknowledges and agrees that:
 - (i) the Receivers are acting pursuant to and in accordance with the Orders;
 - (ii) this is a court appointed receivers sale in circumstances where it is usual that limited representations and warranties are given by the Receivers and except as expressly set out in this Agreement, no representation or warranty is made by the Receivers in relation to the Lot including but not limited to with respect to title to the Lot; and
 - (iii) the Receivers are not the agent of Mr Ireland, Mrs Ireland, any Related Entity of Mr Ireland or Mrs Ireland, or any other entity with a potential entitlement to the Lot or who may claim an entitlement to the Lot.

2.2 No personal liability of Receivers

- (a) For the avoidance of doubt, the parties agree that in connection with the negotiation, execution and completion of this Agreement, the Receivers are acting pursuant to and in accordance with the Orders and to the maximum extent permitted by Law:
 - (i) neither the Receivers nor the Receivers' representatives are personally liable under or in relation to:

- (A) this Agreement;
 - (B) the transactions contemplated by this Agreement;
 - (C) any act, matter or thing arising out of or in connection with this Agreement; or
 - (D) any other deed, instrument or document entered into, under or in connection with this Agreement,
- (ii) the Purchaser releases the Receivers and the Receivers' representatives from liability to the Purchaser for any loss or claim on any ground in connection with this Agreement, the Lot or under any other deed, instrument or document entered into, under or in connection with this Agreement; and
 - (iii) each Receiver is entitled to enforce his or her rights under this Agreement independently of each other Receiver.

2.3 Survival

The parties agree that the provisions of this clause 2 survive any termination of this Agreement.

3. Warranties

3.1 No warranties of Lot

The Purchaser acknowledges and agrees that:

- (a) the Lot is sold on an "as is where is" basis;
- (b) to the maximum extent permitted by Law, the Receivers make no statements or representations nor give any warranties in respect of the sale of the Lot or about the quality or condition of the Lot nor do they make or give any other representations or warranties except those expressly set out in this Agreement;
- (c) without limiting subclause 3.1(a), except as expressly stated, the Receivers do not make any statements or representations nor give any warranties about:
 - (i) the genetics of the Lot;
 - (ii) whether the Lot are registered with any body, society or association;
 - (iii) the physical state, quality or condition of any of the Lot;
 - (iv) the Receivers' rights in respect of the Lot or title to the Lot;
 - (v) the value of the Lot;
 - (vi) the fitness or suitability of the Lot for any purpose (including any purpose expressly or impliedly disclosed by the Purchaser to the Receiver or any agent), and

- (d) by entering into this Agreement the Purchaser has examined the Lot and that it is relying entirely on its own judgement and not on any statements made by Mr Ireland, the Receiver or any agent and that the Receiver makes no representation or warranty as to the condition of the Lot in any respect.

3.2 Limitations

- (a) Subject to any rights under the Competition and Consumer Act 2010 (Cth), the Purchaser may not claim against either the Receivers or the Receivers' representatives for any loss or claim arising from or relating to any statement, representation, warranty, promise or agreement in connection with the sale of any of the Lot:
 - (i) made or implied; or
 - (ii) failed to have been made or given,

by the Receivers, the Receivers' representatives or any representative or other person acting on behalf of any of them, except to the extent that the right to make such a claim is:
 - (iii) expressly set out in this Agreement; or
 - (iv) a right that by Law cannot be excluded or modified.
- (b) All warranties, conditions, promises, representations and statements which may have been made or given by the Receivers, the Receivers' representatives or any person purporting to act on behalf of the Receivers, whether express, implied, written or oral, statutory or otherwise other than those expressly contained in this Agreement, are excluded to the maximum extent permitted by Law.

4. Delivery of Cattle

The Receivers will not deliver the Lot and the Purchaser will not take delivery of the Lot until the Purchaser has paid the sale price for the Lot in full and in cleared funds.