

IMPORTANT NOTICE

All bids made at an auction conducted by Elders Rural Services Australia Limited (“the Agent”) will be treated as offers to purchase goods subject to these conditions of sale unless otherwise agreed in writing by the agent before the sale. The auction is conducted in accordance with these conditions of sale and all applicable legislation and regulations in the State or Territory in which the auction is being held.

1. Goods

- 1.1 Each lot sold at auction is the subject of a separate contract of sale which incorporates these conditions.
- 1.2 The buyer must inspect and satisfy himself as to the quality, fitness and description of the goods before bidding. Goods are sold with all faults which are or would be apparent on inspection.
- 1.3 Subject to any applicable legislation to the contrary, errors, omissions or mis-description of goods do not entitle the buyer to annul the sale, reject the property or to claim compensation, damages or reduction in price.
- 1.4 The description of the goods in auction documents is provided by the vendor. The Agent makes no representation or warranty as to the liability or responsibility for the condition, number or description of goods. The Agent relies on the vendor's description of the goods. Any dispute about goods sold at auction is between the buyer and the vendor only. The Agent is, however, entitled to enforce compliance with these conditions including payment of money.
- 1.5 Where the goods include livestock, the auction of livestock is undertaken in accordance with the Elders Livestock Auctions Terms and Conditions of Sale as well as all applicable laws in that State or Territory. In the event of any inconsistency between this Agreement and the Elders Livestock Terms and Conditions of Sale, the Elders Livestock Terms and Conditions of Sale will prevail.

2. Bids

- 2.1 The auctioneer may invite bids for the purchase of goods. A bid is an offer to purchase goods at the bid price and subject to these conditions.
- 2.2 All bids are deemed not to include GST. Where applicable, GST will be added to the purchase price bid pursuant to these conditions.
- 2.3 The auctioneer has absolute discretion in the conduct of the sale. In particular, the auctioneer may without being required to give reasons:
 - 2.3.1 refuse to accept any bid;
 - 2.3.2 withdraw all or part of any lot before or during the sale;
 - 2.3.3 indicate any dispute between two or more bidders or between the auctioneer and a bidder; and
 - 2.3.4 in the event of any dispute, put the goods up for auction again, or nominate the buyer.
- 2.4 The vendor has the right:
 - 2.4.1 to bid itself or through an agent;
 - 2.4.2 to set a reserve price;
 - 2.4.3 to withdraw goods from auction at any time before the close of bidding.
- 2.5 Subject to any applicable laws and paragraph 14.1 below, the vendor may bid (under clause 2.4.3) an unlimited number of times, unless the auctioneer states prior to the auction that the bidder may only bid a specified number of times.
- 2.6 A bid cannot be made, accepted or retracted after the fall of the hammer.

3. Acceptance of bids

- 3.1 The highest bidder shall be the buyer at the price called by the auctioneer at the fall of the hammer, subject to any reserve price.
- 3.2 As between buyer and vendor, the entries in the clerking sheets, and the contract of sale, are conclusive of all matters referred to in it including the identity of the buyer, the lot number and the purchase price. The Agent is authorised to sign the clerking sheets and all other documents required to effect the purchase of the goods as agent for the buyer, and the Agent's signature will bind the buyer. The buyer must sign an acceptance note for the goods if asked to do so by the Agent.
- 3.3 A bidder shall be deemed to be a principal unless, prior to bidding, the bidder has given to the Agent a copy of a written authority to bid for or on behalf of another person.
- 3.4 The Agent may determine rules for registration of bidders, bidding, and identification of bidders and may refuse to accept any bid from any person who does not comply with such rules.
- 3.5 It is an offence for a person to falsely claim to have made a bid or to falsely acknowledge that they made a bid. The auctioneer will not acknowledge dummy bids.
- 3.6 The actual successful bidder at an auction sale must give to the Agent:
 - 3.6.1 the bidder's name or the name of the person on whose behalf the successful bid was made or the buyers bid card number; and
 - 3.6.2 such other information required by the Agent, including information required for the Agent to comply with any reporting or record keeping obligations in the State or Territory in which the auction is conducted.

4. GST

- 4.1 If a vendor of goods is registered for GST then GST will be added (if applicable) to the buyer's successful bid price and that GST must be paid by the buyer. The buyer will be given a GST complying tax invoice. If a vendor is not registered for GST the buyer will not have GST added to its successful bid price.
- 4.2 The Agent is not required to advise bidders of the GST status of the vendor prior to the sale. If GST is payable on any sale to a purchaser the purchaser shall be liable to pay any GST whether or not the purchaser was aware of such liability prior to their successful bid.
- 4.3 If, for any reason, GST is not charged or not collected in respect to an auction transaction, the vendor indemnifies the Agent against the Agent incurring any GST liability in respect to that transaction.
5. **Payment Terms**
 - 5.1 The buyer must pay the full purchase price immediately on the sale, without set off or counterclaim.
 - 5.2 If before the sale the Agent has agreed to extend

credit terms to the buyer, the buyer agrees to pay in accordance with the agreed terms. Interest (at the supplier's prevailing rate at that time) will be charged (calculated on a daily basis and debited monthly in arrears to the account) on the overdue amount from and including the date of supply of those goods or services (or from the due date) to, but excluding, the date of payment.

- 5.3 All payments must be made by cash, unendorsed bank or personal cheque unless the Agent, at its discretion, otherwise agrees. Where credit card facilities are available, payment may be made by this method. Payment of the full purchase price will not take place for the purpose of these Conditions unless and until the amount of any cheque, promissory note, bill of exchange or draft has been paid or any credit card transactions approved. Payment of purchase price is only made to the extent of cash actually received by the Agent.
- 5.4 The buyer must pay the full purchase price to the Agent and not to the vendor. The buyer is personally liable to pay to the Agent the full purchase price of the goods, whether or not payable under these conditions, even if:
 - 5.4.1 the buyer is bidding on behalf of someone else (and even if the Agent or the vendor knows this); or
 - 5.4.2 a dispute has arisen in respect of the sale of any goods; or
 - 5.4.3 the buyer has purported to pay any part of the purchase price to the vendor; or
 - 5.4.4 the buyer alleges any right of set-off or counterclaim against the vendor.
- 5.5 The Agent may enforce payment by the buyer of the full purchase price in the Agent's name alone. Additionally, the Agent has a right of action against the buyer's principal, if the buyer is an agent.
- 5.6 Nothing in these conditions shall render the Agent in any way whatsoever liable to the buyer, nor entitle the buyer to set off against the Agent any rights the buyer may have against the vendor.
- 5.7 The Agent may impose a buyer's premium in respect of any auction sale. This buyer's premium will be the percentage of the hammer price which may be varied by the Agent from time to time. The buyer's premium will be added to the hammer price to form the sale value due and payable by the purchaser prior to GST being added. Any buyer's premium collected will be due solely to the Agent as a selling fee over and above any commission payable to the vendor. The agent's commission shall not be payable if a buyer's premium is to be imposed.

6. Ownership and Delivery of Goods

- 6.1 Goods are at the sole risk of the vendor in all respects until close of bidding. Goods are at sole risk of the buyer in all respects after close of bidding even if the buyer has not taken delivery.
- 6.2 Without limiting clause 6.1, goods do not belong to the buyer and the buyer is not entitled to take delivery of goods until the buyer has paid the full purchase price. If the buyer is allowed to take delivery of goods before paying the full purchase price, the buyer is only bailee of the goods until the full purchase price is paid. During such bailment period:
 - 6.2.1 if the buyer re-sells any goods, the buyer holds the purchase price on trust for the vendor and the Agent; and
 - 6.2.2 the Agent may, in addition to any other remedies, enter into any property where the goods may be and repossess the goods.
- 6.3 The buyer must make all necessary settlements and take delivery of goods from the place where goods are kept within the time and on the date specified within 1 hour after the close of the auction. If there is no representative of the Agent present when the buyer takes delivery of the goods, the Agent is not responsible for any shortfall or defect. If the vendor or the buyer remove identifying marks of lots after sale, the Agent is not responsible for any subsequent loss.
- 6.4 The buyer must:
 - 6.4.1 arrange for removal and transport of goods at the buyer's expense and risk; and
 - 6.4.2 abide by any legislation relating to the movement or transportation of livestock and goods including issue of a waybill or any other such documentation as required within the State or Territory in which that the movement takes place.
- 6.5 By bidding at a sale and by paying the purchase price for the lot, the buyer 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 for its intended purpose and in accordance with the manufacturer's directions and without risks to health or safety and will provide adequate information and training to those who use it or to those others to whom it may be supplied, to ensure its safe use.
- 6.6 Without limiting the generality of clause 6.5, the purchaser undertakes and agrees that before the item is used the purchaser may be applicable under relevant State or Territory Occupational Health and Safety legislation to:
 - 6.6.1 have all electrical equipment inspected by a competent person for its safe use;
 - 6.6.2 ensure chemicals are identified and controlled according to their Material Safety Data Sheet specification;
 - 6.6.3 ensure power take offs are guarded;
 - 6.6.4 ensure V belts and pulleys are guarded; and
 - 6.6.5 ensure a roll over bar is fitted.
- 6.7 Without limiting clauses 6.5 and 6.6, the buyer agrees to abide by such Occupational Health and Safety legislation governing the safe use of all goods purchased as may be in place within the State or Territory in which the goods are sold or within the State or Territory to which the goods are taken.

7. Collusive Practices

- 7.1 No buyer or potential buyer, vendor or Agent, may

induce or attempt to induce another person, or themselves agree, to:

- 7.1.1 abstain from bidding, either generally or for a specific lot or lots;
- 7.1.2 bid to a limited extent only;
- 7.1.3 submit a joint bid at the auction, where it is intended that the property, rights or privileges bid for will or may be shared by two or more persons;
- 7.1.4 give or offer a gift or other consideration to a person for abstaining from bidding, or accepting a gift or consideration for abstaining from bidding;
- 7.1.5 induce or attempt to induce another person to abstain from bidding by offering that person the right to take over as a purchaser of the goods at the auction price, or to agree to use someone else's name in a bid or to enter a drawing of lots, to determine who becomes the owner of any or all of the goods; or
- 7.1.6 do any other act or thing that might in any way prevent or tend to prevent free and open competition.

8. Limitation of Liability

- 8.1 The Competition and Consumer Act 2010 and similar State and Territory legislation may imply warranties and conditions which may not be excluded. In addition, some State and Territory legislation may imply warranties and conditions relating to the sale of Livestock or Farm Produce which cannot be excluded. All other express or implied warranties, representations and conditions in relation to goods are excluded, so far as the law permits, unless given in writing signed by the vendor or Agent or expressed in these Terms and Conditions.
- 8.2 The Agent is not liable to the buyer for breach of any express or implied warranty, statement or condition or for any mis-description in relation to the goods. The Agent makes no representations and gives no warranties about the goods. Subject to laws to the contrary in the State or Territory in which the auction is conducted, any warranties, express or implied, are made by the vendor and not by the Agent. In the event that, notwithstanding this clause, the Agent does make representations or give warranties about the goods, the Agent's liability is excluded to the extent permitted by law. If liability cannot be excluded, then it is limited in the same manner that the vendor's liability is limited under clause 8.3 below.

- 8.3 Subject to any applicable laws in the State or Territory in which the auction is conducted that prescribe remedies which cannot be varied or avoided by contractual agreement between the parties, the vendor's liability to the buyer for breach of any express or implied condition or warranty in relation to the goods is restricted to the refund of purchase price actually paid by the buyer by way of liquidated damages, which the buyer agrees to be a genuine pre-estimate of the buyer's loss.

9. Agent

- 9.1 The Agent sells as del credere agent for the vendor.
- 9.2 The name and other relevant details of vendors are available on request from the Agent, at any time.
- 9.3 If the buyer does not remove goods in accordance with clause 6.3 the Agent may make, but is not obliged to make, arrangements for feeding or watering any stock or for transporting or storing goods at the risk of the buyer. The buyer must repay on demand all expenses incurred by the Agent. The Agent has a lien on such goods until the buyer has paid all expenses incurred by the Agent. The Agent is not liable to the buyer for any damage caused to the goods as a result of the Agent giving or not giving such service.

10. Break of delivery

- 10.1 Time is of the essence for all obligations of the buyer, including an obligation to pay monies due.
- 10.2 If the buyer does not comply strictly with the buyer's obligations under these conditions, the Agent may:
 - 10.2.1 rescind the contract of sale on behalf of the vendor;
 - 10.2.2 retain any deposit or part payment made by the buyer; and
 - 10.2.3 repossess and resell any goods by auction or by private sale.
- 10.3 If the Agent sells any goods under clause 10.2, the buyer has no right to any profit and the buyer must pay to the Agent on demand as liquidated damages the difference between the original purchase price (including, where applicable, GST and the Buyer's Premium) and the price realised on resale plus all expenses under clause 9.3, all expenses of resale and interest at the rate referred to in clause 5.2, on:
 - 10.3.1 the unpaid portion of the original purchase price from the date on which payment was due to date of payment; and
 - 10.3.2 all expenses from the date they were incurred to the date of payment.
- 10.4 Any deposit or part payment made by the buyer will be retained by the Agent and set-off against the amount owing under clause 10.3.

11. Risk

- 11.1 Every person at the auction site before, during or after the sale shall be deemed to attend at their own risk and to have noted and accepted the conditions of sale and the condition of the premises. The Agent does not assume or accept responsibility or liability of any kind for any damage or injury which may occur.

12. Indemnification

- 12.1 The vendor and the buyer indemnify the Agent and 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.

13. Safety

- 13.1 In order to ensure the safety of persons attending the auction, the vendor and prospective bidder must:
 - 13.1.1 Have regard to all safety warnings, including signage displayed on and around the auction site.
 - 13.1.2 Observe and adhere to all requirements or

- 13.1.3 Supervise and have control of all children in their care. Children are not to handle items offered for sale at auctions, including all plant and equipment, tools and parts, and are to remain clear of all machinery, sharp items (including tools and machine parts) and other potentially dangerous goods at all times.
- 13.1.4 Remain outside “no go areas” or any other areas that are roped off or marked as being out of bounds.
- 13.1.5 Only park vehicles in designated parking areas on the property.
- 13.1.6 Follow any directions given by the Agent, its employees, representatives or contractors.

12. Terms and Conditions

- 12.1 These Terms and Conditions are subject to legislation or regulation in the State or Territory in which the auction is conducted and in the event of any conflict the legislation or regulation will prevail. These terms and conditions are in addition to and do not derogate from the duties and rights of vendors, Agents and buyers set out in legislation and regulation in the State or Territory in which the auction is conducted.
- 12.2 The vendor is bound by these terms and conditions by offering the goods for sale.
- 12.3 The buyer is bound by these terms and conditions by attending and bidding at the sale.
- 12.4 The Agent is bound by these terms and conditions by conducting a sale.

13. Definition

- 13.1 In these Terms and Conditions, the following words have the following meanings:
 - 13.1.1 “Agent” means Elders Rural Services Australia Limited (ABN 72 004 045 121) and includes its related corporations and their employees, officers and agents
 - 13.1.2 “auctioneer” means Agent or the person appointed by the Agent to conduct the auction.
 - 13.1.3 “buyer” means the highest bidder subject to reserve price and that person's servants and agents. Where one or more persons are the buyer, “buyer” means all of them jointly and each of them severally. Where the buyer bids on behalf of two or more persons, “buyer” means both principal and agent jointly and each of them severally.
 - 13.1.4 “Farm Produce” means “farm produce” or “stock products” or such similar terms as defined in any legislation (applying in the State or Territory in which the auction is conducted) regulating the sale of farm produce, and includes skins, hides, tallow, cereals, grain, potatoes, onions and other vegetables, edible roots and tubers, tobacco, fruit, hay, chaff, dairy produce and eggs.
 - 13.1.5 “goods” means the subject of any lot in a sale catalogue and, where the context permits, includes Livestock.
 - 13.1.6 “GST” means the goods and services tax payable under the GST Act.
 - 13.1.7 “GST Act” means “A New Tax System (Goods and Services Tax) Act 1999
 - 13.1.8 “Livestock” means horses, cattle, sheep, asses, mules, swine, camels, goats, alpacas, ostriches, emus, and any other animals that are classified as “Livestock” (or similar term) by laws applicable to the sale of livestock in the State or Territory in which the auction is being conducted.
 - 13.1.9 “Lot” means all goods described in a sales catalogue as constituting a lot for the purpose of auction.
 - 13.1.10 “vendor” in respect of any goods means the person on whose behalf the Agent is selling the goods.

14. WA Legislation

- 14.1 The vendor or any person on behalf of the vendor or the auctioneer has the right to make no more than three bids.
- 14.2 Where the goods being sold include Farm Produce, as defined in the Auction Sales Act 1973 (WA), it is an offence to:
 - 14.2.1 induce or attempt to induce another person to abstain from bidding by means of a promise, expressed or implied, that the other person will have the right to elect to take over as buyer or to toss or draw lots to establish who is to become the owner.
 - 14.2.2 Abstain or agree to abstain from bidding as a result of such a promise.
 - 14.2.3 Knowingly enter or permit or cause to be entered in the auctioneer's record any name other than that of the actual successful bidder.
 - 14.2.4 Enter in the auctioneer's record the name of the buyer other than that of the actual successful bidder.
- 14.2.5 Where a successful bidder to supply wrong information as to the name of the buyer, firm or corporation on whose behalf the sale is conducted.

15. NSW Legislation

- 15.1 The following notices are given pursuant to the Property, Stock and Business Agents Act 2002 (NSW).
- 15.2 Penalties or collusive practices: It is an offence against the Property, Stock and Business Agents Act 2002 for a person to do any of the following as a result of a collusive practice, or to induce or attempt to induce another person by a collusive practice to do any of the following:
 - 15.2.1 to abstain from bidding;
 - 15.2.2 to bid to a limited extent only; or
 - 15.2.3 to do any other act or thing that might prevent free and open competition. Severe penalties may be imposed on persons convicted of collusive practices.
- 15.3 Successful bidders: The actual successful bidder at an auction sale must give to the auctioneer or Agent:
 - 15.3.1 the bidder's name; or
 - 15.3.2 the name of the person on whose behalf the successful bid was made.