



Clearing Sales Terms & Conditions

INTRODUCTION

1. These Terms and Conditions apply to all clearing sales, machinery related auctions & private treaties conducted by Downie Corporation Pty Ltd ACN 654 690 856, its agents or assigns or any of its related bodies corporate (as that term is defined in the *Corporations Act 2001 (Cth)*) (together **DownieCorp**) as auctioneer.
2. The Vendor and Purchaser acknowledge and agree that DownieCorp is acting as an agent for the Vendor and:
 - a) that the sale contract for the purchase of any Lot is made directly between the Vendor and the Purchaser; and
 - b) the terms of engagement between DownieCorp and the Vendor do not extend to the provision of advice by DownieCorp to the Vendor in relation to the safety or otherwise of the item/s for sale, the sale area and the surrounding environment where such items may be located.

REGISTRATION AND BIDDING

3. All intending bidders must register prior to bidding at the Auction. By bidding at Auction each bidder accepts, and is bound by, these Terms and Conditions.
4. Subject to a reserve price and the Vendor's rights under clause 5 of these Terms and Conditions, the highest bidder will be the Purchaser.
5. The Vendor reserves the right:
 - a) to make one or more bids at the Auction in respect of a Lot or Lots by DownieCorp or its representative;
 - b) without giving any reason, to withdraw any Lot or Lots from sale and without declaring the reserve price; and
 - c) to refuse any bid.
6. DownieCorp, reserves its rights:
 - a) to refuse any person admission to, or eject them from the Auction site;
 - b) prior to the commencement or during the Auction, to announce further special conditions applying to the Auction or a particular Lot, in which event such further special condition or conditions will be deemed to be incorporated into and form part of these Terms and Conditions;
 - c) to not disclose the existence of and/or quantum of the reserve price (if any) of a Lot prior to the closing of bidding or withdrawal of the Lot;
 - d) to refuse to accept any bid which, in DownieCorp's opinion is not in the best interests of the Vendor;
 - e) if a dispute arises as to a bid, to decide whose bid was the last or, alternatively, to resubmit the Lot for sale;
 - f) to (whether or not a Lot has been knocked down as sold) in its sole discretion resubmit it for sale by Auction at the Auction sale in progress or as soon as possible after the Auction sale;
 - g) to offer and sell a Lot that is not sold at Auction immediately after the Auction has completed, by private agreement. Any such private agreement is also subject to these Terms and Conditions unless otherwise agreed to in writing by DownieCorp; and
 - h) to cancel any transaction due to any error whatsoever, even if the Lot has been paid for. DownieCorp may exercise this right, right up until the time the Purchaser collects the Lot(s). If DownieCorp exercises this right, then it (and the Vendor) will refund any part (or all) of the purchase price that the Purchaser has paid.
7. A bidder is taken to be a principal unless, before bidding, the bidder has given to the Auctioneer a copy of a written authority to bid for or on behalf of another person or body corporate.
8. Subject to clause 5, the price payable by the Purchaser will be the:
 - a) price at which the hammer falls, and as recorded in the sale book by the Auctioneer at the sale for in person Auctions; or
 - b) price at which the Auction period closes for online Auctions,and shall be binding on the Purchaser and the Vendor.

PAYMENT TERMS

9. Unless otherwise agreed in writing between DownieCorp and the Purchaser, the purchase price will be payable in full on the day of the Auction.
10. If payment in full is not made pursuant to clause 9, interest will accrue daily on the purchase price at the rate of 18% per annum (which rate is subject to variation from time to time) until the date payment is made in full or the Vendor elects to resell the Lot pursuant to clause 13.
11. The Vendor or DownieCorp may at its discretion extend credit to the Purchaser, provided that such arrangements are approved in writing prior to the Auction by the Vendor or DownieCorp (as the case may be). Where credit is extended to the Purchaser by the Vendor, DownieCorp shall not, unless otherwise agreed to in writing, act as del credere agent on the sale and receipt of the purchase price is at the sole risk of the Vendor.
12. Risk in and security of all Lots shall pass to the Purchaser on the fall of the hammer and for the avoidance of doubt, neither the Vendor or DownieCorp shall be responsible for safeguarding the Lot thereafter and they will not be liable for any loss or damage however caused.
13. Property and title in each Lot shall pass to the Purchaser upon payment by the Purchaser of the price and until payment by the Purchaser the Lot is held by the Purchaser as trustee for the Vendor. If the Purchaser fails to make payment, the Vendor and/or DownieCorp will be at liberty to repossess the Lot and for that purpose without prejudice to any rights or remedies the Vendor and/or DownieCorp may have against the Purchaser under these terms or at law or in equity enter upon the lands or premises of the Purchaser or any other land where the Lot may be held.
14. If a purchased Lot is not collected by the Purchaser or their representative from the premises specified by the Vendor within 14 days after the date of the Auction, then the Purchaser acknowledges and agrees that the Vendor may (in its absolute discretion) treat the Lot as abandoned and have the Lot removed and/or disposed of at the Purchaser's cost.

TITLE AND DESCRIPTION OF LOTS

15. The Purchaser acknowledges and agrees that all of the Lots have been made available for inspection prior to the sale. No allowance or refunds will be made, nor shall any bidder or Purchaser be entitled to reject any Lot on the ground that it is not correctly described in the Catalogue, advertisements or other information supplied. The Purchaser agrees that this condition will apply during the COVID-19 pandemic and regardless of any public health restrictions in place at the time or in advance of the Auction.
16. The Vendor represents and warrants to the Purchaser and DownieCorp that prior to the commencement of the Auction:
 - a) it has good title to the Lot;
 - b) it has proper authority to sell the Lot; and
 - c) subject to these Terms and Conditions, the Lot will be transferred to the Purchaser free of any encumbrances, liens or security interests at the time of delivery of the Lot.
17. DownieCorp gives no warranty as to the Vendor's title to the Lot or the Vendor's right to sell the same and, to the extent permitted at law, DownieCorp is not liable in respect of any error, misdescription or omission in any particulars appearing or stated regarding the description of any Lot offered for sale.
18. In the case of online clearing sales, the Vendor and Purchaser acknowledge that DownieCorp relies entirely on all information provided to it by the Vendor regarding the description and state of the relevant Lots. To the extent permitted by law, DownieCorp excludes any and all express and implied warranties relating to the Lots, including but not limited to their description in any Catalogue.
19. The Purchaser acknowledges that the consumer guarantees stipulated in sections, 54 to 59 (inclusive) of the Australian Consumer Law do not apply to the sale of goods by Auction, either in person or online Auctions. As a result, the Vendor and DownieCorp make no warranties and give no guarantees regarding:
 - a) the goods being of acceptable quality;
 - b) the goods being fit for any disclosed purpose or any purpose for which the Vendor, supplier or manufacturer represents they are fit;

- c) the goods matching the description or corresponding to any sample or demonstration model;
- d) the availability of repairs or spare parts for the goods; or
- e) any express warranties in respect of the goods made by their manufacturer.

Nothing in this clause or within these Terms and Conditions should be interpreted as attempting to exclude, restrict or modify the application of any applicable provisions of the Australian Consumer Law.

SAFETY AND USE OF GOODS SOLD

20. The parties acknowledge that WH&S Legislation imposes obligations on plant owners in regards to the operation of plant in the workplace (which expression includes all areas in which plant may be used).

21. The Purchaser acknowledges and agrees that:

- a) unless the Purchaser has been notified otherwise in writing by the Vendor, no warranties or representations are made that any plant the subject of a clearing sale is fit for use in any work place as defined in the WH&S Legislation;
- b) where relevant information and/or records regarding the design or manufacture of the lot are not readily available, the Purchaser releases the Vendor and DownieCorp from any liability associated with its unavailability;
- c) it is their sole responsibility to ensure that they seek to ascertain the information and/or records relevant to the safe use of all items purchased ; and
- d) prior to use of any Lot purchased at Auction, the Purchaser will satisfy itself that the purchased Lots comply with the WH&S Legislation.

22. The Vendor acknowledges that WH&S Legislation imposes obligations on the seller of any new or used plant to inspect equipment, identify faults and provide Purchasers with advice on faults and information in relation to the safe use of the items being sold. The Vendor warrants to the Purchaser and DownieCorp that:

- a) it is aware of its obligations under the WH&S Legislation regarding the sale of plant; and
- b) it has (either itself or through a third party engaged by it) complied with the WH&S Legislation in relation to the safety of the Lots.

23. Unless otherwise stated all plant breeders rights seed varieties are sold for stockfeed use only and may not be used by the Purchaser for any other purpose whatsoever.

ELECTRICAL SAFETY

24. The Purchaser acknowledges that:

- a) no electrical items being offered at this Auction have been tested or inspected by a licensed person;
- b) no warranty can, or will be, given by the Vendor, their agents and/or servants as to whether any electrical item being offered at is in a safe working order;
- c) they have satisfied themselves in all respects as to the status of those electrical items on offer before bidding.

DISPUTES, RELEASE AND INDEMNITY

25. If any dispute arises in relation to a Lot (including but not limited to any misdescription, damage or deficiency of the Lot), the dispute is between the Purchaser and the Vendor.

26. The Purchaser acknowledges and agrees that if any dispute arises in relation to any Lot (including but not limited to any misdescription, damage or deficiency of the Lot), the Purchaser must notify the Vendor directly in writing within 3 days following the date of sale of that Lot.

27. The Vendor and Purchaser acknowledge and agree that if any dispute is notified to the Vendor in accordance with clause 26 above, then they will use their best endeavours to resolve the dispute without the intervention or involvement of DownieCorp.

28. The Vendor and Purchaser acknowledge and agree to:

- a) release DownieCorp from any claim, action, tribunal or court proceeding in respect of any dispute contemplated in clauses 25 to 27; and
- b) jointly and severally indemnify DownieCorp, on a full indemnity basis, from all liability, including all costs incurred by it in relation to any such claim.

GST

29. Words defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.

a) Amounts GST exclusive

- i. The Vendor acknowledges that all bids and other amounts payable in respect of a lot are exclusive of GST and that the Vendor is
- ii. solely responsible for paying any GST payable on the sale from the proceeds of sale.

b) GST payable in addition to purchase price

In addition to paying the amount bid by the Purchaser (which is exclusive of GST) the Purchaser must:

- i. pay to the Vendor an amount equal to any GST payable for any supply by the Vendor under or in connection with these terms and conditions (including, without limitation the sale), without deduction or set-off of any other amount; and
- ii. make that payment as and when the amount bid by the Purchaser or other consideration or part of it must be paid or provided.

c) GST on claims

- i. If a payment to satisfy a claim or a right to claim under or in connection with these terms and conditions (for example, for misleading or deceptive conduct or for misrepresentation or for a breach of any warranty of the Vendor or of DownieCorp or for indemnity or for reimbursement of any expense) gives rise to a liability to pay GST, the payer must pay, and indemnify the payee against the amount of that GST.
- ii. If a party has a claim under or in connection with these terms and conditions for a cost on which that party must pay GST, the claim is for the cost plus all GST (except any GST for which that party is entitled to an input tax credit).
- iii. If a party has a claim under or in connection with these terms and conditions whose amount depends on actual or estimated revenue or which is for a loss of revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST (whether that amount is separate or included as part of a larger amount).

TAX INVOICES

30. DownieCorp acknowledges that it will issue a tax invoices on the Vendor's behalf to the Purchaser.

GENERAL

31. Subject to Clause 6, where the Auction is not conducted online, these Terms and Conditions contain the entire agreement between the parties and any preceding representations or documentation are excluded.

32. Where the Auction is conducted online, then these Terms and Conditions apply in addition to the terms and conditions of the online Auction website. These Terms and Conditions will override the terms of the online Auction website to the extent there is any inconsistency.

33. These terms and conditions shall apply to sales of all Lots whether by Auction or private treaty.

34. The Purchaser acknowledges that these Terms and Conditions apply regardless of any public health restrictions and/or directives that are in place, including in relation to the COVID-19 pandemic.

35. The proper law governing the interpretation and enforcement of these conditions is the law of the State or Territory in which the Auction took place. If the Auction is an online Auction, then the governing law is the law of Victoria, Australia, unless the parties otherwise agree.

36. If any term is to any extent held by any court of competent jurisdiction to be invalid or unenforceable, then those terms are to be severed to the extent they are invalid or unenforceable and the remaining terms will not be affected and will remain in full force and effect.

Safety information for purchasers of plant equipment, and or attachments

IMPORTANT SAFETY ITEMS AND RISK CONTROLS TO CONSIDER WITH USED PLANT EQUIPMENT MAY INCLUDE;	
Equipment manuals	Refer to manuals to address safe operation of specific equipment make and model.
Instruction labels	Ensure instruction labels on equipment to correctly identify the function of each control.
Safety labels	Ensure warning labels to identify hazards eg; pinch points, crush zone, hot parts etc.
Visual alarms & signals	Ensure flashing light/s vehicle lighting and reflective tape, fitted where required.
Audible alarms	Ensure horn, and motion beeper, systems warning buzzers & alarms fitted as required.
Sound levels & exposures	Maintain equipment and ensure sound levels are compliant. Use hearing protection.
Roll over protection	Ensure integrity of operator protective structure. Ensure certification plate fitted.
Overhead clearance	Ensure appropriate Vehicle Height label in cabin to identify equipment clearance.
SWL label & or load chart	Safe Working Load labels or load charts required on equipment and/or in operator's area.
Load hold check valves	Ensure Check Valves are fitted to prevent cylinder movement in the event of hose failure.
Lock outs & limit switches	Ensure limit switches & lock outs function for controlled and stable operation of equipment.
Emergency stops	Ensure emergency stops available, for personnel to isolate power to equipment as required.
Brake systems	Ensure equipment brake systems are tested and maintained functional where required.
Seat belts & restraints	Ensure uncompromised seat belts and/or restraints fitted as per regulatory requirement.
Mirrors and blind spots	Ensure and use existing mirrors, & reverse camera or spotter to assist reversing.
Props & safety bars	Ensure prop and instruction label is installed & use fitted supporting prop or safety bars.
Tank identification	Ensure identification labels on all fluid storage tanks, including; Fuel type, Hydraulic Oil.
Hydraulic hoses	Ensure security and protection is in place for all hydraulic hoses as per standards.
Hydraulic hose guarding	Ensure guarding to any hoses within 500mm of personnel & label 'pressurized fluid'.
Overhead power lines	Ensure warning label fitted for overhead power line hazards, & label for minimum approach.
Entanglement	Ensure guards fitted for protecting from hazards, and warning labels as required to identify.
Slip, trip or fall	Ensure anti skid surface, and guard rails, & 3-point access warning labels installed at access.
Crushing cutting shearing	Ensure guards are securely fitted & signs are in place to warn keep clear of moving plant.
Stabbing puncturing	Ensure guards are securely fitted & signs are in place to warn keep clear of moving plant.
Friction striking ejecting	Ensure guards are securely fitted & signs are in place to warn keep clear of moving plant.
High pressure fluid	Ensure appropriate guards & ensure High Pressure Fluid warning labels as required.
Compressed air or gases	Ensure warning labels fitted & compressed air or gas systems labels as per standards.
Explosion	Ensure warning labels fitted to warn, flammables and or risk of battery explosion.
Confined space	Ensure warning labels fitted and Confined Space Control Measures applied as required.
Suffocation	Ensure powered plant equipment operating area is well ventilated during operation.
Chemical	Refer to Material Safety Data Sheets and refer to end user SWM's and JSA'S as required.
Dust	Apply dust suppression & refer to end user SWM's or JSA'S as required for PPE requirements.
Electrical	Ensure, secure and protect plant electrical systems, & test electrical equipment as per standards.
Fire	Ensure an appropriate serviceable fire extinguisher is available to suit electrical and oil fires.
Fumes	Operate maintained equipment only in ventilated areas, Refer to user SWM's and JSA'S.
Guarding	Ensure equipment guards are securely fitted and maintained free from defect.
Heat	Ensure guarding fitted for hot engine & exhaust & hot surface warning labels.
Defects	Apply preventative maintenance & daily operator prestart checks. Repair all defects.
Modifications	Ensure equipment is in compliance with standards, and has any modifications approved.

The purchaser accepts this safety information and acknowledges their responsibilities in ensuring their plant equipment is safe.

This safety information is provided to assist stakeholders in meeting requirements of Occupational Health & Safety Regulations. Plant equipment may contribute to serious injury or a fatality. Content listed above may not be an exhaustive list of potential hazards or risk controls. Omissions or errors may occur without liability to contributing persons. OH&S regulations require equipment purchasers and owners to inspect their plant equipment and address any hazards and risks prior to operation. Used plant equipment may require maintenance inspections, repair, and attention to hazards and risk controls prior to use. Purchaser must source relevant equipment manuals and seek advice to ensure equipment is maintained and safe prior to use.
 NOTE 1. Safe Work Method Statements (SWMs) and Job Safety Analysis (JSAs) may also be required for equipment operations.
 NOTE 2. This document is not produced to replace the supplier or manufacturer's, engineering or operational assessments.
 NOTE 3. The compliance status for any published standards remains the responsibility of the purchaser and or the end user.



DOWNIE CORPORATION

MACHINERY AUCTIONS

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