

ALPA



Australian Livestock and Property Agents Association Ltd.

TERMS AND CONDITIONS At Clearing Sales

1. These conditions of sale constitute the entire agreement between the vendor, bidders and agents.
 - a) A vendor is bound by these terms and conditions by offering Goods for sale by auction.
 - b) An agent (includes an auctioneer) is bound by these terms and conditions by conducting an auction sale.
 - c) A buyer is bound by these terms and conditions by bidding at auction.
 - d) All intending bidders must register to the satisfaction of the Auctioneers prior to bidding at auction sale.
2. Each sale lot is subject to a reserve price and the right to bid is also expressly reserved by or on behalf of the vendor.
3. A bid cannot be made or accepted after the fall of the hammer.
4. The highest bidder shall be the purchaser at the price called by the Auctioneer at the fall of the hammer. In the event of a disputed bid the Auctioneer is the sole arbitrator of the successful bidder or the Auctioneer may decide, at his/her absolute discretion, to put the lot up again.
5. The Auctioneer may refuse to accept any bid which in the Auctioneers opinion is not in the best interests of the vendor and need not give reasons for doing so.
6. A bidder shall be deemed to be a principal unless, prior to bidding, the bidder has given to the Auctioneer a copy of written authority to bid for or on behalf of another person.
7. The auction shall be conducted on the basis that the bid price shall be exclusive of Goods and Services Tax (GST). GST shall be added after the fall of the hammer for those sale lots subject to GST.
8. The Auctioneer may determine rules for registration, bidding and identification and may refuse to accept any bid from any person who does not comply with such rules.
9. All lots are sold without any warranty or representation as to title, ownership, fitness for use, safety, quality or otherwise. All lots are open for inspection prior to the commencement of the sale and are sold with all faults, if any. All conditions and warranties expressed or implied by law are excluded to the extent that the law allows. No compensation shall be given for any faults, imperfections, errors in description, number in or of any lots sold.
10. All lots shall be at the purchaser's risk immediately after the fall of the hammer. Such risk includes but is not limited to loss of the property the subject of the sale and any damage caused directly or indirectly by the property.

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11. Terms are strictly cash or bank cheque inclusive of GST if applicable and payable on the day of sale. The Auctioneer may make specific alternate arrangements with individual purchasers but any such arrangements do not imply or create application generally. The purchaser is not entitled to possession of the Goods which constitute the lot until payment has been made in full and the Auctioneer has authorised release of the lot.
12. If delivery is made to, or possession obtained by, the buyer or its representative before full payment of the Price, then until full payment is received, the buyer:
 - a) does not acquire title to the Goods;
 - b) holds the Goods as bailee only for the vendor;
 - c) must act in a fiduciary capacity in its relationship with the vendor;
 - d) must store the Goods so that they are readily distinguishable from other Goods owned by the buyer;
 - e) is responsible for the Goods;
 - f) may make a bona fide sale for market value of any or all of the Goods. As between the buyer and the subsequent buyer, the sale shall be made by the buyer in its own name and not as agent for the vendor, however as between the vendor and buyer, the sale shall be made as bailee and agent for the vendor; and
 - g) must keep and account for the proceeds of any subsequent sale separately from its other money and hold those proceeds, together with the benefits of any rights against subsequent buyers, on trust for the vendor.
13. In addition to clause 12, if payment is not made according to clause 11, but delivery has been made to, or possession obtained by, the buyer or its representative:
 - a) The vendor or its agent may repossess and resell the Goods and enter property owned or occupied by the buyer or its representative if necessary to do so; and
 - b) Interest may be charged at the rate usually charged by the agent for overdue accounts on any amounts which remain owing at any time.
14. By bidding at sale and purchasing an item, the purchaser acknowledges and undertakes that before the item the subject of the sale ('the item') is used the purchaser will ensure that it is safe to use in accordance with manufacturer's directions and without risks to health and will provide for the provision of adequate information to those who use it or to those others to whom it may be supplied, to ensure its safe use.
15. Without limiting the generality of clause 14, the purchaser acknowledges that by bidding at auction the purchaser undertakes and agrees that before the item is used and as may be applicable:
 - a) Electrical equipment will be competently inspected for safe working,
 - b) Chemicals will be identified and controlled according to their Material Safety Data Sheet specification,
 - c) Power take off will be guarded,
 - d) V belts and pulleys will be guarded and
 - e) A roll over bar will be fitted where appropriate.

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16. The purchaser will also comply with Legislation which may require electrical appliances to be inspected by a registered electrical contractor prior to use.
17. Without limiting clauses 14 and 15, the purchaser agrees to comply with such legislative requirements as to safety that may apply in the State to which the item is taken after the sale or in which it is proposed that the item be used.
18. Every person at the auction site before, during or after the sale shall be deemed to attend at his or her own risk and to have noted and accepted the conditions of sale and the condition of the premises.
19. The agent agrees that he is liable to pay to the vendor the Price, less such commission as is agreed between the vendor and the agent, and in the absence of any agreement such amount as is reasonable, and less the Fees that are payable by the vendor that were incurred by the agent on behalf of the vendor in relation to the sale of the Goods.
 - a) In the event that the buyer pays the Price or part of it direct to the vendor then the agent has no liability to the vendor for the amount of such payment. Further, if the agent pays the vendor any amount which the buyer also pays direct to the vendor in respect of the same Goods, then the vendor must repay the agent that amount and the agent may debit that amount to an account held in the name of the vendor by the agent.
 - b) Regardless of whether or not a sale has occurred the agent may, but is not under obligation so to do, instead of deducting payments owed to it by the vendor, debit the amount of the commission and fees to an account held in the name of the vendor by the agent.
20. The Auctioneer has been retained by the vendor for the purpose of selling the Goods comprised in the lots. The terms of engagement between the Auctioneer and the vendor do not extend to the provision of advice by the Auctioneer to the vendor, to any prospective bidder or to any other person, in relation to the safety or otherwise of the auction site and the surrounding environments.
21. Nothing in these terms and conditions shall render the Auctioneer in any way whatsoever liable to the buyer, nor entitle the buyer to set off against the Auctioneer any rights the buyer may have against the vendor or otherwise.

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These are recommended terms and conditions of auction sale.

They are provided to ALPA members as recommended terms and conditions only.

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