

TERMS & CONDITIONS OF AUCTION AND SALE

1. Definitions

In these terms and conditions, unless the context otherwise requires or implies:

Administration Fee means 5% of the Purchase Price.

Auctioneer means Rodwells and Co Pty Ltd ACN 009 481 752 trading as *Australian Agricultural Auctions*.

Auction means the auction of the Lots in a List.

Auction Site means the premises at which Lots are located and an Auction is conducted.

Australian Consumer Law means the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010 (Cth)*.

Bidder means a person bidding at an Auction.

Bidder Number means the identification number allocated to a Bidder on Registration.

Bidder Card means the card completed by prospective Bidders for Registration.

Completion means in relation to an Auction, the point in time when all of the Lots on a List have been auctioned, irrespective of whether or not all Lots have been sold.

GST means the goods and service tax as imposed by the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

List means a list containing some or all of the Lots available at an Auction.

Loss means any claim, delay, loss, liability, damage, expense, penalty, outgoing or cost whatsoever and however arising, whether present, unascertained, immediate, future or contingent and includes indirect and consequential losses.

Lot means any goods available for purchase at an Auction.

Motor Vehicle means a vehicle that is built to be propelled by a motor that forms part of the vehicle.

On-Line Registration means registration as a Bidder at www.agriauctions.com.au

Purchaser means the successful Bidder for a Lot as determined by the Auctioneer.

Purchase Price means the highest bid accepted by the Auctioneer for a Lot.

Registered/ Registration means registration as a Bidder with the Auctioneer by Bidder Card or On-Line Registration.

Reserve Price means the minimum price of a Lot agreed between the Vendor and Auctioneer prior to the Auction.

Vendor means the owner of a Lot.

Taxable Supply has the meaning given to that term by the GST Law.

Tax Invoice means a tax invoice as defined in the GST Act.

WH&S Laws means the laws governing work health and safety in the relevant state or territory.

2. Auction and Sales Contract

- 2.1 The Auctioneer has been appointed as agent of the Vendor for the purposes of selling the Lots.
- 2.2 The contract for the purchase of a Lot is made directly between the Vendor and the Purchaser.
- 2.3 If any dispute arises in relation to a Lot, the dispute is between the Purchaser and the Vendor.
- 2.4 The Purchaser releases the Auctioneer from any claim, action, tribunal or court proceeding in relation to the auction or sale of that Lot and agrees to indemnify the Auctioneer, on a full indemnity basis, from all liability, including all costs incurred by it in relation to any such claim.

3. Registration

- 3.1 Bidders must be Registered to bid at an Auction.
- 3.2 By Registration, Bidders agree to be bound by these Terms and Conditions.

4. Bidding

- 4.1 Auctioneers will only accept bids on Lots from Registered Bidders.
- 4.2 Bidding on a Lot can be made using a Bidder Number.
- 4.3 A Bidder will be deemed to be bidding on their own behalf unless the Bidder has disclosed to the Auctioneer that it will be bidding as agent on behalf of a principal. The Bidder acknowledges and agrees that it will be jointly and severally liable for any obligations of its principal.
- 4.4 Restrictions on Bid increments can be set by the Auctioneer at the Auctioneers' discretion.
- 4.5 An Auctioneer can refuse any person admission to, or eject them from, the Auction Site if the behaviour of that person is deemed by the Auctioneer to impact negatively on an Auction.
- 4.6 Subject to any Reserve Price, and at the sole discretion of the Auctioneer, the highest Bidder for a Lot will be the Purchaser.

- 4.7 The record by the Auctioneer of the highest bid is binding on the Purchaser, and is prima facie evidence that the Purchaser has agreed to purchase the Lot.
- 4.8 The Vendor is prohibited from bidding on a Lot whether directly or indirectly, in person or through any third party.
- 4.9 The Bidder agrees not to bid for, or on behalf of, any Vendor in relation to the Vendor's Lots.
- 4.10 The Bidder undertakes to notify the Auctioneer immediately if it becomes aware of any breach of clauses 4.8 or 4.9.

5. Reserve Prices

- 5.1 Sale of a Lot may be subject to a Reserve Price.
- 5.2 The Auctioneer need not disclose the existence and/or quantum of a Reserve Price (if any) of a Lot prior to the close of bidding or withdrawal of a Lot from sale.

6. Payment

- 6.1 The Purchaser must pay the Purchase Price to the Auctioneer on the day of Completion.
- 6.2 Payment may be made by cash, personal cheque, bank cheque, electronic funds transfer or credit card.
- 6.3 The sale of all Lots will be subject to payment of the Administration Fee to the Auctioneer.
- 6.4 Credit card payments will incur administration fees of 2% for Visa and Master Card, and 3.5% for American Express.
- 6.5 If payment is made by cheque and the cheque is dishonoured, the Purchaser will be in breach of these terms and conditions and interest will be applied to the amount outstanding from the date due.
- 6.6 Late payment will incur interest at a rate of 19.75 % per annum of the amount outstanding, calculated daily from the date payment is due up to and including the date of payment in full.
- 6.7 If a Purchaser fails to pay the Purchase Price, the Auctioneer is entitled to resell the Lot (at Auction or by private sale) and the net proceeds of that sale, after deducting Commission, and any costs incurred by the Auctioneer associated with the sale and resale (**Resell Price**), shall be credited to the Vendor. The Purchaser remains liable to the Vendor for, any difference between the Purchase Price and the Resell Price.

7. Title and Risk

- 7.1 Title to a Lot remains with the Vendor until payment in full of the Purchase Price and Administration Fee.

- 7.2 Risk in a Lot is passed to the Purchaser from the close of Bidding in relation to that Lot. Neither the Auctioneer nor the Vendor will be accountable for any damage or loss to the Lot which may arise, occur, or become apparent thereafter.
- 7.3 The Vendor represents and warrants to the Purchaser and the Auctioneer that:
- (a) it has good title to the Lot;
 - (b) it has proper authority to sell the Lot; and
 - (c) the Lot will be free from any security, charge or encumbrance, including security interests (as defined in the *Personal Property Securities Act 2010* (Cth)) over the Lot at the time of delivery of a Lot.
- 7.4 The Purchaser acknowledges that it has responsibility to conduct a search of the Personal Property Securities Register in relation to any Lot and agrees to undertake that search no earlier than the day prior to the day it bids for the Lot.
- 7.5 The Vendor and the Purchaser:
- (a) expressly acknowledge and agree that the Auctioneer relies on the representations and warranties at clauses 7.3 and 7.4 in auctioning the Lot on behalf of the Vendor; and
 - (b) release the Auctioneer from any liability incumbent on it, resulting from a breach of clauses 7.3 and 7.4.

8. Delivery

- 8.1 Lots may not be removed from the Auction Site until:
- (a) Completion; and
 - (b) the Administration Fee and Purchase Price have been paid in full.
- 8.2 The Purchaser must remove purchased Lots from the Auction Site by 6pm on the day of Completion, unless a later time is specified by, or agreed with the Auctioneer.
- 8.3 The Purchaser will be strictly liable for any damage to the Auction Site, or other goods, caused by the removal of any Lot from the Auction Site.
- 8.4 Unless otherwise agreed with the Auctioneer, Lots not removed in accordance with clause 8.2, may, be removed from the Auction Site and stored in an alternate location, at the cost of the Purchaser.

9. Conduct of Auction and dealing with Lots

- 9.1 The Auctioneer may at anytime, and at its sole discretion:
- (a) withdraw any Lot from the List at any time prior to Auction;
 - (b) offer for sale part only of any Lot in a List;
 - (c) offer two or more separate Lots in a List together as one Lot and if that Lot is not sold, to offer those Lots for Auction as separate Lots;

- (d) in the event that any Purchaser successfully bids for more than one Lot at the Auction, the Auctioneer may treat the sale of multiple Lots as interdependent contracts and treat default under a contract for either Lot as default under all contracts and allocate any monies received from that Purchaser between the Lots as it sees fit;
- (e) offer and sell a Lot that is not sold at an Auction immediately thereafter by private agreement. Any such private agreement is also subject to these conditions unless otherwise agreed in writing by the Auctioneer.

10. Quality of Lots

- 10.1 The Purchaser acknowledges that the consumer guarantees stipulated in sections 54, 55, 56, 57, 58 and 59 of the Australian Consumer Law do not apply to the sale of goods by auction.
- 10.2 The Purchaser acknowledges that:
 - (a) the Auctioneer has not carried out an inspection of the Lots offered for sale;
 - (b) the information that the Auctioneer has in relation to each Lot is information provided to the Auctioneer by the Vendor of each Lot (including, any inspection, condition, pre-auction reports or other information as to condition);
 - (c) neither the Auctioneer nor the Vendor make any representation and give no warranty or guarantee in relation to the quality or fitness for purpose of a Lots; and
 - (d) it must satisfy itself as to the condition, description and state of repair of a Lot prior to the Auction; and
 - (e) it is the Purchaser's responsibility to check the Written Off Vehicles Register prior to an Auction to satisfy itself as to the registrability of a Motor Vehicle.
- 10.3 Nothing in 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, or the liability of the Auctioneer or the Vendor for failing to comply with the provisions of the Australian Consumer Law.

11. Occupational Health & Safety

- 11.1 Both the Vendor and Auctioneer have duties under WH&S Laws.
- 11.2 In order to discharge this duty and based on the information provided to it by the Vendor, the Auctioneer will indicate whether a Lot:
 - (a) is supplied with the provision of adequate information for safe use;
 - (b) is supplied without adequate information for safe use, or with identified faults or defects; or
 - (c) is supplied for intended use as scrap metal or spare parts,
 and will supply the Purchaser with either:

- (d) the information referred to at subparagraph (a), or
- (e) written advice stating the applicable matters at subparagraphs (b) and (c).

11.3 The Purchaser agrees to acknowledge receipt of the documents at clause 11.2 by signing a Record of Sale, as requested by the Auctioneer.

12. General Law

12.1 The interpretation and enforcement of these Terms and Conditions including all substantive rights and obligations hereunder and the manner mode and method of performance is the law of the state of the Auction Site.

12.2 All rights and remedies available to the parties against each other under the general law are subject to these Terms and Conditions.

12.3 If any of these Terms and Conditions is, to any extent held by any court of competent jurisdiction to be invalid or unenforceable, the remaining conditions will not be affected, and will remain in full force and effect.

13. Further special conditions

13.1 The Auctioneer may prior to the commencement, or during an Auction announce further special conditions applying to that Auction or a particular item put up for auction in which event such further special condition or conditions will be deemed to be incorporated into and form part of these conditions.

14. Goods and services tax (GST)

14.1 The Vendor will elect whether the Purchase Price of the goods is inclusive or exclusive of GST. If applicable, GST will be added to all charges and fees payable.

14.2 If the whole or any part of the Purchase Price of a Lot is consideration for a taxable supply, the Purchaser must pay to the Vendor via the Auctioneer, an amount equal to the GST amount applicable to the Purchase Price. The Auctioneer will provide to the Purchaser (if applicable) a Tax Invoice at that time.