

## Miller and James Real Estate - Auction Terms & Conditions

1. All intending Purchasers must register prior to bidding at the auction.
2. By bidding at auction each intending Purchaser accepts the terms and conditions of sale and is bound by them. 3. Subject to a reserve price and the Vendor's rights under paragraph
3. the highest bidder will be the Purchaser.
4. The Vendor reserves the right:
  - a) to make one or more bids at the auction in respect of a lot or lots by Miller & James or its representative;
  - b) without giving any reason, withdraw any lot or lots from sale and without declaring the reserve price; and
  - c) to refuse any bid
5. If a dispute arises as to a bid, the auctioneer has the sole authority to decide whose bid was the last or, alternatively, to resubmit the lot for sale.
6. The auctioneer may refuse to accept any bid which, in the auctioneer's opinion is not in the best interests of the Vendor.
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 corporate body.
8. The price at which the hammer falls, and as recorded in the sale book by the auctioneer at the sale, shall be the price payable by the Purchaser and shall be binding on the Purchaser and the Vendor.
9. Unless otherwise agreed in writing between Miller & James and the Purchaser, the purchase price will be payable in full on the day of the auction, or within 24 hours of Miller & James providing a Tax Invoice. If payment in full is not made pursuant to this clause, 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 16.
10. The Vendor or Miller & James may at its discretion extend credit to the Purchaser providing arrangements are approved in writing prior to the auction by the Vendor or Miller & James (as the case may be). Where credit is extended to the Purchaser by the Vendor, Miller & James shall not act as del credere agent on the sale and receipt of the purchase price is at the sole risk of the Vendor.
11. Security in all lots shall pass to the Purchaser on the fall of the hammer and for the avoidance of doubt, neither the Vendor or Miller & James shall be responsible for safeguarding the lot thereafter and nor shall they be liable for any loss or damage whether such loss or damage is caused or contributed to by any act, neglect or default of the Vendor and/or Miller & James, their servants employees or agents.

12. 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 Vendor as trustee for the Purchaser. If the Purchaser fails to make payment, the Vendor and/or Miller & James will be at liberty to repossess the lot and for that purpose without prejudice to any rights or remedies the Vendor and/or Miller & James 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.

13. All the lots having been made available for inspection prior to the sale. No allowance or refunds will be made, nor shall any Purchaser be entitled to reject any lot on the ground that it is not correctly described in the catalogue, advertisements or other information supplied.

14. Miller & James gives no warranty as to the Vendor's title to the lot or the Vendor's right to sell the same and is not liable in any respect of any error, miss-description or omission in any particulars appearing or stated regarding the description of any lot offered for sale.

15. Occupational Health & Safety Regulations impose obligations on plant owners in regard to the operation of plant in the work place (which expression includes all areas in which plant may be used) and the Purchaser acknowledges that with the exception of any plant classified as Category 1; that is, plant that is safe and without risks to health if used for a purpose for which it was designed, manufactured and supplied and in respect of which, all relevant information and conditions for safe use have been provided to the Purchaser, all plant the subject of this clearing sale is not fit for use in any work place as defined in the Occupational Health and Safety Act of the relevant State, and the Purchaser warrants to the Vendor that, prior to any plant purchased by the Purchaser pursuant to these terms and conditions being used or operated in any way whatsoever, he or she shall make safe to use such plant and the Purchaser further warrants to the Vendor that he or she shall ensure that, prior to any plant sold pursuant to these conditions of sale being used, that the use of the said plant in every respect shall conform with the requirements of the Occupational Health and Safety Act of the relevant State as it imposes a duty on employers, self-employed persons and occupiers of work places as if the Purchaser was an employer, self-employed person, or occupier as might be applicable from time to time.

16. If the Purchaser fails to comply with any or all of the above conditions, all moneys received by Miller & James shall be forfeited to the Vendor and all lots uncleared may be resold by public auction or private contract and any deficiency arising on such resale together with all costs and charges shall be made good by the Purchaser.

17. Unless otherwise stated all PBR Varieties are sold for stockfeed use only and may not be used by the Purchaser for any other purpose whatsoever.

18. Miller & James has been retained by the Vendor as auctioneer for the purpose of selling the lots for the highest price. The terms of engagement between Miller & James and the Vendor do not extend to the provision of advice by Miller & James to the Vendor in relation to the safety or otherwise of the sale area and the surrounding environment.

19. GST - Words defined in A New Tax System (Goods and Services Tax) Act 1999 (Cwt.) have the same meaning in this clause.

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

ii. 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: 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 Make that payment as and when the amount bid by the Purchaser or other consideration or part of it must be paid or provided.

iii. GST on claims 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 Miller & James 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. 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). 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).

20. Tax Invoices - The Vendor agrees that it will not issue a tax invoice in respect of a sale of any lots. Miller & James acknowledges that it will issue tax invoices to Purchasers in respect of sales made by it on behalf of the Vendor.

21. Buyer's Premium If any lots, or the entire catalogue, are advertised as having a Buyer's Premium as a %, then such premium amount will be added to the sale price of any such lots and the Purchaser will be invoiced accordingly by Miller & James.

## 22. Warranties, Guarantees and Conditions

a. All implied guarantees, warranties and conditions insofar as they relate to the Vendors are excluded to the extent permitted by law.

b. The Vendors are not liable for any loss or damage to the purchaser resulting from any machinery purchased from them by the purchaser; or any special, consequential, direct or indirect loss and damage incurred by the purchaser as a result of such purchase.

c. The purchaser warrants that he/she/it has examined thoroughly the machinery before purchase and does not rely upon the Vendor's skill and judgment.

d. Clauses 22(f) and (g) constitutes the purchaser's sole remedy in the respect of the purchase.

e. Where the purchaser buys the machinery as a Consumer, these conditions shall be subject to any laws or legislation governing the rights of Consumers and shall not affect the Consumer's statutory rights. The Vendors refer each such Consumer to the Consumer Guarantee Guide at the following link:

[http://www.consumerlaw.gov.au/content/Content.aspx?doc=the\\_acl/guidance.htm](http://www.consumerlaw.gov.au/content/Content.aspx?doc=the_acl/guidance.htm) and

state that nothing in these conditions is to be taken as seeking to contract out of the purchaser's statutory rights.

f. In the event of a breach of an implied guarantee, condition or warranty which cannot by law be excluded or modified, including any guarantee, condition or warranty implied by the Competition and Consumer Act 2010, the Vendors' liability shall at the Vendors' option be limited to the refund of the purchase price. In all other situations, the Vendor's liability shall be \$10.00 and no more.

g. Nothing in these conditions is intended to have the effect of contracting out of any applicable provisions of the Competition and Consumer Act 2010 ("CCA") or the Fair Trading Acts ("FTA") in each of the States or Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.

h. The Vendors shall not be responsible for damage or fault in performance arising out of the operation of the machinery by the purchaser.

i. The purchaser acknowledges that the Vendors give no warranty as to fitness of the machinery for its intended purpose or application of the purchaser or as to its merchantable quality and that the purchaser warrants that he/she/it has relied entirely upon his/her/its own evaluation thereof.

j. The purchaser warrants that he/she/it has not relied upon any representations made by the Vendors or their agent.